



**THE CONTINUOUS CASE OF SEXUAL OFFENCES
AGAINST CHILDREN IN REPUBLIC OF SOUTH
AFRICA DESPITE OF THE ADOPTION OF
INTERNATIONAL LAW (2006-2011)**

By

**MUHAMAD RIZKI NUGRAHA DARMA NAGARA
016201500142**

A thesis presented to the

**Faculty of Humanities, President University
In partial fulfilment of the requirements for Bachelor Degree in
International Relations**

Concentration in Diplomacy Studies

January 2019

PANEL OF EXAMINER APPROVAL SHEET

The Panel of Examiners declare that the thesis entitled "*The Continuous Case of Sexual Offences against Children in Republic of South Africa despite of the Adoption of International Law (2006-2011)*" that was submitted by Muhamad Rizki Nugraha Darma Nagara majoring in International Relations from the Faculty of Humanity was assessed and approved to have passed the Oral Examinations on 5 March 2019.



Natasya Kusumawardani, S.IP., MProfStuds (Hons)

(Chair - Panel of Examiner)



Bustanul Arifin, BA.IR., MA.

(Examiner I)



Anggara Raharvo, S.IP., M.P.S

(Examiner II)

**THESIS ADVISER
RECOMMENDATION LETTER**

This thesis entitled "*The Continuous Case of Sexual Offences against Children in Republic of South Africa despite of the Adoption of International Law (2006-2011)*" prepared and submitted by Muhamad Rizki Nugraha Darma Nagara in partial fulfilment of the requirements for the degree of Bachelor of Arts in International Relations in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I, therefore recommend this thesis for Oral Defense

Cikarang, Indonesia,



Natasya Kusumawardani, S.IP., MProfStuds (Hons)
Thesis Advisor

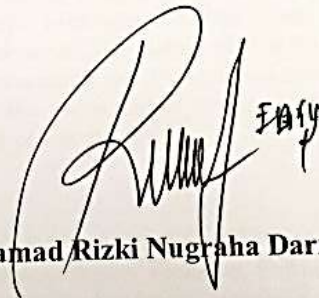


Anggara Raharyo, S.IP., M.P.S
Thesis Advisor

DECLARATION OF ORIGINALITY

I declare that this thesis, entitled "*The Continuous Case of Sexual Offences against Children in Republic of South Africa despite of the adoption of international law (2006-2011)*" is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Nijmegen, the Netherlands

A handwritten signature in black ink, appearing to be 'Rizki' with a large flourish and 'EASY' written to the right.

Muhamad Rizki Nugraha Darma Nagara

ABSTRACT

Title: "The Continuous Case of Sexual Offences against Children in Republic of South Africa despite of the Adoption of International Law (2006-2011)"

The universalism concept of human rights sees that children should be protected by all states under International Human Rights Law (IHRL). However, there are still numbers of violation to the protection of children's right, one of them is Child Sexual Abuse in Republic of South Africa (SA) which they have the different perception in seeing their sexual behaviour towards children. The case of SOAC in SA has violated the Children's Act and Sexual Offences and Related Matters (SORMA) Act. It is stated that child sexual abuse defined as sexual offences against children (SOAC). There are thousands of cases which have been reported through South African Police Service (SAPS), indeed the government has tried to stop it. Yet, the case is still continued. Moreover, the SA's government has comprehensive legislation and constitutions, statutory framework in regards to the protection of children rights. However, South Africa experience difficulty in order to implement those international laws since the culture of patriarchy is entrenched in the society. Patriarchy was constructed in the society because their interpretation over the practice of SOAC which they consider this as not a violation of crime instead as common norms which was constructed by the practice of tradition and apartheid which construct patriarchy as the cultural - fault lines. This showed that the relativism concept of human rights can be seen on how SA's people see with different perspective over SOAC. In this thesis, the research methodology that used is qualitative research. The author of this thesis used the theory of Social Constructivism, Universalism, and Cultural Relativism, and the concept of state's responsibility to the international human rights law and patriarchy as the theoretical framework of this thesis.

Keywords: Child Sexual Abuse, Sexual Offences against Children, Patriarchy South Africa, Cultural Fault-lines, Human Rights Violation, Patriarchy, Sexual Offences and Related Matters Act (SORMA), Tradition, Apartheid

ABSTRAK

Title: "The Continuous Case of Sexual Offences against Children in Republic of South Africa despite of the Adoption of International Law (2006-2011)"

Konsep universalisme dalam hak asasi manusia berpandangan bahwa anak-anak harus dilindungi oleh semua negara di bawah Hukum Hak Asasi Manusia Internasional. Namun, masih banyak terjadi pelanggaran terhadap perlindungan hak anak, salah satunya adalah Pelecehan Seksual Anak di Republik Afrika Selatan yang mana mereka memiliki persepsi yang berbeda dalam memandang perilaku seksual mereka terhadap anak-anak. Kasus ini telah melanggar Undang-Undang Anak dan Pelanggaran Seksual dan Hal-Hal Terkait. Menurut Undang-Undang Pelanggaran Seksual dan Hal-Hal Terkait mendefinisikan kasus Pelecehan Seksual Anak sebagai Pelanggaran Seksual terhadap Anak. Salah satu bentuk dari kasus ini yaitu pemerkosaan terhadap anak-anak. Terdapat ribuan kasus yang telah dilaporkan melalui Dinas Kepolisian Afrika Selatan dan memang pemerintah telah berusaha menghentikan kasus ini. Namun, kasus ini masih terus berlanjut. Selain itu, pemerintah Afrika Selatan memiliki undang-undang dan konstitusi yang komprehensif, kerangka kerja hukum dalam hal perlindungan hak-hak anak. Namun, pemerintah Afrika Selatan mengalami kesulitan untuk menerapkan hukum internasional tersebut karena budaya patriarki sudah melekat didalam masyarakat. Budaya ini dibangun didalam masyarakat karena interpretasi mereka atas praktik pelanggaran seksual terhadap anak-anak dianggap tidak sebagai tindakan kriminal, melainkan norma-norma umum yang dibangun oleh praktik tradisi dan apartheid yang mana membangun budaya patriarki sebagai garis kesalahan budaya. Hal ini menunjukkan bahwa konsep relativisme mengenai hak asasi manusia dapat dilihat dalam bagaimana masyarakat Afrika Selatan melihat kasus ini dengan perspektif yang berbeda yang mana mereka menganggap hal ini ialah hal yang wajar dan biasa. Didalam skripsi ini, metodologi riset yang digunakan ialah kualitatif. Penulis skripsi menggunakan teori Konstruktivisme Sosial, Universalisme, and Retalivisme Budaya, dan konsep dari tanggung jawab negara kepada hukum hak asasi manusia internasional, dan patriarki sebagai kerangka teori skripsi ini.

Keywords: Pelecehan Seksual Anak, Pelanggaran Seksual terhadap Anak-anak, Afrika Selatan, Garis Kesalahan Budaya, Pelanggaran HAM, Patriarki, Budaya, Undang-Undang Pelanggaran Seksual dan Hal-Hal Terkait, Tradisi, Apartheid

ACKNOWLEDGEMENTS

AssalamualikumWr. Wb.

First of all, I would like to say thank you very much to Allah SWT. Secondly, I would like to express my gratitude to my parents and family. My mom, Raden Hj. Henny Hendrawaty a.k.a Mamih and my dad, Drs. H. Dadang Hidayat Bsc.f, a.k.a Papih who have always encouraged, supported, and believed in me. I would like to express my gratitude to my sisters and brother, (alm) Enden Nova Indah Sovianti, Putri Dita Silva Kartika Asri, Bunga Nurputri Hendayati, and Satria Kusumah Jaya Dibrata. To all my other family members which I cannot write the names one by one, I just want to say thank you very much for all of your support, kindness, and love.

Thirdly, in the making of this thesis, I would like to say thank you very much to Miss Natasya Kusumawardani Prawiradinata and Mr. Anggara Raharyo for all the guidance throughout the thesis process even though distance separates us but we still can communicate and do the consultation. I would like to say thank you very much and gratitude to Mr. Teuku Rezasyah who always support and give me life advice and guidance throughout my journey. I would like to say thank you very much and gratitude to Mr. Hendra Manurung who always gave abundant support for me. I also would like to say thank you and express my gratitude to Mr. Riski Baskoro and Mr. Bustanul Arifin who always be there for me in every situation that I have faced in university both academic and social life. Then, I would like to say thank you very much to Mr. Yoonjung Kim (Hoppy Yoon) who always gave me advice and support in my academic life. Thank you for believing in me that I could be business expert, scholars, and professor in the future. I also would like to express my gratitude to all of lectures that has always supported me and shared abundant knowledge while I am pursuing my degree in President University, who are Mr. A.A Banyu Perwita, Mr. Endi Haryono, Mr. Eric Hendra, Mr. Harris Pratama, Ms. Isyana, Mr. Verdinand Robertua Siahaan, Laoshi Titi, Laoshi Rini, Mr. Reza A.A Wattimena. and Ms. Witri.

Fourthly, I would like to say my gratitude and thank you very much to Mr. Agus Canny (Vice Rector for Student and Alumni Affairs) who always believe in my potential and support me in every of my positive event.

This paragraph and next is dedicated to all of my support systems. First, I would like to say thank you very much and glad to have you in my life, Farhan Al-Farizi for always listening, supporting, and encouraging me as my brother.

Then, I would like to say thank you very much to Agung Azhari, Ani Nurhani Rakhmah, Ayuni Sekarsari, Putri Fasya Amalya Sanjaya, Iseu Adywianti Muanar, Poppy Meilani, Ulfa Fitri Syamsu, Adinda Putri Lestari, Natalie G. Peleh, Julia Ratih Gita Dwiyana Sitompul, Rio Kristanto, Bastian Saputra Pinang, Angie Febriani Pulungan, Maria M. Widhia Putri, Shelia Saady, Antonia DJ, Anastasia Pradah Weningtias, Denisa Amalia, Novela Permata Sari, Methildis Ayu, Vidia Alkaarev, Ardiza Aldit, Fitrya, Rendy Utomo Rachim, Amalia Theresia, Cindy May McGuire, Hayle Bradley, Yuana Umaran, Agung Azhari, Heltami Syversten, Gloria Wanjoyo, Naomi Wilhelmina, Devinia Purnama Ariesya, Ayu Bella A., Sydney Callista, Vania Ivena, Nadya Anjani, Dimas Bagas A., Nabil Victoria, Wildan G., Esther Lasut, Ester Ndoen, Grace Sitepu, Beby Kristami, Frisca Nazhiera, Geby Hanny, Julia Lesmana, Krisna Dana, Miasari, Peter San Lie, Rachel Sayogo, Taramitha A., Yolla D., Ribka Nabila, Rizky Amalia, Reynaldo Montolalu, Chrisander W., Tyana D., Vanesa geana, Aulia Magdani, Gregory Komansilan, Nandarista, Khansa Aqila, Andriani Florencia, Bella Vista, Winnie, Farah, Yuka, Michell, Serly, Deby Sandra , Maharani Balqis, Sonya N., Theyta B., Voni S.W., Luki Junian, Hanny N., Dhianaswa Zhafira, Mita Listya, M. Mirzal Dipa, Cici Tobing, Evi S., Amelinda H., Maria Anggriani, Karema N., Adi Asgaf, Rara N. K., Fadel, Carolina M, Dwini Fernanda, Jella C., Priscilla E. Marbun, Paul Gana, Isti Marta, Utamy J., Feronika D., Pelita Y.P., Tania A.W., Haekal Umri, Marella P., Lanny A., Meilisa Audina, Joana Da Costa, Edwina Setiawan, Khalida, Yohana Manurung, Winda, Josh, Razak, Jennifer, Joana Melia, Dominique Angie, Felisca, Yani, Cisty, Nadya, Vina, Juwita, Viska, Gek Wulan, Indri, Widi, Teuku Dodi Alfayet, Ardila, Andika Wira, Rafki, Tira, Nabila, Rachmat Al Hafizh, Ashila Maharani, Nurma, Theresia Oktaviani, and Tedy Setiawan,. Since I started to writing my thesis with batch 2014, I would like to say

thank you very much to Ka Aldo, Ka Amelinda, Ka Karema, and Ka Dea for accompanying and helping me.

I would like to say thank you very much one and the only sister of Life, Kaka Natasya who always give me abundant supports, love, and care. She is the form of mother, sister, and teacher for me. Indeed, in the university, she is my lecturer, but outside university life, she is both my mother and sister. She taught me every lesson in life. Thank you for loving and accepting me the way I am. Be Kind, Healthy, Wealthy, Free, and Live Your Life to the Fullest". I would like to say thank you very much to my coach and sister, Elisabteh Rompis (Lizl). She taught me the upside down of life. Thank you for loving and believing me.

To my family in the Netherlands, Adinda Katrina Sudradjat, Riska Angeline, Julia RGDS, Roda Duale, Joshep Liddiard, and Lady Graziella, thank you very much for everything. I cannot live without you guys here. I cannot imagine how struggle I am to live here. I would like to say thank you very much to HAN University lecturers and International Placement Office, Karin, Corine, Sandra, Chantal, Ingrid, Yolande, Sonja, Rolf, and Vermeuleun. To my family from Novo Learning BV, Martijn, Maarten, Maria, Ivy, Laura, Michelle, Lenia, Maaïke, Rosa, Varsha, Ghena, Arjan, Anna, Rob, Helmer, Joost, Micha, David, Irene, Winnie, Huyen, and Ifa thank you very much for everything. The making process of this thesis might be one of the hardest moment in my life since I need to do the internship abroad and study in another university abroad in which in the same time making this thesis. I really optimize my time before and during my stay here in the Netherlands to compose this thesis. Thank you to all people who have supported me until this stage which I can finish my thesis and submit it as the graduation requirements. However, while doing the research and reading every literature of my thesis case which is child sexual abuse in South Africa, I realized that the human rights concept is not fully implemented universally in every country. By making this thesis, it is the way I support human rights in order to raise people awareness regarding the protection and promotion of human rights.

Nijmegen, January 30, 2019

Muhamad Rizki Nugraha Darma Nagara

Table of Contents

PANEL OF EXAMINER APPROVAL SHEET ...	Error! Bookmark not defined.
THESIS ADVISER RECOMMENDATION LETTER	Error! Bookmark not defined.
DECLARATION OF ORIGINALITY	Error! Bookmark not defined.
ABSTRACT	iii
ABSTRAK	v
ACKNOWLEDGEMENTS	vi
LIST OF TABLES	xii
LIST OF FIGURES	xiii
LIST OF ACRONYMS	xiv
CHAPTER I	1
INTRODUCTION	1
I.1 Background of Study	1
I. 2 Problem Identification	8
I.3 Statement of the Problem.....	14
I.4 Research Objective	14
I.5 Significance of Study.....	14
I.6 Scope and Limitation of the Study	14
I.7 Theoretical Framework.....	15
1.7.1 Universalism	15
I.7.2 Cultural Relativism.....	17
1.7.3 Constructivism	19
I.7.4 State's Responsibility to International Human Rights Law	23
I.7.5 Patriarchy	23
1.7.6 Research Framework.....	26
I. 8 Research Methodology	28
I. 9 Literature Review	29
I.10 Thesis Structure	45
CHAPTER II.....	47
AN OVERVIEW OF CHILD SEXUAL ABUSE ACCORDING TO UN.....	47
II.1 Child Sexual Abuse according to UN	47
II.2 Child Sexual Abuse Violates IHRL	49

II. 3 Chapter Summary.....	52
CHAPTER III	53
REPUBLIC OF SOUTH AFRICA'S RESPONSE TO SEXUAL OFFENCE AGAINST CHILDREN	53
III.1 International Human Rights	53
III.1.1 The UN Convention on the Rights of the Child.....	53
III.1.2 African Charter on the Rights and Welfare of the Child	54
III.1.3 The United Nations Convention on the Elimination of all forms of Discrimination against Women.....	55
III.2 Constitution and Legislation	57
III.2.1 The Constitution of Republic of South Africa Act, No 108 of 1996	57
III.2.2 Children's Act 38 of 2005	57
III.2.3 The Child Care Act, No 74 of 1983 (as amended).....	58
III.2.4 Criminal Law: Sexual Offences and Related Matters (SORMA)	58
III.2.5 Domestic Violence Act, No 116 of 1998	62
III.2.6 The Criminal Procedure Act 51 of 1977	63
III.2.7 The Child Justice Act.....	63
III.3 Institutional and Constitutional Bodies Mandates	64
III.3.1 The South African Human Right Commission (SAHRC)	64
III.3.2 Department of Women, Children, and People with Disabilities (DWCPD) 65	
III.3.3 Department of Social Development (DSD)	66
III.3.4 South African Police Service (SAPS).....	67
III.3.5 Department of Justice and Constitutional Development (DoJCD)	68
III.3.6 National Prosecuting Authority (NPA).....	68
III.4 Policies and Plan	69
III.4.1 The National Development Plan (NDP)	69
IV.4.2 The Medium Term Strategic Framework (MTSF)	69
III.4.3 The National Policy Guidelines for Sexual Offences	70
III.5 Programme and Strategies	71
III.5.1 The Sixteenth Days of Activism	71
III.5.2 The Victim Empowerment Programme (VEP)	72
III.5.3 Thuthuzela Care Centres (TTCs)	73
III.5.4 Family Violence, Children Protection, and Sexual Offences Unit (FCS).....	74
III.6 Other International Obligations in regards to the Protection of Children	75
III.7 Civil Society and Others Programme & Strategies.....	76

III.7.1 Project Ndabezitha	76
III.7.2 Isolabantwana (Eye on the Child)	78
III.7.3 Soul City Institute for Health and Development IHDC)	79
III.7.4 Gender Links (GL).....	80
III.7. 6 Sonke Gender Justice	82
III.7.7 The Transform Education About Rape and Sexual Abuse (TEARS) Foundation	83
III.8 Chapter Summary	84
CHAPTER IV	86
SEXUAL OFFENCE AGAINST CHILDREN AND PATRIARCHY	86
IV.1 Contributing Factors to Sexual Offences against Children.....	86
IV.1.1 Age and Sex of the Child	86
IV.1.2 African Children Status	87
IV.1.3 Gender Inequality	88
IV.1.4 Masculinity Entitlements	91
IV.1.5 Poverty	92
IV.1.6 The Ideal Masculine Standards in South Africa society	92
IV.1.7 The Failure of SOAC Victim's Disclosure of the Case.....	93
IV.2 The Cycle of SOAC.....	94
IV.3 The Construction of Patriarchy in South Africa	95
IV.3.1 Tradition and Apartheid Constructed Patriarchy in South Africa.....	95
IV.3.1.1 Tradition	95
IV.3.1.2 Legacy of Apartheid	99
IV.3.2 Patriarchy as Cultural-Fault Lines	100
IV.3.2.1 The Practice of Tradition and Apartheid as Hardened Culture.....	101
IV.3.3 Human Rights as Relativism Concept in South Africa.....	103
IV.4 Chapter Summary	106
CHAPTER V.....	107
CONCLUSION	107
Bibliography.....	110
APPENDICES	116

LIST OF TABLES

Table I.2.1	Rape Statistical Data of South Africa in 2004-2010	8
Table I.2.2	Total Sexual Offences in 2008/2009 - 2010/2011	9
Table I.2.3	against children younger than 18 years: 2006/2007 – 2010/2011	9
Table I.2.4	Total Sexual Offences in 2008-2018	9
Table I.2.5	Crimes against Children 1 January - 31 March 2017	10
	Crimes against children Twelve Months 01 April 2017 to 31 March	
Table I.2.6	2018	11
	Sexual Offences against Children 2006/2007 - 2010/2011 and	
Table I.2.7	2017/2018	11
	Sexual Offences against Children 2006/2007 -2010/2011 and	
Table IV.3.2.1	2017/2018	103

LIST OF FIGURES

Figure I.7.5.1	Research Framework	26
Figure I.7.5.2	The Cycle of SOAC	27
Figure IV.3.2	Research Framework	100
Figure IV.3.3	Research Framework	103

LIST OF ACRONYMS

ACRWC	The African Charter on the Rights and Welfare of the Child
AU	African Union
CADRE	Centre for AIDS Development, Research and Evaluation
CAT	The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CFMC	Clinical Forensic Medicine Centres
CRC	Convention on the Rights of the Child
SOAC	Child Sexual Abuse
DoJCD	Department of Justice and Constitutional Development
DSD	Department of Social Development
DWCPD	Department of Women, Children, and People with Disabilities
FCS	Family, Child and Sexual Offences
GL	Gender Links
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRPD	The Convention on the Rights of Persons with Disabilities
IDMT	The Inter Department Management Team
IHRL	International Human Rights Law
JDL	The Protection of Juveniles Deprived of their Liberty
MTSF	The Medium Term Strategic Framework
NDP	The National Development Plan
NPA	National Prosecution Authority
NRSO	The National Register for Sex Offender
OHCHR	The High Commissioner for Human Rights
ORC	The Office on the Rights of the Child
SA	Republic of South Africa

SAHRC	The South African Human Rights Commission
SAPS	the South African Police Service
SOAC	Sexual Offences against Children
SORMA	Sexual Offences and Related Matters Act
TCCs	Thuthuzela Care Centres
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organization

CHAPTER I

INTRODUCTION

I.1 Background of Study

Every single of human beings have their own human rights which could not be taken by anyone, thus it has to have the fundamental legality aims to uphold, promote and protect human rights. In addition, we also need to ensure that the government will protect its people's rights. Thus, the international human rights law was established by the international community aims to become the cornerstone for government to guarantee that they have obligation to protect their people's rights and refrain from certain acts (United Nations, n.d.).

According to United Nations Human Rights Council (UNHRC), they defined human rights as, "the rights which inherent to every human regardless their nationality, sex, national or ethnic origin, color, religion, language, or any other status." (United Nations, n.d.) Therefore, every single human being should not have any discrimination by anyone within their life because this right has been existed within the human itself as permanent, thus all people are same and equal under human rights law.

"Human rights, following the manifest literal sense of the term, are ordinarily understood to be the rights that one has simply because one is human. As such, they are equal rights, because we either are or are not human beings, equally. Human rights are also inalienable rights because being or not being human usually is seen as an unalterable fact of nature, not something that is either earned or can be lost. Human rights are thus "universal" rights in the sense that they are held "universally" by all human beings. Conceptual universality is in effect just another way of saying that human rights are, by definition, equal and inalienable." (Donnelly, The Relative Universality of Human Rights, 2007)

Not only because of the justification that we are human and based on the sense of humanity which makes the human rights become the universal as Jack Donnelly has stated in the previous statement, but also the United Nations has declared the universality of the human rights itself by making the **Universal Declaration of Human Rights** (UDHR). *"This Declaration was proclaimed by the United Nations*

General Assembly in Paris on 10 December 1948 on General Assembly resolution 217 A. (United Nations, n.d.) *"It is aimed at a common standard of achievements for all peoples and all nations, and as fundamental human rights to be universally protected."* (United Nations, n.d.) The human right as a universal concept basically should be accepted, followed, and obeyed by states parties. Thus, state parties should protect their people's rights and refrain from any acts which lead to the human rights violation that has been stated within the UN Human Rights documents. The universal concept of human rights also has been emphasized within the statement from Universal Declaration of Human Rights.

"Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction"(United Nations, n.d.).

Therefore, it is clear that the universal concept of human right has been applied to all state parties legally. After the establishment of Universal Declaration of Human Right, in 1966, The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also established which has been signed (United Nations Human Rights Office of the High Commissioner, n.d.) (United Nations Human Rights Office of the High Commissioner, n.d.). Both have entry into force which became international law in 1976 (Human Rights, 2018). Those human rights documents have known as the "International Bill of Human Rights"(United Nations, n.d.).¹

In implementing the universal value of human rights, the state might face challenges due to some cases that happened in the state itself. For instance in some countries in Africa specifically, the Republic of South Africa² which facing the human rights problem. The problem is not somehow only because the state does not want to obey the international law by not implementing the law, but state somehow

¹ "Fact Sheet No.2 (Rev.1), The International Bill of Human Rights

² In the following next pages and chapters, the words of Republic of South Africa will be mentioned as South Africa.

already implement the law, but the case keeps happening. Indeed, the protection of human rights is not only promoted and protected by state, but also society needs to obey to human rights law so that it will help the implementation of policy by the state in order to protect the human rights.

The universalism and relativism concept of human rights is still debatable. The universal concept of human rights is still not well implemented by certain countries even though somehow they have ratified the international standard, for instance, the Universal Declaration of Human Rights. It does not mean that those states parties do not want to follow and implement those obligations but there is a reason behind it which become the barrier for states parties to implement this. The most common argument for relativity appeals to culture (Donnelly, 2007).

"In discussions of human rights, however, cultural relativism typically appears as a substantive normative doctrine that demands respect for cultural differences. The norms of the Universal Declaration are presented as having no normative force in the face of divergent cultural traditions." (Donnelly, The Relative Universality of Human Rights, 2007)

Both concepts have a different perspective on how they look on human rights. Human rights as a universal concept believe that universality of human rights is because we are the human and the sense of humanity which inherent to all people since the beginning of their lives. The relative concept perceives that, "few societies or individuals, however, believe that their values are binding simply or even primarily because they happen to be widely endorsed within their culture." (Donnelly, 2007)

In this thesis, it will be explained on how the concept of human rights can be relative in a certain society due to the role of culture. According to universalism concept of human rights, all of the children's right should be protected. It is due to the states agreement under Convention of the Rights of the Child (CRC) in which states members have agreed to protect the children from any form of violation, abuse, and discrimination. In fact, there are still numbers of violation cases to the protection of the rights of the children, one of the example is Child Sexual Abuse (CSA). Under article 34 of CRC,

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or

other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials." (United Nations, n.d.)

One of the countries which is facing the high number of CSA is South Africa which has 123,238 cases in total from 2006-2011 (South African Police Service, 2011). In contrast, South Africa has ratified International Human Rights Law, which are, "*International Convention on the Elimination of All Forms of Racial Discrimination :1969 (ratified in 1998), International Covenant on Civil and Political Rights :1976 (ratified in 1998), International Covenant on Economic, Social and Cultural Rights :1976 (ratified in 2015), Convention on the Elimination of All Forms of Discrimination against Women :1981 (ratified in 1995), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :1987 (ratified in 1998), Convention on the Rights of the Child :1990 (ratified in 1995), and Convention on the Rights of Persons with Disabilities :2008 (ratified in 2007)*". (OHCHR, n.d.) South Africa has legislated Bill of Rights in their constitutions (Chapter 2) on 15 January 1996 (Western Cape Government, 2018). South Africa has tried to implement the international child protection policy to their national law (South African Human Rights Commission, 2002). The domestic legislation of South Africa are set out in the Constitution and in international instruments (South African Human Rights Commission, 2002). Following are their domestic legislation aims to protect children's rights and provision that govern the case of child sexual abuse: "*The Child Care Act, No 74 of 1983 (as amended), Sexual Offences Act, No 23 of 1957 (as amended), Domestic Violence Act, No 116 of 1998, The Criminal Procedure Act 51 of 1977, and The National Policy Guidelines for Sexual Offences ("National Policy Guidelines")*." (South African Human Rights Commission, 2002) However, ever since the government has implemented this legal framework, yet, the violations are still happening. Furthermore, South Africa will be taken as a case study on how the society has different perspective to see their sexual behavior towards the children in the case of CSA. This case becomes significant because South Africa as a country which has ratified IHRL specifically children rights still has a high number of cases of CSA within its country as the violation to IHRL.

In order to understand the case of CSA, the definition and terms related to the CSA will be explained in this thesis both from UN and the government of South

Africa. 1999 WHO Consultation on Child Abuse Prevention (62) has formulated the definition Child Sexual Abuse which stated that:

*“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity is intended to gratify or satisfy the needs of the other person. **This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performance and materials.**”* (World Health Organization, n.d.)

In South Africa, the government did not use the term of CSA, instead they use the term of Sexual Offences against Children (SOAC) which are governed under Sexual Offences and Related Matters (SORMA) Act (Justice).

