PROTECTION AND THE OPSC:
JUSTIFYING GOOD PRACTICE LAWS TO PROTECT CHILDREN FROM SEXUAL EXPLOITATION

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INTRODUCTION AND PURPOSE

As human rights law continues to grow increasingly internationalised, with countries working together to reach minimum standards and find localised ways of meeting these standards, NGO publications describing "model laws" and "good practice" statutes, policies, or programmes have become commonplace. In the realm of commercial sexual exploitation of children (CSEC), ECPAT (End Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes) also has a number of publications that address such good practices; with regard to legal issues, ECPAT's major resource is Strengthening Laws Addressing Child Sexual Exploitation[1], which serves as an important complement to this journal. While this earlier ECPAT publication provides comprehensive descriptions of the relevant legal provisions that should be incorporated in CSEC frameworks, with short citations to countries with relevant provisions, it does not always provide detailed explanations for why particular legal provisions exemplify good practice or respond to objections to such provisions that might be raised by opponents.

ECPAT's legal advocacy agenda, which flows largely from the Stockholm Declaration and Agenda for Action and Rio Declaration and Call for Action outcome documents of the World Congresses in 1996 and 2008[2] (respectively), has not changed substantially since the Strengthening Laws Addressing Child Sexual Exploitation publication was released (also in 2008). However, as ECPAT began releasing its 2nd Edition Global Monitoring Reports on the status of action against commercial sexual exploitation of children in 2011, a prime opportunity for comparative analysis of progress and continuing challenges, it became clear that some legal advocates continue to struggle to construct a compelling narrative that persuasively responds to internal objections to laws that fully protect children from commercial sexual exploitation. Furthermore, there were few resources available to prepare such advocates for the objections they might face and equip them with counter-arguments with which they can respond.

This journal thus aims to contribute to filling the aforementioned gap by focusing on a few key good practice legal criteria in each of the three major manifestations of CSEC addressed in the Optional Protocol on the sale of children, child prostitution and child pornography[3] (OPSC)—child sex tourism, child pornography, child prostitution.[4] The journal focuses primarily on the good practice criteria likely to be most controversial or elicit the most objections, explains the benefit of these good practices, and provides responses to likely objections. Where possible, the journal illustrates these arguments through actual debates that occurred in countries that have managed to pass good practice laws, showing how domestic advocates managed to successfully plead their case. In instances where desk research in English language did not provide access to such internal debates at the government level, the debates are presented through reference to academic or journalistic sources. As will become clear in Sections II and III, for most manifestations of CSEC, there is no single country that has successfully achieved and adequately implemented all the relevant good practice criteria throughout its territorial boundaries.[5] As a result, most of the sections are illustrated through treatment in varying degrees of depth of several country case studies.

Legal advocacy will continue to be a key component of pursuing greater progress toward achieving the Agenda for Action, and these sections are thus intended to provide a useful resource for legal advocates seeking to strengthen CSEC laws in their countries by illuminating the key features for which they should be striving, preparing them to respond to objections, and providing concrete case studies that may serve as a model for replication.

Comparative evaluation

This legal frameworks journal focuses on the three manifestations where key provisions are contained in the OPSC[6] and most countries have addressed key criteria at the legislative level in order to ensure a reasonably consistent, objective metric for cross-country comparison on issues where comparative data is accessible for all countries in the sample set. However, there are key benefits to moving the policy measures related to trafficking into the legal arena, and a paper addressing this issue will be included in a subsequent journal.

The OPSC-based criteria have been used to evaluate the level of domestic harmonisation of CSEC legal frameworks for 35 countries[7] analysed for this journal. For each criterion, every country[8] has been assigned a score of zero, one, or two points based on the adequacy of their domestic laws with regard to that criterion.

0- Poorly harmonised (has passed only a few provisions required by the OPSC)

1- Partially harmonised (has passed many provisions required by the OPSC but still contains substantial gaps)

2- Well harmonised (has passed the vast majority of provisions required by the OPSC)

Results from these evaluations will be used as a key benchmark for assessing the general state of legal frameworks protecting children from CSEC globally and the resulting categorisations provide a useful tool for advocates to view their countries in a comparative perspective and hold their governments accountable.

Before proceeding, however, it is important to clarify that this analysis is based primarily on a desk review of relevant legal materials, many of which have been translated into English from another language. Evaluating the harmonisation of two legal provisions is challenging, even when both provisions are being analysed in their original, authoritative language, as the meaning of particular terms and phrases is always subject to interpretation. This analysis is even more challenging when analysing a legal provision that has been translated from its original language. Furthermore, in many countries there is no authoritative translation, meaning that these unofficial translations lack binding legal status. Thus, the resulting assessments provide a broad insight into the comparative progress across a range of jurisdictions but do not claim to represent an authoritative account of harmonisation for any one particular country.

CHAPTER 1
CHILD SEX TOURISM[9]

Introduction

Because of the diverse contexts and often transnational multitude of actors involved in child sex tourism (CST), formulating an effective legal and policy response is notoriously challenging. Though the OPSC does address particular kinds of sexual exploitation that result from child sex tourism (prostitution, pornography, and trafficking), its only specific treatment of child sex tourism issues is to establish a few jurisdictional requirements for state parties. After briefly outlining the provisions of the OPSC focused specifically on CST, we will examine a few core "good practice" elements that should be incorporated into each state's legal regime in order to respond to the unique challenges presented by CST offences, as illustrated by Australia, one country in which these good practices recently been achieved.

The OPSC

Beyond its provisions focused on child prostitution and pornography, acts that sometimes result from child sex tourism, the OPSC imposes minimal requirements on states with regard to the unique elements involved in CST offences. CST-focused provisions are limited to jurisdictional issues, which include establishing basic territorial jurisdiction for crimes committed on a state's territory (Article 4.1) and extraterritorial jurisdiction to hear cases involving persons alleged to have committed offences abroad but now present in state territory; however, this latter requirement only applies to states that refuse to extradite such offenders to the territory where the crime occurred (Article 4.3). This rule is inadequate, because it imposes no extraterritorial requirements on countries willing to extradite offenders. In these circumstances, the only option for prosecution would be in the country where the criminal act occurred. In cases where such countries are unable or unwilling to prosecute, child sex tourists may feel free to commit criminal acts and return to the legal safety of their home countries, never being held accountable for their destructive and criminal activity.

With regard to the minimum requirements of the OPSC in the realm of child sex tourism, of the 34 states reviewed[10] so far :

WELL HARMONISED - 6 STATES (18%)	PARTIALLY HARMONISED - 25 STATES (73%)	POORLY HARMONISED - 3 STATES (9%)
CAMBODIA	AUSTRALIA	CZECH REPUBLIC
FRANCE	BANGLADESH	KYRGYZSTAN
ITALY	BELARUS	NEPAL
NEW ZEALAND	BURKINA FASO	
UKRAINE	CAMEROON	
USA	CANADA	
	COLOMBIA	
	DENMARK	
	GERMANY	
	INDIA	
	INDONESIA	
	JAPAN	
	MONGOLIA	
	NETHERLANDS	
	PAKISTAN	
	PHILIPPINES	
	ROMANIA	
	RUSSIA	
	SOUTH KOREA	
	SPAIN	
	SWEDEN	
	TAIWAN	
	THAILAND	
	TOGO	

As exhibited by the above chart, though the requirements with regard to CST in the OPSC are quite minimal, focusing only on jurisdictional issues, most reviewed states still have not managed to adequately harmonise their laws with these basic jurisdictional requirements, leaving a lack of clear and consistent options for the prosecution of CST crimes.

Beyond the OPSC

Though the OPSC does provide that states "may" introduce broader extraterritorial provisions to cover crimes committed by any alleged offender with habitual residence in that state or for any crime involving a victim who is a national of that state (Article 4.2), these broader extraterritorial provisions are an imperative tool for the deterrence and punishment of child sex tourism offences and should thus be mandatory, and countries are increasingly exceeding the requirements of the OPSC and adding provisions guaranteeing extraterritorial provisions. For example, 2008 legal amendments in Cambodia have now added extraterritorial jurisdiction to Cambodian law with no requirement that the conduct be criminalised in the country where it occurred.[11] Although Cambodia is currently primarily a destination rather than sending country for child sex tourists, as it continues to develop economically, there will likely be a greater number of Cambodian citizens with the resources to travel abroad to exploit children; thus, laying this legal framework is an important anticipatory step. Other developing countries, such as India, have long contained such extraterritorial provisions in their law.[12]

If a country lacks such extraterritorial provisions, even if it is willing to extradite, its citizens may feel free to exploit children in countries that lack child protection laws or fail to enforce them. Thus, ECPAT considers robust extraterritoriality provisions a basic prerequisite for an adequate legal scheme to prevent and punish child sex tourism. Extraterritorial jurisdiction should apply not only to citizens of a state but also to residents and corporations incorporated or principally carrying out activities within that state.

In addition to extraterritoriality, there are a number of other legal issues raised by child sex tourism that are typically not adequately dealt with by existing provisions focused on child prostitution, trafficking, and pornography. Many child sex tourists are situational offenders, who lack a predilection specifically for children or a prior intention to exploit, but take advantage of the easy availability of vulnerable children in a particular context. Because of the lack of premeditation involved in situational offences, the general deterrence created by laws prohibiting child exploitation and abuse, supplemented by extraterritorial jurisdiction, will often be the only legal tools available in efforts to prevent child sex tourism.

However, many other child sex tourists exercise premeditation and preparation in the commission of their crimes and, with proper legal tools, can be apprehended before they ever have the opportunity to abuse a child. Such good practices include criminalisation of any action serving as *preparation* to commit one of a range of child exploitation offences without requiring evidence of attempt to commit any one *particular* offence, as well as criminalisation of acts that serve to encourage or benefit from child sexual exploitation. These preparatory offences are still not present in most countries' legal frameworks, and, for reasons discussed in more detail below, they remain quite controversial. However, in addition to Australia, a few other countries have added such offences. The chart below presents three such countries and excerpts from relevant provisions to provide a snapshot of the varied ways such provisions may be enacted. Though all of these countries have some form of preparatory offences in their criminal legislation, none of them matches the comprehensive treatment achieved in Australia's legislation discussed on the next page:

Country	CST Preparatory Offense Provision
New Zealand	Everyone is liable to imprisonment for a term not exceeding 7 years who— • (a) makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person . . . whether or not such an offence is actually committed by that other person; or • (b) transports any other person to a place outside New Zealand with the intention of facilitating the commission by that other person . . . whether or not such an offence is actually committed by that other person; or • (c) prints or publishes any information that is intended to promote conduct that would constitute an offence against section 144A, or to assist any other person to engage in such conduct. (2) For the purposes of this section,— • (a) the ***making or organising of travel arrangements*** includes, but is not limited to,— • (i) the purchase or reservation of tickets for travel to a country outside New Zealand:(ii) the purchase or reservation of accommodation in a country outside New Zealand: • (b) the ***publication of information*** means publication of information by any means, whether by written, electronic, or other form of communication; and includes the distribution of information.[13]
United Kingdom	Section 14[14] (1) A person commits an offense if— a. He intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and b. Doing it will involve the commission of an offense under any of the sections 9 to 13. (Child sex offences Sec 9-13) Section 62- Committing an Offense with Intent to Commit Sexual Offense (1) A person commits an offense under this section if he commits any offense with the intention of committing a relevant sexual offense
United States	"(b) Travel With Intent To Engage in Illicit Sexual Conduct.--A person who travels... for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both. "(d) Ancillary Offenses.--Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both."[15]

The Australian example

Though these legal definitions are important, good practice criteria do not end with strong statutory provisions but also include a state's broader orientation toward its international legal obligations and finding ways to ensure its legal system produces tangible reductions in the exploitation of vulnerable children. Thus, before moving to an analysis of Australia's legal framework for protecting children from sex tourists, it is useful to consider the background situation in Australia and how the current statute serves as an impressive response to Australia's particular challenges domestically, regionally, and internationally.

