Global Report

INTERNATIONAL TRIBUNAL FOR CHILDREN'S RIGHTS

International Dimensions of the Sexual Exploitation of Children

BUREAU INTERNATIONAL DES DROITS DES ENFANTS
INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS
OFICINA INTERNACIONAL DE LOS DERECHOS DEL NIÑO

International Dimensions of the Sexual Exploitation of Children:

Global Report

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Preface

Over the past three years, the International Tribunal for Children's Rights has been working on a topic which has captured the attention of the international community, governments, NGOs and media alike: the international dimensions of sexual exploitation of children. In an effort to carry on the discussions which dominated the Stockholm World Congress of 1996, the International Tribunal set to work on putting together a series of Hearings to shed light on questions left unanswered.

This report directly fulfils a major activity of the Action Plan adopted by experts at the UNESCO meeting on Sexual abuse of children, child pornography and paedophilia on the Internet.

It also provides a firm juridical witness to the need of supporting and reinforcing through action the United Nations Convention on the Rights of the Child.

The sexual abuse and exploitation committed on children by adults surpass all national boundaries. These abuses thus become the responsibility of more than one state, they become, in effect, an international problem. Some of the most common examples of these international dimensions of sexual exploitation of children include child sex tourism, cross-border trafficking of children for sexual purposes, child pornography and most recently the use of the Internet as a new channel for the proliferation of these forms of abuse and exploitation, including live transmissions of sado-masochistic acts on children.

The Global Report is the result of an analysis and compilation of the recommendations produced by the first cycle of interventions of the International Tribunal for Children's Rights in France, Brazil and Sri Lanka. The Recommendations cover a wide array of measures aimed at better protecting children from sexual exploitation and ensuring that their abusers are properly prosecuted and convicted, all over the world.

UNESCO is proud to be associated with the publication of this report. It is our hope that this document can be used not only as a reference but also as a launching pad for further discussions, and that it will encourage actors and agents to seek appropriate policies to bring about some much needed change. It is our firm belief that this Report will also contribute to the greater body of knowledge needed to combat the sexual abuse of children. As data will change rapidly, and as laws are not static, some of the information contained in this report will need to be updated regularly, but the recommendations here remain a starting point and foundation for the work of experts and concerned individuals committed to children's rights. As the anthropologist Margaret Mead writes, "never doubt that a small group of concerned people can change the world, in fact it is the only thing that ever has".

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General Introduction

On November 20, 1989, the United Nations General Assembly celebrated the 30th anniversary of the *Declaration of the Rights of the Child*. That same day, the international community extended the protection afforded under human rights to one of society's most vulnerable groups, namely children, by adopting the *Convention on the Rights of the Child*. It is the first international legal instrument to spell out guarantees applicable to the entire field of children's rights.

Ten years later, despite the near universal ratification of the *Convention on the Rights of the Child* — 191 States parties — one cannot overlook the fact that violence against children is on the rise. According to UNICEF data, over eleven million children under the age of five die each year from hunger, disease, war or inhumane treatment suffered at the hands of adults. This number does not include children who are the victims of abuse, negligence or exploitation. The International Bureau for Children's Rights was created to address this situation, to initiate and sustain concrete action, to stimulate the process of recognising the rights of children, and to provide them with a future. The founding of the International Bureau for Children's Rights in 1994 constitutes a catalyst for mobilising society to move resolutely towards achieving results that will guarantee the welfare of all the world's children. It serves as a reminder to governments that by ratifying the *Convention on the Rights of the Child*, they have committed themselves to respect the rights set out in the Convention and to guarantee them to any child within their jurisdiction, without distinction of any kind.

Apart from its involvement in areas such as education and research, the uniqueness of the Bureau is felt through its main intervention mechanism, the International Tribunal for Children's Rights, which co-ordinates an efficient international intervention by judges, lawyers, criminologists, investigators and human rights' experts. The *modus operandi* of the International Tribunal for Children's Rights has evolved considerably, from the time it was first conceptualized in 1994, when the Bureau was founded, until the First Hearings were held in 1997. No longer solely focusing on individual children's rights violations and the identification of those responsible, the International Tribunal for Children's Rights also assumes a larger role, providing an unprecedented forum where governments, NGOs and other representatives of civil society, including children, can express their concerns and ideas for a more effective implementation of children's rights. This evolution is a testimony to the change in emphasis that has taken place in recent years in the field of international human rights, most notably children's rights. As noted in section two of the present report, the initial focus was on the setting of standards and the identification/denunciation of human rights violations. While this is an important objective to which we remain committed, it has now been joined by an increasing interest in ensuring the effective implementation of the *Convention on the Rights of the Child* with the progressive achievement of the provisions it contains. It is our belief that upon reading this Global Report you will concur, that the International Tribunal for Children's Rights is in a position to achieve results on all fronts.

As far as the topic of this Global Report is concerned, it is no secret that in recent years the plight of children facing sexual exploitation has become a concern of international proportions, and one for which intervention and support is badly needed. For the Bureau, this was expressed as early as 1995, when an international survey of more than 240 NGOs — part of our ongoing process of consultation with NGOs and other partners — clearly identified that the first intervention of the Bureau should address the issue of sexual exploitation of children, principally in its international dimensions. This became the focus of the Bureau's interventions for the 1996-1999 period.

What followed were extensive research, networking and field missions by representatives of the Bureau in collaboration with our partners around the globe, in order to establish the extent of the work already being done in this field and, moreover, to identify the issues which had yet to be addressed and which could benefit from our intervention. As is evident by the work of ECPAT and a number of other NGOs, awareness-raising campaigns have shown results in this area. A good example and a crucial catalyst in the world-wide mobilisation against this particular form of child exploitation has been the World Congress Against the Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in August 1996, which resulted in a number of significant advances. Nevertheless, the challenge no longer consists simply in promoting a campaign of awareness-raising, but rather in implementation, not only of the *Convention on the Rights of the Child* and related instruments in terms of legislative changes, but also in the effective protection of children and prosecution of offenders.

It is with this view in mind that the Bureau participated in various international meetings and projects, among them the European Meeting on the International Dimension of Sexual Exploitation of Children, held in Madrid in November 1998 and organised by the Spanish Ministry of Justice, in collaboration with the International Bureau for Children's Rights. Also worth mentioning is the Bureau's participation in the UNESCO Experts' Meeting on Child Pornography and the Internet, held in Paris in January 1999.

It is also in this spirit that the International Tribunal for Children's Rights began its first cycle of interventions on the international dimensions of the sexual exploitation of children, which ultimately led to Hearings in Paris (1997), Fortaleza (1998) and Colombo (1999).

The primary focus of the First Hearings — held in Paris, France, from September 30 to October 3, 1997 — was on the use of extraterritorial legislation as a potentially powerful tool to protect children against some of the international dimensions of sexual exploitation. This focus came from the realisation of two elements: first, although a growing number of countries allow for extraterritorial application of their penal legislation in the case of child sex offenders, these laws vary considerably from one State to another, making for a very diversified international legal framework; second, only a small number of those countries have successfully implemented their extraterritorial laws. Thus, the main objectives of the Paris Hearings was to shed light on the numerous impediments to the full and successful implementation of these laws, and also to propose solutions. Among the obstacles identified and discussed by the Tribunal were: those which stem directly from the wording of the law, the problems associated with the gathering and admissibility of evidence, the financial restraints and resource problems, the lack of political will, the poor co-operation between States involved or between governments and NGOs, as well as the time, energy and resources required to bring extraterritorial cases to trial. As for remedying these problems, the Paris Hearings proved an ideal forum for the discussion and development of innovative ideas and solutions, including issues such as: setting the protection of children as the first priority, the reconciliation of administrative and legislative mechanisms, and training. These provided the framework for the Tribunal's first report and laid the foundation for the Hearings to come.

The Second Hearings — held in Fortaleza, Ceará, Brazil, from May 11-15, 1998 — proved an ideal opportunity for the Tribunal to look at the issue of sexual exploitation of children in a more regional and even national context. More importantly, a forum was provided to develop solutions that could be implemented directly into a local infrastructure. To achieve this, the Tribunal heard various testimonies borne of experience and learned about the integrated efforts in the fight against the sexual exploitation of children in Brazil and other parts of Latin America. Among the many lessons learned during the Tribunal's intervention in Brazil, one stands out, and is reflected in the general recommendations issued by the Tribunal. It proved absolutely crucial to duly consider the social, political, economic and cultural conditions at the root of the sexual exploitation of children and adolescents in Brazil. This implied that the fight against sexual exploitation in Brazil be placed within the widest framework of respect for the rights of children, adolescents and adults. It also called for the promotion of the status of children and adolescents as *sujets de droit*, and respect for social rights and implementation of efficient economic development policies. Finally, it called for the respect of children and adolescents' rights to an appropriate sexuality with regard to their age.

We have all heard of the ever popular premise "think globally, act locally". Applied here, it means that one cannot hope to truly understand the causes and effects of a problem such as sexual exploitation of children, let alone propose solutions without due consideration for the societal and cultural background in which children are born and develop. For the International Bureau for Children's Rights and its Tribunal, such a premise might be considered a prerequisite to any international intervention focusing on, rather than merely taking place in, a national or regional context.

Finally, the Third Hearings of the International Tribunal for Children's Rights — held in Colombo, Sri Lanka, February 10-13, 1999 — addressed another fundamental aspect of the struggle against the international dimensions of child sexual exploitation, namely, international co-operation. More specifically, the Hearings focused on the protection of child victims through child-friendly procedures, the sexual exploitation of children and the Internet; and judicial co-operation and training. Careful analysis of the testimonies heard and documents submitted led the Tribunal to identify three key considerations, which would constitute the backbone of their report. First, the Tribunal talked of *Justice Denied*, which referred to the need for child-friendly legal systems and procedures, and to the importance of taking into account the special needs of child victims and witnesses — both of which are clear applications of the protection of children as the first priority, a principle first set out in the Paris Hearings. Second, the Tribunal pointed to what it called *A Damaging Environment* for children. This referred to inadequate co-ordination and co-operation, economic deprivation, lack of education and awareness, political insecurity, lack of resources, a deficient recovery and reintegration process, and a weak monitoring process. Finally, the Tribunal spoke of the *Internet Challenge*, both its positive and negative effects on children and their rights.

The concerns, guidelines, and even general principles voiced by the Tribunal over this three year period reflect a certain consensus between the experts and participants heard at its Hearings. If made available to the largest possible audience, they could be of great use to many organisations

and individuals. For this and other reasons, the first and most important follow-up action undertaken by the Bureau will be to ensure that this Global Report receives the highest degree of dissemination possible. Because the Tribunal's recommendations could also benefit from targeted/specialised distribution, relevant specific recommendations will be made available to specific agencies, universities, Bar associations, judges associations, police academies, social workers associations, and others whose work directly affects children.

Furthermore, many of the Tribunal's recommendations very clearly require immediate action and intervention. Obviously, the Bureau cannot hope to undertake all of these tasks at the same time, nor can it hope to do so alone. Nevertheless, we are determined to do everything in our power to ensure that the necessary actions and interventions are undertaken. One of the very first steps taken in this respect was towards the creation of an international Working Group, composed of representatives from Government, UN Agencies and the NGO Community. This is organised in order to draft a set of specific guidelines for the protection and safeguard of the interests, the integrity and the physical and emotional well-being of child victims and witnesses in criminal judicial procedures. During the next two years, a group of twenty or so experts from all the world's regions, and representing diverse backgrounds will share experiences and best practices. Together, they will prepare a set of guidelines that will ultimately be submitted to the appropriate decision-making bodies. This is but one example of the follow-up actions that the Bureau is undertaking, and will continue to undertake. In addition, the Bureau will ensure that the Hearings of the International Tribunal for Children's Rights, initiated with the higher interests of children in mind, indeed translate into a greater respect for their rights, in compliance with the national and international laws and more particularly with the principles set out in the United Nations *Convention on the Rights of the Child*.

I would like to end by expressing my deepest and most sincere thanks to all those individuals and organisations that have made this endeavour possible and that have believed in our mission. More specifically, I would like to thank the members of the Board[1], for their availability and support; Judge Jules Deschênes and the members of the international Selection Committee for their wisdom; the Judges of the Tribunal who have graced us with their knowledge, sensibility and patience (Josiane Bigot, Claire Suzanne Degla, Maria da Graça Diniz da Costa Belov, Roch Lalande, Shiranee Tilakawardane); the Secretaries whose competence and professionalism were essential to the work of the Tribunal (Martha Silva Campos, Judith Ennew, Vitit Muntarbhorn), the witnesses, whether experts or laypersons, representatives from NGOs or governments, who have so generously shared with us their experiences and opinions; and, last but not least, the volunteers and benefactors, without whom none of this would have been possible.

I am confident that together, empowered by this new solidarity and enlightened by a renewed sensibility toward children's suffering and the ever necessary respect for their rights, we will accomplish worthwhile work to improve the fate of children.

Andrée Ruffo
President

1 For a complete list of the Members of the Board of Directors of the International Bureau for Children's Rights, please consult Annex III.

1 Introduction

The international dimensions of the sexual exploitation of children was the topic identified for the first three years' of work by the International Tribunal for Children's Rights. Various aspects and levels of this theme were the topics of three Public Hearings held between September 1997 and February 1999, in Paris, Fortaleza (Brazil), and Colombo (Sri Lanka). Each of the Hearings resulted in a separate report of the evidence heard, together with the deliberations of the judges and their recommendations. This Global Report draws together the more important themes and concerns of all three Hearings, together with some reflections by the Tribunal on the related activities of the International Bureau for Children's Rights over the same three year period. It covers lessons learned as well as reflections on possibilities for effective future international and national actions in the fight to protect children from sexual exploitation. In so doing, it identifies a perspective on 'international dimensions' that emerged from all three Hearings. The judges found that it is necessary to tease out the linkages between the global and the local, in order to understand and combat the mechanisms of child sexual exploitation.

1.1 The global and the local

It is now commonplace for international debates to refer to the increasing globalisation of economic, political and cultural spheres. Child welfare is no exception. On the one hand, many commentators refer to the globalisation of a western ideal of childhood and its imposition on other cultures where it may not be so appropriate, sometimes linking this with the universalisation of human rights standards through the United Nations *Convention on the Rights of the Child* (CRC).[1] On the other hand, many children's rights advocates have drawn attention to the increasing vulnerability of children that result from globalising tendencies. These include: the effects of economic changes on child health and development; the pressures on children to become child labourers because of both macroeconomic factors and the impact of the global pandemic of HIV/AIDS; and the growing international dimensions of child sexual exploitation caused by increased global travel and tourism as well as the information flows consequent on new information technology, such as the Internet.

Thus the first series of Hearings of the International Tribunal for Children's Rights identified a new way of reflecting on international dimensions affecting children. It has become commonplace to hear the phrase 'think globally — act locally'. Yet, as one influential child researcher has commented, it is irresponsible to leave unknown and unanalysed the linkages between international and community levels. The challenge is:

> to develop more powerful understandings of the role of the child in the structures of modernity, the historical processes by which these once localised Western constructions have been exported around the world, and the global political, economic, and cultural transformations that are currently rendering children so dangerous, contested and pivotal in the formation of new sorts of social persons, groups and institutions.[2]

The global and the local

While recognising the global nature of such a violation against the human rights of child, and the responsibility of all States and individuals in combating commercial sexual exploitation of children, one must understand that it remains a problem faced first and foremost by national authorities. It is all the more important for States, confronted with the sexual exploitation of their children, in one or some of its many forms, to develop their own strategies, defined in response to the particular nature of the problem as it exists within their country.

Report of Second Hearings

'Act globally' therefore means ensuring co-operation between local levels, rather than simply accepting meaningless global statements. It emphasises that there must be a dialogue between global and local levels, because of the interdependence between them. The precept of the Committee on the Rights of the Child, that the rights set out in the 1989 UN Convention apply to '*all children, all rights, everywhere*' is a statement about the universality of rights. But the principle of universality, like that of democracy, can only be worked out in the context of local events. Children's rights are guaranteed in international instruments, but are violated or achieved in local, even personal, contexts. It could be argued that, even when children are trafficked across borders, their context is local because they do not have the information or experience to perceive a broader context than their own experience. This is even more true of the most vulnerable, the youngest, the least educated and the least protected.

In this spirit it is possible to discern a natural progression, in which the recommendations of the First Hearings in Paris in 1997 led directly to the examination of the Brazilian national case during the Second Hearings in Fortaleza in 1998, as well as to the surveys of global co-operation and the Internet in the Third Hearings, which

1 See for example, Boyden, J., 1990, Childhood and the policy makers, in James, A., & Prout, A., 1990, *Constructing and reconstructing childhood*, Brighton, Falmer Press, 184-215.

2 Stephens, S., 1994, Children and environment: local worlds and global connections, in *Childhood* 2 (1-2), 1-21.

took place in Colombo in 1999. In this process the Tribunal created a novel space for sharing information about the international dimensions of the sexual exploitation of children, in which facts could be objectively considered and recorded, lending the weight of judicial authority to debates, evidence and recommendations. The extraordinary richness, range and diversity of evidence, emanating from sources in governments, non-governmental organisations, academic and legal fields was unique. The combination of local detail and global scope in this evidence meant that the Tribunal was able to make concrete suggestions about how universal principles might be worked out in specific instances.

The need for concrete recommendations

'The challenge facing government and civil society in Brazil, which is also at the heart of the current Hearings, is the following: how can one ensure that the proposed changes and recommended programmes can be put in place effectively. [For the judges in these Hearings] the challenge is all the greater because it means resisting the temptation to propose new recommendations and solutions without saying exactly how they can be transformed into concrete actions. It is necessary, in fact, to seek ways of stimulating and bringing about changes and actions that have been proposed over and over again in the past.'

Judges Dossier, Second Hearings

Throughout the Hearings the Tribunal also explored and learned from a new role that can be played by the institutions of civil society, by elaborating the meaning of a 'moral court'. The Tribunal is best described in these terms rather than as a formal, judicial institution. The Hearings offer an opportunity for public testimony, for sharing experiences and views, in both oral and written form. The judges do indeed hear evidence but the objective is to make recommendations rather than judgements. It follows that the Reports are neither judicial nor expert reports. Both the process of the Hearings and the nature of reporting bear more resemblance to a commission of inquiry. Although concerned with investigating situations in which children's rights are violated, the Tribunal cannot formally incriminate, prosecute or punish those responsible. The judges have no powers beyond those of persuasion through the comments and recommendations they make in their reports.

Child participation

There is… the need to recognise that the experts are often the children themselves as they are close to the issue in question. — *Report of Third Hearings*

The three Hearings in this first series provided a learning experience for the Tribunal, in which the relatively legalistic proceedings of the First Hearings were softened in subsequent Hearings. This created an environment in which it was possible for a wider range of voices to be heard — mixing the local with the global. The evidence of local testimony, grounded in everyday experience, showed the contexts in which all children's rights might be achieved. This experience also paved the way for the future meaningful inclusion of children in public hearings as experts, as opposed to decorative and even exploitative use of children that so often takes place. One lesson learned in the participation of children in international gatherings is that visibility does not amount to either participation or empowerment.[3] What the Tribunal might consider in the future would be not just child testimony about violations (which could itself amount to a harmful experience for the children involved), but also perhaps the inclusion of children among those who hear and deliberate on evidence.

Following a brief account of the themes and structures of the three Hearings, the remainder of this Global Report considers some themes that dominated the cycle of Hearings. It begins by considering the international scope and incidence of the sexual exploitation of children, which was the background to the Hearings, together with a description of some of the more important responses made by the international community. This is followed by detailed examination of the main themes addressed in the three Hearings, and a consolidated account of the judges' recommendations. Throughout the text, specific national examples from the Hearings in Brazil are used, often in 'boxes', to emphasise the local implications of more global policies and activities examined in the Hearings in Paris and Colombo.

The Report also features two annexes. The first provides detailed information on the various extraterritorial laws that, to this day, have been adopted by more than 20 countries to combat the sexual exploitation of children. For each of these, information is provided on topics such as: the legislative history, theoretical justification, offences and sentences, targeted perpetrators, age of consent / protection, statute of limitation, double criminality and double jeopardy, preliminary measures or procedures, special rules of evidence, difficulties in implementation and steps to improve effectiveness, register for paedophiles and, finally, known cases that have led to prosecutions. The second annexe contains definitions for the terms employed in the Report with respect to child pornography and the Internet.

3 Woolcombe, D., 1998, Children's conferences and councils, in Johnson, V., Ivan-Smith, E., Gordon, G., Pridmore, P., & Scott, P., *Stepping forward: Children and young people's participation in the development process*, London, Intermediate Technology Publications, 236-40.

1.2 From indignation to action: The International Tribunal for Children's Rights

In 1995, an international survey of more than 240 organisations clearly identified the international dimensions of the sexual exploitation of children as the first issue that should be addressed by the International Bureau for Children's Rights. The sexual exploitation of children is no longer the sole concern of the States where these illegal activities take place. Thus, between 1997 and 1999, the International Tribunal for Children's Rights held three Public Hearings on 'the international dimensions of the sexual exploitation of children'.

1.2.1 First Public Hearings: Paris, September 30-October 2, 1997

The Paris Hearings in 1997 represented the first in a series on the international dimensions of child sexual exploitation. Its theme was 'Extraterritorial Legislation in Response to the International Dimensions of the Sexual Exploitation of Children'. The members of the first Bench of the Tribunal were Judge Josiane Bigot (France) who was elected President, Chen Jianguo (China), Claire Suzanne Degla (Benin), Maria da Graça Diniz Costa Belov (Brazil), and Roch Lalande (Canada) (Appendix). Judge Chen Jianguo was unable to attend the Paris Hearings. The role of the Tribunal was to:

- Examine testimony and documentary evidence about the application of extraterritorial legislation in the field of the sexual exploitation of children;
- Identify obstacles to the success of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children;
- Identify the limits of the application of extraterritorial legislation in combating the sexual exploitation of children;
- Propose ways in which existing extraterritorial legislation can be made more effective;
- Make recommendations for the future development of extraterritorial legislation so that it becomes a more effective tool in combating the sexual exploitation of children.

At the time of the Paris Hearings, nearly twenty countries had adopted extraterritorial legislation enabling them to prosecute their nationals for sexual crimes committed against children in other countries. Representatives from governments and from nongovernmental organisations (NGOs) of these countries were invited to inform the Tribunal on their efforts to curb child sex tourism and other variants of sexual abuses committed against children in foreign countries. Despite these legislative changes, actual experiences of the application of extraterritorial legislation are relatively few and not all cases have led to successful prosecutions. Fourteen countries responded to the Tribunal's invitation: Australia, Belgium, Canada, France, Ireland, Italy, Germany, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States. Representatives from governments and NGOs gave testimony before the Tribunal on their experiences of the application of extraterritorial laws and/or submitted written briefs on the subject. Since the Tribunal is a moral court and does not benefit from a formal legal jurisdiction, it could not force States parties to attend its Public Hearings. The States sending representatives to attend the Public Hearings in Paris did so voluntarily, as did the NGOs.

The Tribunal first heard evidence from experts on key issues regarding the legislative responses to the international dimensions of the struggle against sexual exploitation of children. Testimonies and presentations from selected government and NGO representatives formed the main part of the Hearings. This evidence was heard in two groups. The first group consisted of government and NGO representatives from countries that already had experience in the actual implementation of their extraterritorial legislation. They were asked to address the effectiveness of those laws and the difficulties encountered in their implementation. The second group consisted of government representatives from countries where extraterritorial legislation was still under preparation or had been adopted very recently. Those representatives were asked to provide information concerning the drafting and adoption process of their extraterritorial legislation, including the obstacles encountered and the means to overcome them. Finally, case studies illustrating the difficulties of implementation of extraterritorial laws were presented to the Tribunal. On the final morning there was also a panel discussion, open to participation by the audience, on the measures needed to improve enforcement of these laws.

1.2.2 Second Public Hearings: Fortaleza, Brazil, May 11-15, 1998

During these Hearings the members of the International Tribunal for Children's Rights heard evidence concerning the particular context of sexual exploitation of children in Brazil, and the response of local authorities. The members of the Tribunal were Claire Suzanne Degla (Benin), Maria

da Graça Diniz Costa Belov (Brazil), and Roch Lalande (Canada), who was elected president. Evidence was presented about the legislative and judiciary contexts of sexual crimes against minors in Brazil, with the aim of exploring:

- Efforts to combat these crimes and their outcomes;
- The progress made towards combating child sexual exploitation;
- Reasons for any lack of progress;
- Obstacles to the success of past campaigns and initiatives;
- Examples of good practice from successful experiences, together with ideas about how these might be replicated.

These Hearings were based on a number of earlier national conferences and congresses on the subject of sexual exploitation of children, each one of which had resulted in recommendations and conclusions. In co-operation with civil society, the government had also led campaigns that aimed to educate and sensitise locals and tourists about the criminal nature of exploiting minors for sex. Smaller initiatives have also existed for some time at local and regional levels within the country. The challenge facing Brazil's government and civil society was to insure the implementation of these recommended changes and programmes.

One of the motives for holding these Second Hearings of the International Tribunal for Children's Rights in Fortaleza was to try to answer these fundamental questions. Some of the recommendations had been made nearly three years before the Hearings, and yet little information existed to indicate whether they had been followed or whether any policies were in place. On the other hand, it was known that some of the proposed changes to legislation had been implemented. At the time of the Fortaleza Hearings, the Brazilian Penal Code was being reviewed and a Bill was being presented to Congress proposing some very important changes concerning crimes against minors, such as removing some derogatory language and focusing the definition of the crime on the victim. A further important follow-up to past recommendations concerned the establishment of Special Courts for Crimes against Children, which were in the process of being introduced throughout Brazil, even though progress was reported to be slow. At the time of the Hearings only three such Courts had been set up, in Recife, Salvador and, very recently, in Fortaleza itself, although this last had yet to begin hearing cases.

Prior initiatives and meetings in Brazil

The Second Hearings in Fortaleza, Brazil, were based on considerable prior work at the national level, in four major meetings between 1994 and 1997 that included representation from regional as well as national contexts, and were organised largely by Brazilian NGOs, with some involvement of governmental and intergovernmental organisations.

The deliberations and recommendations included:

– Child and juvenile prostitution is so complex that it demands a multi-disciplinary approach;

– Government and international authorities should support small, successful local initiatives, rather than close them down to create new ones;

– Child rights training is needed for police and public officials dealing with children's issues; training is also needed for judges and magistrates, as well as stricter guidelines for selection of the latter;

– A mechanism is required through which stakeholders can submit proposals, recommendations and proposed changes to government departments with the expectation that action will be taken;

– Better research and data analysis are required;

– Sex education in schools;

– Modification of the existing Penal Code;

In addition, one recommendation for a national awareness-raising campaign was implemented:

This Campaign is of some importance and scale. ABRAPIA (Associação Brasileira Multiprofessional de Proteção à Infância e Adolescência) took on the responsibility of receiving telephone calls reporting cases of sexual abuse across the country. The Campaign was first developed in 1996 by the Government Tourism Bureau (EMBRATUR) as an awareness raising campaign against sex tourism and sexual exploitation of children, and received support from the Justice Ministry. This is a project in which the government was, and continues to be, particularly involved. Although the response was strong in the first months, bringing in numerous reports, the campaign seemed to lose some ground after the first year. ABRAPIA has produced an interesting report documenting the complaints received. The campaign has been renewed for a third year but, beyond that, the future of the project remains unsure.

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1.2.3 Third Public Hearings: Colombo, Sri Lanka, February 10-13, 1999.

To conclude its first cycle of activity, the International Tribunal for Children's Rights held its Third Hearings in Colombo, Sri Lanka, on the topic, 'international co-operation in the struggle against the international dimensions of child sexual exploitation'. The members of the International Tribunal for Children's Rights for these Hearings were Judge Shiranee Tilakawardene (Sri Lanka), President of the Tribunal, Judge Josiane Bigot (France), Judge Roch Lalande (Canada). Unfortunately due to travel difficulties, Judge Claire Suzanne Degla (Benin), and Maria de Graça Diniz Costa Belov (Brazil), were unable to attend. These Hearings aimed to follow-up and reinforce the various findings of the first two Hearings. Based on the evidence heard and recommendations made in the Reports of the two previous Hearings, the International Bureau for Children's Rights had identified three issues to be discussed during these Third and final Hearings.

- The first theme was 'the protection of child victims and child witnesses through child-friendly procedures'. This was derived from the principle of the 'best interests of the child', one of the fundamental principles of the UN *Convention on the Rights of the Child*, which had inspired the Tribunal to note in its first Report that the primary consideration in the use of extraterritorial legislation, is that children should be protected from further harm. This has encouraged an increasing number of countries to contemplate the use of video link testimony as a child-friendly method of hearing evidence in cases of the sexual exploitation of children. In Colombo, two international case studies were discussed and analysed. The first was based on a well-known example of extraterritorial prosecution of child sexual exploitation (which had been among the evidence heard in Paris), and focused mainly on treatment of child victims before, during and after the case. This case study was presented by expert witnesses. The second case study addressed new and innovative ways to insure that children participating in the criminal judicial process are protected from further harm and that their special needs are met, whether before, during or after the investigative and judicial stages. This included analytical consideration of video-link testimony and its use in extraterritorial cases as well as the presentation of the video *A Case for Balance*, produced by a UK NGO, the National Society for the Prevention of Cruelty to Children.
- The second theme of the Colombo Hearings was 'judicial co-operation and training'. The Tribunal examined evidence of cases in which countries had collaborated in order to become more effective and better equipped in the struggle against sexual exploitation of children, at multilateral, bilateral or regional levels. Topics covered included memoranda of understanding, mutual legal assistance treaties, letters rogatory, requests for assistance, exchange of information as well as training of law-enforcement officials, prosecutors and others involved in the surveillance and prosecution of offenders. This second theme was analysed by means of two case studies, the first dealing with international co-operation in matters of training, the second with judicial co-operation at an international level.
- The third theme was 'child sexual exploitation and the Internet'. Again, the presentation of this theme was through means of two case studies. The first dealt with the various uses of Internet by child sexual exploiters (including the exchange of child pornography, videoconferencing, sex tours and bride trafficking). This also entailed evidence about the measures taken by various law-enforcement agencies to curb these practices and to monitor and apprehend individuals, groups or even companies that are either engaging in sexual exploitation of children, advertising such exploitation or otherwise promoting it. The second concerned the use of Internet to prevent and denounce sexual exploitation of children and to promote the rights of children.

The Third Hearings were relatively informal and relaxed, with an atmosphere more like a workshop than a formal judicial occasion. This meant that a variety of people and organisations came together to exchange information, to share and learn about the latest developments, so that linkages between global and local levels could be explored. Much of the testimony presented life situations and concrete case studies, including the experiences of real prosecutions and trials related to extraterritorial and other laws on child protection.

2

Background:

children in a global community

The United Nations *Convention on the Rights of the Child* was the main impetus behind the formation of the International Tribunal for Children's Rights. The United Nations General Assembly adopted this Convention on November 20, 1989 and it came into force on September 2, 1990, after having been ratified by the 20 States required under Article 49. The text of the *Convention on the Rights of the Child* contains two major conceptual innovations. The first is that the principle of the 'best interests of the child' should be the guiding principle in 'all actions concerning children' (Article 3 (1)). The second is that the views of children should be 'given due weight in accordance with the age and maturity of the child' (Article 12 (1)). These two key ideas provided guiding principles for the deliberations and recommendations of the members of the Tribunal at the Hearings.

The CRC has been described as the most successful instrument in the history of international human rights. It came into force very rapidly after being adopted by the General Assembly of the United Nations in 1989, and has now been ratified by all but two member states of the United Nations. States Parties to the CRC have been relatively prompt in reporting to the Committee on the Rights of the Child (for which provision is made in Articles 43 and 44). Moreover, the Committee itself has had a high public profile and been particularly active in carrying out its duties.

It is important to note a recent change of emphasis in the field of international human rights. The initial focus was on setting standards as well as identifying and denouncing violations of rights. Now there is an increasing interest in ensuring the effective implementation of human rights instruments together with the progressive achievement of the provisions they contain. This is especially true of the CRC. Of course, there is considerable interest in the more formal matters such as relevant changes in the domestic legislation of States Parties and States Party reports to the Committee on the Rights of the Child. Nevertheless, there is also considerable pressure from intergovernmental agencies and interested sectors of civil society to ensure that administrative and operational procedures are put into place in order to ensure effective implementation and monitoring.

2.1 The globalisation of childhood

The CRC defines childhood by political criteria. A child is a human being aged less than 18 years, which is the age of political majority. However, what is expected of children and what is provided for them varies according to both culture and social class. For example, in the North, children have been banished by law from the labour force. Even though many do work, their economic contribution to society is not included in national financial accounts. The implication is that they are working for 'pocket money' or in order to learn good working habits, even though recent research shows considerable numbers of children under 15 years of age in developed countries making a significant contribution to national economies.

Defining 'child' in Brazilian law

The Statute of the Child and Adolescent... defines what is considered a child or adolescent by law. Children are all people under the age of twelve, and adolescents are people over twelve and under eighteen. The entire social protection and service system is based on this distinction between the child and the adolescent. The juvenile criminal system also uses this distinction, which determines different treatment depending on the offender's status as a child or adolescent.

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The issue of responsibility is also an indicator of the relativity of the parameters set for childhood. As Jo Boyden has pointed out, 'while in many countries children are seen as dependent until well into their teens, in many others they are expected to be fully independent from an early age'.[4] This means that, while many teenagers in the North are incapable of looking after themselves much less a younger sibling, there are many recorded cases of child household heads in the South, earning for and caring for siblings or even their own children. A paradox that points out the importance of social class difference is that, within the labour force of developing countries, child domestic workers are frequently serving older, less capable, children, whose childhood is more prolonged.[5]

The concept of childhood as a time free from political and economic responsibilities as well as a period of sexual innocence is a recent phenomenon that can be argued to be typical only of children from wealthier families in both North and South. However, several commentators have pointed to the way in which it is generalised, or 'globalised', to other social groups and cultures through international welfare agencies at all levels.[6] This dominant notion of childhood, which is based on Northern middle-class ideals, defines children by their incapacities, seeing them as passive recipients of health care, welfare programmes and educational services. Recent studies in the sociology of childhood have challenged this view of children, proposing that they

4 Boyden, J., 1990, *op cit*.

5 Boyden, J, 1985, *Children in development: policy and programming for especially disadvantaged children in Lima, Peru*, Report for UNICEF and OXFAM UK; Boudhiba, A., 1982, *The exploitation of child labour*, New York, United Nations; Ennew J., and Young, P., 1981, *Child labour in Jamaica*, London, Anti-Slavery Society.

6 Boyden, 1990, op cit.: Holland, P., 1992, *What is a child?* London, Virago.

are competent social actors who contribute to both economic and social production and reproduction.[7] This discourse is based in studies of Northern childhoods, but can be seen to have even greater relevance to childhoods in developing countries, particularly for children from disadvantaged socio-economic groups who are expected to assume and fulfil economic and social responsibilities.

2.2 The human rights of children

The past two decades have witnessed changes in approach towards children both as human beings and as subjects of rights. The key to this lies in understanding the difference between

- A 'welfare approach' based on providing for children's needs through the provision of services;
- A 'rights approach' in which States and other authorities must respond to children on the basis of universal standards, especially the CRC, as a matter of obligation rather than discretion.

Nevertheless, the way human rights are implemented, both locally and internationally, tends to result in children's *rights* being protected, *while children themselves are not*.[8] Thus children continue to be treated as legal objects rather than legal subjects. Despite the provisions within the CRC for children to express their views and for these to be given 'due weight' (Article 12) children tend to be neither heard nor listened to, in life, research and legal procedures.

Nevertheless, the recognition that children's rights are based in the universality of human rights, which pertain equally and inalienably to 'all members of the human family' (Preamble to the CRC), permeated much of the evidence heard by the Tribunal. In the Paris Hearings, for example, the representatives of both the Belgian and the United Kingdom governments stressed that universality should be applied to the sexual exploitation of, and traffic in, children. This is not only because of the gravity of the offences but also because they constitute 'a grave breach in basic personal rights and especially human dignity'.

Subjects of rights or objects of rights?

All efforts taken in an attempt to combat sexual exploitation must promote the status of children and adolescents as legal subjects (*sujets de droit*) and not as legal objects (*objet de droit*) for whom measures are taken.

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Human dignity is the foundation of, and justification for, all the rights defined in the United Nations *Universal Declaration of Human Rights* and its related instruments. It is an undefined touchstone, the specific content of which is human rights. Thus, the CRC not only recognises the special vulnerability of children, which leads to the need to define their rights to protection from abuses and exploitation, it also mentions dignity seven times within the text. This reaffirms the principle that children have dignity as members of the human community. But it does not mean losing sight of the particular vulnerability of children, which is the justification of the development of this special children's rights instrument.

Thus it is important to remember that the CRC does not stand alone. It is an integral part of a human rights agenda with a long history, which gained increasing impetus after 1945 in the context of the United Nations. As the Preamble makes clear, it is fundamentally based in the body of previous United Nations human rights instruments, which the judges also took into consideration. Moreover, this Convention has its own history within the human rights project. Although, the human rights agenda can be said to have properly begun with the 1948 United Nations Declaration, as international human rights lawyer, Geraldine Van Bueren, reminds us, 'the first global charter protecting the rights of a particular section of the community focused on children'.[9] The Declaration of Geneva was proposed, and drafted originally by Eglantyne Jebb the founder of both the Save the Children movement and the International Peace Union. Nevertheless, this brief Declaration was based on ideas of child welfare, rather than child rights, and on the assumption that children require adult protection in order to ensure the exercise of their rights. These ideas persisted through the re-drafting of the Declaration during the lifetime of the League of Nations, as well as in the 1959 United Nations *Declaration of the Rights of the Child*. Thus children continued to be seen as objects of international human rights law and not as subjects of rights.

A major change in attitude of the world community was catalysed by the United Nations International Year of the Child in 1979. Children had been mentioned in the Universal Declaration of 1948, in Article 25 (2), which states that 'Motherhood and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.' Other Declarations and Covenants echoed this concern with protection, both the United Nations and statements of other international bodies, such as the European Social Charter. The perceived need of children for protection is based on

7 See Qvortrup, J., 1987, *Childhood as a social phenomenon*, Vienna, European Centre; James, A., & Prout, A., (eds) 1990, *Constructing and reconstructing childhood*, Brighton, Falmer Press.
8 Expert testimony of Professor Eugeen Verhellen, Paris Hearings, 1997.
9 Van Bueren, G., 1993, *International documents on children*, Dordrecht, Boston, London; Martinus Nijhoff Publishers, p. xv.

their physical and mental immaturity. The 1959 Declaration states in its preamble that 'mankind owes to the child the best it has to give' and interprets this in a series of protections, benefits and priorities. But, as already noted, the twentieth century has also been marked by another agenda for children that recognises the rights (and duties) of children as actors and givers, rather than just passive receivers. Following the International Year of the Child the United Nations Commission on Human Rights began to consider a proposal of the Polish government for a *Convention on the Rights of the Child*. Ten years later, after a long drafting process, the Convention was adopted by the United Nations General Assembly. The final text reflects the varied characteristics and preoccupations of the countries involved in drafting, the majority of which were from the North. Thus, to a certain extent, it represents a compromise between different legal cultures, languages, religions and economic resources. Nevertheless, the CRC is unique among human rights documents by containing provisions not only for civil and political rights, but also for economic, social and cultural rights in the same document.

List of international human rights instruments used as background by the Paris Tribunal

Within the overall framework of international human rights instruments, both global and regional, the Tribunal took the following treaties into particular consideration when preparing their Report:

- The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption;
- The Geneva Declaration of the Rights of the Child (1924);
- The United Nations Declaration of the Rights of the Child (1959);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1986);
- United Nations Convention on the Rights of the Child (1989);
- The Organisation of African Unity, African Charter on the Rights and Welfare of the Child (not yet in force).

This last factor underlines the principle that rights are indivisible. The CRC is only conceivable, and can only be implemented, if it is seen in the context of the international human rights agenda in its entirety. In the Preamble to the CRC, this is made clear in references to preceding human rights instruments, such as the United Nations Charter, the *Universal Declaration of Human Rights* and the International Covenants on Human Rights, the *Geneva Declaration of the Rights of the Child* of 1924, *International Covenant on Civil and Political Rights*, *the International Covenant on Economic, Social and Cultural Rights*. The vulnerability of children and their need for special attention is also mentioned in the statutes and relevant instruments of United Nations specialist agencies and international organisations concerned with the welfare of children.

Many discussions about the CRC contain misconceptions. Yet this human rights instrument has stimulated greater interest in human rights than any other, including a pressure that rights should be 'implemented', by which is meant that these entitlements should be made real to all human beings rather than remaining in the realm of ideals and goals. It is for this reason that the International Tribunal for Children's Rights was particularly keen to identify practical, concrete, 'do-able' recommendations.

The relationships between local and global legislation: The Brazilian example

"As for international legal instruments, the Tribunal takes note of the ratification (without reserve) of the Convention on the Rights of the Child by Brazil on September 24th 1990. Brazil has therefore undertaken to respect the provisions of the Convention including those that specifically forbid the sexual abuse of children as in article 34. Article 35 prohibits the sale and traffic of children and article 36 obliges participating States to eliminate all other forms of abuse which threaten the well being of the child. Elsewhere article 32 is explicit in banning economic exploitation, aimed at all work carrying risks or likely to compromise his education, harm his health or his physical, mental, spiritual, moral and social development.

However the Tribunal sadly notes that to date Brazil has yet to submit any report to the Committee on the Rights of the Child. According to article 44 of the Convention, Brazil should have submitted its initial report in October 1992 as well as the first subsequent report in October 1997. This has proved to be an obstacle to implementing and applying the committee's regulatory mechanism and deprives Brazil of the recommendations concerning the application of the Convention in Brazil.

Moreover, considering the close relation between economic and sexual exploitation observed in the various forms of sexual rights abuses in Brazil, one should remember the importance of instruments such as the Convention of the International Labour Organisation, specifically Conventions 29 and 105 which deal with forced labour (the former was ratified

(Continued on next page)

by Brazil on 25 April 1957 and the latter on the 18 June 1965). The inadequacy of these two instruments in view of the growth of economic exploitation of children and adolescents having been recognised by the international community, it is all the more important to subscribe to Convention 138 on the minimum working age for children, which allows the child to benefit from a basic education. Unfortunately the States have demonstrated a remarkable slowness in ratifying this Convention and Brazil does not seem near ratifying it. Support for the Convention in Brazil which was expressed during the campaigns of 1996-1997 principally comes for a significant part from children's rights defence groups.

