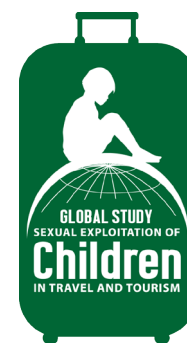


EXPERT PAPER

ASSESSMENT OF LEGAL FRAMEWORKS THAT ADDRESS SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM (SECTT)



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1 OBJECTIVES

The overall objective of this legal study is to assess current international, regional and domestic legal responses to combat Sexual Exploitation of Children in Travel and Tourism (SECTT). The study also aims to highlight the main legal elements required to make these responses effective to help address and strengthen future interventions. Based on the analysis, recommendations intend to inform, enhance and address current challenges.

2 DEFINITION OF SECTT – TERMINOLOGY

The definition of SECTT has evolved, and some of its characteristics have been modulated and discussed in various forums.

ECPAT has defined ‘child sex tourism’ as ‘the commercial sexual exploitation of children by persons who travel from their own country to another, usually a less developed country, to engage in sexual acts with children’.¹

Currently, the definition is under review by the Inter-Agency Working Group (IAWG) on Terminology and Semantics, which is a group of relevant stakeholders drawn from multiple sectors across the globe, representing law enforcement, academia, inter-governmental institutions, international non-governmental organisations and civil society. The IAWG is working towards creating a consistent global lexicon of terminology to describe and address all manifestations of sexual exploitation of children, including SECTT. Using the right terms to capture and describe sexual violence against children is critical to ensure their protection.

United Nations World Tourism Organization (UNWTO) defines ‘sex tourism’ as ‘trips organised from or within the tourism sector, or from outside the sector but using its structures and networks with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at destination’.²

This could be considered a narrow definition. The ‘*primary purpose*’ of ‘*commercial exchanges*’ omits opportunistic tourists that seize opportunities on their trip to have sex with minors (so-called situational perpetrators). Also, sex industries at destination states often have both formal and informal markets. In the latter, sexual arrangements can be for non-commercial purposes.

1 Subgroup Against Sexual Exploitation of Children NGO Group for the Convention on the Rights of the Child, “Semantics or Substance? Towards a shared understanding of terminology referring to the sexual abuse and exploitation of children”, 2005, p. 21.

2 UNWTO, “Statement of the Organization of Child Sex Tourism”, Resolution GA/RES/338(XI), 1995, paragraph 3.

The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has defined 'child sex tourism' as 'the exploitation of children for sexual purposes by people who travel locally or internationally to engage in sexual activities with children'. This definition accounts for the fact that the travelling sex offenders can be domestic travellers, or they can be international tourists. Moreover, it has been pointed out that this form of sexual exploitation of children often involves the use of accommodation, travel agencies, transportation and other tourism-related services that facilitate contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment.³

Despite significant progress, there is still no global consensus to define the crime of SECTT and what it entails.

However, it is evident across all sectors that there needs to be a common understanding of SECTT to ensure all children are protected. Legislation must consider all types of perpetrators⁴ and situations where SECTT occurs. It requires a definition that has practical application to address the problem from various angles involving all relevant stakeholders. It should also be able to address the issue across borders to avoid a response in one place, shifting or transforming into a problem in another location.⁵ SECTT is a crime that needs to be tackled globally.

The importance of correct terminology drove the substitution of the term '*child sex tourism*' for SECTT to reflect its broader criminal and exploitative nature and a broader spectrum of offenders: local, situational, preferential offenders and business travellers. The change entails multiple implications in practice. For instance, it allows a greater societal understanding of the crime and facilitates carrying out clear and targeted responses.

Also, the inclusion of the term '*commercial*' has been controversial, as it is not an element always evident in tourism destinations. Evidence shows that several forms of SECTT exist, that are non-commercial in nature. There could be a formally organised sex industry, supplemented by an informal sector where adults and children can enter into a wide range of sexual exchanges with travelling sex offenders. For instance, so-called '*pseudo-care work*' where employees and volunteers abuse the children with whom they work with in a professional setting. This includes '*orphanage tourism*' and '*voluntourism*', both considered SECTT. This type of travelling sex offender gains access to children through professional organisations or structures without the commercial element attached to it.

Given the evolving nature of SECTT, it seems that the sole use of the term '*exploitation*' serves by itself for any definition and captures any exploitative situations, contexts and relationships between children and adults and is not limited to '*commercial*' exploitation.