A. Background

Australia began focusing attention on child sex tourism and other forms of exploitation by ratifying the CRC in 1990. In 1993 the UN Special Rapporteur on the sale of children, child prostitution and child pornography issued a report on the booming child sex industry in Asia, urging Australia to pass extraterritorial legislation in line with other countries currently considering such measures.[16] This was especially urgent as Australian tourists represented a sizeable percentage of child sex tourists, especially in Asia.[17]

Subsequently, in 1994, Australia became the third country in the world to pass such legislation.[18] However, extraterritorial provisions are now the standard in countries of origin for large numbers of child sex tourists, with some form of extraterritoriality present in nearly all "developed" countries analysed by ECPAT. However, many of these countries have never achieved a single extraterritorial conviction.[19] Many of these countries, such as Sweden, are hampered by continuing "double criminality" requirements that hold that the conduct must also be illegal in the country where it takes place in order to be eligible for extraterritorial prosecution.[20] Initial efforts were included in Part IIIA of the Crimes Act 1914 and levied criminal liability on a range of sexual acts with a child below 16 outside of Australia, as well as encouraging or benefiting from such acts.[21] These offences provided an extraterritorial supplement to similar offences that already existed at the state and territorial level for acts committed within a particular state or territorial jurisdiction. Between 1994 and 2010, these commonwealth laws were amended to conform to changes in Australian criminal law as well to provide protection for child witnesses in legal processes surrounding sexual offences.[22]

B. Early problems

Though these advances were impressive, a number of common legal gaps remained in Australian efforts to protect children from child sex tourism. Though Australian law provided the basic legal tools to prosecute Australian offenders for crimes committed overseas after the fact, there was little capacity to intervene during the preparatory phase of the crime and prevent the exploitative act from ever occurring. In order to achieve these important goals, Australian law needed to be expanded to cover a greater range of preparatory offences.

The movement to improve Australian law began gaining momentum in 2007 when the government proposed a bill to expand coverage to a range of new offences as well as hosting a public enquiry to consider the proposed legislation through the Senate Standing Committee on Legal and Constitutional Affairs. Though the enquiry report generally supported the bill, election pressures later in the year caused it to die temporarily. In 2009, however, the Attorney General revived discussion by disseminating a pro-reform article to spur feedback from relevant stakeholders. This process resulted in the commonwealth government in Australia passing groundbreaking new legislation in 2010 entitled

the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* ("the Act"), which expressly intended to provide law enforcement with tools to take pre-emptive action to protect children from suffering exploitation.[23]

C. Key elements of new Australian legislation

Before moving to the specific offences contained in the Act, it is useful to analyse a few common elements that apply to all of these specific offences. Each of the three general elements considered below are important considerations that must be clearly addressed in any CST legal regime, and Australian legal developments with regard to each represent the Federal government's attempt to provide legal clarity and facilitate consistent prosecution.

1. *Definition of a child*: Australia does not serve as a good practice example with regard to the legal definition of a child, which is limited to persons under the age of 16 in most cases (See, e.g., Section 272.8(1)b). However, the statute does criminalise sexual activity with a "young person" between the ages of 16 and 18 when the defendant is in a "relationship of trust," carrying maximum penalties of 10 years (Section 272.12).[24] However, this provision has limited utility with regard to CSEC offences, as in most cases the victim does not generally know the perpetrators.[25] Many countries struggle to balance local understandings of childhood with emerging international norms surrounding childhood, and recent developments represent progress from earlier provisions providing no protection to young people over 16 and indicate an encouraging posture among Australian officials to make progress toward achieving these norms. However, this definitional issue represents a major gap in Australian law.[26] Other countries struggling with this balance, such as Canada, have found superior "compromise" approaches, leaving the age of consent for non-exploitative sexual activity below 18 in line with local norms, yet raising the age of consent for exploitative sexual activity to meet international norms at 18 years of age.[27] The Canadian approach is a superior intermediate step as the international community's perspective on appropriate ways to negotiate these tensions continues to evolve.
2. *Extraterritorial jurisdiction is expansive*: All offences created in Division 272 are applicable to Australian citizens, residents, and companies incorporated through Australian law or whose principle activities are located in Australia, regardless of where the offending acts are committed or the legal status of the acts in other jurisdictions (no double criminality requirement).[28] This relatively expansive form of extraterritorial jurisdiction that applies to both residents and legal persons (corporations) in addition to citizens are essential tools for an effective CST regime. The lack of double criminality requirement ensures that Australian authorities are not hampered by insufficient legal protections for children in other countries and that Australians are not free to exploit children with impunity in countries with weak laws.
3. *Scope of proscribed conduct*: The new law broadens the scope of proscribed conduct from early versions, which prohibited only sexual "conduct," to also include sexual "activity." The statute defines such activity to include behaviour involving bodily contact or functions between any persons, even when there is no direct physical contact with the child. Thus, even exposing a child to sexual activity between adults could be an indictable offence under the new statute.[29] Furthermore, the Act imposes criminal liability on both active and causative engagement. In other words, the defendant need not personally participate in the sexual abuse of a child, so long as he or she causes or otherwise facilitates the proscribed activity in his or her presence. These offences are important,

because they provide a criminal law tool for prosecuting those who contribute to the sexual abuse or exploitation of a child, even if that person derives no benefit or gratification from the exploitative act. This could cover organised child sex rings or other intermediaries, including individuals who travel with their friends and help them arrange to sexually abuse a child, providing a strong deterrent for those with "indirect" responsibility.

D. Notable Specific Offences

All of the common elements discussed above apply throughout the specific offences stipulated in the Act. While the Act contains a vast range of offences, this essay will limit its discussion to the five key "good practice" provisions that set Australian law above the baseline and could be used as a basis for replication in other country contexts.

1. *Procuring*: The Australian definition is inclusive and specifically mentions acts that may not be easily prosecuted under vaguer piece of legislation, including encouraging, enticing, recruiting and inducing the child.[30] A defendant can be held criminally liable for procuring anyone the defendant believes to be a child, whether or not the person is actually a child and regardless of whether the crime actually occurs or even whether it possibly could occur.[31] Robust procuring offences are a key legislative tool for apprehending child predators, or those seeking to provide children for exploitation with others, before they have the opportunity to do physical harm to children. The Australian Act comprehensively captures varied procuring methods and provides law enforcement with the necessary tools to protect vulnerable children. The explanatory memorandum provides clear legal support for police officers to pose as children on the Internet in order to identify and apprehend child predators.[32] As this issue can sometime create contentious cases regarding questions of entrapment,[33] clearly empowering such preventive law enforcement techniques, as Australia has done, is an important component of an adequate legal framework.
2. *Grooming*: The Act also extends beyond procuring to criminalise actions performed to facilitate the procuring of children, regardless of whether the objective of the grooming is an exploitative act to be performed with the defendant or with a third party. It is unnecessary for the child to know that the defendant intends exploitative contact, so long as the defendant in fact does intend such contact. The grooming provision intends to cover circumstances where a defendant develops a relationship with a child that, on its own, may not be objectionable, but becomes criminal because the defendant's purpose in building such a relationship of trust or dependency is to facilitate the commission of sexual abuse or exploitation.[34] As the grooming process is often integral to making a child susceptible to exploitation, arresting a defendant at this stage is a key tool for protecting children before they can be harmed.

As understanding of the key role played by grooming and other preparatory acts in the CSEC process has increased, countries are increasingly adding such offences into their laws. Ireland, for example, has recently added measures addressing grooming and other preparatory acts. These new provisions impose criminal liability on any "person who within the state- (a) intentionally meets, travels with the intention of meeting, a child having met or communicated with that and (b) does so for the purpose of doing anything that would constitute sexual exploitation of the child."[35] New Zealand has also incorporated similar provisions.[36]

3. *Benefiting*: Targeted largely at tour operators and others involved in the industry, this offence criminalises intending to derive any form of benefit from child exploitation, financial or otherwise.[37] It is important to note that merely taking action to derive any form of benefit from the sexual exploitation of a child is sufficient to be prosecuted under this provision, regardless of whether the exploitation is actually perpetrated or the benefit is actually accrued. This expansive provision creates a strong deterrent effect for those willing to facilitate child abuse/exploitation for financial benefit and helps expand understandings of culpability more broadly to apply to any actor who contributes to such exploitation.

4. *Encouraging*: One notable "good practice" feature of Australian law is this capacious provision, which establishes criminal liability for any behaviour that serves to "encourage, incite to, or urge, by any means whatever (including by a written, electronic or other form of communication); or aid, facilitate, or contribute to, in any way whatever" to the sexual exploitation of a child.[38] This encouraging provision is important, because it sends a strong message that any kind of support for child exploitation, even indirect, creates great harm by contributing to a normalisation of and tolerance for sexual exploitation. Even "moral" support for such exploitation in a context where the defendant does not stand to derive any benefit from, or directly participate in, the exploitative act does contribute to a social system that tolerates such exploitation. This social tolerance is an integral causal factor in the continuing prevalence of child exploitation. Addressing these deeper social elements is an essential part of any adequate plan to eradicate child sex tourism and other forms of exploitation.

5. *Preparing/Planning*: From the criminal law perspective, one key innovative feature of Australian law that helps overcome a common barrier to the prevention of child sex tourism is the scope of its preparatory/planning offences. While criminalising specific actions performed in order to prepare to commit a prohibited act of child sex tourism or other form of child sexual exploitation is increasingly recognised as an important tool in prevention efforts, such provisions are often difficult to enforce because of the burden of proving intent to commit a *specific* act of exploitation.

For example, suppose A performs an Internet search of the "best" destinations for child sex tourism in East Africa, views a message board recommending particular areas of Country Z, books a room in a hotel identified in the message board as being hospitable to child sex tourists, and purchases a plane ticket to this particular city. While it may be possible with these facts to prove that A has performed these actions with the intent to commit some sexual offence against a child, there is no evidence to indicate which *particular* offence he intends to commit. Perhaps he is going to exploit children through pornography, or to find vulnerable children in order to sell them for sex to others. Perhaps he is planning to set up a tour group catering to child sex tourists, or perhaps he intends to have sex with a child himself. According to common principles of criminal liability that apply in most jurisdictions, preparatory offences must attach to the intent to commit some specific offence.

As a result, a legal regime conforming to these common understandings of preparatory liability is faced with a dilemma. The very purpose of establishing preparatory offences is to use the criminal justice system as a powerful tool for the prevention of heinous crimes rather than merely to exact justice after the crime has already been committed. However, because the preparatory acts often indicate only that the individual intended to commit some kind of CSEC offence rather than a *particular* offence, as illustrated in the example above, law enforcement are left unable to satisfy evidentiary requirements.

Once again exemplifying good practice, the 2010 amendments to Australian law provide a strong legislative response to these difficulties by shifting the legal requirements for establishing preparatory liability. The new preparatory provisions establish that it is an offence to commit *any* action in preparation for *any* sexual exploitation offence outlined in the Act, regardless of whether the

exploitation is actually committed and regardless of whether the preparatory act is committed with the intention of committing any specific sexual exploitation offence. This means that so long as a preparatory action is committed with the intent to commit some form of child exploitation covered under the act, the defendant is criminally liable and subject to punishments of up to 10 years.[39]

E. Controversies

Because this innovative legal strategy to prevent child sex tourism relies on a non-traditional deployment of principles of criminal liability, it stirred significant controversy among commentators in Australia. The basic objection levied, for example, by the Law Council of Australia argues that this law is an unjustified extension of criminal liability beyond accepted tenets "to penalise the unrealised private intentions of a person which have only been advanced in a preliminary way... This reluctance to attach criminal liability to purely preparatory conduct stems from the notion that a person can plan for conduct then change his or her mind before the plan is implemented."[40]

The Law Council considers a hypothetical example similar to that raised above (Person A planning a trip to Tanzania) to argue that, even if A researched child sex tourism destinations on the Internet and booked a plane ticket to that destination with the full intention of exploiting children and this intent can be established, it remains unjustified to hold A criminally liable as he could still change his mind and choose not to exploit a child at some later point. Penalising him merely for an intention punishes him for his thoughts rather than action, violating basic principles of criminal responsibility.

Although this argument has been embraced by some commentators,[41] it misses the fact that preparatory offences inherently target acts that, in and of themselves, are not harmful but rather are part of a chain of events that lead to harmful acts. This is not limited to preparatory offences involving children but apply in more traditional preparatory offences, such as conspiracy. Penalising action performed in preparation to commit serious harms has been established in criminal law practice in many jurisdictions throughout the world for generations, despite the fact that the perpetrator of these preparatory offences might have changed his or her mind before committing the actual harm.

Thus, it is relatively well-accepted that the opportunity to change one's mind before committing harm is not a sufficient reason to reject preparatory offences. The reason for this is that, in contrast to the way the objection is commonly formulated, preparatory offences such as conspiracy and preparing to exploit a child do not penalise merely "guilty thoughts." Instead, they penalise taking action toward the realization of those criminal thoughts. Furthermore, unlike preparatory offences focused on domestic crimes, the transnational nature of the child sexual exploitation crimes contemplated in this statute make such a targeted prevention regime especially imperative, as comprehensive enforcement of such laws after the exploitation has occurred is notoriously difficult in some countries,[42] leaving victims to continue suffering the physical and emotional trauma of abuse without an effective criminal justice response.