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2.3 The age of sexual consent

While most local societies in developing countries emphasise the stages through which children and adults pass in the course of a lifetime, paying little attention to birthdates, the global notion of childhood stresses chronological age. Modern statistical systems, as well as medical, educational, political and legal organisation, require precise information about children's ages. Yet, this can be an obstacle in international child protection. In the course of the Paris Hearings, The Tribunal noted that the evidence revealed an interplay between the chronological age of a child and the definition of particular offences. There are considerable variations between, and much lack of clarity in, the legal definitions of significant terms such as exploitation, sexual relations, sexual abuse, sexual violence, age of sexual consent and rape. This may make it impossible to prosecute offenders, particularly where it is necessary to have agreement that a crime has been committed between the legal system of the child's country of origin and that of the abuser ('double criminality'). Thus the age of a child may be crucial to deciding whether or not an offence has been committed.

One issue is the difference that may exist between the age of a child (defined as less than 18 years of age in the CRC), and the age of consent to sexual relations, which is not specified in the Convention. Penal codes in most countries tend to establish an age at which a child can consent to sexual relations. However, what this last term entails is not always clearly defined. Among many other examples, Swiss legislation refers to 'sexual intercourse or any similar act or a different sexual act' while the Norwegian Penal Code (Section 213) states that 'The term sexual intercourse […] shall mean vaginal and anal intercourse' as well as terms such as 'insult to honour' and 'indecent relations'.

Sex and age

Internationally and, in the view of the Committee on the Rights of the Child, 18 is the preferred age [limit] for protecting children from sexual exploitation. This does not refer to a young person discovering his or her sexuality. It relates to child prostitution, child pornography, sexual trafficking - issues where there is exploitation and abuse irrespective of consent. The threshold age at which a child is granted protection from sexual encounters, irrespective of consent, differs from one country to the next. In the UK it is 16; in Switzerland, 16; in the Netherlands, 16; in Germany, 14; in Sweden, 15; in Denmark, 15; in Canada, 18; and in Thailand it is now 18… We still have a long way to go.

Vitit Muntarbhorn, 'Extraterritorial legislation' transcript of lunchtime presentation at the Paris Hearings, p. 2

With respect to sexual offences against children it is common for national legislation to determine an age under which any sexual relations (however defined) are automatically considered to be abusive, and an older group, still in their minority, for whom abuse and exploitation are defined by association with sexual violence and rape. Although the age of majority may be 18 years of age, and can thus be associated with sexual offences against minors (for example in United States legislation), it is more general for the age of 16 years to be associated with sexual maturity. Nevertheless, the evidence presented at the Paris Hearings showed that the range of ages associated with sexual offences against children is wide. Furthermore, the age of the abuser may also be significant with respect to legal definitions. Thus, Swiss law associates sex with a person less than 16 years of age with the offence of sexual abuse, but only if the age difference between the parties involved exceeds three years. And certain sexual offences set out in the Norwegian Penal Code can be waived 'if those who have committed the act of indecency are about equal in age and development'.

The significance of differences in the chronological ages associated with different offences, even among the 'developed' nations that gave evidence at the Hearings, is that in 'developing' countries these ages tend to be somewhat lower. This means that there may well be a group of children, aged for example between 16 and 18 years of age, who would be regarded as sexually abused or exploited in the country of origin of their abuser, but not in their own country. If the country of the offender uses the double criminality principle then it is unlikely that prosecution will take place.

It is worth emphasising that much of the evidence at the Hearings described the effects of the considerable confusion caused by lack of clarity in definitions of key terms and legal definitions. As pointed out by ECPAT-Australia at the Paris Hearings, anomalies of this kind leave considerable space within which sex tour operators can organise their commercial activities without fear of prosecution. Thus, it may be that focusing on the intentions of the operators rather than on the actual offences against children (as in the case of the United States offence of 'travelling with intent'), would be a more effective means of protecting children than prosecuting individual offenders after the event.

The interplay between the ages linked with specific sexual offences against children, the age of sexual maturity and the principle of double criminality can have a crucial influence on whether or not a prosecution can take place in the field of extraterritorial legislation. For example, it is important to be able to establish the actual chronological age of child victims. Nevertheless, in the developing countries that attract sex tourism, this may not be easy because the children involved are likely to come from impoverished socio-economic or ethnic groups. Many such children have never been registered at birth, or their birth certificates have been lost and are difficult, or even impossible, to locate especially if children have lost contact with their natal families. If evidence of age is dependent on the production of a valid birth certificate, the absence of this document alone can prevent prosecution of an alleged offender from taking place.

Nevertheless, evidence provided to the Tribunal in Paris showed that some countries are able to take a flexible approach to establishing a child's age. In the Republic of Ireland, the court may have regard to a person's physical appearance or attributes for the purpose of determining whether that person is (or was at the time of the offence) under the age of 17 years. In Australia, evidence of age may be provided by means of a number of flexible alternatives:

- The child's appearance;
- Medical or other scientific opinion, which includes interpretation of X-rays, which may have to be arranged in the overseas country and interpreted through expert evidence presented in the proceedings in Australia;
- 'A document that is or appears to be an official or medical record from a country outside Australia';
- 'A document that is or appears to be a copy of such a record';
- 'Other possible admissible evidence'.

3 International dimensions of the sexual exploitation of children

In the discussions of the Tribunal throughout all three Hearings, the term 'child sexual exploitation' was taken to refer mainly to child prostitution and pornography. This does not cover all the sexually exploitative situations that exist, but serves the international community with a context on which attempts to eradicate the practice can focus. No exact figures exist on the scope or reach of the phenomenon of child prostitution, mainly because such activities are generally illegal (even for the victims themselves) and rarely monitored. Most of the available data are largely unsubstantiated estimates offered by child advocacy organisations.[10]

The right to sexuality

The suppression of sexual exploitation must be firmly anchored in each one's right to his or her sexuality. This principle must be taken into account when evaluating the results. In cases involving children and adolescents, this right represents not only protection from sexual exploitation and forced sexual relations but also a guarantee that they themselves will not be prosecuted, incriminated and incarcerated for these same acts. Of an equally great importance is the guarantee of respect and care for both the child and adolescent during the discovery and development of their sexuality in all its dimensions. Strictly speaking, combating abuse (from the Latin ab=wrong, usus=use) implies a recognition of its appropriate use.

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Although most specialists agree that the problem is most present in South East Asia, there is growing evidence to support that it is not limited to any one geographical area. Countries in Africa and Latin America now join the ranks of 'sex tourism' destinations and Eastern Europe may be becoming a new tourist destination for Europeans with more limited financial means. Nevertheless, sex tourism is not the main source of custom for child prostitutes, whose clients are mainly local. Moreover paedophilia among foreign travellers is not limited to tourists as increasing reports of paedophiles working in welfare agencies, including international aid organisations reveal. Such abusers do not have to make any payment for sexual exploitation of the young people in their charge.

Child prostitution affects boys and girls and the age groups cover a considerable range. The children are forced, lured, sold or kidnapped and offered into the sex market, or may be taking part in what might be described as a family business. The children most at risk include those from disadvantaged families or social groups, whose basic needs and rights cannot be met and for whom social and familial support systems may be inadequate. Thus children, whose rights under such Articles of the CRC as 2, 4, 26 and 27 are already violated, are likely to be most at risk of violation of Article 34. Nevertheless, it is unwise to make a simple correlation between poverty and sexual exploitation. The complex mixture of preconditions includes culture, value systems and politico-historical factors. Although evidence is inconclusive, the industry is reported to be profitable for many direct exploiters and it certainly preys on some of the most vulnerable human beings, taking advantage of their powerlessness, search for basic survival and lack of economic alternatives.

3.1 The international scope of child sexual exploitation

Where child sexual exploitation is concerned, globalising tendencies take on a particular texture and are the focus of considerable concern and activity. One of the most disturbing features of contemporary society is the global spread of child sexual exploitation. The phenomenon involves three particular forms of exploitation: child prostitution, child pornography and child sexual trafficking. These have their roots in many regions of the world and are manifested in what might be called traditional forms as well as in particularly modern forms through new information technology. While various negative age-old traditional practices remain, pressuring children into sexual exploitation, the modern aspects of the problem include the spread of tourism in general and sexual tourism affecting children in particular, as well as the suppression of paedophilia in 'tourist sending' countries. In addition, technological advances over the past twenty years enable child pornography to be easily reproduced in secrecy (for example using polaroid photography and camcorders) as well as transferred through electronic networks, such as the Internet. There does seem to be a global market for child sexuality. On the one hand paedophiles travel to other countries to sexually abuse children, on the other hand, children are moved illicitly across frontiers for sexual purposes. The recent proliferation of child pornography on the Internet, adds a new twist to the globalisation of the problem. Sexual exploitation of children through such means is infinitely replicable and can be transmitted instantaneously across the globe with the flick of a switch or the touch of a button.

Sex tours are also being advertised on the Internet. Sex tours enable men and women who would not identify with the label 'paedophile' to travel to 'exotic' places where they feel able to step outside whatever sexual mores may constrain

10 Ennew, J., Gopal, K., Heeran , J., & Montgomery, H., (1996) *Children and prostitution: How can we measure and monitor the commercial sexual exploitation of children?*, Oslo, Childwatch International.

them at home, because they believe these rules do not exist in foreign cultures. Powerful forces of racism, misogyny, neo-colonialism and economic exploitation combine to sell 'exotic and erotic' sex vacations.[11] The relationship between tourism and prostitution merging into the sex trade has been well established. For example, in 1971 the Thai government entered into an agreement with international organisations to create a more stable source of income through tourism. International participants included major transportation giants who were interested in their own financial gain. Other international bodies, such as the United Nations and the World Bank, recommended tourism as a way to generate income and repay foreign debts.[12] Focusing on these interests, Thailand and its international counterparts merged prostitution with tourism to create an international tourist industry.[13] The Internet is merely the latest tool used by sex tour operators to expand their business.[14] Nevertheless, many countries and communities have come to depend on the sale of women and children's services almost like a cash crop. Centres for sex tourism also become sources of women and children who are vulnerable to being trafficked for purposes of sexual exploitation elsewhere.

3.2 National dimensions

While recognising the global nature of violations against Article 34 and other children's rights, the Second Hearings of the Tribunal were based on the principle that the sexual exploitation of children remains a problem faced first and foremost by national authorities. It is all the more important for States Party to the CRC and other relevant human rights instruments to develop national strategies that respond to the particular nature of the problem as it exists within their country. The Second Hearings of the Tribunal held in Fortaleza, Brazil, and concentrated on the lessons that could be learned from a single national context.

> The international dimensions of the sexual exploitation of children should not be exclusively identified with sex tourism, nor yet confined to either developed or developing countries.
>
> *Report of First Hearings*

It is often claimed that poverty is the main factor behind child sexual exploitation. Yet this is not the full picture. The recent rapid development of Brazil has not spared it from being afflicted with several serious social problems. The judges in the Tribunal for the Second Hearings heard that interaction between various social, economic, political and cultural factors has created a particularly dangerous environment for vulnerable children who live in situations of violence, poverty and who lack opportunities. Under these circumstances, the sexual exploitation of minors in Brazil has emerged as a very real problem.

Testimony at the Second Hearings in Fortaleza was a reminder that it is vital to use verifiable facts in debates about the sexual exploitation of children. In a sense it can be claimed that too much has been said about this matter, and there has been a tendency to quote numbers and use estimates from sources that are less than reliable.[15] One objective of the Second Hearings was to dispel myths about the involvement of foreigners in child sex tourism in Brazil. While this is one of the many forms of sexual exploitation to which Brazilian children are exposed, recent research reveals that the problem is not of the scale that authorities, as well as international and local NGOs once believed it to be.

Sex tourism certainly exists in Brazil and, in some cases, involves Brazilian minors and foreign adults. However, the majority of cases of commercial sexual exploitation of children are of a more 'traditional' kind, in that most cases are of simple prostitution, with or without the services of an intermediary. It is important to distinguish the situation as it exists in Brazil and other parts of Latin America from what might occur in Asia, Africa and Eastern Europe. The problem in every case has unique causes and characteristics. The solutions therefore cannot be universal.

One contributory factor in the development of the myth of sex tourism is the fact that local and international media tend to overplay the proportional importance of sex tourism by foreigners.[16] Even the nature of the sex tourism as it exists in Brazil is quite different from popular reports from other countries. Foreign sex tourism mostly occurs in the north east of Brazil, where the beaches are beautiful and the population is particularly poor. One Brazilian author has described the romantic fantasy surrounding the relationship between the foreigner and the local girl.[17] In Brazil, sex tourism would seem neither to be an organised 'industry', nor an extremely lucrative or even 'commercial' business.

11 Hughes, D.M. 1997, *Policing the Internet — Combating pornography and violence on the Internet, a European approach, London*, February 1997, p. 8.
12 *Ibid*.
13 Truong, T-D., 1985, Virtue, Order, Health and Money: Towards A Comprehensive Perspective On Female Prostitution In Asia 17-21, U.N. Economic and Social Commission for Asia and the Pacific, U.N. Doc. ST/ESCAP/388 19, p. 26, as cited by Levan, P., 1994, Curtailing Thailand's Child Prostitution Through an International Conscience, *American U.Journal of International Law & Policy* 869, p. 882.
14 The operation of sex tours has been prohibited (see for example, Australia's Crimes (Child Sex Tourism) Amendment Act of 1994) by attaching criminal responsibility to corporate bodies and/or individuals.
15 Ennew, J., Gopal, K., Heeran, J., & Montgomery, H., 1996, *op cit*.
16 Rosemberg, L., & Andrade, L.F., 1999, Ruthless rhetoric: child and youth prostitution in Brazil, in *Childhood*, 6(1), 113-131.
17 Dangremon, M., Networks of sexual exploitation and Sex-tourism, in *Sexual exploitation of girls and adolescents in Brazil*, 55-63.

The young girls may not be paid except in gifts and outings and may consider the sexual relations as an investment in a relationship or possibly marriage. Some of the girls involved are minors, usually adolescents, but this particular form of transaction does not seem to involve small children. Police and some NGOs claim that if there is a market for small children, it is hidden and discreet, not open and on the streets as in some other countries. Nevertheless, in the Northern Region, independent gold mining colonies have been linked to the existence of brothels holding children, trafficked there for sexual purposes.

The sexual exploitation of children through juvenile prostitution serving local clients is far more common. According to numbers reported to the Tribunal by the Brazilian NGO Associação Brasileira Multiprofessional de Proteção à Infância e Adolescência (ABRAPIA), which collected anonymous telephone reports of sexual exploitation of children, nearly 90% of cases concerned Brazilian nationals.[18] These data involve only reported cases but they do demonstrate the predominantly local nature of the problem. Nevertheless, there are increasing reports of trafficking of children for sexual purposes, the sexual exploitation of child domestic workers and, more recently, of pornography.

The most complicated and potentially widespread problem in Brazil is reported to be the apparent increase in pornography involving children. Undoubtedly new technology means that it is now easier to produce both still and moving pornographic images without detection. But the swift reproduction and dissemination of such images through the Internet is surely the most rapidly growing and disquieting trend in any country. Images need not be new to circulate on the rapidly expanding information super highway and Brazil can now count itself among the numerous countries that confront the near impossibility of controlling 'cyber-porn'. Besides the complexity of the technology involved, enacting adequate legislation is a problem far from being solved. Brazil's particular socio-economic structure creates an environment in which children are exposed to forms of sexual exploitation which traditionally affect developing countries, while having to deal with the emerging problems of the more developed countries.

3.3 The need to understand the context of child sexual exploitation

Throughout the discussions of the Third Hearings of the Tribunal in Colombo, participants emphasised the need to analyse the context of child sexual exploitation and to render it more transparent. In an opening address, Professor G.L. Peiris, Minister of Justice for Sri Lanka, underlined the importance of taking into consideration the socio-economic context facing children and their families, in particular the poverty that may pressure children into prostitution. But poverty is not the only issue. In Sri Lanka and elsewhere, it is exacerbated by armed conflicts that render child protection all the more difficult. These factors were also emphasised by Mr. Harendra De Silva, Chairman of the Child Protection Authority of the Government of Sri Lanka, who also noted that, until recently, physical and sexual abuse in family settings had been denied by Sri Lankan society. Discussions during the Hearings in Colombo echoed those that had taken place the previous year in Fortaleza. The main contextual concerns raised in evidence before the Tribunal included:

- Recognising the global and local nature of the problem;
- Suggesting that there are links between domestic abuse and sex tourism; children who have been abused at home may be more vulnerable to sexual exploitation outside the home;
- Stressing that gender issues should be addressed, which includes in Sri Lanka the fact that girls may benefit from a greater degree of familial and social protection than boys due to the high social value placed on virginity;
- Recognising that there is extensive internal and cross frontier trafficking of children for sexual purposes;
- Acknowledging that:
  - Programmes for child assistance and protection sometimes suffer for problems of management and sustainability;
  - While the demand and supply factors leading to child sexual exploitation need to be countered, the perpetrators who are part of the demand factor are often more united than those seeking to outwit them;
  - Awareness raising, education and training on the issue of child sexual exploitation remain limited;
  - The issue of recovery and reintegration of victims of abuse and exploitation, including sexual exploitation, is not adequately addressed;
  - Law and policy enforcement in relation to child rights suffer from low priority setting, inadequate or misallocated resources, and corruption;
  - Child abuse and exploitation are inadequately monitored;

18 ABRAPIA, Campanha nacional de combate à exploração sexual infanto-juvenil — Relatorio fevereiro de 1998. Evolução dos indicadores de fevereiro/97 a fevereiro/98.

– There are few restrictions on paedophiles to prevent their associating with children; for example, an abuse may arise from a situation of adoption of a child by a paedophile;

– There is often a lack of trust between government agencies and NGOs.

3.3.1 Root causes: links between the local and the global

Local evidence during all three Hearings underlined the importance of taking into account global structures of inequality, which were identified as key elements by the judges in the first Tribunal Hearings. Legislation cannot bear the full burden for eliminating the sexual exploitation of children, given the underlying cultural, social and economic causes, of which the most important are:

- The vulnerability and powerlessness of children as a group compared to adults;
- The generalised lack of awareness of children's rights as human beings and lack of knowledge of the *Convention on the Rights of the Child*;
- The structures of gender, class and race that lead to sexual inequalities and to the vulnerability of certain groups of children.
- The poverty of both certain nations and certain social groups, which is an essential factor in the vulnerability of some children to exploitation of all kinds;
- Imbalances in power between rich and poor nations, which create the underlying structure of sex tourism.

4

The response of the international community

As the international community became aware of the magnitude of the problem of the sexual exploitation of children, many organisations sought to counteract the phenomenon. Three main strategies have been adopted:

1. Preventative measures:

   Education, raising awareness, income-generation schemes and monitoring;

2. Protective measures:

   Criminalising and penalising exploiters, harmonising laws between countries, training law enforcement officials, providing hotlines and rescue operations for child victims;

3. Recovery and reintegration:

   Providing health/social services and sensitising their staff; educating families and communities not to stigmatise child victims.

Crossing all three of these strategies is extraterritorial legislation, an existing tool developed by a number of countries in order to combat the sexual exploitation of children in one of its better-known forms — child sex tourism. Extraterritorial legislation was the topic of the First Public Hearings of the International Tribunal for Children's Rights in Paris in 1997, and will be discussed further in Annexe I. In the core of this Report, discussion of extraterritorial legislation is confined to the overall global response, together with attempts at implementation in national contents.

4.1 Intergovernmental action

4.1.1 Protection against sexual exploitation in the CRC

Article 34 of the UN Convention on the Rights of the Child

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.

As noted earlier in this text, one of the motives for establishing a specific UN convention for the rights of children was the recognition of their special vulnerability. Thus, the *Convention on the Rights of the Child* contains a number of articles concerned with protection against abuse and exploitation. Among these, Article 34 deals with the sexual exploitation of children. The current prominence given to this Article by the international community is based on recognition of the scale of harm involved. This refers not only to the traumatic effects on individual children but also to the total number of children involved. Moreover, the Committee on the Rights of the Child insists that the CRC is viewed holistically — *all rights* apply to *all* children, *everywhere*. This entails that Article 34 must be viewed in the context of:

- All other relevant human rights instruments;
- All other provisions of the CRC.

With respect to the CRC this means including articles that provide the services and resources to children that should prevent sexual exploitation from taking place, as well as articles that provide protection against other forms of exploitation (Articles 32-36), and against the sale and traffic of children. It is also important to take into account articles intended to provide support for parents (Articles 19, 26 and 27) so that the sexual exploitation of children does not become an inevitable income-generating mechanism within family survival strategies. In addition, the principles of self-determination and expression, enshrined in Article 12 but also dealt with in other 'participation' articles (Articles 13-16), are important for discussions of children's consent to sexual activity.

4.1.2 Other elements in the response of intergovernmental community

The CRC has acted as a catalyst to a general acceptance that children are active subjects of human rights. It has also become a reference point for subsequent legislation, actions, policies and programmes. But it is also important to recognise that the CRC is part of a broader human rights agenda that has been developing throughout the twentieth century, and more particularly since 1945.

The sexual exploitation of children was recognised as a problem in various United Nations instruments designed to combat sexual trafficking in general. In 1982 a UN Special Rapporteur on Child Labour recommended that child prostitutes together with 'maids of all work' should be the priority categories in the fight to eliminate child labour.[19] Later in the 1980s a Special Rapporteur on sexual sale and trafficking also presented a report to ECOSOC that included

19 Boudhiba, A., 1982, *The exploitation of child labour*, New York, United Nations;

among its concerns the particular problems of sexually exploited children.[20] These were among the fore-runners to a broad spectrum of actions taken in the last two decades.

Since the adoption of the CRC by the United Nations General Assembly in 1989, initiatives of the global inter-governmental community has included:

- The formation of a Working Group by the United Nations Economic and Social Council and its Human Rights Commission mandated to study the issue and come up with recommendations towards the eradication of the exploitative practice. This Working Group on the 'Traffic of Children, Child Prostitution and Child Pornography' passed a resolution in 1992 entitled 'Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography', which created a list of guiding principles for any future endeavours in this field, as well as setting goals for the member states to achieve;
- The UN Commission on Human Rights reviews, adopts or rejects the work and proposals from other UN human rights mechanisms and treaty bodies with resolutions that are binding on member states. It established a Sub-Commission on the Prevention of Discrimination and the Protection of Minorities of which the Working Group on Contemporary Forms of Slavery is a subsidiary body. This latter is charged with monitoring, among others, the Programme of Action on the Sale of Children, Child Prostitution and Child Pornography, and the newly adopted Programme of Action on the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others.
- The UN General Assembly has appointed a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, who reports on specific cases, undertakes fact-finding missions to investigate specific trends and situations in a given region or country, conducts workshops and is available for consultations. NGOs may approach him/her directly or through the Centre for Human Rights. There have been two Special Rapporteurs to date: Vitit Muntarbhorn (Thailand) from 1991-1994 and Ofelia Calcetas-Santos (Philippines) since 1994. Reports have been issued to the General Assembly in 1994, 1995, 1996 and 1997.
- The UN General Assembly has also appointed a Special Rapporteur on Violence Against Women, its Causes and Consequences, whose mandate includes young girls as well as adult women. The tasks are similar to those of the Rapporteur on the Sale of Children. Since 1994, Mrs. Radhika Coomaraswamy (Sri Lanka) has occupied this position and has issued fourteen reports to date. Her preliminary report in 1995 gave a thorough overview of the sexual abuses young girls are subjected to in all societies. Her 1996 report addressed domestic violence and military sexual slavery, which also involves young girls.
- In 1992, INTERPOL established a Standing Working Party on Offences against Minors to reinforce the legislative capacity of every member state, to provide for or encourage police training, to encourage specialisation within police forces and to facilitate co-operation and specialist international police assistance. This working party is producing a handbook for police officers dealing with offences against minors, and giving special attention to the traffic in child pornography via the Internet. It will likewise assist in the maintenance of databases and special registers that will help to restrict the criminal activities of child sex offenders.

Among UN specialised agencies, UNICEF takes the lead on children's issues and now bases its mission statement on the CRC. In the 1990s it has been active in supporting efforts to combat sexual exploitation of children, including supporting NGO initiatives and research on the topic. Like the International Labour Office (ILO), UNICEF recognises the link between a concern for child sexual exploitation and the fight against child labour. Child prostitution is now included among the 'worst forms' of child labour in an ILO Convention, adopted by the International Labour Convention in June 1999.

In addition, three important recent initiatives have expanded the available possibilities for combating the international dimensions of the sexual exploitation of children, all of which became reference points within the first cycle of Tribunal Hearings. Ongoing debates about the need for an optional protocol to tackle the specifically international aspects of child exploitation were explicitly or implicitly mentioned in the evidence presented to the Tribunal, as well as in the judges' recommendations. The Colombo Hearings heard evidence about the wide-ranging implications for protecting child witnesses of the adoption by the United Nations Diplomatic Conference of Plenipotentiaries of a Statute on the Establishment of an International Criminal Court, at their meeting in Rome on 17 July 1998. And, last but not least, the Congress Against the Commercial Sexual Exploitation of Children, which took place in Stockholm in 1996, was acknowledged as being

20 Fernand-Laurent, J., 1983, Report of the Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, ECOSOC E/1983/7 17 March, United Nations, Geneva.

instrumental in establishing some of the networks that supported and informed the entire cycle of Hearings. The first two of these initiatives are discussed below, while a consideration of the enabling nature of the Stockholm Congress ends the current chapter.

Sexual exploitation and children's rights

Judge Rosenczveig underlined the comments made by Professor Verhellen in his expert evidence on the first day, stressing that changes in legislation are consequent on changes in the way society views children and childhood. Geert Cappelaere stressed the need to de-politicise the area, and also to make concrete propositions from a perspective that considers the total context of sexual exploitation. He stated that it is important that the principle of extraterritorial legislation exist and that it be used as one tool among many in the fight against the sexual exploitation of children, but it is more important that human rights, in general, and the Convention on the Rights of the Child, in particular, be brought into play in the countries in which offences take place. Thus, he reiterated the underlying philosophy apparent in evidence during the Hearings of preference for legislation and implementation at domestic level in all countries as the primary means of protecting children against sexual exploitation.

Judge Rosenczveig and Dr Cappelaere both identified the following priorities:

- Awareness-raising in police, legislative bodies and administrative bodies about child sexual exploitation and the Convention on the Rights of the Child;
- Strengthening the material means for implementing legislation at the local level;
- Finding out more about children -how to listen to them, hear them and obtain their opinions;
- Reinforcing the potential of police and legislative authorities to act in international cases of child sexual exploitation.

Ms Sackstein emphasised the issues of definition that had been apparent throughout the Hearings and drew attention to the work done in the area in the Draft Optional Protocol as well as to the need to compare different legislation, pointing to the confusions that exist about definitions of 'sexual majority' 'sexual exploitation', 'sexual abuse' and 'sexual violence'.

Public comments largely underlined the views expressed by panellists. There appeared to be general agreement that the primary focus should be local level implementation, for which the role of NGOs is important. Speakers also emphasised that confusions about definitions and problems of evidence and proof lead to under-reporting and under-prosecution of sexual crimes against children.

Panel discussion: First Hearings

4.1.3 Optional Protocol

A key element in the background to the 1997-9 Public Hearings of the Tribunal was a continuing debate about the development of an optional protocol to the UN *Convention on the Rights of the Child* to address the international dimensions of sexual exploitation, particularly 'sex tourism'. This was originally a combined Australian and French initiative in the context of a Working Group on 'Traffic of Children, Child Prostitution and Child Pornography' formed by the UN Economic and Social Council and UN Human Rights Commission. A draft optional protocol was discussed in 1993 at the Second International Workshop on National Institutions for the Promotion of Human Rights, held in Tunis. In April 1997, the UN Commission on Human Rights issued a report on the question of a Draft Optional Protocol to the Convention on the Rights of the Child. This protocol on the Sale of Children, Child Prostitution and Child Pornography would make the sexual exploitation of children an international criminal offence.[21] It would result in the sale of children, child prostitution, and child pornography being subject to universal criminal jurisdiction, thereby ensuring that all states party would have jurisdiction over the crime, regardless of the nationality of the alleged criminal or the location of the offence. Chapter V of the Draft Optional Protocol refers to international co-operation and co-ordination.[22] Article C proposes, "State Parties shall promote co-operation between their authorities and [relevant national and international non-governmental organisations] and international organisation with a view to the implementation of the purposes of the present Protocol.' According to the author of a recent article in a legal journal:

> Under the Draft Optional Protocol, parties would assume a substantial obligation to cooperate with other States to further the prevention, detection, prosecution, and punishment for crimes of sexual exploitation of or trafficking in children. The burden on parties would be greater than that imposed by the [UN Convention on the Rights of the Child], which generally obliges States Parties to take national, bilateral, and multilateral action to prevent child prostitution and exploitation, but does not require extraterritorial legislation or any other specific measure. In addition, Article 1 of the Draft Optional Protocol asserts that the sexual exploitation of and

21 See the Report of the working group on its third session, U.N. Doc. E/CN.4/1997/7.

22 *Ibid*. Note that many delegations expressed the view that the optional protocol should also cover the promotion of international co-operation of an administrative and judicial nature. A number of delegations suggested that provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be a useful basis for discussions regarding the issue of extradition.

trafficking in children constitute 'crimes against humanity', placing them in the same category as war crimes such as wilful killing, torture, genocide, and unlawful mass deportations.[23]

4.1.4 International Criminal Court

On another front, a significant recent development is the adoption of the Statute of the International Criminal Court (1998) in Rome which paves the way to the establishment of an international criminal court to prosecute individuals for genocide, war crimes, crimes against humanity and crimes of aggression. Among the many offences included within the scope of war crimes and crimes against humanity are rape, sexual slavery and enforced prostitution. The Rome Statute also provides for protection of victims and witnesses, including the use of videotaped evidence, as well as international co-operation and judicial assistance. Article 68 of the Statute stipulates in its first paragraph that:

> The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including age, gender as defined in Article 2, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.[24]

4.2 Nongovernmental action

By definition, nongovernmental organisations (NGOs) are not State bodies, although they may be subject to statutory laws and dependent for their proper functioning on at least tacit State approval. As part of civil society, they are sometimes referred to as the 'third sector' in national and international affairs, representing an independent, practical source of action for the public good, aiming to bring about beneficial changes that have not been successfully achieved by either government or market forces. Whether NGOs are national or international they tend act differently from state organisations because they have different objectives and modes of operation. One major effect of NGO actions over the past 20 years has been raised awareness through campaigns that have, in many cases, forced governments to recognise the problem of child sexual exploitation. This has involved the collection and dissemination of information on the topic. In broad terms NGOs can be subdivided into organisations with an interest in advocacy and those with a greater interest in welfare and protection. Each group has different data requirements and adopts different research approaches and methods, some of which have lacked scientific rigour.

Nevertheless, NGOs have undeniably played a vital historical role in advocacy for the elimination of the sexual exploitation of children. NGOs were particularly active in 1979, the UN International Year of the Child, when the idea of a UN Convention on the Rights of the Child was first mooted. During the drafting process for the CRC, as well as in the campaigns that led to the International Congress against the Commercial Exploitation of Children, NGOs consistently worked to bring the exploitation of children to public attention, often taking a lead role. Information is required for successful advocacy to take place. Some NGOs, such as ECPAT,[25] International Catholic Child Bureau (ICCB/BICE), Terre des Hommes and Anti-Slavery International, together with members of the International Save the Children Alliance have been particularly active in this field at an international level, lobbying for action and putting the issue before the public and governments alike. In addition, certain of the international operational NGOs have been active in sponsoring research on child exploitation issues, as well as in developing methods of research that are appropriate to gathering data with children and other powerless groups. UNICEF already works closely with NGOs through the NGO Committee, acknowledging that they 'form a critical bridge between people and their official representatives at all levels. Their independence enables them to denounce social wrongs and to promote solutions long before they become politically acceptable'.[26]

The NGO Working Group for the Convention on the Rights of the Child was established in 1983. It lobbied for, and advocated in favour of, the drafting of the Convention on the Rights of the Child in order to ensure that a number of essential issues be included in discussions, among them child sexual exploitation for which there is now a Focal Point within the Working Group. As a result, a sub-group was established to developed policy papers and make sure

23 Healey, M.A., 1995, Prosecuting child sex tourists at home: Do laws in Sweden, Australia and the United States safeguard the rights of children as mandated by international law? In *Fordham International Law Journal*, 18, 1852-1923, p. 1879.

24 Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentaries on the Establishment of an International Criminal Court on 17 July 1998, A/CONF. 183/9, Article 68.

25 Originally started as a campaign based in Thailand, with the name End Child Prostitution in Asian Tourism, ECPAT now has a global remit and organisation. The name was changed in 1996 to 'End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes' although the acronym ECPAT remains.

26 UNICEF NY, 1997, *Social mobilization for the elimination of child labour*, Issues paper for the International Conference on Child Labour, Oslo 27-30 October, 1997, p. 4.

the topic was included in the Convention as well as in other forums, such as the Beijing's Women's Summit of 1995. After co-organising the Stockholm Congress, this sub-group was chosen as a focal point to facilitate the co-ordination and co-operation of the NGOs, governments and international agencies that are following up the Declaration and Agenda for Action of the Congress. Yet, even before the adoption of the CRC by the UN General Assembly in 1989, NGO initiatives launched campaigns around the world for the eradication of this form of abuse. One of the best-known is ECPAT, which, since its creation, has been at the forefront of international efforts in this field working on political action, changes in laws, education and awareness-raising.

4.2.1 The 'Stockholm Congress': co-operation between states and civil society

The ECPAT campaign culminated in the World Congress Against Commercial Sexual Exploitation of Children, held in Stockholm in August 1996 which effectively placed the topic on the international agenda. This event was co-sponsored with UNICEF, the NGO Working Group for the Rights of the Child and the Swedish government. A Declaration and Agenda for Action was signed by 122 countries that are thus committed to put in place measures to end commercial sexual exploitation of children by the year 2000. The event was a crucial catalyst for the development of international awareness of the dimensions of the sexual exploitation of children. Although the impetus for this event came initially from the non-governmental sector, the impressive involvement of governments and intergovernmental organisations resulted in a number of significant advances. These include:

- A focus on the international dimensions of the sexual exploitation of children;
- Increased awareness of the sexual exploitation of children;
- Understanding of the need for implementing the provisions of relevant human rights instruments;
- Networking between governments and nongovernmental organisations (NGOs), which represents a hitherto unrealised alliance between States and civil society, as well as opportunities for mutual learning.

Thus, it is now widely recognised that there is an urgent need for systems to be put in place to combat the sexual exploitation of children at national and international levels. Both governments and civil society realise that the challenge no longer consists simply in promoting a campaign to raise awareness. The priority is implementation, not only of the UN *Convention on the Rights of the Child* and related instruments in terms of legislative changes, but also protection of children and prosecution of offenders. One response to the Congress and its Draft Declaration and Agenda for Action has been that several governments have adopted, and others are considering, new legislation designed to combat the international aspects of the sexual exploitation of children.

With all the credit due to the organisers and participants of the aforementioned World Congress, it was neither the first time, nor will it be the last time, that people have sat down to discuss the issue of child sexual exploitation and seek solutions. Nevertheless, it was without a doubt the largest meeting to bring together representatives of NGOs and governments from around the world, and did a great deal to publicise and raise awareness on the extent of the problem. All parties present in Stockholm signed the Draft Declaration and Agenda for Action. All present agreed to take these recommendations home and promised to take whatever measures necessary to see to their implementation. Nevertheless, it was not long before several nations and organisations noticed that some of these solutions or recommendations were not readily applicable in all contexts, and that in several cases, much work still needed to be done at a national level before internationally developed solutions could be applied.

4.2.2 Declaration and Agenda for Action of the World Congress Against the Commercial Sexual Exploitation of Children

The Declaration highlights the need to punish those who exploit children sexually, while not punishing the child victims. The Agenda for Action is a set of guidelines for measures concerning prevention, protection, recovery/reintegration of the child victims, as well as child participation in protecting their rights. It stipulates the need for specific measures of which the most important for the operation of the International Tribunal for Children's Rights might be argued to be:

- Develop or strengthen and implement laws, policies and programmes to protect children and to prohibit the commercial sexual exploitation of children, bearing in mind that the different types of perpetrators and ages and circumstances of victims require differing legal and programmatic responses;
- Develop or strengthen and implement national laws to establish the criminal responsibility of service providers, customers and intermediaries in child

prostitution, child trafficking, child pornography, including possession of child pornography, and other unlawful sexual activity;

- Develop or strengthen and implement national laws, policies and programmes that protect child victims of commercial sexual exploitation from being penalised as criminals and ensure that they have full access to child-friendly personnel and support services in all sectors, and particularly in the legal, social and health fields;
- In the case of sex tourism, develop or strengthen and implement laws to criminalise the acts of the nationals of the countries of origin when committed against children in the countries of destination ('extraterritorial criminal laws'); promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions against those who commit sexual crimes against children in destination countries; and share relevant data;
- In the case of trafficking of children, develop and implement national laws, policies and programmes to protect children from being trafficked within or across borders and penalise the traffickers; in cross border situations, treat these children humanely under national immigration laws, and establish readmission agreements to ensure their safe return to their countries of origin accompanied by support services; and share relevant data.

One global response:

extraterritorial legislation

As stated in the previous chapter, extraterritorial legislation has been identified as one potentially powerful tool in the implementation of those provisions of international human rights instruments that are directed towards protecting children against sexual exploitation. There are clearly several options for action that can be taken at the national and international level, one of which is the adoption of legal measures. A number of countries have taken this route and enacted extraterritorial legislation, which makes it possible to prosecute sex tourists or others who have committed a sexual offence against a child in a country other than their own. In addition, intergovernmental action has resulted in the drafting of the Optional Protocol mentioned above, which, if adopted, could oblige a States Party to adopt or adapt extraterritorial laws to enable the prosecution of offenders for sexual crimes committed against children abroad.

Extraterritorial legislation is neither limited to the sexual exploitation of children nor new. Over 20 countries[27] allow it to be applied in the case of sex offenders. This has been achieved through different approaches. Some States have a provision within their legislation that extends their jurisdiction to acts committed by their nationals while abroad. Others have amended their criminal or penal laws to include the specific crime of child sexual exploitation through 'sex tourism' or 'child prostitution'. Finally, some have adopted new laws in order to deal with the eventuality of one of their nationals sexually exploiting a child while outside the country's normal territorial jurisdiction. Thus far, however, even in cases that do not involve the sexual exploitation of children, the number of prosecutions based on principles of extraterritorial jurisdiction is very small. Thus, experience in this field is limited and the international community might be said to be still in a learning phase.

There are a number of principles that govern the conditions under which a government can extend its jurisdiction to criminal acts committed beyond the boundaries of its own territory. In brief these are:

- What is called the 'active personality' of the offender, which means that jurisdiction can be extended outside national territory to acts committed by nationals;
- The 'passive personality' of the victim, whose nationality provides the basis for the establishment of extraterritorial jurisdiction;
- The principle of protection, through which States reserve the right to take action with respect to acts that threaten their national security;
- The principle of universality, which refers to 'universal crimes' that are sometimes called 'crimes against humanity'.

One factor complicating the understanding and application of extraterritorial legislation is that these principles are neither universally agreed nor universally applied.

Other legal concepts that are important in this field are:

- Double criminality, which entails that, for extraterritorial legislation to be used, the act involved must be illegal according to the laws of the countries of the offender and of the country where the crime was committed;
- Double jeopardy (*ne bis in idem*), whereby a person who has been acquitted or convicted of an offence cannot be prosecuted again for that same offence.

What crime has been committed?

What do you prosecute under? Is it rape? Is it sexual assault? Is it "*proxenetisme*" (the French term for making use of the prostitution of others)? Corruption of the innocent? Indecent assault? And is this with or without violence? My preference is to use "sexual exploitation" because it conveys the image of victimisation. Germany uses "sexual act" but it's hard to determine whether a child under "sexual act" is a victim or not. There are also problems in proving "sexual act" in Germany because it is defined as 'certain acts of relevance'. What on earth does that mean? According to one court case, embracing and kissing alone is not sufficient [...]. But that is the classification the Germans use... the police agreed [that] they don't want to use "sexual act", but that is what they have to use.

Vitit Muntarbhorn:
Transcript of lunchtime presentation at Paris Hearings

In the case of acts of child sexual exploitation that are associated with sex tourism, the responsibility of corporate bodies, such as tour companies, becomes important. Where legislation in this area exists, it not only allows companies involved in the sex industry to be found criminally liable but also makes them subject to seizure and forfeiture of assets and responsible for damages to exploited children.

As already pointed out, a further important principle in the sexual exploitation of children is the legal age of consent to sexual acts. This may establish the grounds for prosecution, but also be a complicating factor if the age of consent in the offender's country differs from that of the country where the offence was committed. Finally,

27 See Annexe I.

various legal principles governing the period of time that can elapse between offence and prosecution are of practical importance given the time-consuming nature of negotiations between States with different legislative and administrative mechanisms.

5.1 Evidence about extraterritorial legislation from the Paris Hearings

During the Paris Hearings in September-October 1997, the Tribunal heard oral evidence from governments and NGOs from six countries in which there is experience of the application of extraterritorial legislation in cases of the sexual exploitation of children, as well as from four governments that have recently adopted such legislation. The significant contribution of ECPAT among the national NGOs giving evidence was noted. The Tribunal also received and considered written evidence from governments and NGOs. They considered this evidence in the light of international human rights instruments and other pertinent materials. Three presentations devoted to case studies on the final day of the Hearings, as well as the details of various cases in many of the government and NGO presentations, were particularly useful in assessing the impact of extraterritorial legislation. They also made it possible to identify the obstacles to its implementation and ways in which such difficulties can be overcome. The evidence of experts in the field provided valuable orientation with respect to the philosophical and legal basis of the use of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children. The judges of the Tribunal were also present during a Panel Discussion at which an exchange of views among participants took place. The Tribunal heard a significant body of verbal evidence and also took into consideration written reports and other materials. In their deliberations the judges identified a number of key themes. In many cases these consisted of questions for which satisfactory answers are not yet available due to the fact that, with respect to extraterritorial legislation on the sexual exploitation of children, the international community is still in a learning phase.

In some submissions, the adoption and implementation of extraterritorial legislation is seen as having a deterrent effect. Thus, written evidence from the Belgian government referred to the intention to 'effect a sharp increase in penalties for serious cases of sexual abuse of children', and also stated that:

> The idea at the base of this extension of judicial competence of Belgian tribunals was to send a clear message to those who sell child pornography and abuse children. (translated by the International Bureau for Children's Rights).