When defining SECTT, consideration must be given to the fact that there is overlap with other manifestations of Commercial Sexual Exploitation of Children (CSEC). It often falls under the manifestation of prostitution. It is also closely linked to sex trafficking of children

3 United Nations, General Assembly, Human Rights Council, "Report of the Special Rapporteur on the sale of children, child prostitution and child pornography", A/HRC/22/54, 24 December 2012. Theo Noten, "Combating the sexual exploitation of children in travel and tourism. Achievements and challenges", The Code and ECPAT, Geneva, 6 March 2013.

4 Kalen Ferretti, "International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation", 32 B.C. INT'L COMP. L. Rev. 1, 2009.

5 Subgroup Against Sexual Exploitation of Children NGO Group for the Convention on the Rights of the Child, "Semantics or Substance? Towards a Shared Understanding of Terminology Referring to the Sexual Abuse and Exploitation of Children", 200, p. 20.

when the purpose is sexual exploitation and the use of children in pornography.⁶ While not rejecting the common elements with some of the different CSEC manifestations, specific criminal categorisation could avoid problems when sentencing in cases when prosecution falls under other statutory SCEE crimes. This could lead to lower penalties and not recognising specific elements the SECTT crime contains, such as preparatory acts, engaging with sex tour operators, co-opting travel infrastructure, etc. The United Nations Office on Drugs and Crime (UNODC)⁷ has emphasised that all sentences shall be commensurate with the seriousness of the offence and all manifestations of child sexual exploitation deemed criminal, including newer forms of abuse that are committed online and related to SECTT.

Even when defining the perpetrators of these crimes, among the group most commonly identified as travelling sex offenders, practical distinctions arise when addressing the problem of non-physical contact with the child (through the internet) which may be quite different from physical, sexual contact with a travelling sex offender.⁸ This is linked with the need for different enforcement laws that situational or preferential travelling child sex offenders require.

Inconsistent terminology can negatively influence the development and application of legislation and proper assessment of the incidence. When the links between crimes are diluted, current legislation in countries that can be applied to criminalise SECTT could be compromised, by the failure to define or criminalise and/or adequately penalise sexual offences against children. This could also have a significant impact on legal redress in cases of transnational sexual crimes against children, hampered by weaknesses and lack of specification within the legal frameworks.

From a legal point of view, there are also other challenges that need to be addressed regarding SECTT. One of them, characterised as urgent, is inadequate legislation.⁹ It should be recognised that the lack of a global legal framework prohibiting SECTT and ensuring extraterritoriality exacerbates the problem. The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and most national laws contain a range of sexual offences against children that are directly linked with SECTT and can be used to tackle the issues and provide a base for further legislative specific developments. It is just as important to clearly name SECTT as an offence in legislation. This is because of cultural, linguistic, political and/or legal differences between countries that can lead to diverse interpretations.¹⁰

All in all, accurate legal articulation of the phenomenon and child-centred terminology is essential.¹¹ A consensus on the appropriate terminology and clear international standards could serve to harmonise and enhance key national and regional legislation, which would offer a better chance of effective prosecutions of travelling sex offenders of any kind around the world.

6 Ibid., p. 57.

7 UNDOC, "Protecting the future: Improving the Response to Child Sex Offending in Southeast Asia", August, 2014 (not published), p. 28.

8 UNDOC, "Protecting the future", p. 3.

9 UNWTO, Report of the 30th Meeting of the World Tourism Network on Child Protection, "Policing and Law Enforcement", Child Exploitation through Trafficking and its relationship with the Travel and Tourism Industry", Berlin, 6 March 2015.

10 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism...", p. 3.

11 Afroz Kaviani Johnson, "Protecting Children's Rights in Asian Tourism", International Journal of Children's Rights, 22, 2014, pp. 581-617.

There is limited explicit mention of SECTT under international law, although a number of international instruments refer to it implicitly or include the typical conduct of the crime within other manifestations of sexual exploitation of children.