*“Enacting comprehensive provisions dealing with the creation of certain new expanded, or amended sexual offences against children and persons who are mentally disabled, **including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation.**”* (South African Police Service, 2007)

Seeing the definition above, so, in South Africa, the definition of child sexual abuse is the same with sexual offenses against children (SOAC).³⁴ The forms of SOAC are, *“rape, sexual assault, sexual exploitation, sexual grooming, child pornography, compelling or causing children to witness sexual offences, sexual acts or self-masturbation, and exposure or display of or causing of exposure or display of genital organs, anus or female breasts to children ('flashing').”* (South African Police Service, 2007). Those form of cases is reported by South African Police Service as one category which is Crime against Children specifically SOAC.

³ In the following part of the thesis until the conclusion of the thesis, the term of child sexual abuse will be mentioned into sexual offences against children since this thesis take the study case in South Africa, so the case will follow the definition from South African government under Sexual Offences and Related Matters Act (SORMA)

⁴ In the following pages and chapters, the words of Sexual Offences against Children will be mentioned as SOAC.

There were 123,238 in a total of sexual offences against children cases from 2006 until 2011 (Republic of South Africa, 2011). In 2013 and 2014, according to South Africa's Police Service, there were 18,524 cases of SOAC were reported, 51 cases every day as the average (Artz, Leoschut, Burton, & Lloyd, 2016). In addition, 62,649 total cases of sexual abuse (including adults and children) were reported in the same year, and 46,253 out of a total number of cases are rape (Artz, Leoschut, Burton, & Lloyd, 2016). According to Optimus Study South Africa (2016), between 18,000 and 20,000 SOAC cases has been reported to the police every year.

In 2014, IBTimes UK made South Africa as top 5 countries with the highest rate of SOAC (Iaccino, 2014). The following countries are India, Zimbabwe, the United Kingdom, and the United States. Furthermore, in the same year, South Africa's Tears Foundation and the Medical Research Council made a report which stated that 50% of South African's children are usually abused before the age of 18 (Krever, 2014).

In 2017, according to South African Police Service Crime Statistic 1 January-31 March 2017, there were 5,032 cases of SOAC (Republic of South Africa, 2017). Furthermore, according to South African Police Service Crime Statistic 1 April 2017 - 31 March 2018, there were 48,165 in the total of sexual SOAC (Republic of South Africa, 2018).

Seeing the importance of children rights protection from any abuse include the SOAC, it triggered UN to create the study on violence against children in 2016. The UN-Secretary General has made the UN-Secretary-General study on violence against children which cover the response of Presidency of the Republic of South Africa South Africa regarding their efforts in protecting children rights include the legal framework regarding SOAC. (United Nations General Assembly, 2006). Furthermore, the Presidency of the Republic of South Africa has responded "*The UN Study on Violence against Children Questionnaire to Governments*" which has been made by the UN (Republic of South Africa, 2006).

"Child protection legislation in a free and democratic SA is aimed at ameliorating and addressing the negative impact of decades of discrimination, domination, inequity, patriarchy, and underdevelopment. The new approach to legislative reform is perfectly consistent with a human rights approach to the progressive realization of children's rights. It is also consistent with the rights of children embedded in the Constitution of the

Republic of South Africa *The relationship between poverty and vulnerability to violence, abuse and exploitation have been well documented globally. The compounded impact of generations of race and class discrimination has left especially black South African children in a severe state of deprivation and underdevelopment. The eradication of poverty, inequality, and underdevelopment is therefore fundamental to the achievement of the national vision of a caring- and people-centred society in which the rights and dignity of all are respected and protected. Children's rights to survival, growth, protection, development, and participation are entrenched in South Africa's Constitution and these rights have been further reinforced in subsequent legislation, policy development and government programmes.*" (Republic of South Africa, 2006)⁵

Children should be protected by the government as constituted in South Africa Law and International Law. In addition, to protect the children right, South Africa is clearly stating that they have established an Office on the Rights of Child (ORC). Furthermore, the government stated that they have adopted and in line with the international human rights law. This notifies that the protection of children include stopping child sexual abuse is a significant case that has to be ended.

"Lending further credence to government's commitment to the rights of the child, an Office on the Rights of the Child (ORC) has been established in the Presidency, the highest executive office in the land. The ORC, in collaboration with Government Departments, Offices on the Rights of the Child in the Premiers' and Mayors' Offices, and the National Children's Rights Advisory Council comprising of Government officials and members of Civil Society, coordinates and monitors delivery on children's rights. Child rights protection and the development of the human potential of children are explicit goals of the National Children's Rights Programme. Internationally, South Africa has since the advent of democracy in 1994, systematically expanded its participation in the global agenda for the protection and promotion of the rights of children. The country has also acceded to the major international standard-setting instruments for the protection of children against violence. The South African government, therefore, remains committed to implementing the provisions contained in these instruments. During the past ten years of democratic government has overhauled its domestic legislation to align it with international standards and the South African Constitution." (Republic of South Africa, 2006)⁶

Referring to the Presidency of the Republic of South Africa, they have implemented and launched several programmes and strategies to protect the children rights. The programmes and strategies are including but not limited to: The annual 16

⁵ Read more in the appendix

⁶ Read more in the appendix

*Days of Activism for no violence against women and children Campaign, The annual Child Protection Week and Youth Month, The Safe Schools Project, and Government's Imbizo programme (the Republic of South Africa, 200*In 2019, Economist Intelligence Unit (EIU) launched the research program entitled, *Out of the shadows: Shining light on the response to child sexual abuse and exploitation* which examine 40 countries on how they are responding to the threat of SOAC (EIU,2019). South Africa was ranked 15 out of 40 countries with overall scores 56.1 (EIU,2019). The government of South Africa has demonstrated its commitment to tackling SOAC by **enacting comprehensive legislation on sexual offences against children (EIU,2019).**

Having comprehensive legislation on sexual offences against children does not mean that it can change South African's perspective over SOAC because South African are kept doing this criminal case which still makes South Africa has a high number of this case, 48,165 in the total of sexual offences against children in 2017/2018.

I. 2 Problem Identification

Seeing South Africa has a high rate of rape since 2004-2011 (South African Police Service, 2011), this thesis will provide first regarding sexual offences as in general based on annual crime report from South Africa.

Rape Statistical Data of South Africa (2004-2010)						
2004	2005	2006	2007	2008	2009	2010
148.4	145.2	137.6	133.4	144.8	138.5	132.4
<i>Number of rape incidents per 100,000 citizens</i>						

Table I.2.1 Rape Statistical Data of South Africa in 2004-2010 (South African Police Service, 2011)

This statistical data was obtained from the South African Police Service Annual Crime Report in 2010/2011 (South African Police Service, 2011). It has included the number of SOAC.

Total Sexual Offences (Rape and Sexual Assault) 2008/2009 - 2010/2011

Crime Category	2008/2009	2009/2010	2010/2011
All Sexual Offences	54.126	55.097	56.272
Total	165.495		

Table I.2.2 Total Sexual Offences in 2008/2009 - 2010/2011 (South African Police Service, 2011)

This statistical data was also obtained from the South African Police Service Annual Crime Report in 2010/2011 (South African Police Service, 2011). Seeing from the data, from 2008/2009 to 2010/2011, the number of cases increased. *"The average of approximately 55 165 rape and sexual assault cases recorded over the past three financial years."*(South African Police Service, 2011) It has included the number of rape against children.

Crimes against children younger than 18 years: 2006/2007 – 2010/2011

Crime Category	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
All Sexual Offences	25.428	22.124	20.141	27.417	28.128
Total	123.238				

Table I.2.3 Crimes against children younger than 18 years: 2006/2007 – 2010/2011 (South African Police Service, 2011)

By using the same data of the South African Police Service Annual Crime Report 2010/2011, it also provides the findings of sexual SOAC in the category of crime against children. The number of cases decreased gradually from 2006/2007 to 2008/2009. However, from 2008/2009 to 2009/2010, it increased 7.276 cases, and it increases 711 cases in 2010/2011.

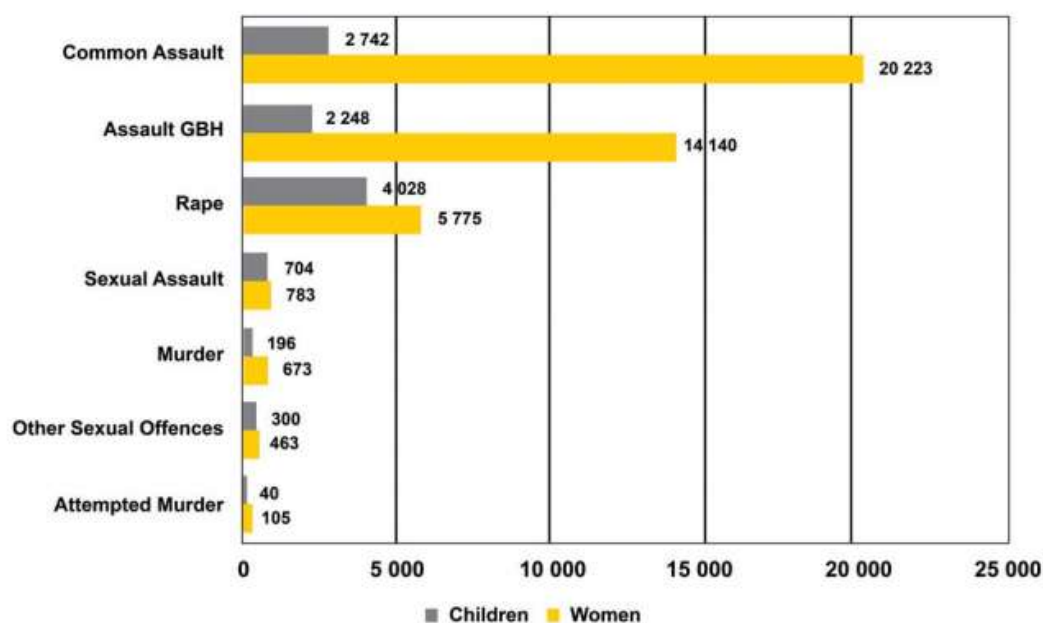
Total Sexual Offences 2008-2018

Crime Category	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Total Sexual Offences										
Rape	46,647	48,259	48,158	47,069	48,408	45,349	43,195	41,503	39,828	40,035
Sexual Assault	6,396	6,629	7,006	7,194	6,967	6,597	6,087	6,212	6,271	6,786
Attempted Sexual Offences	3,808	3,811	3,599	3,535	3,293	2,913	2,641	2,573	2,073	2,066
Contact Sexual Offences	12,346	8,293	6,158	2,741	2,220	1,821	1,694	1,607	1,488	1,221
Total Sexual Offences	69,197	66,992	64,921	60,539	60,888	56,680	53,617	51,895	49,660	50,108

Table I.2.4 Total Sexual Offences in 2008-2018 (South African Police Service, 2018)

This data was obtained from the South African Police Service Annual Crime Report 2017/2018 (South African Police Service, 2018). The data has included the number of SOAC. It shows that the SOAC cases were decreasing from 2008/2009 to 2011/2012. However, it increased 349 cases from 2011/2012 to 2012/2013. Then, from 2014/2015 to 2016/2017, the number of cases decreased into 3.957 cases. Yet, from 2016/2017 to 2017/2018, it increases 448 cases.

Women and Children as Victim of Crime: 1 January - 31 March 2017



Source: South African Police Service Annual Crime Report 2016/2017

Table I.2.5 Crimes against Children 1 January - 31 March 2017 (South African Police Service, 2017)

This figure was obtained from the South African Police Service Annual Crime Report 2016/2017 regarding crime against women and children from January to March 2017 (South African Police Service, 2017). The total of SOAC is 4.732 cases with 4.028 rape and 704 sexual assault. Thus, the average of approximately 1.577 case of SOAC was recorded over the past three months (January-March) in 2017.

Crimes against children Twelve Months 01 April 2017 to 31 March 2018 (Republic of South Africa)		
Crime Category	2017/2018	2017/2018
All Sexual Offences	24.677	23.488
Total	48.165	

Source: Crime Situation in Republic of South Africa Twelve Months 01 April 2017 to 31 March 2018, South African Police Service

Table I.2.6 Crimes against children Twelve Months 01 April 2017 to 31 March 2018 (South African Police Service, 2018)

This data was obtained from the South African Police Service Crime Situation in Republic of South Africa April 2017 to March 2018 (South African Police Service, 2018). The number of cases decreased into 1.189 cases.

Sexual Offences against Children 2006/2007 -2010/2011 and 2017/2018 (Republic of South Africa)

Crime Category	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2017/2018	2017/2018
All Sexual Offences	25.428	22.124	20.141	27.417	28.128	29.409	23.488

Table I.2.7 Sexual Offences against Children 2006/2007 - 2010/2011 and 2017/2018

This figure is the combination between South African Police Service Crime Reports 2006/2007 - 2010/2011 and 2017/2018. If it is combined, so the average cases are 25.162. However, if it is only 2006/2007 - 2010/2011 reports, the average cases will be 24.648 cases. Seeing the pattern of the cases through each year, in 2018/2019 is possible to reach above 20.000 cases.

Even though that there was a decreasing number of SOAC from year to year (2006/2007 - 2008/2009), but it is still far from what United Nations expected which UN urges states to legally ban the violence against children include SOAC.

"The UN Study on Violence against Children urges States to: "prohibit all forms of violence against children, in all settings, including all corporal punishment, harmful traditional practices, such as early and forced marriages, female genital mutilation and so-called honour crimes, sexual violence, and torture and other cruel, inhuman or degrading treatment or punishment, as required by international treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. ". (UN SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN, n.d.)

In 2019, South Africa has ranked 15 out of 40 countries in responding SOAC by EIU. It is stated that South Africa has comprehensive legal legislation. Yet, seeing the data that are provided in this thesis, the number of cases is still high. Referring to the previous data, there is 3 periods that showing the above average cases which are 2006/2007, 2009/2010 and 2010/2011. If South Africa has a comprehensive legal framework, the people of South Africa must have to obey the policy that has been created by the government. Thus, it may raise a question why SOAC is kept doing by society.

In fact, society still keeps doing the crime by seeing the number of cases that have been provided which disobey the child protection policy which are, *"the Child*

Care Act, No 74 of 1983 (as amended), Sexual Offences Act, No 23 of 1957 (as amended), Domestic Violence Act, No 116 of 1998, The Criminal Procedure Act 51 of 1977, and The National Policy Guidelines for Sexual Offences ("National Policy Guidelines")" (Artz, Leoschut, Burton, & Lloyd, 2016).

Whether the implementation of the legal framework from the government or the factors from a society that make society keep doing this crime. As stated in the Presidency's response, "*the discrimination, domination, inequity, patriarchy and underdevelopment*" maybe become the factors that make this case is keep occurring (Republic of South Africa, 2006).

In 2009, a book entitled *An Overview Of Sexual Violence in South Africa* by Romi Sigsworth which was published by Centre for the Study of Violence and Reconciliation (CSVR) explain all sexual violence's forms in South Africa was contributed by patriarchy, men domination, gender inequality, and women discrimination (Sigsworth, 2009). Sigsworth (2009) believes that the causes of all sexual violence's forms can be categorized as an individual factor, relationship factor, community factor, and societal factor. Those factors are linked with patriarchy and gender inequality (Sigsworth, 2009).

The notions of female's ownership by the male in a sexual relationship due to the entitlements of masculinity within the practice of patriarchy in South Africa (Sigsworth, 2009). In the practice of patriarchy, the terms of masculinity are defined as, "the men's control over women." (Sigsworth, 2009) Due to this entitlements, in most of the cases, the perpetrators are unable to perceive the sexual violence as harmful or criminal (Sigsworth, 2009). The cause of this situation is, "*the line between consent and coercion becomes blurred in a society where male sexual entitlement is the norm.*" (Sigsworth, 2009) The case of SOAC is not only done by the familial relationship but also is done by a stranger or acquaintance. Based on South Africa's culture that men are allowed to have sex whenever and whoever they feel like, so in this case, if the perpetrators are stranger or acquaintance, they allow to do it. Thus, in order men to control over women, they will use violence in this case.

"In cases of stranger rape, a sense of entitlement over women can be an underlying factor, in that entitlement is a culturally sanctioned norm that allows men to have sex whenever they feel like it, and with whomever, they feel like it." (Sigsworth, 2009)

Brundige and Bowman (2014) also mentioned that SOAC in South Africa was contributed by patriarchy, sex inequality, male domination, socio-economic factor, tradition, and apartheid (Brundige & Bowman, 2014).

The unsupportive conditions for the family to live in which they were facing the poverty and economic dislocation created the space for the perpetrator in doing the SOAC. Hence, poverty mostly becomes the major risk factor in the case of SOAC (Brundige & Bowman, 2014). Furthermore, it was stated that the victim who had penetrative sexually abuse by the perpetrator revealed that the circumstances of dysfunctional family and communities with high unemployment within the family members and poverty had been experienced by most of the children.

Sadly, poverty becomes the most difficult barriers to be faced by the children in which the victims could not flee from the perpetrator (Brundige & Bowman, 2014). The reason why is that most of the time, the perpetrator is also the person whom they rely upon. This creates the unfair situation for the children and mother in which the victims may have a chance to be abused by the perpetrator. Due to the economic struggle, the victims just depends on the perpetrator (Brundige & Bowman, 2014). Thus, it creates perfect condition for perpetrators to do SOAC.

In addition, the patriarchy that has constructed within South African created the superior of men and their strong domination over women and children which made the SOAC easier to be done. The patriarchy phenomenon led to sexual inequality among them. *“Discussions of child sex abuse and incest in Africa often note their integral connection to the vast disparity of power between men and women.”* (Brundige & Bowman, 2014)

By seeing the research above, the patriarchy in the society of South Africa became perhaps can be the contributing factors. Perhaps, it will lead to the misconception of sexual violence due to the rape myth that spreading in society (Sigsworth, 2009). In addition, there is a cycle of SOAC when the victims were having difficulty to disclose the case, the case will close and the perpetrators will keep doing that (Brundige and Bowman, 2014). The reason why is because the control from the perpetrator (men) towards the victim of the case to not to disclose the case. Thus, it becomes the cycle when the victim cannot disclose the case, the SOAC will happen again.

I.3 Statement of the Problem

The SOAC in South Africa is still happening widely despite efforts from South African government. Hence, this thesis will answer the research question as follow.

“Why did sexual offences against children in South Africa keep happening despite the adoption of international law (2006-2018)?”

I.4 Research Objective

This thesis is done with several objectives:

- Analyzing the problem of the sexual offences against children in South Africa.
- Identifying the factors that become the causing the SOAC in the society even though Sexual Offences and Related Matters Act (SORMA) and other Child Protection Policy has been implemented.

I.5 Significance of Study

There are many researchers, journals, books, publication, or academic studies that discuss the topic of SOAC in South Africa (Gender Links,2008; Brundige & Bowman, 2014; Segsworth, 2009). However, little has been done to analyze within the framework of Social Constructivism. Therefore the significance of this study lies on how it will take the SOAC from social constructivism in-depth analysis with the construction of patriarchy within South Africa and its contributing factors to the occurrence of the case. This study will combine comprehensive data and framework in analyzing the case of SOAC in South Africa. Thus, hopefully, it will help to fulfill the gap within academic literature regarding the case of SOAC in South Africa.

I.6 Scope and Limitation of the Study

The limitation of this thesis will be focusing on why the case of SOAC kept happening in South Africa. The time frame of the case's data is from 2006 to 2011.

I.7 Theoretical Framework

This thesis will use three theory which will be used to analyze the case of SOAC in South Africa as the Human Rights violation. Therefore, this thesis will use Universalism, Cultural Relativism, and Social Constructivism.

1.7.1 Universalism

According to New Zealand Handbook on International Human Rights, it explains that the universalism could be defined as a common standard as the United Nations stated that the human rights indeed a universal concept by seeing from the Preamble of Universal Declaration of Human Rights (New Zealand Ministry of Foreign Affairs and Trade, 2008).

“The United Nations has consistently stressed the universality and indivisibility of human rights. The Universal Declaration of Human Rights is very clear on this subject. As expressed in the Preamble, the Declaration constitutes “a common standard of achievement for all people and all nations” based on “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice, and peace in the world.” (New Zealand Ministry of Foreign Affairs and Trade, 2008)

Article 2 states:

“Everyone is entitled to all the rights and freedom set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political, or another opinion, national or social origin, property, birth or another status.” (New Zealand Ministry of Foreign Affairs and Trade, 2008)

Thus, the Declaration regards all rights as universal which states are required to protect human rights. Then, referring to Jack Donnelly’s studies entitled “The Relative Universality of Human Rights” stated that those human rights are, by definition, equal and inalienable (Donnelly, The Relative Universality of Human Rights, 2007).

“Human rights, following the manifest literal sense of the term, are ordinarily understood to be the rights that one has simply because one is human. As such, they are equal rights, because we either are or are not human beings, equally. Human rights are also inalienable rights because being or not being human usually is seen as an unalterable fact of nature, not something that is either earned or can be lost. Human rights are thus “universal” rights in the sense that they are held “universally” by all human beings. Conceptual universality is in effect just another way of saying that human rights are, by definition, equal and inalienable.” (Donnelly, 2007)

In a book entitled “Relativism and Human Rights a Theory of Pluralistic Universalism” written by Claudio Corradetti, underlines the mechanism on how we could apply the universalism concept into something, referring to the context of human right as a universal concept, as follow,

“Any form of agreement must presuppose a pattern of mutual understanding can either proceed to justification, or to a suspension of a process leading to an agreement.” (Corradetti, 2009)

In order to achieve the universal concept of human rights which could be applied to every human, it requires mutual understanding. Thus, the ratification of international human rights laws and treaties by state parties has shown their mutual understanding to proceed to justification, as a result, an agreement to apply human rights as a universal concept. Taking an example, Universal Declaration of Human Rights which are the consensus of mutual understanding from all state parties in order to promote and protect the human rights.

In conclusion, by seeing from the human nature and also nurture of universal concept on human rights, the universalism should be applied universally to all human regardless of their distinguishing features.

The theory of Universalism will suit the thesis which analyzes the case of SOAC in South Africa. According to the UDHR which has been signed and ratified by the South African government, the

universalism concept of human rights should be applied to all human and thus, it entitled them under the international law. However, it contradicts to what happens in South Africa which the case of SOAC is kept exist. Thus, the concept of universalism somehow is important to see the government's effort in implementing the concept of human rights into domestic policy. The consistency of government efforts in implementing of universalism concept could be seen by looking on whether the domestic policy is in line with the international law or not.

I.7.2 Cultural Relativism

In Jack Donnelly publication, “Cultural Relativism and Universal Human Rights”, he defined the cultural relativism in the context of international human rights,

“Cultural relativism may be defined as the position according to which local cultural traditions (including religious, political, and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society” (Donnelly, 1984)⁷

Therefore, the cultural relativist believes that human rights standard is not the same which is universal instead relative in which it is distinct from one culture to another culture which reflects national identity (Donnelly, 1984). In addition, Jack Donnelly stated in his publications, “The Relative Universality of Human Rights”, stated that human rights cannot be generalized as a universal concept which it does not have the normative force,

“In discussions of human rights, however, cultural relativism typically appears as a substantive normative doctrine that demands respect for cultural differences. The norms of the Universal Declaration are presented as having no normative force in the face of divergent cultural traditions.” (Donnelly, The Relative Universality of Human Rights, 2007)

⁷ The journal was downloaded from <http://www.jstor.org/stable/762182>.

Thus, what may be regarded as a human rights violation in one society may properly be considered lawful in other society. For instance, in the case of SOAC, according to UN Human Rights documents which are universally applied by all states parties declared that this case is violating human rights, however for South African, it may be relative by seeing the tradition and myth which was already constructed historically and culturally. They perceive this action is lawful under the culture. Therefore, the role of culture in shaping an individual's behavior is significance. If we would like to see the importance of culture in shaping state's behavior, we may see on how culture shape individual which has been explained by Jack Donnelly in "Cultural Relativism and Universal Human Rights",

"The impact of culture on the shaping of individuals is systematic and may lead to the predominance of distinctive social types in different cultures. There can be little doubt that there are important, structurally determined differences, for example, between the modal "natures" of men and especially women in modern western and traditional Islamic societies. In any particular case, "human nature," the realized nature of real human beings, is a social as well as a "natural" product."(Donnelly, 1984)

Donnelly (1984) emphasize that every individual's behavior and perception towards something are shaped by social nature. Therefore, it led to a different understanding on how individual perceive something.

The cultural relativism will suit into the thesis topic which against the universalism concept on human rights. Thus, the cultural relativism will explain how culture shape human's behavior and perception which led to the varying standard of human rights which are not universal but instead relative. In relation to the case of SOAC in South Africa, hence the cultural relativism will analyze how and what makes South African's perception become relative to human rights.

1.7.3 Constructivism

In international relations, the version of constructivism are varied, but the core idea of the constructivism remain the same which is the relationship between structure and agents on how they relate and reconstruct each other. In the book “The Globalization of World Politics”, Michael Barnett stated that,

“Although there are various versions of Constructivism, they share a common concern with how ideas define the international structure; how this structure shapes the identities, interests, and foreign policies of states, and how state and non-state actors reproduce that structure-and at times transform it.”
(Baylis, Smith, & Owens, 2011)

In addition, Robert Jackson and Sorensen, George stated in their publications “Introduction to International Relations Theories and Approaches” that,

“According to constructivist philosophy, the social world is not a given: it is not something ‘out there’ that exists independent of the thoughts and ideas of the people involved in it. It is not an external reality whose laws can be discovered by scientific research and explained by scientific theory as positivists and behaviouralists argue. The social and political world is not part of nature. There are no natural laws of society or economics or politics. History is not an evolving external process that is independent of human thought and ideas. Everything involved in the social world of men and women is made by them.”
(Jackson & Sørensen, 2006)

Michael Barnett also refers to John Gerard Ruggie in the book “The Globalization of World Politics” about “*Constructivism is about human consciousness and its role in international life*” (Baylis, Smith, & Owens, 2011). This focus on human awareness proposes a commitment to idealism and holism, it constitutes the constructivism’s core (Baylis, Smith, & Owens, 2011).

“Idealism observes that the meaning and construction of material reality is dependent on ideas and interpretation.”
(Baylis, Smith, & Owens, 2011)

In relation to human rights, based on idealism,

"the human rights do not exist by on its own in which it does not objectively exist on this earth waiting to be discovered by states, instead there has been processing and observation on how states discuss and debate what is actually human rights, what is its meaning, until what extent we call something like human rights, what is the function of human rights and how states should respond to human rights." (Baylis, Smith, & Owens, 2011)

Some forms of holism and structuralism has been accepted by Constructivism, in which,

"The world is irreducibly social and cannot be separated to the properties of already existing actors, the emphasis on holism recognize that agents have some autonomy and their interaction help to construct, reproduce and transform those structures." (Baylis, Smith, & Owens, 2011)

The core observation of constructivism which is called the **Social Construction of Reality** has been brought by Michael Barnett which accepted both idealism and holism in analyzing issues (Baylis, Smith, & Owens, 2011). There are two elements within the social construction of reality, are as follows:

- 1) *"The underline on the socially constructed nature of actors and their identities and interest."* (Baylis, Smith, & Owens, 2011) This element emphasizes that actors do not exist naturally instead they are nurture, constructed and shaped by their cultural environment.

"what makes an Arab state an Arab state is not the Fact that the populations speak Arabic but rather that there are rules associated with Arabism that shape the Arab state's identity, interests, and foreign policies that are deemed legitimate and illegitimate." (Baylis, Smith, & Owens, 2011)

Indeed, it will same also with what makes a South Africa state a South Africa state is not the fact that the population are speaking in Afrikaans language but instead there are rules associated with South Africa that shape South Africa's state identity, interests and

foreign policy that are deemed legitimate and illegitimate (Baylis, Smith, & Owens, 2011).