Nevertheless, it was clear from most of the evidence presented that extraterritorial legislation is only one tool among many in the fight to protect children from sexual exploitation. It should not be regarded as an end in itself. Both oral and written evidence from the government of Australia, for example, underlined that, despite adopting new legislation and taking measures to implement it, the government's position is that the primary responsibility for protecting children against the international dimensions of the sexual exploitation of children rests with the country in which the offence takes place. The testimony of the government of Spain also emphasised that the adoption of extraterritorial legislation does not do away with the need for legislation and implementation at the national level. The adoption of extraterritorial legislation, according to a written submission from the government of the United Kingdom, 'has required careful thought' because '[t]he requirement of oral testimony and the right of the defence to cross-examine witnesses are central to criminal trials' in that country and 'it is therefore very difficult to mount successful prosecutions for offences committed abroad'. For this government, therefore, extradition 'will always be the preferred option'. Nevertheless, despite these practical difficulties, the seriousness of the offences entailed in the international dimensions of the sexual exploitation of children eventually led to the decision that the adoption of extraterritorial legislation by the United Kingdom could be justified. According to the oral evidence given by Terrence Lonergan, reporting on behalf of the Canadian Ministry of Justice, children's rights are now a Canadian government priority. Thus, in the Canadian government's written submission it was stated that the justification for using extraterritorial legislation to combat child sexual exploitation is based on international human rights law:

> In the case of child sex tourism, it can be argued that the Convention on the Rights of the Child, which was ratified by Canada in 1991, provides a sufficient basis for this extension of jurisdiction […] In addition, the degree of consensus on the need for extra-territorial legislation that exists within the United Nations Commission on Human Rights' working group on the draft Optional Protocol […] would indicate an emerging principle of customary international law with respect to child sex tourism.

To ensure effective implementation, this principle must be seen in the context of international realities as well as international legislation. This was given its clearest expression in the expert testimony of Muireann O'Briain[28], who pointed out that the roots of the problem in developing countries can not be eradicated by a campaign, for they are nourished in the fertile soil of poverty. Thus, she reminded the judges that swift and forceful implementation of legal changes must be accompanied by social action aimed at eliminating the need for children to generate income in the market for sex tourism and other forms of exploitation.

As will also be seen later in this Report, several submissions emphasised the fact that successful implementation of extraterritorial legislation is not yet institutionalised. In the few cases that have so far been pursued success has largely depended on personal contacts between professionals in the countries involved, on the commitment and ingenuity of individuals as well as on voluntary actions. The costs involved in bringing cases to court are high, partly because of the need for law enforcement agencies and witnesses to travel between countries, but also because of factors such as translation and interpretation. Until now voluntary and individual action has reduced costs to a certain extent and made it possible to demonstrate that extraterritorial legislation can be used effectively to combat the international dimensions of the sexual exploitation of children. However, many submissions strongly stated that, in the long term, the success of extraterritorial legislation should not depend on occasional volunteer activities. It is an urgent necessity to establish sustainable *systems*, based on what has been learned through the cases pursued thus far, as well as on finding sufficient resources to support such systems.

5.1.1 Old and new legislation

While extraterritorial legislation is a recent creation, its application to the sexual exploitation of children is relatively recent. Already-existing legislation has been extended or amended by a number of governments, some of which already had experience in implementing this kind of legislation in other contexts, such as the interests of national security. The relevant Swiss legislation, for example, had been in force since 1937. Written evidence from the government of Sweden reported that extraterritorial rules had been in force for 'a very long time' and that '[t]he application of the rules has very seldom caused special problems' although evidence from Helena Karlen, of ECPAT-Sweden, stated that, from the NGO perspective, the requirement for double criminality should be removed in the case of sexual exploitation. Canada already had experience of extraterritorial offences for war crimes and crimes against humanity. Likewise, Belgium already had provision for this kind of legislation in the Penal Code, but it had only been used previously with respect to national security, and Italy, was intending to extend existing extraterritorial legislation to sexual offences in 1997 by amending an existing provision in its Criminal Code.

The grounds for extending or amending existing extraterritorial legislation vary between countries, having been enacted for different motives and according to different principles and overall legal philosophies. In the case of Spain, the government extended the principle of universality in 1994 to include the sexual exploitation of children. Australia enacted new legislation, the Crimes (Child Sex Tourism) Amendment Act, in direct response to a perceived problem. The United States extended to international use a principle of interstate law on travelling with the intention of sexually exploiting children. In addition to the information given to the Tribunal at the Hearings, and provided for the judges in written submissions, the judges were aware of a variety of examples of national legislation, providing a somewhat confusing international framework. However, it seemed clear from the evidence that political will to combat the international sexual exploitation of children can be, and in many cases has been, transformed into legislative action in three ways, which are not mutually exclusive:

1. Identification of existing legislation that can be extended to use in cases of sexual exploitation, the justification tending to rest on acknowledging the seriousness of sexual offences against children and thus activating a principle of universality;

2. Changing existing legislation to include sexual offences against children that cross national borders;

3. Enacting new legislation.

New legislation may include novel offences, such as the offence of 'benefiting from or encouraging' child sex tourism', included in the Australian Crimes (Child Sex Tourism) Amendment Act, which is specifically designed to address offences committed by tour operators. The government of Germany also stated in written evidence that it was planning to create special offences for cases of sexual abuse of children that occurs in conjunction with the marketing of pornographic materials. However, the creation of new offences may raise further problems with respect to double criminality because these offences may not exist within the legal systems of receiving countries.

28 Ms O'Briain is now President of ECPAT, but at the time of the Paris Hearings she was a Senior Counsel in the Republic of Ireland (Eire) and Legal Advisor to ECPAT International.

Despite these legislative changes, actual experiences of the application of extraterritorial legislation are relatively few and not all cases have led to successful prosecutions. In addition, much extraterritorial legislation designed to combat the sexual exploitation of children is new and has still to be put to the test. The evidence presented to the Tribunal thus provided an overview of experiences to date in this field, including the reasons for successes as well as some of the obstacles and how to overcome them.

5.1.2 International investigations of child sexual exploitation

Processes of investigation that aim to establish the grounds for prosecution of offenders in extraterritorial cases are subject to a number of obstacles. The authorities in the country of origin of the offender may not be alerted to the fact that an offence has taken place. The vital role played by embassies and other agencies of foreign representation in setting in train the use of extraterritorial legislation was mentioned several times in both written and oral evidence presented to the Tribunal. In the case of Belgium, it was reported that two circulars had been sent to all Belgian Embassies and Consulates. These draw attention to the application of extraterritorial legislation to sexual offences against children and stating that all sexual exploitation cases concerning Belgian citizens must be reported, from the outset, to the Belgian legal system. The submission of the United States government to the Paris Hearings even made the following plea to all present:

> If any member of your law enforcement community has evidence that a US citizen is involved in child exploitation, this evidence should be brought to the legal attachJ located at the American embassy in your country. The representative will convey the information to the appropriate Department of Justice office in the US.

Once a case is under way, the investigating agencies of both countries need to co-operate but obstacles can be experienced. The level of financial and human resources in the two countries may not be equal. As Ms. O'Briain stated in her expert evidence, policing is under-resourced in many countries, with police being underpaid and under-trained. Moreover, the identification of cases and collection of evidence has often in the past relied on the efforts of NGOs, which usually have little experience in collecting evidence that will be admissible or sufficient in court cases. Thus, it can be useful, as in the bilateral agreement between the United Kingdom and the Philippines, to include training programmes, financial assistance and the exchange of information and research as part of the inter-country collaboration. However, as Ms. O'Briain pointed out in her case study evidence, formal bilateral agreements may not always be necessary. In the case of Van der S, a citizen of the Netherlands, the Dutch police went to the Philippines and were able to work there because of informal personal contacts with Filipino police. These links had been formed as a result of networking begun at the Stockholm Congress against the Commercial Sexual Exploitation of Children and in the context of ECPAT police training. Much depends on willingness to be flexible with respect to the powers permitted to foreign police and other investigating agents by their counterparts in the countries in which offences take place. Ms. O'Briain also mentioned the Baumann case in which Sri Lankan police co-operated to the extent that they allowed a Swiss search warrant to be used. Such cases show that there is often considerable potential for collaboration. Nevertheless, as several witnesses at the Paris Hearings pointed out, the implementation of extraterritorial legislation in the context of child sexual exploitation should not rely on the good will and voluntary efforts of individual professionals and agencies, but rather be based in sustainable systems of intergovernmental co-operation. In addition, it was stressed that systems of co-operation between law enforcement agencies should be capable of rapid action.

5.1.3 The balance between legal requirements and child protection

Rules governing what may be admitted as evidence in court vary considerably between countries, depending to a large extent on whether the legal system is accusatory or interrogatory in nature. Documents from one country may not be admissible evidence in the legal proceeding of another. For example, as the Belgian government submission pointed out, documentary information from developing countries may be regarded as vague and imprecise from the perspective of the Belgian legal system. This can be the case with respect even to establishing the identity and chronological age of the victim.

One important consideration is whether or not it is necessary for child victims to travel to the country of the perpetrator to give evidence. The written evidence of the Swedish government indicates that it is not normally necessary for Swedish children to give evidence in court cases. Thus, in cases involving extraterritorial legislation, evidence gathered in the country where the offence is alleged to have taken place can be used in court. Similar instances were cited by Muireann O'Briain in her testimony about various instances of the use of extraterritorial legislation. In the case against Van der S in the Netherlands, it was seen that the court could convict without Filipino children having to travel to the Netherlands to give evidence. In the case

against Baumann, which took place in his home canton of Zurich in Switzerland, Sri Lankan children did not have to travel to Europe. Instead, investigators from Zurich went to Sri Lanka to gather evidence. Canada provides another example of a legal system in which this is possible. As described in the government's written submission, although witnesses, including children, can be brought to Canada to testify, the Canadian authorities can also send a rogatory commission abroad to hear evidence. There are, of course, cost implications consequent on either action. The Canadian written testimony goes on to comment that:

> […] if the offence occurs in a country with which Canada has a mutual legal assistance treaty, there will be an enhanced capability to obtain admissible evidence. However, even with a treaty, given Canada's rigorous evidentiary laws and the standards set out in the Canadian Charter of Rights and Freedoms, the evidence gathering process could be lengthy and costly. In those instances where no treaties exist, it will be even more difficult and expensive to investigate and prosecute a case.

Ms. Lynn Mattucci, from the US Criminal Division of the Department of Justice, made the same point. She stated that the main reason why there have been no prosecutions of child sex offenders in the US under extraterritorial legislation is because it is difficult to get evidence that will meet the 'very stringent' USA evidence and authenticity requirements. This is the case even though the offence of 'travelling with intent' does not require proof that a sexual act has taken place. The Spanish government submission took a forward-looking approach when it referred to the fact that obtaining admissible evidence can be a problem when the legislation and standards of proof in the two countries involved are different. Under the provisions of Spanish extraterritorial legislation, evidence can be given in the foreign State or in Spain itself. This government, like those cited above, has found that questions can be sent from Spain but may not then meet Spanish criteria for evidence to be valid. Thus, the Spanish government recommended the development of international accords on standards to be achieved for evidence to be admissible.

5.1.4 Overcoming obstacles in legal proceedings

Many of the witnesses at the Paris Hearings provided examples of the ways in which obstacles inherent in the rules of legal procedures can be overcome in order to prosecute child sex offenders. Ms O'Briain pointed out that, in the case of Van der S, a child's statement about the offence was interpreted by the court in the Netherlands as a 'complaint'. This enabled the court to proceed in the prosecution, despite the rule that a formal complaint must be made by a child, its parents or guardians. Indeed a legal change in Netherlands law was being planned in this respect. However, as Ms. O'Briain commented, it is worth remembering that it is not perhaps logical to ask a child whose livelihood depends on prostitution to make a complaint against a customer.

On the question of double criminality, the Tribunal heard many varied opinions in the course of the Paris Hearings. Several witnesses indicated that the requirement for double criminality can act not only as an obstacle to legal proceedings taking place but also provide loopholes because sex tour operators can simply change their tour destinations to countries in which sex tourist would not be liable to prosecution. As pointed out above, there may be a crucial interplay between double criminality and either the age of consent or the age groups to which an offence refers in different legislation. It may be the case that certain acts are defined as criminal offences in both countries, but not for the same age groups. As stated in the Swedish government's written evidence, 'Since we normally require dual criminality, the age of consent in the foreign country is essential for jurisdiction'. The answer to this kind of problem may simply be to identify the pertinent offence (or offences) in the two countries involved, in order to fulfil a double criminality requirement. The Norwegian government's written submission stated that:

> The Norwegian Penal Code does not refer to a double criminality condition in general. However, the Norwegian prosecution will normally have less interest in pursuing a case when a foreign country has done so. One exception is criminal acts that are much more severely punished under Norwegian law compared with the actual legislation.

France and Australia are among those countries for which double criminality is not a requirement for prosecution. It would appear that, at the very least, countries using extraterritorial legislation as a tool to combat sex tourism should work towards unanimity on the question of double criminality, and the Belgian government submission referred to various efforts made within the European Union in this regard. Although unanimity has not been achieved, member States had been requested to re-examine their legislation.

One practical obstacle to the implementation of extraterritorial law, referred to in many submissions, is the timing of the response to a reported offence and the speed necessary for investigators to gather evidence. In order to gather sufficient, admissible evidence, considerable co-operation and liaison between the law enforcement agencies is required. Means have to be found for obtaining and trans-

lating necessary documents with all possible speed. Even in the successfully-pursued case against Bolin, a period of three years elapsed before the boy's birth certificate was sent to Sweden from Thailand, even though, as stated by the representative from ECPAT-Sweden, there was 'good' co-operation between the Swedish and Thai authorities. The Belgian government's submission suggested that establishing a focal point in each country for communication would facilitate a more rapid response, and several submissions pointed to the important role that could be played by embassies in this respect. On the other hand, the Swedish government's submission implicitly warned against over-centralisation of collaboration:

> The experience tells us that it is most effective if officials can take a direct contact with each other or with others who have the relevant information, instead of using central authorities or other middlemen […] central contacts points could, however, be of value to facilitate such direct contacts.

Obstacles to the use of extraterritorial legislation

…while in Germany, I spent the day questioning the police about a number of cases for which extraterritorial laws have been applied. They register the most I've counted anywhere: 37 prosecutions since 1993! Six judgements against the accused while the others have more or less petered out. Three judgements against the accused for crimes committed in Thailand, of all places! It was interesting to note that it isn't always the police who initiate the investigations. There were anonymous reports from film developing labs, random customs mail checks, coincidental discoveries from house searches, [reports from] federal criminal officers [and from] liaison officers, requests from foreign authorities to take over legal proceedings, to name a few. It is really quite an array of people who have started proceedings. Yet this is only the beginning. Countless problems emerge once the process has begun. Files or information requested from local authorities are not sent, are lost or take a long time to arrive — up to a year, according to one German prosecutor. Other common problems include suspects that disappear after being set free on bail and difficulties in determining the identity or age of victims. Sometimes the only proof of the latter is a video or picture that is not properly dated.

Vitit Muntarbhorn:
Transcript of lunchtime talk at Paris Hearings

Perhaps one of the most useful means of facilitating contact would be to include in bilateral agreements a requirement for action within a specified time limit, as is the case with the Memorandum of Understanding (MOU) between the governments of the Philippines and United Kingdom:

> The law enforcement agencies covered by this MOU will provide an initial response within seven days to any request for assistance from agencies from the other country relating to a serious crime.

According to this MOU, such a response must be quick and confidential, include investigations and 'preparation for and assistance in liaison to each other's countries.'

5.2 Conclusions

The international dimensions of the sexual exploitation of children should not be exclusively identified with sex tourism, nor yet confined to either developed or developing countries. Although extraterritorial legislation is important, it is one tool among many, and it is necessary to examine successes, failures and obstacles to the implementation of international law, in general, not only extraterritorial legislation. The evidence presented to the Tribunal at the Paris Hearings indicates that legislative change is possible. New laws are being enacted, new offences created, innovative means of dealing with the obstacles to the implementation of extraterritorial legislation are being developed. Creativity, flexibility and harmonisation of investigative processes, legislation and legal proceedings are all necessary in the fight against the international dimensions of child sexual exploitation. As mentioned earlier, the international community is in a learning phase with respect to applying extraterritorial legislation, which means that international exchange of experience is vital.

The principle of extraterritorial legislation and its application clearly have a role to play in combating international dimensions of the sexual exploitation of children. Yet it is even more fundamental that human rights, in general, and the *Convention on the Rights of the Child*, in particular, should be brought into play in the countries where offences take place, as well as the countries of origin of the offenders:

> criminal law is not omnipotent. It cannot be used to right every social wrong or to eliminate ideological or political frictions. It would, therefore, be an illusion to pretend that the elimination of international conflicts of jurisdiction can solve the underlying social or political conflicts. Some conflicts exceed the capacities of criminal law. Criminal law derives its authority from its credibility, and its credibility is based on the tangible results of enforcement.[29]

29 Council of Europe, European Committee on Crime Problems, 1992, *Criminal Jurisdiction*, *Criminal Law Forum*, Vol 3, No 3, Spring 1992, 441-478, p. 477.

Protecting children is the first priority

In the Report of the Paris Hearings, the Tribunal expressed its concern that to protect children by prosecuting those who have sexually exploited them, may at times lead to further damage to children, and that such involvement in investigative and legal procedures may also constitute breaches in their right to human dignity.[30] Consequently, children's right to protection should take priority over both adult indignation and adult retribution, and the principle of any action taken in the prosecution of perpetrators of sexual offences against children should be to 'do no harm' to the victims and witnesses. This was identified by the Tribunal as a guiding principle for all its deliberations and recommendations and was one of the three main themes of the Third Hearings in Colombo. It follows from the principle of 'the best interests of the child', which is enshrined in the UN *Convention on the Rights of the Child*. It also follows from the concrete observations that there may be a paradox involved in the practical aspects of identifying and prosecuting offenders. Although bringing perpetrators to justice may protect children from further harm, and even, as a deterrent, act as a preventative measure, investigative and legal processes may result in further damage to victims.

Protecting children is the first priority

The primary goal is to protect children from all forms of exploitation. Thus, the Tribunal has drawn attention, not least in the structure of this Report, to their concern that the zeal to punish perpetrators of sexual offences against children should not cause secondary harm to children. They are also concerned with the testimony they received indicating that many perpetrators are not being convicted because of the insufficiency, poor quality and inadmissibility of evidence. There seems to be a balance to be maintained between the need to protect the rights of adult defendants and the need to protect children. These issues all revolve around the question of evidence. Means need to be found for obtaining good evidence from children, as well as for developing flexibility of process in legal proceedings concerning child victims and for further international and cross-cultural understanding and co-operation about matters concerning evidence. It may be that the special vulnerability of children requires particularly innovative and flexible interpretation of the rules regarding the giving of testimony in order for justice really to be done. Yet, this must not infringe the rights of defendants nor diminish evidentiary standards.

Report of Paris Hearings

It follows that child welfare should be the priority in implementation, which means that, when necessary, legal systems should be adapted to children, with respect to aspects such as procedure and evidence. Nevertheless, the Tribunal also pointed out that adaptation must not be allowed to compromise the legal principle of the presumption of the innocence of the accused.

Some of the necessary adaptation is purely practical and consists in eliminating or minimising obstacles to successful investigations and prosecutions so that exploiters do not escape justice and are prevented from abusing any more children. It is clear that the main obstacle to the effective application of extraterritorial legislation, for example, is the reconciliation of different national systems of investigation, legal measures and processes. Subsidiary themes identified by the Tribunal in this context entail taking into consideration other provisions of the CRC, most notably those that deal with freedom to express an opinion (Articles 12 and 13) and respect for a child's culture and language (Article 30).

Involvement in investigative and legal procedures may also constitute breaches in children's right to human dignity. The situations in which this might arise are founded on the power adults, in general, have over children, even when their 'best interests' are the motive for adult action. Several of those presenting evidence echoed Eugeen Verhellen's comments in his expert testimony to the Paris Hearings about the need to listen to children and hear what they are saying, while giving priority to their interests rather than to adult indignation. In her presentation of case studies on the same occasion, Muireann O'Briain stressed that adults should automatically give priority to children, without resorting to sensationalised accounts of exploitation. Moreover, she stated that adult reactions to child prostitution need to be tempered by an understanding of the conditions in which children live. Similarly, Italian government evidence emphasised the need to give children psychological protection and support during every stage of investigation and legal proceedings. The implication is that children's right to protection should take priority over both adult indignation and adult retribution. The principle of any action taken in the prosecution of perpetrators of sexual offences against children should be 'do no harm' to the child victim. The United Nations *Standard Minimum Rules for the Administration of Justice* (1985, 'Beijing Rules) Paragraph 10.3 refers to the need to 'avoid harm' to juvenile offenders in the course of investigation and prosecution, with the Commentary stating that 'the term "avoid

30 International Tribunal for Children's Rights, 1998, *Report of the First Public Hearings*, Montreal, International Bureau for Children's Rights.

harm" should be broadly interpreted […] as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm'. If this is the standard international minimum for juvenile offenders it should be applied with equal force to the treatment of child victims and witnesses. Yet evidence provided to the Tribunal shows that investigations and legal proceedings involved in the implementation of extraterritorial legislation do not always abide by this principle.

Many states have recognised the need for investigators, prosecutors and victim-witness co-ordinators to develop procedures and services that would allow children to effectively and safely participate as witnesses in the criminal justice system. As was noted by many delegations in the Working Group on the Draft Protocol to the UN Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography[31], special measures are needed to deal with the particular demands of prosecuting crimes committed against children. Likewise, minimum standards should be developed for the treatment of child victims and witnesses by law enforcement agencies, the judiciary and the legal system as a whole. Rules of procedure should specifically take into account the special circumstances of cases involving violence against children or situations of sexual exploitation, to ensure effective prosecution against such violations, but also to ensure that special needs of children are met. The needs of child witnesses and victims are many and require special attention. In extraterritorial or transnational cases, special needs of foreign child victims, such as language and culture, also have to be taken into account. Other important issues may also arise, such as questions of competence and credibility. In practice, appreciation of and respect for special needs of child victims and witnesses and other related issues must lead to the development of child-friendly ways to deal with them within the justice system.

6.1 Guarantees for children's safety

As noted above, the Rome Statute of the International Criminal Court[32] deals specifically with the protection of victims and witnesses and their participation in the proceedings. Evidently, these concerns take on a whole new meaning when applied to child victims and witnesses. The Paris Report specifically highlighted the requirement to guarantee the safety of children during the investigation, pre-trial and prosecution stages.[33] Part of the problem, in the amount of time it takes to commit to trial, stems from the difficulties experienced by the prosecution in obtaining and translating the requisite documents.

The court must be able to take certain measures to protect child victims, their families and other witnesses from reprisals and unnecessary anguish to which they might be exposed in a public trial, without prejudicing the rights of suspects and accused to a fair trial. The court, in close co-operation with States Parties, must be able to take effective security measures to protect them. These measures should encompass protection before, during and after the trial until the security threat ends. It has been suggested that in developing an effective protection programme, the court and States Parties should draw upon successful witness protection programmes already in place in many States. It is still not clear, however, who is responsible for ensuring the physical safety of the child, nor who or which country bears the cost of such protection. In extraterritorial cases, should the child be asked to travel to the country of the accused, one must consider whether a transfer of responsibility occurs from one country to another.

Two issues regarding the physical and psychological safety of child victims of sexual exploitation arose from the evidence given to the Tribunal. These concern:

1. The requirement to guarantee the safety of children during investigation, pre-trial and prosecution stages, when they may be subjected to intimidation and/or actual physical harm;
2. The safety and psychological well-being of children after legal proceedings have taken place, whether or not prosecution of offenders has been successful.

With respect to the first of these issues, it is clear that the time that may elapse between investigation and trial leaves children vulnerable to intimidation and violence. In international cases this may be prolonged because of the difficulties experienced by the prosecution in obtaining and translating the requisite documents. For example, Helena KarlJn, speaking on behalf of ECPAT-Sweden, pointed out that in the Bolin case, it took three years to obtain a birth certificate for the boy victim. It can be both difficult and costly to provide sufficient protection for children in these circumstances. If it is considered necessary for the children's safety to remove them from their own country in order to avoid threats and actual physical harm, the consequent culture shock, disruption of family life and the experience of being virtually incarcerated for a considerable time in order to ensure their continued protection may be psychologically damaging. Furthermore, it may affect the viability

31 See: U.N. Doc. E/CN.4/1997/7.
32 ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, A/CONF.183/9.
33 International Tribunal for Children's Rights, 1998, *op cit.*

of the evidence they can provide in court and their ability to stand up to cross-examination. In the Holloway case, reported by both the Australian government and ECPAT-Australia, the two Cambodian boy victims were threatened and even kidnapped after they had given testimony to the police in Cambodia. They were then taken to Australia, where the authorities refused to provide protective custody. When ECPAT provided a safe house it found the safety of its own staff under threat. In addition to the physical abuse they have sustained, children who are victims of sexual exploitation often suffer from psychological distress that may be exacerbated by having repeatedly to relive certain traumatising events for the benefit of investigators, prosecutors and judges.

An example in which children were not protected

Roger Walker of World Vision, Australia, together with Naly Pilorge of LICADHO, Cambodia and Khou Akha of the Cambodian Center for the Protection of Children's Rights, Cambodia, traced the history of various cases against foreign paedophiles, especially an extraterritorial case concerning an Australian diplomat alleged to have sexually exploited two Cambodian street children. It took some two years to bring the case to court in Australia. In the court proceedings that ensued in Australia as part of the latter's extraterritorial law, the children were taken to Australia to give evidence. They were subjected to long periods of aggressive cross-examination in an environment alien to them, and gave confusing answers. They were even unsure about who the defence lawyers were during the committal proceedings. The judge dismissed the case, thus acquitting the accused of the alleged sexual exploitation of the children. The two children were then returned to Cambodia, and the NGO responsible for them was not even given the flight details of their arrival in Cambodia. Their futures are uncertain, and one of them travels to and from the Thai border, probably involved in prostitution.

Report of Third Hearing

Whether or not prosecution is successful, the particular vulnerability of children, which is cited in the Preamble to the CRC as the justification for a special children's human rights instrument, entails that follow-up care is likely to be necessary in order to ensure continued protection of their rights. 'What do you do with the children you have saved?' asked Muireann O'Briain during her testimony. She cited the case of two Burmese children who had been sexually exploited in Thailand who were subsequently executed when they were repatriated to Burma because they were known to be HIV positive. ECPAT-Australia also voiced this concern with respect to less dramatic cases. For example, two boys from the Solomon Islands who had been trafficked to Australia for sexual purposes were sent back to their home country, but without the benefit of counselling or legal support, which were not available under legislation at the time.

6.2 Child-friendly legal proceedings

Anxiety about the effects of legal proceedings on child victims of sexual exploitation has led to a number of innovations in the ways in which legal systems deal with child witnesses, some of which were mentioned to the Tribunal. Yet these innovations are themselves subject to debate and reservations. Thus, although Muireann O'Briain referred in her expert testimony to the Australian legal system as 'child-friendly', Christine Beddoe, representing ECPAT-Australia, queried whether this is the case. She stated that, despite directives to the contrary, cross-examination is seldom child-friendly and culturally sensitive: 'It would be difficult enough for an adult to withstand let alone a child and especially one from another country'. Indeed, the Australian government's written submission itself points to an anomaly in Australian law that entails that there is no provision making evidence of sexual reputation inadmissible: 'Child victims of sexual assault should have no less protection than adult victims. In fact, there should be greater protection as consent is not an issue'. Similarly there should be no difference made between the ways in which child nationals and non-nationals are treated as witnesses. For example, ECPAT evidence in the First Hearings referred to the acquittal of a high level Australian diplomat in a 1994 sex tourism case in 1994 because the evidence given by two teen-aged Cambodian boys was insufficient. On this occasion the magistrate himself reportedly 'commented that an Australian child would not have been cross examined so rigorously' and added that 'cross examination of child witnesses under the [Sex Tourism] Act should be reviewed.'

6.2.1 The special needs of child witnesses

The special needs of victims, regardless of age, have long been recognised by various national, regional and international instruments. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly on November 29th of 1985, states that the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by informing them of their role and the scope, timing and progress of the proceedings as well as the disposition of their cases; allowing their views and concerns to be presented and considered at appropriate stages of the proceedings,

providing proper assistance to victims throughout the legal process; taking measures to minimise inconvenience to victims, protect their privacy and ensure their safety (as well as that of their families and witnesses on their behalf) from intimidation and retaliation; and avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.[34] As is evident from the work associated with the International Criminal Court, we have come to recognise the necessity to protect victims and witnesses, especially in cases of sexual violence. Evidently, this must not be left to individual and isolated initiatives, but rather be organised and guaranteed by means of close and ongoing co-operation between States and various judicial systems.[35]

Concern over the protection of victims and witnesses is not new, but, as pointed out above, the issue has received renewed attention in discussions on the proposed International Criminal Court. Although not specifically concerned with child victims and child witnesses, these discussions highlight the fundamental principles applicable to all victims and witnesses and who participate in the criminal process. For example, the International Centre for Human Rights and Democratic Development issued a number of suggestions regarding the treatment of victims and witnesses, recommending for example that governments adopt the strongest possible language in order to safeguard the rights of victims and witnesses, especially those who have suffered rape and other sexual violence crimes.[36] Moreover, Amnesty International has stated that,

> [t]o ensure that justice is done, the [International Criminal Court] must develop effective victim and witness protection programs, involving the assistance of all states parties, without prejudicing the rights of suspects and the accused. The court, in close co-operation with states, must be able to take certain security measures to protect witnesses and victims and their families from reprisals. Such measures must not prejudice the rights of suspects and accused.[37]

For child witnesses, participating in an adult-oriented criminal trial, with all its confusing information, convoluted courtroom procedures and unfamiliar language and culture, can be at the very least intimidating. Without careful co-ordination and attention to their needs, the whole thing can turn into an emotionally damaging and distressing experience. For most children, testifying in a criminal trial will induce a high degree of anxiety and since the judicial process in itself will rarely be a pleasant experience for them, such cases should be dealt with in an expedited and predetermined fashion. This means that certainty is needed about the trial date and the manner in which the child will testify, and that unnecessary delays should be avoided. Likewise, the child's waiting period at court should be kept to a minimum. Most children will need to familiarise themselves with the surroundings in which they will be asked to testify. Should they opt for the video-link set-up, they should be provided with the opportunity to see the equipment and practice prior to trial. Information about the child's individual needs should be made available to the court as early as possible, so that necessary accommodations can be planned in advance. Finally, efforts should be made to make the child feel as comfortable as possible. That may include doing away with formal attire and/or adapting the language used, not only in the way the judge and the attorneys address the child, but also between the professionals themselves. Moreover efforts should also be made to insure that the child understands who the people are as well as what is going to happen. Child witnesses have special needs with respect to the way questions are asked. Questions need to be kept brief, structured and simple, avoiding complex questions so that children are not confused and giving them time to answer.

6.2.2 Use of video

As noted at the Colombo Hearings by Jean-François Noël, a Canadian lawyer who is Legal Advisor to the International Bureau for Children's Rights, some attempts to accommodate the special needs of child witnesses have used modern technology to develop particular ways of obtaining evidence from children. Depending on which method, or combination of methods, is used, it may mean that children are protected from having to confront their abusers in court (as well as from other intimidating aspects of the court process) or from having to travel to a foreign country in order to testify. Various means of using closed-circuit television links and video-recorded evidence are being used in many countries. These take three basic forms:

- In cases involving sexual abuse in national contexts or in cases in which extraterritorial legislation is used in which a foreign child has been brought to the country of its exploiter, a closed circuit television link may be set up between the court and a safe place

34 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, United Nations General Assembly, November 29th, 1985 (see 6th Principle).

35 This was also noted by the International Centre for Human Rights and Democratic Development, in reference to the experiences of the International Criminal Tribunals for the former Yugoslavia and Rwanda. See: Decision on the Prosecutor's motion requesting protective measures for victims and witnesses, *Prosecutor* v. *Tadic*, Case No. IT-94-I-T (10 August 1995), para. 46.

36 For more on this organisation's position on the issue see International Centre for Human Rights and Democratic Development, *Towards an Effective International Criminal Court: Meeting the Challenge*, gopher://gopher.igc.apc.org:70/00/orgs/icc/ngodocs/rome/ichrdd.txt

37 See Amnesty International, *United Nations (UN) The International Criminal Court: 16 Fundamental Principles for a Just, Fair and Effective International Criminal Court*, Report - IOR 40/12/98, May 1998, (11th principle).

where the child gives evidence, without having to confront the abuser or be overwhelmed by the formal atmosphere of the court (many examples in domestic legislation);

- A video-link may be set up between the domestic point (country of the exploiter) and the overseas point (country of the exploited child) in which it is possible to both see and hear in both directions, so that evidence can be heard and cross-examination take place (Australia);
- Evidence given by a child may be video-recorded in the child's own country and used in the foreign court (Sweden).

These methods may mean that children are protected from having to confront their abusers in court (as well as from the court process itself which could be a distressing experience) or from having to travel to the country of the accused to give evidence. Evidence given at the Paris and Colombo Hearings showed that experiences of the use of television and video are as varied as extraterritorial legislation itself, and that opinions about the wisdom of using such evidence are correspondingly different, both with respect to the legal consequences and the effects on children.

As with extraterritorial legislation, the use of television and video in court cases involving child abuse is in a learning stage and national experiences vary. In the United States, a child, like any other witness, has to be present in court because this is a constitutional right for the defendant. Therefore television links and video-taped evidence are not possible. In Canada, although the Criminal Code (Section 715.1) provides for the admissibility of video-taped evidence made shortly after the offence, the child witness has to appear in court and 'adopt the contents of the video-tape'. In other countries, a more flexible approach is possible. Thus, written evidence from the German government stated that 'video technology as a means of protecting children is being tested in Germany by the police and the courts. Correspondingly, draft legislation is currently before the German parliament for discussion'. In the case of Sweden, the written submission of the government pointed out that children under the age of 16 years are not considered as witnesses. Thus, the abused child is not considered as a witness and that it is not possible for the child to give evidence under oath. The child is heard by the court as a plaintiff, but not under oath. The police interrogation is normally videotaped, and can be shown to the court instead of hearing the child in court, but this is up to the judge's discretion in each case. In the successfully-pursued and well-publicised Bolin case (which was used as a case study in the Colombo Hearings), once the boy in question had reached the age of 15 years he travelled to Sweden to give evidence against his abuser.

The fact that video evidence is used may, in itself, affect proceedings. As pointed out in the submissions in Paris from the Australian government, there are no proven criteria for deciding on whether or not a court experience and/or the culture shock that might be consequent on travelling to another country to give evidence might cause further distress to a child. Conversely it might even be the case, as the ECPAT-Australia evidence suggested, that a court-room appearance could be more beneficial in the healing process of an abused child. There is no established expertise in this area that could provide overall guidelines for making decisions in international cases and the effects may vary according to the child's cultural expectations. Even where video technology evidence is available, Australian government evidence states:

> […] it may not be desirable to use it. In addition to the problems experienced by the child within his or her home country, the weight of the evidence may be affected and it may not be cost effective, as the prosecution would have to travel to the overseas country to talk to the witness and assess the reliability of the evidence.

The Belgian government's submission drew attention to an important consideration in this area, which is linked to Eugeen Verhellen's emphasis on the importance of identifying ways of listening to children in general and thus facilitating their ability to give evidence in legal proceedings. Although the use of video technology is an interesting option, it is more important, as the Belgian government evidence suggests, to treat the evidence of children with the same seriousness as that of adults. However, because of the power imbalance between adults and children it is equally important, in terms of the viability of evidence, that children be able to provide testimony that is free from adult suggestion or intimidation. This entails that, whatever the environment in which they give evidence, child witnesses should be accompanied by an adult of their choice, and also that psychologists with cross-cultural experience should be involved in the process.

The use of videotaped evidence is usually intended to replace the written deposition of a child witness (describing to police his or her account of the events), thereby improving the quality and reliability of the deposition. Since the videotape may be used to refresh the child's memory before or even during his or her testimony, this would seem to overcome the problem of a child's memory fading from the time the evidence is being taken to the child's court appearance,

which can be especially long in international cases. Such use of videotaped evidence, however, is not intended to replace the child's appearance in court.[38] In countries where the defence is guaranteed the right to cross-examine witnesses, it would seem improbable that a child's videotaped deposition would be admitted into evidence without the child being heard during the trial, because this would deprive the defence of its opportunity for cross-examination.

As noted by Jean-François Noël in his evidence before the Tribunal at the Colombo Hearings, some might say that these innovations are aimed more at improving the quality of the evidence available to the public prosecutor than at making the court process more child-friendly. Nevertheless, the availability of such videotapes has quickly been put to use by public prosecutors as a new and effective argument in plea-bargaining. Whereas an accused might previously have taken his chance in court on the belief that the child victim would never actually talk, examination of an incriminating videotape showing the child victim describing the scene might change the mind of the accused and lead to a guilty plea, thereby preventing the child from having to go through the court process at all. Testimony can also be given behind a screen or through domestic video links (closed-circuit).

In domestic sexual abuse cases or in cases where a foreign child is brought to the country of his/her abuser to testify against that person, ways of facilitating the child's testimony have been developed. One is the use of a screen whereby the child is prevented from seeing the accused during his or her testimony. Another is the use of a closed circuit television link between the court and a safe place where the child gives evidence, without having to confront the abuser or be overwhelmed by the formal atmosphere of the court. There are many examples of this procedure in domestic legislation. As to how exactly these systems are set-up and operated, the situation varies from one country to the next. In some cases, closed-circuit television links are set-up between the courtroom and an adjacent room where the child alone will testify in the presence of both attorneys. In others, both the crown and the defence attorneys remain in the courtroom with the judge, the jury and the public, while the child witness is in another room, usually accompanied by a clerk. Examination and cross-examination then takes place by means of a video link.

6.2.3 Respect for children's cultural background

Concern for children's safety and psychological well-being is closely related to issues of culture and language raised in several testimonies before the Tribunal, and of particular importance in combating the international dimensions of the sexual exploitation of children. It was also clear that these issues affect the viability of evidence provided by children and, therefore, the outcome of any prosecution. The principle of dignity, referred to above, also includes respect for an individual's identity, language and culture. This is enunciated in the CRC, particularly Article 30, which provides that children of minority communities and indigenous populations have the rights to enjoy their own culture and to practice their own religion and language. Article 40, which deals with the administration of juvenile justice also refers (in paragraph (vi)) to the right of children who are believed to have infringed the law to 'have the free assistance of an interpreter' if they cannot 'understand or speak the language used'. By extension, child witnesses need to be accorded the same rights, so that their evidence is both admissible and meaningful. Cultures vary considerably with respect to sexual mores as well as ideas about children and childhood, and these differences in conceptual structure also affect the language used to describe or discuss sexual behaviour and sexual exploitation. There may also be considerable differences within countries between different socio-economic or ethnic groups. Interpreters and translators thus need to be cross-culturally sensitive as well as capable of communicating with children. It is also important that all adults involved in cases implicating the international sexual exploitation of children, be they lawyers, judges, magistrates or juries, are aware of and able to understand the pertinent cultural differences and pressures that might, for instance, lead a child (particularly from an impoverished background) to seek an income through prostitution. In this respect, Muireann O'Briain's reference to the reaction of the Swiss investigator who visited Sri Lanka to collect evidence in the Baumann case is relevant. It was reported that he regretted not having made a video record of the conditions of poverty in which the children lived in order to be able to demonstrate to Swiss authorities their potential influence on children's decision to become prostitutes.

These issues were summed up particularly well in the written evidence of the Australian government at the Paris Hearings:

> […] it is vital that the investigation and prosecution team understand the cultural background of the victim from the outset. Child witnesses, particularly victims of sexual assault, must develop a relationship of trust with the questioner or they cannot give evidence of their experience. This relationship of

38 See, for example, *Criminal Code of Canada* (Section 715.1), which provides for the admissibility of videotaped evidence made shortly after the offence. Australia also has a similar proposal under study.

> trust is not possible where there is no appreciation of the child's cultural background. In an Australian prosecution for sexual assault on a child, investigators and prosecutors are aware that the child's statement relates to his or her family and social background. Questions are framed and answers interpreted in the context of a shared culture. Without some cultural understanding, the interview with the victim may appear to give inconsistent evidence as to time or place or even the particular act alleged.

Likewise, ECPAT-Australia commented that the unsuccessful prosecution of an Australian diplomat showed that courts may be unprepared to deal with both psychological and linguistic aspects of cross-cultural issues. The evidence of one of the teenagers involved in this case was discredited because of a previous case with a United Kingdom national, without taking into consideration that the sexual reputation of a child cannot be judged by the same criteria that might be applied to adults. The pressures that forced him into prostitution might be different for a child than for an adult. In addition, it was reported that the Director of Public Prosecutions found it difficult to brief the boys without leading them, which meant that they had limited briefing and no recourse was made to a psychologist who had experience of cross-cultural issues.

Language is one of the main manifestations of culture. Once again the implications for the implementation of extraterritorial legislation are well summed up in the written evidence of the Australian government in Paris in 1997:

> Cultural differences are exemplified in language differences. It may not be easy for the investigators or prosecution to locate an appropriate interpreter in the overseas jurisdiction. The interpreter must not only understand the dialect of the witness but needs to be of at least the standard required by Australian courts, with a level of proficiency in both the witness's dialect and English. The interpreter must be aware of possible cross-cultural misunderstandings at the time of the interview.

The written submission from the Belgian government on the same occasion also emphasised the need for translators and interpreters to be able to indicate to legal and other professionals involved in international child exploitation cases the cultural meaning of the words and phrases children use in their mother tongue and local dialect. In addition, further evidence from the same government pointed out that its experience in an extraterritorial case involving co-operation between Belgian and Thai authorities revealed that, at times, the two were not talking the same legal language. Expectations of, for example, what counted as evidence were different with the Thai authorities considering that there was no requirement to seek further evidence beyond the production of photographs.

With respect to the evidence given by children, a further consideration is specific to children as a social group, which, is the necessity to take into account the maturity and level of language development of child witnesses. Children's language in general differs from adult language with respect to the level of development of vocabulary and grammar, as well as in terms of understanding the meanings of words. This is acknowledged in the CRC particularly in Article 13, which deals with freedom of expression and also provides for the possibility of adopting alternatives to written modes: 'either orally, in writing or in print, in the form of art, or through any other media of the child's choice'. Moreover, it is made clear especially in Article 12, that the age and maturity of a particular child should be taken into consideration when children give their opinion on adult plans or provisions for their welfare, which by extension can also be applied to the testimony of child witnesses. This is clearly related to the necessity stressed by Eugeen Verhellen to find ways of listening to children and being able to hear what they are really trying to express. Although this was mentioned at various times during the Paris Hearings, it was not clear what experience exists in the field of communicating with children in general, much less in cases of the implementation of extraterritorial legislation.