F. Continuing gaps

Though Australian CST law contains some of the most comprehensive provisions in the world, with the 2010 Act providing a greatly enhanced legal framework for protecting children from exploitation by sex tourists, the law was reportedly not accompanied by any declared increases in law enforcement resources for implementation,[43] and Australia has historically not been the leader in extraterritorial prosecutions for CST. In its initial report on the implementation of the OPSC, the government stated that more than 150 allegations of child sex tourism offences had been investigated by the Australian Federal Police until 2008, with a total of 29 Australians charged with child sex tourism offences since 1994.[44] Approximately 61 percent of these charges were

brought to prosecution. Compared to other countries, this record makes Australia a relatively successful country at prosecuting child sex tourism offences. However, at an average of less than two cases per year, prosecutions clearly represent only a small fraction of offences that have been committed. The average sentence for convictions under child sex tourism laws is five to six years under the old legislative scheme.[45] In 2009, the TSETTs investigated 372 suspected incidents of child sex tourism and filed charges against one defendant.[46]

Under the new scheme, for nearly all offences, Australia has higher penalties than other peer countries, such as the UK, Canada, and New Zealand.[47] In 2010, the number of prosecutions increased, with convictions of five Australian offenders carrying sentences of one to four years' imprisonment.[48] This figure places Australia closer to matching recent statistics of the USA, the historic leader in CST prosecutions. In 2010 the US Department of Homeland Security reported seven criminal arrests resulting in five indictments and six convictions in child sex tourism cases.[49] This low number of convictions by both countries illustrates the difficulty of extraterritorial prosecutions and the need for better international coordination in evidence gathering and trial preparation. Though it is encouraging that Australian efforts in this regard appear to be improving, the Australian situation illustrates the necessity of ensuring a well-resourced and consistent CST enforcement regime.

One final gap worth mentioning here addresses a more basic weakness of an approach that focuses purely on punishing damaging actions. As discussed in depth, the preparatory offences passed in Australia are so important, because they allow law enforcement to intervene to prevent an act of exploitation rather than merely to punish it after the fact. However, there are also other legal tools that can serve this prevention mandate that have so far been addressed in only a handful of countries. This class of provisions, rather than focusing on damaging action, imposes requirements to take positive preventive action on the part of those in a position to help protect children. These positive requirements imposed on private sector companies and individuals who derive profit from a thriving tourism industry that renders children vulnerable require such individuals to take protective action in order to be able to operate a profit-earning enterprise. This approach has been exemplified by Colombia, and the relevant Colombian provisions are worth some extended treatment:

Since 2006 the Colombian government in response to the commitments made during the two World Congresses against Sexual Exploitation of Children and Adolescents in Stockholm and Yokohama, and article 44 of the Colombian Constitution, issued in 2001 the Law 679, the "Statute to prevent and counteract exploitation, pornography and child sex tourism," adopting criminal laws and police and administrative measures that assign responsibilities to various public authorities and private actors to protect children from CST.

The 679 Law established an obligation for tourist services providers to adopt commitments or codes of conduct for the protection of children against all forms of exploitation and sexual violence arising from domestic and foreign tourists, and instructed the Ministry of Economic Development (now Ministry of Commerce, Industry and Tourism of Colombia) to ensure compliance with this obligation.[50]

The Law also created a duty for hotels or lodging establishments, according to which they have the obligation to inform customers and employees about the legal consequences of the exploitation and sexual abuse of minors in the country, through the insertion of a clause in the hosting contracts that are signed after the effective date of Law 679 of 2001. Travel and tourism agencies also have the duty to include such information in their tourist advertising, and domestic and foreign airlines must inform their customers on international flights to Colombia about the existence of legislation against CSEC.[51]

However, these earlier provisions were perceived as "toothless," imposing no clear sanctions for violators. To remedy this, Law 1336 of 2009, which supplements and strengthens Law 679

of 2001, clarified the obligations of tourist service providers to prevent the sexual exploitation of children in their respective business activity, subjecting non-compliance to administrative sanctions.[52]

Through Resolution No. 3840 of 2009, the Colombian Ministry of Commerce, Industry and Tourism established the Code of Conduct for self-regulation in tourism services and tourist accommodation services. Through resolution 4311 of 2010, the Aeronautica Civil established the basic content of the code of conduct for commercial air passenger services companies.

Additionally, the Law 1336 of 2009 provided that the Ministry of Commerce, Industry and Tourism shall require providers of tourism services to adopt the code of conduct aforementioned as a condition for registration or renewal of the National Tourism Registry.[53]

These affirmative requirements in Colombia with regard to CST represent an encouraging venture into new legal methods of preventing the sexual exploitation of children. Similar efforts by the Philippines in the realm of child pornography will be discussed in the next chapter.

Conclusion

Child sex tourism continues to present one of the greatest challenges for global law enforcement, government, and civil society action. The difficulty of addressing the social and cultural attitudes that contribute to demand create an environment where a vast number of men and women travel abroad to exploit children sexually. Collecting evidence, gathering witnesses, and establishing sufficient proof are resource and skill intensive and present challenges for even the wealthiest, most experienced law enforcement regimes. As many cross-border sex tourists engage in planning before they depart, the most effective way to protect children from experiencing deep and lasting harm is to apprehend offenders before they ever leave their home countries.

Though not sufficient, a basic building block of such a regime is a legal framework that comprehensively captures the unique issues involved in the commission of CST offences and provides law enforcement with the legal tools necessary to apprehend offenders at the preparatory phase. In addition to preparing/planning, an adequate legal regime must criminalise encouraging, benefiting, grooming, and procuring. Extraterritorial jurisdiction must cover residents and legal persons (corporations) in addition to citizens. Advocates seeking legal reform at the domestic level can learn much from Australia's comprehensive laws in terms of creating a comprehensive legal framework and responding to objections from those who see such laws as penalising someone merely for having a "guilty mind." However, a comprehensive legal framework is only one piece of the picture, as such a framework is only valuable when implemented by specially trained law enforcement collaborating across borders and fully equipped with sufficient resources to overcome the challenges of cross-border cases. Though legal progress is encouraging, there is still much work to be done to achieve adequate systems for the protection of children from travelling sex offenders.

CHAPTER 2
CHILD PORNOGRAPHY[54]

Introduction

As information and communications technologies (ICT) continue to evolve at a breathtaking pace, the need for sophisticated, dynamic law enforcement responses continues to grow. An effective long term response requires a comprehensive legal foundation that criminalises the range of materials and activities that contribute to child pornography as well as levying responsibility on the range of actors in a position to counter its production and dissemination. Child pornography is so harmful not only because of the underlying abuse of a child featured in some forms of child pornography but also because circulation of all forms of child pornography is a key contributor to harmful social attitudes that tolerate a demand for sexual activity with children. However, recognising the full range of harm produced by child pornography and fully counteracting all relevant forms faces a range of objections with regard to rights to privacy and expression and thus remain controversial in many parts of the world. The following chapter will address some of these controversies, articulate key good practice criteria for an optimal legal framework protecting children from exploitation in child pornography, and present how these criteria have been achieved by recent legal developments in the Philippines and other countries.

The OPSC

Though child pornography is addressed in a number of international agreements, including the ILO Convention 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child, the most specific and comprehensive stipulations are located in the OPSC. The following sections will explain the requirements imposed by the OPSC on state parties with regard to child pornography and consider where the OPSC's coverage falls short. These gaps will be useful in understanding ECPAT's key good practice criteria that can be used as a legal advocacy agenda to ensure that every country has a comprehensive child pornography legal regime.

With regard to the minimum requirements of the OPSC in the realm of child sex tourism, of the 34 states reviewed so far :

Well harmonised - 9 states (26%)	Partially harmonised - 18 states (51%)	Poorly harmonised - 8 states (23%)
CAMBODIA	BELARUS	AUSTRALIA
GERMANY	CANADA	BANGLADESH
NETHERLANDS	COLOMBIA	BURKINA FASO
NEW ZEALAND	CZECH REPUBLIC	CAMEROON
ROMANIA	DENMARK	INDIA
SRI LANKA	FRANCE	MONGOLIA
SWEDEN	INDONESIA	NEPAL
PHILIPPINES	ITALY	THAILAND
USA	JAPAN	
	KYRGYZSTAN	
	PAKISTAN	
	RUSSIA	
	SOUTH KOREA	
	SPAIN	
	TAIWAN	
	TOGO	
	UKRAINE	
	SINGAPORE	

Of 35 countries evaluated so far, only nine are well harmonised with the child pornography provisions of the OPSC, and, as will be discussed below, there are a number of key legal good practice elements that go beyond the requirements of the OPSC. Approximately half the countries analysed are partially harmonised, many of which have passed updated legislation recently that has ushered in progress yet still fails to meet minimum standards.

What counts as child pornography?

Comprehensive laws are a key foundation for protecting children from being exploited in child pornography as well as to ensure that simulated images, in which no real children are harmed, do not contribute to a culture that sexualises children and normalises their sexual abuse and exploitation. Reducing these contributors to the exploitation of children in its many manifestations, including sex tourism, prostitution, and trafficking, should be a key objective of such offences, and the scope of relevant provisions should be determined in light of this objective.

A child pornography regime must address both the definition of child pornography, *i.e.*, what activities are considered pornographic and what kind of media they can be featured in. Additionally, it must address the particular actions that are criminalised in connection with the prohibited materials. In other words, what must a defendant have done in connection with child pornography in order to be guilty of a particular offence? The following section will address both of these issues. The OPSC defines child pornography as:

"any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for sexual purposes." (Article 2(c))

The phrase "any representation, by whatever means…" makes clear that the OPSC requires the prohibition not only of "traditional" varieties of pornography in the forms of photographs and videos but also drawings, paintings, and other visual materials. Read literally this provision would also presumably encompass audio and written materials, though some prominent parties have interpreted more narrowly as limited to visual representations.[55] Furthermore, the term "simulated" makes clear that sexual activity need not have actually occurred, so long as the representation appears as if it did.

Though the OPSC has clearly adopted an expansive definition about the range of media that can be used to capture child pornography, it is less clear about what kind of real or simulated conduct qualifies pornographic, stating only that the definition includes "explicit sexual activities…" This leaves many unanswered questions about meaning of the word "explicit" and thus leaves fairly broad latitude for state parties to define the term as they wish. Would the definition cover kissing, touching of sexual parts, and/or masturbation? In addition to the sexual activities provision, the OPSC also covers "any representation of the sexual parts of a child for sexual purposes." It is important to note that these two provisions apply the label of "child pornography" to two different kinds of material that must be analysed according to two different standards. The first prohibits materials that are inappropriate regardless of the purposes for which they are produced or accessed. For example, imagine a psychologist were to produce images of sexual acts with children for the purpose of research rather than for sexual gratification; though the psychologist lacked the intent to derive sexual gratification from the production of these images, he would be in violation of this provision merely by virtue of producing images that meet the requisite criteria.

However, the latter provision focusing on the display of the sexual parts of a child only penalises representations produced for sexual purposes. In other words, the law would not cover images of nude children playing in the yard taken by their parents for purely non-sexual purposes. However, these same images produced or kept by a paedophile in order to derive sexual gratification would be considered pornographic. These distinctions are important to keep in mind when engaging in legal reform efforts grounded in the OPSC.

A. What counts as child pornography?- ECPAT's good practice criteria

I. Activities depicted

Though the minimum provisions on child pornography in the OPSC are the most thorough treatment of the issue in international law so far, they are not yet specific enough to serve as a foundation for strong child pornography law. This is especially true with regard to the first prong of the standard above, which leaves the term "explicit" undefined. In order to protect children adequately, states should interpret the term broadly, such as the definition contained in the Council of Europe's (CoE) Convention on the Protection of children against sexual exploitation and sexual abuse, which includes at least "a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children, or between an adult and a child, of the same or opposite sex; b) bestiality; c) masturbation; d) sadistic or masochistic abuse in a sexual context; e) lascivious exhibition of the genitals or the pubic area of a child. It is not relevant whether the conduct depicted is real or simulated."[56]

The importance of having these provisions clearly delineated in federal legislation can be illustrated by recent developments in Germany. Though Germany has managed to criminalise a wide range of media featuring child pornography, most forms of relevant conduct, as well as addressing virtual child pornography; however, a notable lack of clear definition of what constitutes "pornography" has left the law subject to unclear interpretation that has been a subject of divergent treatment among various courts and law enforcement agencies,[57] which has created an uncertain and potentially inconsistent enforcement environment with regard to these definitional issues.