- 2) It underlines on how a knowledge shapes the process of the individuals in constructing and interpreting their world. In addition, Barnett further discusses the process of reality which stated that *“Reality does not exist out there waiting to be discovered; instead, historically – produced and culturally – bound knowledge enables individuals to construct and give meaning to reality.”* (Baylis, Smith, & Owens, 2011)

In addition to the Michael Barnett’s idea that this has constructed the reality frequently which comes to us as an objective reality which has a relation to the Social Facts’ concept (Baylis, Smith, & Owens, 2011). In this world, there are things which their existences are depending on the human agreement and not. For instance, the things which do not depend on the human agreement are the things in which categorize as nature (e.g. stones, trees, coal, animals, and etc), those things will remain to exist.

Meanwhile, social facts are something that their existences depend on the human agreement and are taken for granted (Baylis, Smith, & Owens, 2011). *“Social facts include money, refugees, terrorism, sovereignty, and human rights.”* (Baylis, Smith, & Owens, 2011).. *“Their existence will only be there as long as the human agreement exists, and their existence shapes how we categorize the world and what we do.”* (Baylis, Smith, & Owens, 2011)

In the book “The Globalization of World Politics”, Michael Barnett also stated that what is viewed as legitimate actions has shape the social construction of reality (Baylis, Smith, & Owens, 2011).

In the case of SOAC in South Africa, other actors in the international system will see South Africa’s action as illegitimate action that violates the international common standards which should be obeyed, and as result, indeed it will raise the costs to South Africa if they would like to keep doing the SOAC which has been commented by other actors in international system.

“To understand the origins of these concepts requires attention to the interplay between existing ideas and institution, the political intentions by leaders who had concealed motives and morally minded actors who were attempting to advance humanity.” (Baylis, Smith, & Owens, 2011)

In the book “The Globalization of World Politics”, Michael Barnett also stated that constructivist will examine how actors make their activities meaningful. Barnett refers to Max Weber’s idea that, *“we are cultural beings with the capacity and the will to take a deliberate attitude towards the world and lend it significance.”* (Barnett, 2011).

“Constructivists attempt to recover the meanings that actors give to their practices and the objects that they construct. These derive not from private beliefs but rather from culture. In contrast to the rationalist presumption that culture, at most, constrains action, Constructivists argue that culture informs the meanings that people give to their action. Sometimes Constructivists have presumed that such meanings derive from hardened culture. But because culture is fractured and because society is comprised of different interpretations of what is meaningful activity, scholars need to consider these cultural fault – lines and treat the fixing of meanings as an accomplishment that is at the essence of politics.” (Barnett, 2011)

Michael Barnet emphasizes that the main state’s behavior construction was derived from the concept of the idea. In addition, He explains through the concept of cultural fault-lines. The cultural fault-lines could exist because of the norms and values which created by the practices (Barnett, 2011).

The theory of Social Constructivism will suit the thesis on the topic of SOAC by South Africa. As in this thesis has mentioned in the previous part, the case of SOAC keeps increasing and doing by the South African, hence the theory of social constructivism will give a better understanding of why South African have another perspective on seeing SOAC by keep doing this crime while the government has comprehensive legal legislation in order to protect human rights.

I.7.4 State's Responsibility to International Human Rights Law

The state has obligation to protect them and fulfill human rights when state becoming parties to international treaties under the international law. States are obliged to refrain any human rights violation, and obliged to promote and respect human rights. In doing that, states must take an action to fulfill this obligation.

"International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights." (OHCHR, n.d.)

"Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level." (OHCHR, n.d.)

This is a clear principle to protect the human rights by calling upon states to work collectively. With this concept, it helps the analysis of this thesis to see South Africa's obligation in protecting human rights regarding SOAC and the implementation of international law that has been integrated to domestic law should be obeyed by state's citizen.

I.7.5 Patriarchy

Sylvia Walby wrote a book entitled "Theorizing Patriarchy" has defined patriarchy as, "A system of social structures and practices in which men dominate, oppress and exploit women." (Walby, 1991)

The hierarchical and unequal circumstances which men control everything over women includes sexuality, reproduction, and production become the system of power relations in which as the basis of patriarchy (Ray, 2014).

There are various definitions of patriarchy, however, historically, the terms of 'patriarchy' means that, *"the rule of the father or the 'patriarch', it aims to describe a male-dominated family. For instance, the large household of the patriarch which included women, junior men, children, slaves, and domestic servants all under the rule of this dominant male."* (Abeda Sultana, 2011). However, the definition has been shifted into more the male domination. Thus, nowadays, the terms of 'patriarchy' is more generally used, *"To refer to male domination, to the power relationships by which men dominate women, and to characterize a system whereby women are kept subordinate in a number of ways."* (Abeda Sultana, 2011)

"Patriarchy, in its wider definition, means the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general." (Abeda Sultana, 2011)

"It implies that "men hold power in all the important institutions of society" and that "women are deprived of access to such power". However, it does not imply that "women are either totally powerless or totally deprived of rights, influence, and resources." (Abeda Sultana, 2011)

Furthermore, feminists are the one who notices and aware at first regarding patriarchal control which they do believe that patriarchy is not biological determined instead it was socially constructed same as gender socialization.

"Feminism is an awareness of patriarchal control, exploitation, and oppression at the material and ideological levels of women's labor, fertility, and sexuality, in the family, at the place of work and in society in general, and conscious action by women and men to transform the present situation." (Ray, 2014)

As within feminism has divided into several perspectives in which each perspective may be different from one to another, for instance, radical feminism.

“Radical feminism is distinguished by its analysis of gender inequality in which men as a group dominate women a group and are the main beneficiaries of the subordination of women.” (Walby, 1991)

Walby also emphasizes that male violence against women is considered to be part of a system of controlling women which include sexual violence (Walby, 1991).

“Sexual practice is seen to be socially constructed around male notions of desire, not women’s. Further, sexuality is seen as a major site of male domination over women, through which men impose their notion of femininity on women.” (Walby, 1991)

In regards to the case of SOAC in South Africa, the patriarchal concept was culturally and socially constructed since long time ago within the tradition which was implemented well in a family. In most of the cases, the perpetrator is the victims’ relative (father, uncle, etc) which are categorized as men. Their motives are basically the male domination over women and children in which they have the power to do so.

1.7.6 Research Framework

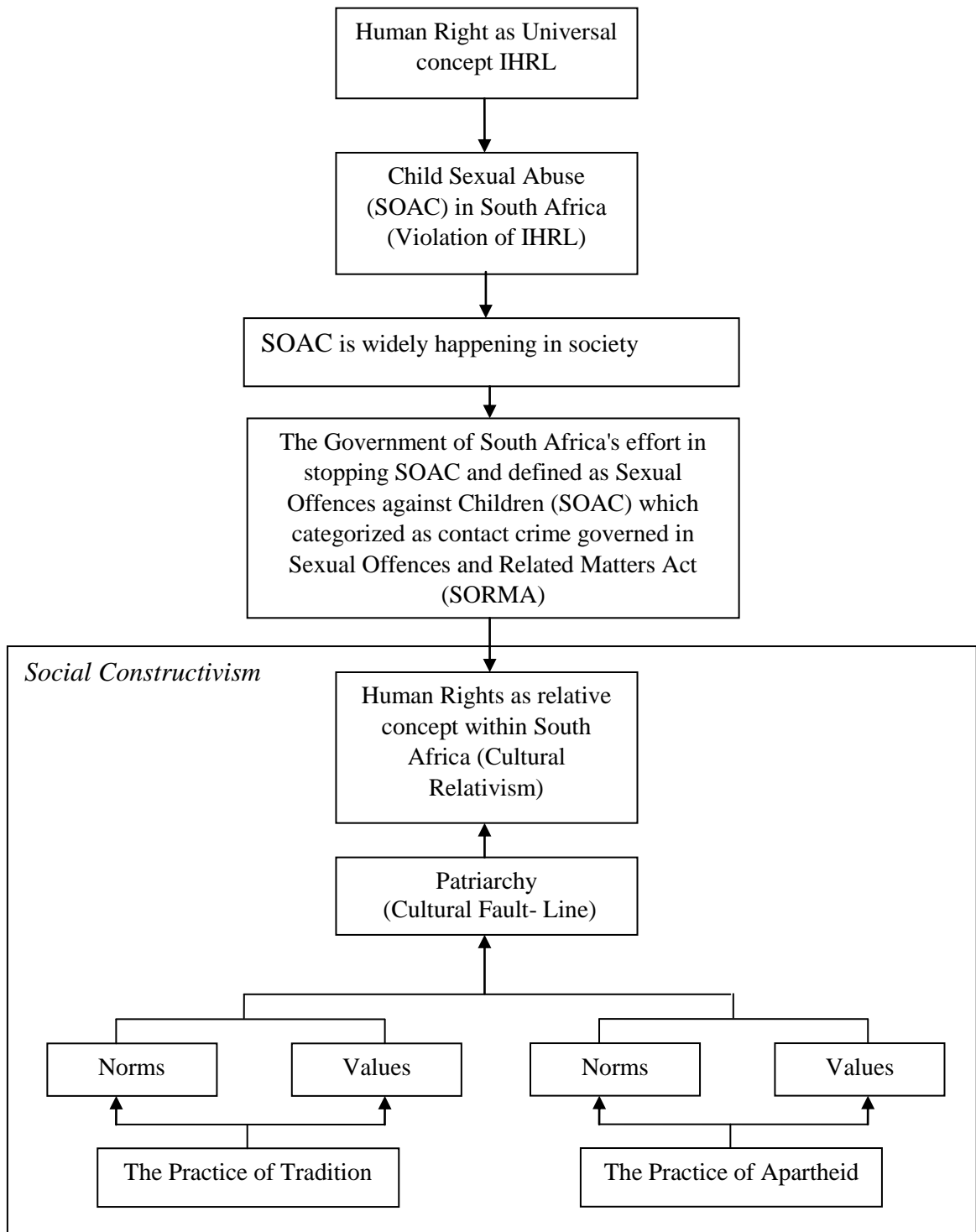


Figure I.7.5.1 Research Framework

Source: Made by Muhamad Rizki Nugraha Darma Nagara

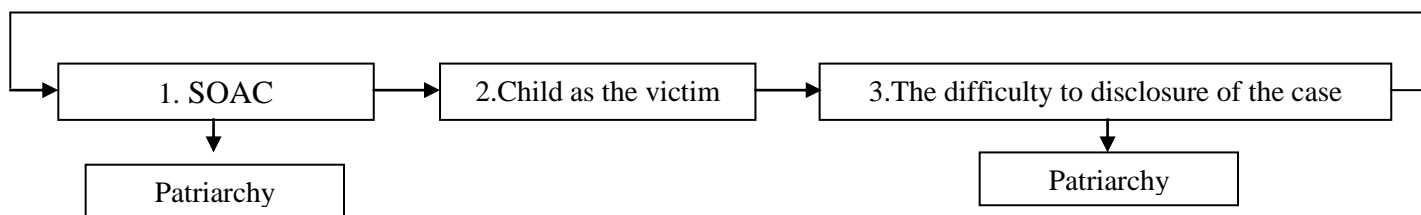


Figure I.7.5.2

The Cycle of Case

Source: Made by Muhamad Rizki Nugraha Darma Nagara

The figure I.7.5.1 (Research Framework) shown that child sexual abuse has violated the concept of human right as South Africa has ratified, "Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (ICRPD) which should uphold the universality concept of human rights." (OHCHR, n.d.) In fact, the issue of SOAC still exists which violated the UN Human Rights conventions specifically UDOHR, ICCPR, and CRC.

South Africa has integrated the IHRL into their national law which is South Africa obligation since it has binding under IHRL regarding child protection policy. The SOAC is kept doing by South African themselves by seeing the thousand case which has been reported even though the government has defined SOAC as a criminal act (contact crime). The reason why child sexual abuse is supported is basically the perception of cultural relativism and human right as a relative by the South African themselves.

It also explains how patriarchy within South African which have constructed by tradition and apartheid long time ago, the men domination over women. This creates misconception and blurred lines over sexual violence that

lead to perceiving the sexual offenses against children is not a violation of human rights. Culture as a leading factor of SOAC in South Africa will be the main focus of this research.

The figure I.7.5.2 (The Cycle of SOAC) shown that research found there is a cycle how SOAC is widely happening in South Africa. First, the SOAC was caused by patriarchy. Then, the victim was having difficulty to disclosure the case after the abuse. This was caused by the oppression and threaten of power from the perpetrator which were coming from men (patriarchy).

I. 8 Research Methodology

The research methodology that will be used to help the author in collecting the findings to answer the research question is the qualitative research method. By using this method, it makes the author easier to analyze the case rather than using the quantitative method.

“Qualitative equivalents of quantitative methods courses are, in a sense, inherently hollow, they tend to be filled with things other than analytical technique. These range from data gathering techniques, such as elite interviewing and content analysis.” (Klotz & Prakash, 2011)

The research process itself involves identifying and locating relevant information, analyzing what the author has found, and then developing and expressing the ideas. The author will analyze journals, books, South Africa’s governing documents, and the other related international conventions which are related with the UN’s involvement in stopping SOAC case which affects to the change of South African government in the policy-making process.

The sources will be obtained from books, journals, official data, and any UN documents that support the related information regarding the author’s thesis, and internet as well. The reason why the author would like to use this method is that qualitative research will support the purpose of this thesis which is to examine the problem of SOAC.

I. 9 Literature Review

The literature reviews that will be used by the author are mostly the journals that had been written by the people who are expert in their studies. Those people had conducted the field research to examine the reasons why the case of SOAC is still widely happening in South Africa.

I.9.1 Jack Donnelly, "The Relative Universality of Human Rights," *Human Rights Quarterly*, 2007

In his literature, he mainly explains the exploration of different human rights' senses in terms of "universal" concept within human rights. Furthermore, he explains the basic concepts of the universality of human rights such as how human rights could be seen as universal. Thus, the conceptual and substantive universality is being explained in this literature. The conceptual universality means that human rights are inalienable rights in which these rights are seen as an unalterable fact of nature that either could not be earned or lost. The reasons why this could be seen as an unalterable fact of nature is that one has simply because one is human. And now, the problem is that whether the rights recognized in the Universal Declaration of Human Rights and the International Human Rights Covenants are universal in which lead to the matter of substantive universality (Donnelly, 2007).

However, even though those rights have been protected and endorsed under the international law, it does not mean that the implementation of international human rights law in national level will run smoothly. In addition, *the global human rights regime relies on the national implementation of internationally recognized human rights* (Donnelly, *The Relative Universality of Human Rights*, 2007). Thus, he explains the national and international obligations over the protection of human rights which are universally applied by all nations.

This literature is in line with the thesis in which it helps the thesis' author to understand more regarding the concept of universalism. Furthermore, this literature supports the author's understanding in analyzing South Africa's governments in implementing the international law into their domestic law to

protect the human rights specifically in regards to the case of SOAC by seeing the concept of universality of human rights.

I.9.2 The New Zealand Handbook on International Human Rights. Wellington: New Zealand Ministry of Foreign Affairs and Trade, 2008

New Zealand Handbook on International Human Rights which was published by the New Zealand Ministry of Foreign Affairs & Trade, explains the core understanding of human rights.

This book is divided into three sections which are the evolutions of human rights, major thematic issues, and text of core human rights instruments (New Zealand Ministry of Foreign Affairs and Trade, 2008). In the first section, it emphasizes more on the historical background, development, and the nature of human rights. It also focuses on how the United Nations and other actors related works over human rights. Then, in the second section, it explains more on the major thematic issues including racial discrimination, women's rights, children's rights, refugees, and other involuntary migrants, human rights in armed conflict, and rights of indigenous peoples, and rights of a person with disabilities. Last but not least, in the third section, it explains the international human rights law which becomes the core of human rights instruments such as Universal Declaration of Human Rights (Donnelly, *The Relative Universality of Human Rights*, 2007).

The book is supporting the author's understanding regarding human rights especially on the universal concept of human rights which has been stated by UN by seeing from the Universal Declaration of Human Rights. Besides, the author could get more understanding regarding children's and women's rights. Thus, it inspired the thesis' author on how the author analyzes the existence of SOAC in South Africa.

I.9.3 Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6, no. 4 (1984)

"Cultural Relativism and Universal Human Rights" in *Human Rights Quarterly*, Vol. 6, No. 4 page 400-419 was written by Jack Donnelly in 1984 published by The Johns Hopkins University Press. This book explains clearly regarding the different concept of relativism and universalism in regards to human

rights (Donnelly, Cultural Relativism and Universal Human Rights, 1984, pp. 400-419).

“If human rights are based in human nature, on the simple fact that one is a human being, and if human nature is universal, then how can human rights be relative in any fundamental way?.” (Donnelly, Cultural Relativism and Universal Human Rights, 1984)

By seeing from the phrase above, Donnelly explains in his book regarding the further explanation of how the human rights could be seen as relative. In most of the book's content, Donnelly explains that in relativity concept, it requires a supportive factor, which is culture, and thus it is called cultural relativism.

Moreover, Donnelly explains the role of cultural relativism which is significant in shaping the behavior of an individual which drive to the behavior of states. He also explains the notion of communal self-determination.

As he mentioned in his book,

“The impact of culture on the shaping of individuals is systematic and may lead to the predominance of distinctive social types in different cultures. There can be little doubt that there are important, structurally determined differences, for example, between the modal "natures" of men and especially women in modern western and traditional Islamic societies. In any particular case, "human nature," the realized nature of real human beings, is a social as well as a "natural" product.” (Donnelly, Cultural Relativism and Universal Human Rights, 1984)

Furthermore, he also emphasizes that different nation has a different perspective on seeing the human rights which were determined by the cultural traditions. In addition, Donnelly explains that cultural relativism makes people have different perception of human rights, for instance, the social status and hierarchy within society. As he mentioned in his book,

“In traditional cultures, communal customs and practices usually provide each person with a place in society and a certain amount of dignity and protection.” (Donnelly, Cultural Relativism and Universal Human Rights, 1984)

This book is in line with the thesis on how culture has a role as construction's source of the idea on the implication of Patriarchy which leads to SOAC in South Africa. Human rights are seen as relative within South African by seeing from the case of SOAC which is not considered a violation. Yet, human rights should be seen as a universal concept and promote by nations. The cultural relativism

becomes one of suitable theory to be used in this thesis, to analyze the role of culture in shaping and construct an individual's behavior in perceiving human rights in the case of SOAC.

I.9.4 John Baylis, Steve Smith, and Patricia Owens. The Globalization of World Politics: An Introduction to International Relations. Oxford: Oxford University Press, 2011

The fifth edition of "The Globalization of World Politics: an Introduction to International Relations" was written by John Baylis, Steve Smith, and Patricia Owens. This book was published by Oxford University Press in 2011. The thesis author would like to only focus on Chapter 9 of the book which is discussing the Social Constructivism by Michael Barnett in the page of 149-160 (Baylis, Smith, & Owens, 2011).

Chapter 9 provides an overview of constructivist approaches to international relations (IR) theory (Barnett, 2011, pp. 149-160). As it is stated within this chapter as follow,

"Constructivist believes that ideas define the international structure, how this structure shapes the identities, interests and foreign policy of states and how state and non – state actors reproduce that structure – and at times transform it." (Barnett, 2011)

Furthermore, Michael Barnett explains that the core observation of constructivism which is called the social construction of reality. There are two elements within this core observation which are, *"first the role of the cultural environment which shaped and constructed the actors towards their identities and interests, second how knowledge shapes on how the individuals construct and interpret their world."* (Barnett, 2011) Another key point of this chapter is how constructivism sees the relationship between the agent and structures. Therefore, Barnett explains more on how the agent and structure create social structure. In addition, Barnett explains the cultural fault lines which could exist because of the norms and values which created by practices.

The thesis' author believe that Social Constructivism theory by Michael Barnett will support the thesis since this theory will become the theoretical framework of this thesis. This means this thesis will be constructed by the ideas of social constructivism. Furthermore, this chapter will give a comprehensive

understanding of the ideas as the state's and people's behavior, in addition, the relationship between the agents and structures. In the case of SOAC, this chapter will help the author to analyze how SOAC in South Africa could be constructed.

I.9.5 Robert H. Jackson and Georg Sorensen. "Social Constructivism" in Introduction to International Relations: Theories and Approaches. Oxford: Oxford University Press, 2006

The third edition of "Introduction to International Relations: Theories and Approaches" was written by Robert H. Jackson and Georg Sorensen. This book was published by Oxford University Press in 2006. The thesis author would like to only focus on Chapter 6 of the book which is discussing the Social Constructivism in the page of 162-177 (Jackson & Sørensen, 2006, pp. 162-177).

Furthermore, it explains the historical background and development of social constructivism and also why social constructivism could be established which become significant approach within international relations (Jackson & Sørensen, 2006). In this chapter, Alexander Wendt as social constructivist explains his conception of social structures which have three elements, shared knowledge, material resources, and practices.

This book will support the thesis author in constructing the theoretical framework in which it supports the understanding of social constructivism by Michael Barnett as this thesis's theory.

I.9.6 Ian Hurd, "Constructivism," in The Oxford Handbook of International Relations. Oxford: Oxford University Press, 2008

The book entitled "The Oxford Handbook of International Relations" was published by Oxford University Press in 2008. The thesis author would like to only focus on Chapter 17 of the book wrote by Ian Hurd which is discussing the Constructivism in the page of 298-316 (Hurd, 2008, pp. 298-316).

This chapter analyzes the feature that makes constructivism differ than the other IR theories. Moreover, the notion of interest and identities within the actors are explained well in this chapter, as follow:

"The social constitution of interests encompasses all the ways that actors' interests and identities might be influenced by their interactions with others"

and with their social environment. This includes the processes of socialization and internalization.” (Hurd, 2008)

Furthermore, the mutual constitution of Structures and Agents is explained in this chapter. Hurd analyzes the difference between Structures and Agents which lead to social interaction and structure.

This book is in line with the thesis because it supports the theoretical framework which the author used in this thesis. Thus, it enhances the author’s understanding regarding constructivism on how the relationship between structure and agent.

I.9.7 Sylvia Walby. *Theorizing Patriarchy*. Oxford u.a: Blackwell, 1991

Sylvia Walby wrote a book entitled “Theorizing Patriarchy” in 1991. This book aims to be a comprehensive overview of the variety of ways of explaining women’s subordination in contemporary society and the reason why recent changes have occurred especially in the analysis of gender relations. The concept of patriarchy has been comprehensively explained within this book as Walby gave a multitude perspective regarding patriarchal concept, for instance from the radical and liberalism feminism’s point of view (Walby, 1991).

It is relevant to the thesis as the patriarchal concept will become one of the supportive theory within this thesis in analyzing the root problem of SOAC. The male domination over women and children become the core concept of patriarchy which the author could take a base for analyzing the case of SOAC in South Africa.

I.9.8 Suranjita Ray. "Understanding Patriarchy." *Ikhtyar "Choice" | Gender Studies and Research Space*

Suranjita Ray made a study in Gender Studies and Research Space entitled “Understanding Patriarchy”. This literature has mainly discussed the concept of patriarchy which explains the origin, history, basic concept, feminism, and the structure of patriarchy. Ray took several gender scholars and feminists within this study (Ray, 2014).

This literature is in line with the thesis due to the explanation of patriarchy that helps the author to analyze the case of SOAC in South Africa. It also enhances the

author understanding regarding patriarchy which the author could use to support the patriarchal concept by Walby as the theory within this thesis.

I.9.9 Abeda Sultana, Ph.D. "Patriarchy and Women's Subordination: A Theoretical Analysis". The Arts Faculty Journal, June 2011

Abeda Sultana, Ph.D. wrote a journal in 2011 entitled "Patriarchy and Women's Subordination: A Theoretical Analysis". This journal explains on how women become inferior over man, the concept of patriarchy, the process of women's subordination within the social system, and the relationship between patriarchy and feminism (Abeda Sultana, 2011).

This journal is relevance to the thesis since it explains the concept of patriarchy which the author will use in supporting the theoretical framework within this thesis. Moreover, it also explains how the women become inferior over man which include sexuality, and thus it will support the ideas of the author to analyze the root problem of SOAC in South Africa.

I.9.10 The Presidency: the Republic of South Africa, "The UN Study on Violence against Children Questionnaire to Governments: Response from The Government of South Africa June 2006," OHCHR

This study was published by OHCHR in 2006. This is the Presidency of the Republic of South Africa over the response of the UN study on violence against children questionnaire to governments. In this study, it covers all of the detailed information regarding violence against children includes SOAC. All of the international and national instruments in regards to the human rights protection specifically children are explained within this study. Thus, the detailed legal act has been provided within this study. The government efforts in protecting the children right is also explained within this study, for instance South Africa government established the Office on the Rights of the Child (ORC) in 1998 and moreover a number of structures have been established to enhance and coordinate the delivery of protection services to children (Republic of South Africa, 2006).

This study is relevant to the thesis since it supports the author analysis regarding SOAC in South Africa and how the South Africa government response towards this case. It makes the author easily to analyze the government efforts in

solving the case comprehensively. Furthermore, it makes the thesis become more comprehensive since the sources are directly from the South Africa government and UN.

I.9.11 Cynthia Grant Bowman and Elizabeth Brundige. 2014. "Child Sex Abuse Within the Family in Sub-Saharan Africa: Challenges and Change in Current Legal and Mental Health Responses"

“In Cynthia Grant Bowman and Elizabeth Brundige entitled “*Child Sex Abuse within the Family in Sub-Saharan Africa: Challenges and Change in Current Legal and Mental Health Responses*” which was published by Cornell International Law Journal and released in the United States in 2004” (Brundige & Bowman, 2014), stated that that child sex abuse is higher in communities with societal norms of female inferiority and sexual submissiveness” (Brundige & Bowman, 2014). There are two main points from this journal which make the author inspired by them, are many explanations on how patriarchy from tradition become the root problem towards the SOAC, second, and the lack of a lawful framework for addressing the SOAC.

Moreover, this journal specifically explains the reasons behinds why the phenomenon of SOAC happens within the family in South Africa. It became a tradition for South African to do SOAC, and they do not recognize those actions as a violation of human right. In addition, this journal is relevance to the thesis topic which explains comprehensively regarding the reasons why the government of South Africa still have the problem in tackling down the issue which is the inadequacy of the legal framework which addresses the specific problem of incest for SOAC within the family in South Africa.

I.9.12 Capri, Charlotte. "On observing work with sexually abused children in the Western Cape: Witnessing, participating, defending." Psycho-analytic Psychotherapy in South Africa (n.d.).

Another journal is Charlotte Capri who wrote “*On observing work with sexually abused children in the Western Cape: Witnessing, participating, defending*” which was published by the University of Cape Town in 2008 (Capri,

2008). This journal emphasizes Capri's research on the SOAC that occurs in a low-income community in the province of Western Cape which is describing and witnessing of SOAC case there. It supported the author's thesis because, on Capri's research, it explains in detail the causes on why escalation number of SOAC is kept escalating.

The relevancy of this journal towards thesis topic is that domination of male towards women and girl which they could do more sexual exploitation due to their power that they have, it led to the increase of SOAC because the girl is vulnerable and powerless to men (mostly in this case are their father or relative). Thus, patriarchy becomes the main causes of SOAC.

I.9.13 University of Cape Town, CJCP, and The Gender Health and Justice Research Unit, Optimus Study South Africa: Technical Report, Sexual victimization of children in South Africa Final report of the Optimus Foundation Study: South Africa, ed. UBS Optimus Foundation (Switzerland: UBS Optimus Foundation, 2016)

Another book for supporting this thesis is a book entitled "*Sexual abuse of children and adolescents in South Africa: Forms, extent and circumstances*" which were written by Catherine L. Ward, Lillian Artz, Lezanne Leoschut, Patrick Burton, and Sam Lloyd and published by UBS Optimus Foundation in 2016 (Artz, Leoschut, Burton, & Lloyd, 2016). This book has been recognized by UN and becomes the official publication within UNICEF.

The book introduces a SOAC's large-scale academic project which is called Optimus Study. UBS Optimus Foundation has collaborated with UN in which we could access this book from the UN site. This project has been gathered in three countries with a different continent which are Switzerland, China, and South Africa. Yet, this book is more concerning specifically the SOAC's situation in South Africa. Likewise, in relevance to the topic, a complete explanation regarding SOAC's impact is underlined in the book. The case is affecting the victims which consequently develop into psychological disturbances. In this book, it explains how socio-economic and tradition contribute to the increasing number of SOAC. Additionally, the effective prevention and intervention strategies are

revealed in the book. Securing the victims and protecting the children from the incest are the first action that the South African government have to do.