All these considerations have cost implications. Translation and interpretation at the level of competence required may also require special training and thus the need for both human and financial resources may make it difficult to develop sustainable systems. Currently it appears from the evidence provided to the Tribunal that translation of legal documents, for example, is costly and time consuming and often dependent on the support and good will of external agencies. Thus, for example, Cléa Cremers, giving case study evidence on behalf of the Swiss NGO CIDE (Comité International pour la Dignité de l'Enfant), pointed out that the pursuit of the case against Baumann had been facilitated with the aid of an international NGO with respect to translating evidence, which would otherwise have been extremely expensive.

6.3 Conclusions

Child witnesses and victims in all judicial procedures face particular problems that are exacerbated in extraterritorial cases. Those who seek to protect them and seek to bring abusers and exploiters to justice are confronted by a number of issues and problems that need to be addressed if justice is to be secured without further damage to victims, their

families and helping agencies. Chief among the problems raised during the Hearings is the observation that justice delayed is justice denied. Other concerns include :

- The police may not be favourable towards prosecution of the alleged paedophile or sex tourist, even though there are grounds for prosecution;
- In federal systems, the federal police may claim that child protection is a federal matter and thus should be taken up at state rather than the federal level;
- There is little understanding of the cross-cultural dimensions of the issue, including the nuances of different languages, the role of the authorities, the public's perception and children's own perceptions;
- There may be a lack of video-recording facilities to document children's testimony in the pre-trial stage as well as the absence of a video link or other facilities during the trial to prevent the child victim from having to physically confront the accused;
- Experience in using such facilities in extraterritorial cases may be lacking;
- Should video link by means of video conferencing be used with the accused in his/her country of origin while the victim remains in his/her own country?
- The advantages and disadvantages of taking a child victim to give evidence in a foreign country where the accused is a national or resident are not weighed in a balanced manner, especially in view of the fact that the legal system and the court structure and procedures of the perpetrator's country are likely to be alien to the child;
- If the child victim is to travel to a foreign country to give evidence he or she should be accompanied by a familiar person, who can be of support throughout the proceedings;
- Questioning or cross-examination of a child victim or witness may be aggressive, traumatic and confusing to the child; this is evidently the case in the common law system where the defence lawyer often resorts to aggressive cross-examination, while the inquisitorial role of judges in the civil law system may result in parallel traumas for the child;
- Child victims and witnesses are sometimes not kept in adequately safe shelters and they are at times under the threat of harassment to and pressure on their families and themselves to terminate the prosecution;
- NGOs helping child victims and witnesses may be under similar threats.

In learning from the mistakes of the past, the presentations in the Third Hearings concerning the Cambodian-Australian experience and related discussions highlighted the need for future actions:

- Promote closer links between the authorities of the countries of origin and destination countries to gather evidence and ensure the safety of victims, witnesses and NGOs providing help;
- Expedite the hearing of cases;
- Provide facilities to help victims awaiting court hearings;
- Allow video-recorded evidence of children's testimony and support the possible use of video-link facilities in transfrontier cases, so that child victims and witnesses would not need to travel to a foreign country to give evidence, unless this is in the best interests of the child;
- Train and use experienced law enforcers and other personnel to act in a child-sensitive manner;
- Provide emotional, human and financial support for child victims and those who help them;
- Establish special courts, procedures and personnel to try these cases at the national and international levels;
- Explore not only the use of criminal proceedings against the accused but also of civil litigation;
- Use DNA evidence;
- Be prepared to use private investigators;
- Be aware of and act sensitively towards cross-cultural differences;
- Prevent aggressive and confusing questioning or cross-examination of children;
- Prohibit references to a child's past history to undermine his/her credibility;
- Provide for proceedings *in camera*;
- Enable child victims and witnesses to familiarise themselves with the court environment prior to court appearances.

The guiding principle should always be to test the question of whether or not to prosecute the alleged wrongdoer, not from the angle of the anger of the child's family or community nor of an organisation seeking retribution, but rather of whether or not it is in the best interests of the child to pursue the case. Will more harm be incurred by the child as a result of the proceedings? If so, then the prosecution should not proceed?

The discussions that ensued at the Third Hearings raised additional issues that will need to be addressed in the future, including the following:

- How to deal with situations in which the perpetrator and the victim are both children;
- The need to produce a book of good practices concerning child-friendly procedures;
- How to provide more training for judges in human rights and child-friendly;
- The need for greater involvement of psychologists and psychiatrists in child-friendly procedures as part of multidisciplinary teams;
- The need to involve NGOs and lawyers in child-friendly procedures.

Discussions concerning the presentation from the Philippines in the Colombo Hearings raised the issue of whether it is preferable for children to be witnesses rather than plaintiffs and prosecutors, and even whether NGOs might be plaintiffs in place of child victims. If the child is a witness, this may reduce the demands for his/her presence in court and minimise the traumas that may result from the workings of an insensitive legal system. As a witness, a child would only have to appear in court once, whereas he/she would have to appear many more times as a plaintiff/prosecutor. Lessons from the field suggest the following guidelines for child rights' workers involved in prosecutions of the offenders and protection of the child victims:

- Find a trustworthy prosecutor;
- Lobby for child-friendly judicial system and personnel;
- Link up with reliable police;
- Respect the rights of the accused;
- Train social workers to help children;
- Obtain medical evidence as soon as possible abusive incidents;
- Avoid multiple medical examinations of the child victims.

Child pornography on the Internet:

a new dimension of globalisation

Most of the evidence submitted at the First Hearings in Paris related to direct sexual exploitation of children in prostitution. Nevertheless there was a strong undercurrent of concern about child pornography, with particular reference to the dissemination of pornographic material on electronic networks, such as the Internet. Although there were no specific references to the application of extraterritorial legislation in combating the international distribution of pornographic material relating to children, it was clear that some governments are considering ways in which this might be achieved. The employment of extraterritorial legislation in this respect may be less concerned with the production of pornographic materials than with their distribution. Thus, wide-ranging provisions within New Zealand legislation refer to acquiring, transporting and publishing child pornography by any means, 'whether by written, electronic or any other form of communication and including the distribution of information.' The government of France includes within the definition of pornography, virtual images as well as non-pornographic images designed to be used by paedophiles, thus acknowledging the importance of the use to which images are put, as much as the actual exploitation of individual children in the production of pornography.

The Internet and the sexual exploitation of children

Like any other communication technology, the Internet is only a means, a carrier. Despite its creative advantages, the Internet can also wreak havoc on the lives of our young children. It can expose them to illegal images of child pornography, it can provide the entire transactional basis for lucrative traffic in pornography. Repeated and relentless exposure to paedophile writing, essays and images could mislead children and the general public into thinking that there is nothing wrong with free sex for children of any age, that there is nothing illegal or harmful with the sexual abuse of children or in displaying such acts through pornography or paedophile websites on the Internet. Many paedophile sites aim precisely at proving that their deviant behaviour is "normal" or "acceptable", by the very fact that they and their writings are openly and prominently displayed on the Internet.

Preface to UNESCO *Protecting children on line, Final Report, Declaration and Action Plan*, Paris 18-19 January, 1999

The Internet has enormous potential benefits for education and information flows. It is estimated that there are more than 123 million users, half of whom are in North America. The Internet itself is a space where freedom of expression can be enjoyed and lead to many positive results. However, all freedom has limits and must never be used to exploit children. There is a negative side to the Internet, in particular the availability of child pornography, which can be found on and is conveyed by various newsgroups and 'chat-rooms'. In addition, children might also be put in jeopardy as viewers or users of harmful material.

The Report of the Third Hearings in Colombo noted that the Internet makes child pornography, infinitely replicable. All the witnesses heard by the Tribunal indicated that such material should be illegal. It was also noted repeatedly that censorship is not a sufficient tool in the context of electronic networks. There is an urgent need for new laws to be targeted to prevent the production, distribution and possession of pornography by these means. Yet the electronic highways of the Internet are difficult to police and legislate for, because they lack a specific owner or source. All Internet service providers clearly have a key role to play in preventing and removing information and sites that cater to child pornography. But they need to be mobilised to do so. It was noted in the presentations at the Third Hearings that UNESCO had recently organised an international conference some weeks earlier to focus on the use of the Internet by paedophiles. This meeting, which was widely attended, raised the need for legislation to combat child pornography, as well as the need to promote the constructive role of law enforcers, Internet service providers, children and parents against the threat of child pornography[39] At the Third Hearings it was suggested that law enforcement might be assisted by developing some kind of 'cyber-police'. It was also suggested that an agency (with a name such as 'Screenpeace') could possibly be developed to monitor the Internet. This could perhaps be assisted by the adoption of Codes of Ethics by major Internet actors, which might mobilise user opinion against child pornography.

It is not only adults who use the Internet, which is increasingly becoming a major feature of children's leisure time, at least among wealthier groups. Thus, means need to be found to protect children from inadvertedly coming across harmful material. In the Third Hearings, the Tribunal was told about a variety of methods might be evolved to help to rate or classify the information available on the Internet, thus enabling parents and children themselves to block off the harmful material. Various filtering systems are already available to help screen the information coming through Internet servers and web sites. These methods might become related to any Codes of Ethics adopted and reinforced by hotlines to receive complaints from Internet users, which

39 UNESCO, 1999, *Final Report, Declaration and Action Plan; Sexual abuse of children, child pornography and paedophilia on the Internet. An International Conference 18-19 January, 1999*, Paris, UNESCO.

could activate the industry to take action against those conveying child pornography and or other harmful material through the Internet. This might include requests to remove certain types of material from the Internet and cross-referral to law enforcers in case of breaches of the law.

It should be emphasised that the Internet has a great potential also for child protection. The experiences of Casa Alianza, an NGO working on child protection in Central America, confirm this. Casa Alianza has a web site and network that helps to spread and collect information which can be used constructively against paedophiles and others seeking to abuse children.[40] It is a manifestation of a community response using the Internet positively for child protection. This has led to a variety of arrests and prosecutions of those sexually exploiting children, ranging from local exploitation to cross-border trafficking, such as into the United States. Many have been detained for child pornography, and the Internet has been used as a tool to denounce sexual exploitation and promote child rights. This is also witnessed by the growth of NGO monitoring of child sexual exploitation on the web, such as 'Pedowatch'.[41]

7.1 Conclusions

Nevertheless, the Report of the Third Hearings noted that there is still little concerted action to address a number of urgent challenges, including:

- Reducing the technological gap between developing and developed countries, especially the fact that the Internet is primarily being used in developed countries;
- Implement laws against the manufacturing, distribution and possession of child pornography, and promote law reform where existing laws fail to cover these elements;
- Ensuring that laws prohibit not only general forms of child pornography but also computed generated child pornography;
- Including in legislation and other actions not only pictures representing child pornography but also 'depictions' that can be made by using techniques such as morphing and pseudo-child pornography;
- Promoting self-regulation on the part of major Internet suppliers and users;
- Linking governments, law enforcers, the Internet industry and NGOs to establish commonly agreed standards as a kind of 'co-regulation', and provide services and remedies, such as hotlines to receive complaints, where there are allegations of violations of child rights on the Internet;
- Evolving classification systems in order to rate the type of information coming through the Internet;
- Providing greater access to filtering systems to block off harmful material and educate the public, especially parents and children to use them;
- Compelling Internet service providers to retain the allegedly illegal material for a certain period of time to help the police with investigations;
- Harmonising laws and policies in different countries on these issues.

Discussions during the Third Hearings raised additional issues that relate the roles of the State, intergovernmental organisations, the Internet industry and the community, including NGOs, including the following:

- How to explore the possibility of a software programme or virus to block child pornography sites;
- How to boycott servers who host child pornography and to promote servers who refuse to host child pornography;
- Whether UNESCO might take on the role of monitoring this issue.

40 www.casaallianza.org

41 Pedowatch is the name of an organisation for monitoring paedophilia on the Internet, established in August 1997. For further details see www.pedowatch.org.

Globalising the local:

International co-operation in the fight against child sexual exploitation

The importance of international commitment to eliminating the commercial sexual exploitation of children by all means available cannot be too strongly stressed. It is summed up as follows in the written statement of the US government to the Paris Hearings:

> It is only through continued work, international co-operation and constant reassessment of our progress that we will reach our ultimate goal of permanently making the world a safe place for our children.

Evidence heard by the Tribunal in all three Hearings indicated that there are three dimensions to co-operation with respect to combating the international sexual exploitation of children:

- Intergovernmental co-operation;
- Co-operation between States and civil society;
- Links at various levels between personnel in the two countries involved in an extraterritorial investigation and/or prosecution.

All three levels have already been mentioned in the course of this Report, but are here discussed in more detail because, as already observed, they are key factors in overcoming obstacles to implementation.

8.1 Intergovernmental co-operation

As seen earlier in this Report, intergovernmental co-operation can be bilateral, regional or global in scope. It may operate through formal treaties, such as the *Convention on the Rights of the Child*, in bilateral agreements and memoranda of understanding, as well as in agreements to co-operate at practical levels, through direct links between personnel, exchange of information and international assistance.

The Memorandum of Understanding between the governments of the United Kingdom and the Philippines is a case in point, covering a number of areas. The Preamble to this MOU refers to the two governments' desire 'to form a united front against child abuse'. It establishes a framework over three years of operation and was signed at a high level by the respective Secretaries of State for Foreign Affairs. Thus it not only provides for co-operation, exchange of intelligence and a flow of assistance and training from the United Kingdom to the Philippines, but also includes provisions for counterpart funding from the Philippines. The very practical terms of this MOU include a precise definition of 'primary points of contact' for law enforcement agencies, setting out a schedule of meetings at which the two governments can discuss the progress of the activities covered by the MOU, especially with respect to monitoring their impact.

At the Paris Hearings, the representative of the Australian government acknowledged the importance of this model and stated that Australia's own MOU with the Philippines, which had not at that point been fully drafted, would aim to increase the capacity to prosecute, and cover the following areas:

- Agreement to co-operate between law enforcement agencies;
- Australian assistance to the Philippines;
- Immigration controls;
- Close consultation between the two governments.

Lourdes Balanon, Director of Social Welfare and Development in the Philippines referred to the MOU between the UK and the Philippines in her evidence to the Hearings in Colombo. She mentioned that a key plan of action for children in the Philippines has been adopted, and stated that an initiative is being explored with the Netherlands to promote child friendly procedures such as the use of audio-visuals to document children's testimonies. On another front, co-operation with Sweden is being promoted to establish therapy centres for child assessment and recovery, as well as to form multidisciplinary teams for child protection. She stressed that it is necessary to recognise that the experts are often the children themselves, which is why an international conference for children would be held in Manila on the issue of child sexual exploitation in the near future.

Written evidence from the German government to the Paris Hearings also emphasised the efficacy of oral, but still binding, agreements with other governments, such as had been achieved between the German Federal Ministry of Justice and the Thai Prosecutor General. By means of this agreement 'both States, in addition to diplomatic channels, also accept a communication from the prosecuting authorities', followed up by a formal 'exchange of notes'. It was noted in this submission that mutual assistance of this kind is more difficult in the case of 'sex tourism' countries, for example in South East Asia, than within Europe. Nevertheless, it was stated that the German Federal Ministry of Justice was seeking such agreements with 'as many as possible of the countries regarded as the destinations of sex tourists':

> What this means in practice is this: If a German public prosecutor wants to ask his Thai colleague to interrogate a witness, then he will make the request not only through the usual diplomatic channels, but will also ask the Federal Ministry of Justice to communicate it direct to the Thai Ministry of Justice, which for its part immediately informs the Thai

public prosecutor. In the age of the fax machine, this means that the Thai prosecutor can on the very same day learn of the request from his German colleague and already have secured the interrogation of the witness by the time the official request reaches him through diplomatic channels.

The important role embassies can play in the practical implementation of treaties and agreements has already been discussed. Embassy staff can be alerted to the issues involved by the circulation of information, as has been the case with all the embassies and other overseas representations of the government of Belgium. However, the Tribunal did not receive any evidence that embassy staff of any country have been given specific training about either extraterritorial legislation or the sexual exploitation of children.

One obstacle to co-operation between governments is differences in sentencing policies. For example, some countries permit capital punishment while the international trend is against such penalty. Concern that a death penalty might be passed on one of its nationals might override concern for a perpetrator being brought to justice. This issue will clearly require some debate between governments within wider contexts than the sexual exploitation of children, and is a reminder that children's rights must be viewed within the panorama of the whole human rights agenda. On the other hand, another topic worthy of note that was raised in the Third Hearings is the potential of international co-operation in tracking convicted paedophiles and preventing them from continuing their activities in other countries. It was noted in the discussions in Colombo that the United Kingdom has a register of sex offenders, who are obliged to report to the authorities on their movements both at home and abroad.

8.1.1 Regional co-operation

In addition to bilateral agreements, a growing tendency to regional co-operation may also contribute to greater child protection. One suggestion from the discussions of the Third Hearings was to establish an international children's court for the Asian region. A child welfare initiative already exists under the Asia-Europe Meetings (ASEM). Although ASEM is primarily concerned with economic and political co-operation, the non-governmental sector has lobbied successfully to incorporate issues of transparency, accountability, human rights and the social dimension, resulting in the child welfare initiative. This provides for more training and judicial co-operation on child protection between the two regions and entails improved police co-operation, exchange of intelligence and information, and more youth participation. British policemen have also helped to provide training to Philippine police, while an exchange of liaison officers is being explored. A computer website is being set up to provide information on personnel and organisations working on child protection, as well as a legislative and policy-related data bank. These ideas were concretised by a Plan of Action adopted by a meeting of experts from the two regions, held in London in October 1998. A follow-up meeting of police and law enforcers against cross-border crimes will take place in 1999. Within the NGO sphere of operation a parallel movement is also taking place and ECPAT is proceeding with a project to promote international youth participation against sexual exploitation in 1999.

Other activities that might be contemplated at regional level include:

- International activities such as involvement in the work leading to the Draft Optional Protocol;
- Discussion of double criminality in a regional intergovernmental forum (such as has occurred within the European Union), including regional bilateral treaties such as that being developed between the governments of Australia and the Philippines;
- Changes in domestic legislation and legal procedures;
- Definitions of offences and the ages to which they apply;
- Determination of the chronological age of a child victim;
- Investigations of offences;
- Discussion and reconciliation of differences between:
  - Legal processes;
  - Rules concerning the admissibility of evidence.

8.2 Co-operation between States and civil society

It was often clear, and even more frequently implicit, in the testimony heard by the Tribunal that commitment to combating child sexual exploitation has led to an unusual degree of co-operation between governments and non-governmental organisations. A major catalyst in this regard was the Stockholm Congress against the Commercial Sexual Exploitation of Children, which provided unprecedented opportunities for exchanging information and networking between representatives of governments and nongovernmental organisations.

As pointed out earlier, the International Tribunal for Children's Rights is itself a response of civil society. Until the Stockholm Congress in 1996, NGOs (most notably ECPAT) had been at the forefront of campaigns to put the issue of the international dimensions of child sexual exploitation on the international agenda. In this role, NGOs had sometimes been cast in confrontational rather than co-oper-

ative relationships with governments. It is therefore notable that, in pursuit of the common aim of eradicating child sex tourism, new modes and levels of co-operation have been achieved. In the proceedings of the Paris Hearings this was manifest in the way the Australian government and Australian ECPAT representatives worked together to provide complementary evidence. Further examples of the same degree of alliance and trust occurred at other times in the Hearings with respect to other countries, such as Sweden and Belgium. In addition to seeing this co-operation in action, the Tribunal heard evidence touching on several examples of such co-operation on the ground, of which one example is the training provided by the NGO ECPAT to law enforcement agents of the State in many parts of the world.

The Tribunal concluded that civil society, including NGOs, has an essential role in the fight against the sexual exploitation of children. Instances of NGO initiatives and effective co-operation between NGOs and government personnel were given by several participants at the Third Hearings. These include the action of the PREDA[42] Foundation in the Philippines under the leadership of Father Shay Cullen. PREDA helps to pursue cases against perpetrators and also it provides facilities for the recovery and reintegration of the child victims, including therapy. Its work supports local action, community involvement and co-operation with government authorities, such as the Department of Social Welfare. PREDA also provides training on these issues, giving internships to train workers to help children overcome their traumas and to gather evidence for prosecutions, while using special interviewing facilities to document child testimonies, sometimes with the use of video recordings.

From the evidence in Colombo of Lourdes Balanon, Director of Social Welfare and Development in the Philippines, it could be seen that co-operation between NGOs and government agencies, nationally and internationally, has led to the successful prosecutions of paedophiles and sex tourists both in the Philippines as the destination country and in the countries of origin of the sex exploiters. Such co-operation included the following:

- Field visits by the law enforcers of the countries of origin to the destination country to gather and evaluate the evidence;
- Making sure that child victims who are taken to the countries of origin of the sex exploiters to give evidence, are accompanied by people familiar to them, who can help them adjust to the new environment;
- Exploring other means of apprehending perpetrators, such as extradition;
- Promoting both non-formal and formal arrangements for sharing evidence and helping in judicial proceedings, as exemplified in mutual co-operation agreements;
- Supporting initiatives such as the Memorandum of Understanding between the United Kingdom and the Philippines to provide training and know-how, especially to law enforcers.

8.2.1 Support for NGOs

In the Third Hearings it was also pointed out during evidence that it is not only child victims and their families that need to be protected during investigation and prosecution periods. NGOs that initiate action and protect children and their families may themselves come under threat, either to their staff or as organisations. Staff may at times become discouraged from filing cases against perpetrators for fear of a backlash, such as being subjected to multiple lawsuits initiated by the alleged or actual perpetrators, losing funding because of the influence of well-connected perpetrators, or physical threats to staff, buildings and equipment.

Despite such difficulties, case profiles from the Philippines cited by Father Cullen and by Sergio Cruz, a children's rights lawyer from the Philippines, showed that success is possible against the wrongdoers. The Tribunal heard that major factors in ensuring success are the existence of strong legislation against child sexual exploitation, governments that prioritise child protection, and recognition of the role of NGOs in child rescue and protection. This last factor is particularly important because it is often NGOs that alert governments to expose exploitative situations. Future co-operation would need to address the root causes as part of preventive action, as well as curative action, such as prosecutions of the perpetrators and compensation for the victims. The former may entail development assistance and employment for families, while the latter might well be linked to access to legal and other assistance and aid. The role of NGOs in mobilising the community for child protection was further highlighted by Jack Arthey representing ECPAT UK at the Colombo Hearings. He cited, in particular, the example of non-governmental work in the United Kingdom in lobbying successfully for the passage of an extraterritorial law against child sexual exploitation. It has also propelled the travel industry to take action against child sex tourism, in addition to convincing governments to adopt the child welfare initiatives.

42 PREDA is the acronym for People's Recovery Empowerment and Development Assistance Foundation. For further information see www.preda.org

Discussions concerning these presentations revolved around the impact of NGOs on government policy and whether there needs to be a regulatory body for NGOs to promote greater cohesion. While the impact of NGOs was underlined, there was a reticence to support such a regulatory body for fear of government control and manipulation of NGOs. However, registers of NGOs to facilitate contacts would be useful. These already exist to some extent; ECPAT, for example, has published a directory of organisations working on the issue.

8.3 Bilateral co-operation between professionals and/or agencies

This Report has already detailed many examples of co-operation as well as obstacles to bilateral co-operation between law enforcement agencies or legal professionals. Experiences described to the Tribunal in both written and oral submissions were varied. The main obstacles encountered appear to consist of problems of communication, including translation and interpretation, as well as problems of understanding (or misunderstanding) between different legal systems. Yet the Tribunal also heard of excellent examples of co-operation, based on flexibility and common commitment to eradicating the sexual exploitation of children. An example is the flexible attitude of the Sri Lankan police in the investigation of the Baumann case, who permitted investigators from Zurich to use a Swiss search warrant when they visited Sri Lanka.

A considerable amount of testimony on this aspect of extraterritorial legislation was presented to the Tribunal, much of which was anecdotal and none of which was systematic. Nevertheless it was possible to distinguish three main themes:

1. Successful cases of prosecution of sex tourists and associated agents have often been the result of investigations pursued through direct personal contact between law enforcement and legal agencies. This raises the issue, often referred to during the Hearings, of how to build and maintain sustainable systems given that these will be more costly in terms of both human and financial resources. As long as successful prosecution relies on the efforts of committed individuals or voluntary groups, prosecutions are likely to be limited to a few, awareness-raising 'show trials' that cannot protect more than a few children;

2. Even if bilateral agreements can be set in place between, for example, different police forces, there is still a need to devise ways of co-ordinating the efforts of the various types and levels of organisation and individuals involved. These include justice systems, law enforcement bodies, legal systems, welfare systems and so on. The Belgian government's submission was among those that strongly recommended to the Tribunal that there be focal points, or core groups to co-ordinate the different activities and policies involved in each case;

3. A balance should be struck between formal, intergovernmental connections, which provide authority to act as well as the mandate to carry out investigations and collect evidence, and the direct contact between individuals in the same profession, which might be described as the oil that eases the wheels of investigation. There seems to be a clear link between this requirement and the provision of specialised professional training that acts simultaneously as the basis for international networking. Implicit in this, is the idea of setting standards of good (and effective) practice.

8.4 Co-operation in training

It was clear from all three Hearings that there is already considerable experience at international and national levels in using both existing and novel means for combating the international dimensions of the sexual exploitation of children. Nevertheless, it is also true to say that all these efforts remain at a learning stage. Moreover, as is common in international child rights and welfare work, experiences are not always shared, with the risk of repeating errors or duplicating efforts. Thus, the First Tribunal identified the importance of learning from the evidence presented, on experiences of providing appropriate training for those who are involved in the implementation of extraterritorial legislation, in order to equip them for carrying out their work more efficiently but without compromising the principle of protecting children.

8.4.1 Public awareness

Although the content and methods used were not detailed, the Paris Tribunal heard of many training and awareness-raising schemes that are aiding the successful implementation of extraterritorial legislation in the fight against international child sex offenders. It appears that many of the activities in this field received considerable impetus from the Stockholm Congress Against the Commercial Sexual Exploitation of Children and that ECPAT has made significant contributions to this movement.

The importance of public education and awareness of the issues involved in the international dimensions of the sexual exploitation of children was mentioned by several

witnesses. In the first instance, this includes raising the awareness of tourists as a preventive measure. However, general public awareness has an equally important role to play. Ms. O'Briain referred to the fact that a public campaign for extraterritorial legislation in the United Kingdom led directly to legislative action by the government. With respect to individual cases, it was clear that public awareness also affects individual decisions to bring offences to light. Thus, in case study evidence, the Tribunal heard from Lia Freitas Calvacante from CEDECA (Child & Adolescent Defence Centre), in Ceará, Brazil, that police were alerted to offences through anonymous phone calls from the public about the activities of a German citizen and his Brazilian accomplices. Likewise, both Ms. O'Briain and Stan Meuwese, who gave evidence on behalf of Defence for Children International — Netherlands, pointed out that the Van der S case in the Netherlands came to light because of the action of a concerned individual who, in the course of his employment developing photographs, became concerned about the content of some images and went to the police.

8.4.2 Training implementers

The Tribunal also heard of various schemes to train those who are involved in implementation of extraterritorial legislation at many levels. Nongovernmental organisations have been at the forefront of efforts to combat the commercial sexual exploitation of children, yet they tend to be more accustomed to gathering information for advocacy and campaign purposes, and require training in assembling evidence that can be used effectively in legal processes. Even law enforcement agencies may not be sufficiently trained in methods of investigation in this field, particularly in obtaining information from children. As Christine Beddoe, testifying in Paris on behalf of ECPAT-Australia, commented, '[t]his is a highly specialised area of the law and requires a high level of intensive training […] this is no ordinary generic police work'.

Who needs training?

Training of judges, prosecutors and law enforcement personnel is of vital importance to an effective implementation of decisions taken. It was encouraging to learn that a number of countries (United Kingdom, Germany, USA) had sent police officers to train their counterparts in Thailand, Philippines, Vietnam; although one could hope for a better co-ordination between these initiatives, also within each country.

Report of Madrid Conference

The range of those who may require training is wide. It includes training customs and immigration officers to detect child pornography at airports and, as suggested by the National Commission against Sexual Exploitation in Belgium, specialised groups of magistrates, who would not only be able to employ new skills in court cases, but also exchange information and experiences among themselves. It was reported in Paris that, in Germany, 'further training seminars on specific topics for judges and public prosecutors, including some in collaboration with neighbouring European States, are being planned and held'. The MOU between the United Kingdom and Philippine governments entails that training for law enforcement agencies may include:

- Use of equipment;
- Skills training for law enforcement personnel;
- Expert assistance in curriculum development;
- Training opportunities for Filipino personnel in the United Kingdom.

Training must take context into account

The training of police officers and judges must take into account the specialised training necessary in view of dealing with victims and their families. So as to allow the latter to be treated fairly, without aggravating the shock and emotional tension that often accompany the process and to guarantee better application of the law. Moreover the training of police officers must take account of the shortcomings of current training methods, meaning the isolation of police officers, far from the present day reality of the country. The police must take part in this evolution, to better understand the origins of social issues, rather than only being summoned to react to them and arbitrate conflicts;

Recommendation of the Judges from Second Hearings

The evidence at the Hearings indicated that many training initiatives are under way, but with little exchange of information about content, methods and impact. To give one example, Muireann O'Briain stated in her expert evidence in Paris that ECPAT had arranged for a policeman working voluntarily in Thailand to train NGOs to assemble evidence, and also to train police officers in how to deal with child witnesses. However, she commented that this is an individual effort. In training, as in so many other aspects of the implementation of extraterritorial legislation, there is a need for sustainable systems to be put in place.

8.4.3 Training researchers

Although few witnesses mentioned research, the Tribunal identified this as an important requirement in the field of the international sexual exploitation of children. One reason for this was pinpointed in the evidence of ECPAT-Australia:

> Existing laws must be continually evaluated and improved. Child Sex Tourism and exploitation know no boundaries. People engaging in these activities are often predatory abusers who see themselves as mavericks and who in the past have been able to stay one step ahead of the law. Loopholes must be closed.

The need to monitor the progress of the fight against international sexual exploitation of children entails that social science researchers may require special training in the development and use of social indicators and other monitoring tools. Moreover, as Eugeen Verhellen stressed in his expert testimony in Paris, academic researchers, particularly in developmental psychology, have blocked the scientific understanding of children as social actors, and thus placed limits on their credibility as witnesses. Training in listening to and hearing children is not only required by law enforcement and legal personnel but also by researchers who collect a broader range of information on the contexts in which sexual exploitation of children takes place, as well as the impact of various efforts to eliminate it. As seen above, there is currently little knowledge available to guide legal and other personnel in matters concerning cultural attitudes towards and concepts of sexuality; on children's ability to form opinions and express themselves at different maturational and chronological ages; as well as on trauma and healing processes in different cultures. Research topics such as these require the development of specific skills in the fields of cross-cultural and childhood research.

8.5 Sharing information

Consequent on the need for new research skills is the requirement to exchange experiences and information, not only among researchers themselves but also among service providers, law enforcement agencies, legislators and legal personnel. On the question of data bases, the written submission of the government of the Netherlands reports that:

> Since July 1995, the CRI [National Criminal Intelligence Service] has been engaged in modifying and developing a system for the Netherlands which has been introduced in Canada, the United States and Austria under the name of VICLAS (Violent Crime Linkage Analysis System). This system can register the modes of operation of murderers and sex offenders. The offences covered are rape (by strangers), sexual offences relating to children (not within the family), sex-related murder and murders for psychotic motives. The system enables a link to be established between national and international crimes and possible offenders. Preparations for the introduction of this system are being made in other countries such as the United Kingdom, Finland, Belgium, Malta, Sweden and (outside Europe) Australia and New Zealand.

Such data bases, while necessary, are costly. The ECPAT-Australia submission in Paris mentioned a paedophile unit of the Australian Federal Police, with a data base of suspected and convicted child molesters that are known to travel overseas. Nevertheless, it appears that the mandate and resources of the Australian Federal Police 'do not extend to investigations of most of these cases'. Many of the Paris submissions also referred to the need for information to be exchanged between and among the countries of origin of the offenders and those in which offences take place. However, the Australian government evidence reported problems in the exchange of information between law enforcement agencies at different levels: 'That area is governed by a mixture of Commonwealth, State and Territory law, most of which differ'. Because of problems such as these, many submissions made recommendations about information exchange. The Netherlands government suggested that the VICLAS system of linkage centred on a data base about offenders should be extended. The Belgian government recommended the establishment of a European network of co-operation and exchange of information. In a press release included in documents submitted to the Tribunal, the government refers to a proposal for exchanging information under the auspices of the European Union:

> A European centre specialised in the disappearance of children. This centre will centralise all data gathered in each member State of the Union by the national cells for the disappearance of children; to draw up a manual for the benefit of the police setting forth techniques for fighting the trade in human beings and paedophilia.

The bilateral agreement between the governments of the United Kingdom and the Philippines includes exchange of information about best practice and research as well as 'relevant products and services offered by the private sector of either country'. The Swedish government refers in its written submission to the compilation of a computer register or data base of information that is intended to be shared.

8.6 Conclusions

The lessons learned during the course of the cycle of Hearings about international co-operation include the key role of NGOs in mobilising public opinion and government support for law reform and the importance of allocating resources for constructive changes. However, while NGOs may become partners of governments in child protection work, they need to preserve the right to challenge governments where action on child rights is deficient. They need to pressure for sufficient human and financial resources to respond to the issue. Nevertheless, various challenges remain in regard to co-operation both at home and abroad, including:

- Developing special courts and training special judges and magistrates to deal with cases of child abuse and exploitation;
- Avoiding situations in which children have to confront their exploiters in court;
- Making sure that child victims are not confined and treated like criminals, while perpetrators find it relatively easy to be freed on bail;
- Making it a mandatory obligation in all countries to report cases of child abuse and exploitation to the authorities for action;
- Ensuring adequate training for the local community and law enforcers to respond to the rescue and protection of child victims;
- Ensuring that there are sufficient numbers of trained social workers and counsellors to help the child victims.

All these factors would be greatly facilitated if they took place within an environment in which the *Convention on the Rights of the Child* was implemented at both national and local levels. Under Articles 12-15 of the Convention this would mean appropriate involvement of children and young people in programmes of child protection. Finally, the case studies presented to the Tribunal at all three Hearings indicated that resources made available to those who are committed to combating the sexual exploitation of children were adequate, and moreover that they were not, as occasionally happens, misappropriated. Children have a right, under Articles 3 and 4 of the CRC to adequate appropriate resources, both human and financial, in achievement of their rights. This means that persons caring for them should be appropriately trained and maintain professional standards of operation (Article 3(2)), and that resources must be made available 'to the maximum extent of their available resources and, where needed, within the framework of international co-operation' (Article 4 43). With respect to the latter, it needs to be emphasised that this means the total maximum available — not from what is available when all other social groups and concerns have been catered for.

43 See also Article 45, with respect to co-operation of United Nations specialist agencies, such as UNICEF.

9 Recommendations

The Members of the International Tribunal for Children's Rights,

Considering that, in adopting the UN *Convention on the Rights of the Child*, the international community has reiterated its interest and determination in promoting the well-being of children and the respect of their rights;

Recalling that, pursuant to articles 19, 32 to 36 of the UN *Convention on the Rights of the Child*, States Parties have undertaken to protect children from all forms of abuse and exploitation, including all forms of sexual exploitation and sexual abuse;

Recalling that, to this end, States Parties to the UN *Convention on the Rights of the Child* have undertaken to take all appropriate national, bilateral and multilateral measures to prevent: 1) the inducement or coercion of a child to engage in any unlawful sexual activity, 2) the exploitative use of children in prostitution or other unlawful sexual practices, and 3) the exploitative use of children in pornographic performances and materials;

Propose the following recommendations:

9.1 International action

1. International co-operation should include, but not be limited to, further discussion of the Draft Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
2. A Working Group should be established at an international level to develop a separate treaty that would reconcile the legal, administrative and investigative rules of concerned nations in order to facilitate the implementation of extraterritorial legislation in cases of the sexual exploitation of children. The agenda of this working group should include, but not be limited to:
   a) Definitions of sexual offences against children;
   b) Reconciliation of chronological ages of children with respect to sexual offences against children and the age of consent to sexual activities;
   c) The inter-relationship between rules of double criminality and the definition of ages;
   d) International agreements about, and the possible elimination of, double criminality;
   e) Rules concerning testimony;
   f) Standards of acceptable proof.
3. In light of the expansion of international tourism, the manner in which this industry is promoted should be modified so that ecological, historic and architectural aspects are promoted, rather than information about a culture's supposedly 'sensual and exotic' nature;
4. Promote regional international courts of child rights, with child-friendly procedures to enhance child protection.
5. Promote, develop or improve:
   a) Regional treaties or conventions against trafficking in children;
   b) Extradition treaties;
   c) Mutual co-operation agreements to ascertain the evidence to assist prosecutions;
   d) Memoranda of understanding between different countries to promote training on child protection, information exchange and development assistance;
   e) Stationing of police liaison officers in different countries;
   f) Joint police/immigration information sharing and action in co-operation with INTERPOL and related agencies.
6. To this end, international co-operation should be encouraged and reinforced through agreements at international, regional and bilateral levels, building on the experiences gained from the implementation of existing memoranda of understanding, such as those between the governments of the United Kingdom and the Philippines, and Germany and Thailand;
   These agreements should entail:
   a) Co-operation between relevant ministries, law enforcement agencies and legal professionals;
   b) Exchange of information and the development of data bases;
   c) Training at all levels, including specialist interpreters;
   d) Support and resources;
   e) Exchange of research results;
   f) Monitoring and documentation of the implementation of extraterritorial legislation and bilateral agreements.

9.2 National actions

1. The guiding instrument for action to assist and protect children is the United Nations *Convention on the Rights of the Child*. This is complemented by the Declaration and Agenda for Action of the 1996 World Congress against Commercial Sexual Exploitation of Children ('The Stockholm Declaration and Agenda for Action').

A key principle is the best interests of the child. Legislative and related improvements at national level should comprise the following:

a) Countries that have not yet ratified the *Convention on the Rights of the Child* should do so;

b) Timely national reports should be sent to the United Nations Committee on the Rights of the Child under Article 44, including verifiable, scientific data on all aspects of child sexual exploitation as laid out in Article 34 of the Convention;

c) The age for protection of the child from sexual exploitation (child prostitution, child pornography and child sexual trafficking) should be raised; the preferred age for protecting the child absolutely from sexual exploitation, irrespective of sexual consent, is 18 years;

d) Elevate the profile of child rights in the political agenda and set a higher priority for child protection, while inviting all politicians and political parties to have a policy on child protection; implementation of national laws and policies on child protection;

e) Introduce extraterritorial laws to cover the misdeeds of nationals and residents when committed against children in other countries;

f) Promote effective law enforcement in both the destination countries and the countries of origin of child sex abusers/exploiters;

g) Recognise the role of NGOs in interventions on behalf of child victims;

h) Make it mandatory for professionals and others who come into contact with information on child abuse/exploitation to report it to the authorities;

i) Establish registers of convicted paedophiles so as to facilitate tracing of their movements;

j) Provide more and better incentives for quality law enforcement;

k) Establish specialised police units on child protection with trained personnel, including women police officers.

2. Networking and co-operation between government agencies and NGOs should be fostered. This should be enhanced by community mobilisation to involve the business sector, including the computer and tourism industries, the media, local communities, leaders, parents and children as a vigilant force against child sexual abuse/exploitation. A directory of NGOs working on child protection should be identified and/or compiled for broad dissemination.

3. At national levels, multidisciplinary teams comprising lawyers, doctors, social workers, psychiatrists/counsellors, etc. should be formed to provide integrated interventions to help the child victim. These need to be coupled with more accessible services, including the following:

   a) Free telephone services for receiving complaints;

   b) Advertisements and other publicity giving addresses of help for victims;

   c) Information on television and radio, as well as mobile information facilities reaching out to child victims;

   d) Centres offering counselling and other therapies to assist victims;

   e) A pool of experts in forensic medicine to help with cases;

   f) Specialised units to assist in the collection of evidence, including DNA fingerprints.

4. Resource mobilisation and allocation should be maximised to reduce duplication; there can be more pooling of information, personnel, budgets and other resources for the best interests of the child.

5. Promote community participation in the detection, investigation and prosecution of cases, as well to ensure the recovery and reintegration of child victims in a child-sensitive manner.

6. Child and youth participation should be maximised, and their networks should be supported as part of a civil society force against child sexual exploitation.

9.3 The protection of children

The protection of children must be the first priority in all legislation and implementation of legislation aiming to combat the international dimensions of the sexual exploitation of children. Without prejudice to the presumption of innocence of the accused, this means that no harm should be caused to children in the course of investigations carried out for, or legal processes involved in, prosecuting and convicting those who commit sexual offences against children.

This principle entails that:

9.3.1 With respect to investigations

1. Investigations should not be carried out in ways that:
   a) Are psychologically damaging to children;
   b) Put children at risk of intimidation or physical danger.
2. Children must be protected from intimidation and physical danger, as well as undue disruption to their lives, identities or economic security, during the period before and during court proceedings;

9.3.2 With respect to proceedings

3. The best interests of the child (Article 3(ii) of the Convention on the Rights of the Child) and the right to have his/her opinion taken into account in all decisions taken on her/his behalf (Article 12 of the *Convention on the Rights of the Child*) should be the guiding principles in decisions about whether a child should:
   a) Travel to the country of the accused to give evidence;
   b) Give evidence by video link, either between countries or in the country of the accused;
   c) Give evidence in court;
   d) Give evidence in some other place.