Though the CoE definition captures most activities constitutive of a strong definition of child pornography, in order to also prevent communications media from continuing to contribute to a culture that tolerates or encourages the sexualisation of children, the following additional activities should also be included in order to achieve comprehensive coverage. Any material that: depicts a child, or apparent child, witnessing sexual activity by any person(s); advocates, encourages, or counsels any sexual activity with children; or indicates or implies that a child is available for sexual purposes. The final two provisions would serve to prohibit all forms of "child erotica," which are often not covered under child pornography laws but serve to reify the common belief articulated by paedophiles that children can consent to and desire sex with adults and that this activity is "normal" and defensible in many contexts.[58]

B. Offences related to child pornography required by the OPSC

"Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2." (Article 3.1(c))

The OPSC extends legal coverage to a range of child pornography offences, such as producing child pornography by any means; spreading pornographic representations to others by any means including through new information technologies; and moving such materials across national borders. However, the possession provision included in the OPSC only requires that countries criminalise possession with the intent to distribute, disseminate, export, offer, or sell. Thus, mere possession is not a required offence under the OPSC, creating a major gap in international law that should be remedied by individual countries. A number of

recent legal developments in particular countries have modelled new provisions on the OPSC. Though these countries that have mirrored their offences based on the language of the OPSC have often achieved marked improvements from earlier laws, they also fail to criminalise mere possession.[59]

C. Offences related to child pornography- ECPAT good practice criteria

As detailed above, perspectives on the scope and kinds of harm created by child pornography are divergent. As a result, many countries have failed to criminalise the mere possession of child pornography, prohibiting possession only when it is intended for sale, dissemination, etc. The rationale for this distinction is that those who merely possess child pornography for their private viewing do not directly participate in the harm perpetrated against children, because they are not directly involved in the abuse nor are they directly involved in contributing to the negative social attitudes created by such material, because they have not spread the material to others. Thus, their connection to the relevant varieties of harm is too remote to warrant criminalisation.[60] The problem with this view is that it ignores the core of the entire child pornography industry—demand. So long as there continues to be demand, there will continue to be the production, sale, and dissemination of child pornography. Failing to criminalise the possession of pornography sends a confused message to those with sexual desires for children that, although selling these materials is wrong, viewing them is acceptable. In order to end this damaging industry, law and society must send a clear and consistent message that any involvement with the materials contributes to the widespread sexual abuse and exploitation of children in powerful, even if indirect, ways.

As technology has changed, it is now possible to regularly view child pornography without needing to download or maintain any physical possession of the relevant depictions; thus, in addition to mere possession, states should also criminalise mere intentional viewing, accessing or downloading pornography. Though the law may carve out exceptions for law enforcement and others with a compelling reason to access such materials, other than these specific exceptions, the law prohibiting access should apply regardless of sexual intent. In other words, criminal prohibition should apply to any intentional accessing of child pornography, even if the purpose of such viewing is research or casual curiosity. Though this approach is far reaching, prohibiting access only with sexual intent would create great barriers to effective enforcement and prosecution of cases, as proving sexual intent is extremely difficult.

D. Why not criminalise all forms of child pornography, including simulated versions?

Now that we have considered some basic good practice background, it is worth turning to some of the relevant controversies with regard to child pornography legal frameworks in order to probe more deeply into the basic rationale as well as more subtle nuances of such provisions.

While, for some, it may seem obvious that a state should pursue laws that achieve the highest degree of protection for children from sexual exploitation, for many others, laws criminalising certain kinds of child pornography are objectionable. It is not that most of these critics support child pornography but rather object to intense regulation of conduct connected to child pornography, because they see such laws as excessively impinging on the rights to free expression and privacy. These objections, powerful to those with a strong libertarian outlook, hold that there is a strong presumption that the government should not criminalise or inhibit citizens' rights to expression and to access or engage with materials in the privacy of their own homes. For a person to be convicted of a crime for accessing images or other materials depicting children sexually, they argue, it must be clearly shown

that this person has directly harmed someone else through these acts or is likely to create such harm. While this may be possible in some cases, in most cases of mere possession of child pornography, critics contend, the claim of harm is too remote.[61]

As indicated by the framework discussed above, most of the discourse on these questions proceeds under the assumption that there is a prima facie presumption that persons have the right to access whatever materials they choose but that this presumption may be limited when there is a countervailing interest substantial enough to warrant intervention in individual rights. The question within this framework then, is what degree of intervention in someone's *prima facie* right to access materials (including child pornography) by the need to protect children. Before proceeding to address this question directly, however, it is worth pausing to note that some authorities have found that child pornography is among a small class of content so exceptionally damaging that it does not qualify for free speech protection at all. In other words the presumption that persons have the right to access materials they choose simply does not apply at all in the case of child pornography, with no requirement that a particular showing of harm be made in a particular case. This was the logic contained in an important United States Supreme Court case expanding the government's power to prohibit child pornography.[62]

However, the rationale for this categorical exception for child pornography was grounded in the fact that child pornography depicts an underlying act of real sexual abuse committed against a specific child; thus, this categorical exception cannot be extended to digitally simulated images.[63] As a result, in order to respond to such critics, we must provide an extended account of the harms created by various forms of child pornography, including digital simulations, and show that these harms are significant enough to warrant a wholesale ban on any kind of engagement with such materials, including mere possession or accessing.

E. Harms created by child pornography

The most common identified harm and the one that serves as a foundation for the uncontroversial provisions criminalising child pornography is what one might call "direct harm," which refers to the physical and psychological damage suffered by children used in the production of pornography. This harm encompasses both the harm perpetrated during the production process as well as the continuing psychological shame and trauma created by having pornographic images of oneself perpetually circulating in public media. This direct harm is created in the production of child pornography featuring representations of real children, often considered the archetypical form of child pornography. However, as technology has changed drastically over the last 20 years, an increasingly large amount of child pornography is created using adults digitally simulated to look like children, cartoons, or other digitally produced images that may not directly harm children during their production.

For those who understand the damage of child pornography as only a function of this direct harm, there will be little reason to clearly prohibit these simulated representations, as no "real" children are harmed by their production, unless the image of a real child is superimposed or "morphed" onto a digitally produced image. However, this conceptualisation of the harm of child pornography is overly narrow and ignores the broader social conditions that continue to make children vulnerable to widespread sexual abuse and exploitation. There are three key categories of indirect harm created by simulated or fabricated child pornography that must be recognised and addressed within legal systems:

1. Grooming children for exploitation

As increasing numbers of children and youth use the Internet in their daily lives, an increasingly large range of children are vulnerable to exploitation by child predators who use the expansive reach of the Internet as a vehicle to facilitate the sexual

abuse of children who are not yet in their physical presence. The process through which child predators condition, prepare, and manipulate children in order to make them more susceptible to engaging in sex acts is called grooming, and a common part of this process is normalising sexual activity with adults and desensitising them to depictions of such acts through child pornography, including virtual simulations.[64]

Though this problem is well accepted, it does face objections from commentators who argue that the fact that virtual simulations are used to groom children is not a sufficient basis for prohibiting such images. In and of themselves, it is argued, these images are not harmful but are only harmful when used in a particular way. Instead, criminal liability should be placed on the grooming process itself, and virtual images should only be a crime when used for the harmful purpose of grooming children for sexual abuse or exploitation.[65] In response to such critiques, it is important to note that grooming offences are often difficult to prove in court. Furthermore, legal intervention can only happen after the desensitisation process has already been carried out, leaving children already exposed to pornographic images that could be psychologically damaging as well as creating future vulnerability to exploitation and abuse. Removing such images from circulation is a more effective way of preventing harm to children. Most countries who have added notable anti-grooming criminal offences in recent years have reinforced the effectiveness of these provisions by also pursuing robust anti-child pornography regimes.[66]

2. Encouraging the propensities of child predators and maintaining a market for child abuse images

A second form of indirect harm created by virtual child pornography bears some similarity to grooming, only applied to the perpetrator rather than the child victim. This logic holds that viewing child pornography, including virtual simulations, may make viewers more likely to commit acts of sexual abuse against children, as the images desensitise persons with predispositions toward desiring sex with children. Though these propensities may have existed already, without viewing such images, internal "morality" mechanisms may push such individuals to abstain from acting on their impulses. However, accessing depictions of sexual acts between adults and children may encourage these individuals to see children as sexual objects or rationalise their impulses as "normal." Child pornography that depicts children as "enjoying" their own abuse can serve as a tool for viewers with predilections toward children to justify their harmful impulses by imagining that children consent to and enjoy sex with adults. Furthermore, failing to legally ban such images may further reinforce such skewed perspectives by allowing offenders to construct a narrative that the legal system has somehow tacitly approved of such conduct. It also may excite their predispositions toward children, increasing their desire to sexually abuse real children.

This logic has played a key role in legislative prohibition of virtual child pornography in the UK[67] as well as in a prominent judicial decision in Canada.[68] In the sweeping language of its decision, the Canadian Supreme Court held that harm of child pornography is not located only in the underlying act (if any) or in dissemination of such materials but instead that the very existence of such images is an affront to the rights of children to dignity and equality. It also held that the state's interest in ending the sexual exploitation of children is sufficient to justify any burdens imposed on free speech.

A critic might object here, questioning how the state interest mentioned above is served by such restrictive laws. In addition to spurring viewers to commit acts of child sex abuse, viewing virtual child pornography also contributes to the demand for child pornography, which includes images involving real children in addition to simulated images. Thus, even if a real child was not harmed in the process of creating the virtual image, these images are important contributors to a broader child pornography market that harms thousands of children every year.[69]

The major counterargument to this rationale is that, despite the intuitive plausibility of this claim, there is no hard evidence

establishing such a link. This was one of the bases on which the US Supreme Court struck down initial efforts to criminalise virtual child pornography.[70] While it is true that there remains an unfortunate dearth of research on this question, pending further research, the strong intuitive plausibility of such a claim has been sufficient to sustain a legal prohibition in many prominent jurisdictions throughout the world, without the need to draw an evidence-based link of a tight nexus between viewing and abusive acts. In addition to the Canadian case mentioned above, European precedent has clearly established the validity of such criminal prohibitions. In *Handyside v United Kingdom*, the European Court of Human Rights (ECtHR) held that restrictions on free speech were justified in order to preserve public morals and that legislators and judges had the capacity to make judgments about what materials were likely to damage public morals. So long as the government adopted restrictions they judged reasonably necessary to protect public morals, there was no requirement that the government prove that these restrictions were absolutely "indispensable."[71] In Europe there have been no judicial challenges to prohibition of virtual child pornography,[72] and, though further research into the question is certainly warranted, this rationale is increasingly accepted in various legal contexts.

3. Creating a culture of tolerance for the sexualisation of children and cultivating demand

The final form of indirect harm created by virtual child pornography is the broadest and most difficult to cognisably apply to any particular victim, but it is also the most important as it probes to the deeper social conditions that continue to create demand for sex with children and insufficient social pressure on those with such predispositions to abstain from acting on them. This form of indirect harm is intimately linked with the broader phenomenon of sexualisation of children in television shows, magazines, music, movies, advertisements, and other media. This widespread sexualisation of children has a subtle but profound impact on social attitudes. Though it is true that most people continue to believe that adults should not have sexual contact with children, they are also more accustomed to seeing depictions of child sexuality in everyday life. Though someone without predispositions toward sex with children may be able to draw a line between media and appropriate conduct in "real life," for those harbouring such predispositions, this distinction is considerably more problematic. Such persons may interpret the popularity of media with sexualised depictions of children, or adults dressed to look like children, as indicative of social support, or at least tolerance, for sexual activity with children. As mentioned above, they may construct a narrative of the "naturalness" of child sexuality and nurture false beliefs that children can meaningfully consent to and enjoy sex with adults.

The weight of this final form of indirect harm has been acknowledged even by some commentators who argue against criminalisation of virtual child pornography. For example, legal academic Suzanne Ost argues that this form of harm may be a sufficient rationale for the prohibition of creation and dissemination of virtual child pornography, as such activity promotes such harmful social attitudes.[73] However, she continues, such harm is not created by those merely possessing or accessing such materials but rather by those producing them; so, relevant offences must be narrowly tailored to target the particular activities that cause the relevant harm. Ost's position ignores, however, that without consumers of such materials, there would not be producers, distributors, and sellers. Those who purchase such images play a key role in the spreading of such damaging social attitudes, as they are the reason that such depictions are produced. Furthermore, failing to use the law to express fully the impropriety of such materials by criminalising even mere possession sends a signal that the legal system tacitly tolerates the conduct depicted and the harmful social attitudes it engenders.

Reporting obligations

In addition to the prohibitions discussed above, another important good practice criterion is the affirmative obligation imposed on particular classes of persons to report suspected cases of child pornography or exploitation over the Internet. The reporting issue is complex as it can apply to a wide range of different types of persons with regard to a wide range of conduct and require a wide range of disclosure. Because of the variety of possibilities along these three axes, reporting requirements can be difficult to draft and implement. This key good practice criterion has been addressed, though not well implemented, in Philippines law and will be mentioned in the section on the Philippines legal framework below. However, the public debate on the issue has been perhaps even more robust in Canada[74] in recent years. Examining this controversy with regard to requiring ISPs to preserve and reveal customer information to law enforcement in cases of suspected child pornography or online exploitation helps to reveal some of the key reasons why reporting obligations are so important, as well as some of the key objections likely to be faced in any context with active debate on the issue.