This book is relevant to the thesis as it covers almost all the reports and information regarding SOAC in South Africa. Thus, it enhances the author understanding in analyzing the case of SOAC in South Africa.

I.9.14 Osadan, Robert, and Elizabeth Reid. "Child Sexual Abuse and Sexual Aggression in Children." *International Journal of Humanities and Social Science* 5, no. 6 (June 2015), 31-42.

The journal entitled "*Child Sexual Abuse and Sexual Aggression in Children*" by Robert Osadan and Elizabeth Reid which was published by International Journal of Humanities and Social Science in 2015 (Osadan & Reid, 2015). They explain that the government is lack of making the specific policy regarding sexual aggression by an adult in school-aged children. The sexual aggression in school-age and literature survey of SOAC is two main points that are highlighted by the authors in the journal. Sexual aggression in school-age is categorized as one of the most indicative symptoms in child victim. In addition, the author has analyzed that sexual aggression tends to be the disturbance for the school. Yet, this journal also gives the explanation on how the adults could know some possible indicators of sexual victimization in children, the multitude of explanations of child sexual abuse's types.

In accordance with the analysis, this journal gives the explanation regarding the preventive ways to eliminate SOAC in school-age children, as a result, it would not happen again in the future. Hence, the lack of best strategies and decisions from the government makes them still could not stop the problem, as one the causes are the unreported cases, nonetheless, the preventive ways specifically for the protection of school-age children are needed. This could be one of reason on why child sexual abuse in school-age children is escalated.

I.9.15 Irit Hershkowitz, Omer Lanes, and Michael E. Lamb, "Exploring the disclosure of child sexual abuse with alleged victims and their parents," *Child Abuse & Neglect* 31, no. 2 (2007)

Irit Hershkowitz, Omer Lanes, and Michael E. Lamb wrote a journal entitled “*Child Abuse & Neglect 31 (2007) 111–123: Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents*” and published by International Society for Prevention of Child Abuse and Neglect, ELSEVIER in 2007 (Hershkowitz, Lanes, & Lamb, 2007). It is stated within the journal that the disclosure process of SOAC is a different one to another, it depends on some criteria. “Those criteria are the children’s ages, the parents’ expected reaction, the severity, and frequency of abuse, the suspect’s identities, and the strategies they had used to foster secrecy” (Hershkowitz, Lanes, & Lamb, 2007). Moreover, this journal underlines that the role of parent, especially mother, in the process of disclosure for the victims is very important because the parent’s reaction will affect the psychology of the children.

This journal is relevance to thesis topic in which support author idea that the disclosure of Abuse is one of the causes. This journal inspires the author that SOAC is both of causes and solution of SOAC case. Why is that so? Firstly, unreported case which it contributes to the escalation number of SOAC is due to victim do not want to disclose their case to the caregiver, on other hand, if we could understand the importance of disclosure of abuse, we will have the advantages to decrease the unreported case and gradually decrease the number of SOAC which one of the main cause of SOAC is that people do not want to disclose their case.

I.9.16 Cathryn Hunter, "Responding to Children and Young People's Disclosures of Abuse," Child Family Community Australia

Cathryn Hunter’s journal entitled “*Responding to Children and Young People’s Disclosures of Abuse*” and published by National Child Protection Clearinghouse (NCPC) in 2011 explains on the process and right period of the children are likely to disclose (Hunter, 2011). Indeed, the journal gives the information regarding the appropriate moment for the adults, parents, or relatives to help the children or victim to disclose. Most of the SOAC’s victims in South Africa still did not want to give any report that she or he has been abused, it is due to the fear that they felt if they talk to the adults or parent. Whereas, it should be the role of parents to embrace them to feel safe and comfort if they surrounded by

their parents. It is the chance for the adult to support and give them understanding regarding the case.

This journal is relevance to the thesis topic because it explains on how the disclosure of child sexual abuse is the difficult stage for the victims which it will increase the number case of SOAC if it is still underreported. Thus, the disclosure of SOAC has become one of the factors on why the case is still increasing in which the government will experience the difficulty to stop this case.

I.9.17 John Briere and Diana M. Elliot. “Sexual Abuse, Family Environment, and Psychological Symptoms: On the Validity of Statistical Control” in the Journal of Consulting and Clinical Psychology. (Journal of Consulting and Clinical Psychology 61, 1993)

John Briere and Diana M. Elliott entitled "*Sexual abuse, family environment, and psychological symptoms: On the validity of statistical control*" contained the further explanation regarding the further psychology impact which, "*a range of psychological and social factors contribute to the development of psychopathology, particularly family dysfunction is associated with negative psychological outcomes.*" (Briere & Elliott, 1993)The family functioning and parent-child relationship are one key factor which plays a crucial role in how the victims adopt the post-SOAC, why is that so? It directly affects the support the child receives post-disclosure (Briere & Elliott, 1993).

This journal’s relevancy towards thesis topic is that the dysfunctional family will increase the chance to SOAC which it becomes the resistance for government to tackle down this issue.

I.9.18 Lucy Jamieson, Lizette Berry, and Lori Lake."South African Child Gauge 2017" Children's Institute

A book entitled “The South African Child Gauge 2017” was written by Lucy Jamieson, Lizette Berry & Lori Lake which has become UN publications for UNICEF. This book is the only publication to track the annual basis of children of South Africa. The South African Child Gauge® is published annually by the

Children's Institute, University of Cape Town, to monitor progress towards realizing children's rights (Jamieson, Berry, & Lake, 2017).

This book includes an overview of the latest legislative developments, child-centered indicators, and a collection of short essays by experts in the field (Jamieson, Berry, & Lake, 2017). Thus, It also explains how children's right should be protected under international law through the South Africa government's obligation. Not only the case of SOAC which the book explained but also all the thematic cases of children includes Sustainable Development Goals.

This book is relevant to the thesis is because it contains the status of children in South Africa includes the reports of the cases. Furthermore, it helps the author in understanding the government effort to stop this case by seeing from the collaboration between local government and international institution. The African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC) both protect the right to life, survival, and development, alongside many other rights (Jamieson, Berry, & Lake, 2017).

I.9.19 South African Human Rights Commission, "REPORT ON SEXUAL OFFENCES AGAINST CHILDREN". South African Human Rights Commission, last modified April 2002

This report was made by the South African Human Rights Commission in April 2002. This includes the function and mandate of the commission, The Prevalence of Sexual Violence against Children, International Human Rights Instruments, Constitutional Statutory Framework for Protection of Children, and the recommendations (South African Human Rights Commission, 2002).

Furthermore, it more explains the importance of disclosure of the cases. It could be disclosed by the victims, parents, or caregiver. It also emphasizes how the procedural of disclosure as well as the duty to report the case. In most of the cases, the reports were unclear due to several reasons. One of the reasons is that the victims feel threaten by the perpetrator (South African Human Rights Commission, 2002).

This report is very relevant to the thesis since it gives comprehensive reports directly from the South African Human Rights Commission. It helps the author to understand more over the SOAC in South Africa. Furthermore, it also gives the information on until what extent South African government protects the child rights. It includes South Africa's obligations under international law. Thus, the author could easily analyze the government effort on solving this case.

I.9.20 UNICEF South Africa, "Child Sexual Abuse - A handbook for parents and caregivers"

A handbook of child sexual abuse which was produced and developed Centre for AIDS Development, Research and Evaluation (CADRE) for the Department of Health, South Africa has been one of UNICEF publications. It explains regarding the understanding of child sexual abuse for parents and caregivers. Furthermore, it more explains the disclosure of case (Fox & Nkosi, 2003).

This book is relevant to the thesis is because it supports the author ideas regarding the disclosure of the case. SOAC's disclosure is one of the issues which makes this case still increasing. This shows that the government has made collaboration with UN in order to stop this case, yet the government still experience the case.

I.9.21 UNICEF, The Department of Social Development, and The Department of Women, Children, and People with Disabilities, "The study on Violence Against Children in South Africa"

This book is the summary of the report on Violence against Children in South Africa in collaboration with the Department of Social Development, the Department of Women, Children, and People with Disabilities and UNICEF in 2012 (Viviers, 2013).

This book explains the violence against children data includes SOAC in home, school, and community. Moreover, it contains information regarding international and domestic legal action over the children rights and protections. In addition, it gives an insight on how the severe impact will be received by the victims of the abuse (Viviers, 2013).

This book is relevant to the thesis because it gives a comprehensive understanding and data regarding SOAC in South Africa. Furthermore, it helps the author to analyze the case of SOAC in South Africa by seeing the situation of SOAC such as on how the perpetrator abuse in the home, school, and community. It also emphasizes the disclosure of SOAC.

I.9.22 Department of Planning, Monitoring and Evaluation Department of Social Development of Republic of South Africa. "Report on Diagnostic Review of the State Response to Violence against Women and Children". 2016

Report on Diagnostic Review of the State Response to Violence against Women and Children was published by Department of Planning, Monitoring and Evaluation Department of Social Development of Republic of South Africa in 2016 (DEPARTMENT OF PLANNING, MONITORING AND EVALUATION, 2016). This report explain comprehensive review about violence against women and children. In addition, it explain the strength and flaw of government efforts in mitigating the violence against women and children. This report is supporting the thesis data on how the situation of government of South Africa in mitigating SOAC

I.9.23 South African Police Service. "Crime Situation in RSA Twelve Months 01 April 2017 - 31 March 2018". 2018

12 months (1 April 2017 - 31 March 2018) Report on Crime Situation in South Africa created by South African Police Service in 2018 (South African Police Service, 2018). This report support the data of crime include sexual offences against children in South Africa from 1 April 2017 - 31 March 2018.

I.9.24 South African Police Service. "South African Police Service ANNUAL CRIME REPORT 2016/2017".2017

Annual Report on Crime Situation in South Africa created by South African Police Service in 2017 (South African Police Service, 2017). This report support the data of 2016/2017 of crime include sexual offences against children in South Africa.

I.9.25 South African Police Service. "South African Police Service Crime Report 2010/2011

South African Police Service Crime Report 2010/2011 created by South African Police Service in 2011 (South African Police Service, 2011). This report support the data of 2011 of crime include sexual offences against children in South Africa. In addition, it also provide the data of SOAC from 2003.

I.9.26 Sigsworth Clarke."Anyone can be a Rapist: An Overview of Sexual Violence in South Africa". 2009.

A report written by Sigsworth Clarke entitled "Anyone can be a Rapist: An Overview of Sexual Violence in South Africa" which was published by Centre for the Study of Violence and Reconciliation in 2009 explain about the case SOAC and its contributing factors (Sigsworth, 2009). It is stated that any sexual violence in South Africa can be analyzed by seeing from individual factor, community factor, and societal factor. The report has a comprehensive findings regarding the patriarchy and male entitlements that lead to the increasing number of SOAC. This report is supporting the data and analysis of the thesis on how patriarchy can lead to the SOAC.

I.9.27 The Constitution of Republic of South Africa

The constitution of Republic of South Africa become the basis of official government findings on this thesis (Republic of South Africa, n.d.). It laid all the fondation of law in South Africa. It governed also law that related to children's rights and SOAC.

I.9.28 UNICEF, The Department of Social Development, and The Department of Women, Children, and People with Disabilities, "The study on Violence Against Children in South Africa," UNICEF South Africa

This book was created by The National Prosecution Authority (NPA) on behalf of the Inter-Department Management Team (IDMT) and United Nations Children's Fund (UNICEF) with support from the Royal Danish Embassy commissioned this research undertaken by Gender Links (GL) (Gender Links,

2008). This books mainly focus on case studies of Gender-based violence (GBV) in South Africa which also cover some case of SOAC. Children have always been linked with the GBV issue. In most of the GBV cases, it laid out the common roots of the problem which is the domination of manpower over women and children in the social system (Gender Links, 2008).

This book is relevant towards the thesis is because it gives the conceptual patriarchy which becomes root problems of GBV which related to SOAC. Children as a victim of violence rooted because of the patriarchal situation within the South African.

I.10 Thesis Structure

Chapter I: Introduction

This chapter will discuss the background of the study, problem identification, statement of the problem, research objectives, significance of the study, scope and limitation of the study, theoretical framework, research methodology, literature review and the thesis structure.

Chapter II: An Overview of Child Sexual Abuse According to UN

This chapter will discuss the definition of Child Sexual Abuse according to UN and what IHRL that SOAC violated, the urgency of South Africa's government in stopping the case.

Chapter III: The South Africa's Response to SOAC

This chapter will discuss the government's response to SOAC include their International Human Rights Law, Constitutional, Statutory Framework, plans and policies, strategies and programmes, the role of civil society for the protection of children from SOAC within South Africa.

Chapter IV: SOAC and Patriarchy

This chapter will discuss that there is a strong relation between SOAC and patriarchy in South Africa. In addition, it will analyze why SOAC is widely

happening in South Africa by seeing from its contributing factors. In addition, this chapter will explain how patriarchy can be constructed in South Africa. In addition, the theory used in this research will answer the research question.

Chapter V: Conclusion

The last chapter will be discussed the evaluation and conclusion of all the materials presented in this research.

CHAPTER II

AN OVERVIEW OF CHILD SEXUAL ABUSE ACCORDING TO UN

II.1 Child Sexual Abuse according to UN

The definition of Children has defined by UN through article 1 of the Convention on the Rights of Child as follows:

"(Article 1): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18." (United Nations, n.d.)

The World Report on Violence and Health has a definition of sexual violence against women which can be adapted to include children (World Health Organization, 2002). The WHO report defines sexual violence as:

"Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise direct against women's sexuality, using coercion (i.e. psychological intimidation, physical force or threats of harm), by a person, regardless of relationship to the victim, in any setting, including, but not limited to, home and work." (World Health Organization, 2002)

In 2002, The World Report on Violence and Health (2002), WHO defined sexual violence as,

"Sexual violence is defined as any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work." (World Health Organization, 2002)

Referring to the same source, SOAC is one of sexual violence act as it is stated below,

*"A wide range of sexually violent acts can take place in different circumstances and settings. These include, for example: **rape within marriage or dating relationships, rape by strangers**, systematic rape during armed conflict; unwanted sexual advances or sexual harassment, including demanding sex in return for favours, sexual abuse of mentally or physically disabled people, **sexual abuse of children**, forced marriage or cohabitation, including the marriage of children, denial of the right to use contraception or to adopt other measures to protect against sexually transmitted diseases, forced abortion, violent acts against the sexual integrity of women, including female genital mutilation and obligatory inspections for virginity, forced prostitution and trafficking of people for the purpose of sexual exploitation." (World Health Organization, 2002)*

In addition, the WHO Consultation on Child Abuse Prevention has defined child abuse as:

"Child abuse or maltreatment constitutes all forms of physical and/ or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power." (World Health Organization, 1999)

The definition of Child Sexual Abuse formulated by 1999 WHO Consultation on Child Abuse Prevention (62) which stated that:

"Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity is intended to gratify or satisfy the needs of the other person. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performance and materials." (World Health Organization)

We need to understand the forms of sexual victimization in regards to the child sexual abuse case. According to the investigation that has been created by University of Cape Town, CJCP, and The Gender Health and Justice Research Unit,

Optimus Study South Africa: Technical Report, Sexual victimization of children in South Africa Final report of the Optimus Foundation Study, sexual victimization could be differentiate as sexual victimization with physical contact and sexual victimization without physical contact.

Firstly, the Sexual victimization with physical contact includes:

"1. Without penetration: kissing and touching of intimate parts of the body by the perpetrator or by the victim to; 2. With penetration: includes the introduction of objects or the perpetrator's body parts into the vagina, mouth and/or anus of the victim." (Artz, Leoschut, Burton, & Lloyd, 2016).

Then, the Sexual victimization without physical contact includes:

"Indecent exposure, voyeurism, confrontation with pornographic material, verbal sexual innuendos or harassment, sexual acts via electronic media (e.g. disseminating photos featuring nudity or pornographic films, verbal advances in chat rooms or similar)." (World Health Organization, n.d)

II.2 Child Sexual Abuse Violates IHRL

According to the Universal Declaration of Human Right, there are 5 from 30 articles which are stated that child sexual abuse is violating the legal protection of human right (United Nations, n.d.).

Article 1.

"All human beings are born free and equal in dignity and rights." (United Nations, n.d.)

Article 2.

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status." (United Nations, n.d.)

Article 3.

"Everyone has the right to life, liberty, and security of person." (United Nations, n.d.)

Article 5.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (United Nations, n.d.)

Article 7.

"All are equal before the law and are entitled without any discrimination to equal protection of the law"(United Nations, n.d.)

Child sexual abuse also violates the International Covenant on Civil and Political Rights (ICCPR) which focus on the civil and political rights issue, specifically it violate the article 6 verse 1 (United Nations Human Rights Office of the High Commissioner).

Article 6.

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."(United Nations Human Rights Office of the High Commissioner, n.d.).

In addition, child sexual abuse violates the Convention on the Rights of the Child (CRC) in which this convention bind states parties to protect and promote the fundamental rights of children. There are 4 specific articles which have been violated in regards to child sexual abuse (Article 2.,3., 6. , 34.)(United Nations, n.d.).

Article 2.

"1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."(United Nations, n.d.).

Article 3.

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;

3. *States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*"(United Nations, n.d.)

Article 6.

"1. States Parties recognize that every child has the inherent right to life;

2. States Parties shall ensure to the maximum extent possible the survival and development of the child."(United Nations, n.d.)

Article 34.

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials."(United Nations, n.d.)

Those UN Human Rights conventions which has been implemented by states have become a universal concept of human rights which is aiming to protect human rights. The common standard can be seen as universal by realizing that the Universal Declaration of Human Rights become the milestone of all of UN Human Rights documents. In almost all of the UN Human Rights convention, it emphasizes the protection of human rights which humans are equal and free from any discrimination. By ratifying those UN Human Rights documents indicate that all state parties would like to commit in the matter of human rights. Thus it is showing the agreement willingness of states to promote and protect the fundamental of human right. In fact, the reality is not what we have expected. The implementation of that human rights law that should be promoted and protected universally, instead it is different in the view of some countries for instance in South African which child sexual abuse is regarded as the cultural relativism for some people.

II. 3 Chapter Summary

Child sexual abuse is violating human rights law as the example are the article 1, 2, 3, 5, and 7 of Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights, and article 2, 3, 6, and 34. of the Convention on the Rights of the Child. In the next chapter, this thesis will explain the government's effort in stopping SOAC includes their legislative framework and collaboration with Non-Governmental Organizations (NGO).

CHAPTER III

REPUBLIC OF SOUTH AFRICA'S RESPONSE TO SEXUAL OFFENCE AGAINST CHILDREN

In favor of protecting the children right as South Africa's obligation under international law, *"South Africa's government has a comprehensive child protection policy and statutory framework."* (South African Human Rights Commission, 2002) The framework is set out primarily in the South African Constitution. Those are International Human Rights, Institutional, Constitutional and Statutory Framework, Plan and Policies, Programmes and Strategies, and Civil Society Collaboration for the children's protection within South Africa as follows:

III.1 International Human Rights

III.1.1 The UN Convention on the Rights of the Child

South Africa acceded to this Convention in 1995. In order to adopt this convention, indeed South Africa has made several national policies, law, and its amendment. It could be shown in the implementation of domestic regulations include the Child Care Act, the Sexual Offences Act, and National Policy Guidelines. In addition, the establishment of The South Africa Human Rights Commission empowers the government to protect the children rights. According to the UN Convention on the Rights of the Child, South Africa has following obligations:

"To take all appropriate legislative, administrative, social and educational measures to protect the child from forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s) or any other person who has the care of the child." (South African Human Rights Commission, 2002)⁸

"Such protective measures should as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for other forms of identification, reporting,

⁸ Article 19 (1) of Convention on the Rights of the Child

referral, investigation, treatment and follow-up of instances of child maltreatment described in the convention.” (South African Human Rights Commission, 2002)⁹

“To protect children from all forms of sexual exploitation and sexual abuse by taking all appropriate national, bilateral and multinational measures to prevent: The inducement or coercion of a child to engage in any unlawful sexual activity; The exploitative use of children in prostitution or other unlawful sexual practice; The exploitative use of children in pornographic performances and materials.” (South African Human Rights Commission, 2002)¹⁰

“To take all appropriate national, bilateral, and multinational measures to prevent the abduction of or the sale of or traffic in children for any purpose or in any form.” (South African Human Rights Commission, 2002)¹¹

“To take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of any form of neglect, exploitation, or abuse, torture or any form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.” (South African Human Rights Commission, 2002)

III.1.2 African Charter on the Rights and Welfare of the Child

On 7 January 2000, the South African Government ratified the African Charter on the Rights and Welfare of the African Child developed by the Organization of African Unity. This Charter is intentionally context-specific and reflective of African culture, values, and more. The Charter includes a special emphasis on the rights and responsibilities of African children that are not addressed in the CRC (**Republic of South Africa, 2006**). South Africa has obligation as follows:

1. “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. Such protective measures include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those

⁹ Article 19 (2) of CRC

¹⁰ Article 34 (a) (b) (c) of CRC

¹¹ Article 35 of CRC

who care for the child, as well as other forms of prevention and for identification, referral, investigation and follow-up of instances of child abuse and neglect.” (South African Human Rights Commission, 2002)

The first obligation of South Africa refer to the African Charter on the Right of the Child is making sure that there will be no violation of children right in regards to child abuse include SOAC. The government should be ready to take any action both in solving and preventing the case occurs. In addition, the government needs to provide a special unit to protect those children from any abuse. This form of actions aims to prevent the abuse will occur, the identification and investigation also will follow.

2. “Protect the child from all forms of sexual exploitation and sexual abuse and in particular take measures to prevent: The inducement, coercion or encouragement of a child to engage in any sexual activity; The use of children in prostitution or other sexual practices; The use of children in pornographic activities, performances and materials.” (South African Human Rights Commission, 2002)

The second obligation is more specific into the preventive action to the sexual exploitation and sexual abuse of children. The government needs to prevent children from any sexual activities and practice include prostitution, and pornographic.

3. “Take appropriate measures to prevent: The abduction, sale of, or trafficking of children for any purpose or in any form, by any person including parents and other caregivers or legal guardians of the child; The use of children in all forms of begging.” (South African Human Rights Commission, 2002)

Lastly, the third obligation is more focus on children trafficking and abduction. Referring to this case, the perpetrator could be anyone includes parents, caregiver, or legal guardians for the children. Therefore, in regards to this obligation, the government of South Africa should make a preventive measure and action in this matter.

III.1.3 The United Nations Convention on the Elimination of all forms of Discrimination against Women

The international legal framework for the protection and promotion of women’s rights is the Convention on the Elimination of

All Forms of Discrimination against Women (CEDAW) (South African Human Rights Commission, 2002). *"CEDAW is often described as the international bill of rights for women, entered into force in 1981."* (South African Human Rights Commission, 2002) The case of SOAC also matters to this convention. The reason why is the victim of SOAC is mostly girls. *"Girl-children are particularly vulnerable to certain human rights violations, and therefore require additional protections."* (United Nations Division for the Advancement of Women (DAW);UNICEF, 2006) Therefore, any discrimination and abuse to girls are part of the protection from CEDAW.

"The human rights of children and the girl-child are explicitly set out in the Convention on the Rights of the Child (CRC), the most widely ratified human rights treaty in history. They are also contained but with special emphasis on the rights of women and the girl-child in other human rights document particularly the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). " (United Nations Division for the Advancement of Women (DAW);UNICEF, 2006)

"CEDAW directly addresses the dire need for the improvement of the status of women and girls and stresses the need to abolish all forms of discrimination against them." (United Nations Division for the Advancement of Women (DAW);UNICEF, 2006).

The international legal framework aims to address women's and children's rights are provided through CEDAW and CRC. Thus, those conventions are complement one to another which aims to improve the status of women and girl and the need to end all of the forms of discrimination and abuses to them. In addition, those convention has been adopted by South Africa by seeing from the government's implementation of domestic regulations include the Child Care Act, Sexual Offences Act, National Policy Guidelines, and the establishment of The South Africa Human Rights Commission

III.2 Constitution and Legislation

III.2.1 The Constitution of Republic of South Africa Act, No 108 of 1996

"The Bill of Rights entrenched in the South African Constitution enumerates a number of provisions aimed at ensuring the protection, promotion, and respect of human rights of South African people." (South African Human Rights Commission, 2002) section 28(1) (d) laid the relevant section regarding the abuse which is stated that, *"Every child has the right to be protected from maltreatment, neglect, abuse or degradation."* (South African Human Rights Commission, 2002)

The section above do not give specific provision regarding the abuse, however based on the constitution in the section 10, sexual abuse are included.

"Section 10 of the Constitution: everyone has the right to have their dignity respected and protected". Sexual abuse violates this "inherent dignity and is also a form of violence in contravention of section 12(1) (c). It further contravenes sections 12(1) (e) and 28(1) (d) in that it constitutes inhuman and degrading treatment." (South African Human Rights Commission, 2002)

In regards to the section above, sexual abuse is categorized as the inhuman and degrading treatment which this action against the 12(1)(c). Indeed, every human being on this earth has their own dignity which we all should respect and protect.

III.2.2 Children's Act 38 of 2005

Children's Act governs everything related to children and their rights to be protected. According to Chapter I of Children's Act 38 of 2005, SOAC has explained as,

"sexual abuse, in relation to a child, means - (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted; (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person; (c) using a child in or deliberately exposing a child to sexual activities or pornography; or (d) procuring or allowing a child to be procured for commercial sexual exploitation or in

any way participating or assisting in the commercial sexual exploitation of a child". (DoJCD, 2005)

Furthermore, SOAC has been defined and governed as a crime under Sexual Offences and Related Matters Act specifically sexual offences against children (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

III.2.3 The Child Care Act, No 74 of 1983 (as amended)

"To provide for the establishment of children's courts and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters." (Republic of South Africa, 1983)

This act includes the protection for, *"commercial sexual exploitation of children, and children who have been physical, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he or she is."* (Republic of South Africa, 1983)

III.2.4 Criminal Law: Sexual Offences and Related Matters (SORMA)

SOAC in South Africa has governed in SORMA which provide an extensive range of specific offences aimed at the protection of children (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). The Act criminalizes the SOAC (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"The Act provides a demarcation between the age of consent for consensual sexual acts between children aged 12 to 16 years and also provides special provisions in relation to the prosecution and adjudication of consensual sexual acts involving children up to 16 years of age." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

Sexual Offences Act, No 23 of 1957 (as amended),

"To amend the Immorality Act, 1957, so as to rectify certain obsolete expressions; to increase the maximum fines which may be imposed for certain contraventions in terms of the said Act; to extend the prohibition on a parent or guardian from procuring the defilement of his daughter so that it shall apply in respect of all his children, and to create a presumption in this connection; to make other provision in connection with the offence of assistance for the purposes of unlawful carnal intercourse, and the presumption concomitant therewith; to adapt and extend the provisions relating to sexual offences by a male with youths so that they shall also apply to a female; to extend the prohibition of sexual acts with female idiots or imbeciles so that it shall also apply in respect of male idiots or imbeciles; and to make it an offence for a person to have unlawful carnal intercourse, or to commit an act of indecency, with any other person for reward; and to provide for matters connected therewith." (Republic of South Africa, 1957).

SORMA covers sexual offenses which have or attempts or commits to having carnal intercourse with girls or boys under sixteen. Then, parent or guardian procuring defilement of child or ward who procures or attempt to procure to have carnal intercourse with girl or boy (Republic of South Africa, 1957).