   In all such decisions, due consideration should be given to the child's age, maturity and culture.
4. Child victims in sexual exploitation cases pursued through the application of extraterritorial legislation should not be cross-examined aggressively and in particular not to a greater extent than adults or than children who are nationals of the country of the accused. Domestic legislation should be amended to ensure that this is the case:
   a) A child's prior reputation should be inadmissible evidence with respect to his or her credibility;
   b) The interpretation of rules and procedures should be flexible in order to reflect the principle of the protection of children. Systems should adjust to the special vulnerabilities of children;
   c) Interpreters in investigative and legal proceedings should receive specialist training to enable them to deal sensitively with sexually exploited children. They should be able to express themselves fluently in both the dialect of the child and the language of the court. They should be aware of the cultural mores of the child's society and social group;
   d) Law enforcement and legal professionals should receive specialist training in communicating with and listening to sexually exploited children;
   e) At national and local levels, special courts, judges and procedures should be made child-friendly and gender-sensitive, in order to deal with situations of child abuse/exploitation. Judges and other law enforcers, including the police and prosecutors, at all levels need to be trained and sensitised to promote and respect child rights. A pool of trainers/educators has to be developed.
5. The quest for child-friendly procedures is based upon the need to avoid re-traumatisation of the child victims/witnesses via the judicial or other processes, especially in the pre-trial and trial stages. Such procedures could include the following:
   a) Inform child victims/witnesses of their role in regard to the court proceedings;
   b) Allow their views to be heard and respected;
   c) Provide proper assistance, including legal aid and assistance, and the availability of a lawyer to help them throughout the proceedings;
   d) Minimise inconvenience to them and respect their privacy;
   e) Reduce delays in the proceedings;
   f) Eliminate aggressive questioning or cross examination of child victims;
   g) Provide for trials in camera;
   h) Protect the identity of the child victim;
   i) Prepare child victims for the judicial process and avoid rushing to prosecute alleged abusers if a child is not ready to go to court;
   j) Ensure early medical examination of the child and avoid multiple re-examinations;
   k) Record a child's testimony as early as possible after the abusive incident, with other witnesses at hand;
   l) Provide adequate translations/interpretations and translators/interpreters who are sensitive to children's needs;
   m) Keep children in a safe environment;
   n) Provide for videotaping of child testimonies and video-link in court to prevent confrontation between a child and an alleged abuser;
   o) Legal aid and assistance should be made available to child victims;

p) The special needs of the child victims/witnesses should be catered for. These include the following:

i. Enable children to familiarise themselves with the court surroundings;

ii. Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the prosecutor;

iii. Inform the court of the special needs of children in general and of individual children in specific cases;

iv. Help children to be comfortable in the proceedings;

v. Encourage questioning to be short and clear so as not to confuse child witnesses.

9.3.3 With respect to follow-up

6. Victim support services should be alerted to and involved in all cases involving extraterritorial legislation and the sexual exploitation of children to provide culturally-appropriate counselling and socio-economic support to children at all stages in the process, including follow-up;
7. Children who have been victims of sexual exploitation and/or trafficking should not be repatriated unless follow-up support can be provided and certainly not if there is evidence that repatriation might threaten their physical security;
8. The physical and psychological damage to child victims needs to be dealt with more effectively. This may imply the availability of mandatory counselling and other psychological help;
9. States should allocate effectively the resources necessary for the follow-up and rehabilitation of those persons found guilty of sexual crimes, including:

a) Recruiting and training adequate technical personnel (such as psychologist, social workers and doctors);

b) Providing adequate solutions to the incarceration of sexual offenders.

9.4 Legislation

1. The implementation and consequences of statutes of limitation should be researched and reviewed;
2. The implementation of extraterritorial legislation with respect to the sexual exploitation of children should have the objective of establishing sustainable systems for prosecuting individual and corporate offenders. Such systems should:

a) Not rely on or be limited to voluntary or individual efforts;

b) Be able to deal with cases systematically, rather than on an occasional basis;

c) Be cost effective;

d) Be seen to be effective so that they act as a deterrent.

3. Current legislation relative to commercial sexual exploitation in general should be reviewed with a view to:

a) Full legal recognition of the rights of children and adolescents to their sexuality;

b) Permitting adequate classification of violations to these rights;

c) Clearly defining the penalties to which exploiters and clients are subject.

4. At the same time it is essential to ensure that legal and justice administration systems are equipped with better infrastructure, without which there can be no effective or uniform application of the law.

9.5 The Internet

1. To ensure effective co-operation at international level between States and civil society, resources should be sought for the establishment of a specialised, permanent forum for the exchange of information, including a web site on the Internet.
2. Countries should be called upon to provide a legal framework to protect children from sexual abuse/exploitation via the Internet as follows:

a) Enact or reinforce legislation against child pornography;

b) Ensure that such legislation covers not only the production and distribution of child pornography but also its possession;

c) Extend the scope of such legislation to encompass the Internet;

d) Make provisions to combat pseudo-child pornography;

e) Implement effectively the laws concerned.

3. The response of the computer industry, especially the Internet Service Providers, against child pornography should be promoted. This may entail self-regulation through a Code of Ethics, as well as a mechanism to receive complaints and cross-referral to the law enforcement agencies.

4. Children and parents should be made more aware of not only the benefits of the Internet as a tool of education and communication but also the underlying threats. This entails the following actions:

   a) More education for parents and children to be vigilant against harmful and/or illegal content;

   b) Greater use of ratings and filtering systems to block such content.

5. Software to block and erase child pornography on the Internet should be developed.

9.6 Monitoring and evaluation

1. Monitoring of laws, policies, programmes and personnel dealing with child protection needs to be promoted so as to assess their impact on children and improve their capacity.

2. Activities/programmes to assist and protect children should be assessed from the angle of sustainability to prevent the problems leading to abuse/exploitation, to protect the children affected and to promote their recovery and reintegration, including follow-up of cases;

3. Information about 'best practices' concerning interventions to help children should be collected and disseminated to improve performance;

9.7 Training

1. Training of relevant professionals, including law enforcement personnel, judges, magistrates, welfare workers and researchers, should take into account the special requirements of child victims and child witnesses, with respect to the provisions of the United Nations *Convention on the Rights of the Child*. In addition, specialist training for national level focal points within all professions that are involved in the implementation of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children should take place, with particular reference to the experience gained in existing training programmes.

   Training issues include, but are not limited to:

   a) Communicating with and listening to children;

   b) Cultural meanings and linguistic issues involved in understanding the sexual exploitation of children;

   c) The development of 'child-friendly' investigative and legal procedures;

   d) Appropriate research skills.

9.8 Information management

1. Research and documentation should provide the basis for informed collaboration. In particular, research is required on:

   a) Monitoring and evaluation of the implementation of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children;

   b) The impact of training programmes for professionals in this field;

   c) The potential of extraterritorial legislation in combating the dissemination of child pornography, particularly through electronic networks such as the Internet;

   d) The impact on children of involvement in international legal action against child sex offenders.

2. Greater dissemination of child rights and related laws, policies etc. is required. This should go hand in hand with circulation of information, training, awareness raising, sensitisation and education of target groups, such as law enforcers, to motivate them to protect children and of the community at large as child protectors. The issue of education about sexuality in a culturally sensitive manner also has to be tackled effectively.

3. Data and information concerning child sexual abuse/exploitation should be made more systematic and transparent, as they will have direct impact on the types of interventions needed to help children. Regional and national data banks should be established to collect experiences, laws, policies, court judgements etc. concerning action against child sexual abuse and exploitation.

4. Governments, if necessary with the help of international agencies, must take stock of all research conducted on the state of sexual exploitation in the country, and deepen their knowledge as to the causes and consequences of the problem. This means collecting and analysing reliable data;

5. Educational systems should include information and discussions on sexuality beyond the discipline of sex education, and simple classes on human biology, in such a way as to make sexual education an integral part of the school curriculum;

6. Promote awareness raising campaigns for the general public about the different forms of sexual exploitation, through the combined efforts of governmental and private organisations whilst encouraging universal participation and diminishing the level of widespread tolerance towards these acts;
7. Control over television programming must be maintained in order to convey information that may be useful to parents in selecting appropriate programs for their children, and to regulating scheduling restrictions for programs considered not appropriate for children and adolescents (including advertising).

9.9 General social measures

1. All interventions affecting child victims must be made more child- and gender- sensitive, bearing in mind the particular situations of girls;
2. Work towards a wider cultural transformation in attitudes towards childhood, sexuality and gender;
3. Address fundamental aspects of the fight against sexual exploitation such as the redefinition of sexual crimes;
4. Victim protection programmes and programmes to protect child rights defenders from harassment should be enhanced;
5. Address root causes in social and economic differences. Make social welfare assistance widely available and, where justified, special assistance must exist for persons who are victims of sexual abuse, through specialised prevention and protection services;
6. National and international courts and other authorities must be severe with individuals who abuse their positions of power or authority (including judges and police officers) humiliating, insulting or otherwise discrediting the testimony of plaintiffs in matters of sexual assault;
7. Better protection must be awarded to witnesses and victims, notably by adopting and reinforcing instruments such as the GAJOP (operational, juridical support group and protection to victims and witnesses) actually in force in Brazil;
8. Special attention should be given to existing legislation that protects domestic workers, whose situation of double exploitation (economic and sexual) places them in a particularly vulnerable state;
9. There needs to be an increase in the number of criminal procedures brought against sexual aggressors in an attempt to counter the loopholes and cracks in the legal systems, and in their manner of dealing with complaints.

9.10 The International Bureau for Children's Rights

is invited to take the following actions:

1. Compile, as a matter of urgency, information about 'best practice' in the field of children-friendly systems and procedures with a view to broad dissemination of the findings;
2. Request governments, the computer industry, NGOs and other concerned actors to provide information on the use of the Internet, especially the current situation concerning child pornography;
3. Request governments, the computer industry, NGOs and other concerned actors to send updates of legislation concerning child pornography, including criminalisation of the possession of child pornography;
4. Collect and disseminate information on extraterritorial laws and contact points for follow-up of cases;
5. Support training programmes for law enforcers and community watchdogs on investigation techniques against child sexual exploitation, including in regard to the Internet;
6. Establish a system for monitoring the present recommendations including a division of tasks and responsibilities between national and international organisations in order to follow-up on the results which will be obtained in every area;
7. Ensure that this Report is widely distributed.

Annexes

Annex I
Extraterritorial legislation against the sexual exploitation of children

As of October 1999, the criminal law of twenty-four states can be said to apply to sexual crimes committed against children abroad. These are:

Australia	Germany	Portugal
Austria	Iceland	Spain
Belgium	Ireland	Sweden
Canada	Italy	Switzerland
China	Japan	Taiwan
Denmark	Netherlands	Thailand
Finland	New Zealand	United Kingdom
France	Norway	United States

The extraterritorial provisions of some of these countries, such as Australia's *Crimes (Child Sex Tourism) Amendment Act 1994* or the *German Criminal Code* (as amended in 1993 and 1998), have been repeatedly put to the test before the courts, as well as discussed in length in various publications and reports. Others, on the other hand, have never actually been applied to extraterritorial cases of sexual exploitation of children and, as a result, less is known about them.

In preparation for the Paris Hearings, held in 1997, a questionnaire was sent to those countries which, at the time, were known to have adopted extraterritorial legislation to combat the international dimensions of sexual exploitation of children, as well as to those who were contemplating doing so in the near future. The questionnaire covered issues such as offences and sentences, double criminality, double jeopardy and the like. In spite of the extraordinary response we got following that request for information (including the verbal testimony by governments and NGOs at the Paris Hearings), we soon realised that it would take a lot of time and effort to complete the data and to stay up to date on the new provisions adopted and/or modified each year.

What follows is a summarised account of the data gathered so far on twenty-three out of the twenty-four countries listed above (despite our efforts, we were unable to gather sufficient data in time to complete a detailed information tableau on Thailand's extraterritorial criminal law). A more complete rendering, including information on other countries that may join the list — Mexico and Luxembourg, for example, are reportedly studying new bills which would make their criminal jurisdiction applicable to sex crimes committed against children abroad — can be obtained by contacting the Bureau, and will most likely be the subject of a future update. In the meantime, we invite you to contact the International Bureau for Children's Rights and to submit any additional information or correction which might help us strengthen and improve this admittedly imperfect account.

Australia

LEGISLATION

Crimes (Child Sex Tourism) Amendment Act 1994, No 105, 1994. Became law on July 5, 1994.

Legislative history

While a number of Acts already applied to crimes committed overseas by Australians (such as the War Crimes Act 1945 and the Crimes (*Traffic in Narcotic Drugs and Psychotropic Substances*) Act 1990), it was only in 1994 that the *Crimes* (*Child Sex Tourism*) Amendment Act extended Australia's extraterritorial jurisdiction to sexual crimes against children.

Theoretical justification

Presented during the 1997 Paris Hearings before the International Tribunal for Children's Rights, the Australian Government's Report (hereinafter Australia's Paris Report) noted, that the Commonwealth Parliament of Australia's constitutional power to make criminal conduct occurring overseas an offence in Australia flows from the external affairs power which enables Australia to legislate with respect to matters physically external to Australia.

Offences and sentences

The activities covered by Australia's extraterritorial jurisdiction over international SEC are confined to those proscribed by the child sex tourism legislation (contained in Part IIIA of the Crimes Act 1914). Australia's Paris Report cited the offences and the maximum penalties for each of the Part IIIA offences as follows:

- engaging, while outside Australia, in sexual intercourse with a person who is under sixteen (section 50BA); Penalty: Imprisonment for seventeen years;
- inducing a person who is under sixteen to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person (section 50BB) Penalty: Imprisonment for seventeen years;
- engaging while outside Australia in sexual conduct which involves a person who is under 16 (section 50BC); Penalty: Imprisonment for twelve years;
- inducing a person who is under sixteen to be involved in sexual conduct where the conduct takes place outside Australia (section 50BD); Penalty: Imprisonment for twelve years;
- benefiting from an offence against Part IIIA of the Act (regardless of whether the relevant act or omission occurs within or outside Australia) (section 50DA); Penalty: Imprisonment for seventeen years; and
- encouraging conduct which would constitute an offence against Part IIIA (regardless of whether the relevant act or omission occurs within or outside Australia (Section 50DB); Penalty: Imprisonment for seventeen years.

Furthermore, in imposing a sentence for the offences in sections 50BA-50BD, the court must take into account, in addition to the general sentencing principles (as mentioned in sub-section 16A(2) of the Act), the age and maturity of the person in relation to whom the offence was committed, so far as those matters are relevant and known to the court. In some cases, the penalty provided under the law of the country where the offence was committed could also be taken into consideration.

Targeted perpetrators

Australia's Paris Report noted that under section 50AD of the Act, a person cannot be charged with an offence against Part IIIA unless, at the time of the offence, the person was an Australian citizen, a resident of Australia, a body corporate incorporated by or under a law of the Commonwealth, State or Territory, or any other body corporate that carries on its activities principally in Australia. Furthermore, the "procurers and middle-men" (including bodies corporate) who are involved in inciting, aiding, facilitating or contributing to conduct of a kind, which would constitute an offence against Part IIIA are also targeted (by way of division 4 of Part IIIA). Finally, the general law of conspiracy and complicity also applies to those who might be involved in various ways in such activities.

Age of consent / protection

The offences in Part IIIA of the Act relate to children under the age of 16.

Statute of limitation

The prosecution of an individual or a body corporate for an offence against Part IIIA of the Act may be commenced at any time (subsections 15B(1) and (1A) of the Act).

Double criminality

As noted in Australia's Paris Report, although double criminality is not a requirement for prosecution, the philosophy underlying the Act is that the primary responsibility for protecting children from sexual exploitation rests with the country in which the conduct occurred. "The Australian legislation is viewed as an additional measure to enable prosecution of Australian citizens or residents who for some reason are not prosecuted where the conduct occurred."

Double jeopardy (*"ne bis in idem"*)

A person convicted or acquitted outside Australia for an offence against the law of that country cannot be convicted in Australia of an offence against Part IIIA of the Act in respect of that conduct (s. 50FC of Part IIIA).

Preliminary measures or procedures

Aside from the fact that a prosecution cannot proceed in the absence of the person charged, there are no special preliminary measures or procedures conditional to the laying of an accusation before courts for crimes committed abroad with regard to international SEC.

Rules of evidence (facilitating proof)

Part IIIA provides the mechanism for a witness to give evidence by video link subject to certain conditions (section 50EA):

(a) the witness will give evidence from outside Australia; and

(b) the witness is not a defendant in the proceedings; and

(c) the facilities required are available or can reasonably be made available;

(d) the court is satisfied that attendance of the witness at the court to give evidence would:

(i) cause unreasonable expense or inconvenience; or

(ii) cause the witness psychological harm or unreasonable distress; or

(iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and

(e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

Australia's Paris Report addresses a number of difficulties and problems associated with the detection, investigation, and prosecution of child sexual abuse cases; all of which contribute to a low conviction rate:

- Greater costs and resources for collecting evidence overseas and difficulties in ensuring that the evidence is admissible in an Australian court;
- Problems in the sharing of information with State/Territory police, as that area is governed by a mixture of Commonwealth, State and Territory law (most of which differ);
- Lack of expertise and, in some cases, will to investigate child sex tourism on the part of some overseas agencies;
- Overseas evidence and cultural and linguistic problems are said to be the major difficulties encountered when prosecuting a child sex tourism offence. Cultural differences are exemplified in language variance, as it may prove difficult to locate an appropriate interpreter in the overseas jurisdiction;
- Difficulties in obtaining proof of age of the child victim;
- While Division 5 of Part IIIA allows for evidence to be taken by video link in the prosecution of a child sex tourism offence, this may not be done as of right *(cf. Evidence (Closed Circuit Television) Act* 1991 (ACT) section 4A) and there are mandatory criteria which must be satisfied before the court may direct that the witnesses will give evidence by video link (hence the need to identify the appropriate agency or person to assess these criteria);

– Even where video link evidence is available, it may not be desirable to use it because of problems experienced by the child within his or her home country or because of the impact on the weight of the evidence. Furthermore, it may not be cost effective;

– The vulnerability of children to intimidation and violence in the extended period (generally in excess of twelve months) between the committal and the trial is a particular problem;

– Another anomaly in relation to the child sex tourism offences is the lack of a provision such as that in section 76G of the *Evidence Act 1971 (ACT)*, with respect to the inadmissibility of evidence regarding the sexual reputation of the complainant. Child victims of sexual assault should be no less protected than adult victims. In fact, there should be greater protection since consent is not an issue.

Register for paedophiles

In their report presented during the Paris Hearings, ECPAT-Australia stated that only the Australian Federal Police (AFP) can provide data on the number of Australian child molesters who travel abroad. Their paedophile monitoring and investigation unit, called Operation Mandrake, has compiled a database of suspected and convicted child molesters known to travel overseas. At the time of the report (1997), their database listed up to 1,300 Australians, more than 300 of which were listed as being active overseas.

PROSECUTIONS

Despite the difficulties referred to above, six persons have been charged to date under the above mentioned legislation. Three of those have been convicted, one was acquitted and the other two cases are still pending. Based on information contained in ECPAT-Australia's Report, here are the known cases to date under the *Australian Crimes (Child Sex Tourism) Amendment Act:*

1) A.R.C., was convicted and sentenced on 26 April 1996 to two years imprisonment for aggravated sexual assault against a five year old girl in the Philippines (as well as a further seven years in jail on similar charges that occurred in Sydney). The child victim did not have to travel to Australia, as evidence came by way of a video recording of the incident, which was seized at the time of A.R.C.'s arrest.

2) J.P., a seventy-six year old male, was convicted and sentenced to eight years imprisonment on 1 May 1997, for offences against two children in Thailand after 1994. J.P., who has a long history of child sexual abuse both in Australia and in Thailand, is HIV+. In handing down the sentence in Brisbane District Court, the Judge commented that the sentence reflected the appalling history of the accused. He was also sentenced to nine years imprisonment without parole in relation to numerous child sexual assaults committed in Australia.

3) Male, aged thirty-eight years, was charged in May 1996 for alleged sexual abuse against children (both boys and girls) in Thailand between July 1994 and 1996. Large quantities of child pornography were found. The case is said to be still pending.

4) J.H., Australia's former ambassador to Cambodia, was charged in April 1996 of sexually abusing minors under 16 in Phnom Penh, Cambodia, between July and December 1994. He appeared before the Magistrates Court in November 1996 but was released as the Magistrate refused to commit him for trial, concluding that there was insufficient evidence for a jury to convict. The evidence relied on the testimony of two teenage Khmer boys (who allegedly had sex with J.H. and an adult witness), who had been brought to Australia for the committal hearing. The boys were not physically present in the court room but their evidence was taken from another room via a close circuit television link. According to the Magistrate, the cross examination of the child witnesses had revealed inconsistencies in the boys' testimony regarding dates and places. However, the Magistrate also commented that an Australian child would not have been cross examined so rigorously and that cross examination of child witnesses under the Act should be reviewed. Although it did not lead to a conviction, this case is important because it highlighted the deficiencies of the *Crimes (Child Sex Tourism) Amendment Act 1994*, especially with regard to the lack of child-friendly procedures.

5) R.J.J., aged fifty-six years, was charged with one count of having sex with a child under 16 years in the Philippines, and two counts of "encouraging" another person to have sex with a child under sixteen years (said to be the first of its kind in the world). R.J.J. was committed to trial following his committal hearing on 7 May 1997.

6) J.A.L., aged forty-three years, was arrested in Karratha, Western Australia on June 6 1997, and charged with more than forty child sex offences (twenty-one counts of sexual conduct with a child overseas and twenty-two counts of possessing child pornography) which allegedly occurred in Cambodia between January and March 1997. Convicted on one count of sexual intercourse and eight counts of indecent dealings with underage girls, J.A.L. became the first person to be sentenced in Australia for sexually abusing children abroad. He was jailed for fourteen years. Evidence relied solely upon a series of photographs and undeveloped film, as Australian police were unable to locate any of the victims (even though they travelled to Cambodia).

Austria

LEGISLATION

Penal Code Amendment, Nov. 27, 1996.

Legislative history

The Austrian Penal Code was revised in 1994 to allow for the prosecution and punishment of Austrian citizens responsible for the sexual abuse of children committed abroad, as well as those responsible for the publication of child pornography.

Theoretical justification

No data available.

Offences and sentences

According to section 64 (4a) of the Austrian Penal Code, aggravated sexual abuse of persons under age (i.e. children under 14) and pornographic presentations involving such persons, constitute a criminal offence, subject to prosecution irrespective of the criminal law in force in the country of the scene of crime, if the perpetrator is an Austrian national with primary place of residence in Austria. Other criminal offences, punishable irrespective of the scene of the crime, are covered by section 64, para. 4, viz. Slave Trade (s.103 Austrian Penal Code) and Traffic in Human Beings (s. 127 Austrian Penal Code).

As for sentences, The Austrian Penal Code provides as follows:

- *Aggravated sexual abuse of persons under age* (section 206) carries from one to ten years of imprisonment for intercourse or other sexual act, or from five to fifteen years of imprisonment if the act has produced grave bodily harm or pregnancy, or from ten to twenty years if the victim dies. If, however, the offender is less than three years older than the victim, and the act has not resulted in penetration (against the victim's wishes), grave bodily harm or death, the offender shall not be punished unless the victim is under thirteen years of age.
- *Sexual abuse of persons under age* (section 207) carries from six months to five years of imprisonment; from one to ten years if the act has produced grave bodily harm; and from five to fifteen years of imprisonment if it has resulted in the death of the victim. If, however, the offender is less than four years older than the victim, and the act has not resulted in grave bodily harm or death, the offender shall not be punished unless the victim is under twelve years of age.
- *Importation, transportation, promotion, exportation of child pornography, or otherwise offering, providing, presenting, demonstrating or making available such material* (section 207a) carries a penalty of imprisonment of up to two years; or up to three years if the act has been committed for profit or by a member of a gang. *Possession of child pornography*, on the other hand, carries a penalty of up to six months imprisonment or fines of up to 360 daily rates.
- *Jeopardising the moral, ethical and health development of persons under 16 by subjecting them to sexual activities* (section 208) carries a penalty of imprisonment of up to five years.
- *Homosexual activities with persons under 18* (section 209) carries a penalty of imprisonment from six months to five years, if the offender has reached twenty years of age and the victim is between fourteen and eighteen years of age.

Targeted perpetrators

Austrian citizens residing in Austria (s.64(4a)).

Age of consent / protection

14 years.

Statute of limitation

The period of prescription (statute of limitation) ranges from 5 to 20 years, depending on the seriousness of the crime and the penalty foreseen, and does not begin until the victim reaches full age.

Double criminality

No.

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

If an Austrian law enforcement agency receives information on such a crime committed abroad, it must be reported to the justice authorities, i.e. to the Public Prosecutor's Office. Whether a letter rogatory will be sent, depends on the legal situation in the respective country.

Rules of evidence (facilitating proof)

Proof of the offender undertaking the commencement of the act is enough.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

Austria's stringent privacy law (Data Protection Acts) makes it impossible to have a national register or database containing the names of suspected or even convicted paedophiles. An employer nevertheless has the right to ask the applicant to provide an Extract from the Criminal Records, or a 'Certificate of Good Conduct', when they are applying for a sensitive job.

PROSECUTIONS

No data available.

Belgium

LEGISLATION

Criminal Code (*Code Pénal*) and Law on Criminal Instructions (*Code d'instruction criminelle*) as modified by the Law containing provisions to combat trafficking in human beings and child pornography (*Loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite de êtres humains et de la pornographie enfantine*) and the Law consecrating the extraterritoriality principle in matters of sexual abuse of minors under the age of 16 (*Loi du 13 avril 1995 consacrant le principe d'extraterritorialité dans le domaine des atteintes aux mœurs au préjudice de mineurs de moins de seize ans*). Both new laws were adopted on 13 April 1995.

Legislative history

The new law on extraterritoriality, along with another law on sexual abuse of minors adopted on the same day, aims to respond to the conclusions of a parliamentary commission of inquiry on the sale and trade in human beings, whose report was deposited on 18 March, 1994. As noted in 1997 by the representative of the Belgian Government at the Paris Hearings of the International Tribunal for Children Rights (hereinafter Belgium's Paris Report), before the legislative intervention of 1995, prosecution in Belgium of sexual abuse of minors committed abroad was subject to the following hypothesis and conditions:

- If the accused was Belgian, then it had to be an offence both in Belgium and in the country where it was committed (double criminality), the accused had to be found in Belgium. If the victim was a foreigner, a formal complaint was required from the victim or his/her family or an official denunciation from the foreign authorities (except in the cases of corruption of minors and prostitution);
- If the accused was a foreigner, than the victim had to be Belgian and the crime had to be punishable by more than five years in the country where it was committed.

As of 1995, the extraterritorial jurisdiction of Belgian courts was extended. New article 10*ter* of the *Code d'instruction criminelle* discarded the need for a formal complaint or official notice in order to prosecute either Belgians or foreigners found in Belgium who had committed sexual abuse against children outside the country (except in cases of possession of child pornography and misdeeds against children over 16). However, the need for double criminality remains.

Theoretical justification

As for the universal jurisdiction of Belgian courts with regard to the extraterritorial prosecution of such crimes (the law covers nationals as well as residents and those passing through Belgium), it was said to be justified by the fact that sexual exploitation of children and the sale of children constitute a grave attack on fundamental human rights, including that of human dignity (Belgium's Paris Report).

Offences and sentences

As a matter of general principle, any crime or '*délit*' committed by a Belgian abroad can be prosecuted in Belgium, subject to the double criminality condition. Furthermore, if the crime has been committed against a foreigner, then prosecution must be preceded by a complaint from the victim or his/her family or by a formal denunciation from the foreign authorities. As mentioned earlier, the new section 10*ter* of the *Code d'instruction criminelle* has done away with the requirement for a complaint or denunciation with regard to sexual abuse/exploitation of minors committed abroad, namely:

- Attack on modesty and rape of children under 16 (sections 372-377 of the *Code pénal*);
- Corruption of minors (section 379);
- Pimping (section 380*bis*);
- Corruption of minors and pimping with participation in an organisation (section 381*bis*);
- Sale and distribution of child pornography (section 383*bis*, §1 and 3);
- Traffic in human beings (section 77*bis* of the *Loi du 15 décembre 1980 sur l'accès, le séjour, l'établissement et l'éloignement des étrangers*);
- Offences listed in sections 10, 11, 12 and 13 of the *Loi du 9 mars 1993 sur les entreprises de courtage matrimonial*.

Targeted perpetrators

The law covers nationals as well as residents and those passing through Belgium.

Age of consent / protection

It varies according to category of offence: sixteen years for attack on modesty and rape, age of majority for corruption of minors and prostitution.

Statute of limitation

As noted by Professor Vitit Muntarbhorn in his 1998 UNICEF Report on extraterritorial criminal laws against child sexual exploitation, "The prescription period runs from the age of majority of the child for a period between 5 to 10 years, depending upon the seriousness of the offence."

Double criminality

As it now stands, the double criminality condition is required. However, as noted in Belgium's Paris Report, the Ministry of Justice is considering amending section 10*ter* of the *Code d'instruction criminelle* in order to do away with the double criminality condition.

Double jeopardy (*"ne bis in idem"*)

Section 13 of the *Code d'instruction criminelle* makes it impossible to prosecute someone in Belgium who has been judged and convicted abroad and has served his or her entire sentence or has benefited from a pardon or amnesty. The same is true of those who have

been acquitted. While a convict who has only partially served his/her sentence can be prosecuted again in Belgium, the sentence will be reduced to take into consideration the time already served abroad.

Preliminary measures or procedures

While the new law adopted in 1995 has done away with the need for a complaint from the victim (or his/her family) or formal denunciation from the foreign authorities (except in cases of possession of child pornography and misdeeds against children over sixteen), the requirement remains in effect with regard to prosecution of offences which took place prior to 1995 or which are not listed in article 10*ter* of the *Code d'instruction criminelle*.

Rules of evidence (facilitating proof)

As noted by Professor Vitit Muntarbhorn in his 1998 UNICEF Report on extraterritorial criminal laws against child sexual exploitation, since the modifications introduced in 1995, a child now has the right to be accompanied by an adult of his/her choice when he or she is to be questioned by judicial authorities. With regard to the use of videotape evidence, Professor Muntarbhorn notes:

"In recent years, the possibility of using videotapes has been tried and accepted in practice, even though the law does not clearly stipulate that videotape must be used. […] However, as in other civil law systems, there is still a need for a written transcription (*procès-verbal*) of the videotape."

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

According to Belgium's Paris Report, the main difficulties encountered by the magistrates are:

- There is often insufficient information to merit the lunch of an investigation: facts are rarely officially denounced to Belgian authorities by their foreign counterparts and the information is often too fragmented and incomplete to support a valid criminal charge;
- A number of difficulties are also associated with the verification and completion of the available information. Rogatory commissions are often slow and local authorities do not always provide the necessary support. One solution could be to set up, in each country, a central authority (law enforcement officials or public prosecutors) to serve as contact points;
- It often proves difficult to know the intention of local authorities with regard to future criminal prosecutions or the outcome of those already pending;

As to the steps taken to improve the effectiveness of the extraterritorial law, the Minister of Foreign Affairs has prepared and distributed two circulars to diplomatic posts abroad in order to draw diplomats' attention to the new rule of extraterritoriality and invite them to assist in its implementation. Another circular has also been prepared by the Ministry of Foreign Affairs, this time drawing the attention of Belgian tourists on the existence of the extraterritoriality rule.

Register for paedophiles

According to the new section 382bis of the *Code pénal* (adopted as part of the series of modifications in April 1995), any person convicted of an offence listed in sections 372 to 386*ter* of the *Code pénal* can, on top of the sentence normally imposed for these offences, be forbidden for a period of one to twenty years, to teach in an establishment which serves minors or to participate or be associated with any institution, association or organisation whose activities mainly concern minors.

PROSECUTIONS

According to Belgium's Paris Report, there appears to have been very few cases of implementation since the adoption of section 10*ter* of the *Code d'instruction criminelle*. A first reading among the five general prosecutors then revealed sixteen existing cases. They essentially involved acts committed abroad by Belgians on foreign victims. Listed countries include Thailand (six cases), Philippines, Cambodia, Congo (ex-Zaire), Rwanda, Czech Republic, Slovakia, Poland, Portugal, Spain and France. Since then, one Belgian national has been convicted of sexual offences committed on a fourteen year old boy in Thailand. The 1999 ECPAT Europe Law Enforcement Group's Report entitled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children*, provides detailed information and analysis of the case (pages 179-194), including the following summary on page 179:

> "On 18 May 1998 the correctional tribunal in Bruges convicted M.B., a 48 year old unmarried teacher, of unlawful sexual contact with a child under 16 years old in Thailand. It sentenced him to one year in prison, but required only half of this sentence actually be served. In addition, the court barred M.B. from teaching for ten years and withdrew his civil rights for five years.
>
> A special service of the office of the First Minister, called 'Centre for Equal Opportunities and Opposition to racism' was parti [sic] civil in this case on two levels: in representing the victim, in representing the interests of society for which it has been empowered by the law of 13 April 1995. This last empowering was not accepted by the Court.
>
> This case is the second time that a Belgian has been convicted in Belgium for sex tourism, and the first one grounded on the new extraterritoriality law of 13 April 1995."

Canada

LEGISLATION

Bill C-37 — *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation)*. Adopted April 25, 1996 and entered into force on May 26, 1997.

Legislative history

This Act modifies s.7 of the Criminal Code, by adding ss.7(4.1), to include extraterritorial application of the law to offences regarding child prostitution, pornography, sexual assault or abuse (s. 151-155, 159, 160(2),(3), 163.1, 170, 171, 173, and 212(4)). The Canadian government's report before the International Tribunal for Children's Rights at the Paris Hearings (hereinafter Canada's Paris Report) states:

> "The *Criminal Code* already addresses certain aspects of 'sex tourism'. More particularly, section 212 of *Criminal Code* (procuring) could apply to tour operators or travel agents offering sex tours in Canada […]. However, according to subsection 6(2) of the *Criminal Code*, the provisions of the *Criminal Code* do not apply to offences committed outside Canada, unless otherwise provided by legislation. […]
>
> As introduced in Parliament, Bill C-27 proposed to amend the *Criminal Code* to allow the criminal prosecution in Canada of Canadian citizens and permanent residents who travel abroad in order to engage in the sexual exploitation of children for money or any other form of consideration. However, following the testimony of certain witnesses, including ECPAT, the Justice and Legal Affairs Committee decided to amend the Bill in order to address not only the problem of child sex tourism, but also other sexual offences involving children committed abroad. By broadening the scope of the Bill, the Committee agreed that it would be possible to prosecute Canadians who go abroad in order to engage in sexual activities with Canadian or foreign children, whether for consideration or not."

Theoretical justification

According to Canada's Paris Report, the basis for unilaterally extending Canada's jurisdiction over its nationals for acts committed abroad is the nationality principle. However, as in other common law countries, Canada is generally reluctant to use the nationality principle in international law to exert jurisdiction over its own citizens for acts or omissions committed outside Canada, except in accord with an international agreement or consensus:

> "In the case of child sex tourism, it can be argued that the Convention on the Rights of the Child, which was ratified by Canada in 1991, provides a sufficient basis for this extension of jurisdiction. Article 34 of the Convention requires signatories to take all appropriate national, bilateral and multilateral measures to prevent the exploitation of children in unlawful sexual activities and prostitution. Article 35 compels States parties to take measures to prevent the sale, abduction or trafficking of children. Although such provisions do not specifically require States parties to exert their jurisdiction extra-territorially, some academics argue that the Convention might be interpreted as doing so. In addition, the degree of consensus on the need for extra-territorial legislation that exists within the United Nations Commission on Human Rights' working group on the draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography would indicate an emerging principle of customary international law with respect to child sex tourism."

Offences and sentences

The legislation covers sexual acts with minors while abroad. Maximum sentences vary between 5-14 years imprisonment, with a minimum of 5 years for living off avails of prostitution.

Targeted perpetrators

Citizens and permanent residents.

Age of consent / protection

fourteen years, eighteen for prostitution, between fourteen and eighteen if there is abuse of authority or trust.

Statute of limitation

No statute of limitation for prosecution of serious crimes.

Double criminality

No.

Double jeopardy (*"ne bis in idem"*)

As pointed out by Professor Vitit Muntarbhorn in his 1998 UNICEF Report on extraterritorial criminal laws against child sexual exploitation, Canada's extraterritorial law does not prohibit re-prosecution in Canada of an offence for which the accused has already been acquitted or convicted in the country where the offence was committed. Nevertheless, one might argue for an international application of paragraph 11h) of the *Canadian Charter of Rights and Freedoms* (1982), which provides that "any person charged with an offence has the right… h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried and punished for it again". One might also invoke that such re-prosecution would be contrary to the principles of fundamental justice (article 7 of the above mentioned Charter).

Preliminary measures or procedures

First, the appropriate authorities of the foreign state where the alleged offence took place have to formally request that Canada prosecute the suspected offender; such a request would likely be coupled with mutual legal assistance to facilitate the prosecution. Secondly, the responsible provincial Attorney General has to agree to go ahead with the prosecution.

Rules of evidence (facilitating proof)

Section 715.1 of the *Criminal Code* provides for the admissibility of videotaped evidence made shortly after the offence in which the child witness describes the acts complained of. This is intended to improve the quality and reliability of the deposition, replacing the written deposition usually made by the child (or signed by him) and describing to police his account of the events. When the child is called to testify, the videotape may be used to refresh his memory. Evidently, the videotape is not intended to replace the child's testimony, as the child nevertheless has to appear in court and 'adopt the contents of the videotape'.

Furthermore, Section 486 of the *Criminal Code* allows the use of a screen or of video link testimony under certain circumstances. Sub-Section 2(1) reads:

> "(2.1) […] Where the accused is charged with an offence […] and the complainant or any witness, at the time of the trial or preliminary inquiry, is under the age of eighteen years or is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, the presiding judge or justice […] may order that the complainant or witness testify outside the courtroom or behind a screen or other device that would allow the complainant or witness not to see the accused, if the judge or justice is of the opinion that the exclusion is necessary to obtain a full and candid account of the acts complained of from the complainant or witness."

Following Bill C-40, *An Act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend other Acts in consequence*, which came into force on June 17, 1999, video-link technology can now be used for the purpose of providing testimony from witnesses located abroad. The new *Criminal Code* Section 714.2 reads:

> "714.2 (1) A court shall receive evidence given by a witness outside Canada by means of technology that permits the witness to testify in the virtual presence of the parties and the court unless one of the parties satisfies the court that the reception of such testimony would be contrary to the principles of fundamental justice."

Finally, the Canadian legislation also includes a presumption with regard to the age of the victim which, in certain circumstances, represents a reversal of the burden of proof. Evidence that the victim was represented to the accused as being under the age of eighteen years is, in the absence of evidence to the contrary, proof that the accused believed, at the time the offence was allegedly committed, that the victim was under the age of eighteen years.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

On the anticipated difficulties regarding the application of the newly adopted Criminal Code modifications, Canada's Paris Report contains the following observations:

> "Obviously, adopting legislation is only one way of dealing with a problem as complex as child sexual exploitation. The next step is ensuring that the legislation is enforceable and that more global measures are taken to address the root causes of the problem. In Canada, we are presently working in the public legal education field to develop proposals on how to address the issue from a more general perspective.
>
> Another outstanding issue relates to the fact that criminal legislation relying on extraterritoriality is more difficult and expensive to implement for law enforcement and prosecution authorities as the evidence of the offence has to be gathered outside of Canada. However, Canada already has experience with similar cases as it can and does prosecute other extra-territorial offences such as war crimes and crimes against humanity. Witnesses can either be brought to Canada to testify or Canada can send rogatory commissions abroad to hear evidence.
>
> Furthermore, if the offence occurs in a country with which Canada has a mutual legal assistance treaty, there will be an enhanced capability to obtain admissible evidence. However, even with a treaty, given Canada's rigorous evidentiary laws and the standards set out in the *Canadian Charter of Rights and Freedoms*, the evidence gathering process could be lengthy and costly. In those instances where no treaties exist, it will be even more difficult and expensive to investigate and prosecute a case.
>
> The amendments that were made to the *Criminal Code* in order to criminalize child sex tourism and child sexual exploitation abroad are not symbolic. The entry into force of such legislation sends a strong signal to Canadians that if they travel abroad and engage in these types of activities with children, they will be prosecuted — if not by the country where they commit offence, then here in Canada."

In a document titled *'Report on the 1997-98-99 Activities — Canadian Strategy Against Commercial Sexual Exploitation of Children and Youth as Follow up on the First World Congress in Stockholm, 1996'* published in June 1999, the Advisor on Children's Rights to the Minister of Foreign Affairs (and member of the Senate of Canada) noted:

> "DFAIT [Canada's Department of Foreign Affairs and International Trade] publication, *Bon Voyage: But…*, has inserted a section called 'sexual exploitation of children' informing travellers that: 'The Government of Canada has

enacted legislation that permits the arrest and prosecution of Canadians in Canada for the sexual exploitation of children in other countries. Most countries are now enacting legislation, or more vigorously enforcing existing laws, concerning the sexual exploitation of children. Those convicted face a penalty of up to 14 years imprisonment'.

"DFAIT is now developing operating procedures for handling the reporting of cases in Canadian Embassies and Missions abroad on Bill C-27 via consular network, RCMP [Royal Canadian Mounted Police], etc." [...]

"Criminal Intelligence Service Canada (CISC) acts as a national clearinghouse for the exchange of information/intelligence between INTERPOL and other international law enforcement agencies and the provinces/territories. In September 1998, *Operation Cathedral*, which involved 21 countries, dismantled the Wonderland Club — an international paedophile network; and in March 1999, *Operation Bavaria*, originating in Germany, along with seven other countries including Canada, made numerous arrests pertaining to child pornography."

Register for paedophiles

Bill C-69, *An Act to amend the Criminal Records Act and to amend another Act in consequence* (as passed by the House of Commons on May 14, 1999), contains a new provision that enables notations to be made in the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police regarding the records relating to certain offences listed in the regulations of pardoned persons in order to allow the disclosure of those records when individuals are screened for positions of trust with children or other vulnerable groups. The government has stated that its specific intention in proposing this amendment is to cover sexual offences.

PROSECUTIONS

No cases to date (1999).

China

LEGISLATION

Criminal Law of the People's Republic of China (PRC), adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997. This law went into effect as of October 1, 1997 (Article 452).

Legislative history

The People's Republic of China (PRC) began developing its present legal system in the late 1970's. The new criminal law (1997) constitutes a major overhaul of the 1979 code. Among the notable changes is the introduction of the principle that a crime has to be legally defined before a conviction can be imposed (*nullum crimen, nulla poena sine lege*). Another is the abolition of the crime of counter-revolution, which has been replaced by the "crime of harming state security".

Theoretical justification

The general principle is that the Criminal Law of the PRC is applicable to all who commit crimes within the territory of the PRC, except as specially stipulated by law (Article 6).

More specifically, the Criminal Law of the PRC applies to crimes committed by PRC citizens outside the territory of the PRC, but there is no obligation to prosecute if the crime is committed by someone other than PRC state personnel and military personnel and if, under the Criminal Law of the PRC, the crime in question would be punishable by a minimum sentence of less than a three-year fixed-term imprisonment (Article 7).

The Criminal Law of the PRC also applies to foreigners who, outside PRC territory, commit crimes against the PRC state or its citizens, provided that the Criminal Law of the PRC stipulates a minimum sentence of not less than a three-year fixed term of imprisonment for such crimes and subject to double criminality (Article 8).

Finally, the Criminal Law of the PRC is also applicable to the crimes specified in international treaties to which the PRC is a signatory state or with which it is a member, and the PRC exercises criminal jurisdiction over such crimes within its treaty obligations (Article 9).