The Canadian Bill C-22, "Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons Who Provide an Internet Service," was introduced in May 2010, and is now law.[75] Bill C 22 was created to fight Internet child pornography by requiring Internet Service Providers (ISP) and other people providing Internet services,[76] to report any incident of child pornography. Bill C-22 includes provisions requiring the following:

- If a person providing Internet services is advised of an Internet address where child pornography may be available, the person must report that address to the organisation designated by the regulations[77]
- If a person has reasonable grounds to believe that the Internet services operated by that person are being used to transmit child pornography, the person must notify the police[78] as well as preserve the computer data.[79]
- There is a requirement that the ISP must preserve all computer data related to the notification that is in their possession or control for 21 days- without a warrant or judicial oversight

This law was precipitated by several years of debate regarding this challenge. In 2009, the Office of the Federal Ombudsman for Victims of Crime released a report entitled "Every Image, Every Child," which focuses on the problem of Internet-facilitated child sexual abuse. In the report, the Royal Canadian Mounted Police's National Child Exploitation and Coordination Centre said that "the single most important challenge facing investigators of Internet facilitated child exploitation ahead of all other issues, has been their inability to obtain basic customer information such as someone's name and address from Internet Service Providers (ISPs)."[80]

The key issue is that the Internet presents an unprecedented environment difficult to analogise to other contexts, making the proper legal and policy response difficult to conceptualise. For children's rights advocates and many in government, the Internet is a space that operates much like more traditional public spaces, in which individuals and groups have the capacity to affect (including harm) large numbers of others through a single course of action. However, unlike in traditional public spaces, a person's identity is not easily visible, because the Internet allows someone to mask him or herself in a digital cloak of anonymity, allowing him to engage in extremely damaging behaviours without facing social or legal sanction from those in his community and/or state, as he would in more traditional public spaces.

However, for those more concerned with Internet privacy, the Internet is not like traditional public spaces, because individuals engage with the Internet alone or in small groups surrounded by the walls of homes where they would normally expect to be granted high levels of privacy. As a general matter, conduct in one's home is granted a greater presumption of privacy to be shielded from view or interference by outsiders. Thus, because much Internet activity takes place at home, such activity should be protected just as other conduct in someone's home often receives

greater privacy protection.[81]

The problem with this view is that, before the Internet era, activities performed in the home had a limited capacity to harm other people with whom one was not acquainted. The direct effect of activities performed in the home was typically limited to those in the immediate vicinity or, for those separated by larger geographic distances, only those people whose addresses and phone numbers were already known to the individual in question. With the Internet, individuals have the capacity to connect with, share information and images, establish relationships, and execute plans with massive numbers of people across vast distances with none of the usual ability to gauge an individual's credibility or be protected by others. This is especially true in the case of children, who now have a unique capacity to access information and engage in relationships with individuals they do not know, free from monitoring by families and communities. In this way, the Internet creates unprecedented kinds of child protection concerns that necessitate a unique policy response where traditional operative concepts of privacy may not easily apply.

In an important February 2009 child pornography case, *R. v. Wilson*, an Ontario Superior Court Justice squarely faced these privacy concerns and found "no reasonable expectation of privacy" in subscriber information kept by Internet service providers. This was the first time a Judge in Canada had ruled on whether there are privacy rights in ISP information that are protected by the Canadian Charter of Rights and Freedoms.[82] Justice Leitch began her opinion by acknowledging the issues at stake:

"...social and economic life creates competing demands. The community wants privacy but it also insists on protection. Safety, security and the suppression of crime are legitimate countervailing concerns..."[83]

A number of key points arose from her opinion that are useful for justifying laws requiring ISPs to reveal customer information to law enforcement in cases of suspected CSEC over the Internet. First, ISPs almost always have service level agreements (SLA) with each customer that state terms and conditions of access. In order for a customer to use the ISP to access Internet content, the customer must agree to allow the ISP to collect information about the customer and share with law enforcement in certain kinds of cases. Though at the time of the Wilson case, Canada did not yet require ISPs to collect and release this information, the ISP in question already included such provisions in its SLA with each customer and voluntarily provided this information to law enforcement in the *Wilson case*.

With the passage of the law, ISPs will automatically include these privacy terms as part of its agreement with each customer, meaning that customers must agree to the possible sharing of some of their personal information. Thus, rather than this legal requirement allowing the government to secretly obtain information without the consent of the relevant party, the relevant party will have consented already to the release of such information in signing an SLA with the ISP.

One might object here that this consent is not genuine, because all ISPs will include such provisions in their contracts under these laws, which means that Internet consumers have no option to access the Internet unless they agree to these terms. However, the Internet is not a basic life necessity but rather a service that facilitates access to information produced by other individuals and companies, as well as communication and affiliation with others in the public sphere. It is an optional benefit that enriches an individual's life but also creates the capacity for individuals to more easily harm vulnerable people, especially children. As a result, there is nothing shocking about imposing conditions before granting someone access to the non-essential benefit of the Internet—only allowing individuals to enter into this public space if they agree to sacrifice some anonymity and provide some basic identifying information necessary to preserve public safety, especially the safety of children. Such requirements are already commonplace in user agreements with cellular telephone providers.[84] Furthermore, similar child protection measures are even common in more traditional public spaces where it would

be comparatively easier to identify an offender in physical space. For example, it is quite common to require registration and visitor identification for persons entering schools, sports facilities, or other places where children congregate. Such information is then available for release to law enforcement in the event a crime is committed.

To return to the *Wilson case*, the Justice cited another Canadian precedent holding that "The subscriber's name and address... is simply the general information that all persons engaging in commercial contractual relations accept. Moreover, it is not information that anyone has, in such commercial relations as this, any expectation of privacy in." In the developing legal precedent in Canada, along with a number of other countries,[85] the challenge of conceptualising the Internet world is beginning to settle in favour of understanding the Internet as a public domain that serves as an environment for impressive new social developments while also posing great dangers for children.

Thus, legal systems are increasingly taking the view that when someone accesses the Internet in private home spaces, the nature of the Internet transforms such access from a private home activity to an entrance into the public domain affecting large numbers of people just as would an interaction in a traditional public space. As a result, one's Internet activity in the home is subject to regulation and intervention just as one's conduct would be in traditional public spaces. Therefore, if an individual chooses to use the Internet in his home, he must be willing to accept some openness of his personal information, just as he would in traditional public spaces. Just as he would not be able to enter a school or sports club without leaving some personal identifying information, he must also be willing to do the same when accessing the Internet.

The legal trajectory in Canada is encouraging; however, unlike the Philippines (see below), Canada has not yet imposed requirements on ISPs to report suspected cases of child pornography to law enforcement. Current law merely requires ISPs to cooperate with law enforcement requests, though there is a bill being considered to expand these requirements. However, this new law has faced strong resistance from critics who have argued that mandatory reporting legislation for ISPs would turn them into a "deputies" charged with enforcing laws that they may not have the expertise or authority to interpret, particularly if for small ISPs such as cyber cafes, hotels, public libraries etc. Since they may not know the legal standard or correctly apply it, they make many mistakes in the attempted "policing."[86] However, this objection overstates the role of ISPs, who have no authority to investigate crimes but rather merely report suspected offences to law enforcement so that officials may pursue an investigation if they wish. Such a report is not substantively different from a bar owner who observes a customer who appears to be soliciting a child for sex and passes the customer's name and credit card information to police. Some developing countries have emerged as leaders in international movement to make these private sector requirements mandatory. In addition to the Philippines, which will be discussed below, Colombia is a notable example of good practice:

In Colombia, the providers or servers, administrators and users of global networks of information have the duty to denounce before the competent authorities any criminal conduct against minors of which they have knowledge, including the dissemination of pornographic material related to minors.[87] The infraction of this duty is subject to administrative sanctions by the Ministry of Communications, such as the imposition of fines up to 100 minimum monthly wages, the cancelation or suspension of the corresponding web page.[88] In addition, it is established that the contracts providing services of hosting should include explicit clauses prohibiting the hosting of child pornography contents. In case that the hosting service provider has knowledge of the existence of these kinds of contents in its own infrastructure, there is an obligation to denounce them before the competent authority.[89] The lack of compliance with these obligations is subject to the same sanctions aforementioned, notwithstanding the possible criminal investigations that may be carried out.[90]

One of the most impressive examples of a country who has managed to overcome the many controversies addressed in this chapter to achieve comprehensive protections for children will now be addressed.

Good practice case study- the Philippines

A. How did the Philippines get there?

After years of no child pornography legal regime, in 2009 the Philippines passed sweeping new provisions in the Anti Child Pornography Act of 2009.[91] This effort was spearheaded by a 2007 study by the Council for the Welfare of Children (CWC) and the Philippine National Police (PNP), supported by UNICEF, on the "Modus Operandi of Perpetrators of Child Pornography in the Philippines," which showed that organised child pornography groups were already functioning in the Philippines with no adequate anti-child pornography law to serve as a deterrent or tool for law enforcement to intervene in the industry, which was changing rapidly in the Internet age. Furthermore, the lack of a cohesive national plan describing the methods of producing, transmitting and distributing child pornography in cyberspace inhibited the policy response.[92]

Following this study, a range of NGOs including ECPAT Philippines and UNICEF began engaging in concerted advocacy campaigns to push for the legislature to pass a new law to address these gaps. Furthermore, the domestic media consistently emphasised the dangers to children of unprotected Internet usage through a series of editorials and studies.[93] The Catholic Church of the Philippines was also a key ally, engaging their NGO and media network to increase support for the new bill,[94] as well as launching a number of initiatives to better protect minors. From 2007 on, there was encouragement by the international community to draft a plan to combat child pornography. Representative Nikki Prieto - Teodoro, the bill's legislative sponsor, used her background in children's rights and network of political connections to tap into that sentiment and draft the new act with support from international NGOs. So, the Philippines was able to pass this landmark legislation by mobilising a coalition of advocates, led by NGOs, but also including religious leaders, the media, the international community, and connected politicians sympathetic to children's rights.

B. What does the legislation include?

1. Definition of child pornography:

Implementing Rules and Regulations of Republic Act No. 9775 Act defines pornography as "any representation, whether visual, audio or written or a combination thereof, by electronic, magnetic, optical or any other means of a child engaged or involved in real or simulated sexual activities."[95]

This definition of child pornography is fully in line with and exceeds the requirements of the OPSC.[96] Section 3(a) of the Anti-Child Pornography Act defines a child as "a person below eighteen (18) years of age or over; but [who] is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability condition." Sections 3(a)(1) and (2) also specify that the definition of a child for the purposes of this legislation shall also include "a person regardless of age who is presented, depicted or portrayed as a child" and "computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child." This definition provides comprehensive coverage of all forms of child pornography, including digitally simulated images, providing Philippines law enforcement with the legal tools to counteract all forms of harm discussed above.

2. Prohibited Acts

Section 4 lists the prohibited and unlawful acts, including, but not limited to: hiring, inducing, persuading or coercing a child to perform in the creation or production of child pornography; producing, manufacturing or directing child pornography; offering, publishing, transmitting, selling, distributing, broadcasting, promoting, importing or exporting child pornography; and possessing child pornography with the intention to sell, distribute or publish.[97] Section 4(d) in relation to possession of child pornography presumes that if an offender has in his/her possession more than three articles of child pornography, there is an intention to distribute. Furthermore, the Section 4(j) of the 2009 Act, in line with the Rio Declaration and Call for Action,[98] prohibits the act of wilfully accessing child pornography.

Above the requirements of the OPSC and in line with the Rio Declaration and Call for Action,[99] Section 3(h) defines and prohibits the grooming of children for sexual purposes. "Grooming" is defined as preparing a child (or someone the offender believes to be a child) for a sexual relationship or a sexual activity by communicating child pornography. It includes online enticement and also enticement by any other means.[100]

In line with the Rio Declaration and Call to Action,[101] the 2009 Act imposes obligations also upon private sector actors (Internet service providers, private business establishments, Internet content hosts) that are well placed to assist in the fight against child pornography.[102]

In relation to internet service providers (ISP), Section 9 of the Act imposes the following obligations: upon discovery that their servers or facilities are being used to commit child pornography offences, ISPs must notify the Philippine National Police or the National Bureau of Investigation within 7 days; ISPs are obliged to preserve evidence for use in criminal proceedings; upon request by law enforcement authorities, ISPs must also give details of users who access or attempt to access websites containing child pornography; and ISPs must install available programs or software designed to filter and block child pornography.