In chapter 1 of Sexual Offences Act, it laid the definition of "child". The definition of "child" is, "*(a) a person under the age of 18 years; or (b) with reference to sections 15 and 16, a person 12 years or older but under the age of 16 years.*" (Republic of South Africa, 2007) The complainant, "*means the alleged victim of a sexual offence.*" (Republic of South Africa, 2007) A sexual act "*means an act of sexual penetration or an act of sexual violation.*" (Republic of South Africa, 2007)

SORMA define sexual penetration as follow,

"sexual penetration" includes any act which causes penetration to any extent whatsoever by— (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond

the mouth of another person, and ‘sexually penetrates’ has a corresponding meaning.” (Republic of South Africa, 2007)

It also defines sexual violation as follow,

"sexual violation includes any act which causes—

(a) direct or indirect contact between the—

(i) genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal;

(ii) the mouth of one person and—

(aa) the genital organs or anus of another person or, in the case of a female, her breasts;

(bb) the mouth of another person;

(cc) any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could—

(aaa) be used in an act of sexual penetration;

(bbb) cause sexual arousal or stimulation; or

(ccc) be sexually aroused or stimulated thereby; or

(dd) any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or

(iii) the mouth of the complainant and the genital organs or anus of an animal;

(b) the masturbation of one person by another person; or

(c) the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration, and ‘sexually violates’ has a corresponding meaning; and ‘this Act’ includes any regulations made under this Act, including the regulations made under sections 39, 53 and 67.” (Republic of South Africa, 2007)

In chapter 3 of SORMA, it is stated all forms of sexual offences against children are as follows:

1. Consensual sexual acts with certain children:
 - Section 15 Acts of consensual sexual penetration with certain children (statutory rape);
 - Section 16 Acts of consensual sexual violation with certain children (statutory sexual assault);
2. Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child pornography or

- pornography to children and using children for pornographic purposes or benefiting from child pornography;
- Section 17 Sexual exploitation of children;
- Section 18 Sexual grooming of children;
- Section 19 Exposure or display of or causing exposure or display of child pornography or pornography to children;
- Section 20 Using children for or benefiting from child pornography;
- 3. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation and exposure or display of or causing exposure or display of genital organs, anus or female breasts ('flashing') to children;
- 21 Compelling or causing children to witness sexual offences, sexual acts or self-masturbation; and
- 22 Exposure or display of or causing of exposure or display of genital organs, anus or female breasts to children ('flashing')" (South African Police Service, 2007).

Children's Act governs everything related to children and their rights to be protected. According to Chapter I of Children's Act 38 of 2005, SOAC has explained as,

"sexual abuse, in relation to a child, means - (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted; (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person; (c) using a child in or deliberately exposing a child to sexual activities or pornography; or (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child". (DoJCD, 2005)

SOAC is categorized as a crime so any person who committed SOAC, will be guilty of the offence and the sanction has been governed in the criminal law itself. In chapter 3 of Sexual Offences Act, it laid the explanation of Sexual Offences against Children in the form of rape and sexual assault (section 15 and section 16).

"(Acts of consensual sexual penetration with certain children (statutory rape): Section 15): (1) A person ("A") who commits an act of sexual penetration with a child ("B") is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child." (Republic of South Africa, 2007)

"(Acts of consensual sexual violation with certain children (statutory sexual assault): Section 16): (1) A person ("A") who commits an act of sexual violation with a child ("B") is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an

act of consensual sexual violation with a child." (Republic of South Africa, 2007)

The government of South Africa categorizes the sexual offences (rape and sexual assault) as the Contact Crime.

"Contract crime refers to those crimes in which the victims themselves are the targets of violence or property is targeted and the victims in the vicinity during the commission of the crime are subjected to threats of violence or the use of such violence. Those are Murder, Rape, Attempted Murder, Assault GBH, Common Assault, Common Robbery, Robbery aggravating, and Sexual assault." (the Republic of South Africa, n.d.)

III.2.5 Domestic Violence Act, No 116 of 1998

"RECOGNISING that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective." (Republic of South Africa, 1998).

The government of South Africa has realized that domestic violence is one of the high rate of the case within South African society which can take on many forms. They are really concerned on the victims of this case since the victims are the most vulnerable in the society which is women and children. The preventive action to become more effective is needed.

"AND HAVING REGARD to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child." (Republic of South Africa, 1998)

The government of South Africa is promoting and protecting the fundamental of human rights specifically the equal and freedom

rights for their citizen. They also aware that SOAC should be ended since it is the state obligation to end any abuse include women and children in referring to CEDAW and the Rights of the Child.

"IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence, BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa." (Republic of South Africa, 1998)

The main purpose of this act is stating that the government of South Africa is committed to the elimination of domestic violence include taking preventive action and giving maximum protection from domestic abuse.

III.2.6 The Criminal Procedure Act 51 of 1977

This Criminal Procedure also covers rape, compelled rape, sexual assault, compelled sexual assault and compelled self-sexual assault. In addition, it covers the regulation regarding the sexual violation of children (Republic of South Africa, 1977).

III.2.7 The Child Justice Act

In 2010, *"children who were in conflict with the law were dealt with in terms of the Criminal Procedure Act which is the law applicable to adult offenders."*(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016) In the case of sexual offences against children, the perpetrator is not always the adult, but somehow, there also a case which the perpetrator is the same children age, in which the law related has been governed under Sexual Offences Act (the Republic of South Africa, n.d.) Thus, to proceed the children accusation of committing offences, it is required to have a child justice system. The Child Justice Act become a more appropriate way to proceed with the child court (Department of Planning,

Monitoring & Evaluation and Department of Social Development, 2016).

"Children under the age of 18, who are suspected to have committed crime are not subjected to the general criminal procedure but will follow a specific child justice process. The Act details the procedures that those in positions of authority must follow from the time the child is arrested until the sentence is passed."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

III.3 Institutional and Constitutional Bodies Mandates

III.3.1 The South African Human Right Commission (SAHRC)

The South African Human Rights Commission (hereafter referred to as "the Commission") is one of the independent Constitutional bodies established in terms of chapter 9 of the Constitution of the Republic of South Africa.

"It derives its mandate from the Constitution and from the Human Rights Commission Act. The Commission is mandated by section 184 of the Constitution to (a) promote respect for human rights and a culture of human rights, (b) promote the protection, development, and attainment of human rights and (c) monitor and assess the observance of human rights in the Republic. In working towards its mandate, the Commission is empowered by section 184(2) of the Constitution to (a) investigate and report on the observance of human rights and to (b) take steps to secure appropriate redress where human rights have been violated." (South African Human Rights Commission, 2002)

The Human Rights Commission Act governed further powers, duties, and functions on the Commission.

These include, "the power to (a) conduct an investigation into an alleged violation of human rights, (b) require any person to appear before it and produce to it all articles or documents in his or her possession or under his or her control and which may be necessary in connection with such investigation and (c) require any person who appears before it to give evidence under oath or affirmation." (South African Human Rights Commission, 2002).

As stated in the Act and its explanation above, the Commission has an important role in protecting and promoting human rights in

South Africa which they have duties and obligations to identify, discuss, and integrate the strategic priority areas in line with the Human Rights Matrix. In addition, specific provinces and the UN treaty bodies have been assigned by the Commission amongst themselves. Those are the strategic priority areas:

- Access to Justice and Housing;
- Environmental, Natural Resources, and Rural Development;
- Basic Services and Health Care;
- Children's Rights and Basic Education;
- Migration and Equality;
- Human Rights and Law Enforcement and Prevention of Torture; and
- Disability and Older Persons (South Africa Human Rights Commission, 2002).

III.3.2 Department of Women, Children, and People with Disabilities (DWCPD)

DWCPD has a mandate to promote, facilitate, coordinate and monitor the realization of the rights of women, children and people with disabilities(DSD, DWCPD, and UNICEF, 2012). As part of its mandate, the DWCPD has developed a National Plan of Action for Children(DSD, DWCPD and UNICEF, 2012). The main aim of the National Plan with regards to violence against children include the sexual offences against children, is to ensure that:

- A safe, supportive and protective environment for all children in their homes, communities, and schools is created and sustained;
- children are protected from all forms of sexual abuse and exploitations;
- the rights of refugee children are protected within the ambit of the provisions of national and international laws;
- unaccompanied minors receive protection and support services;

- and all forms of child labor are eradicated in the country by 2015 (DSD, DWCPD and UNICEF, 2012).

III.3.3 Department of Social Development (DSD)

The Department of Social Development (DSD) is mandated, *"to facilitate human development and improve the quality of life through the provision of comprehensive, integrated, sustainable and high-quality social development services to help reduce vulnerability and poverty."*(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)Per Section 28 of the Constitution, the DSD is responsible for protecting families and children from maltreatment, neglect, abuse and degradation (South African Constitution, S28(1)(d)(e)(f); ACRWC, Articles 15, 16, 21; UNCRC, Articles 19, 34, 37, 39)(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

The DSD is required to provide the following statutory services for children:

- *Reporting of suspected cases of abuse, neglect and/or abandonment;*
- *Intervention and removal of children in appropriate cases;*
- *Investigations and assessments in cases of suspected abuse, neglect or abandonment of children;*
- *Placement and integration of children in alternative care;*
- *Therapeutic programmes;*
- *Foster care;*
- *Adoption;*
- *and Reunification and reintegration services* (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

III.3.4 South African Police Service (SAPS)

SAPS was founded in 1995 under the Presidency of Nelson Mandela (SAPS, n.d.). The Constitution places responsibilities on SAPS to, “*prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law*”. (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016) The extension provision of SAPS duties is contained under the protective legislation such as under the Children’s Act, 2005 (Act 38 of 2008), Domestic Violence Act and others. SOAC case is criminal acts in terms of both common law and the legislative framework (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). One of the main responsibilities of SAPS is in investigating the case related to violence against children include SOAC for the prosecution of the cases (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"SAPS must investigate crimes against children but do so in a manner that is sensitive [and] endearing to the child victim. The Sexual Offences Related Matters Act (SORMA) describes the requirements of SAPS with respect to children and women. Under the SORMA, SAPS is obligated to provide complainants with the maximum and least traumatizing protection the law can provide and proper recognition of the needs of victims of sexual offences through timely, effective and non-discriminatory investigation. SAPS is also guided by the Service Charter for Victims of Crime in South Africa (2004), the Minimum Standards in Services for Victims of Crime (2004); SAPS National Instruction on Treatment of Victims of Sexual Offences 22/1998, SAPS National Instruction 3/2007 on Sexual Offences, the DSD’s Integrated Victim Empowerment Policy (2007); the DoJCD’s National Policy Guidelines for Victims of Sexual Offences (2008) and the DSD’s National Policy Guidelines for Victim Empowerment (2009)." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

III.3.5 Department of Justice and Constitutional Development (DoJCD)

Under the constitution of South Africa specifically Section 12 and Section 28, the DoJCD is required, *"to protect the rights of women and children from violence, and specifically to protect children from maltreatment, neglect, abuse or degradation, and exploitative labor practices."*(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)The National Policy Framework for Child Justice (2010) and the National Policy Guidelines for Victims of Sexual Offences (2008) are the basic guidance of the DoJCD(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"The DoJCD's main role with respect to Violence against Women and Children (VAWC) is the provision of courts and court services. The Department provides courts and all required justice services for South Africa citizens, and has responsibilities to ensure access for people living in townships and rural areas, and to minimize secondary victimization in justice proceedings through the provision of intermediaries, closed-circuit television or similar technologies."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

III.3.6 National Prosecuting Authority (NPA)

NPA has responsibilities related to the prosecution of Violence against Children cases include sexual offences against children (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). It is stated under the constitution of South Africa under Section 28. In addition, other responsibilities of NPA is to protect the right of children and their family.

"Under Section 28 of the Constitution, the National Prosecuting Authority (NPA) has responsibilities for the protection of the right of the child and their families to be protected from maltreatment, neglect, abuse or degradation, and exploitative

labor practices. Under Section 12 of the Constitution, the NPA has similar responsibilities more broadly to protect South African's from violence, including violence against women. Child abuse, neglect, and maltreatment are criminal acts in terms of both common law and the legislative framework and the NPA has responsibilities with respect to the prosecution of VAC cases. The NPA must prosecute crimes against children but do so in a manner that reduces secondary victimization within the criminal justice system and by adopting a victim-centered approach." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

III.4 Policies and Plan

III.4.1 The National Development Plan (NDP)

"The vision of the National Development Plan (NDP) is to eliminate poverty and reduce inequality by 2030, and Chapter 12: Building Safer Communities is one of the NDP priorities for achieving this vision." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

NDP aims to eliminate poverty and reduce inequality (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). In addition, its priorities are to build safer communities. For instance, a secure and safe environment for women and children.

IV.4.2 The Medium Term Strategic Framework (MTSF)

The Medium Term Strategic Framework (MTSF) serves as the government's medium-term implementation plan of the NDP (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). It is based on 14 outcomes that support the achievement of vision 2030. Outcome 3 intends that *"all people in South Africa are and feel safe."* (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

"Within this outcome, there are seven necessary sub-outcomes. Violence against Women and Children include sexual offences against children are identified under the more broad definition of 'contact crimes' which is the focus of sub-outcome 1:

reduced levels of contact crime. This sub-outcome is required, per the MTSF, because communities and all people feel unsafe due to unacceptably high levels of serious and violent crime such as murder, rape, and aggravated robberies."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

III.4.3 The National Policy Guidelines for Sexual Offences

"The Preamble the Act recognizes that sexual violence in South Africa is a 'grave concern' that has a 'particularly disadvantageous impact on vulnerable persons' and the society as a whole. It also acknowledged that women and children are disproportionately vulnerable and are more likely to become victims of sexual offenses." (Department: Justice and Constitutional Development of Republic of South Africa, 2012).

The National Policy Guidelines has known that sexual violence in South Africa is the big issue that the government should end, also agreed that women and children are categorized as the most vulnerable in society since mostly the victim of sexual offense faced by this group. The National Policy Guidelines also covers the "Enacts comprehensive provisions dealing with the creation of certain sexual offenses against children and persons who are mentally disabled," (Department: Justice and Constitutional Development of Republic of South Africa, 2012).

"Establishes the National Register for Sex Offender (NRSO) with the aim of protecting children and mentally disabled persons from coming into contact with any person convicted for committing a sexual offence against a child or a mentally disabled person." (Department: Justice and Constitutional Development of Republic of South Africa, 2012)

In order to protect children from any sexual abuse, the government made NRSO which showing on how the matter is significant for South Africa. *"In recognition of the Constitutional guarantees of the rights to equality, dignity, freedom and security of the person, as well as the right to privacy, the Act places a significant*

degree of responsibility and accountability on government departments to deliver appropriate, adequate, and efficient services to all victims of sexual violence." (Department: Justice and Constitutional Development of Republic of South Africa, 2012)

"the Act itself requires the introduction of certain services to certain victims of sexual offences which is read to mean specialized services. Government departments have established specialized units, divisions or structures that are capacitated by specialist personnel and special resources to deal with sexual offences matters. Examples of these include specialized services offered by Clinical Forensic Medicine Centres (CFMC) in the DOH; Family, Child and Sexual Offences (FCS) Units within SAPS; Thuthuzela Care Centres (TCCs) established by the NPA; Court Preparation Officers provided by NPA; as well as the Sexual Offences Courts that are capacitated with Witness Testifying Rooms, One-Way Mirrors, Anatomical Dolls and Intermediaries provided in courts, as well as One-Stop Centres managed by the DSD." (Department: Justice and Constitutional Development of Republic of South Africa, 2012).

In the National Policy Guidelines, it lays down that the government has established some specialized services to end and prevent the sexual offenses include SOAC. One of the specialized services is Family, Child and Sexual Offences (FCS) Units.

III.5 Programme and Strategies

III.5.1 The Sixteenth Days of Activism

In order to raise awareness of violence against women and children, the government of South Africa runs the annual campaign (government's flagship campaign) namely The 16 Days of Activism campaign which has been running since 1994 (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). This campaign is annual events that take place from 25 November to 10 December (The Parliament of South Africa, n.d.).

"Over the years the Sixteen Days of Activism campaign has provided a rallying point for the South African government and NGOs to mount campaigns aimed at raising awareness,

influencing behavior change and securing high-level political commitment to end gender violence." (Gender Links, 2008)

"A National Coordinating Committee convened by the Sixteen Days secretariat has been constituted to facilitate coordination of the campaign across sectors. Representatives of key government departments, NGOs, FBOs, traditional leadership, business sector, and other stakeholders sit on the committee. The committee draws up the calendar of events, contributes to selecting the theme and looks and feel of each year's campaign. It is also responsible for drawing together the national calendar of events and acts as an information sharing platform." (Gender Links, 2008)

The Government Communication and Information Systems (GCIS) monitored this campaign which has shown good outreach and impact towards society's awareness regarding violence against women and children which is including SOAC (Gender Links, 2008). However, it did not have the potential to meaningfully change the attitudes and behavior of society (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"Monitoring of the Sixteen Day campaign by the GCIS has shown that awareness has grown from 16% in 2003, 26% in 2005 and 33% in 2006. During the actual Sixteen Days campaign period, awareness is even higher: 23% (2003); 31% (2005) and 41% (2006) with the 2007 results still unavailable. This shows that the Sixteen Day campaign has gained significant profile and is an important building block for future prevention efforts." (Gender Links, 2008)

III.5.2 The Victim Empowerment Programme (VEP)

The Victim Empowerment Programme (VEP) is, *"one of the core outputs of the National Crime Prevention Strategy of 1998, and is coordinated by the DSD within the Justice, Crime Prevention and Security (JCPS) Cluster." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)* The VEP is a national programme in operation within all provinces in South Africa.

"The mission of the VEP is to develop, strengthen and monitor integrated victim empowerment policies, programmes and services through strategic partnerships, across multiple sectors and government departments. It specifically targets women, victims of Gender-Based Violence, sexual assault and rape, child abuse, abuse of people with disabilities and older persons, and victims of human trafficking and hates crime."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

The VEP has been criticized due to the lack of uniformity in its implementation which results the adequate monitoring and oversight (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

III.5.3 Thuthuzela Care Centres (TTCs)

In order to address sexual offences, the Sexual Offences and Community Affairs Unit was established within the NPA in 1999 (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). The establishment of Thuthuzela Care Centres (TCCs) was one of the main activities of the unit. TTCs provides a one-stop hospital-based service to the sexual violence survivors. In its operation, 51 TCCs have been established (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"TTCs provide a one-stop hospital-based service to survivors of sexual violence, including medical, legal and psychological management support. The aim of the centers is to reduce secondary victimization, improve conviction rates and reduce the cycle time for the finalization of cases. To date, 51 TCCs have been established, but as at 2013, only 35 of these were fully operational. This is against the NPA's initial target of 55 operational TCCs by 2015/16." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

In the implementation of TCCs, the challenges appeared which was the lack of funding for TCCs (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"While the TCC model has been widely commended, in terms of its implementation there are concerns that that lay counselors do not always receive good training and thus can be ill-equipped to deal with the counseling needs of victims of violence. Interviews also indicated that there is concern over the lack of funding for TCCs, as they have historically been donor funded and are now reportedly facing budget challenges." (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

III.5.4 Family Violence, Children Protection, and Sexual Offences Unit (FCS)

In order to address crimes against children, a Child Protection Unit (CPU) within the South African Police was established in 1986 (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). Seeing the rising victims number of sexual offences and family violence, the extension of the unit was needed. Thus, the Family Violence, Child Protection Unit, and Sexual Protection Unit (FCS) was established by the SAPS in 1996 (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). "The FCS is mandated to police family violence, child protection, and sexual offenses."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

On March 2016, a Report on Diagnostic Review of the State Response to Violence against Women and Children was published by the Department of Planning, Monitoring, & Evaluation and Department of Social Development. It is stated that in the operation of FCS, a number of challenges have been identified mostly concern about the police officials' capacity within FCS and FCS' services. The police officials could not fulfill their performance well (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016).

"Concerns about the capacity of police officials at these units have been raised: police officials are sometimes not readily available after hours and over weekends which can result in a child-victim and his or her parents waiting up to two to three days for expert assistance from the police. Further studies have highlighted that FCS staff are not consistently suitably qualified to provide these services, are not suitably experienced, did not

undergo specialized screening for suitability, and do not have some of the basic requirements, such as a driver's license."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

The service which was provided by FCS should be victim-friendly, yet, in fact, it is not victim-friendly enough (Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016). The lack of experience and skills might be a factor why FCS could not perform well this duty.

"Victim-friendly services are essential to ensuring that victims of gender-based violence are informed of their rights, understand their role in criminal justice system processes, and are able to heal and recover. A number of challenges have been identified including an adversarial court system that is not child-friendly, shortage of victim-friendly rooms at police stations and courts, and poor referral mechanisms between government departments."(Department of Planning, Monitoring & Evaluation and Department of Social Development, 2016)

III.6 Other International Obligations in regards to the Protection of Children

Following are other international obligations that contribute to the protection of children and to which South Africa has formally ascribed are listed below (Republic of South Africa, 2006):

- a. South Africa has signed and is in the process of ratifying the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;
- b. The Convention on the Minimum Age for Admission to Employment (ILO No. 138) was ratified on 30 March 2000;
- c. Council of Europe Cyber Convention: South Africa signed the Convention, on 23 November 2001. Ratification of the Council of Europe's Additional Protocol to the Convention on Cybercrime is currently underway. This additional protocol criminalizes acts of a racist and xenophobic nature committed on the internet or other

- electronic media. When this protocol has been signed the country will proceed with the ratification of both instruments;
- d. South Africa acceded on 01 August 2003 to the Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption;
 - e. South Africa acceded on 8 July 1997 to the Convention on the Civil Aspects of International Abduction (Hague Convention);
 - f. Declaration and Agenda for Action against Commercial Sexual Exploitation;
 - g. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by South Africa on 10 December 1998;
 - h. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
 - i. UN Guidelines for the Prevention of Juvenile Delinquency (Ryad rules);
 - j. UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (JDL); and
 - k. South Africa ratified, on 20 February 2004, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. This protocol supplements the UN Convention against Transnational Organized Crime (Republic of South Africa, 2006).

III.7 Civil Society and Others Programme & Strategies

III.7.1 Project Ndabezitha

In July 2004, there has been launched the Project Ndabezitha which is, "*forms part of the Domestic Violence Division of the National Prosecuting Authority's Sexual Offences and Community Affairs Unit (NPA-SOCA).*" (Gender Links, 2008) This project targeted all traditional leaders to empower and raise awareness regarding domestic violence including sexual offences against children (Gender Links, 2008). It is also targeted rural communities where the traditional leader

based. The management of domestic violence is included in this project.

"The word 'Ndabezitha' is a Zulu traditional greeting used to traditional leaders in recognition of the inherent honor and respect attributed to their social standing and position of authority." (Gender Links, 2008)

This project aims to:

- Create a pool of registered Skills Facilitators and Assessors on domestic violence within the traditional leadership sector;
- Empower traditional leaders at large with appropriate skills required for the proper integrated management of domestic violence complaints in a manner that promotes restorative justice system;
- Raise public awareness of domestic violence within the rural communities where traditional leaders are based;
- Promote Restorative Justice principles with the aim of contributing to the reduction of the rates of offending and re-offending in domestic violence; and
- Encourage information sharing, coordination, and support amongst the Parties and other relevant role-players (Gender Links, 2008).

The implementation of Project Ndabezitha gave positive response among the traditional leaders (Gender Links, 2008). It is stated that some traditional leaders gain more awareness regarding the Domestic Violence Act which governs any domestic violation against women and children including sexual offences against children. One of the traditional leader gave the response towards this project, Chief Tshabalala, Durban,

"The programme is excellent because it is reminding us of things that we sometimes forget, like the values that have been lost. It has (also) shifted my mindset a lot. I understand the Domestic Violence Act better now especially the provisions that I was not aware of. For example, I did not know that one can obtain a Protection Order (which prevents violence from

reoccurring if the order is upheld). The fact that there were going to be certificates issued made us happy. Project Ndabezitha will definitely have an impact on my community because if one has the information they become equipped. Now we can spread the word that domestic violence is a crime and one can be reprimanded by the law. A lot of people in South Africa do not know about the Act and only become aware of it when they get into trouble. Now every committee meeting I hold I am going to tell them about the Act. When people come to me to report family matters I will be able to point them that it is wrong and that will lead to prevention (secondary prevention).” (Gender Links, 2008)

III.7.2 Isolabantwana (Eye on the Child)

Isolabantwana (Eye on the Child) is, *"a community-based child protection programme that advocates the collaboration of communities and formal resources when protecting children against abuse, neglect, and exploitation."*(Gender Links, 2008) It aims to educate the local communities regarding social problems that exist in society (Gender Links, 2008). The mechanism of this programme is recruiting the adult volunteers who have good feeling over children which will be screened and trained by the Department of Social Development (Gender Links, 2008). The status of this adult volunteers will be a Social Worker at the organization or Social Worker at Department of Social Development which expected to be Child Welfare Volunteer (Gender Links, 2008).

"The programme further seeks to educate and enlighten communities about various social problems. Adult volunteers who have compassion for children are recruited, screened and trained to assist social workers in the prevention and management of child abuse. The end result is a 24-hour child abuse, community-based service to vulnerable children and families by trained Child Welfare volunteers. Volunteers identify, support and counsel families and children at risk of abuse intervening when necessary by providing a safe environment for children. Volunteers receive support and guidance through the strong infrastructure of The Welfare in South Africa and member organizations."(Gender Links, 2008)

The duty of volunteers are as follow:

- *Eyes*, who are trained to be able to identify children who are vulnerable and in crisis situations and who reported to be abused, remove the children if necessary and place them with safety parents, who are trained in the Programme;
- *Safety Parents* mentioned above, open their houses for these children in a crisis for least 48 hours, until a Social Worker can intervene; and
- *Management Committee* manages the Project with the assistance of the Social Worker at the Organisation, or Social Workers of the Department of Social Development (Gender Links, 2008).

This programme gave impactful towards communities whereas the trained volunteers raise awareness in communities. The early intervention and preventative services for children and families at risk are provided (Gender Links, 2008).

III.7.3 Soul City Institute for Health and Development Communication (SC IHDC)

SC IHDC is a Non-governmental Organization (NGO) which was established in 1992 (Gender Links, 2008). It aims to promote health from a holistic standpoint. The basis that SC IHDC used on its advocacy is "edutainment", which is a combination concept of education and entertainment (Gender Links, 2008). SC IHDC is categorized as a social change project which seeks the impactful change at the individual, community, and sociopolitical level (Gender Links, 2008).

"SC IHDC has eight programme areas. The Soul City Series (1-8) is an entertaining drama that is broadcast on both television and radio and has reached more than 16 million South Africans and has also been aired all over Africa, the Caribbean, and South East Asia. The Series has tackled a number of key social development and health issues, including HIV and AIDS,

hypertension, violence against women, and ensuring children's entitlement to social security. The Soul Buddyz series which is designed to promote the health and well being of children between 8 and 12 years old." (Gender Links, 2008)

SC IHDC uses the media to inform the message of a number of the key of social development and health issues, including the protection of children. Not only to give an entertainment to the public, but also educate them indirectly with the value within the message that they gave (Gender Links, 2008).

"The success in this approach lies in the fact that the mixed media used by SC IHDC is accessible at different levels and powerfully persuasive as it is rooted in community experiences, as well as successfully responding to complex social and health issues. The information provided impacts on social norms, attitudes, and practices, aimed at the individual, community and socio-political environment. Violence prevention and children's life skills development are some of the key areas of focus." (Gender Links, 2008)

This advocacy programme covers the effective implementation of the Domestic Violence Act including sexual offenses against children. Furthermore, SC IHDC tackles a number of key areas include violence prevention and children's development.

"The advocacy programme runs simultaneously with and informs the Soul City Series. Examples of campaigns undertaken under the advocacy programme include the speedy and effective implementation of the Domestic Violence Act, a road safety campaign, and one for the promotion of schools as nodes of care for vulnerable children. By 2005 there were a total of 2080 clubs and facilitators established in primary schools and libraries in all provinces across the country, with 41 600 members."(Gender Links, 2008)

III.7.4 Gender Links (GL)

GL is an NGO established in March 2001 with the main focus on, "Promoting gender equality in and through the media." (Gender Links, 2008) This work has two facets, "research, training, and

advocacy for achieving greater gender sensitivity and balance within the media and in its editorial content; as well as strategic communication skills training for gender activists and women in decision making to better access and influence media content." (Gender Links, 2008)

GL use the media to engage with the public. The reason why is media often considered as the source of the problem of violence against women and children. But, at the same time, GL sees media as a potential solution to end the gender-based violence includes boys and girls (Gender Links, 2008).

key elements of the GL strategy are as follows:

- Working directly with mainstream media, through research, training, developing gender policies, continuous engagement, and providing useful links, contacts etc;
- Working with gender activists to develop strategic communication skills and package their issues more effectively to ensure media coverage;
- Providing bridging services between activists and the mainstream media through the Opinion and Commentary service, especially working with survivors of gender violence to tell their own stories, providing content that is often difficult for the media to access due to lack of trust, time and skills constraints;
- Using IT to maximize impact, build skills and capacity; and
- Ensure through these campaigns and media publicity that politicians are put under the spotlight and make gender violence a political priority (Gender Links, 2008).