First, [the Convention on the Rights of the Child](#) (CRC, 1989)¹² obliges States parties to take all appropriate national, bilateral and multilateral measures to protect children from all manifestations of sexual exploitation and sexual abuse,¹³ and abduction, sale and trafficking.¹⁴ States parties are also obliged to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse, while in the care of parents, legal guardians or other carers.¹⁵ Importantly, the CRC also obliges States parties to take all appropriate measures to promote physical and psychological recovery. States should also provide for social reintegration of a child victim suffering from any form of neglect, exploitation, or abuse.¹⁶

Second, [the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography](#) (OPSC, 2000),¹⁷ which explicitly addresses the different manifestations of sexual exploitation of children. The instrument obliges State parties to criminalise the sale of children, child prostitution and child pornography, whether such offences (including attempts, complicity and participation) are committed domestically or transnationally or on an individual or organised basis.¹⁸

SECTT is referred to in the Preamble as well as in Article 10 of the OPSC, which deals with international cooperation. The Preamble states: *'The States Parties to the present Protocol, [are] ... Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography.'* Thus, SECTT here seems to be linked with other manifestations of sexual exploitation of children. Article 10 (1) of the OPSC provides that *'States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism'*. It is important to point out that the OPSC does not define *'child sex tourism'* but it does define the other mentioned manifestations of CSEC.

Furthermore, the monitoring mechanism provided for in the OPSC is limited to the periodic submission of a report to the CRC providing comprehensive information on the measures taken by the States parties to implement the provisions of the Protocol. However, there are no established consequences for failure to submit the report and/or take appropriate measures which commonly occurs. This is a severe drawback.

12 Countries that have not yet ratified the CRC: South Sudan, Somalia and United States of America.

13 Convention of the Rights of the Child, Article 34.

14 Ibid., Article 35.

15 Ibid., Article 19.

16 Ibid., Article 39.

17 Countries that have not yet ratified the OPSC: Bahamas, Barbados, Cameroon, Cook Islands, Fiji, Ghana, Ireland, Kenya, Kiribati, Liberia, Marshall Islands, Nauru, Niue, Palau, Papa New Guinea, St Kitts & Nevis, Samoa, Sao tome and Principe, Singapore, Solomon Islands, Somalia, South Sudan, state of Palestine, Tonga, Trinidad & Tobago, Tuvalu, United Arab Emirates and Zambia.

18 Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, Article 3.

3. INTERNATIONAL LEGAL INSTRUMENTS

Third, and again linked with SECTT, the [Protocol To Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#) (2000) defines ‘trafficking in persons’ as the ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.¹⁹ The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered in any case ‘trafficking in persons’.²⁰

There is evidence to indicate that children are trafficked internally and across borders²¹ to respond to the demand from travellers.²² Therefore, SECTT could perhaps fall under the crime of trafficking. However, it must be noted that some of the criminalised aspects under the statute of trafficking in persons may be absent in the crime of SECTT. This could lead to a failure to investigate and prosecute alleged offenders.

Fourth, the [ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182](#) (1999) defines the ‘worst forms of child labour’,²³ a term that comprises the following categories: (i) ‘all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, ...’ and (ii) ‘the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances’.

The inclusion of these categories as labour forms has led to some controversy. SECTT is not included as a category. But, because of its linkages with other manifestations of CSEC, it could be included in the future.

Lastly, the [ILO Minimum Age Convention No. 183](#) (1973) expressly states that the minimum age for admission to any employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young people, shall not be less than 18 year.²⁴

19 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3(a).

20 Ibid., Article 3(c).

21 The Trafficking Protocol does not expressly mention that both international and internal trafficking falls within the scope of the treaty. The Trafficking Protocol has been interpreted as requiring the offence to be transnational and committed by an international criminal network. The most direct consequence of this narrow interpretation is that internal trafficking is not always considered as falling within its scope. Nevertheless, it should be understood that the silence of the Protocol means both internal and cross-border trafficking are included.

Silvia Scarpa, “Child Trafficking: the worst face of the world”. Global Migration Perspectives, No. 40, Global Commission on International Migration, Geneva, Switzerland, September 2005.

22 ECPAT International, “Combating Child Sex Tourism: Questions and Answers”, Bangkok, 2008.

23 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Article 3.

24 ILO Minimum Age Convention, Article 3 (1).

After the above brief review, it can be concluded that although SECTT is still not designated as a specific crime in the international legal framework, there is an indirect obligation for the prosecution of perpetrators and accomplices of SECTT. Existing conventions and protocols may serve as a reference for the adoption of specific regional and national regulations to fight against SECTT. However, there are no specific instruments to date that reflect the concrete elements of a SECTT crime. Moreover, the monitoring mechanisms of international legal instruments are not complete or operative, which is another barrier to prosecution of the SECTT crime by the States parties. An approach to strengthened legal mechanisms in this sense could lead to a better and more effective prevention and protection of victims worldwide. Until then, all countries should make a concerted effort to at least endorse existing legal instruments, specifically the OPSC.