Additionally, mall owners/operators and owners or lessors of other business establishments have the responsibility to report child pornography offences within seven days of discovery that their premises are being used to commit such offences.[103] Where there is a public display of child pornography, there is a deemed presumption that the owner, operator or lessor of the premises knew about the offence and are therefore liable under Section 10 of the Act. Other individuals and corporate bodies required to report child pornography offences include photo developers, IT professionals, credit card companies, and banks.[104]

The Act also requires the appropriate protection to be put in place for child victims of pornography offences. For example, Section 13 elaborates on strict confidentiality in evidence-handling process, while Sections 14 and 18 guarantee witness protection and recovery and reintegration assistance for victims.

C. Problems with Enforcement

Though the Philippines has laudably achieved one of the world's best laws on child pornography and exploitation over the Internet, unfortunately, the practical impact of this law continues to be quite low, with few convictions and low levels of awareness.

Several other countries with laws less comprehensive than the Philippines have utilised strong enforcement regimes to achieve greater practical impact on the lives of children. Switzerland[105] serves as one such example of a country whose techniques would help the Philippines turn its good practice law into an effective regime.

Switzerland is a federal country made up by 26 cantons. Regarding child protection services or law enforcement organisation each canton organises itself differently. Nevertheless, there are some federal institutions competent to coordinate procedures between cantons. The CYCO (Cybercrime coordination unit Switzerland) or the commissionership Pornography and Paedophilia are two of them. They are the federal institutions (in the Ministry of Justice and Police) competent to coordinate procedures and represent the referral points at an international or national level for questions related to child pornography. Cantonal policies next to the federal police are actively contributing in the fight against child pornography, sometimes with their own initiatives. The collaboration between law enforcement agencies and local NGOs in the fight against child pornography at a national level should not be underestimated. Several working groups are in place in order to facilitate investigations and information sharing.

DNS Blacklist: Since 2007, the Swiss federal police has established several partnerships with ISP, which are based on a voluntary collaboration. These measures have been the result of a strong collaboration between national NGOs like ECPAT Switzerland or the Swiss Agency for Criminal Prevention and the CYCO.[106] The majority of ISPs (14, which represent 85% of all Swiss users) have subscribed to a contract with the government.[107] This implies that the CYCO will manage a list of child pornographic websites that have to be blocked by the providers on the Swiss territory.[108] These partnerships are based on a trust relationship, which means that ISPs usually do not review the sites before blocking. The system is successful in spite of the fact that there is no compulsory reporting system for ISPs to refer child pornography websites found on their system. The national law allows the service to block any kind of representation depicting sexual acts involving children, including photography, films as well as pictures, virtual or animated images (hentai).[109]

Monitoring Peer-to-Peer systems: The CYCO is also monitoring peer-to-peer file sharing platforms (only in Switzerland). Once a user sharing child pornography has been identified by the programme, the case is transmitted by the CYCO to the competent cantonal authority (living place of the user).[110] The monitoring system is automatic and has been programmed to look for specific words in the title of the files being shared. Once a suspicious file has been identified, the content (pictures, video) will be analysed by the computer.[111] 229 cases have been transmitted to cantonal authorities during the year 2010 thanks to this system.[112] However, the CYCO lacks the competence to investigate cases further because of the federalist structure of the state. Investigation procedures related to child pornography are thus executed at the cantonal level.[113]

Undercover Investigation: The CYCO is also undertaking secret investigations in chatrooms and social networks,[114] including researching and looking for potential child abusers. It is not uncommon for offenders to be active on the Internet asking young people to send them suggestive pictures or to be filmed through webcams and asking victims to undertake sexually explicit postures. The investigators have two goals, to catch abusers and to deter potential offenders by making law enforcement presence on the Internet well-known.

Online reporting mechanism: Another key tool in Switzerland to fight against child pornography is the online report formulary.[115] Thanks to this tool everyone is able to announce anonymously websites depicting potential child pornography. The CYCO will then provide a legal analysis on the content of the announced website and, when child pornography is detected, the case will be transmitted to the competent authority at the national or international level for further investigations.[116]

Internet Service Providers have the obligation to save their clients' data for a period of 6 months in order to assist law enforcement agencies if needed.[117]

INTERPOL ICSE: Switzerland joined in 2010 the group of 16 countries that have access to the INTERPOL images/videos database called ICSE (International Child Sexual Exploitation). This database, managed by the group Comm PP, assists national experts in the comparisons of pictures, victim identification and international collaboration.[118]

The Comm PP also coordinates nationwide or international cases with a connection to Switzerland and undertakes the first investigations in order to identify the victim or determine the illegal content of the material.[119]

Conclusion

Viewing Switzerland alongside the Philippines reveals the complexity of comparative legal analysis on CSEC issues. Though the Philippines legislation is clearly superior to Switzerland's across a range of measures, Switzerland is actually doing a better job of protecting children from child pornography because of a strong enforcement regime for its, admittedly only average, legal framework. However, this is not to imply that the Philippines legal progress is not beneficial. Though the law has not been yet been adequately implemented, it has laid a strong foundation from which the Philippines can build fully protective anti-child pornography regime in the future. Enforcing such laws requires a significant but worthwhile investment of state resources, and Switzerland has many more resources at its disposal than the Philippines. However, because of the great gravity of the problem in the country, the Philippines must work to mobilise the resources to achieve comprehensive and consistent enforcement of its new laws so that it can serve as a model for other countries with regard to legal frameworks as well as implementation.

Extended examination of the controversies in this chapter reveal the charged and complex issues involved in protecting children from child pornography and exploitation online. Conceptualising the harm of virtual child pornography continues to be a struggle in many country contexts. In Japan, for example, the sexualisation of children through comics (manga) and other simulated images is widespread, and the large manga industry will continue to push back against efforts to highlight the role of such materials in CSEC and prohibit them accordingly.[120] Clear conceptualisation of this harm is also key in expanding the range of offences to include mere access and possession.[121] Finally, in the Internet age, enforcement of anti-child pornography laws depends upon engaging ISPs and other private sector partners to work in partnership with law enforcement, and developing countries such as the Philippines and Colombia are leading the charge in legally mandating such requirements. However, enforcement remains weak in both of these countries, leaving them opportunity to learn from countries with an already developed enforcement regime, such as Switzerland, in order to enhance local capacity to ensure that good laws translate into systematic benefits for children.

CHAPTER 3
CHILD PROSTITUTION

Introduction

Child prostitution is probably the oldest and most localised of CSEC issues, and countries thus often rely on outdated legal provisions that do not capture the full range of offences or actors that contribute to this global phenomenon. Some countries in South Asia, for example, continue to rely on outdated, patchwork provisions that overlap in some areas and leave major gaps in others, including providing insufficient protection for boys.[122] As a result, legal reform in this area may be especially urgent in these countries and many others, necessitating attention to international standards and good practice.

With regard to the basic requirements of the OPSC, including the definition of child prostitution and the specification of the four basic criminal offences, a number of countries are minimally compliant. However, with regard to the key good practice criteria—offences of benefiting and encouraging, removing criminal liability from child victims in all cases, and establishing third-party reporting requirements—there appears to be no country that has achieved all of these criteria uniformly throughout its entire territory with regard to child prostitution. As already mentioned, one possible reason for this phenomenon is that child prostitution is an offence that has often been addressed by the criminal law in particular countries for a much longer period of time, with provisions dating back to eras when there was a much less developed body of international laws, standards, and good practices, with less pressure to conform to international norms. Furthermore, of the various manifestations of CSEC, child prostitution, when viewed separately from its intimate relationship with the other manifestations, is the most localised manifestation of CSEC. Thus, in countries with a federal lawmaking structure; in which some legislative authority is vested with sub-national political units such as states, territories, or provinces; child prostitution law is often within the authority of these smaller units, creating a lack of uniform legal framework throughout the country.

Though prostitution is addressed in a number of international agreements, including the ILO Convention 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child, the most relevant international treaty is the OPSC. The following sections will explain the requirements imposed by the OPSC on state parties with regard to child prostitution and consider where the OPSC's coverage is insufficient. These gaps will be useful in understanding ECPAT's key good practice criteria to achieve a comprehensive regime for the protection of children from being exploited in child prostitution.

Of the various manifestations of CSEC, child prostitution contains the smallest number of controversial issues and is exposed to considerably less public discourse. However, this chapter will highlight several key issues as presented through analysis of country case studies. Compared to other manifestations, child prostitution is an issue in which there are fewer countries that stand out as clear examples of good practice. However, a number of countries do provide positive examples with regard to particular issues.

The OPSC

A. Definition

Child prostitution is defined in Article 2 as "the use of a child in sexual activities for remuneration or any other form of consideration." While these terms are left undefined to allow a variety of interpretations by state parties, it is important for each country to provide greater specificity to the terms in this definition in order to ensure consistent, effective enforcement.

1. *Sexual activities:* Many countries, such as Kyrgyzstan,[123] do not define the term sexual activity. Countries should provide an expansive definition of the term "sexual activities" to include not only intercourse, but any kind of contact genital-genital (including groin, breast, and anal regions), genital-mouth, and genital-hand, involving a child and an adult in any of these roles.

2. *Remuneration and consideration:* A key limitation in the outdated legal regimes of many countries is their limited understanding of remuneration. Some countries, such as Belarus and Russia,[124] do not mention remuneration in child prostitution provisions at all. In others, such as Germany, remuneration includes only money.[125] The exploitative economic element of child prostitution is not limited to the transfer of money but also to other benefits, including, but not limited to, food, gifts, clothing, mobile phones, shelter, drugs, etc., whether given to the child or a third party. Cambodia's provisions referring to "anything of value" are satisfactorily inclusive.[126] A high percentage of child prostitution is structured around the exchange of such non-monetary forms of benefit, necessitating a broad definition.

B. Prohibited Conduct

The OPSC requires states to criminalise engaging a child in prostitution, including, at a minimum, the following acts: "offering, obtaining, procuring or providing a child for child prostitution" (Article 3). However, once again, it is important at the domestic level to provide more specific definitions of these crimes in legislation.

OPSC ACT	INTERPRETATION
Offering	To ask someone if they would like a child for sex; to advertise the availability of children as sexual partners. An offer may occur in a range of ways, including verbally or via newspapers, internet, mobile phone or any other form of communication
Obtaining	The prohibition on obtaining a child for prostitution targets the client of a prostituted child. It refers to the transaction by which a person acquires the sexual services of a child.
Procuring	To arrange for a child victim to be made available to a customer, for example by 'buying' a child for someone, or arranging for a child to be brought to a particular place for them. This activity is commonly referred to as 'pimping'.
Providing	To make a child available to someone who so requests. This can be illustrated by a parent or a relative who sells a child for the purposes of prostitution or to a brothel owner who provides a customer with access to a child.

The obtaining provision is particularly important, as many states, such as Brazil, have laws that criminalise intermediaries who furnish children for prostitution, and sometimes even the child victims themselves, but fail to criminalise those who purchase sex services with children.[127] Ensuring that the client is fully covered under the laws is a key minimum criterion for compliance with the OPSC.

With regard to the minimum requirements of the OPSC in the realm of child sex tourism, of the 34 states reviewed so far :

Well harmonised - 6 states (17%)	Partially harmonised - 17 states (49%)	Poorly harmonised - 12 states (34%)
CAMBODIA	AUSTRALIA	BANGLADESH
COLOMBIA	CANADA	BELARUS
NEW ZEALAND	CZECH REPUBLIC	BURKINA FASO
SRI LANKA	DENMARK	CAMEROON
THAILAND	FRANCE	ITALY
USA	GERMANY	JAPAN
	INDIA	MONGOLIA
	INDONESIA	NEPAL
	KYRGYZSTAN	PAKISTAN
	NETHERLANDS	SINGAPORE
	ROMANIA	TOGO
	RUSSIA	UKRAINE
	SOUTH KOREA	
	SPAIN	
	SWEDEN	
	TAIWAN	
	PHILIPPINES	

Because many countries have addressed child prostitution in their legal systems for much longer than other manifestations of CSEC, which has created less of a movement to legislate in this area, child prostitution is the area with the largest number of countries poorly harmonised.

Good practice

A. Third-party liability

Though the OPSC captures most of the range of conduct that should be criminalised in order to protect children from exploitation in prostitution, there are other forms of third-party liability beyond the OPSC's minimum requirements that should be incorporated into an adequate protection regime. These third parties can be captured by facilitating, encouraging and benefiting provisions that would criminalise supporting the commission of child prostitution in any way. Such provisions would be triggered by allowing one's premises to be used for such activities, inciting others to commit such acts (regardless of whether the individual derives any personal benefit or plays any participatory role in the commission of the act itself), receiving any kind of financial benefit or reward that has been derived from the commission of child prostitution offences, or in any way facilitating the commission of such offences at any stage of the process. Because these offences have been discussed in detail in Chapter 1 of this volume, they will not be discussed again here.