In improving the quality and quantity of gender violence coverage includes violence against children, the mainstream media in South Africa will be worked with GL (Gender Links, 2008). GL mainly have three legs to work, which are:

- Mainstreaming gender into media coverage;
- Mainstreaming media into gender activism; and
- Building bridges between the two through the Opinion and Commentary service - notably the “I” stories in which survivors of gender violence tell their own stories (Gender Links, 2008).

The operation of GL has marked the improvement in media awareness and issues coverage regarding violence against women and children (Gender Links, 2008).

III.7. 6 Sonke Gender Justice

Sonke is a South African-based non-profit organization established in 2006 which works throughout Africa (Sonke, n.d.). Sonke itself, has its objective stated that "We believe women and men, girls and boys can work together to resist patriarchy, advocate for gender justice and achieve gender transformation."(Sonke, n.d.) Sonke utilizes the ‘spectrum of change’ model, drawing on a broad range of social change strategies that include:

- Partnering with government to promote policy development and effective implementation;
- Advocacy, activism and community mobilization;
- Networking and coalition work nationally and internationally;
- Capacity building and training with partner organizations;
- Innovative communication strategies for social change;
- Community education;
- Individual skills building; and
- Research and monitoring and evaluation (Sonke, n.d.).

In its operation, Sonke has given several awarded, including Men's Health Best Man Award in the Public Service category (2007) and MogambriMoodliar Human Rights Awards (2017).

"In 2007, founders and directors of Sonke, Dean Peacock and Bafana Khumalo won the Men's Health Best Man Award in the Public Service category. The award recognized the two men's efforts to halt the spread of HIV and AIDS and to stop all forms of gender-based violence in South Africa. In addition, on 10 November 2017, we were honored to receive the Overall Human Rights Award in the Foundation for Human Rights' inaugural Mogambri Moodliar Human Rights Awards."(Sonke, n.d.)

III.7.7 The Transform Education About Rape and Sexual Abuse (TEARS) Foundation

TEARS Foundation is a local NGO founded in 2012 which has been registered as Non-Profit Organization (NPO) and Public Benefit Organization (PBO) specializing in assisting and supporting the victim of sexual violence and fighting against domestic violence, sexual assault and child abuse (TEARS Foundation, n.d.).

The contribution of TEAR in fighting against of sexual offences against children is becoming the source of database case related and giving assistance and support the victim of sexual offences against children.

*"TEARS Foundation is responsible for the sourcing and collating of a database comprised of a fully comprehensive network of services; medical, medico-legal, legal and psychological, currently available throughout South Africa, for the assistance and support of survivors of rape and sexual abuse. This database will be accessible to all South Africans, *free of charge, through a web and mobisite. By using a USSD (Unstructured Supplementary Service Data) mobile interface, in conjunction with location-finding software, any South African with a cell phone will be able to receive an instant referral to the nearest available help facility, via SMS." (TEARS Foundation)*

In 2017, TEARS joined a collaborative campaign with McCann Worldgroup Johannesburg, and Picture Tree (Picture Tree, 2018). It

aims to, "*create awareness about child abuse and giving young children a much-needed voice in the #MeToo conversation.*"(Picture Tree, 2018) Mick Blore, chief creative officer, McCann Worldgroup South Africa, and Sub-Saharan Africa stated about the ironic condition of children in South Africa over the sexual offences against children, he believes that #MeToo movement can bring the voice that unvoiced by the children.

"It's a sobering statistic that 34 percent of children in South Africa are the victims of sexual violence and physical abuse before they reach the age of 18. The problem is that the #MeToo movement is essentially a social idea, and this automatically excludes young children who don't make use of social media. Ironically, children are one of the age groups most taken advantage of, sexually molested and raped." (Screen Africa, 2018)

In addition, Mara Glennie, founder of the TEARS Foundation, stated that TEARS has a legal duty as responsible citizens to uphold the children rights and protect them from any forms of abuse.

"It is our collective legal duty as responsible citizens to protect all children against abuse and to report abuse when we suspect it. Through the #MeToo campaign, we opted to communicate a USSD number that can be dialed to access the contact details of the nearest help center. Although abuse cannot be officially reported through the foundation, we provide access to crisis intervention, advocacy, counselling, and prevention education services for those impacted by domestic violence, sexual assault and child sexual abuse." (Picture Tree, 2018)

III.8 Chapter Summary

The government of South Africa has maximized their efforts in implementing IL, yet, the SOAC is still happening. As South Africa has a comprehensive legislation framework in mitigating the SOAC and protecting the child and victim which can be seen on The Constitution of Republic of South Africa Act, No 108 of 1996, the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007, the Children's Act No. 38 of 2005, Domestic Violence Act, No 116 of 1998, The Criminal Procedure Act 51 of 1977, and The Child Justice Act.

In addition, South Africa has numerous of institutions related to the protection of children which are Department of Social Development (DSD), South African Police Service (SAPS), The South African Human Right Commission (SAHRC), Department of Women, Children, and People with Disabilities (DWCPD), Department of Justice and Constitutional Development (DoJCD), and National Prosecuting Authority (NPA).

Policies and Plan also are made which are The National Development Plan (NDP), The Medium Term Strategic Framework (MTSF), and The National Policy Guidelines for Sexual Offences.

The numerous programmes and strategies had been implemented by the government which can be categorized into two main goals, raise public awareness regarding SOAC, and protecting the children's right and victim of SOAC. The programmes are made not only to mitigate the case but also to make the information regarding SOAC are easy to be absorbed by society. *For raising the awareness:* The Sixteenth Days of Activism, The Victim Empowerment Programme (VEP), Project Ndabezitha, and Isolabantwana (Eye on the Child). *For protecting the children's right and victim of SOAC:* Thuthuzela Care Centres (TTCs) and Family Violence, Children Protection, and Sexual Offences Unit (FCS).

The government has also aware of the importance of the role of civil society in mitigating SOAC. Thus, the government collaborates with numerous NGOs, which are Soul City Institute for Health and Development Communication (SC IHDC), Gender Links (GL), Sonke Gender Justice, and The Transform Education About Rape and Sexual Abuse (TEARS) Foundation.

Having a comprehensive legislative framework does not mean can easily change society perspective regarding SOAC and mitigate the SOAC easily. Thus, it is required a multi-faceted approach in order to tackle the case. The government seeks for "inter-sectoral" and "partnership" in collaboration, coordination, and communication between government, civil society organizations, academic research institutions, business, the media, beneficiaries, and all citizens. In the next chapter, it will be explained the reason why SOAC keep doing by a society which also has strong relation with patriarchy.

CHAPTER IV

SEXUAL OFFENCE AGAINST CHILDREN AND PATRIARCHY

SOAC has clearly violated the children rights which they should be protected under the international law. As Republic of South Africa has ratified the numbers of human rights treaties, they are obliged to fulfil this obligation to protect children from any forms of violence, abuse, and discrimination.

Contrast to the reality in the society, SOAC kept doing by them even though it has violated the international law and criminal law within South Africa. The number of cases that reached 176,135 in a total of 7 financial years, indeed, get the international attention. As stated in the Presidency's response, "*the discrimination, domination, inequity, patriarchy and underdevelopment*" maybe become the factors that make SOAC keeps occurring in society (Republic of South Africa, 2006). Several publications mentioned that SOAC was rooted from patriarchy. Thus, in this chapter, it will explain how patriarchy can contribute to the case of SOAC.

IV.1 Contributing Factors to Sexual Offences against Children

IV.1.1 Age and Sex of the Child

"All children tend to be vulnerable just by virtue of being children as they have less capacity than adults to protect themselves." (DSD, DWCPD and UNICEF, 2012) However, the age and sex affect the level of vulnerability to the case (DSD, DWCPD and UNICEF, 2012). The collaborative study between South Africa's government and UNICEF (2012) stated that the younger the age of children, the more risk of the case will come (DSD, DWCPD and UNICEF, 2012). In addition, they believed that girls are more having a risk to SOAC instead of boys. However, it does not mean that boys are not at risk, still, they can be the victim of SOAC (Artz, Leoschut, Burton, & Lloyd, 2016).

"For example, younger children tend to be more at risk of physical violence than older children. Girls are at higher risk of sexual abuse and exploitation and harmful traditional practices than boys, while boys are more at risk of physical abuse." (DSD, DWCPD and UNICEF, 2012)

According to Optimus Study (2016), boys are more likely reporting the case instead of girls (Artz, Leoschut, Burton, & Lloyd, 2016). It is supported by the data as follow:

*"...found large differences in the reporting of sexual abuse between boys and girls, with girls being significantly more likely to have experienced sexual abuse over the course of their lifetimes. These differences were not as stark in this South African study. In fact, drawing on the school SAQ, boys were more likely to report any form of sexual abuse in both rural and urban areas: **36.8 percent of boys, and 33.9 per cent of girls**, reported experiencing some form of sexual abuse. Breaking this down into urban and rural populations, **36.4 per cent of urban females** (a total of 509 females) and **27.2 per cent of rural females** (or 137 rural females) reported that that had experienced some form of sexual abuse. Male reporting was slightly higher, with **38.8 per cent of urban males** (a total of 567) and **31.7percent of rural males** (a total of 186) reporting some form of sexual abuse." (Artz, Leoschut, Burton, & Lloyd, 2016)*

By seeing the data, it does not mean that the number of SOAC for girls is not big as boys since there is a possibility that SOAC goes under-reported (Artz, Leoschut, Burton, & Lloyd, 2016). In addition, Optimus study (2016) also stated that girls are having more risk. The reason why girls are more at risk instead of boys is that in African tradition, girls belong to the ownership of her father or man (Brundige & Bowman, 2014). In addition, due to the patriarchy within the family, girls are more inferior towards boys (Brundige & Bowman, 2014).

IV.1.2 African Children Status

The status of children in Africa is more related to the custom and tradition within the country (Brundige & Bowman, 2014). Children are considered as the lowest class in society, and in many areas of Africa, they are considered as property (Brundige & Bowman, 2014).

"Children occupy the lowest rungs of the status hierarchy in many areas of Africa. This is especially true for girls, who may be treated as outsiders because they will ultimately belong to another family upon marriage. If a man is supporting a girl child, he may feel entitled to sexual rights over her. For example, one Namibian father who was separated from his wife was reported to have told his daughter that if

she was living under his roof, he expected her to have sex with him. Another man raped his daughter to punish her when she came home late. In these ways, men use rape as an instrument through which they communicate their control over the women and girls in their families." (Brundige & Bowman, 2014)

"Children are regarded as property in many areas of Africa. "Cultural values that encourage treating children as possessions," in the words of one scholar, "pose no barrier to use of children to satisfy adult sexual desires." Moreover, the socialization of African children makes them easy prey for incest; they have traditionally been taught absolute respect for and obedience to their parents and older persons in general." (Brundige & Bowman, 2014)

Due to the absolute teaching of respect and obedience to their elders, it makes a perfect situation to do incest which children will be the victim of the case. The absolute teaching of obedience does not make children to question everything, so if they will be sexually abused by their parents or older person, they may not fight nor report the case itself. In the worst scenario, perhaps, they still think that giving their body to do intercourse with their parents or older person is perceived as a normal action.

IV.1.3 Gender Inequality

The problem of child sex abuse within the family in Africa is inextricably linked to gender inequality (Brundige & Bowman, 2014). Incest is overwhelmingly a male-on-female crime. The SOAC will not be stopped unless the gender-based violence is ended. According to the South African Child Gauge, **2014** Report stated that "*Surveys of adolescent sexuality conducted in South Africa have consistently found more than one-third of adolescent girls reporting forced sexual initiation. In community surveys, about 40% of all women who reported the rape to the police in 1999 were under the age of 18*" (S, L, L, & C, 2014). Findings of these studies showing that female are mostly are at much higher risk of becoming the victim of SOAC. The children and women do not have such kinda power which is equal to the dominant power of men. And thus, if those issues have not been reported, the cycle will exist until the end. It will be called a failure of the disclosure.

Referring to the publication of South Africa Violence Prevention Model and Action Plan, the gender roles are heavily stuck within society, as the example, by seeing from one of the research conducted in the Western Cape underscore perceptions of gender roles in South African society:

"If you are a woman, you are supposed to look after the house while the man goes out to work ... men think they are bosses, they think whatever they say a woman must agree with even if it is wrong - woman respondent, a social worker." (Gender Links, 2008).

Since the patriarchy entrenched within society, man has more power and dominant to women and children. As result, men can control women and children in the family in every matter include sexual abuse. According to Child Gauge 2014, the children vulnerability to violence in the community, school, and home is due to the subordination of children position which is contributed by gender inequality (S, L, L, & C, 2014). The position of children will become more inferior towards the men adults which they unable to reject the violation.

In addition, UNICEF has stated in one of their publication in 2017 saying that one of the factors that SOAC might happen at home or intra-family is because the gender inequality that exists within the society. Children become more vulnerable since they seem treated as an object in the family (UNICEF, 2017).

"The patriarchal system, with relations of power in favor of men, operated fully in their homes and in the community. In keeping with the hierarchy consistent with the patriarchy system, the participants reported that fathers headed the households and commanded more power, control, and respect than mothers. Heading the household entailed making rigid rules, making decisions, controlling household activities and providing materially for the family. These are, then, examples of a 'lived ideology' where behavior reflects the beliefs, values, and practices of a given society or culture – in this case, where the ideology is that of male superiority over females, that behavior may entail violence in an attempt to maintain the status quo." (Sigsworth, 2009)

In the household, men, as the controller has more authority, do everything which women and children should obey any thought from the men. The lived ideology which entrenched from patriarchy resulted from the vast disparity between males and females. The children especially girls will be easier and have a risk to be sexually abused by father.

"Men's beliefs and attitudes around women and sex can shape their behaviours in the sexual arena. A combination of misconceptions about acceptable sexual behaviour and a patriarchal outlook can foster the acceptance of and perpetuation of sexual violence." (Sigsworth, 2009)

"In typical patriarchal families, men learn that their power is endorsed by patriarchy which provides an often unquestioned opportunity for them to intimidate and control those who are less powerful than them. This can find expression in many forms. For example, it is reported that in some parts of the country fathers are having sex with their daughters before they get married because they cannot give their virgin daughter away before having had sex with her." (Sigsworth, 2009)

The statement above stated how a practice of patriarchy was constructed in a patriarchal family and how male gain their power within society.

"The learned behaviour of boys and girls is characterized by patriarchal ideology as well as most religious doctrines. Central to this is the concept that children are brought up to trust unquestioningly and obey their parents and other adult authority figures. This unquestioning obedience might have a double effect in the sense that it may place a child at risk of sexual abuse because of his/her acceptance of subjugation, or it may provide a protective factor that allows adult members of the family ultra protective rights over the children. Children's socialization into obedience and silence, and their real fear of breaking such codes, may contribute to their abuse." (Sigsworth, 2009)

The acceptance of reality by the children to obey any rules from their parents made them do not ask any further question which will do everything even if their parents will abuse sexually them.

*"The study found that there was a direct link **between these misconceptions about sexual violence and the claim to have forced someone else to have sex.** Furthermore, 8% of men thought it was okay to punish his wife by beating her up or sexually abusing her and almost two-thirds of men believed women were partly responsible for sexual violence. **These myths surrounding rape seem to have penetrated the minds of rapists and the public alike in South Africa, with an unchallenged acceptance and internalization of the misconceptions that feed into and sustain a culture of rape.** As such, men shift responsibility for sexual violence/rape onto women. Another important factor in men's beliefs and attitudes around sexuality is that women are not entitled to take the initiative or have any control in sexual relationships." (Sigsworth, 2009)*

A culture of rape was sustained by norms and values of the practice of patriarchy that normalize the act of sexual violence in society.

*"Societal influences sustain the occurrence of sexual violence through misplaced social beliefs about the situational elements that constitute rape; belief in an internalization of rape myths that result in victim blaming (displacing the responsibility for the sexual violation by attributing the crime against the victim to the victim instead of the perpetrator); and cultural and religious beliefs that reinforce social beliefs which engender sexual violence against women. These elements create **what is known as a 'rape culture' – a society which accepts sexual violence as the norm, which treats victims with suspicion and disrespect, and treats perpetrators with impunity.**"*

Due to the Men's beliefs on blurred lines between sexual attitudes and their entitlement lead to the common acceptance of sexual offences against children. This create a perception in society that SOAC is normal and not a violation of human rights or crime.

IV.1.4 Masculinity Entitlements

The relationship factor's idea is the notions of female's ownership by the male in a sexual relationship due to the entitlements of masculinity within the practice of patriarchy in South Africa (Sigsworth, 2009). In the practice of patriarchy, the terms of masculinity are defined as, "the men's control over women." (Sigsworth, 2009) Due to this entitlements, in most of the cases, the perpetrators are unable to perceive the sexual violence as harmful or criminal (Sigsworth, 2009). The cause of this situation is, *"the line between consent and coercion becomes blurred in a society where male sexual entitlement is the norm."* (Sigsworth, 2009) The case of SOAC is not only done by the familial relationship but also is done by a stranger or acquaintance. Based on South Africa's culture that men are allowed to have sex whenever and whoever they feel like, so in this case, if the perpetrators are stranger or acquaintance, they allow to do it. Thus, in order men to control over women, they will use violence in this case.

"In cases of stranger rape, a sense of entitlement over women can be an underlying factor, in that entitlement is a culturally sanctioned norm that allows men to have sex whenever they feel like it, and with whomever, they feel like it." (Sigsworth, 2009)

IV.1.5 Poverty

The unsupportive conditions for the family to live in which they were facing the poverty and economic dislocation created the space for the perpetrator in doing the sexual abuse against children. Hence, poverty mostly becomes the major risk factor in the case of SOAC (Brundige & Bowman, 2014). Furthermore, it was stated that the victim who had penetrative sexually abuse by the perpetrator revealed that the circumstances of dysfunctional family and communities with high unemployment within the family members and poverty had been experienced by most of the children.

Sadly, poverty becomes the most difficult barriers to be faced by the children in which the victims could not flee from the perpetrator (Brundige & Bowman, 2014). The reason why is that most of the time, the perpetrator is also the person whom they rely upon. This creates the unfair situation for the children and mother in which the victims may have a chance to be abused by the perpetrator. Due to the economic struggle, the victims just depends on the perpetrator (Brundige & Bowman, 2014). Thus, it creates perfect condition for perpetrators to abuse the children sexually.

IV.1.6 The Ideal Masculine Standards in South Africa society

Community factors contribute to the occurrence of SOAC which explain how masculine standards in society lead to sexual violence (Sigsworth, 2009). In South Africa, an ideal of masculine standards has been constructed in a society which all men need to meet this standard (Sigsworth, 2009).

"Men are often committed to this ideal model of masculinity (which assumes gainful employment, economic success, household headship, and sexual entitlement) and then struggle to meet the various challenges posed by this ideal. Failure to meet the standards set by the ideal can result in feelings of inadequacy and the need to give a 'performance' of masculinity that involves one of the hallmarks of masculinity: aggression. The taking of sex is a relatively simple but violent performance of masculinity that can achieve a feeling of ascendancy over both women and other men: rape asserts the subjectivity and physical power of a man whose status might otherwise be insecure, and humiliates the victim as an object." (Sigsworth, 2009)

Thus, the existence of ideal masculine standards in men results they need to meet this expectation and standard since the failure of fulfilling this standard can cause men to use coercive method (sexual violence) to re-assert their masculinity and gain ascendancy.

IV.1.7 The Failure of SOAC Victim's Disclosure of the Case

According to one South African study reports that the reasons why on how and why the failure of SOAC Victim's disclosure of SOAC case within intra-familial case, the perpetrator has coercive method to give so much pressure towards the victims and the fear of the caregiver's reaction become the factor the inhibiting the disclosure of the case (Brundige & Bowman, 2014).

The perpetrator which mostly are men ask the victims to keep the secrecy forcedly, or/and threaten them by giving the punishment if the victims disclose the truth (Brundige & Bowman, 2014). Thus, the victims will feel so much pressure and anxiety if they tell the truth. The dilemma began when they do not know what they should do. If they tell anyone, they risked their life, while if they disclose the case to their families, they are afraid of the caregiver's reaction towards them (Brundige & Bowman, 2014). Are the caregivers will believe in them or even go to the worst scenario in which the caregivers will mad to them. This dilemma creates a severe impact on the psychology of the victims (Brundige & Bowman, 2014). Following will be the scenario of the dilemma which gives critical impact towards the victim of the SOAC case.

The children will feel betrayed if the caregivers do not believe them, in the worst scenario, the non-supportive families punished or ignored the victims when there were trying to disclose the case as it was reported that there has been 26% of a sample of 856 victims experienced that tragedy (Brundige & Bowman, 2014).

However, the feeling of afraid from victim always there because, in fact, *"the perpetrators of sexual abuse are usually known to the child and may include persons from the community and authority figures such as teachers, relatives or family members, most are men."* (Brundige & Bowman, 2014) If in the case that the perpetrators of sexual abuse are the

father or other man family member of the victim, he will dominate the victim and the victim could not do anything.

IV. 2 The Cycle of SOAC

“An assumption women and children are inferior to the men and they have the right to take sexual advantage of women and children is becoming the key element of patriarchal entitlement.” (Brundige & Bowman, 2014)

In order to affect men will, patriarch's capacity become the dependency of patriarchy's power, by doing sexual intercourse is one of the ways to fulfil that, and it could be using violence if necessary (Brundige & Bowman, 2014). Indeed, the male domination over women and girl lead to the SOAC.

“Russell (1986) reports that most women who were sexually abused as children become victims of (attempted) rape as adults. She writes that “[o]nce a woman is labelled promiscuous, her right to refuse sex is frequently denied” (p. 32). With a privileged position in the phallogentric economy, men have the power to label, socialize, and objectify girls for their sexual gratification. This reinforces a girl's sense of powerlessness, and she ultimately lacks the assertiveness to reject sexual advances from men she might wish would simply be her nurturing father. Swartz (2007b) and Levett (2002) draw attention to male exploitation of structured power in relation to young girls in the context of sexuality. Levett (2002) warns that the idea of sexually abused boys becoming abusive adults is a causative one that conceals.” (Capri, 2008)

Due to the patriarchy which sticks up within society, most of the victims of SOAC were having difficulty in disclosing the issue which led to the underreported case. The victims do not want to report their accident due to several reasons. There have been one South African study reports that the victims likely do not want to disclose the case are because of the threat which the perpetrator gave to him/her and the fear which the victim will get from their caregiver (Capri, 2008). The most crucial thing is the impact that the victims will get from their caregiver reaction, there must be both positive and negative impact, and the caregiver will directly report the case to the authorities or do not believe the victims. The severe psychological effect from the abuse will be received by the victims when their caregiver has not faith towards the victims, indeed the betrayed feeling will go to their heart

(Brundige & Bowman, 2014). *“26% of a sample of 856 child sex abuse victims in one South African study reported being either punished or ignored when they disclosed the abuse.”* (Brundige & Bowman, 2014)

In relation to the incest issue and gender-based violence, most of the families are trying to hide the issue. Why is that so? It is due to prevention to not bring the extend embarrassment and bad image towards the family. “Collective Shame Problem” has been a mainstream way in order to avoid the truth of SOAC according to Ghanaian author, one the mother will not speak up the truth aims to protect their daughter’s future and at the same time to avoid the shame also bad image to their family especially who are involving in the case of incest (Brundige & Bowman, 2014). Meanwhile, The child will not speak up the truth regarding the perpetrator because of the fear that their family name will be bad and shame upon them, while the family is the one who the victim depends on (Brundige & Bowman, 2014).

The mental health effect will be received by the victims. The reason why is that the victims are most likely have known the perpetrator in which could be both parties have a common relative or having a relationship in the past. In other words, the perpetrator is most likely someone known to the victims. As result, the inner conflict might happen because the abuse indicates in a relationship of trust and affection which will be a severe traumatic phenomenon that the victims will face. “It is well documented that SOAC is associated with an increased risk for the long-term psychological sequel which can continue and impact on adult functioning” (Maniglio, 2009). Thus, it creates a severe impact on victims and the underreported case happen as a cycle.

IV.3 The Construction of Patriarchy in South Africa

IV.3.1 Tradition and Apartheid Constructed Patriarchy in South Africa

IV.3.1.1 Tradition

“All of South Africa’s 11 ethnic groups are steeped in patriarchal traditions.” (Gender Links, 2008). As Constitutional Court judge Albie Sachs once put is, *“the only truly non-racial institution in*

South Africa is patriarchy." (Gender Links, 2008)"Men expect to be dominant and many women accept the perception that women are subservient to men in relationships." (Gender Links, 2008) The construction of patriarchy is due to the gender roles and men domination to women in South African tradition.

"Rules and prescriptions relating to gender roles and relations are mainly applied to women; the work they must do, the role they must play in family and society, who they may associate with, their movements, and so on. These rules aim to "keep women in their place." (Gender Links, 2008)

In every action, women have to be controlled by men, women do not have an equal position in South African tradition. Women have always been submissive and inferior to the men According to South Africa, violence Prevention Model and Action Plan stated that, *"there is a study of domestic violence in four villages in Moretele District in South Africa revealed that: There is a layered development of rules over the various stages of a woman's life."* (Gender Links, 2008).

"From childhood, a girl is groomed and prepared for marriage, and the role through which she – and her family – will be realized. A young woman who fulfils her domestic responsibilities and duties, and follows prescripts on movement and behaviour (being obedient, respectful, dressing modestly etc.) Preserving their integrity by raising a respectable wife for a man brings status to a family, and 'protects Magadi' – that is lobola." (Gender Links, 2008)

A girl has been taught by her family to be a good, and obedient, and respectful wife. Those actions describe women are the property of the family, as a property, it should belong to someone, which is the father as head of the family.

"Where there is disagreement between and within focus groups on violence in dating relationships, the differences centred more on whether boys have a 'right' to discipline girls. Beating a woman is a 'right' or prerogative earned through marriage." (Gender Links, 2008)

From this statement, there is no doubt on how patriarchy can be constructed by South African's tradition which leads to the normalization of SOAC in the society. Men can do anything including the right to discipline women as example beating or rape since the tradition says so.

"There was clear recognition of traditional gender roles in communities, which involve women staying at home to raise the family and men going out to work to provide for the family. Women were expected by men to be submissive to their husbands and men were expected to be the decision makers."
(Gender Links, 2008)

It is clear that the gender roles are norm and values that create the patriarchy. By seeing from the statement above that men has always become superior to women. This gender role could not be changed as the tradition constructed the society to do the same.

On another hand, there are also some myths which turn out using the gender roles tradition to create the patriarchy which led to the case of SOAC. For instance, in South Africa, there was a belief that sex with a virgin can cure AIDS-the so-called "virgin-cleansing" myth. This myth is also consonant with traditional African medicine, which sees illness as a condition of bodily pollution needing to be cleansed; for example, sex is viewed as having cleansing power after bereavement (Brundige & Bowman, 2014). In addition, there is also a traditional healer recommend to have sex with their daughters in order to have good luck, such as good health, abundant harvests, and more money (Brundige & Bowman, 2014).

Another example within the tradition of South Africa that contribute to SOAC is Jacob Zuma's rape trial in 2005/2006 (Clarke, 2015). Before the colonization occurred in South Africa, Many tribal cultures were made up, for instance, Swazi and Zulu (Clarke, 2015). A patchwork of patriarchy was made up to positioning women subordinate to their chiefs or head of the family. The case of Jacob

Zuma's rape trial represents how patriarchy that has been constructed by contemporary South African tradition (Clarke, 2015).