Offences and sentences

– *Article 152: Smuggling obscene material* (including movies, video/audiotapes, pictures, books and journals) is punishable with imprisonment of more than three years but less than ten years plus fine; offences of a serious nature are punishable with more than ten years of imprisonment or life imprisonment, plus fine or forfeiture of property; for offences of a less serious nature to imprisonment or criminal detention or restraint of less than three years, plus fine. Units (corporations) committing such offences shall be punished with a fine, with personnel directly in charge and other directly responsible personnel being punished accordingly.

– *Article 236: Rape of a woman* (by violence, coercion or other means) is punishable with no less than three years and no more than 10 years of fixed-term imprisonment. Sexual relations with a girl under the age of 14 is treated as rape and is to be given a heavier punishment. When involving one or more of the following circumstances, people charged with the above mentioned crimes are to be sentenced to no less than 10 years of fixed-term imprisonment, life imprisonment, or death:

  (1) rape of a woman or sexual relations with a girl in odious circumstances;

  (2) rape of several women or sexual relations with several girls;

  (3) rape of a woman in a public place or in public;

  (4) rape of a woman by more than one individual;

  (5) cause the victim serious injury, death, or other serious consequences.

– *Article 240: Abducting and trafficking of women or children* is punishable by 5 to 10 years in prison plus fine. Those falling into one or more of the following categories are to be sentenced to 10 years or more in prison or to be given life sentences, in addition to fines or confiscation of property. Those committing especially serious crimes are to be sentenced to death in addition to confiscation of property.

  (1) Primary elements of rings engaging in abducting and trafficking of women or children;

  (2) those abducting and trafficking more than three women and/or children;

  (3) those raping abducted women;

  (4) those seducing, tricking, or forcing abducted women into prostitution, or those selling abducted women to others who in turn force them into prostitution;

  (5) those kidnapping women or children using force, coercion, or narcotics, for the purpose of selling them;

  (6) those stealing or robbing infants or babies for the purpose of selling them;

  (7) those causing serious injuries or death, or causing other grave consequences to abducted women or children, or their family members;

  (8) those selling abducted women or children outside the country.

– *Article 241*: *Buying of abducted women or children* is punishable by up to three years in prison, or to criminal detention or surveillance. Forced sexual relations with bought women is considered rape and should be convicted and punished according to article 236. Those buying and selling abducted women or children are to be convicted and punished according to article 240 (abducting and trafficking of women or children). Those buying abducted women or children but not obstructing bought women from returning to their original residence in accordance with their wishes, or not abusing bought children and not obstructing efforts to rescue them, may not be investigated for their criminal liability.

– *Article 358: Organising or forcing others into Prostitution* is punish able by 5 to 10 years plus fine. Those falling under one or more of the following categories are to be sentenced to 10 years or more in prison or given a life sentence, in addition to a fine or confiscation of property:

  (1) those committing serious crimes of organising others for prostitution;

  (2) those forcing young girls under the age of 14 into prostitution;

  (3) those forcing more than one person into prostitution and those repeatedly forcing others into prostitution;

  (4) those forcing others who were raped by them into prostitution;

  (5) those causing severe injuries, death, or other serious consequences to those who are forced into prostitution.

Those committing one or more of the above crimes, if the case is especially serious, are to be given a life sentence or sentenced to death, in addition to confiscation of property.

Those helping others organise people for prostitution are to be sentenced to five years or fewer in prison in addition to a fine. If the case is serious, they are to be sentenced to 5 to 10 years in prison in addition to being fined.

– *Article 359*: *Harbouring prostitution or seducing or introducing others into prostitution* is punishable by up to five years in prison or criminal detention or surveillance, plus fine. Those seducing girls under 14 years of age into prostitution are to be sentenced to five years or more in prison in addition to a fine.

– *Article 360*: *Visiting a young girl prostitute under 14 years of age* is punishable by five years or more in prison plus fine.

– Articles 363-367 refer to the crimes of commercial and non-commercial production, reproduction, publishing, selling or dissem inating of obscene materials (defined as erotic books, magazines, motion pictures, video tapes, audio tapes, pictures, and other obscene materials that graphically describe sexual intercourse or explicitly publicise pornography), but there are no specific provisions to deal with material of this kind which involves children.

Targeted perpetrators

No data available.

Age of consent / protection

14 years.

Statute of limitation

According to Article 87, crimes are not to be prosecuted where the following periods have elapsed:

(1) *five years* in cases where the maximum legally-prescribed punishment is fixed-term imprisonment of less than five years;

(2) *ten years* in cases where the maximum legally-prescribed punishment is fixed-term imprisonment of not less than five years and less than ten years;

(3) *fifteen years* in cases where the maximum fixed-term imprisonment is not less than ten years;

(4) *twenty years* in cases where the maximum legally-prescribed punishment is life-imprisonment or death (unless otherwise approved by the Supreme People's Prosecutor).

It should be noted, however, that there are no limitation periods in cases where the accused escapes from investigation or adjudication or where, after the victim has filed charges within the period for prosecution, the authorities refuse to file for investigation as they should (Article 88). As for calculation of the limitation period, it begins on the date of commission (or completion) of the crime (Article 89). Should any further crime be committed during this period for prosecution, the period for prosecution of the former crime is counted as commencing on the date of the latter crime.

Double criminality

Only with regard to crimes committed by foreigners (Article 8).

Double jeopardy (*"ne bis in idem"*)

According to Article 10 of the Criminal Law of the PRC, "any person who commits a crime outside PRC territory and according to this law bear criminal responsibility may still be dealt with according to this law even if he has been tried in a foreign country; however, a person who has already received criminal punishment in a foreign country may be exempted from punishment or given a mitigated punishment."

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Note: English version of the Criminal Law of the PRC provided by Charles D. Paglee, *Chinalaw Web — PRC Criminal Law* (last modified April 7, 1998) as available at the following URL: <http://www.qis.net/chinalaw/prclaw60.htm>

Denmark

LEGISLATION

Danish Criminal Code

Legislative history

The Criminal Code dates back to 1866 and has always included extraterritorial provisions of crimes committed by Danish citizens abroad. An amendment in 1960 made citizens or permanent residents of other Nordic countries (Iceland, Finland, Norway, Sweden) comparable to Danish citizens for this provision. Section 7 of the Criminal Code provides for extraterritoriality.

Danish legislation contains no specific decree or law related to sex offences against children committed by Danish citizens in other countries (child sex tourism, child prostitution). The sections 216 to 236 of Chapter 24 of the Criminal Code on sex offences and pornography, where related to children, can be applied to such cases.

The Danish Criminal Code underwent a number of changes in 1997. These were compiled into an amended version of the Criminal Code that came into force August 12, 1997. There have been three minor changes in 1998-99, including the fact that criminal sanctions can no longer be imposed for adult prostitution (although it remains illegal, e.g. unemployment benefits cannot be obtained on the basis of this form of occupation).

Theoretical justification

The theoretical justification for Danish extraterritorial legislation is the nationality of the offender, which is extended to Nordic citizens domiciled in Denmark. Denmark requires double criminality in offences committed by Danish citizens.

Chapter 2 of the Danish Criminal Code contains the general conditions concerning the application of the provisions of the criminal law. In particular, section 7 reads:

§7. (1) Acts committed outside the territory of the Danish state by a Danish national or by a person resident in the Danish state shall also be subject to Danish criminal jurisdiction in the following circumstances, namely;

1) where the act was committed outside the territory recognised by international law as belonging to any state, provided that acts of the kind in question are punishable with a sentence more severe than simple detention; or

2) where the act was committed within the territory of a foreign state, provided that it is also punishable under the law in force in that territory.

(2) The provisions in subsection (1) above shall similarly apply to acts committed by a person who is a national of, or who is a resident in Finland, Iceland, Norway or Sweden, and who is present in Denmark.

Furthermore, section 8 reads:

§8. The following acts committed outside the territory of the Danish state shall also come within Danish criminal jurisdiction, irrespective of the nationality of the perpetrator:

1) where the act violates the independence, security, Constitution or public authorities of the Danish state, official duties toward the state or such interests, the legal protection of which depends on a personal connection with the Danish state; or

2) where the act violates an obligation which the perpetrator is required by law to observe abroad or prejudices the performance of an official duty incumbent on him with regard to a Danish ship or aircraft; or

3) where an act committed outside the territory recognised by international law as belonging to any state which violates a Danish national or a person resident in the Danish state, provided acts of the kind in question are punishable with a sentence more severe than simple detention; or

4) where the act comes within the provisions of section 183a of this Act. The prosecution may also include breaches of sections 237 and 244-248 of this Act, when committed in conjunction with the breach of section 183a; or

5) where the act is covered by an international convention in pursuance of which Denmark is under obligation to start legal proceedings; or

6) where transfer of the accused for legal proceedings in another country is rejected, and the act, provided it is committed within the territory recognised by international law as belonging to a foreign state, is punishable according to the law of this state, and provided that according to Danish law the act is punishable with a sentence more severe than one year of imprisonment.

Offences and sentences

Chapter 24 of the Criminal Code deals with sexual offences. Some sections deal with sex crimes in general, such as rape (216); sexual intercourse committed by other unlawful coercion (217) or extramarital intercourse committed by taking advantage of another person's mental illness or mental deficiency or sexual intercourse committed with a person who is in a position of being unable to resist the act (218); sexual intercourse committed on a inmate of an institution by a supervisor or employee (219); sexual intercourse committed by way of false representation (221); obscene behaviour (232); and inciting other persons to immorality or exhibiting an immoral mode of life (233). The following sections, on the other hand, either specifically refer to sex crimes committed against children or provide for harsher penalties when the victim is a child:

§ 220. Any person who, by grave abuse of the subordinate position or economic dependence of another person, has extramarital intercourse with that person shall be liable to imprisonment for a term not exceeding one year or, when the person is under twenty-one years of age, to imprisonment for any term not exceeding three years.

§ 222. (1) Any person who has sexual intercourse with a child under the age of fifteen years shall be liable to imprisonment for any term not exceeding six years.

(2) If the child is under the age of twelve, or if the perpetrator has enforced the sexual intercourse by coercion or by intimidation, the penalty may be increased to imprisonment for any term not exceeding ten years.

§ 223. (1) Any person who has sexual intercourse with a person under the age of eighteen who is his adopted child, stepchild or foster child, or who has been entrusted to him for instruction or education, shall be liable to imprisonment for any term not exceeding four years.

(2) The same penalty shall apply to any person who, by gravely abusing superior age or experience, induces any person under the age of eighteen to sexual intercourse.

§ 223a. Any person who, as a client, has intercourse with a person under the age of eighteen who, in full or in part makes a living through prostitution, shall be liable to a fine, simple detention or imprisonment for any term not exceeding two years.

§ 228. (1) Any person who

1) induces another to seek a profit by sexual immorality with others; or

2) for the purpose of gain, induces another to indulge in sexual immorality with others or prevents another who engages in sexual immorality as a profession from giving it up; or

3) keeps a brothel;

shall be guilty of procuring and liable to imprisonment for any term not exceeding four years.

(2) The same penalty shall apply to any person who incites or helps a person under the age of twenty-one to engage in sexual immorality as a profession, or to any person who abets some other person to leave the country in order that the latter shall engage in sexual immorality as a profession abroad or shall be used for such immorality, where that person is under the age of twenty-one or is at the time ignorant of the purpose.

§ 229. (1) Any person who, for the purpose of gain or in frequently repeated cases, promotes sexual immorality by acting as an intermediary, or who derives profit from the activities of any person engaging in sexual immorality as a profession, shall be liable to imprisonment for any term not exceeding three years or, in mitigating circumstances, to simple detention or a fine.

(2) Any person who lets a room in a hotel or inn for the carrying in of prostitution as a profession shall be liable to simple detention or imprisonment for any term not exceeding one year or, in mitigating circumstances, to a fine.

§ 234. Any person who sells obscene pictures or objects to a person under the age of sixteen, shall be liable to a fine.

§ 235. (1) Any person who commercially sells or otherwise disseminates, or who, with such an intention, produces or procures obscene photographs, films or similar objects of children shall be liable to a fine or to simple detention for any term not exceeding six months.

(2) Any person who possesses photographs, films or similar objects of children, who have sexual intercourse or sexual relations other than sexual intercourse, shall be liable to a fine. Similar punishment shall apply to any person who possesses photographs, films or similar objects depicting children, who have sexual relations with animals, or who use objects in a coarsely obscene manner.

It should be noted that sections 216-223a also apply to sexual acts other than intercourse (section 224), and that sections 216-220 and 222-223a can also be applied to sexual relations with a person of the same sex (section 225). Also, the punishment provided for offences listed in sections 228 or 229 may be increased by up to one half in case of repeat offenders (section 231), while lighter sentences (but no less than the prescribed minimum period of imprisonment) apply to offences committed in ignorance of the age of the person whose rights are infringed (section 226). Punishment under Sections 216-224 and 226 may be remitted if the persons between whom the sexual act took place have subsequently married each other (section 227).

It should be further noted that, with regard to sentences, subsection 10(2) of the Danish Criminal Code provides that the punishment imposed for an act committed abroad may not exceed that provided for in the law of that state.

Targeted perpetrators

As noted above, depending on the acts involved, Denmark's extraterritorial legislation can apply to Danish nationals and residents (sub-section 7(1) of the Danish Criminal Code), as well as to nationals and residents of Finland, Iceland, Norway and Sweden who are present in Denmark (sub-section 7(2) of the Danish Criminal Code). Finally it can also apply irrespective of the nationality of the offender (section 8).

Age of consent / protection

The age of consent is fifteen years. There are also provisions to protect children under eighteen or twenty-one years of age in special circumstances. Due to double criminality, the age of consent of the country where the act was committed must be considered.

Statute of limitation

The limitation of criminal proceedings is governed by Chapter 11 of the Criminal Code, namely sections 92-94, and the determining factor is the possible maximum sentence that can be imposed for a particular crime. In general, limitation periods range from two to fifteen years as follows:

– two years where the offence is not punishable with a penalty more severe than imprisonment for one year, or where the penalty for the offence would not exceed a fine (subsection 93(1)1));
– five years, where the offence is not punishable with a penalty more severe than imprisonment for four years (subsection 93(1)2));
– ten years, where the offence is not punishable with a penalty more severe than imprisonment for ten years (subsection 93(1)3));
– fifteen years, where the offence is not punishable with a penalty more severe than imprisonment for a determinate period (subsection 93(1)4)).

However, some exceptions apply, such as the one contained in subsection 93(3) which states that for breaches of section 223 (1) — *sexual intercourse with a person under the age of eighteen who is his adopted child, step-child or foster child, or who has been entrusted to him for instruction or education* — the period of limitation shall in no case be less than ten years.

Double criminality

Double criminality is required for the prosecution, in Denmark, of acts committed within the territory of a foreign state by Danish nationals and residents, as well as by nationals and residents of Finland, Iceland, Norway and Sweden who are present in Denmark.

Double jeopardy (*"ne bis in idem"*)

The relevant dispositions are contained in sections 10a and 10b of the Danish Criminal Code, which read:

§10a. (1) A person who has been convicted by a criminal court in the state where the act was committed or who has received a sentence which is covered by the European Convention on the International Validity of Criminal Judgments, or by the Act governing the Transfer of Legal Proceedings to another country, shall not be prosecuted in this country for the same act, if,

1) he is finally acquitted; or

2) the penalty imposed has been served, is being served or has been remitted according to the law of the state in which the court is situated; or

3) he his convicted, but no penalty is imposed.

(2) The provisions contained in subsection (1) above shall not apply to a) acts which fall within section 6(1) of this Act; or b) the acts referred to in section 8(1)1) above, unless the prosecution in the state in which the court was situated was at the request of the Danish Prosecuting Authority.

§10b. Where any person is prosecuted and punishment has already been imposed on him for the same act in another country, the penalty imposed in this country shall be reduced according to the extent to which the foreign punishment has been served.

Preliminary measures or procedures

There are no preliminary measures or procedures. A crime, committed in Denmark or abroad, can be investigated when it is brought to the knowledge of police or other appropriate authorities by the victim or any other person, or the police is informed of the crime through any other means.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

Since there have been no prosecutions related to child sex tourism, it is not possible to point out difficulties in implementation of this legislation or steps to improve it. There has been a public discussion on the need to abolish double criminality for some crimes such as female circumcision, when the media revealed that persons with permanent residence in Denmark have taken their daughters to be circumcised in a country where this practice is not outlawed, as it is in Denmark. There was a public demand that such cases should be prosecuted but, due to double criminality, this has not been possible.

Register for paedophiles

The Ministry of Justice keeps a Criminal Records Register, which includes information on all imposed sentences of imprisonment. This applies to sentences given to paedophiles as well. Information is restricted and protected. Only appropriate authorities can access this information. In addition each person has a right to receive a copy of his/her own criminal register (or the lack of it).

Section 236 of the Criminal Code includes the possibility of imposing restrictions to future employment in schools, kindergartens, and child care institutions, of persons who have been sentenced for sex crimes against children, specified in sections 216, 217, 218 para 1, 222 or 223 para 2, 224, 225 or 226 as well as section 232. It also restricts such persons from frequenting play parks or gardens, on commons, in the neighbourhood of schools, recreation grounds, children's homes, mental hospitals or institutions for the mentally deficient, or in particular woods or at particular bathing establishments or seaside resorts. Those convicted of one or more of the infractions listed above can also be forbidden by the court to allow children under the age of eighteen to live in their house or, without permission of the police, to stay themselves with persons who live together with children under eighteen. These restrictions are not made public but the police will see to their implementation and be notified in case of breach. Institutions working with children can request the police to do a background check of a person who is to be employed or is employed, if they suspect the person to have committed such crimes.

PROSECUTIONS

To date (1999), there has been no prosecutions of Danish citizens related to sex crimes against children committed abroad.

Finland

LEGISLATION

The Penal Code of Finland; Laws amending the Penal Code, Nos. 626/1996 and 563/1998. Amendments to the Penal Code were adopted on 16 August 1996 (Law No. 626/1996) and 24 July 1998 (Law No. 563/1998) and entered into force respectively on 1 September 1996 and 1 January 1999.

Legislative history

The Penal Code adopted in 1889 has seen numerous amendments throughout the years. The latest Law amending the Penal Code (563/1998) contained new provisions as well as changes to existing ones with respect to extraterritorial crimes, sex crimes and double criminality.

While Finnish legislation contains no specific decree or law related to sex offences committed by Finnish citizens against children in other countries (child sex tourism, child prostitution), the following sections of the Penal Code can be applied to these cases:

- Chapter 20 of the Penal Code (Sexual Offences), which contains the provisions on sexual abuse of children (Articles 5-8);
- Chapter 17 of the Penal Code (Offences against Public Order), which contains the provisions on possession and distribution of pornography in general, with Articles 18 and 19 relating to the distribution and possession of child pornography.

Theoretical justification

The theoretical justification for the Finnish extraterritorial legislation is the nationality of the offender. Finland takes universal jurisdiction for all crimes committed by Finnish citizens outside the country. This rule is extended to Nordic citizens and aliens domiciled in Finland, and even to aliens not domiciled in Finland but nevertheless residing there.

Offences and sentences

- Rape (sexual intercourse by threat or violence or by taking advantage of the victim's incapacity to defend himself/herself) is punishable with imprisonment for a minimum of one year and a maximum of six years (section 1);
- Aggravated rape (rape which causes bodily injury, serious illness or a state of mortal danger; pare committed in a particularly brutal, cruel or humiliating manner; or rape committed with the use of a weapon or with the threat of serious violence) is punishable with imprisonment for a minimum of two years and a maximum of ten years (section 2);
- Coercion into sexual intercourse (sexual intercourse by unlawful coercion other than rape) is punishable with imprisonment for a maximum of three years (section 3);
- Coercion into a sexual act (sexual act other than intercourse, violation of sexual self-determination) is punishable with a fine or imprisonment for a maximum of three years (section 4);
- Sexual abuse (intercourse or other sexual acts) committed in one of the following circumstances is punishable with a fine or imprisonment for a maximum of four years (section 5):

1) with a person under eighteen years who is at a school or other institution under the perpetrator's responsibility or control or is comparably subordinate to the perpetrator;
2) with a person under eighteen years whose ability to decide on his/her sexual behaviour is decidedly much weaker due to immaturity or age difference;
3) with a person who is cared for at a hospital or other institution and whose ability to defend himself/herself is weakened by an illness, disability or any other infirmity;
4) with a person otherwise very dependent on the perpetrator, by gravely misusing this dependency;

- *Sexual abuse of a child* (sexual intercourse with a person under sixteen years of age, sexual act by touching or other means that can impair the minor's development or inducement to such an act) is punishable with imprisonment for a maximum of four years (section 6). This section does not apply in cases where there is no major difference between the parties in their age or mental and physical maturity. Sexual intercourse with a minor who is sixteen years but not eighteen years by a parent or a person, who has a position comparable to a parent or is living in the same household with the minor, must also be considered as sexual abuse of a child;
- *Aggravated sexual abuse of a child* (sexual abuse of a child whose age or stage of development are such that the offence is conducive to causing special injury to him/her; sexual abuse of a child committed in an especially humiliating manner; or sexual abuse of a child which is conducive to causing a special injury to the child owing to the special trust he/she has put in the offender or the special dependence of the child on the offender) is punishable with imprisonment for a minimum of one year and for a maximum of ten years (section 7);
- *Buying sexual services from a young person* (to get a child under eighteen years of age to have sexual intercourse or to perform another sexual act by promising or giving remuneration) is punishable with a fine or to imprisonment for at most six months (section 8);
- *Pandering* (for economic gain, keeping a room or other premises for prostitution, taking advantage of the prostitution of others or enticing or intimidating another to engage in prostitution) is punishable with a fine or imprisonment for a maximum of three years (section 9);

Attempts are also punishable by law in all of the above offences. Provisions on rape and sexual coercion can be applied to crimes committed against both adults and children.

Chapter 17, Section 22 deals with incest:

– *Incest* (sexual intercourse with one's own grandchild, child, parent, grandparent, great-grandparents, or own siblings) is punishable with a fine or imprisonment for a maximum of two years. This does not apply to a person who was under eighteen years of age and had intercourse with his/her parent or grand-parent nor to a person who was unlawfully coerced to have intercourse.

Finally, Chapter 17, Sections 18-22 deal with child pornography:

– *Production, importation, marketing, and distribution of child pornography* are punishable by fines or by imprisonment for a maximum of two years. Possession of child pornography is punishable by fines or imprisonment for a maximum of six months. Child pornography is defined as photos, videotape, movie or other realistic pictorial representation of a child in a sexual intercourse or other comparable act or in any other manner offensive to sexual mores. Marketing and advertising of all pornography by any means to persons under fifteen years is also punishable by fines or imprisonment of a maximum of six months.

Targeted perpetrators

Finnish legislation does not specifically identify child sex tourism as a crime but a person committing any of the above offences against a minor, ranging from offering remuneration for sexual favours to rape, can be prosecuted. As mentioned earlier, Finland takes universal jurisdiction for all crimes committed by Finnish citizens outside the country, as well as those committed by Nordic citizens and aliens domiciled or residing in Finland.

Age of consent / protection

The age of consent is sixteen years. There are also provisions to protect children under eighteen in special circumstances. Since Finland does not require double criminality in these cases, the age of consent in the foreign country does not affect the possibility to prosecute a person in Finland.

Statute of limitation

Limitation starts generally from the date of the offence and is one year in cases where the prosecution rests with the plaintiff (which are nowdays a minority). However, in sexual crimes against children the prosecution rests nowadays with the Prosecutor and the decisive factor in determining the limitation of criminal proceedings is the maximum sentence imposed for a particular offence as follows:

MAXIMUM SENTENCE	LIMITATION PERIOD
Life imprisonment	none
Imprisonment for eight years or more	twenty years
Imprisonment from two to eight years	ten years
Imprisonment from one to two years	five years
Fines or imprisonment for a maximum of one year	two years

Double criminality

As a general rule, Finland requires double criminality in relation to offences committed by Finnish citizens (et al.), but an exception was made recently regarding sexual crimes committed against children by adding a par. 2 to the Section 11 in Chapter 1 of the Penal Code. Thus, double criminality is not required for offences of possession and distribution of child pornography; Sexual abuse of a child and aggravated sexual abuse of a child; buying sexual services from a young person and pandering (if the crime is committed against a person under 18 years of age).

Double jeopardy (*"ne bis in idem"*)

Chapter 1, Section 13 of the Finnish Penal Code states that a person may not be prosecuted in Finland for a crime for which that person has been previously acquitted, declared guilty without a sanction being imposed or for which that person has served his/her sentence in its entirety or his currently doing so in another country. The same applies to sentence which have lapsed under the law of the foreign State.

Preliminary measures or procedures

A crime committed abroad can be investigated when an offence is brought to the knowledge of appropriate authorities, but a decision by the Prosecutor General is required for prosecution.

Rules of evidence (facilitating proof)

In Finland, children can be heard in court, if this is deemed necessary and not harmful to the child. In all cases dealing with children, the best interests of a child is the ruling factor. There are no specific provisions about videotaped evidence.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

Since there have been no prosecutions related to child sex tourism, it is not possible to point out difficulties in implementation of this legislation or steps to improve it.

Register for paedophiles

The police keep a register for persons suspected of any type of crimes. Suspected paedophiles are included. The Ministry of Justice keeps a Criminal Records Register which includes information on all imposed sentences of imprisonment but not of fines. Information in the criminal records register is restricted, accessible only to the appropriate authorities and to the concerned individual.

PROSECUTIONS

As of September 1999, Finnish extraterritorial law has not yet been applied to sexual offences against children committed by Finnish nationals while abroad.

France

LEGISLATION

Penal Code Amendment (Feb. 1994), Loi Mehaignerie (Penal Code amendment, Feb. 1995) and Loi no 98-468 du 17 juin 1998.

Legislative history

As a general rule, French penal law has long been applicable to crimes (and 'délits', in certain circumstances) committed by French nationals outside of France (see, sections 113-6, 113-7 and 113-8 of the Code pénal). According to these dispositions, an act committed abroad by a French citizen can be prosecuted in France if:

– It constitutes a crime (which encompasses rape and grave violence on a minor);

– It constitutes a 'délit', subject to the double criminality condition and a complaint by the victim (or his/her family) or an official denunciation by the foreign authorities.

The law was modified in 1994 in order to do away with the double criminality condition and to discard the need for a denunciation with regard to the extraterritorial prosecution of certain 'délits', namely, sexual contact ('atteinte sexuelle') without violence accompanied by payment of remuneration (sections 227-26, alinea 4). The law was further modified in 1998 to extend the extraterritorial jurisdiction to all sexual offences (without regard to double criminality) committed against minors, as well to allow the prosecution of those ordinarily residing in France. The new law provides for the strengthening of penalties against legal persons involved in sex tourism. Extra measures concerning medical and psychological follow-up are added to normal sentences. The new law also reinforces existing measures concerning child pornography.

Theoretical justification

According to Professor Vitit Muntarbhorn's 1998 UNICEF Report on extraterritorial criminal laws against child sexual exploitation, the general scope of extraterritoriality is justified by the fact that France does not, as a rule, extradite its nationals.

Targeted perpetrators

As last modified in June 1998, the law now applies to French citizens as well as people ordinarily residing in France and corporate bodies.

Age of consent / protection

fifteen years.

Statute of limitation

In France, the period of prescription for 'délits' is three years.

In cases of crimes or '*délits*' committed on a minor by an ascending parent ('*ascendant*') or by a person in a situation of authority with regard to the child, the prescription period begins only when the victim achieves majority.

It should be noted that sections 18*bis* et 18*ter* of the proposed bill would modify the rules of prescription as follows:

Offences and sentences

French Penal law defines the following sexual offences against minors and associated sentences:

OFFENCES	VICTIM AGED 15-18	VICTIM AGED UNDER 15
Sexual aggressions		
Rape accompanied by cruel acts	Life	Life
Rape causing death	30 years	30 years
Rape	15 years	20 years
Sexual assault other than rape having caused lesion or committed by a person in situation of authority	10 years + 1 MF	10 years + 1 MF
Sexual assault other than rape	5 years + 500.000F	7 years et 700.000F
Sexual exhibition	1 year + 100.000F	1an et 100.000F
Endangering minors		
Sexual assault without violence menace or constraint (*'atteintes sexuelles'*)	5 years + 500.000F (only if committed by a person in situation of authority)	5 years et 500.000F (up to 10 years + 1MF if committed by a person in situation of authority; by more than one person or if accompanied by payment of remuneration)
Corruption of minors	5 years + 500.000F (or 7 years + 700.000F if through the use of a telecommunication network or if committed in or around a school)	7 years + 700.000F
Distribution or possession (with intent to distribute) of child pornography	3 year + 300 000F (or 5 years + 500.000F if through the use of a telecommunication network)	3 years + 300 000F (or 5 years + 500.000F if through the use of a telecommunication network)

– Firstly, the period of prescription of certain offences (torture, violence, rape of minors) would begin, whoever the perpetrator is and whatever his relation toward the victim, when the victim achieves majority;

– Secondly, the period of prescription would be extended from three to ten years in cases of sexual assault.

Double criminality

As noted earlier, the extraterritorial implementation of French penal law does not require double criminality in regard to crimes (rape violent assault) and has been reformed to discard double criminality in regard to all sexual offences committed against children (section 227-27-1 of the *Code pénal*).

Double jeopardy (*"ne bis in idem"*)

The protection against double jeopardy applies, both in relation to crimes and '*délits*' (section 113-9 of the *Code pénal*). The offender can nevertheless be prosecuted again if he/she has not fully served his/her sentence.

Preliminary measures or procedures

While a complaint from the victim and an official denunciation is never required with regard to the prosecution of crimes, both are usually required prior to extraterritorial prosecution of lesser offences considered as '*délits*'. The law was modified in 1994 in order to do away with that requirement in cases of sexual contact ('*atteinte sexuelle*') where there is payment of remuneration. The law was further modified in 1998 to do away with the requirements for a complaint or official denunciation in all cases of sexual offences committed against children (section 227-27-1 of the *Code pénal*).

Rules of evidence (facilitating proof)

At present, French law allows videotaping of child victims as well as support by psychologists and psychiatrists, but leaves it to the judge to decide whether or not to use such techniques.

In order to prevent psychologically fragile witnesses from having to make multiple depositions and thus relive traumatising events, section 19 of the proposed bill would introduces a new section to the *Code de procédure pénale* (section 706-53) which allows the public prosecutor and the *juge d'instruction* to authorise the videotaping of a minor's interview when he or she has been victim of a sexual offence. Future section 706-52 of the *Code de procédure pénale* states that interviews and confrontations of minors victims of sexual offences must be absolutely necessary in order to uncover the truth.

Moreover, future section 706-54 would allow interviews and confrontations to be done in the presence of a psychologist, a member of the child's family or the '*administrateur ad hoc*' with authorisation from the public prosecutor or the *juge d'instruction*.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

As noted by Professor Muntarbhorn in his 1998 UNICEF Report, there is much room for dissemination of information about French laws and procedures to authorities and other key actors abroad, including by way of French Embassies world-wide.

Register for paedophiles

The proposed bill would provide for the creation of a national register destined to centralise the collection of DNA samples of individuals convicted of sexual crimes and '*délits*' (section 5A).

PROSECUTIONS

As noted by Professor Vitit Muntarbhorn in his 1998 UNICEF Report, by 1997 an estimated twenty investigations had been carried out regarding the child sexual exploitation of children by French nationals in other countries, only one of which had reached the stage of judicial decision. The latter involved no less than seven individuals (L.D., H.C., B., J.L., A.B., S.G. and D.D.) who, on 29 October, 1997, were convicted by the Tribunal de Grande Instance in Draguignan (France) of sexual offences involving children both in France and in Romania. The seven men, who had travelled around the world in relation to a paedophile ring who had produced child pornography videos involving children under fifteen, were sentenced to between five and fifteen years. They were also deprived or their civic and civil rights for a period of five years. On 18 November, 1998, the of the Aix en Provence Court (*chambre correctionnelle*) confirmed the additional penalties and slightly reduced the sentences. For a more detailed rendering of the case, see pages 159-178 of ECPAT Europe Law Enforcement Group's 1999 Report.

Again, according to the research conducted by Professor Vitit Muntarbhorn, the other investigations concerned the illegal activities of French nationals in countries such as Colombia, Portugal, Sri Lanka and Thailand.

ECPAT Europe Law Enforcement Group's 1999 Report further mentions the case of M.T., a 45 year old French journalist who, after being arrested, tried and convicted (on 22 December 1994) in Thailand with regard to sexual abuse of two Thai boys, escaped from Thailand back to France without serving his sentence. The report notes that although a prosecution would be possible in France, no such action has taken place. For a detailed rendering of the case, see pages 143-158 of the report.

Germany

LEGISLATION

German Criminal Code (as amended in 1993 and 1998).

Legislative history

As noted by Professor Vitit Muntarbhorn in his 1998 UNICEF Report on extraterritorial criminal laws against child sexual exploitation: "Extraterritoriality is nothing new to German law. However, it was expanded in 1993 to cover sexual acts committed by Germans abroad without the need for double criminality. […]"

"In 1997 an innovative new law was passed to deal with child pornography via the Internet. The Information and Communications Services Act now imposes a responsibility on service providers to check against child pornography coming through the Internet […]."

Theoretical justification

German law applies both the personality and universality principles.

Offences and sentences

Again, as noted by Professor Vitit Muntarbhorn in his 1998 UNICEF, the German Criminal Code (as amended in 1993 and 1998) contains a variety of offences related to sexual exploitation of children, including:

"1. Section 174 concerning the sexual abuse of those in a dependent position, such as guardians or parents abusing a child;
2. Section 176 concerning sexual abuse of children defined as 'sexual acts committed on a person under 14 years of age', the child's consent being immaterial and Section 176a concerning sexual abuse of a child for the purposes of producing and disseminating child pornography publications;
3. Section 177 concerning rape (with sexual intercourse) and sexual coercion;
4. Section 180 concerning promoting of sexual act with children under 16 years of age and enticing a person under 18 years of age to commit sex acts for remuneration and Section 180a concerning encouragement of prostitution, especially in relation to those under 18 years of age;
5. Section 181 and 181a concerning trafficking and pimping;
6. Section 182 concerning seduction of a person under 16 years of age, for instance by exploiting the person's susceptibility to pressure or offering him/her remuneration to commit sex acts;
7. Section 184 concerning dissemination and possession of child pornography."

As for the sentences imposed regarding sexual offences against children, the Government of Germany's Report brought before the International Tribunal for Children's Rights during the Paris Hearings (hereinafter Germany's Paris Report), notes:

"The sexual abuse of children is, as a rule, penalised under sec. 176 subsec. 1 of the Criminal Code by a custodial sentence of between 6 months and 10 years. In particularly serious cases the sentence, under sec. 176 subsec. 3, is a custodial one of between 1 year and 10 years.

Where the offender recklessly causes the death of the child as a result of the offence, the sanction is a custodial sentence of between 5 and 15 years.

It is intended to effect a sharp increase in penalties for serious cases of sexual abuse of children. Corresponding initiatives for a change to the statute book are at an advanced stage of the legislative process. Part of this will be the creation of a special offence for cases of sexual abuse of children with a view to pornographic marketing."

Targeted perpetrators

In his 1998 UNICEF Report, Professor Vitit Muntarbhorn asserts that German law applies to nationals and foreigners, including in regard to the distribution of child pornography outside Germany. As to the question of whether travel firms and middle-men are covered by the relevant criminal sanctions, Germany's Paris Report indicates that this is determined by the general provisions on participation as set out in the Criminal Code, which entails that the decisive factor will always be the assessment of the particular circumstances.

Age of consent / protection

According to Germany's Paris Report, children under fourteen years of age benefit from absolute protection (irrespective of the child's consent). Children under sixteen years, on the other hand, benefit from special provisions under the Criminal Code (eg. sec. 180 subsec. 1, sec. 182 of the Criminal Code). In addition, the German Criminal Code contains special criminal law norms for the protection of persons under eighteen years (eg. sec. 180 subsecs. 2 and 3 of the Criminal Code). Furthermore, children as well as adults come under the protection of the general criminal law relating to sexual offences (eg. sec. 177 of the Criminal Code — sexual coercion and rape).

Statute of limitation

Germany's Paris Report notes that the statute of limitation is set at five years in respect of sexual abuse of charges (sec. 174 of the Criminal Code); sexual abuse of persons unable to put up resistance (sec. 179 of the Criminal Code); encouraging sexual acts by minors (sec. 180 of the Criminal Code) and sexual abuse of young persons (sec. 182 of the Criminal Code).

The limitation period is set at ten years for sexual abuse of children (sec. 176 of the Criminal Code) and at twenty years for sexual coercion and rape (sec. 177 of the Criminal Code). Furthermore, for offences under sections 176, 177 and 179 of the Criminal Code, the running of the limitation period is suspended until the victim attains the age of eighteen.

Double criminality

As noted in Germany's Paris Report, it is a matter of general rule (as set out in section 7 of the German Criminal Code) that German criminal law applies to offences committed abroad where the act is a criminal offence at the place of commission or where such place is not subject to any criminal jurisdiction and either:

– the offence was committed against a German, or
– the offender was a German at the time of the offence or became one after the offence, or
– the offender at the time of the offence was an alien, is found to be in the domestic territory and, although the Extradition Act would permit his extradition by virtue of the nature of the act, is not extradited because a request for extradition is not made or is rejected, or because extradition cannot be effected.

The German criminal law nevertheless applies — irrespective of the law of the place of commission — to the following offences committed abroad:

a) Offences against sexual self-determination
– In cases of sexual abuse of charges where both the offender and victim are Germans at the time of commission and have the basis of their existence in the domestic territory;
– In cases of sexual abuse of children where the offender is a German and has the basis of his existence in the domestic territory;
b) In cases of trafficking (and aggravated trafficking) of human beings in human beings;
c) In certain cases of dissemination of pornographic writings.

Double jeopardy (*"ne bis in idem"*)

Judgements of foreign courts do not in principle rule out the bringing of a prosecution before the courts of the Federal Republic of Germany. Nevertheless, a different situation applies where agreement has been reached in a bilateral treaty or a multilateral convention to deviate from this general rule. Similarly, a formal transfer of proceedings can, under international law agreements, result in a procedural impediment in the transferring State. Germany's Paris Report further indicates that:

"Section 153c of the German Code of Criminal Procedure gives the public prosecution service the possibility of not prosecuting offences committed abroad. Under this provision the prosecution service may desist from prosecuting offences

a) which have been committed outside the jurisdiction of the Code of Criminal Procedure or which have been committed within this jurisdiction by a person participating in an offence committed outside the jurisdiction;
b) which an alien has committed in the domestic territory on a foreign ship or aircraft;
c) where in consequence of the offence a sentence has already been enforced against the accused abroad and, after setting off this foreign penalty against the penalty to be expected in the domestic territory, the latter would not be of significance, or where the accused has been acquitted of the offence with final and binding force abroad."

Preliminary measures or procedures

Contrary to some other countries, a complaint from the victim or denunciation from the foreign authorities is not necessary to open an investigation and begin prosecution.

Rules of evidence (facilitating proof)

As indicated in Professor Vitit Muntarbhorn's 1998 UNICEF Report, German law allows for cases of sexual exploitation of children to be tried before youth courts rather than adult courts.

As noted in Germany's Paris Report: "The results of taking evidence abroad can as a matter of principle be used in German criminal proceedings in the same manner as evidence obtained in the domestic territory. This conforms to the constant case law of the Federal Court of Justice (Bundesgerichtshof). As a result, there is no need for special legislative provisions. The use of video technology as a means of protecting children is being tested in Germany by the police and the courts. Corresponding draft legislation is currently before the German parliament for discussion." It should be noted that a new law was indeed adopted in 1998 to allow the use of videotaped evidence as well as video-link testimony.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

As noted in Professor Vitit Muntarbhorn's 1998 UNICEF report, the enforcement of Germany's extraterritorial law has often been hampered by a variety of factors, including the failure of the foreign authorities to send files or the delays in receiving the required information from the foreign authorities; lost files; the fact that some suspects disappear once they are granted bail; missing information on the identity and age of the victims or uncertainty regarding the origin of some of the evidence (such as time and place of the pictures and videos).

Germany's Paris Report also draws attention to a number of concerns with regard to international co-operation and exchange of information between the German authorities and those of the State where the offence was committed. In particular, the report notes that with European countries this type of co-operation largely functions smoothly and efficiently: "This is particularly true of those countries with whom it has proved possible to conclude agreements setting up direct channels between the public prosecution services and the courts." On the other hand, the report notes that mutual assistance dealings in criminal matters are generally longer and more difficult in relation to the main destinations of German sex

tourists (above all the countries of South East Asia). "This particularly impedes the conducting of criminal proceedings for sexual abuse committed abroad — a type of proceeding which can depend to a large degree on the swift handling of German requests for mutual assistance. In some cases, however, it has recently proved possible to find more flexible solutions here as well."

Register for paedophiles

Germany's Paris Report indicates that are no special mechanisms going beyond the general measures for conducting searches for, and warning about offenders.

PROSECUTIONS

By 1997, there had been 37 prosecutions (including six convictions) of Germans for sexual acts committed against children abroad, which as indicated by Professor Muntarbhorn in his 1998 UNICEF Report, is the largest number of prosecutions under any extraterritorial law. Here are the details that appear in Professor Muntarbhorn's report (as provided by the Federal Ministry of Justice in February 1998) with regard to the six cases which led to convictions:

1. Bavaria: Sentenced to 8 months' imprisonment (suspended sentence) for one deed in Thailand involving one 12-year-old child;
2. Berlin: Sentenced to four years' imprisonment for 17 deeds involving 25 Thai children aged between 9 and 14;
3. Hesse: Sentenced to one year and eight months' imprisonment (including with regard to possession of child pornography) for an unspecified number of deeds in Thailand involving an unspecified number of Thai girls;
4. North-Rhine Westphalia: Sentenced to two years' imprisonment for 3 deeds in the Philippines involving one 14-year-old child of unspecified nationality and one 10-year-old Bosnian child;
5. North Rhine-Westphalia: Sentenced to three and a half years' imprisonment for 3 deeds in the Philippines involving one 11-year-old Filipino child. *Note: for a detailed rendering of this case (Germany's first ever extraterritorial conviction), please consult ECPAT Europe Law Enforcement Group's 1999 Report titled Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children (pages 61-73).*
6. Saxony: Sentenced to one year and three months' imprisonment for several deeds in Czech Republic involving two Czech girls aged 10 and 14.

Iceland

LEGISLATION

General Penal Code, No. 19/1940, with subsequent amendments; Act on Criminal Responsibility of Legal Persons, No. 144/1998; Code of Criminal Procedure, No. 19/1991.

Legislative history

No data available.

