



INTERNATIONAL POLICY AND LEGAL FRAMEWORKS ADDRESSING THE DEMAND FOR THE SEXUAL EXPLOITATION OF CHILDREN

Development of Legal Approaches at the International and Regional Levels to Tackle the Demand for the Sexual Exploitation of Children

The starting point for a discussion on legal approaches to address the demand for the sexual exploitation of children (SEC) must be the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC includes international provisions to protect children from all forms of sexual exploitation and sexual abuse, as well as from the sale of or traffic in children for any purpose or in any form.¹

The first collaborative international effort to address the commercial sexual exploitation of children specifically was the First World Congress against the Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in August 1996.² Following that, the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography was drafted to address the problem of trafficking children for a sexual purpose and other forms of child sexual exploitation through a prohibition on the sale of children.³ The UN Special Rapporteur on the sale of children, child prostitution and child pornography (Special Rapporteur) is mandated “to investigate the exploitation of children around the world and to submit reports to the General Assembly and the Commission on Human Rights, making recommendations for the protection of the rights of the children concerned”.⁴ To date, there have been two thematic reports tabled at the UN level that discuss the demand for SEC, one by the former Special Rapporteur⁵ and one by the current Special Rapporteur; the latter also focuses on demand for sexual exploitation of children online (SECO).⁶

Both the 1999 Worst Forms of Child Labor Convention by the International Labour Office and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (otherwise known as the Palermo Protocol) from 2000 include provisions that explicitly state that participating members should take all necessary measures to ensure

- 1 UN General Assembly (1989), “Convention on the Rights of the Child”, art. 34-35, accessed 31 July 2016, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.
- 2 Save the Children, “World Congress against the Commercial Sexual Exploitation of Children”, accessed 6 September 2016, <http://resourcecentre.savethechildren.se/publishers/world-congress-against-commercial-sexual-exploitation>.
- 3 UN General Assembly (2000), “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”, A/RES/54/263 of 25 May 2000, accessed 31 July 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.
- 4 UN Office of the High Commissioner for Human Rights (OHCHR), “Special Rapporteur on the sale of children, child prostitution and child pornography”, accessed 31 July 2016, <http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>.
- 5 UN Human Rights Council (2015), “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography”, UN Doc. A/HRC/31/58, 30 December 2015.
- 6 UN Human Rights Council (2014), “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio”, UN Doc. A/HRC/28/56, 22 December 2014, accessed 31 July 2016, http://www.ohchr.org/Documents/Issues/Children/SR/A.HRC.28.56_en.pdf.

the effective implementation and enforcement of the respective Conventions, including the creation and application of penal sanctions. The Palermo Protocol explicitly addresses the issue of demand as it requires states to adopt or strengthen legislative or other measures in the educational, social or cultural spheres to discourage the demand that fosters all forms of exploitation of persons, especially women and children.⁷

The developments noted above were studied at the Second World Congress against the Commercial Sexual Exploitation of Children and Youth held in Yokohama, Japan, in December 2001, which produced the Yokohama Global Commitment. At the World Congress III against the Sexual Exploitation of Children, Youth and Adolescents, held in Brazil in November 2008,⁸ one of the major themes discussed was “Legal Frameworks and Enforcement” with a focus on reviewing existing laws concerning the sexual exploitation of children and the successful implementation of the Optional Protocol on the Sale of Children.⁹

In addition to international legal instruments, there are several regional legal bodies that have produced tools which attempt to hold the demand side of child sexual exploitation more accountable. The African Commission on Human and Peoples’ Rights developed the 1990 African Charter on the Rights and Welfare of the Child which highlights protecting children from sexual exploitation in Article 27. In addition, the Protocol to the African Charter on Human and Peoples’ Rights adopted in 1998 and entered into force in 2004, supports the establishment of the African Court on Human and Peoples’ Rights to “complement and reinforce the functions of the African Commission on Human and Peoples’ Rights”.¹⁰

The Asian Human Rights Commission produced a similar document to the African Charter on Human and Peoples’ Rights: the 1998 Asian Human Rights Charter, A Peoples’ Charter. The Asian Human Rights Charter includes a section dedicated to children; in particular, Article 10.2 mentions the sexual exploitation of children.¹¹ The document also includes principles for enforcement of the Charter provisions and suggestions for strengthening the framework for rights, including how to deal with the demand side of child sexual exploitation.¹² In fact, the Charter relies on machinery for the enforcement of rights, describing a united approach with the judiciary, the legal profession, Human Rights Commissions and civil society institutions.¹³ More recently, the 2015 ASEAN Convention against Trafficking in Persons especially Women and Children reiterated the commitment of the Association of Southeast Asian Nations to combat trafficking and protect victims in that region.