"Whilst many cultures have a patriarchal structure, Zulu society incorporates ideological controls which "served to socialize females into accepting a position of inferiority", limiting them to the traditional roles of mother, wife, daughter, accepting themselves as 'second class citizens'. Nevertheless, it is vital to note that, in regards to sexual learning, traditional Zulu culture was reasonably liberal; young people's advances into adult sexuality were monitored. This incorporated puberty rites, sexual education and the encouragement of 'ukusoma' (non-penetrative sex) amongst young couples. However, during colonization in the late 19th century, Christian missionaries attempted to stop 'backward' practices, in particular, as many colonists found sexual subjects' offensive to discuss. Therefore, throughout colonization and into contemporary society, many traditional Zulu practices lost their popularity, such as polygamy. However, the patriarchal structure remained throughout society." (Clarke, 2015)

The case began when there was a rape accusation over Zuma which accused him rape a daughter of a family friend. *"He argued that earlier in the evening the complainant had been wearing a Kanga; a traditional African cloth which usually symbolizes modesty and respectability." (Clarke, 2015)*

"Throughout the trial, this was "sexualized and transformed into an object of seduction". Importantly, the use of the Kanga within the trial can be used to entrench stereotypes and the rape mythology that dress is a key marker in the potential for rape. This is worrying as these stereotypes should be abolished rather than normalized." (Clarke, 2015)

"Additionally, the woman was sitting without her legs crossed which, to Zuma, symbolized she was sexually aroused. He claimed that it was his responsibility, as a Zulu man, to have sex with her. If he had not, he claims he would have disrespected her dignity." (Clarke, 2015)

There was not enough proof of rape over the complainant, such as signs, did not try to find any help, ready to be raped, and did not present a normal victim behaviour (Clarke, 2015). Referring to that act, the complainant could not do anything since the limitation of

power that she has, means she subject to Zuma. Thus, Zuma was not considered as guilty.

In conclusion, this is relevant in the majority of rape cases includes sexual offences against children, where the power limitation of women and children made them could not come forward to fight for themselves or not being trusted by the society that they have been sexually abused by the perpetrator. Furthermore, the culture itself is being used to justify sexual violence which further normalizes and embeds sexual violence into South African society.

IV.3.1.2 Legacy of Apartheid

"In apartheid South Africa, gendered objects were isolated socially on racial lines. The first democratically elected government of South Africa inherited apartheid policies and institutions that had resulted in inequalities between class, sex and race and extremely skewed access to employment. The apartheid era's structures and policies were blatantly anti-poor, racist and sexist." (Huffel, 2011)

Historically, South Africa has experienced the apartheid during the colonization era since 1940 (South African History Online, 2019). The segregation of sex, class, and race was entrenched in that era (Huffel, 2011). The discrimination of gender roles has constructed that man has more power than women. This is how the patriarchy culture was constructed in the apartheid. Where women are subordinate to man. Not only gender roles that have been created from apartheid but also the brutality values which make men can do violence.

"Some individuals and communities internalized the brutality experienced in that era such that it became a way of life. Black men who had been belittled at work or imprisoned would come home angry and take out their anger on those over whom they had power- their families. All this compounded the glorification of brutality and male violence in South Africa's macho culture." (Gender Links, 2008)

Post the colonization, the impact of Apartheid might happen towards South African especially men. The brutality as a macho culture in South

Africa leads to the SOAC. The dominant position of men and its macho culture within the family provide the perfect conditions for SOAC (Brundige & Bowman, 2014).

"The loss of a feeling of power resulting from unemployment is an important link to child abuse, creating what has been described as a crisis of masculinity. In other words, incest and other forms of sexual violence are related to the "disempowerment and emasculation" of African men that results from unemployment and also from a heritage of colonialism and apartheid." (Brundige & Bowman, 2014).

In addition, some men need to reassure their masculinity since post the apartheid, they have the feeling of brutality and high masculinity. Thus, while they lose their power due to some reasons, as an example, the unemployment, as result they have a feeling of disempowerment and emasculation, and thus, they need to confirm again their masculinity by using sex. In a family, a disempowered father will use sex to reassert his masculinity to his child which will lead to SOAC.

IV.3.2 Patriarchy as Cultural-Fault Lines

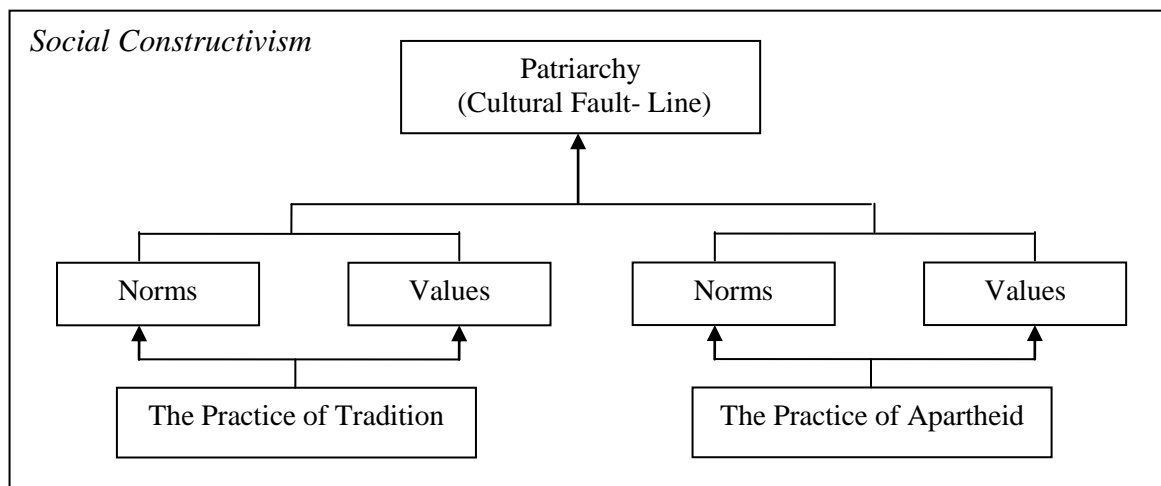


Figure IV.3.2

source: Research Framework made by Muhamad Rizki Nugraha Darma Nagara

The role of cultural and historical background become the main factor of the construction of state as the constructivist's beliefs. As stated by Michael Barnett (2011),

“Reality does not exist out there waiting to be discovered, instead, historically – produced and culturally – bound knowledge enables individuals to construct and give meaning to reality.”(Barnett, 2011)

Barnett believes that reality was constructed by culture and history. Furthermore, cultural and historical background made an important role in shaping society's interpretation of an issue (Barnett, 2011).

Moreover, a cultural-fault line was called the different interpretations in society due to the different individual's interpretation. Thus, the interpretation of South African really plays a significant role in constructing the behaviour of the state (Barnett, 2011).

In SOAC case, it is important to analyze the factor behind the normalization of SOAC in South African. The author's thesis will focus on patriarchy as the cultural fault lines of the history of South Africa. The patriarchy may create a normalize perception over SOAC, thus it has become a normal thing on South Africa. In the following section, this thesis will analyze the tradition and apartheid's existence as a hardened culture of South Africa and make it as a cultural fault-line.

IV.3.2.1 The Practice of Tradition and Apartheid as Hardened Culture

The figures above show that the practice of tradition and apartheid has constructed patriarchy in South Africa. This thesis framework was based on the theory of Constructivism of Alexander Wendt and Michael Barnett which become the tool to prove that the practice of tradition and apartheid has created the common norms and values which led to the construction of patriarchy in South Africa. As Wendt emphasize that culture has an important role in constructing both states and its people behaviour, "Changing the practices will change the inter-subjective knowledge that constitutes the system." (Wendt, 1995) By seeing from the Wendt's statement, the practice will change the people's knowledge in constituting the system, thus, the role of the practice of tradition and apartheid has a significant role. In regards to the case, the practice of tradition and apartheid has driven to change the South African behaviour and system. Barnett (2011)

emphasizes the interpretation of the changes of the system as cultural fault-lines,

*“But because **culture is fractured** and because **society is comprised of different interpretations of what is meaningful** activity, scholars need to consider these **cultural fault – lines** and treat the fixing of meanings as an accomplishment that is at the essence of politics...”(Barnett, 2011)*

Barnett believes that culture is fractured, and as the society encompasses variant interpretations, it needs to consider that the cultural fault-line might be produced. In regards to the case, the practice of tradition and apartheid in South Africa has changed South African's interpretation of patriarchy. Hardened culture also produce cultural fault-lines as Barnett (2011) stated in his book,

*“Constructivists attempt to recover the meanings that **actors give to their practices and the objects that they construct**. These derive not from private beliefs but rather from culture. In contrast to the rationalist presumption that culture, at most, constrains action, Constructivists argue that **culture informs the meanings that people give to their action**. Sometimes Constructivists have presumed that **such meanings derive from hardened culture**.” (Barnett, 2011)*

As the making social construction's process is mutually constituted, means the social process can be affected by the practice of constructing and reconstructing themselves (Wendt, 1995). Thus, the practice of tradition and apartheid has become a hardened culture in South Africa.

The practice of tradition and apartheid in South Africa has given the norms and values of gender and sex inequality which constructed patriarchy in South Africa. Whilst, the practice of SOAC in South Africa is the result of the process of re-construction that derived from patriarchy in South Africa.

Stopping the practice of tradition and apartheid does not mean the practice of SOAC will be ended too. After South Africa becomes a republic within the presidency of Nelson Mandela, the apartheid was ended and some tradition has not been doing by modern society (Sahistory, n.d.). The number of sexual offences against children still exists in big number. In 2006, UN created “The UN Study on Violence against Children Questionnaire to Governments” which has been directly responded by the Presidency of the

Republic of South Africa (Republic of South Africa, 2006). The President aware that patriarchy becomes one of the root problems of SOAC which the government tries to solve it (Republic of South Africa). After 2006-2018, the number is still there as the average more than about 20.000 cases.

Sexual Offences against Children 2006/2007 -2010/2011 and 2017/2018 (Republic of South Africa)

Crime Category	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2017/2018	2017/2018
All Sexual Offences	25.428	22.124	20.141	27.417	28.128	29.409	23.488

Table IV.3.2.1 Sexual Offences against Children 2006/2007 -2010/2011 and 2017/2018

It has shown that the practice of tradition and apartheid has become a hardened culture since even if the apartheid has stopped since democratization, the SOAC keep doing by the South African.

IV.3.3 Human Rights as Relativism Concept in South Africa

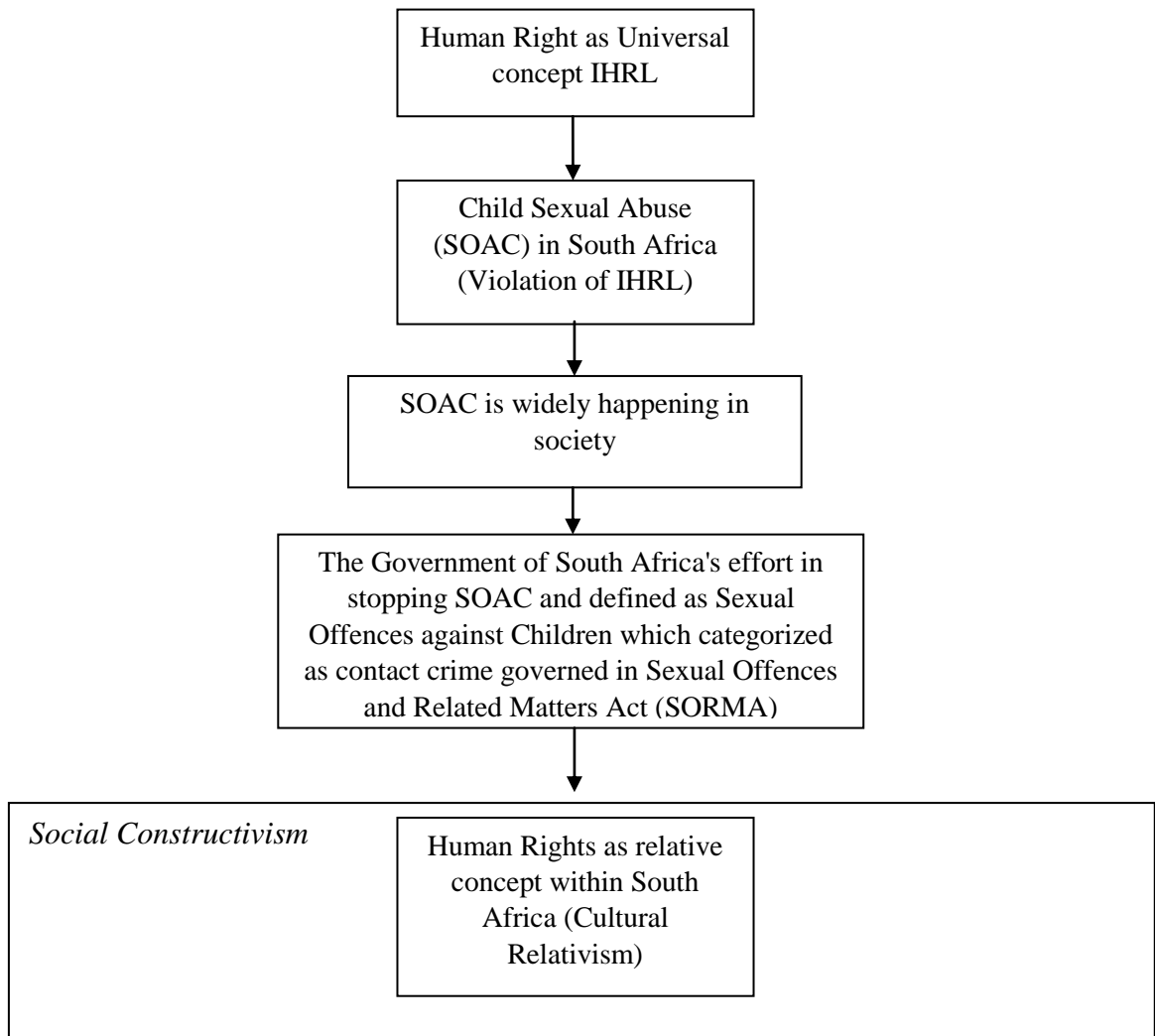


Figure IV.3.3

Research Framework made by Muhamad Rizki Nugraha Darma Nagara

The universal concept of human rights also has been emphasized within the Universal Declaration of Human Rights' statement.

“Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”(United Nations, n.d.).

Therefore, it is clear that the universal concept of human right has been and should be applied to all state parties legally. In the implementation of the universal concept in human rights, states might face some barriers, like what happened in South Africa, the society perceives human rights differently on how they treat the children. Children indeed must be protected under IHRL, specifically CRC, but what happened in South Africa, the society even violates the IHRL by keep doing SOAC. They see this phenomenon as common norms which have been normalized and accepted by society. In contradiction with the what the government of South Africa has done, the government has ratified numbers of human right treaties, it is an obligation of South Africa to protect their citizen under the obligation of international law (OHCHR, n.d.) cases are still happening as in 2017 and 2018, there were 48,165 cases in total (South Africa Police Service, 2018). They have legislated the IHRL into their national law which has been governed in Criminal Law and Child Act making this case a crime.

As Donnelly has stated that one of the factors that makes the concept of human rights become relative is a culture. Somehow, a culture can create another interpretation of South African to see that the SOAC as a not a crime or violation of human rights, instead of as a normal phenomenon. This show that human rights concept perceived as a relative concept by South African.

The practice of tradition and apartheid has constructed patriarchy in South Africa which has supported the cultural relativism of human rights. Since then, the practice of SOAC has been normalized by society. The reason why, it is because perception of SOAC is not considered a crime or violation of human rights instead of the male entitlements (Gender Links, 2008; Sigsworth 2009).

“The impact of culture on the shaping of individuals is systematic and may lead to the predominance of distinctive social types in different cultures. There can be little doubt that there are important, structurally determined differences, for example, between the modal “natures” of men and especially women in modern western and traditional Islamic societies. In any particular case, “human nature,” the realized nature of real human beings, is a social as well as a “natural” product.” (Donnelly, Cultural Relativism and Universal Human Rights, 1984)

As Jack Donnelly emphasize that every individual’s behaviour and perception towards something are shaped by social nature, therefore, in this circumstance where the society perceived SOAC as a common thing to do by South African, it will lead to a different understanding on how other communities perceives something.

Since South African has normalized the practice of SOAC which it is considered a a violation of human rights under the international law, yet, South African perceived that as not a crime, so it can be concluded that South African's perception towards human rights is using relativism concept of human rights.

IV.4 Chapter Summary

In this chapter, there are strong relations between patriarchy and SOAC. The male entitlements and men domination is contributing to the existence of SOAC. In addition, the status of child which considered as object makes easy condition for the perpetrator to do SOAC due to the culture of patriarchy which is entrenched in society. Furthermore, the patriarchy connected to the domination, discrimination, inequity, and underdevelopment of society in South Africa.

The culture of patriarchy was constructed a long time ago due to the creation of norms and values of tradition and apartheid practice. The tradition and myth within South Africa which see girl or children as an object has created the perspective of men is more controlling than women. Men can control everything that they wanted to girl or women in which it is allowed in the tradition. The feeling of masculinity and superior make men more dominating to girl or women. By seeing from the existing myth, in order to have luck and free from severe disease, it is required to have sex with virgin women or girls. Thus, it shows that men have more authority, domination, or power than women.

The apartheid practice during the colonization has given significant impact to the South African men. The brutality as macho culture and feeling of masculinity made them have more position in a family. If for example, they got angry when they go back home or given the poor situation in a family, they need to reassure their masculinity by abusing their member of family sexually. In addition, the segregation of gender roles and sex has to lead the disparity power of men and women. This can be one of the proofs on how patriarchy has been constructed traditionally long time ago.

In this chapter, it is proved that the patriarchy was constructed by the values and norms from the practices of tradition and apartheid. In this case, cultures become leading factors on how the society interprets something. Thus, the human rights concept was seen relative by South African due to the culture.

CHAPTER V

CONCLUSION

Human rights as the universal concept are not only justified because of we are human and based on the sense of humanity, but also the United Nations has declared the universality of the human rights itself by making the Universal Declaration of Human Rights (UDHR). The ratification of the UN Human Rights documents shown that all state parties have the willingness to promote and protect the fundamental of human rights. In addition, the most important thing is that those parties would like to commit in the matter of human rights.

On the other hands, relativism also can be the concept for human rights. This concept exists due to the values endorsed by the culture within the society. Therefore, something may be regarded as the violation of human rights by seeing from the universal concept and it might be seeing different by the relative concept in which they will consider this as the lawful action in their society.

SOAC in South Africa is a big issue that the government of South Africa and the UN have tried to solve. Seeing from the universal concept of human rights, SOAC indeed is violating human rights documents which are universally applied by all member states that ratify the documents related. Meanwhile, for South African, as a relative concept, SOAC is one of lawful action that is not violating any international human rights documents. They considered the SOAC is lawful under their culture since it has been constructed historically and culturally within their society which derived from their tradition, and apartheid.

The number of SOAC in South Africa is very high which many other parties include the UN tried to stop it. In addition, the government of South Africa has so many efforts in an attempt to stop SOAC. Starting from ratifying the international human rights law, reform and amend their national act, and create specialized service unit.

The cases are keep doing by South African. This action occurs due to the cultural relativism and human rights perception of South African that regard SOAC as lawful under their culture to treat child as sexual object.

The practice of tradition and apartheid has created the patriarchy as the cultural fault lines in this matter. The cultural fault lines could exist because of the norms and values which created by practices. The tradition in South Africa believes that everyone has been assigned by the gender roles within society. In addition, due to the apartheid, it produced gender, sex, and racial segregation. The gender roles have created the disparity of power between men and women. Men tend to have more power compared to women. Simply saying that men are the superior and dominant while women are inferior and submissive. In some traditions, men allow controlling everything towards women which they considered women as an object or property in their society. In addition, the myth has passed from one generation to generation and it still exists within the society. One of the most popular myth is the virgin cleansing myth which enables people to cure their disease specifically AIDS by having sex with a virgin girl. At the same time, a girl is only an object for a family, so men can do whatever they wanted to.

Those norms and values have created patriarchy which has grown in South Africa's society. This culture also restricts women's mobility and freedom to do something. This situation makes women are not only treated as subordinate to men but are also subject to discriminations, humiliations, exploitations, oppression, control, and violence. The dominant position of men within a family provides the perfect conditions for SOAC.

The notion that men have their strong domination over women and children described that the gender-based violence occur and mostly this case has always been under-reporting to the police due to several reasons. This also supports the perfect conditions for the increase of child sexual abuse.

The practice of tradition and apartheid also plays a significant role in constructing South African's behaviour. Furthermore, those had become a hardened culture which becomes the cultural fault lines in South Africa. Those practice has been reduced by the government after becoming a democratic country, but the case of SOAC are still in big number.

Due to the different perception on seeing this case as no violation of human rights by South African, means that the concept of relativism in human rights was

entrenched on South African which they accepted the violation of human rights in the case of SOAC.

Bibliography

Report

Sigsworth, R. (2009). *AN OVERVIEW OF SEXUAL VIOLENCE IN SOUTH AFRICA*. Johannesburg: Centre for the Study of Violence and Reconciliation.

World Health Organization. (n.d.). *Child Sexual Abuse*. Retrieved January 16, 2019, from WHO:
http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf

World Health Organization. (1999). *Report of the Consultation on Child Abuse Prevention*. Geneva: WHO.

World Health Organization. (2002). *World Report on Violence and Health| Summary*. Geneva: WHO.

Official Government Sources

DEPARTMENT OF PLANNING, MONITORING AND EVALUATION. (2016). *Report on Diagnostic Review of the State Response to Violence against Women and Children*. Parktown: KPMG.

Department: Justice and Constitutional Development of the Republic of South Africa. (2012, June). *FINAL DRAFT: NATIONAL POLICY FRAMEWORK - MANAGEMENT OF SEXUAL OFFENCE MATTERS*. Retrieved January 16, 2019, from Department: Justice and Constitutional Development of Republic of South Africa:
<http://www.justice.gov.za/vg/sxo/2012-draftNPF.pdf>

Republic of South Africa. (1957, April 12). *Sexual Offences Act*. Retrieved January 16, 2019, from Republic of South Africa:
https://www.gov.za/sites/default/files/gcis_document/201505/act-23-1957.pdf

Republic of South Africa. (1957, April 3). *SEXUAL OFFENCES ACT 23 OF 1957*. Retrieved January 16, 2019, from Department: Justice and Constitutional Development of Republic of South Africa:
<http://www.justice.gov.za/legislation/acts/1957-023.pdf>

Republic of South Africa. (1998, November 20). *Domestic Violence Act 116 of 1998*. Retrieved January 16, 2019, from Department: Justice and Constitutional Development of Republic of South Africa:
<http://www.justice.gov.za/legislation/acts/1998-116.pdf>

Republic of South Africa. (2006, June). *The Presidency: Republic of South Africa, "The UN Study on Violence against Children Questionnaire to Governments: Response from the Government of South Africa June 2006"*. Retrieved January 19, 2019, from OHCHR:

<https://www.ohchr.org/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/South%20Africa.pdf>

Republic of South Africa. (n.d.). *Constitution*. Retrieved January 20, 2019, from Department of Justice:
<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

South Africa Human Rights Commission. (n.d.). *Focus Areas*. Retrieved January 16, 2019, from The South African Human Rights Commission: <https://www.sahrc.org.za/>

South African Human Rights Commission. (2002). *Report on Sexual Offences against Children*. Retrieved January 16, 2019, from SAHRC:
https://www.sahrc.org.za/home/21/files/Reports/child_sexual_offences_report_april_2002.pdf

South African Police Service. (2007). *Criminal Law*. Retrieved January 20, 2019, from South African Police Service:
https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/sexual_offences_act32_2007_eng.pdf

South African Police Service. (2011). *South African Police Service Crime Report 2010/2011*. South Africa: South African Police Service.

South African Police Service. (2017). *South African Police Service Annual Crime Report 2016/2017*. South Africa: South African Police Service.

South African Police Service. (2018). *Crime Situation in RSA Twelve Months 01 April 2017 - 31 March 2018*. South Africa: South African Police Service.

The Republic of South Africa. (1977, April 21). *CRIMINAL PROCEDURE ACT 51 OF 1977*. Retrieved January 16, 2019, from Department: Justice and Constitutional Development of Republic of South Africa:
<http://www.justice.gov.za/legislation/acts/1977-051.pdf>

The Republic of South Africa. (1983, June 15). *Child Care Act 74 of 1983*. Retrieved January 16, 2019, from Western Cape Government:
https://www.westerncape.gov.za/assets/departments/social-development/child_care_act_74_of_1983.pdf

Books

Artz, C. L., Leoschut, L., Burton, P., & Lloyd, S. (2016). *Sexual Abuse of Children and Adolescents in South Africa: Forms, Extent, and Circumstances*. Augustinerhof: UBS Optimus Foundation.

Barnett, M. (2011). Social Constructivism. In J. Baylis, S. Smith, & P. Owens, *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press.

- Baylis, J., Smith, S., & Owens, P. (2011). *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press.
- Corradetti, C. (2009). *Relativism and Human Rights a Theory of Pluralistic Universalism*. Springer.
- Donnelly, J. (2013). *Universal Human Rights in Theory and Practice*. London: Cornell University Press.
- Fox, S., & Nkosi, Z. (2003). *Child Sexual Abuse - A handbook for parents and caregivers*. Gauteng: The Teddy Bear Clinic and the Centre for AIDS Development, Research and Evaluation (CADRE).
- Gender Links. (2008). *South Africa violence prevention model and action plan*. The National Prosecution Authority; UNICEF.
- Hurd, I. (2008). Constructivism. In C. Reus-Smit, & D. Snida, *the Oxford Handbook of International Relations* (pp. 298-316). Oxford: Oxford University Press.
- Jackson, R. H., & Sørensen, G. (2006). Social Constructivism. In R. H. Jackson, & G. Sørensen, *Introduction to International Relations: Theories and Approaches*. Oxford: Oxford University Press.
- Jamieson, L., Berry, L., & Lake, L. (2017). *South African Child Gauge 2017*. Cape Town: Children's Institute, University of Cape Town.
- Klotz, A., & Prakash, D. (2011). *Qualitative Methods in International Relations: A Pluralist Guide*. Basingstoke: Palgrave Macmillan.
- New Zealand Ministry of Foreign Affairs and Trade. (2008). *The New Zealand Handbook on International Human Rights*. Wellington: New Zealand Ministry of Foreign Affairs and Trade.
- S, M., L, J., L, L., & C, S. (2014). *South African Child Gauge 2014*. Cape Town: Children's Institute, University of Cape Town.
- UNICEF. (2017). *Preventing and Responding to Violence Against Children and Adolescents: Theory of Change*. New York: UNICEF.
- Viviers, A. (2013). *The Study on Violence against Children in South Africa*. The Department of Social Development; The Department Women, Children and People with Disabilities".
- Walby, S. (1991). *Theorizing Patriarchy*. Oxford: Basil Blackwell.

Journals

- Abbasi, M. A., Saeidi, M., Khademi, G., Hoseini, B. L., & Moghadam, Z. E. (2015). Child Maltreatment in the Worldwide: A Review Article. *Int J Pediatr, Vol.3*, 353-365.