Theoretical justification

The territorial jurisdiction of Iceland with respect to crimes committed in Iceland, crimes committed aboard Icelandic ships or aircraft or with respect to ships or aircraft travelling in Icelandic territory, or the gains acquired in Iceland from an offence committed abroad is provided under section 4 of the General Penal Code of Iceland.

According to section 5 of the General Penal Code of Iceland, Icelandic criminal law applies to offences:

1. Committed by Icelandic nationals or residents or by Danish, Finnish, Norwegian and Swedish nationals or residents who stay in Iceland, if the offence was committed in a place outside the criminal jurisdiction of other states under international law, provided it was also punishable under the law of the offender's home state;
2. Committed by Icelandic nationals or residents if the offence was committed in a place under the criminal jurisdiction of another state, provided it was also punishable under the law of that state.

Finally, according to section 6 of the General Penal Code of Iceland, Icelandic criminal law also applies to a number of offences (not relevant to the sexual exploitation of children) even if they have been committed outside Icelandic territory and irrespective of the offender's identity.

Offences and sentences

Relevant sexual offences, as defined within Chapter XXII of the General Penal Code of Iceland, are:

Art. 194 – Any person who, by using force or the threat of force, compels a person to participate in sexual intercourse or other sexual acts, shall be imprisoned for a term of at least one year, and a maximum of sixteen years.

Art. 195 – Any person who, by means of any other unlawful means of coercion, compels a person to participate in sexual intercourse or other sexual acts, shall be imprisoned for a term of up to six years.

Art. 196 – Any person who takes advantage of a person's mental illness or other mental disabilities in order to have sexual intercourse, or other sexual relations, with him or her, or takes advantage of other factors which render the

person unable to resist participation in the act, or to understand its significance, shall be imprisoned for up to six years.

Art. 197 – If a supervisor or employee in a prison, mental hospital, care centre, educational institution or other similar institution has sexual intercourse or other sexual relations with an inmate, patient or pupil at the institution, he shall be imprisoned for up to four years.

Art. 198 – Any person who has sexual intercourse, or other sexual relations, with a person outside the bond of marriage or a cohabitational union by grossly abusing the fact that the person is financially dependent on him or her, is in his or her employment, or is under his or her protection in a relation of trust, shall be imprisoned for up to three years, and up to six years if the person is under the age of eighteen. Other forms of sexual harassment shall be punishable by imprisonment of up to two years.

Art. 199 – Any person who has sexual intercourse, or other sexual relations, with a person who wrongly believes that the act is taking place within marriage or a cohabitational union, or who is under the misapprehension that he or she is participating in the act with a different person, shall be imprisoned for a term of up to six years.

The same punishment shall be applicable if the intercourse or other sexual act takes place under the pretence that what is happening is a form of medical or other scientific treatment.

Art. 200 – Any person who has sexual intercourse or other sexual relations with his or her child or other descendant shall be imprisoned for a term of up to six years, and up to ten years if the child is under the age of sixteen.

Sexual harassment of a type other than that mentioned in paragraph 1 by a person involving his or her child or other descendant shall be punishable by up to two years in prison, and up to four years if the child is under the age of sixteen.

Sexual intercourse or other sexual relations between siblings shall be punishable by up to four years in prison. If one of the siblings, or both, are under the age of eighteen when the act takes place, it may be decided to waive the punishment applicable to them.

Art. 201 – Any person who has sexual intercourse or other sexual relations with a child or young person under the age of eighteen who is his or her adopted child, step-child, foster-child, the child of his or her cohabitational partner or a young person who has been entrusted to him or her for education or upbringing, shall be imprisoned for up to six years, and up to ten years if the child is under the age of sixteen.

Sexual harassment of a type other than that mentioned in paragraph 1 shall be punishable by up to two years in prison, and up to four years if the child is under the age of sixteen

Art. 202 – Any person who has sexual intercourse or other sexual relations with a child under the age of fourteen shall be imprisoned for up to twelve years. Other types sexual harassment shall be punishable by up to four years' imprisonment.

Any person who, by employing deception, gifts or other means, entices a young person aged between fourteen and sixteen to participate in sexual intercourse or other sexual acts shall be imprisoned for up to four years.

Art. 204 – If an offence against Art. 201 or 202 is committed in ignorance of the age of the person whose rights are infringed, a correspondingly lighter punishment shall be imposed, but it may not be less than the prescribed minimum period of imprisonment.

Art. 205 – Punishment under Arts 194-199, 202 and 204 may be waived if the man and woman between whom the sexual act took place, have subsequently married or entered into a cohabitational union, or, if they were married or in a cohabitational union at the time, have subsequently entered into or continued that union.

Art. 206 – Any person who practises prostitution for a living shall be imprisoned for up to two years.

Any person who bases his or her employment or living on the sexual promiscuity of others shall be imprisoned for up to four years.

The same punishment shall be applied for beguiling, encouraging or assisting a young person under the age of eighteen to make his or her living from sexual promiscuity.

The same punishment shall also be applied for encouraging any person to leave or enter Iceland for the purpose of making his living from sexual promiscuity if the person concerned is under the age of twenty-one years or is unaware that this constitutes a purpose of the journey.

Any person who, through beguilement, encouragement or mediation, causes others to have sexual intercourse or other sexual relations in return for payment or to make the sexual promiscuity of others into a source of income, e.g. by letting accommodation or by other means, shall be imprisoned for up to four years, and shall be fined or imprisoned for up to one year if there are mitigating circumstances.

Art. 208 – If a person who is to be punished under Art. 206 has previously been sentenced for a violation of that Art., or has previously been sentenced to prison for an offence committed for financial gain, the punishment may be increased by up to one half.

Art. 209 – Any person who, through lewd conduct, offends people's sense of decency or causes a public scandal, shall be imprisoned for up to four years, or shall be sentenced to up to six months' imprisonment or a fine if the offence is minor.

Art. 210 – If pornography appears in print, the person responsible for its publication under the Publications Act shall be fined or imprisoned for up to six months.

The same punishment shall apply to the production or importation, for the purpose of dissemination, sale, sharing out or other distribution, of pornographic publications, pornographic pictures or other such items, or to displaying them, and also to organising a public lecture or performance which is similarly immoral.

Furthermore, the same punishment shall apply to releasing pornographic publications, pornographic pictures or other such items, to young people under the age of eighteen.

Any person who is in possession of photographs, films or comparable items depicting children in a sexual or obscene manner shall be liable to a fine. The same punishment shall apply to being in possession of photographs, films or comparable items showing children participating in sexual acts with animals or using objects in an obscene manner.

Note: With respect to the sentencing of criminal acts committed abroad, section 8 of the General Penal Code of Iceland states that the penalty imposed shall not exceed the maximum provided for by the law of the offender's home state, cf. subparagraph 5(1), or by the law of the state of commission, cf. subparagraph 5(2).

Targeted perpetrators

Icelandic nationals and residents of Iceland. As for the criminal liability of legal persons, section 19a of the General Penal Code of Iceland state that legal persons may be ordered to pay a fine if this is provided for by statute. According to sections 19b and 19c, a legal person can only be made criminally liable if its officer, employee or other natural person acting on its behalf committed a criminal and unlawful act in the course of its business and that penalties may be imposed even if the identity of that person has not been established. As for administrative authorities, these can only be made criminally liable if an unlawful and criminal act has been committed in the course of an operation deemed comparable to the operations of private entities.

Age of consent / protection

The age of consent for sexual intercourse and other sexual relations is fourteen (eighteen if child is the perpetrator's adopted child, step-child, foster-child, the child of his or her cohabitational partner or a young person who has been entrusted to him or her for education or upbringing). With respect to prostitution, the age is set at eighteen. Young persons under twenty-one years of age are protected from those who would encouraging them to leave or enter Iceland for the purpose of making their living from sexual promiscuity.

Statute of limitation

According to section 81 of the General Penal Code of Iceland, criminal liability lapses as follows:

1. In two years, if the prescribed penalty does not exceed one year in prison, or if the penalty deemed suitable does not exceed a fine;
2. In five years, if the prescribed penalty does not exceed four years in prison;
3. In ten years, if the prescribed penalty does not exceed ten years in prison;
4. In fifteen years, if the maximum penalty prescribed exceeds imprisonment for a definite period longer than ten years.

If a person is guilty of conduct punishable under more than one criminal provision, the limitation period shall be governed by the provision providing for the heaviest penalty.

Double criminality

As noted above, section 5 of the General Penal Code of Iceland requires that, in order for Icelandic criminal law to apply to offences committed in a place outside the criminal jurisdiction of other states under international law, the offence must to be also punishable under the law of the offender's home state. As for offences committed in a place under the criminal jurisdiction of another state, the offence must also be punishable under the law of that state.

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

There is no specific provision requiring that a complaint from the foreign victim or a formal request from the foreign authorities be received prior to investigation or prosecution. In fact, as stated in subsection 66(2), police shall at any time, when necessary, initiate an investigation on account of knowledge or suspicion of crime, irrespective of whether a complaint has been received, and the Director of Public Prosecutions may give orders to police in this context.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve ffectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Ireland

LEGISLATION

Sexual Offences (Jurisdiction) Act 1996, No 38 of 1996.

Legislative history

Ireland does not, as a general rule, apply its criminal laws to acts committed by its nationals while abroad. Rather, Ireland has adopted specific legislation to allow sexual acts committed against children abroad to be prosecuted extraterritorially.

Theoretical justification

No data available.

Offences and sentences

Sexual offences involving children done outside the State. Aiding and abetting, counselling and procuring, conspiring or inciting to commit the offence are also offences. Making arrangements to transport a person for the purpose of committing an offence. Publishing information intended or likely to promote, advocate or incite the commission of an offence.

Sentence depends on method of procedure (Sub-sections 6a, b).

Targeted perpetrators

The legislation covers sexual acts committed against children abroad by citizens of the State or by persons ordinarily resident in the State, as bodies corporate if any person of title or responsibility shows consent, connivance or neglect.

Age of consent / protection

17 years (Section 1.1)

Statute of limitation

No data available.

Double criminality

Double criminality is required by way of Section 2.1 of the *Sexual Offences (Jurisdiction) Act 1996.*

Double jeopardy (*"ne bis in idem"*)

Yes (Section 9).

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

Physical appearance of the juvenile is permitted to help determine age (Section 8).

IMPLEMENTATION

No data available.

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Italy

LEGISLATION

Law of 3 August 1998, No. 269: Provisions against the sexual exploitation of children including prostitution, pornography and sex tourism, as new forms of slavery. Published in the *Gazzetta Ufficiale* No.185 of August 1998 and came into force on 11 August, 1998.

Legislative history

The above mentioned new law had first been presented in 1995, thanks in part to the lobbying work of ECPAT-Italy. It was approved only in 1998 by the Senate and House, after it had been reviewed and modified by the Justice Commission of the Chamber of Deputies. The first article of the new law states: "In compliance with the principles of the *Convention on the Rights of the Child*, implemented by the law of 27 May 1991, No. 176, and in furtherance of the Final Declaration of the World Congress of Stockholm, adopted on 31 August 1996, the protection of children against all forms of sexual exploitation and abuse in order to preserve their physical, psychological, spiritual, moral and social development is of primary importance for the Italian government. To this end, the following articles from 600-bis to 600-septies, introduced by articles 2,3,4,5,6 and 7 of this present law, are inserted in Section 1, Chapter III of Title XII of the second book of the Penal Code."

New article 604 of the Penal Code (introduced by Article 10 of the new law), specifically addresses the issue of extraterritorial offences. It states:

> "Article 604. The provision of this section, together with those in Articles 609-bis, 609-ter, 609-quarter and 609-quinquies also apply when the offence is committed abroad by an Italian citizen or where an Italian citizen is the victim, or by a foreign citizen with the assistance of an Italian citizen. In the latter case, the foreign citizen is punishable when the offence attracts a penalty of imprisonment of not less than 5 years and there is a request from the Minister for Justice"

Theoretical justification

No data available.

Offences and sentences

Child Prostitution (article 600bis):

- Inducing, promoting or profiting from the prostitution of a child under the age of eighteen is punishable with imprisonment from six to ten years and a fine of 30 million to 300 million *lire*;
- Sexual intercourse with a person age between fourteen and sixteen years in exchange for money or other economic benefit is punishable with imprisonment from six months to three years or a fine of not less than 10 million *lire*;
- The penalty is reduced by a third if the accused is under the age of eighteen years.

Child Pornography (article 600ter):

– Exploiting a child under the age of eighteen for the purposes of making pornographic shows or for producing pornographic material is punishable with imprisonment from six to twelve years and a fine of 50 million to 500 million *lire*. The same penalty applies to those who trade commercially in child pornography;
– Distributing, making available, or publicising child pornography, by whatever means (including by electronic transfer), for the purposes of the seduction or the sexual exploitation of children under the age of eighteen, is punishable with imprisonment from one to five years and a fine of 5 million to 100 million *lire*;
– Knowingly giving to another party, whether or not for valuable consideration, child pornography is punishable with imprisonment for up to three years or a fine of from 3 million to 10 million *lire*.

Possession of Pornographic Material (art.600quarter)

– Knowingly obtaining or possessing child pornography is punishable with imprisonment for a term of up to three years or a minimum fine of 3 million *lire*.

Tourism which promotes child sexual exploitation (art.600quinquies):

– Organising or promoting foreign travel which promotes child prostitution or encourages such activity is punishable with imprisonment for a term of six to twelve years and a fine of 30 million to 300 million *lire*.

Art. 600*sexies* provides for more severe penalties in certain aggravating circumstances with regard to certain crimes, such as when the victim of child prostitution or child pornography is under fourteen years of age or when the accused was in a position of trust or authority or was a relative of the child victim. The same article also provides for less severe penalties in attenuating circumstances such as when the accused has taken concrete measures to ensure that the minor is enabled to become self-reliant and independent.

Art. 600*septies* also provides for supplementary penalties such as confiscation of property seized and closure of the business which gave rise to the offences as well as revocation of the business permit or the concession or authorisation to broadcast.

Finally, the second paragraph of article 601 states that trafficking or trading in minors under the age of eighteen for the purposes of prostitution in any manner is punishable with imprisonment for a term of six to twenty years.

Targeted perpetrators

As noted above, Article 604 of the Penal Code, as modified by Article 10 of the Law of 3 August 1998, makes the relevant dispositions applicable "when the offence is committed abroad by an Italian citizen or where an Italian citizen is the victim, or by a foreign citizen with the assistance of an Italian citizen. In the latter case, the foreign citizen is punishable when the offence attracts a penalty of imprisonment of not less than five years and there is a request from the Minister for Justice."

Age of consent / protection

eighteen years.

Statute of limitation

No data available.

Double criminality

No.

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

With regards to procedural provisions, a number of new articles were added to the Code of Criminal Procedure. These include: article 33*bis*; article 190*bis*, par. 1*bis*; article 392, par. 1*bis*; article 398, par.5*bis*; article 472, par.3*bis* and article 498, par.4*bis* and 4*ter*.

Article 498, par. 4*ter* deals with the examination of young witnesses behind a screen as well as via video-link (at her/his own request or that of her/his representative) in proceedings for the offences provided for in Articles 600*bis*, 600*ter*, 600*quarter*, 600*quinquies*, 609*bis*, 609*ter*, 609*quarter* and 609*octies* of the Penal Code.

A number of new provisions were also added with the intention to facilitate evidence gathering. To this end, article 14 of the new law permits the use of subterfuge methods to prevent child prostitution or child pornography or to obtain evidence concerning such activities. It also provides for the delaying of arrest or detention for the purpose of obtaining more evidence or finding the person responsible for such crimes. Finally, article 14 provides that the judicial authorities may order the confiscated material to be held by the judicial police who may use it for the purposes of entrapping other child sex offenders.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

Article 16 of the new law obliges tour operators to provide the following notice to travellers: "Italian law punishes with imprisonment offences relating to child prostitution and child pornography, even if these offences are committed abroad." Tour operators who fail to comply with this obligation are liable to a fine ranging from 2 to 10 million *lire*.

Moreover, the second paragraph of article 17 of the new law provides that two-thirds of the fines imposed, the monies confiscated and the proceeds from the sale of goods confiscated with regard to child sex offences are to be used to finance specific programmes for prevention, assistance and psycho-therapeutic rehabilitation of child victims, while the remaining third is to be used for the treatment of offenders, on the latter's request.

Furthermore, under the responsibility of the Office of the Prime Minister and with a pre-authorised budget of 100 million *lire* per year, a number of co-ordinating measures are to be taken, including: collection of data and information on the national and international level in relation to prevention, repressive and entrapment measures, and on the various strategies planned or undertaken by other countries; promotion of studies and research related to the social, health, and legal aspects of the phenomenon of child sexual exploitation; participation in all the EU and international organisations whose aim is the protection of children from sexual exploitation; extension of the authority of EUROPOL to include the combating of networks for the sexual exploitation of children; establishing within the mobile unit of every police area, a specialised unit of the judicial police with competence to prosecute offences under this law within the territory; establishing a unit at the central headquarters of the judicial police with responsibility for collecting all relevant information to the offences covered by this law and to co-ordinate the information obtained with the equivalent sections in other European countries.

ECPAT-Italy is of the opinion that bilateral agreements such as the one between the UK and the Philippines will have to be developed in order for the new law to be truly effective. The non-governmental organisation is said to be lobbying in this respect.

Register for paedophiles

No such register in Italy.

PROSECUTIONS

No cases to date, as the law is very recent. Nevertheless, ECPAT-Italy informs us that an Italian citizen is actually under investigation for having allegedly organised sex tours for paedophiles as well as for possession of child pornography. Italy's participation in Operation Cathedral also led to a number of investigations regarding possession of child pornography.

Japan

LEGISLATION

Penal Code Amendment, Law No.45 of 1907, last amended as Law No.68 of 1987.

A new law titled *Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children* was approved by the Japanese upper house in April 1999, and became law after a unanimous vote by the 500 members of the lower house on 18 May, 1999. It is expected to take effect by the end of 1999.

Legislative history

As a general rule, Japan's penal laws apply to acts committed abroad by its nationals. Article 3 of the Penal Code allows for extraterritorial application of the law, in the cases specified, including crimes of a sexual nature. Article 10 of the new law now specifically provides that "the crimes specified in articles 4 to 6, paragraphs 1 and 2 of article 7, and paragraphs 1 and 3 (limited to the part thereof which relates to paragraph 1) of article 8 shall be dealt with according to the provision of article 3 of the Penal Code (Law No. 45 of 1907)."

As evidenced by its title and as stated in article 1, the objective of the *Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children*, "is to protect the rights of children by prescribing punishment for acts related to child prostitution and child pornography, and by establishing measures including the giving of appropriate protection to children who have suffered physically and/or mentally from the said acts, in light of the fact that sexual exploitation and sexual abuse of children seriously infringe upon the human rights of children."

The new law prohibits commercial sex with children under 18 (compared with 13 under the old law), and restricts the sale and distribution of child pornography. In addition, the new law prevents Japanese tour operators from participating in the trafficking of children for sexual purposes abroad. The new law also eliminates the necessity of a complaint from the victim in order for rape charges to be laid.

Theoretical justification

No data available.

Offences and sentences

Offences and related sentences are defined as follows under the new law of 1999:

- *Child prostitution* (article 4) is punishable with imprisonment with labour for up to three years or a fine of up to one million yen.
- *Intermediation of child prostitution* (paragraph 5(1)) is punishable with imprisonment with labor for up to three years or a fine of up to three million yen; while *commercial intermediation of child prostitution* (paragraph 5(2)) is punishable with imprisonment with labor for up to five years and a fine not exceeding five million yen.

– *Solicitation of child prostitution* (paragraph 6(1)) — that is soliciting a person to commit child prostitution for the purpose of intermediating in child prostitution — is punishable with imprisonment with labor for up to three years or a fine not exceeding three million yen. *Commercial solicitation of child prostitution* (paragraph 6(2)), on the other hand, is punishable with imprisonment with labor for up to five years and a fine not exceeding five million yen.
– *Distribution, selling, lending as a business, or public display of child pornography* (paragraph 7(1)) is punishable with imprisonment with labor for up to three years or a fine not exceeding three million yen.
– *Production, possession, transportation, importation to or exportation from Japan of child pornography*, if committed for the purpose of any of the activities mentioned in paragraph 7(1), is punishable with the same penalty as described in the said paragraph.
– *Importation to or exportation from a foreign country of child pornography*, if committed by a Japanese national for the purpose of conducting any of the acts mentioned in paragraph 7(1), is punishable with the same penalty as is described in the said paragraph.
– *Trade in children for the purpose of child prostitution and child pornography* (paragraph 8(1)) is punishable with imprisonment with labor for not less than one year and not more than ten years.
– *Transportation of a child who has been abducted, kidnapped, sold or bought in a foreign country, out of that country* (paragraph 8(2)), if committed by a Japanese national for the purposes of child prostitution or child pornography, is punishable with imprisonment with labor for a limited term of not less than two years.
– *Attempts* of the crimes mentioned in paragraphs 8(1) and 8(2) are also punishable (paragraph 8(3))

Targeted perpetrators

Japanese nationals and legal entities. As to the criminal responsibility of the latter, article 11 of the new law provides that in cases "where a representative of a legal entity or a proxy, employee or any other servant of a legal entity or of a natural person has committed any of the crimes mentioned in Articles 5 to 7 with regard to the business of the legal entity or natural person, the legal entity or natural person shall, in addition to the punishment imposed upon the offender, be punished with the fine described in the relevant article."

Age of consent / protection

As stated in article 2(1) of the *Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children*, a child is defined as a person under the age of eighteen years (up from thirteen years prior to the adoption of the new law).

Concerning the awareness of the age of the child, article 9 of the new law states that "no one who uses a child shall be exempt from the punishments specified in articles 5 to 8 on the grounds of not having been aware of the age of the child excepting cases where there is no negligence."

Statute of limitation

Six months.

Double criminality

ECPAT Europe Law Enforcement Group's 1999 Report entitled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children* indicates that in Japan, double criminality is not required for any of the offences specified in the Criminal Code as being capable of being prosecuted extraterritorially (see pages 15-16 of the Report).

Double jeopardy (*"ne bis in idem"*)

Article 5 of the 1907 Penal Code reads:

> "Even when an irrevocable judgement has been rendered in a foreign country, the imposition of penalty in Japan for the same act shall net be barred thereby. If, however, the offender has undergone the execution, either in whole or in part, of the penalty pronounced abroad, the execution of penalty in Japan shall be reduced or remitted".

Preliminary measures or procedures

As provided in section 180 of the Penal Code, a complaint is necessary prior to prosecution of indecency through compulsion and rape and, except if the offence was committed jointly by two or more persons. The new law adopted on 18 May 1999 is expected to do away with the requirement of a complaint by the victim.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

Article 12 through 17 of the new law contain various initiatives and priorities with regard to the protection of children from sexual exploitation and the safeguard of their best interests before, during and after prosecution.

The first paragraph of article 12 states that those who are officially involved in investigations or trials concerning the crimes under articles 4 to 8 shall, in performing their official duties, pay attention to the rights and characteristics of children, and shall take care not to harm their reputation or dignity, while the second paragraph of article 12 provides for the State and local public entities to give training and enlightenment to those officials in order to deepen their understanding of the rights and characteristics of children.

Article 13, on the other hand, prohibits the publication of any article, program, etc. that could lead to the identification of a child involved in cases relating to any of the crimes mentioned in articles 4 to 8.

Article 14, in recognition that such acts as child prostitution and the distribution of child pornography would seriously affect the mental and/or physical growth of children, calls upon the State and local public to prevent such acts through education and awareness-raising, in order to deepen the public's understanding of the rights of children and through the promotion of research and studies.

Article 15 recognises the need to protect children who have suffered mental or physical damage as a result of having been involved in child prostitution or having been depicted in child pornography, and calls on the relevant administrative agencies, in co-operation with one another, to take into account the mental and physical conditions of the children as well as the environment in which they have been placed and to take the necessary measures (such as consultation, instruction, temporary guardianship and placement in an institution) for their protection so that they can recover physically and mentally from the damage they have suffered and grow with dignity. In so doing, the relevant administrative agencies shall provide the protector of the child with the consultation, instruction, or other steps necessary for the protection of the child.

Article 16, on the other hand, recognises that in order to be able to properly provide protection based on professional knowledge with regard to children who have suffered mental and/or physical damage as a result of having involved in child prostitution or having been depicted in child pornography, and as a result calls on the State and local public entities to promote researches and studies on the protection of such children, to improve the qualities of persons who undertake the protection of such children, to reinforce systems of co-operation and liaison among relevant agencies in case of the urgent need of protection of such children, to arrange systems of co-operation and liaison with private organisations which undertake the protection of such children, and to arrange other necessary systems.

Finally, article 17 recognises that for the prevention of acts relating to the crimes mentioned in Articles 4 to 8 as well as for proper and swift investigation of cases relating to such crimes, the State must secure close international co-operation, promote international researches and studies, and promote other forms of international co-operation.

Register for paedophiles

No data available.

PROSECUTIONS

According to ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children*, four criminal petitions have been filed in Japan since 1996 in relation to sexual offences committed by Japanese nationals while abroad. As of yet, however, none of these cases has been put to trial.

Netherlands

LEGISLATION

Dutch Criminal Code

Legislative history

As a general rule, the penal law of the Netherlands applies to acts committed abroad by Dutch nationals.

Theoretical justification

No data available.

Offences and sentences

Here are some of the offences listed in the Dutch Criminal Code which may be associated with the sexual exploitation of children:

- Any act outraging public decency committed in a place accessible to persons under sixteen years of age is punishable by up to three months imprisonment or a second-category fine (article 239);
- Offering, displaying or sending (other than at a person's request) a pictorial representation or object known to be offensive to public decency is punishable by up to two months imprisonment or a third-category fine (article 240);
- Supplying, offering or showing to a person under the age of sixteen a pictorial representation or object which may be considered harmful to children under sixteen is punishable by up to two months imprisonment or a second-category fine (article 240a);
- Manufacturing, importation, conveying in transit, exportation, stocking, distribution or public exhibition of child pornography involving a child manifestly under the age of sixteen, or an information carrier containing such material (unless used for scientific, educational or therapeutic aim) is punishable by up to four years imprisonment or a fifth-category fine, or up to six years imprisonment or a fifth-category fine if the perpetrator has made a habit or profession of committing such offences (article 240b);
- Rape is punishable by up to twelve years imprisonment or a fifth-category fine (article 242);
- Sexual assault (including penetration) on a person known to be unconscious, powerless or otherwise unable to express consent or to offer resistance is punishable by up to eight years imprisonment or a fifth-category fine (article 243);
- Sexual assault (including penetration) on a child under the age of twelve is punishable by up to twelve years imprisonment or a fifth-category fine (article 244);
- Sexual assault (including extramarital penetration) on a child between the age of twelve and sixteen is punishable by up to eight years imprisonment or a fifth-category fine (article 245);
- Indecent assault (compelling another person to commit or submit to an indecent act) is punishable by up to eight years imprisonment or a fifth-category fine (article 246);

– Committing an indecent act with a person known to be unconscious, powerless or otherwise unable to express consent or to offer resistance, or committing an extramarital indecent act with a child under the age of sixteen (or inducing the latter to commit or submit to such an act with a third party) is punishable by up to six years imprisonment or a fifth-category fine (article 247);

– Child prostitution (committing an indecent act with a minor of unimpeachable conduct by offering or promising a gift of money or property, or by misusing authority or influence, or by means of deception) is punishable by up to four years imprisonment or a fourth-category fine (article 248ter);

– Committing an indecent act with his minor child, foster child, adopted child, his ward or a minor entrusted to him for care, education or supervision, or a servant or subordinate who is minor, is punishable by up to six years imprisonment or a fifth-category fine (article 249);

– Committing of an indecent act by a public servant with a person under his authority or his charge is punishable by up to six years imprisonment or a fifth-category fine (article 249);

– Committing of an indecent act by any manager, doctor, teacher, official, supervisor or servant in a prison, state labour institution for care and protection of children, orphanage, hospital or charitable institution with a person committed to the institution is punishable by up to six years imprisonment or a fifth-category fine (article 249);

– Committing of an indecent act by any person employed in the health care sector or in social work with anyone committed to his care is punishable by up to six years imprisonment or a fifth-category fine (article 249);

– Intentionally causing or encouraging a child to commit an indecent act with another person is punishable by up to three years imprisonment or a fourth-category fine; or by up to four years imprisonment or a fourth-category fine if the child is his minor offspring, foster child, adopted child, his ward or a minor entrusted to him for care, education or supervision, or a servant or subordinate who is minor. If the offender has made a habit of committing the indictable offence, the terms of imprisonment may be increased by one third (article 250);

– Trafficking in human beings is punishable by up to six years imprisonment or a fifth-category fine; or by up to eight years imprisonment or a fifth-category fine if the trafficking is done by more than one person, if it involves a child under the age of sixteen or if it results in grievous bodily harm; or by up to ten years imprisonment or a fifth-category fine if the trafficking is done by more than one person and with regard to a child under sixteen or if it results in grievous bodily harm (article 250ter);

Note: with regard to sentencing, article 248 of the Dutch Criminal Code provides for more severe penalties in cases where any of the indictable offences defined in articles 243, 245 and 246 results in serious physical injury or death.

Targeted perpetrators

Dutch nationals and those permanently residing in the Netherlands.

Age of consent/protection

16 years, with special crimes concerning children under 12 or between 12-16 years.

Statute of limitation

No data available.

Double criminality

The law of the Netherlands does indeed apply the double criminality condition (article 5, paragraph 1(2) of the Dutch Criminal Code). In its report before the International Tribunal for Children's Rights at the Paris Hearings in 1997 (hereinafter the Netherlands' Paris Report), the Government of the Netherlands offered the following motive for maintaining the requirement of double criminality:

> "It has been urged that the applicability of Dutch criminal law should be extended. The reason given is that the legislation on sexual offences is still deficient in a number of countries and that the condition of double criminality as contained in article 5, paragraph 1(2), Criminal Code, can be an obstacle to the prosecution in the Netherlands of Dutch nationals who have committed sex offences in these countries. For the time being, the government sees no occasion to extend the scope of application of the criminal law to include sex offences committed by Dutch nationals abroad which do not constitute criminal offences in the countries where they are committed. The main reason for preserving the requirement of double criminality is that the possibility of bringing a prosecution in the Netherlands is partly dependant on the co-operation of the relevant authorities in the country concerned. Their assistance is of great importance in the collection of evidence. Prosecution are already difficult and would undoubtedly become even more difficult if the act in question was not a criminal offence locally."

Double jeopardy (*"ne bis in idem"*)

ECPAT Europe Law Enforcement Group's 1999 Report on extraterritorial legislation indicates that the protection against double jeopardy applies in extraterritorial cases (article 68, sub. 2 of the Criminal Code). On page 16, the Report further indicates that the protection is applicable to those acquitted of the charge ('vrijspraak') or discharged from further prosecution ('ontslag van alle rechtsvervolging'), as well as to those convicted of the offence (if a penalty was imposed, followed by its full realisation/execution, mercy or prescription.

Preliminary measures or procedures

If the child victim is aged 16 years or over, he or she must file a formal complaint in order for the acts to be prosecuted extraterritorially. The same is true for acts committed against children aged between 12-16 years, unless there is abuse of authority or trust. However, according to ECPAT Europe Law Enforcement Group's 1999 Report, there is no need for a formal request to be made by the foreign authority where the offence took place (page 16).

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

With regard to the role of police and the importance of police training, the Netherlands government noted in its Paris Report:

> "The duties of the police in relation to children and young people and sexual offences have for some time received considerable coverage in police training, both at the basic level and in the specialised courses. These course are of a high calibre and take account of current developments and the latest ideas and how to deal with these issues. The specialist courses are now being overhauled to ensure that they are even more in keeping with the need for specialist expertise in the police forces."

Register for paedophiles

With regard to the follow-up and tracking of child sex offenders, the Netherlands' Paris Report noted that the Forensic Laboratory was making preparations for the establishment of a national databank of DNA profiles to enable the truth to be established in a particular criminal case. The report also noted that the National Criminal Intelligence Service (CRI), who is responsible for the co-ordination of information on child pornography and trafficking in women, is engaged in modifying and developing a system for the Netherlands which has been introduced in Canada, the United States and Austria under the name of VICLAS (Violent Crime Linkage Analysis System). The system, which covers offences such as rape (by strangers), sexual offences in relation to children (not within the family), sex-related murder and murders for psychotic motives, enables a link to be established between national and international crimes and possible offenders.

PROSECUTIONS

ECPAT Europe Law Enforcement Group's 1999 Report provides detailed information and useful analysis with respect to three cases. The first two refer to acts committed in the Philippines, while the third one refers to offences committed in Sri Lanka. Here are the summary of each case, as they appear in the Report:

- "J. van der S., a 43 year old divorced computer programmer, went to the Philippines on several occasions. During his visits he arranged for girls to come over to a hotel room, where he sexually abused the underaged girls. He made pornographic pictures and videos and brought them back home. On 8 October 1996, the District Court in the Hague sentenced J. van der S. , to five years imprisonment, inter alia, for raping and having other forms of sexual contact in the Philippines with a girl under 16 years of age. On 26 February 1997, the High Court of Appeal made a decision which also resulted in a sentence of five years imprisonment. J. van der S. then appealed on a point of law to the Supreme Court of the Netherlands. On 21 April 1998, the Supreme Court sent the case back to the High Court of Appeal for technical reasons. On 26 November 1998, the Court of Appeal issued a final judgment confirming the sentence of five years imprisonment. […]

- On January 1997, the District Court of the Hague convicted L. van E., a 24 year old heterosexual Dutch student who was the chairman of a paedophile club and openly approved of adults having sex with children, of infringing both articles 245 [sexual contact with penetration with a child aged between 12 and 16 years old] and 247 [sexual contact without penetration with a child under 16] with penetration old of the Dutch Criminal Code. He was sentenced to two years imprisonment, of which eight months were suspended on condition that he undergo intensive psychiatric treatment. The student was also abused in his own youth. L. van E. appealed this decision but on 17 December 1997, the Appeal Court upheld the District Court's decision. L. van E. filed a further, and final, appeal before the Dutch Supreme Court on purely formal grounds on 6 January 1998. On 8 December 1998 the Supreme Court turned down the appeal. […]

- On 13 November 1997, the Utrecht District Court sentenced C.B., a 50 year old swimming teacher and travel agent, to five years imprisonment for, inter alia, having sexual contact with several boys under the age of 16, including five boys from Sri Lanka. The Public Prosecutor had requested a sentence of six years. C.B. appealed to the Court of Appeal in Amsterdam which upheld the District Court's decision. C.B. then filed a further appeal to the Supreme Court on 1 September 1998. It is not known when the Supreme Court will issue its decision. For the first time, a request made on behalf of the five boys for compensation was successful with the court ordering C.B. to pay NLG 1.500 (USD 750) to each victim. This amount was the maximum that could be awarded to a victim in a criminal case under the law as it was in 1991, when the offenses were committed. There is no maximum amount under the new legislation in force since April 1995 ('Wet Terwee')."

New Zealand

LEGISLATION

Crimes Amendment Act 1995, No.2, to amend the *Crimes Act 1961.* Came into force on September 1, 1995.

Legislative history

No data available.

Theoretical justification

Professor Vitit Muntarbhorn's 1998 Report on extraterritorial criminal laws against child sexual exploitation (published by UNICEF) notes that New Zealand's jurisdiction covers its citizens and those who ordinarily reside in the country.

Offences and sentences

Sexual offences on children (144a) and organising or promoting sex tours (144b). Maximum sentence of seven years imprisonment.

Targeted perpetrators

Sex tour operators (144c) and child sex offenders.

Age of consent/protection

16 years, with special crimes if child is under twelve or between twelve and sixteen years of age.

Statute of limitation

Begins after the charge has been laid.

Double criminality

No.

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

Section 144 B(2) provides that while a person who is alleged to have committed such an offence may be arrested (or a warrant issued and executed that person's arrest) and remanded in custody or on bail prior to obtaining the consent of the Attorney General, no further or other proceedings shall be taken until that consent has been obtained.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

No data available.

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Norway

LEGISLATION

Penal Code 1902, Amendment (1989)

Legislative history

Norway's Penal Code has contained an extraterritorial provision since 1902. This provision made it possible to prosecute Norwegians for crimes committed abroad, but was not applied to cases of child sexual exploitation until recently. In its report before the International Tribunal for Children's Rights at the Paris Hearings in 1997 (hereinafter Norway's Paris Report), the Norwegian Government noted:

> "The possibility to prosecute Norwegians and foreigners in Norway for sexual abuse of children under 14 years of age committed abroad, has always existed in the Penal Code.
>
> Since 1994, one Nordic liaison officer in South-Eastern Asia has worked especially with sexual offences committed abroad. In 1996, it was agreed that the 27 Nordic liaison officers in the field of drug crime (police and customs officers) shall in future handle crimes concerning sexual abuse as well."

Theoretical justification

Both the nationality of the offender and the universal jurisdiction over certain crimes are relevant in establishing Norwegian criminal jurisdiction. According to the Norwegian Penal Code Section 12, a distinction is made between Norwegian nationals and persons domiciled in Norway (hereafter Norwegians) on the one hand and foreigners on the other. A wider range of penal provisions may apply when the act in question is committed by a Norwegian.

Offences and sentences

Rape, sexual exploitation of someone incapable of resisting the act, indecent relations (including sexual intercourse) with a child, promoting and living of the avails of prostitution, incest, child abuse and pornography (showing to, or portraying children) and obscene conduct towards children. Norway's Paris Report adds:

> "Sexual abuse of children under 14 years of age (Section 195 in the Penal Code) is covered both by Section 12 no. 3a (relating to Norwegians) and no. 4a (relating to foreigners). The criminal provision relating to prostitution (Section 206) is covered by no. 3a only. Neither no. 3a nor no. 4a includes the provisions on pornography (Section 211) and some other forms of sexual abuse (Section 212)."

As for sentencing, maximum sentences range from 5 to 10 years' imprisonment, with a penalty of 21 years' imprisonment for specific cases, and a minimum of 1 year imprisonment when indecent relations with a minor consist in sexual intercourse (section 192-197, 206, 212). Additional loss of rights and imposition of fines are also listed (section 17a,b).

When the criminal act is committed by a foreigner, and Norwegian criminal law is applicable because the act concerned is punishable according to the law of the country in which it is committed (double criminality), prosecution may not take place unless there is also power to impose a penalty according to the law of that country. Nor may a more severe penalty be imposed than is authorised by the law of the said country, (section 13, second subsection).

The Supreme Court of Norway has also ruled that when a Norwegian is prosecuted under the condition of double criminality, some regard should be taken to the penalty level in the given country (Rt 1987 page 1355).

Targeted perpetrators

Norwegian nationals, other people domiciled in Norway, and foreigners (if act is also a felony punishable in the country in which it was committed).

Age of consent/protection

The age of consent to sexual relations under Norwegian criminal law is 16 years (eighteen years if there is abuse of authority, sixteen years for pornography). There are higher sentences as well as no defence based on error of age if the child is under fourteen years of age (s.195, 196).

Statute of limitation

The period of limitation (section 67 of the Penal Code) relates to the maximum penalty in the criminal provision concerned.

Double criminality

Double criminality is indeed required (Section 12 no 3c). This means that Norwegians may be prosecuted in Norway only if the criminal act in question is punishable according to the law of the country in which it was committed. The same applies to foreigners residing or staying in Norway.

Double jeopardy (*"ne bis in idem"*)

While the Norwegian Penal Code does not specifically refer to the protection against double jeopardy, Norway's Paris Report indicated that the Norwegian prosecution authority will normally have less interest in pursuing a case when a foreign country has done so, unless the offence is much more severely punished under Norwegian law than under the foreign law.

Preliminary measures or procedures

Prosecution is requested by the victim, and in the case of victims under 17 years, request can be made by parents or guardians. 16 year olds can object or request if they choose to.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

"The professor case": case No.99/1990 (Nor. S.Ct.), (Supreme Court publ. 1990, 760(267-90), Consecutive no. 93B/1990). Three men convicted for sexual abuse of boys in the Philippines and Thailand.

Portugal

LEGISLATION

Penal Code (*Codigo Penal*) and Code of Penal Procedure (*Codigo de Processo Penal*)

Legislative history

Data not available.

Theoretical justification

The general principle with respect to Portugal's territorial penal jurisdiction, as found in article 4 of the Penal Code, is that, unless otherwise stated in an international treaty or convention, the penal laws of Portugal apply to acts committed on the territory of Portugal, irrespective of the nationality of the accused, as well as to acts committed aboard Portuguese vessels and aircraft. As for Portugal's extraterritorial jurisdiction, article 5 of the Penal Code lists five categories of offences committed abroad which can be prosecuted in Portugal, subject to various conditions. With respect to offences which can be associated with the sexual exploitation of children, the relevant conditions are as follows:

1. Offences defined in articles 159 (slavery), 160 (kidnapping), 169 (trafficking for prostitution), 172 (sexual abuse of children under 14), 173 (sexual abuse of minors aged 14-18 by a person in situation of authority) and 176 (sexual exploitation and trafficking of minors aged 14-16) committed abroad can be prosecuted in Portugal if the perpetrator can be found in Portugal and cannot be extradited;

2. All other offences committed abroad by Portuguese or by foreigners against Portuguese victims can be prosecuted in Portugal if the perpetrator can be found in Portugal, subject to double criminality (unless the law is not being enforced by the foreign state). Furthermore, the crime must constitute an extraditable offence but for which extradition cannot be executed in this case;

3. Offences committed abroad against Portuguese by Portuguese habitually residing in Portugal at the time of the offence can be prosecuted in Portugal;

4. Offences committed abroad by foreigners found in Portugal and for whom extradition has been requested but denied (even though the crime is an extraditable offence);

5. Portuguese penal law is also applicable to offences committed abroad for which the Portuguese state has an obligation to prosecute under an international treaty or convention.