4 REGIONAL LEGAL RESPONSES

EUROPE

Efforts to strengthen laws against sexual exploitation of children at a regional level have been encouraging. In the last few years, new trends, evolving contexts and forms of these crimes have been given high priority, along with measures to strengthen laws against child exploitation.

Before explaining the instruments regarding sexual exploitation of children at the regional level in Europe, it is important to distinguish between the European Union (EU) and the Council of Europe.

The EU is a politico-economic union of 28 member states that are located in Europe.

The Council of Europe is not linked to the EU and is an international, regional organisation formed by 47 European countries. Non-European democracies willing to contribute to democratic transitions in Europe are afforded observer status. For example, Canada, Japan, Mexico, and the US have observer status with the Council of Europe.

First, the [EU Convention for the Protection of Human Rights and Fundamental Freedoms](#) (1950) prohibits slavery or servitude as well as forced or compulsory work.²⁵

Second, the [European Charter of Fundamental Rights](#) (2000) criminalises torture and inhuman or degrading treatment or punishment²⁶ and prohibits slavery or servitude as well as forced or compulsory work and trafficking of human beings.²⁷ It affirms the right of a child to be protected for their well-being.²⁸ Also, it prohibits child labour (the minimum age of admission to employment may not be lower than the minimum school-leaving age) and protects young people against any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.²⁹

25 EU Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4.

26 European Charter of Fundamental Rights, Article 4.

27 *ibid.*, Article 5.

28 *Ibid.*, Article 24.

29 *Ibid.*, Article 32.

Moreover, in combination with the instruments above, the legal framework in the region has enabled the adoption of strong legal obligations regarding sexual exploitation of children. Even though SECTT was not specifically addressed, the following instruments highlight its relevance and the need for targeted legal responses:

- Recommendation No. 11/1991 of the Committee of Ministers of the Council of Europe concerning sexual exploitation, pornography and prostitution in children and young adults.
- Recommendation No. 16/2001 of the Committee of Ministers of the Council of Europe on the protection of children against sexual exploitation.
- Council Framework Decision 2004/68/JHA, 22 December 2003, on combating the sexual exploitation of children and child pornography.

All these instruments served as the regional legal framework to combat the SECTT phenomenon until the adoption of the [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (2007), the so-called Lanzarote Convention. The Explanatory Report of the Convention highlighted the importance of having a harmonised legislation that facilitates action against SECTT. This would ensure that perpetrators' who offend in destination countries with lenient child protection laws are not allowed to escape legal ramification due to the ability to compare and exchange information between states. These measures, in turn, would facilitate international cooperation in the form of extradition and reciprocal legal assistance.³⁰

Among the provisions included in the Convention, the following should be noted as they have a direct impact on the fight against SECTT:

- Removal of obstacles regarding confidentiality rules imposed by internal laws to certain professionals when reporting a situation in which they have 'reasonable grounds' for believing that a child is a victim of sexual exploitation.³¹
- Extraterritorial jurisdiction should be activated when victims and/or perpetrators are nationals or residents. The prior requirement of victims' report or denunciation by the state as well as mandatory prosecution in the territory where the crime was committed must be removed.³²
- Corporations are directly liable when the crime is committed for their benefit by a natural person or when lack of supervision or control by a natural person has made possible the commission of a crime for the benefit of the legal person. Some of the sanctions established are an exclusion for entitlement of public benefits or aids, temporary or permanent closure or disqualification from the practice of commercial activities and supervision of convicted persons.³³
- Previous convictions for offences of the same nature should qualify as an aggravating circumstance and must be taken into account when determining sanctions.³⁴

30 Council of Europe, "Explanatory Report on the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse", July 2007.

31 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 12(1). According to the Convention's provisions "sexual exploitation and sexual abuse of children" includes engaging in sexual activities with a child who has not reached the domestic age of sexual consent, child prostitution, child pornography, participation in pornographic performances, intentional causing for sexual purposes of a child to witness sexual abuse or sexual activities, solicitation through ICT to sexual abuse of a child.