- Abeda Sultana, P. (2011). Patriarchy and Women's Subordination: A Theoretical Analysis. *The Arts Faculty Journal*.
- Briere, J., & Elliott, D. M. (1993). Sexual Abuse, Family, Environment, and Psychological Symptoms: On the Validity of Statistical Control. *Journal of Consulting and Clinical Psychology* 61, 284-289.
- Brundige, E., & Bowman, C. G. (2014). Child Sex Abuse Within the Family in Sub-Saharan Africa: Challenges and Change in Current Legal and Mental Health Responses. *Cornell International Law Journal*.
- Capri, C. (2008). On observing work with sexually abused children in the Western Cape: Witnessing, participating, defending. *Psycho-analytic Psychotherapy in South Africa*.
- Deborah, A. C., & Read, J. (2003). Remembering Historical Child Sexual Abuse. *Criminal Law Quarterly* 47.
- Donnelly, J. (1984). Cultural Relativism and Universal Human Rights. *Human Rights Quarterly* 6 no.4.
- Donnelly, J. (2007). The Relative Universality of Human Rights. *Human Rights Quarterly*.
- Finkelhor, D., Turner, H., Ormrod, R., Hamby, S., & Kracke, K. (2009, October). *Children's Exposure to Violence: A Comprehensive National Survey*. Retrieved January 16, 2019, from National Criminal Justice Reference Service: <https://www.ncjrs.gov/pdffiles1/ojdp/227744.pdf>
- Hershkowitz, I., Lanes, O., & Lamb, M. E. (2007). Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents. *Child Abuse and Neglect* 31, 111-123.
- Huffel, M.-A. P. (2011, December). *Patriarchy as empire: a theological reflection*. Retrieved January 29, 2019, from The Scientific Electronic Library Online (SciELO) SA : <http://www.scielo.org.za/pdf/she/v37n3/03.pdf>
- Maniglio, R. (2009). Severe mental illness and criminal victimization: a systematic review. *Acta Psychiatrica Scandinavica*, 180-191.
- Myers, J. E. (2008). A Short History of Child Protection in America. *Family Law Quarterly*, Volume 42, Number 3.
- Osadan, R., & Reid, E. (2015). Child Sexual Abuse and Sexual Aggression in Children. *International Journal of Humanities and Social Science* 5, no. 6, 31-42.
- Ray, S. (2014). Understanding Patriarchy. *Gender Studies and Research Space*.
- United Nations Division for the Advancement of Women (DAW); UNICEF. (2006, September). *The elimination of all forms of discrimination and violence against the girl child*. Retrieved January 16, 2019, from UN: <http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ExpertPapers/EP.15%20Khattab.pdf>

Websites

Claiming Human Rights. (2010, January 28). *Claiming Human Rights - in South Africa*. Retrieved January 16, 2019, from Claiming Human Rights- Guide to International Procedures Available in Cases of Human Rights Violations in Africa: <http://www.claiminghumanrights.org/southafrica.html>

Human Rights. (2018). *WHAT ARE HUMAN RIGHTS?* Retrieved January 16, 2019, from United for Human Rights: <http://www.humanrights.com/what-are-human-rights/international-human-rights-law/international-human-rights-law-continued.html>

Hunter, C. (2011, September). *Responding to Children and Young People's Disclosure of Abuse*. Retrieved January 16, 2019, from Australian Child and Adolescent Trauma, Loss, & Grief Network: <http://earlytraumagrieff.anu.edu.au/files/pb2.pdf>

Iaccino, L. (2014, February 12). *Child Sexual Abuse: Top 5 Countries With the Highest Rates*. Retrieved January 16, 2019, from International Business Times UK: <http://www.ibtimes.co.uk/child-sexual-abuse-top-5-countries-highest-rates-1436162>

Krever, M. (2014, February 26). *The End of Innocence: Photojournalist Documents Child Sexual Abuse*. Retrieved January 16, 2019, from Amanpour-CNN.com Blogs: <http://amanpour.blogs.cnn.com/2014/02/26/the-end-of-innocence-in-south-africa-children-raping-children>.

Lobaido, A. C. (2001, December 12). *Child-rape Epidemic in South Africa*. Retrieved January 16, 2019, from WND: <http://www.wnd.com/2001/12/12139>.

South African History Online. (2019, January 17). *A history of Apartheid in South Africa*. Retrieved January 29, 2019, from South African History Online: <https://www.sahistory.org.za/article/history-apartheid-south-africa>

Picture Tree. (2018, May 21). *South African children join the #MeToo movement*. Retrieved January 28, 2019, from Screen Africa: <https://www.screenafrica.com/2018/05/21/marketing/marketing-content/south-african-children-join-the-metoo-movement/>

Sonke . (n.d.). *About Us*. Retrieved January 28, 2019, from Sonke Gender Justice: <https://genderjustice.org.za/about-us/about-sonke/>

TEARS Foundation. (n.d.). *TEARS Foundation*. Retrieved January 29, 2019, from TEARS Foundation: <https://www.tears.co.za/about-us/>

UN News. (2017, September 18). *World leaders pledge to eliminate sexual exploitation and abuse; UN chief outlines course of action*. Retrieved January 19, 2019, from UN News: <https://news.un.org/en/story/2017/09/565172-world-leaders-pledge-eliminate-sexual-exploitation-and-abuse-un-chief-outlines>

United Nations. (n.d.). *Human Rights*. Retrieved January 16, 2019, from United Nations: <http://www.un.org/en/sections/issues-depth/human-rights>

United Nations Human Rights Office of the High Commissioner. (n.d.). *International Covenant on Civil and Political Rights*. Retrieved January 16, 2019, from united Nations Human Rights Office of the High Commissioner:
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

United Nations Human Rights Office of the High Commissioner. (n.d.). *International Covenant on Economic, Social and Cultural Rights*. Retrieved January 16, 2019, from United Nations Human Rights Office of the High Commissioner:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

United Nations Human Rights Office of the High Commissioner. (n.d.). *Who We Are*. Retrieved January 16, 2019, from OHCHR:
<https://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>

United Nations Human Rights Office of the High Commissioner. (n.d.). *Who We Are/ Brief History*. Retrieved January 16, 2019, from OHCHR:
<http://www.ohchr.org/EN/AboutUs/Pages/BriefHistory.aspx>

UNICEF. (n.d.). *Violence against Children*. Retrieved January 16, 2019, from UNICEF: https://www.unicef.org/southafrica/SAF_resources_violenceleaflet.pdf

United Nations. (n.d.). *Convention on the Rights of the Child*. Retrieved January 16, 2019, from OHCHR: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

United Nations. (n.d.). *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*. Retrieved January 16, 2019, from OHCHR:
<https://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

United Nations General Assembly. (2006, August 29). *United Nations Secretary-General's Study on Violence against Children*. Retrieved January 16, 2019, from UNICEF: https://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf

United Nations. (n.d.). *Universal Declaration of Human Rights*. Retrieved January 16, 2019, from United Nations:
https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

UN SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN. (n.d.). *Legal ban on violence against children*. Retrieved January 29, 2019, from UN SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN:
<https://violenceagainstchildren.un.org/content/legal-ban-violence-against-children>

APPENDICES

South African Police Report 2017/2018

ON A JOURNEY TO A SAFER SOUTH AFRICA
Creating a safe and secure, crime free environment, that is conducive for social & economic stability, supporting a better life for all.



CRIME SITUATION IN RSA TWELVE MONTHS 01 APRIL 2017 TO 31 MARCH 2018

#Patriotic & Selfless Service

CRIMES COMMITTED AGAINST WOMEN AND CHILDREN REPORTED CRIME AGAINST WOMEN AND CHILDREN





Crimes committed against women				
Crime Category	2017/2018	2017/2018	Count difference	% change
Murder	2 639	2 930	291	11,0%
Total sexual offences	37 392	36 731	-661	-1,7%
Attempted murder	3 328	3 554	226	6,7%
Assault with the intent to inflict grievous bodily harm	51 956	53 263	1 307	2,5%
Common assault	78 090	81 142	3 052	3,9%
Total	173 405	177 620	4 215	2,4%
Crimes committed against children				
Murder	839	985	146	17,4%
Sexual Offences	24 677	23 488	-1 189	-4,8%
Attempted murder	936	1 059	123	13,1%
Assault with the intent to inflict grievous bodily harm	7 589	7 562	-27	-0,3%
Common assault	10 211	10 446	235	2,3%
Total	44 252	43 540	-712	-1,6%

*Figures includes unfounded counts



CRIME CATEGORY	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Case Diff	% Change
Total Sexual Offences												
Rape	45 647	48 259	48 158	47 029	48 408	45 348	43 195	41 503	39 828	40 035	207	-1.5%
Sexual Assault	6 196	6 629	7 005	7 194	6 967	6 597	6 007	6 112	6 170	6 786	515	8.2%
Attempted Sexual Offences	3 808	3 811	3 599	3 535	3 259	2 913	2 941	2 579	2 079	2 066	-7	-4.3%
Contact Sexual Offences	11 346	8 259	6 158	2 741	1 220	1 821	1 694	1 607	1 488	1 121	-357	-17.3%
Total Sexual Offences	69 297	66 992	64 921	60 509	60 654	56 668	53 817	51 801	49 665	50 106	440	1.3%
RATIO: Total Sexual Offences												
Rape	94.0	95.9	94.4	90.9	92.2	85.1	79.8	75.5	71.3	69.4	-2.0	
Sexual Assault	12.9	13.2	13.7	13.9	13.9	12.4	11.2	11.3	11.2	11.8	0.5	
Attempted Sexual Offences	7.7	7.6	7.1	6.8	6.9	5.5	4.9	4.7	3.7	3.6	-0.1	
Contact Sexual Offences	24.9	16.5	12.1	5.3	4.2	3.4	3.1	2.9	2.7	2.1	-0.5	
SOME SUBCATEGORIES OF AGGRAVATED ROBBERY												

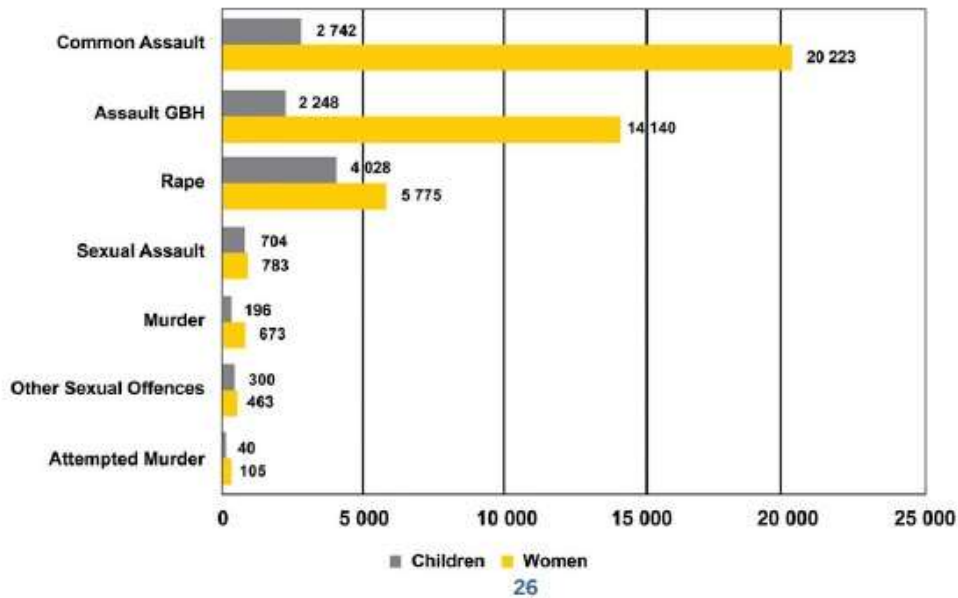
South African Police Service Crime Report 2016/2017

ADDENDUM TO THE SAPS ANNUAL REPORT
ANNUAL CRIME REPORT
2016/2017

A statistical desktop analysis of data on the CAS of the SAPS revealed that a total of 42 162 social contact crimes were committed against women and 10 258 against children during the period from 1 January to 31 March 2017. A breakdown of the proportional contribution of individual crime categories to the total number of social contact crimes committed against women and children during the period under discussion is found in graph 19 below.

GRAPH 19: WOMEN AND CHILDREN AS VICTIMS OF CRIME: 1 JANUARY TO 31 MARCH 2017



South African Police Service Crime Report 2010/2011



Serious crime during the 2003/2004 to 2010/2011 financial years and the percentage increases/decreases in crime between 2009/2010 and 2010/2011

Crime category	Incidence of crime per 100 000 of the population										Raw figures/frequencies									
	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	% Increase/Decrease 10/11 vs 09/10	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	% Increase/Decrease 10/11 vs 09/10		
Contact Crime																				
Murder	41.7	40.3	39.6	40.5	38.6	37.3	34.1	31.9	-6,5%	19 624	18 793	18 528	19 282	18 407	18 148	16 834	15 940	-5,3%		
Total sexual offences	142.5	148.4	145.2	137.6	133.4	144.8	138.5	132.4	-4,4%	66 079	69 117	68 076	65 201	62 818	70 514	68 332	66 196	-3,1%		
Attempted murder	94.8	92.6	93.8	92.5	89.3	87.6	85.3	81.0	-12,3%	30 076	24 516	20 571	20 142	18 795	18 298	17 410	15 463	-11,8%		
Assault with the intent to inflict grievous bodily harm	598.7	535.3	484.0	460.1	439.1	418.5	416.2	397.3	-4,5%	260 082	249 358	226 942	218 030	210 104	203 777	205 200	196 402	-3,3%		
Common assault	605.7	575.0	465.3	440.2	413.9	396.1	400.0	371.8	-7,1%	280 942	267 857	227 553	216 057	199 949	192 838	197 384	185 891	-5,8%		
Robbery with aggravating circumstances	288.1	272.2	255.3	267.1	247.3	248.3	230.6	203.0	-12,0%	133 658	126 788	119 726	126 558	118 512	121 392	113 755	101 463	-10,8%		
Common robbery	206.0	195.8	159.4	150.1	125.8	121.7	116.7	106.0	-5,9%	95 551	90 625	74 723	71 156	64 965	58 232	57 537	54 985	-4,8%		
Contact-related Crime																				
Arson	15.0	17.6	16.3	16.8	25.5	14.3	13.6	13.1	-3,7%	8 896	8 394	7 422	7 858	7 396	6 846	6 701	6 533	-2,5%		
Malicious damage to property	341.2	323.7	307.7	302.5	286.2	275.8	267.9	258.7	-4,4%	158 247	150 785	144 265	143 336	136 968	134 261	132 134	125 327	-5,2%		
Property-related Crime																				
Burglary at residential premises	645.2	592.8	558.9	526.8	487.1	506.5	520.2	495.3	-4,8%	299 290	276 164	262 535	249 665	237 853	246 616	256 577	247 630	-3,5%		
Burglary at non-residential premises	139.3	120.2	116.0	123.3	121.7	143.8	145.5	138.2	-5,8%	64 628	56 048	54 367	58 438	62 995	70 008	71 713	68 082	-3,7%		
Theft of motor vehicle and motorcycle	198.0	180.0	183.3	182.1	167.7	156.0	145.5	129.6	-11,3%	88 144	83 857	85 964	86 298	80 226	75 968	71 776	64 504	-10,1%		
Theft out of or from motor vehicle	370.8	318.8	296.6	261.7	233.4	225.0	245.1	246.2	0,4%	171 982	148 512	139 080	124 029	111 641	109 548	120 862	123 091	1,8%		
Stock-theft	88.6	70.1	61.3	60.8	60.1	61.7	65.7	60.3	-6,2%	41 273	32 675	28 742	33 828	38 776	39 043	32 380	38 144	-6,8%		

Table 6: Crimes against children younger than 18 years: 2006/2007 – 2010/2011

Crime category	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	Difference 2010/2011 vs 2009/2010	% Increase/decrease
Murder	972	1 015	843	965	906	-59	-6,1%
Attempted murder	889	852	782	1 113	786	-327	-29,4%
All sexual offences	25 428	22 124	20 141	27 417	28 128	711	2,6%
Common assault	16 871	16 091	14 544	14 982	13 387	-1 595	-10,6%
Assault GBH	13 947	13 625	12 422	12 062	11 018	-1 044	-8,7%
Total	58 107	53 707	48 732	56 539	54 225	-2 314	-4,1%

Children's Act 38 of 2005

This work has been transmitted to you as a subscriber or by a Sabinet subscriber. All works and portions of works published on Sabinet are the copyright of Sabinet. No part of any work may be reproduced or used to create works by the recipient or user, in any form or by any means, for any commercial or non-commercial purpose whatsoever, without Sabinet's prior written permission. Any unauthorised reproduction of a work subject to copyright will constitute a copyright infringement and render the doer liable under both civil and criminal law

CHILDREN'S ACT 38 OF 2005

GENERAL EXPLANATORY NOTE:

***** Areas marked with five asterisks indicate omitted provisions which will be inserted by way of an Amendment Bill. That Bill will be dealt with in terms of the procedure prescribed by [section 76](#) of the Constitution - as explained in paragraph 1 of the Memorandum on the Objects of the Bill.

(English text signed by the President)

[Assented to: 8 June 2006]

[Commencement date: certain sections with effect from 1 July 2007]

[Proc. 13 / GG 30030 / 20070629]

[Commencement date: remaining sections with effect from 1 April 2010]

[Proc. R12 / GG 33076 / 20100401]

as amended by:

Children's Amendment Act 41 of 2007

[with effect from 1 April 2010]

Child Justice Act 75 of 2008

[with effect from 1 April 2010]

Judicial Matters Amendment Act 42 of 2013

Editor's note: On 11 January 2012 the Constitutional Court of the Republic of South Africa gave [judgment](#) in a case concerning the confirmation of a declaration of constitutional invalidity of [sections 151](#) and [152](#) of the Children's Act No. 38 of 2005. The North Gauteng High Court declared these sections unconstitutional to the extent that they provide for a child to be removed from family care by state officials and placed in temporary safe care, but do not provide for the child to be brought before the children's court for automatic review of that

“child” means a person under the age of 18 years;

“children’s court” means a children’s court referred to in [section 42](#);

“child and youth care centre” means a facility described in [section 191\(1\)](#);
[Definition of “child and youth care centre” inserted by s. 3 of Act 41/2007]

“Child Care Act” means the Child Care Act, 1983 (Act No. 74 of 1983);

“child-headed household” means a household recognised as such in terms of [section 137](#);
[Definition of “child-headed household” inserted by s. 3 of Act 41/2007]

“child labour” means work by a child which -

- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
- (b) places at risk the child’s well-being, education, physical or mental health, or spiritual, moral, emotional or social development;

“circumcision”, in relation to a female child, means the removal of the clitoris by any means;

“sexual abuse”, in relation to a child, means -

24

-
- (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;
 - (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
 - (c) using a child in or deliberately exposing a child to sexual activities or pornography; or
 - (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child;

Child Care Act 74 of 1983

CHILD CARE ACT 74 OF 1983

(English text signed by the State President)

[Assented To: 15 June 1983]

[Commencement Date: 1 February 1987]

as amended by:

Special Courts for Blacks Abolition Act 34 of 1986
Child Care Amendment Act 86 of 1991
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996
Child Care Amendment Act 96 of 1996
Welfare Laws Amendment Act 106 of 1997
Adoption Matters Amendment Act 56 of 1998
Child Care Amendment Act 13 of 1999
Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
[with effect from 16 December 2007]

ACT

To provide for the establishment of children's courts and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters.

[Long title substituted by s. 24 of Act 86/91]

ARRANGEMENT OF SECTIONS

1. Definitions

CHAPTER 1

Constitution of Republic of South Africa 1996

The Constitution

OF THE REPUBLIC OF SOUTH AFRICA, 1996

As adopted on 8 May 1996 and amended
on 11 October 1996 by the Constitutional Assembly

CHAPTER 2

BILL OF RIGHTS

Rights

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Application

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court—
 - (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed

5

Chapter 2: Bill of Rights

to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Freedom and security of the person

12. (1) Everyone has the right to freedom and security of the person, which includes the right—
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right—
 - (a) to make decisions concerning reproduction;
 - (b) to security in and control over their body; and
 - (c) not to be subjected to medical or scientific experiments without their informed consent.

6

Criminal Law (Sexual Offences and Related Matters Act)

**CRIMINAL LAW (SEXUAL
OFFENCES AND RELATED
MATTERS) AMENDMENT ACT**

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWET OP DIE
STRAFREG (SEKSUELE
MISDRYWE EN VERWANTE
AANGELEENTHEDE)**

No 32, 2007

ACT

To comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences, and to deal with all legal aspects of or relating to sexual offences in a single statute, by—

- * repealing the common law offence of rape and replacing it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender;
- * repealing the common law offence of indecent assault and replacing it with a new statutory offence of sexual assault, applicable to all forms of sexual violation without consent;
- * creating new statutory offences relating to certain compelled acts of penetration or violation;
- * creating new statutory offences, for adults, by criminalising the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult;
- * repealing the common law offences of incest, bestiality and violation of a corpse, as far as such violation is of a sexual nature, and enacting corresponding new statutory offences;
- * enacting comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation;
- * eliminating the differentiation drawn between the age of consent for different consensual sexual acts and providing for special provisions relating to the prosecution and adjudication of consensual sexual acts between children older than 12 years but younger than 16 years;
- * criminalising any attempt, conspiracy or incitement to commit a sexual offence;
- * creating a duty to report sexual offences committed with or against children or persons who are mentally disabled;

DEFINITIONS AND OBJECTS

Definitions and interpretation of Act

1. (1) In this Act, unless the context indicates otherwise—
- “**care giver**” means any person who, in relation to a person who is mentally disabled, takes responsibility for meeting the daily needs of or is in substantial contact with such person; 30
- “**child**” means—
- (a) a person under the age of 18 years; or
- (b) with reference to sections 15 and 16, a person 12 years or older but under the age of 16 years; 35
- and “**children**” has a corresponding meaning;
- “**child pornography**” means any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person— 40
- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation; 45
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs or anus of such person;
- (g) displaying any form of stimulation of a sexual nature of such person's breasts;

- (h) engaged in sexually suggestive or lewd acts;
 - (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
 - (j) engaged in any conduct or activity characteristically associated with sexual intercourse;
 - (k) showing or describing such person— 5
 - (i) participating in, or assisting or facilitating another person to participate in; or
 - (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or 10
 - (l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons; 15
- “complainant”** means the alleged victim of a sexual offence;
- “Director of Public Prosecutions”** means a Director of Public Prosecutions contemplated in section 179(1)(b) of the Constitution of the Republic of South Africa, 1996, and appointed in terms of section 13 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), acting in accordance with any directives issued under this Act by the National Director of Public Prosecutions, where applicable, or in accordance with any other prosecution policy or policy directives contemplated in section 21 of the National Prosecuting Authority Act, 1998; 20
- “genital organs”** includes the whole or part of the male and female genital organs, and further includes surgically constructed or reconstructed genital organs; 25
- “Minister”** means the cabinet member responsible for the administration of justice;
- “National Director of Public Prosecutions”** means the person contemplated in section 179(1)(a) of the Constitution of the Republic of South Africa, 1996, and appointed in terms of section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998); 30
- “person who is mentally disabled”** means a person affected by any mental disability, including any disorder or disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was— 35
- (a) unable to appreciate the nature and reasonably foreseeable consequences of a sexual act;
 - (b) able to appreciate the nature and reasonably foreseeable consequences of such an act, but unable to act in accordance with that appreciation;
 - (c) unable to resist the commission of any such act; or 40
 - (d) unable to communicate his or her unwillingness to participate in any such act;
- “pornography”** means any image, however created, or any description of a person, real or simulated, who is 18 years or older, of an explicit or sexual nature that is intended to stimulate erotic feelings, including any such image or description of such person— 45
- (a) engaged in an act that constitutes a sexual offence;
 - (b) engaged in an act of sexual penetration;
 - (c) engaged in an act of sexual violation;
 - (d) engaged in an act of self-masturbation;
 - (e) displaying the genital organs of such person in a state of arousal or stimulation; 50
 - (f) unduly displaying the genital organs or anus of such person;
 - (g) displaying any form of stimulation of a sexual nature of the female breasts;
 - (h) engaged in sexually suggestive or lewd acts;

CHAPTER 3

SEXUAL OFFENCES AGAINST CHILDREN

Part 1: Consensual sexual acts with certain children 35

Acts of consensual sexual penetration with certain children (statutory rape)

15. (1) A person ("A") who commits an act of sexual penetration with a child ("B") is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1). 40

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not. 45

Acts of consensual sexual violation with certain children (statutory sexual assault)

16. (1) A person ("A") who commits an act of sexual violation with a child ("B") is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual violation with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the relevant Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the Director of Public Prosecutions concerned authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).

(b) The Director of Public Prosecutions concerned may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

Part 2: Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child pornography or pornography to children and using children for pornographic purposes or benefiting from child pornography

Sexual exploitation of children

17. (1) A person ("A") who unlawfully and intentionally engages the services of a child complainant ("B"), with or without the consent of B, for financial or other reward, favour or compensation to B or to a third person ("C")—

(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or

(b) by committing a sexual act with B,

is, in addition to any other offence which he or she may be convicted of, guilty of the sexual exploitation of a child.

(2) A person ("A") who unlawfully and intentionally offers the services of a child complainant ("B") to a third person ("C"), with or without the consent of B, for financial or other reward, favour or compensation to A, B or to another person ("D")—

(a) for purposes of the commission of a sexual act with B by C;

(b) by inviting, persuading or inducing B to allow C to commit a sexual act with B;

(c) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C;

(d) by making available, offering or engaging B for purposes of the commission of a sexual act with B by C; or

(e) by detaining B, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the commission of a sexual act with B by C,

is guilty of an offence of being involved in the sexual exploitation of a child.

(3) A person ("A") who—

(a) intentionally allows or knowingly permits the commission of a sexual act by a third person ("C") with a child complainant ("B"), with or without the consent of B, while being a primary care-giver defined in section 1 of the Social Assistance Act, 2004 (Act No. 13 of 2004), parent or guardian of B; or

(b) owns, leases, rents, manages, occupies or has control of any movable or immovable property and intentionally allows or knowingly permits such movable or immovable property to be used for purposes of the commission of a sexual act with B by C, with or without the consent of B,

is guilty of the offence of furthering the sexual exploitation of a child.

Presidency of Republic of South Africa Response to Violence against Children



THE PRESIDENCY:
REPUBLIC OF SOUTH AFRICA

THE UN STUDY ON VIOLENCE AGAINST CHILDREN
QUESTIONNAIRE TO GOVERNMENTS

RESPONSE FROM THE GOVERNMENT OF SOUTH AFRICA
JUNE 2006

INTRODUCTION

The response of the South African Government to violence against children must be understood within the context of South Africa's transition from a past

characterised by state-enforced discrimination, exclusion and inequity. This divisive, state-driven social engineering (apartheid) relegated the majority of the country's people to the fringes of the body politic and the economy and it distanced them – almost entirely – from access to developmental resources. The systematic marginalisation of the black people of South Africa resulted in unprecedented levels of social, economic and cultural deprivation that fractured family and social structures with long-term repercussions that continue to reverberate through communities to this day.

Child protection legislation in a free and democratic SA is aimed at ameliorating and addressing the negative impact of decades of discrimination, domination, inequity, patriarchy and underdevelopment. The new approach to legislative reform is perfectly consistent with a human rights approach to the progressive realisation of children's rights. It is also consistent with the rights of children embedded in the Constitution of the Republic of South Africa

The relationship between poverty and vulnerability to violence, abuse and exploitation has been well documented globally. The compounded impact of generations of race and class discrimination has left especially black South African children in a severe state of deprivation and underdevelopment.

The eradication of poverty, inequality and underdevelopment is therefore fundamental to the achievement of the national vision of a caring- and people-centred society in which the rights and dignity of all are respected and protected. Children's rights to survival, growth, protection, development and participation are entrenched in South Africa's Constitution and these rights have been further reinforced in subsequent legislation, policy development and government programmes.

Lending further credence to government's commitment to the rights of the child, an Office on the Rights of the Child (ORC) has been established in the Presidency, the highest executive office in the land. The ORC, in collaboration with Government Departments, Offices on the Rights of the Child in the Premiers' and Mayors' Offices, and the National Children's Rights Advisory Council comprising of Government officials and members of Civil Society, coordinates and monitors delivery on children's rights. Child rights protection and the development of the human potential of children are explicit goals of the National Children's Rights Programme.

Internationally, South Africa has since the advent of democracy in 1994, systematically expanded its participation in the global agenda for the protection and promotion of the rights of children. The country has also acceded to the major international standard-setting instruments for the protection of children against violence. The South African government therefore remains committed to implementing the provisions contained in these instruments. During the past ten years of democracy government has overhauled its domestic legislation to align it with international standards and the South African Constitution.

The following is South Africa's response to questions posed by the UN General Secretary.