Offences and sentences

Subject to the conditions listed above, Portugal's extraterritorial legislation may apply to the following sexual offences committed abroad (some refer to crimes committed against child or adult victims alike, others refer specifically to crimes committed against children):

- Slavery (article 159), punishable with a prison term of five to fifteen years;
- Kidnapping (article 160), punishable with a prison term of two to eight years, or with a prison term of three to fifteen years if involving sequestration, or with a prison term of eight to sixteen years if involving aggravated sequestration;
- Sexual assault — other than rape (article 163), punishable with a prison term of one to eight years or with a maximum prison term of two years if committed by way of abuse of authority or hierarchic superiority;
- Rape (article 164), punishable with a prison term of three to ten years, or with a maximum prison term of three years if committed by way of abuse of authority or hierarchic superiority;
- Sexual abuse of a person who is unconscious or otherwise incapable of resistance (article 165), punishable with a prison term of six months to eight years (masturbation) or with a prison term of two to ten years (intercourse);
- Seduction — sexual fraud (article 167), punishable with a maximum prison term of one year (masturbation) or two years (intercourse);
- Trafficking for prostitution (article 169), punishable with a prison term of two to eight years;
- Sexual exploitation of another person (article 170) is punishable with a prison term of six months to five years when done with a lucrative intent, or with a prison term of one to eight years if committed by way of violence, threat, ruse, fraud or otherwise taking advantage of the victim's incapacity;
- Exhibitionist acts (article 171), punishable with a maximum prison term of one year or a fine the equivalent of 120 working days;
- Sexual abuse of a child under fourteen years of age (article 172): masturbation of or in the presence of a child under fourteen years of age is punishable with a prison term of one to eight years. Sexual intercourse with a child (including oral and anal sex) is punishable with a prison term of three to ten years. Exhibitionist acts, exposing a child to pornographic material; using a child in a pornographic film, photo or recording; or distribution/dissemination of child pornography is punishable with a maximum prison term of three years, or with a prison term of six months to five years if committed with lucrative intent;
- Sexual abuse of a minor between fourteen and eighteen years of age by a person in situation of authority (article 173): masturbation of or in the presence of a minor aged between fourteen and eighteen years, as well as intercourse with such a minor, is punishable with a prison term of one to eight years. Sexual intercourse with a child (including oral and anal sex) is punishable with a prison term of three to ten years. Exhibitionist acts, exposing a minor aged between fourteen and eighteen years to pornographic material; using such a minor in a pornographic film, photo or recording; or distribution/dissemination of pornography involving such a minor is punishable with a maximum prison term of one year, or of three years if committed with lucrative intent;

- Sexual acts with an adolescent between fourteen and sixteen years of age (article 174): intercourse committed by an adult on an adolescent is punishable with a maximum of two years or a fine the equivalent of 240 working days;

- Homosexual acts with an adolescent between fourteen and sixteen years of age (article 175): masturbation of or in the presence of an adolescent aged between fourteen and sixteen is punishable with a maximum prison term of two years or a fine the equivalent of 240 working days;

- Sexual exploitation and trafficking of a minor (article 176): facilitating prostitution of a minor between fourteen and sixteen years of age is punishable with a prison term of six months to five years. Trafficking of a minor under sixteen years of age for sexual purposes (prostitution) is punishable with a prison term of one to eight years. In cases where such an offence (facilitating or trafficking) is committed by way of fraud, violence, threat or with lucrative intent or with respect to a child under fourteen years of age, the prison sentence will be two to ten years.

Furthermore, article 177 of the Penal Code provides for a significant increase in both the minimum and maximum penalties when certain aggravating factors are present: With respect to offences listed in articles 163-165 and 167-176, the penalties go up by one third in cases where the victim is an ascendant, descendant, adopted, adoptant, or parent (with two degrees od seperation) or if otherwise under the care or supervision of the accused (paragraph 177(1)). This applies in cases where the offence was committed while taking advantage of the victim's hierarchic dependence towards the accused. With respect to offences listed in articles 163-167 and 172-175, the penalties go up by one third if the perpetrator had a sexually transmitted disease such as syphilis or other venereal disease (paragraph 177(2)). With respect to offences listed in articles 163-168 and 172-175, the penalties go up by one half if the crime results in pregnancy, grievous bodily harm; transmission of AIDS or other hepatitis which are life-threatening, suicide or death (paragraph 177(3)). With respect to offences listed in articles 163, 164 and 168, the penalties go up by one third if the victim was aged less than fourteen years (paragraph 177(4)).

Targeted perpetrators

Portuguese citizens as well as foreigners found in Portugal can be prosecuted in Portugal for crimes committed abroad.

Age of consent/protection

14 or 18, depending on the offence.

Statute of limitation

No data available.

Double criminality

Depends on the offence. Other than offences committed abroad by Portuguese against Portuguese or offences defined in articles 159 (slavery), 160 (kidnapping), 169 (trafficking for prostitution), 172 (sexual abuse of children under 14), 173 (sexual abuse of minors aged 14-18 by a person in situation of authority) and 176 (sexual exploitation and trafficking of minors aged 14-16),all other offences committed abroad by Portuguese, or by foreigners against Portuguese victims, are generally subject to double criminality (unless the law is not being enforced by the foreign state).

Double jeopardy (*"ne bis in idem"*)

Paragraph 6(1) of the Penal Code states that Portuguese law only applies to acts committed abroad if the accused has not been judged in the country where the offence was committed or if the sentence hasn't been completely served. The second paragraph of article 6 states that the law and sentence of the foreign state apply if they are more favourable to the accused.

Preliminary measures or procedures

While there is no specific mention in the Penal Code of the requirement, in extraterritorial cases, for a complaint from the foreign victim or a formal denunciation from the foreign authorities, paragraph 178(1) of the Penal Code states that, as a general rule, criminal procedure for the crimes listed in articles 163-165. 167, 168, 171-175 must be initiated by a complaint from the victim, unless the victim subsequently dies or commits suicide. When the victim is under 16 years of age, however, the public prosecutor is authorised to initiate the proceedings if the interests of the victim require it (paragraph 178(2)).

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Spain

LEGISLATION

Penal Code Amendment (1995), Ley Organica Poder Judicial (Procedure).

Legislative history

The Penal Code describes the sexual offences which it covers, and it is the procedure law (*Ley organica poder judicial- L.O.P.J.*) which extends the State's jurisdiction to acts committed abroad by Spanish nationals.

Theoretical justification

Spain's penal jurisdiction is based, principally, on the territoriality principle, complemented by the pavilion principle (section 23.1. *L.O.P.J.*). Spain's penal jurisdiction also incorporates the personality principle (section 23.2a) *L.O.P.J.*) and the protective principle (section 23.3. *L.O.P.J.*). With regard to the universality principle, however, Spain's extraterritorial jurisdiction is limited to acts of terrorism, genocide, counterfeiting of foreign currency and prostitution, and thus does not yet encompass sexual offences committed against children. For the time being, Spain's penal jurisdiction toward the latter is based solely on the territoriality and personality principles therefore does not provide for extraterritorial prosecution.

A proposed modification of section 23.4e) of the *L.O.P.J.*, however, would extend the universality principle to crimes such as corruption of minors and incapable persons and thus make these offences prosecutable even when committed abroad.

Offences and sentences

The following offences are covered:

- Child prostitution;
- Corruption of minors;
- Exploitation of minors or incapable persons in public or private pornographic exhibitions;
- Production, sale, distribution or action aimed at facilitating the production, sale, distribution or exhibition of pornographic material in which a child has been used;
- Possession of child pornography.

Note: a foreign conviction for such an offence would qualify, before Spanish Courts, as a prior conviction with regard to harsher penalties for repeat offenders.

Targeted perpetrators

Spanish citizens or foreigners having acquired Spanish nationality since the offence.

Age of consent/protection

Current legislation (section 181 of the Penal Code) sets the age of protection at twelve years for sexual abuse, with special crimes concerning offences committed on children aged between twelve

and sixteen years, and eighteen years for prostitution. The proposed modification would set the age of protection at fifteen, or eighteen in cases where deception was used.

Statute of limitation

A proposed legislative modification would make the prescription periods begin only after the victim has reached majority.

Double criminality

Yes, (23.2 of the procedure law)

Double jeopardy (*"ne bis in idem"*)

Yes.

Preliminary measures or procedures

The victim must denounce the offence to the authorities, except in the case of minors, where the Public prosecutor may lodge the complaint.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

No data available.

Sweden

LEGISLATION

Penal Code, as amended in 1962 and 1994.

Legislative history

Sweden amended its Penal Code in 1962 to extend its jurisdiction to offences committed abroad, but as noted in ECPAT-Sweden's Report to the Hearings of the International Tribunal for Children's Rights in Paris in 1997 (hereinafter ECPAT-Sweden's Paris Report), the enactment of the Swedish Penal Code's amendments more than three decades ago was not in any way connected to the issue of increased protection for children from sexual offences committed by Swedish citizens abroad. It is in fact only recently that Sweden started applying this law to cases of sexual exploitation of children.

The Swedish Penal Code was again amended in 1994, this time with regard to the various categories of sexual offences.

Theoretical justification

As noted in the Government of Sweden's Report before the International Tribunal for Children's Rights at the Paris Hearings in 1997 (hereinafter Sweden's Paris Report), "the theoretical justification for the very broad Swedish extra-territorial legislation is the nationality of the offender. Sweden takes universal jurisdiction for all crimes committed outside the Realm committed by Swedish citizens. This rule is extended to aliens domiciled here (and for aliens that after the crime have become a Swedish citizen or are Nordic citizens domiciled here) and even to aliens not domiciled here but nevertheless residing here." The report adds that Sweden takes universal jurisdiction over very serious crimes (for which the minimum penalty is not less than four years imprisonment) as well as for certain mentioned crimes which have an international dimension, such as hijacking of an aircraft, and that in these cases dual criminality is not necessary.

In his 1998 Report, Professor Vitit Muntarbhorn notes that with respect to extraterritoriality, the law covers the sexual misdeeds of both Swedish nationals and aliens residing in the realm or passing through the realm, thereby mixing the principles of territoriality, nationality and personality.

Offences and sentences

Chapter 6 of the Swedish Penal Code deals with sex crimes perpetrated against both children and adults. It includes the following offences and related sentences:

– Rape (sexual intercourse or other comparable sexual act forced by violence or serious threat) is punishable with imprisonment of at least two and at most six years. If the crime is considered as aggravated rape (which is usually the case when the victim is a child) the offender can be sentenced to imprisonment to at least four and at most ten years;

– Sexual coercion (sexual act forced by unlawful coercion other than rape) is punishable with imprisonment of at most two years. In cases of aggravated sexual coercion, the offender can be sentenced to imprisonment of at least six months and at most four years.
– Sexual exploitation (sexual act induced by gross abuse of the victim's dependency or by improperly taking advantage of the fact that the victim is unconscious or in other helpless state or is suffering from a mental disturbance) is punishable with imprisonment of at most two years. Cases of aggravated sexual exploitation can call for a prison sentence of at least six months and at most six years.
– Sexual exploitation of a minor (sexual act with someone under eighteen years who is the offender's offspring or stands under his responsibility or, otherwise than as previously stated, a sexual act with someone under fifteen years of age) is punishable with imprisonment of at most four years. If the crime is considered as aggravated sexual exploitation of a minor the offender can be sentenced to at least two and at most eight years in prison.
– Sexual intercourse with a child under fifteen years of age is punishable with imprisonment of up to four years (section 6).
– Sexual intercourse with an offspring is punishable with imprisonment of at most two years, while sexual intercourse with a sibling is punishable with imprisonment of at most one year (section 5).
– Sexual molestation (to sexually touch a child under fifteen years or induce the child to undertake or take part in an act with sexual implications, inter alia to participate in producing pornographic material, or with improper influence induce a person aged between fifteen and seventeen years to take part in pornographic posing or in producing pornographic material) is punishable with a fine or imprisonment of at most one year (section 7).
– Procuring is punishable with imprisonment of at most four years (section 8) and aggravated procuring with imprisonment of at least two and at most six years (section 9).
– Seduction of youth (promising or giving compensation obtain or try to obtain casual sexual intercourse with someone under eighteen years) is punishable with a fine or imprisonment of at most six months (section 10).
– Finally, Section 10a of Chapter 16, which deals with crimes against public order, prohibits the production and distribution of child pornography.

However, as was noted in Sweden's Paris Report, "if a crime is committed abroad, the court cannot impose a penalty which would be regarded as severer than the severest punishment prescribed for the crime under the law at the place where the crime was committed [section 2, paragraph 3 of the Penal Code]." It should also be noted that in some cases, attempt, preparation and conspiracy to commit a sex crime can also be prosecuted. Complicity to commit the above mentioned crimes is also punishable by law (section 12).

Targeted perpetrators

The law covers the sexual misdeeds of both Swedish nationals and aliens resident in Sweden or passing through Sweden.

Age of consent/protection

The age of consent in Swedish law for any sexual activity is fifteen years, but there are also provisions to protect children under eighteen years, with respect for example to sexual exploitation, sexual exploitation of a minor or, sexual molestation and seduction of youth. Also, because Sweden requires double criminally, the age of consent in the foreign country is essential for jurisdiction.

Statute of limitation

Sweden's Paris Report sates that as a general rule, the limitation period begins at the time the offence is committed, but that in cases of sexual offences committed against a child under fifteen, the limitation period begins when the child turns (or should have turned) fifteen years of age.

Double criminality

In Sweden, dual criminality is required for all extraterritorial legislation, except with crimes for which the minimum penalty is not less than four years imprisonment and for certain specially mentioned crimes with an international dimension. As with other member states within the European Union who require dual criminality, Sweden will review these provisions with a view to ensuring that this requirement is not an obstacle to effective measures against its nationals and habitual residents who are suspected of sex crimes against children (Joint Action of 24 February 1997). ECPAT-Sweden, among others, hopes that Sweden will eventually eliminate the double criminality criteria.

Double jeopardy (*"ne bis in idem"*)

As in the law of other States, the Swedish Penal Code recognises the protection against double jeopardy. Chapter 2, section 5a of the Penal Code states that a person may not be prosecuted (unless otherwise ordered by a person authorised by the Government) for the same act if :

– That person has been previously acquitted;
– That person has been declared guilty of the offence without a sanction being imposed;
– That person has served his/her sentence in its entirety or his currently doing so;
– The previously imposed sentence has lapsed under the law of the foreign State.

Preliminary measures or procedures

Request from the foreign government, or a person duly authorised (chapter 2, section 5a). Furthermore, a decision on indictment for a crime committed abroad normally requires a decision from the Prosecutor-General or, in special cases, the Government.

Rules of evidence (facilitating proof)

As noted by the Government of Sweden in its Paris Report: "the abused child is not considered as a witness and […] it is not possible for the child to give evidence under oath. The child is heard by the court as a plaintiff, but not under oath. The police interrogation is normally videotaped, and can be shown to the court instead of hearing the child in court, but this is up to the judge's discretion in each case." As for the use of video-link testimony, there are no provisions in this regard.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

In its 1997 Report before the International Tribunal for Children's Rights in Paris, the Government of Sweden stated that application of the extraterritorial rules has very seldom caused special problems. ECPAT-Sweden's Report to the same hearings, on the other hand, provides a somewhat different evaluation. It stated that during its 35 years of existence, the Swedish extraterritorial legislation "has unfortunately been very little implemented and has therefore not proven very effective in terms of increasing overseas children's protection from sexual abuse by Swedish nationals. However, bearing in mind that the [B.] case was the second one ever worldwide in this field, the fact that it was successful and the fact that it generated massive international media coverage and impact, we believe to a great extent inspired other countries to introduce and enforce extra-territorial legislation. Finally, the low priority put on child sex offences compared to combating narcotics, economic crimes and even car thefts, is not encouraging." ECPAT-Sweden's Report also reflected that, at last, a Swedish law enforcement liaison officer was appointed in November 1993 to Southeast Asia, exclusively trained and assigned to confront the problem of sex crimes against children.

In January 1999, the Committee on the Rights of the Child pointed out that little, if any, information had been provided by the Swedish government on child victims of sexual abuse (in either the initial report or first periodical report). The Committee further requested that Sweden provide an update on the measures it had taken to sanction its citizens who commit sexual offences against children abroad, as well as on the progress made since the Stockholm World Congress in 1996.

Register for paedophiles

Sweden's Paris Report notes that "all convicted persons are registered in a computerized register containing suspects and convictions but this information is generally not open to the public. We do not have a special register about persons convicted for sex crimes against children. A special commission under the Ministry of Education is now looking into the question on how to avoid that people convicted of crimes against children can work with children in day care centers, schools and free time activities organised by the school. A digitalized register over child pornography found in connection with investigations is also being built up by the police to make it easier to investigate cases and to study how child pornography is disseminated. It is also the aim that other countries could take advantage of this child pornography register for their investigations."

PROSECUTIONS

As of 1997, Sweden's extraterritorial law has only been applied once to sexual acts against children committed by a Swedish national while abroad. Both ECPAT-Sweden's Paris Report and ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children* (pages 199-219) contain a detailed account of the case. Here are the major elements of the case:

– In February 1993, B.B., a sixty-six year-old Swedish male national was arrested and taken into custody by Thai police for sexual crimes against a thirteen year-old Thai boy in Pattaya, Thailand. He was later released on bail but his passport was confiscated as he was forbidden to leave the country. Although aware of his arrest and the charges against him, the Swedish Embassy in Bangkok nevertheless issued him a new passport (as required by Swedish constitutional law) and B.B. returned to Sweden. After a lengthy investigation in Sweden, B.B. was finally arrested and tried in the District Court of Stockholm. He was convicted on 22 June 1995 to three months imprisonment for sexual intercourse with a minor. He was also sentenced to financial compensation to the victim (100.000 *bath* plus interest).

Switzerland

LEGISLATION

Swiss Penal Code (Dec. 21, 1937), last modified April 1, 1996. And the *Swiss Code on International Aid in Penal Matters.*

Legislative history

As a general rule, Switzerland's penal laws apply to acts committed abroad by its nationals (due to the *Swiss Code on International Aid in Penal Matters*). As for the provisions regarding sexual exploitation of minors (Title V), they were added by *Chapter I of the Federal Law*, June 21, 1991 (in force as of Oct. 1, 1992).

Theoretical justification

Based on the active personality principle, Switzerland's extraterritorial legislation covers nationals as well as habitual residents (Article 6 of the *Swiss Code on International Aid in Penal Matters*).

Offences and sentences

Sexual activity with children, sexual acts with dependant persons or persons with a disability, coercion to sexual activity, rape, taking advantage of a person's distress, trafficking and promoting prostitution.

Imprisonment of five years for sexual activity with a minor, 10 years imprisonment (maximum) for coercion or rape, taking advantage of distress and disability as well as for promoting prostitution.

ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children* indicates that Switzerland will apply the sentence of the place of commission if it is more lenient than the one provided for in the national law. Furthermore, Switzerland may accept a delegation of authority from the foreign State of commission in order to prosecute a Swiss national or resident. As noted on page 15 of the above mentioned report:

> "This applies if extradition is not possible, and if the offender has committed other offenses in Switzerland, and if the foreign state guarantees that it will not re-prosecute for the offenses committed abroad."

Targeted perpetrators

Swiss nationals or any other persons if they are in Switzerland and are not being extradited.

Age of consent/protection

sixteen years, and between sixteen and eighteen years if they are dependent or taken advantage of.

Statute of limitation

Legal action: five years (art.187.5 SPC)

Double criminality

Yes, the law of the place of commission applies if more lenient.

Double jeopardy (*"ne bis in idem"*)

Yes (art 6(2) SCIAPM).

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

No data available.

PROSECUTIONS

Here is information regarding four extraterritorial cases prosecuted in Switzerland in the last few years:

- R.W., Sentenced to five years with regard to offences committed in the Philippines. Sentenced confirmed by the Swiss Court of Appeal in 1997.
- V.B., convicted of unlawful sexual contact with numerous boys (aged between 11 and 15) over a period of many years in Sri Lanka by the District Court of Zurich on 25 June 1998. The Court sentenced him to four and a half years imprisonment (hard labour prison) as well as CHF 61.000 to be paid in damages to the victims. The Court further ordered that V.B. undergo psychiatric treatment. This case, which represents the first Swiss extraterritorial conviction with regard to sexual abuse of children abroad, is described and analysed in detail on pages 75-91 of ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children*.
- P.M., sentenced to 6 years imprisonment by the Criminal Court of Basel on 9 June 1999, for having sexually abused at least 13 young boys aged between 9 and 16 while in the Philippines between 1989 and 1996. This is said to be the first extraterritorial trial in the Canton of Basel, and the first in Switzerland in which the victims were Filipinos. Seeing the accusations as very serious, the sentence imposed by the Court took into consideration not only the sexual abuse of the children, but also the production of pornography and the psychological intimidation that had been used to make the children comply with the wishes of the accused. As part of the investigation in this case, prosecutors from Basel went to the Philippines in order to gather evidence. Last minute information on conviction courtesy of CRIN MAIL Digest 17, Friday, July 9th, 1999. For more information on the case (prior to conviction), see ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children*, pages 127-142.

– A.P. and T.K.W., Swiss nationals arrested in February 1995 with regard to unlawful sexual contacts with two 12 year old Sri Lankan boys, tried and sentenced in 1997 to two years imprisonment (maximum sentence at the time) by a Court in Sri Lanka. By the time the verdicts and sentences were pronounced, T.L.W. had jumped bail and escaped back to Switzerland. As for A.P., after having been arrested yet again, including for similar offences involving the same two boys now aged 16, he has reportedly escaped from Sri Lanka back to Switzerland. As for T.L.W., he is currently under trial in Switzerland for sexual offences against children and authorities are said to be looking into the possibility of enforcing the sentence pronounced against him (*in absencia*) in Sri Lanka. This would require a formal request for legal assistance by the Sri Lankan authorities, which as yet to come. For more information on this case, please consult ECPAT Europe Law Enforcement Group's 1999 Report titled *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children*, on pages 113-126.

Taiwan

LEGISLATION

Law to Suppress Sexual Transactions Involving Child and Juvenile (1995).

Legislative history

The Law to Suppress Sexual Transactions Involving Child and Juvenile, which was passed back in 1995, has recently been amended in order to implement harsher penalties for people charged with paedophilia, no matter where the crime occurs (Source: ECPAT-Taiwan, Newsletter No.4 Mar/Apr 1999).

Theoretical justification

No data available.

Offences and sentences

According to ECPAT-Taiwan, persons charged with sex with minors under the current law can face up to ten years in prison. Those who pay minors for sex will be charged as rapists occurs.

In addition, any individual intentionally distributing indecent advertisement for sexual service could be sentenced up to five years in prison or fined NT 1 million. Media executives, on the other hand, could face a fine up to NT 600,000 (Source: ECPAT-Taiwan, Newsletter No.4 Mar/Apr 1999).

Targeted perpetrators

No data available.

Age of consent/protection

No data available.

Statute of limitation

No data available.

Double criminality

No data available.

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

No data available.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

No data available.

Register for paedophiles

According to the recent legislative amendments, the government will publicise the name and pictures of the accused as well as outlines of the verdict. Previously, only those of pimps or operators of child prostitution were made available to the public (Source: ECPAT-Taiwan, Newsletter No.4 Mar/Apr 1999).

PROSECUTIONS

No data available.

United Kingdom

LEGISLATION

The Sexual Offences (Conspiracy and Incitement) Act 1996 and *The Sex Offenders Act 1997*, Chapter 51.

Legislative history

Part II of the Sex Offenders Act 1997 gives courts in the United Kingdom jurisdiction to deal with UK citizens and residents who commit sex offences against children abroad.

Theoretical justification

No data available.

Offences and sentences

Schedule 2 of the Sex Offenders Act 1997 lists the sexual offences to which section 7 applies.

For England and Wales

1. the following offences as provided in the Sexual Offences Act 1956 (sub-paragraphs (i) and (iv) to (vii) do not apply where the victim of the offence was 16 or over at the time of the offence):
   (a) rape (s.1);
   (b) intercourse with girl under 13 (s.5);
   (c) intercourse with girl between 13 and 16 (s.6);
   (d) buggery (s.12);
   (e) indecent assault on a girl (s.14);
   (f) indecent assault on a boy (s.15); and
   (g) assault with intent to commit buggery (s.16);
2. indecent conduct towards young child (s.1 of the Indecency with Children Act 1960); and
3. indecent photographs of children (s.1 of the Protection of Children Act 1978).

For *Northern Ireland* (note that offences listed in paragraphs 1, 2, 3, 4 and 6 do not apply where the victim of the offence was 16 or over at the time of the offence).

1. rape;
2. indecent assault upon a female person (s.52 of the Offences against the Person Act 1861);
3. buggery (s.61 of the Offences against the Person Act 1861); and
4. assault with intent to commit buggery or indecent assault upon a male person (s.62 of the Offences against the Person Act 1861);
5. unlawful carnal knowledge of a girl under 14 (s.4 of the Criminal Law Amendment Act 1885);
6. unlawful carnal knowledge of a girl under 17 (s.5 the Criminal Law Amendment Act 1885);

7. indecent conduct towards a child (s.22 of the Children and Young Persons Act (Northern Ireland) 1968); and
8. indecent photographs of children (Article 3 of the Protection of Children (Northern Ireland) Order 1978).

Targeted perpetrators

With regard to England, Wales and Northern Ireland, sub-section 7(2) of the Sex Offenders Act 1997 states that "no proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently become, a British citizen or resident in the United Kingdom." The same applies to Scotland, by way of section 8, which adds sub-section 16B(2) of the Criminal Law (Consolidation) (Scotland) Act 1995.

The Sexual Offences (Conspiracy and Incitement) Act 1996 makes it an offence for a person in the United Kingdom (citizens — either before or since the commission of the act — and people normally residing in the U.K.) to incite others to commit a child sex offence abroad, or to conspire with others to do so. Thus, it covers, for example, tour operators who organise travel abroad for paedophiles for the purpose of engaging in sexual acts against children.

Age of consent/protection

16 years. The crime can be aggravated in the case of intercourse with a girl under 13.

Statute of limitation

There are no special provisions that apply to offences covered in the Sex Offender Act 1997, so the statute of limitation would be the same as under UK law for offences committed in the UK.

Double criminality

With regard to England, Wales and Northern Ireland, sub-section 7(1) of the Sex Offenders Act 1997 states that in order to prosecute a person for an act done in a country or territory outside the UK, the act has to constitute an offence under the law in force in that country or territory. Sub-section 7(3) further indicates that "an act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section, however it is described in that law." The same applies to Scotland, by way of section 8, which adds new sub-sections 16B(1)a) and (3) of the Criminal Law (Consolidation) (Scotland) Act 1995.

Double jeopardy (*"ne bis in idem"*)

The Sex Offenders Act does not refer to the protection against double jeopardy, so the British legal position is unchanged in this regard (the protection is indeed applicable).

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

Reasonable doubt standard for determining age of victim. Videotaped depositions, video link testimony and testimony behind a screen are all admissible in court.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

In its Report before the International Tribunal for Children's Rights at the Paris Hearings in 1997 (hereinafter UK's Paris Report), the government of the UK noted:

> "This issue has required careful thought. The requirement of oral testimony and the right of the defence to cross-examine witnesses are central to criminal trials in this country, and it is therefore very difficult to mount successful prosecutions for offences committed abroad. An interdepartmental review carried out in June 1996 confirmed that there would be considerable practical difficulties involved in obtaining sufficient evidence and witnesses from abroad, but concluded that some prosecutions could be successful in certain circumstances. In view of this, and the particularly serious nature of the offences concerned, it was decided that extraterritorial jurisdiction could be justified in the case of sexual offences against children." […] "These provisions will not alter our existing ability to extradite a person for trial to the country in which he is alleged to have committed an offence. In fact, that will always be the preferred option. However, where that is not possible for any reason, we shall now have the alternative of prosecution here. Mounting a prosecution in this country will not be easy, but we will not be deterred where it is right and proper to do so."

Register for paedophiles

Part I of the Sex Offenders Act sets the notification requirements for sex offenders. Article 1 states that a person becomes subject to the notification requirements if, after the Act has entered into force (or even before, if the person has not been dealt with in respect to that offence), he is convicted of a sexual offence (as listed in Schedule I). The requirement also applies to those serving sentences (or detained in a hospital or subject to a guardianship order) or who are subject to supervision after having been released from prison in respect to such an offence. Based on the type of sentence imposed, the person can be subject to the notification requirement for a period ranging from 5 years to an indefinite period. In essence, the notification requirement means that any person subject to it must provide the local police with the following information (as well as notify the police of any changes): name(s), date of birth and home address(es). Sanctions are also provided for in Part I of the Act for those who fail to comply with the notification requirements.

PROSECUTIONS

No cases to date

United States of America

LEGISLATION

Violent Crime Control and Law Enforcement Act, 1994 and *Child Sexual Abuse Prevention Act of 1994, extends the Mann Act 1910, 18 U.C.S.* Became law on September 13, 1994.

Legislative history

In its report before the International Tribunal for Children's Rights at the Paris Hearings in 1997 , the US Government noted (hereinafter US' Paris Report):

> "In 1994, Congress passed the Child Sexual Abuse Prevention Act which expanded the reach of the Mann Act of 1910, a law designed to prevent the transport of women across domestic state lines for sexual purposes. The authority to enact this legislation came from the federal government's power to regulate interstate and foreign commerce granted by the U.S. Constitution. In 1986, the U.S. enlarged the scope of the Mann Act, and made it illegal for anyone to transport a person under the age of eighteen either between states or abroad with the intent that the minor engage in sexual activity.
>
> Several years later, in 1994, under the Violent Crime Control and Law Enforcement Act, the United States joined the efforts of other countries by making it a crime in the United States for an individual to travel in interstate or foreign commerce, or conspire to do so, for the purpose of engaging in certain prohibited sexual acts with a child less than eighteen years old. [...]
>
> Under this law, if a U.S. citizen makes plans to travel abroad with the intent to engage in certain unlawful sexual activity in a foreign country, the U.S. may prosecute that individual in U.S. courts."

Theoretical justification

United States law covers both nationals and residents.

Offences and sentences

Transportation of minors for sexual purposes (2423a) and travel with intent to engage in a sexual act with a juvenile (2423b). Under the US statute, the prosecutor must prove that the offender:

1) travelled in interstate or foreign commerce, or conspired to do so, with
2) the intent to commit an act which violates federal law (prostitution or any sexual activity prohibited by federal law)
3) with an individual under 18 years old.

The US' Paris Report indicates that "[b]asically, this new law makes it criminal for a U.S. citizen to travel internationally with the intent to engage in specified unlawful criminal sexual activity. The prohibited activities under the statute include rape, molestation of children, prostitution, or the production of child pornography."

With regard to sentencing, the Report notes that an offender can a receive fine of up to $250,000 and be imprisoned up to ten years, or both. A repeat offender may receive a prison term up to twice this amount of time.

Targeted perpetrators

The US' Paris Report notes:

> "Our law authorizes the U.S. government to prosecute citizens for their unlawful acts abroad, but only when they undertake their foreign travel with the requisite intent. The law is violated only when the offender travels, or conspires to do so, with the intent to engage in unlawful sexual activity with a minor. The United States law does not specifically require proof that the sexual acts occur but rather requires proof of intent to travel for the purpose of engaging in those acts, Consequently, individuals, such as sex tour operators, who arrange tours for persons with the promise of sex with children may be prosecuted without personally participating in any unlawful sex act. This fact is particularly important because we wish to aggressively investigate and prosecute tour operators who are making it easy for individuals to travel to engage in unlawful sexual activity. It is imperative that we prosecute those individuals who are creating easy access for others to sexually exploit children. We believe that it is more effective to prosecute one sex tour operator and close his business than to punish his customers one at a time. We must knock sex tour operators out of business. We must insure that they are prosecuted, punished and permanently put out of business.
>
> Individuals who knowingly assist tour operators, such as pimps, can be prosecuted under the statute as aider and abettors. If the aider and abettor lives in, and is a citizen of, a foreign country, it is most likely that we would refer that person to that foreign jurisdiction for prosecution."

Age of consent/protection

18 years, other crimes of sexual nature concerning children under 12 and between 12-16 (sexual abuse of a minor).

Statute of limitation

No data available.

Double criminality

As noted in the US' Paris Report, the double criminality condition is not required under US law:

> "Unlike the laws of some other countries, the U.S. statute does not have the onerous double criminality requirement which some countries have. That is, the United States may enforce its law domestically against a U.S. citizen for certain prohibited sexual crimes committed in a foreign country even if those crimes are not illegal in the country where the acts occur."

Double jeopardy (*"ne bis in idem"*)

No data available.

Preliminary measures or procedures

No data available.

Rules of evidence (facilitating proof)

Video-link testimony and videotaped evidence admissible in many States.

IMPLEMENTATION

Difficulties in implementation and steps to improve effectiveness

The US' Paris Report contains the following remarks in relation to the enforcement of the US extraterritorial law:

> "In the U.S., travel with intent to engage in sexual activity with a juvenile has been used to prosecute violators who have traveled interstate but it has not yet been used to prosecute those who travel abroad to exploit children. In spite of the lack of prosecutions under the new statute, U.S. officials are committed to the enforcement of this law. It appears that the major problem with the enforcement of the law is lack of information or intelligence about potential offenders. […]
>
> To date, we have not received sufficient information upon which to bring criminal charges. However, we are not so naive as to believe that since we have not received reports of such unlawful activity that it does not exist. Clearly, studies which have been conducted which suggest that sex tourism is rampant, particularly in the Asian countries. First, we need to know how prevalent sexual exploitation is in your individual countries. Second, and probably more importantly, we need to be advised when you have any information that a U.S. citizen is engaging in sexual exploitation in your country. […]
>
> We need law enforcement to promptly report all instances of child exploitation regardless of the citizenship of the offender. We need a commitment from all countries to enforce their own child exploitation laws. This is a joint effort. We must work together and be consistent to be effective. […]
>
> We need to establish open communications between the law enforcement communities and be diligent in the sharing of information. Once we receive information from your officials we can pursue an investigation into the allegations of child exploitation. If any member of your law enforcement community has evidence that a U.S. citizen is involved in child exploitation, this evidence should be brought to the legal attaché located at the American embassy in your country. That representative will convey the information to the appropriate Department of Justice official in the U.S."

Register for paedophiles

Sex Offenders Registration Act (Meagan's Law).

PROSECUTIONS

M. H., a fifty-eight year old male university professor from Florida, was convicted on March 2, 1999, of smuggling a fifteen year old boy from Honduras into Florida and of having sexual relations with him. He became the first person convicted under the 1994 U.S. federal law. The twelve member U.S. District Court jury found him guilty of the ten charges that were laid against him. M.H. faces maximum penalties of up to 100 years in prison as well as fines of up to U.S. $ 2.5 million. He was arrested in April 1997 on charges that he obtained a false birth certificate for the young boy in order to bring him to the United States. *[Source: ECPAT's Newsletter, No. 27 — May 1999, reporting from Reuters, March 4, 1999]*

Annex II
Glossary on child pornography on the Internet

a

Anonymous FTP: An anonymous FTP site allows Internet users to log in and download files from the computer without having a private userid and password. To login, you typically enter anonymous as the userid and your email address as the password. (See FTP).[1]

b

Bulletin Board System (BBS): A computerised meeting and announcement system used to carry on discussions or to upload/download files.

c

Chat: A system that allows for online communication between Internet users. See IRC.[1]

Child pornography: The majority of countries around the world have yet to adopt specific legislation on child pornography and instead rely on general obscenity laws to control child pornography.[2] For the few who have adopted specific laws on the matter, the way in which they define child pornography varies considerably. As with other forms of child sexual exploitation, the age of the 'child' involved/protected varies considerably from one jurisdiction to the next, as does the definition of what constitutes 'pornography' (often in relation to obscenity standards in a given society). Also, the law might target one or all of the following activities in relation to child pornography: production, distribution, possession with intent to distribute, possession, etc.

As of yet, international law is of little help in this matter. While the 1989 UN *Convention on the Rights of the Child* protect children (defined under article 1 of the CRC as any person under 18 years unless, under national law applicable to the child, majority is attained earlier) against all forms of sexual exploitation and sexual abuse, including "the exploitative use of children in pornographic performances and materials" (article 34c)), it does not, however, offer a definition of child pornography.

In his January 1994 Report before the Commission on Human Rights, then UN Special Rapporteur on the sale of children, child prostitution and child pornography Vitit Muntarbhorn adopted the following working definition of child pornography: "the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material." The UN Rapporteur further noted that 'pornographic performances' should be added to this definition.[3] His successor and current UN Special Rapporteur on this issue, Ofelia Calcetas-Santos, is of the view that in light of recent technological developments, there was a need to distinguish visual from audio pornography. In her 1996 Report, she defined *visual pornography* as "the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material". As for *audio pornography*, it was defined as "the use of any audio device using a child's voice, real or simulated, intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material". She added that the latter should be distinguished from the use of audio devices to offer the sexual services of a child, which would then be considered as solicitation so as to fall within the ambit of prostitution, not pornography.[4]

As for the Draft optional protocol to the CRC on the sale of children, child prostitution and child pornography, in their latest report before the Commission on Human Rights, the Working Group drew attention on some of the difficulties encountered so far with regard to the definitions of certain concepts, including child pornography. On the latter, they reported that: "[t]he Child Pornography debate focused on the use of "actual child" versus the inclusion of virtual images, as well as the secondary harmful impact on the child viewer, indeed, on the perception of all children. Some of these considerations were obviously new, not only to Government delegations but to some NGOs as well. It may be considered extremely dangerous to underestimate all the potential ramifications of the new technologies and of their effect on children. Some States voiced concern about the limitations of national legislation. The debate clearly illustrates the constraints involved in establishing international workable definitions".[5]

Cyberspace: Term originated by author William Gibson in his novel Neuromancer the word Cyberspace is currently used to describe the whole range of information resources available through computer networks.[6]

d

Discussion Group: A particular section within the USENET system typically, though not always, dedicated to a particular subject of interest. Also known as a newsgroup.[1]

e

E-mail (Electronic Mail): messages sent and received over a network (not necessarily the Internet).

f

FTP (File Transfer Protocol): A very common method of moving files between two Internet sites. FTP is a special way to *login* to another Internet site for the purposes of retrieving and/or sending files. There are many Internet sites that have established publicly accessible repositories of material that can be obtained using FTP, by logging in using the account name anonymous, thus these sites are called anonymous ftp servers.[6]

i

Information Superhighway / Infobahn: The terms were coined to describe a possible upgrade to the existing Internet through the use of fiber optic and / or coaxial cable to allow for high speed data transmission. This highway does not exist — the Internet of today is not an information superhighway.[1]

Internet: The vast collection of inter-connected networks that all use the TCP/IP protocols and that evolved from the *ARPANET* of the late 60's and early 70's.[6] The Internet is a decentralized, global medium of communication that links people, institutions, corporations and Governments around the world. The computer networks are owned by governmental and public institutions, non-profit organizations and private corporations. No single entity, academic or governmental, corporate or non-profit, administers the Internet. There is no central point at which all the information is stored or from which it is disseminated, and it would not be technically feasible for any one entity to control all of the information conveyed on the Internet.[7]

IP Address: Internet Protocol Address — every computer on the Internet has a unique identifying number, like 191.1.24.2.1

IRC: Internet Relay Chat — the system allowing Internet users to conduct online text based communication with one or more other users.[1] Basically a huge multi-user live chat facility. There are a number of major IRC *servers* around the world which are linked to each other. Anyone can create a channel and anything that anyone types in a given channel is seen by all others in the channel. Private channels can (and are) created for multi-person conference calls.[6]

Internet Service Provider (ISP): the company which provides users with a connection to the Internet via either a Dial-up Connection or a Direct Connection.[1]

l

Listserv®: The most common kind of *maillist*, "Listserv" is a registered trademark of L-Soft international, Inc. Listservs originated on BITNET but they are now common on the *Internet*.[6] An electronic mailing list typically used by a broad range of discussion groups. When you subscribe to a listserv, you will receive periodic email messages about the topic you have requested.[1]

m

Morphing: Electronic alteration or 'touching-up' of a child's image or picture, whereby making it into a pornographic image or picture without any physical involvement of the child.

n

Network: Any time you connect 2 or more computers together so that they can share resources, you have a computer network. Connect 2 or more networks together and you have an *internet*. See Also: internet, Internet, Intranet.[6]

Newsgroup: A particular section within the USENET system typically, though not always, dedicated to a particular subject of interest. Also known as discussion groups.[1]

Newsreader: A program designed for organizing the threads received from a mailing list or newsgroup.[1]

p

Provider: See Internet Service Provider (ISP).

Pseudo child pornography: Depiction of children and / or creation of children's images for pornographic purposes by means of computers.[8]

s

Server: A computer, or a software package, that provides a specific kind of service to client software running on other computers. The term can refer to a particular piece of software, such as a *WWW* server, or to the machine on which the software is running, e.g. Our mail server is down today, that's why e-mail isn't getting out. A single server machine could have several different server software packages running on it, thus providing many different servers to *clients* on the *network*. See Also: Client, Network.[6]

Site: A single or collection of related Web pages.[1]

t

TCP/IP: Transmission Control Protocol/Internet Protocol — this protocol is the foundation of the Internet, an agreed upon set of rules directing computers on how to exchange information with each other. Other Internet protocols, such as FTP, Gopher and HTTP sit on top of TCP/IP.[1]

u

Undernet: IRC Server (other IRC servers include, but are not limited to: EFnet, DALnet, Newnet. See IRC.

Uniform Resource Locator (URL): — the method by which Internet resources that are part of the World Wide Web are addressed. As an example, the URL for the International Bureau for Children's Rights is: http://www.web.net/tribunal

USENET: A world-wide system of discussion groups, with comments passed among hundreds of thousands of machines. Not all USENET machines are on the *Internet*, maybe half. USENET is completely decentralized, with over 10,000 discussion areas, called *newsgroups*. See Also: Newsgroup.[6]

W

World Wide Web (WWW): Frequently used (incorrectly) when referring to "The Internet", WWW has two major meanings — First, loosely used: the whole constellation of resources that can be accessed using *Gopher*, *FTP*, *HTTP*, *telnet*, *USENET*, *WAIS* and some other tools. Second, the universe of hypertext servers (*HTTP servers*) which are the servers that allow text, graphics, sound files, etc. to be mixed together.[6]

References

1 SquareOne Technology's Internet Glossary, as published on the World Wide Web at the following URL: http://www.squareonetech.com *Copyright © 1997* SquareOne Technology. All rights reserved.

2 See ECPAT-International's website at http://www.ecpat.net/Childporn/law.html

3 Sale of children, child prostitution and child pornography, Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur, in accordance with Commission on Human Rights resolution 1993/82, E/CN.4/1994/84, 14 January 1994, paragraph 172.

4 Ofelia Calcetas-Santos, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, E/CN.4/1996/100, 17 January 1996, paragraph 8.

5 Report of the Working Group on the Draft optional protocol to the CRC on the sale of children, child prostitution and child pornography, E/CN.4/1999/74, officially presented at the 55th session of the Commission on Human Rights (22/3-30/4 1999).

6 Matisse Enzer's Glossary of Internet Terms, as published on the World Wide Web at the following URL: http://www.matisse.net/files/glossary.html *Copyright © 1994-99 by* Matisse Enzer. Permission is granted to use this glossary, with credit to Matisse Enzer, for non-commercial educational purposes, provided that the content is not altered including the retention of the copyright notice and this statement.

7 Ofelia Calcetas-Santos, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, E/CN.4/1998/101, 13 January 1998.

8 Vitit Muntarbhorn, Extraterritorial Criminal Laws Against Child Sexual Exploitation, UNICEF, 1998, p.8.

Annex III
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