32 Ibid., Article 25.

33 Ibid., Articles 26 and 27.

34 Ibid., Article 28 and 29.

- The statute of limitations shall continue for a period of time that is sufficient to allow the efficient starting of procedures after the victim has reached the age of majority and shall be commensurate with the gravity of the crime.³⁵
- Video testimony by child victims shall be accepted as valid evidence.³⁶
- National data on convicted sexual offenders (specifically, DNA)³⁷ has to be recorded and stored fulfilling protection of data regulations and ensuring the possibility of transmissions to competent authorities of other countries.³⁸

Some of the gaps in the initial Convention have been amended by the Directive 2011/93/EU, of the European Parliament and the Council, 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, other criticisms remain.

For instance, lack of express mention of SECTT (even though the Convention refers to sexual crimes against children committed abroad and mentions the participation of the tourism and travel industry)³⁹ and failure to regulate the possibility of rendering coordinated economic sanctions for states that perpetuate SECTT offences. Thus, creating financial ramifications for tolerating a SECTT industry might prompt such states to finally crack-down on SECTT.⁴⁰ Moreover, under the Convention, states are explicitly allowed to reserve their right to criminalise certain conducts, which limits the uniformity of its application across the states that ratify it.

As mentioned, Directive 2011/93/EU introduced provisions that highly strengthened the prevention and protection of the Convention:

- Punishment for the crimes regulated in the Convention, differentiating when the child has or has not reached the age of sexual consent established in domestic laws. So, even when a country has stated an age of sexual consent under 18 years old, crimes of sexual nature are still punishable, but with an associated lower penalty.

This provision aims to create a way of expanding the protection of all persons under 18 years, regardless of the domestic regulation concerning the age of sexual consent. But still, adolescents are not fully protected due to the lower penalties associated with the crime.

- States parties have the power to decide if crimes apply to consensual activities between peers, who are close in age and depending on the degree of psychological development or maturity, in so far as the acts do not involve any abuse.⁴¹
- A natural person convicted for any of the offences stated in the Directive may be temporarily or permanently prevented from engaging in activities involving direct and regular contact with children. In that case, employers should be entitled to request information of criminal convictions according to national law, and that information should be transmitted to other countries.⁴²

35 Ibid., Article 33.

36 Ibid., Article 35.

37 DNA (Deoxyribonucleic Acid), is the hereditary material in humans and almost all other organisms.

38 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 37.

39 Ibid. Preamble and Article 9(2).

40 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism...", p. 39.

41 Directive 2011/93/EU, of the European Parliament and of the Council, 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, Article 8.

42 Ibid., Article 10.

Some countries have already implemented this obligation. For instance, the [Netherlands](#) has the Certificate of Good Conduct to prevent convicted paedophiles from occupying functions or working in certain professions that bring them into close contact with children, such as employment at day-care centres. They are required to submit this Certificate of Good Conduct to the national or foreign employer as part of their recruitment process. This practice makes it easier for organisations in other countries to discover whether a prospective employee or volunteer should be prevented from working with children.

Under the [Irish](#) Sex Offenders Act 2001, it is an offence for a sex offender to apply for work or to perform a service (including state work or service) which involves having unsupervised access to, or contact with children or mentally impaired people. The offender must disclose to the prospective employer or contractor that he/she has been convicted as a sex offender. The Garda Central Vetting Unit deals with requests to provide information on certain prospective employees. It only deals with requests from organisations that are registered with the unit.

A police criminal record check is now available for UK nationals and persons who have resided in the UK and who are seeking work or are already employed overseas and working with children.⁴³ In a joint initiative, the Child Exploitation and Online Protection (CEOP) Centre, the Association of Chief Police Officers (ACPO) and the Criminal Records Office (ACRO) have developed an International Child Protection Certificate (ICPC). The initiative helps protect children from convicted UK child sex offenders who are seeking overseas employment that will bring them into close contact with children. Schools and organisations that are registered within the ICPC scheme can request a job applicant to provide a certificate as part of their recruitment process. Existing employees can also be asked to periodically produce an ICPC as part of their ongoing vetting processes. The ICPC is supplied directly to the applicant and not to the school or organisation offering employment or voluntary placements.