B. Reporting requirements

Reporting requirements, contrasted with the above offences by being conduct the law must affirmatively *require* rather than prohibit, continues to grow increasingly important, but is also exceedingly rare when canvassing country law throughout the globe. Though many countries have laudably improved their enforcement of child prostitution laws in visible public places, the unfortunate side effect has been that a significant portion of this exploitative conduct has been moved to more private places, such as hotels, guesthouses, condos, massage parlours, karaoke bars, etc. Because of the hidden nature of these spaces, the capacity of law enforcement to discover and investigate crimes is much

more difficult, as they typically cannot enter such establishments without probable cause of criminal activity. As a result, in order to protect children from prostitution, it is imperative for the criminal law to require owners, tenants, or managers of commercial or residential premises who know that their premises are being used to facilitate or perform child prostitution offences to report such suspicions to law enforcement. Any person exercising any form of control over such premises who fails to report such offences should be criminally liable under the relevant statutes.

Reporting requirements in the realm of child prostitution have received notably less attention in academic and public discourse when compared with reporting in the child pornography realm. Likely as a result of this lack of attention, there are very few countries that have imposed such requirements. Of the countries reviewed so far, only Colombia[128] has successfully instituted relevant provisions:

Colombian legislation provides a good example of robust reporting requirements: In addition to the provision of article 219B, the Colombian penal code contains two criminal provisions to punish the conduct of a private person and public servants whenever there is a failure to report the commission of a crime related to the sexual exploitation of children. In regard to the private persons, they are sanctioned whenever they fail to report to the authority the commission of crimes that are considered of public interest, among them those related to sexual exploitation of children. Thus, article 441 refers to the "felony to report by a private person." It provides that "the one that having knowledge of a crime of genocide, forced displacement… or any of the conducts outlined in Chapter IV of Title IV (sexual exploitation) of this book, fails to inform without just cause in an immediate manner to the authority, shall be punished with imprisonment of between 3 and 8 years". Likewise, for the case of public servants, according to article 417, the conduct of a public servant is sanctioned whenever they have knowledge of a crime that should be investigated at its own initiative, and fail to inform the authorities. This conduct is punished with a fine and loss of employment, in addition to imprisonment of between 32 and 72 months of imprisonment.[129]

South African law serves as a strong example. The Child Care Act (1983) holds that:

> "2) Any person who is an owner, lessor, manager, tenant or occupier of the property on which the commercial sexual exploitation of a child occurs and who, within a reasonable time of gaining information of such occurrence fails to report such occurrence at a police station, shall be guilty of an offence." (Section 50A)

For the reasons noted in earlier chapters (See Child Pornography, Chapter 2), such a requirement continues to grow increasingly important, making this a key issue meriting further advocacy.

C. Protecting child victims

One of the key problems created by addressing the prostitution of children under adult prostitution laws, or merely making the child's age a basis for harsher punishments, is that child victims are often left legally liable for their own exploitation. Though there is a growing international consensus that children do not have the capacity to consent to exploitative sexual activity (sexual activity where force, coercion, or financial benefit are relevant features of the decision process), legal frameworks often do not reflect this fact. Furthermore, statutory provisions completely exempting children from criminal liability for commercial sexual activity are exceedingly rare. Of the countries analysed so far where prostitution is illegal, only Cambodia has clear statutory provisions to this effect that apply throughout the country.[130] However, this analysis is complicated by the fact that many countries are governed through a federal structure where some lawmaking authority is delegated to sub-national units of government. Because child prostitution is more localised than the other manifestations of CSEC addressed in this journal, in most federal systems primary lawmaking authority with regard to child prostitution is allocated at the sub-national level.[131] In many of these countries; especially the USA, Canada, and Australia;

children have been protected from criminal liability in some but not all jurisdictions. In most other countries, however, this issue is not addressed at the legislative level at all.

While some legal systems attempt to deal with this issue by creating a high-level policy directing law enforcement and prosecutors that children should be not penalised under criminal laws, such a method is often ineffective, as police working on the ground may not be aware of or understand the policy, and may use vagueness or a lack of monitoring as a justification to ignore the policy when they choose.[132] Though it is true that police officers may also not uniformly enforce a statutory provision exempting children under 18 from prosecution under such laws, such statutory provisions are typically more effective legally, as in the hierarchy of legal norms, their authoritative status is typically higher than that of policy. Furthermore, policy can shift quickly when political leadership changes, creating further confusion among officers charged with implementing such policies and weakening protection for child victims. Thus, it is imperative that these measures be included in a clear and specific statute with the capacity to guide official conduct.

To see this problem, consider the example of the UK, a country that has shown generally positive developments with regard to protecting children from prostitution. However, with regard to protecting child victims from prosecution, the UK has relied on a vague, incomplete policy with unclear implications for law enforcement. In its guide on prosecuting prostitution and exploitation offences, the Crown Prosecution Service holds that "When considering a child accused of prostitution, reference should be made to the policy document Safeguarding Children Involved in Prostitution, elsewhere in the Legal Guidance, and the child should generally be treated as a victim of abuse. The focus should be on those who exploit and coerce children. Only where there is a persistent and voluntary return to prostitution and where there is a genuine choice should a prosecution be considered."[133] Though the government attempted to clarify how this provision should be implemented with child-friendly provisions contained in a separate guide,[134] as illustration of the danger of shifting policy winds, this guide was superseded by a further guide, which unfortunately contains no mention of how law enforcement should deal with the enforcement of these provisions.[135] Such a policy is therefore potentially open to wildly divergent interpretations among law enforcement tasked with deciding whether a child involved in prostitution has "persistently and voluntarily" engaged in such activity.

Though recognising that analysis of these two criteria often proceeds in an integrated fashion, as analysis of each one depends on factors arising from the other, to understand the difficulties of such a determination, let's consider each criterion individually, beginning with the term "voluntary." One of the key reasons for the growing international movement toward decriminalisation of children with regard to sexually exploitative criminal activity is the recognition that, because of the unique social, psychological, and physical vulnerability factors of children; decreased understanding of risks and harms; and the unique power imbalance and constrained capacity for choice nearly always present in commercial sex, children do not have the capacity to consent meaningfully to such arrangements. It would be extremely difficult and impractical for law enforcement to identify that rare and extraordinary case where none of these factors is in play and a child has sufficient capacity to voluntarily engage in such conduct. Such decision making would be ad hoc and inconsistent.

To see this more clearly, compare this issue to other issues where children are held to lack the capacity to engage in adult behaviours—consuming controlled substances (such as alcohol and tobacco), voting, or engaging in armed conflict. Children are deemed uniformly incapable of exercising the level of judgment necessary to engage in these activities; though, in fact, there are likely a number of extraordinary children who have matured at a young age and exist in a unique social, physical, and psychological situation such that they could engage in such activities with a level of conscientious decision-making comparable to adults. However, it would be exceedingly impractical to make case-by-

case determinations of which children meet such standards. With no clear standards, decisions are more likely to be based on biased judgments on the part of officials based on their own personal perceptions of maturity and perhaps clouded by prejudice against minorities or disfavoured social groups.

This also applies with regard to the second criterion: "persistent." Children who have been rescued from prostitution once but returned to circumstances they find even more intolerable or with even fewer life chances can easily fall back into prostitution,[136] believing there is no way they will ever be able to make enough money to pull themselves out of poverty and domestic instability except through commercial sex. For someone to be held to have meaningfully persisted in engaging in an activity that provides the basic resources for survival, she must have a meaningful set of other options. Furthermore, many child victims have been so manipulated by pimps and middlemen that they do not understand themselves as victims and do not see the risks and harms they are suffering through such commercial sex. Their self-esteem may have been so warped by their earlier experience that the only way they can find validation is through commercial sex. They may see themselves as having nothing else to offer.[137]

While it is true that we can imagine cases where such factors are not relevant, it will be nearly impossible for law enforcement to access sufficient and reliable information to make such a determination. This is especially true when many child victims have been trained to be sceptical of officials and avoid telling them anything personal. It is well documented that many children, despite inner turmoil and suffering, may present a hard, even callous façade to those who try to help them. They may deny manipulation or outside pressure, arguing that they fully understood what they were doing, consciously chose to engage in such activity, and wish to return to it. However, these performances cannot be taken at face value, as they often do not reflect the underlying psychological realities[138] and may have been produced through indoctrination and coercion from those who initially led them into prostitution. Furthermore, such determinations may be clouded by the perspectives of officials with regard to external factors unrelated to questions about the child's personal choices. For example, a sense of welfare system failure has been shown to increase the pressure to deal with such issues through the criminal justice system.[139]

Furthermore, proponents of the UK approach who defend it on the grounds that only in extraordinary cases will a child be prosecuted miss a clear objective of complete decriminalisation of children: increasing the capacity of children in prostitution to remove themselves from the exploitative situation, report to and cooperate with law enforcement, and envision and pursue alternate possibilities for their lives. Even if most children will never be prosecuted, children will not know or understand this, and fear of prosecution will continue to push them to engage in risky behaviour and avoid working with officials.[140] Furthermore, the possibility of prosecution will be used by pimps and procurers to control children by threatening to report them to police.[141]

One final objection raised by some policymakers in the UK is that the decriminalisation of children would "risk sending out a message that we do not think it is acceptable for adults to be involved in street prostitution, but that somehow it is acceptable for a child or young person to loiter or solicit for the purposes of prostitution."[142] This objection misses the fact that there are a number of ways of reaching children engaged in prostitution, helping them leave the streets, and providing them the supportive environment they need to exit the exploitative situation that do not involve criminal penalties. No one has argued that the state cannot compel children to leave the streets. However, this required exit should involve transporting the child to a shelter or legally appointed guardian, attending school, counselling, and developing alternative life opportunities. Such a recovery and reintegration programme can include clear messages that the sale of sex involving children is exploitative and unacceptable, without levying criminal penalties on the child victims.

Protecting child victims in Sweden

Because the criminal offences and reporting requirements have already been discussed in detail in Chapters 1 and 2 (also see above in Chapter 3), this chapter's key good practice analysis will focus on protecting victims of child prostitution from criminal liability in light of the controversy described above. Though Sweden's criminal offences are not as specific as those of some peers, such as New Zealand, Cambodia, and Colombia,[143] its unique approach to prostitution creates a number of benefits for child victims of prostitution.

Sweden has garnered significant international attention for its approach to prostitution more generally, which has subsequently been used as a model in prostitution-related reforms in a number of other states, such as Norway, Cuba,[144] and France.[145] After weighing evidence that peers, such as the Netherlands, who had completely legalised or decriminalised adult prostitution were seeing a growth in the exploitation of children and trafficking because of a growing sex industry, Sweden decided to take the unique step of criminalising only those who purchase, promote, or procure prostitution,[146] not individuals involved in prostitution as direct sellers,[147] an approach that has been deemed successful by most analysts to date.[148] The government was persuaded to take this course of action by feminist arguments that those involved in commercial sex are constrained by manipulation, social conditions, and/or a sense of economic urgency such that they cannot genuinely choose to engage in commercial sex, whereby genuine choice is understood as having a full set of viable options without being unduly pressured by the external demands of others. Because of the power imbalance inherent in commercial sex, Sweden took the position that those involved in prostitution are always exploited and suffer a number of deeply harmful physical, psychological, and emotional consequences.[149] To hold them criminally liable would only increase this suffering, further stigmatise the individuals in question, and have the perversely unintended effect of pushing them back into commercial sex.[150]

Though a full treatment of this feminist argument is outside the scope of this piece,[151] these arguments obviously bear a strong relationship to the arguments child rights advocates make with regard to decriminalising child victims; in the Swedish case, these arguments were expanded to cover adults involved in commercial sex as well. Though ECPAT does not take an official position with regard to the best legal and policy response to adult prostitution, the Swedish approach here stands out as a good practice approach to dealing with child victims, because of the complete and uniform enforcement the Swedish government has achieved. In regimes where children involved in prostitution are decriminalised but adults are not, the distinction often serves as a barrier to consistent enforcement of laws with regard to children.

The difficulty of maintaining this distinction between children and adults with regard to offender status manifests itself in multiple ways. For example, police may initially be unaware of a child victim's age, leading to initial detainment, intimidation, and directing an attitude of criminality toward the child victim, further reinforcing a child's common self-image (often reinforced by pimps and procurers) of being dirty, criminal, or an outcast. Furthermore, children may often lack documentation verifying age, allowing them to be lumped in with adults, or severely prolonging the process through which they are designated "victims" rather than "offenders." This interim period can be highly damaging to the child's recovery and reintegration process. In Sweden, on the other hand, the lack of prosecution of persons involved in prostitution *generally* means children will be clearly designated and treated as victims rather than offenders from the outset and receive support rather than intimidation.