Another notable regional human rights organisation is the Council of Europe, whose 47 European member states¹⁴ have all signed the European Convention on Human Rights. They are held accountable by the European Court of Human Rights, which oversees the implementation of the Convention by the states, and by the Strasbourg Court, which hears individual complaints of human rights violations.¹⁵ The Council of Europe is also responsible for the European Convention on the Exercise of Children’s Rights, which is a legal instrument meant to supplement the UNCRC¹⁶ and the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also referred to as the Lanzarote Convention, which is “a comprehensive international instrument focusing on the preventive, protective and criminal law aspects of the fight against all forms of sexual exploitation and sexual abuse of children and setting up a specific monitoring mechanism”. The latter is a definite enhancement in terms of addressing demand through legislation.¹⁷

7 UN General Assembly (2000), “United Nations Convention against Transnational Organized Crime and the Protocols Thereto”, Res. 55/25 of 15 November 2000, Article 9.5, accessed 31 July 2016, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

8 Save the Children, “World Congress against the Commercial Sexual Exploitation of Children”, accessed 6 September 2016, <http://resourcecentre.savethechildren.se/publishers/world-congress-against-commercial-sexual-exploitation>.

9 ECPAT International (2008), “Thematic Issues at the World Congress III Against Sexual Exploitation of Children and Adolescents”, accessed 31 July 2016, <http://resources.ecpat.net/worldcongressIII/thematic2.php>.

10 African Commission on Human and Peoples’ Rights (1998), “Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights”, adopted in 1998, entered into force in 2004, accessed 31 July 2016, <http://www.achpr.org/instruments/court-establishment/#1>.

11 Asian Human Rights Commission (1998), “Asian Human Rights Charter: A Peoples’ Charter”, 17 May 1998, accessed 31 July 2016, <http://www.refworld.org/pdfid/452678304.pdf>.

12 *Ibid*, 22-24.

13 *Ibid*, 22-27.

14 Council of Europe (n.d.), “Who We Are”, Coe’s website, accessed 31 July 2016, <http://www.coe.int/en/web/about-us/who-we-are>; See also: Council of Europe (1950), “European Convention on Human Rights”, accessed 31 July 2016, http://www.echr.coe.int/Documents/Convention_ENG.pdf.

15 *Ibid*.

16 Council of Europe (2000), “European Convention on the Exercise of Children’s Rights”, accessed 31 July 2016, <http://conventions.coe.int/Treaty/EN/Reports/HTML/160.htm>.

17 Council of Europe (2010), “Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse”, Lanzarote, 25 October 2010, accessed 31 July 2016, <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm>.

Other regional legal instruments that target the demand for the sexual exploitation of children include the Declaration of the Arab-African Forum against Sexual Exploitation of Children,¹⁸ the Inter-American Commission of Human Rights' 1969 American Convention on Human Rights¹⁹ and the South Asian Association for Regional Cooperation's Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.²⁰ A common theme throughout regional legal instruments, as well as international ones, is the reliance on domestic legislative efforts to address the demand side of the sexual exploitation of children.

Applying the Legal Standards

If the intention of applying the law is to curb demand for SEC it must be applicable on the “front lines”. Domestic legislation must meet the standards set out in international instruments on children’s rights, such as making 18 years a threshold age, below which any form of pornography or prostitution is deemed exploitative. Furthermore, legislative gaps surrounding child pornography and equal gender protection must be filled. In addition, legal remedies such as extraterritoriality²¹ should be adopted as it will make the process of attaining justice for these victims that much easier.²²

In terms of other legal remedies beyond the criminalisation of child sexual exploitation, certain civil law and alternative avenues should be explored. Since criminal law tends to be reactionary, it is important to create pre-emptive and rehabilitative systems to prevent victimisation of children and disable potential offenders. Proactive legal methods, such as strengthening immigration laws pertaining to trafficking, improving domestic child welfare and protection services, as well as creating a stronger family law and court system geared towards children’s needs will all create a safe process aimed to protect children preventively. Furthermore, effective notification systems between countries and regions, such as the INTERPOL Green notices,²³ can serve to create a coordinated law enforcement front against offenders.

18 UNTERM, “Arab-African Forum against Sexual Exploitation of Children”, accessed 10 August 2015, <http://unterm.un.org/DGAACS/unterm.nsf/WebView/D7C268DC5543A46E85256BFB00486FE2>.

19 Organization of American States (1969), “American Convention on Human Rights”, accessed 31 July 2016, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

20 ECPAT International (2008), “Strengthening Laws addressing child sexual exploitation: A Practical Guide”, Bangkok: ECPAT International; See also: SAARC (2002), “SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia”, accessed 31 July 2016, <http://www.saarc-sec.org/userfiles/conv-children.pdf>.

21 UN Human Rights Council (2015), “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography”, UN Doc. A/HRC/31/58, 30 December 2015, para. 62.

22 ECPAT International (2008), “Online Child Sexual Abuse: The Law Enforcement Response”, 8, accessed 31 July 2016, http://www.ecpat.net/sites/default/files/Thematic_Paper_ICTLAW_ENG.pdf.

23 INTERPOL (n.d.), “International Notices system”, Fact Sheet CM/FS/2015-02/GI-02.

Researched and written by Mark Erik Hecht; Edited by Eliana Riggio; Based on “Power, Impunity and Anonymity” as researched and written by Eliana Riggio and Mark Erik Hecht.



ECPAT INTERNATIONAL

328/1 Phayathai Road, Rachathewi, Bangkok, Thailand 10400
Telephone: +662 215 3388, 02 215 8272 | Fax: +662 215 8272
E-Mail: info@ecpat.net | Website: www.ecpat.net