While the overall desirability of the law remains a subject of debate,[152] this is a key advantage of the Swedish approach. Thus, regardless of whether a particular legal system holds adults involved in prostitution criminally liable, governments must ensure that child immunity to such liability is clearly stated in legislation rather than just policy (as discussed above) and that such laws are

clearly and consistently implemented through carefully sculpted victim identification techniques by specialised law enforcement trained in child-sensitive investigation methods in order to avoid re-victimisation of the child throughout the investigation process.

Though the Swedish approach has ushered in a number of important improvements in the capacity of the government to fight CSEC while also avoiding stigmatisation and criminalisation of the child victim, the government has failed to institute reporting requirements for third parties with the capacity to intervene in cases of suspected child prostitution. Though the "procuring" provisions in the Swedish Penal Code (Section 8) do require that third parties with knowledge that their premises are being used for child prostitution take action to ensure that such activity is terminated, the provision does not require such persons to report this conduct to law enforcement. Thus, the persons using the premises to exploit children can simply move their damaging activities elsewhere without being subject to criminal sanction. The reporting requirements of Colombia and South Africa discussed above serve as models for improvement in this regard.

Conclusion

Child prostitution continues to be an issue often primarily addressed at the local level, with less international and even national focus. As a result, though many countries are basically in compliance with the OPSC, no country has achieved all key good practice criteria with regard to additional criminal offences, third-party reporting requirements, and removing legal liability from child victims. While particular countries, such as Sweden, Colombia, and Cambodia, all stand out with regard to particular aspects of good practice, there is still more legal advocacy work to be done in each of these areas. As discussed in this chapter, a key problem is changing social attitudes that children can choose to enter into prostitution and building a sense of responsibility that those who in any way facilitate or benefit from the existence of prostitution should be held criminally liable. It is an unfortunate reality that in many places in the world, this sense of culpability is reversed, whereby those who facilitate, encourage, and benefit from prostitution operate in impunity and the responsibility for the criminal act is left with children. Because of the nature of the child prostitution issue, international and national level pressure appears to have been less effective at encouraging this change, meaning more work must be done by advocates at the sub-national and local level to ensure that children are protected rather than penalised consistently throughout their countries.

CONCLUSION

In the global movement to protect children from commercial sexual exploitation, there has been extraordinary progress since ECPAT began addressing these issues in the early 1990s. The range and depth of new CSEC-related laws passed in the last 15 years throughout most of the globe means that exploiters are now formally subject to criminal liability for most forms of CSEC in most places. 155 countries have ratified the OPSC[153] and 124 countries[154] have ratified an important related instrument, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Despite this progress, however, much remains to be done. Of the 35 countries analysed for this journal, only three (Cambodia, New Zealand, and the USA) are have well harmonised their national law with all three manifestations (child prostitution, child sex tourism, and child pornography) covered in the OPSC. Four countries (Bangladesh, Burkina Faso, Cameroon, and Mongolia) are poorly harmonised in two of the three manifestations, and one country (Nepal) is poorly harmonised across all three manifestations.

Though these figures show that there is still a long way to go even to achieve compliance with major international treaties, as this journal has discussed, there are a number of key criteria that go beyond the requirements of the OPSC that should also be a part of comprehensive legal regime to protect children. These good practices include criminal offences, such as benefiting, encouraging, and preparing to commit CSEC offences. They also include definitional issues, such as expanding the legal understanding of child pornography to include simulated depictions across all media, and clearly specifying an inclusive definition of sexual activity beyond intercourse. Finally, these good practices must not only penalise action but also inaction by requiring those in a position to protect children to report suspected cases of CSEC to law enforcement. This requirement is relevant both to owners/lessors of establishments where exploitation is perpetrated as well as the ISPs who host Internet sites where such exploitation may be facilitated. As has been discussed in detail, only a handful of countries have achieved each of these good practice criteria, and not even a single country has achieved all of them.

COUNTRY	CHILD PROSTITUTION	CHILD PORNOGRAPHY	CHILD SEX TOURISM
Australia	✶ ✶ ✶ ✶ ✶ ✶		
Bangladesh	✶ ✶ ✶ ✶ ✶ ✶	✶ ✶ ✶ ✶ ✶ ✶	
Belarus		✶ ✶ ✶ ✶ ✶ ✶	
Burkina Faso	✶ ✶ ✶ ✶ ✶ ✶	✶ ✶ ✶ ✶ ✶ ✶	
Cambodia	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦
Cameroon	✶ ✶ ✶ ✶ ✶ ✶	✶ ✶ ✶ ✶ ✶ ✶	
Canada			
Colombia		✦ ✦ ✦ ✦ ✦ ✦	
Czech Republic			✶ ✶ ✶ ✶ ✶ ✶
Denmark			

COUNTRY	CHILD PROSTITUTION	CHILD PORNOGRAPHY	CHILD SEX TOURISM
France			✦ ✦ ✦ ✦ ✦ ✦
Germany	✦ ✦ ✦ ✦ ✦ ✦		
India	✳ ✳ ✳ ✳ ✳ ✳		
Indonesia			
Italy		✳ ✳ ✳ ✳ ✳ ✳	✦ ✦ ✦ ✦ ✦ ✦
Japan		✳ ✳ ✳ ✳ ✳ ✳	
Kyrgyzstan			✳ ✳ ✳ ✳ ✳ ✳
Mongolia	✳ ✳ ✳ ✳ ✳ ✳	✳ ✳ ✳ ✳ ✳ ✳	
Nepal	✳ ✳ ✳ ✳ ✳ ✳	✳ ✳ ✳ ✳ ✳ ✳	✳ ✳ ✳ ✳ ✳ ✳
Netherlands	✦ ✦ ✦ ✦ ✦ ✦		
New Zealand	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦
Pakistan		✳ ✳ ✳ ✳ ✳ ✳	
Romania	✦ ✦ ✦ ✦ ✦ ✦		
Russia			
South Korea			
Spain			
Sri Lanka	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦	
Sweden	✦ ✦ ✦ ✦ ✦ ✦		
Taiwan			
Thailand	✳ ✳ ✳ ✳ ✳ ✳	✦ ✦ ✦ ✦ ✦ ✦	
The Philippines	✦ ✦ ✦ ✦ ✦ ✦		
Togo		✳ ✳ ✳ ✳ ✳ ✳	
Ukraine		✳ ✳ ✳ ✳ ✳ ✳	✦ ✦ ✦ ✦ ✦ ✦
USA	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦	✦ ✦ ✦ ✦ ✦ ✦
Singapore		✳ ✳ ✳ ✳ ✳ ✳	◇ ◇ ◇ ◇ ◇ ◇

Well harmonised ✦
Partially harmonised
Poorly harmonised ✳
Data unavailable ◇

The encouraging yet still inadequate level of legal progress presents a great opportunity for legal advocates to push decisionmakers in their home countries to take more and better action to protect children. However, as has been discussed in detail in this journal, though the need to protect children is uncontroversial, many of the particular good practice provisions discussed in these chapters are sensitive because of the burdens they impose and the rights they affect. It is thus the responsibility of legal advocates to prepare themselves to respond to the objections that will likely be elicited by these good practice provisions and make a clear, compelling case that it is society's responsibility to accept some burdens in order to protect children and that the benefits achieved in children's lives outweigh these burdens. The development of these arguments will continue to evolve as the domestic and transnational discourse on these issues continues to grow deeper and more nuanced. This journal has sought to make some contribution to that discourse by explaining and responding to common objections with regard to a few key good practice criteria in the hope of providing a helpful resource for legal advocates working in the realm of child protection. Through refinement and adaptation to particular domestic contexts, they will hopefully serve as a useful tool for supporting continued legal progress to protect children from all manifestations of commercial sexual exploitation.

ENDNOTES

1 Available at: http://www.ecpat.net/EI/Publications/Legal_Reform/Legal_Instrument_En_Final.pdf

2 World Congress III Outcome Document vailable at: http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf

3 Available at: http://www2.ohchr.org/english/law/crc-sale.htm

4 It is important to note here that there is debate about the acceptability of these terms, which may not capture the gravity of the offences by grouping them with other more accepted forms of tourism, pornography, or prostitution. While acknowledging the merit of these arguments, this legal journal will continue to use these common terms, because they are the terms used in the major international legal instruments that anchor much of the analysis.

5 Section I is the exception, in which Australia stands out, along with the USA, as a world leader in combating child sex tourism

6 With regard to the fourth manifestation, child trafficking, there is a separate international Protocol that provides more comprehensive provisions— the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol); however, the Trafficking Protocol also imposes a number of strong requirements on state parties with regard to anti-trafficking policy as well as law. While some countries have admirably included these policy measures in national legislation, providing greater stability and institutionalisation, most states address these issues at the policy level, moving them outside the scope of a ranking of legal frameworks.

7 These are the countries where 2nd Edition Global Monitoring Reports have been published or drafted. These countries include: Australia, Bangladesh, Belarus, Burkina Faso, Cambodia, Cameroon, Canada, Colombia, Czech Republic, Denmark, France, Germany, India, Indonesia, Italy, Japan, Kyrgyzstan, Mongolia, Nepal, Netherlands, New Zealand, Pakistan, Romania, Russia, Singapore, South Korea, Spain, Sri Lanka, Sweden, Taiwan, Thailand, the Philippines, Togo, Ukraine, and the USA.

8 ECPAT 2nd Edition A4A reports will cover approximately 70 countries. For the full list, see: http://www.ecpat.net/EI/index_A4A.asp

9 As noted in the introduction, this term is no longer preferred as it may work to legitimise such activity by considering it merely as one variety among many forms of tourism. The term "sexual exploitation of children in travel and tourism" emphasises that the conduct is exploitation, with the particular vehicle for such exploitation (tourism) being merely incidental and thus presents a preferable alternative. However, because child sex tourism is the term included in the OPSC (Article 10); this journal will continue to use the term to maintain consistency with the relevant international legal framework.

10 Singapore has not been included in the CST evaluation because of lack of clear data about the status of some jurisdictional provisions.

11 ECPAT International, Agenda for Action Global Monitoring Reports- Cambodia (2011), available at: http://www.ecpat.net/EI/index_A4A.asp.

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13 Section 144C of the Crimes Act of 1961, No. 43, inserted, on 1 September 1995, by section 2 of the Crimes Amendment Act 1995 (1995 No 49) available at http://www.legislation.co.nz/act/public/1961/0043/latest/whole.html?search=ts_act_abortion_noresel#DLM329270.

14 United Kingdom Criminal Code

15 Prosecuting Remedies and Tools Against the Exploitation of Children Today (PROTECT) Act of 2003 18 U.S.C. § 2423 (Supp. 2004) §§

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16 Vitit Muntabhorn, Sale of Children: Report submitted by Special Rapporteur appointed in accordance with the Commission on Human Rights resolution 1992/76, UN Doc E/CN.4/1993/67/Add.1 (9 February 1993) [106]

17 See, Marianna Brungs, 'Abolishing Child Sex Tourism: Australia's Contribution' (2002) 8(2) Australian Journal of Human Rights 101, 103. Also see, ECPAT International, Agenda for Action Global Monitoring Reports- Thailand and Cambodia (2011), available at: http://www.ecpat.net/EI/index_A4A.asp.

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19 Some countries, other than Australia, who have achieved extraterritorial convictions include: the USA, Italy, France and Canada. See, ECPAT International, Agenda for Action Global Monitoring Reports- Italy and France (2011), USA and Canada (2012), available at: http://www.ecpat.net/EI/index_A4A.asp.

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25 Though the victim may have such a relationship with procurers and facilitators, she often has no such relationship with the person purchasing the sex act.

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[45] Jim McNicol and Andreas Schloenhardt, "Australia's Child Sex Tourism Offences," The University of Queensland Human Trafficking Working Group, August 2011.

[46] US State Department Trafficking in Persons Report 2010, at 68. Accessed 31 January 2012 from: http://www.state.gov/documents/organization/142981.pdf

[47] Jim McNicol and Andreas Schloenhardt, "Australia's Child Sex Tourism Offences," The University of Queensland Human Trafficking Working Group, August 2011.

[48] US State Department Trafficking in Persons Report 2011, at 76. Accessed 31 January 2012 from: http://www.state.gov/documents/organization/164453.pdf

[49] US State Department Trafficking in Persons Report 2011, at 378. Accessed 31 January 2012 from: http://www.state.gov/documents/organization/164458.pdf

[50] Article. 16, Law 679 of 2001.

[51] Article. 17, Law 679 de 2001.

[52] Articles. 1, 2 and 4 of Law 1336 de 2009.

[53] Article. 5, Law 1336 de 2009.

[54] As discussed in the introduction, child pornography is no longer the preferred term because it may not reflect the harmful nature of the underlying depictions by grouping them under the same general time as depictions involving adults. As a result, child abuse depictions or child abuse materials would be preferable to emphasise the inherent harm created by such depictions. However, this journal will continue to use child pornography to maintain consistency with the OPSC.

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