Furthermore, there is a discussion about the possibility of issuing a global certificate supported by the International Criminal Police Organization (INTERPOL). The certificates would examine situations where a person has been working in several countries; The aim is to avoid the complex practice of asking different countries to provide reports. This would require an effective information exchange system for a single authority to collate all the information and issue a corresponding certificate.

- Extraterritorial legislation should include (i) offences committed abroad for the benefit of a legal person established in its territory and (ii) offences committed by means of information and communication technology accessed from the territory where the legal person resides.⁴⁴
- Prevention and prohibition of disseminating material advertising the opportunity to commit the offences related in certain countries and the organisation (with or without commercial purposes).⁴⁵

43 CEOP-NCA, "Threat Assessment of Child Sex Exploitation and Abuse", June 2013, p. 7.

44 Directive 2011/93/EU, Article 17.

45 Ibid., Article 21.

The European legal framework⁴⁶ for combating trafficking is extensive and contains some more good practices and measures that also serve to prevent and protect against SECTT.

The Council of Europe Convention on Action against Trafficking in Human Beings (2005), calls for border control measures (such as the obligation of commercial carriers to ascertain that all passengers are in possession of travel documents required for entry into the receiving state)⁴⁷ and criminalises acts related to false travel documentation. (such as forging travel or identity documents).⁴⁸

The Directive 2011/36/EU of the European Parliament and of the Council, 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA introduced provisions to strengthen the Convention. The measures include the establishment of concrete punishment for the crimes regulated in the Convention⁴⁹ and sanctions for legal entities;⁵⁰ the obligations for the States parties to include provisions expressly indicating the non-prosecution and non-penalties to the victims of trafficking;⁵¹ the removal of formal requirements during investigation and prosecutions;⁵² the extent of extraterritorial jurisdiction when the offences committed abroad for the benefit of a legal person established in its territory;⁵³ and the regulation of the rights of the child when being interviewed.⁵⁴

In conclusion, the European region has addressed some key measures and practices learned from the evolving SECTT phenomenon. Some of the most important measures include consensual sexual activities between peers, punishment for sex offenders who commit offences against children under 18 years of age _ regardless of the age of sexual consent in domestic laws. The extension of extraterritorial jurisdiction to legal persons even when crimes are committed by means of information and communication technology and employment pre-checks for convicted sex offenders when working with children are some of the other practices. Although still monitoring mechanisms have to be put in place to ensure real law enforcement, this regional framework can have an expansive effect and can serve as a good reference for international and other regional schemes against SECTT. It also has had an extraordinary impact on the European countries when targeting domestic legal responses.

46 The European Legal Framework is comprised of the following instruments:
Council of the European Union Framework Decision on combating trafficking in human beings (2002/629/JHA).
Council of Europe Convention on Action against Trafficking in Human Beings (2005).
Directive 2011/36/EU of the European Parliament and of the Council, 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

47 Council of Europe Convention on Action against Trafficking in Human Beings, Article 7.

48 Ibid., Article 20.

49 Directive 2011/36/EU, Article 4.

50 Ibid., Article 6.

51 Ibid., Article 8.

52 Ibid., Article 9.

53 Ibid., Article 10.

54 Ibid., Article 15.

SOUTHEAST ASIA

This region is probably one of the first in which SECTT took place on a wider scale. Cases are reported since the 1960s.⁵⁵ Southeast Asian countries have signed several instruments regarding child protection and sexual exploitation of children, particularly in travel and tourism. At the regional level, most of them are just non-enforceable commitments. For instance, the [Declaration of the Commitments for Children in Association of Southeast Asian Nations \(ASEAN\)](#) adopted on 2 August 2001 in Singapore where states agreed on '*protect children from all forms of violence, abuse, neglect, trafficking and exploitation while at home, in school and in the community*'.⁵⁶

In the [ASEAN Tourism Agreement](#) signed in 2002, member states decided to take 'stern measures to prevent tourism-related abuse and exploitation of people, particularly women and children'.⁵⁷

In addition, the COMMIT Initiative, the [Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region](#) was signed in 2004 by Myanmar, Cambodia, China, Thailand and Laos PDR to respond to human trafficking. The initiative calls for the intensification of regional and international cooperation, adoption of appropriate legislation, development of bilateral and multilateral agreements and promotion of greater gender and child sensitivity in all areas of work dealing with victims of trafficking.⁵⁸ COMMIT specifically focuses on child sexual exploitation, including in the tourism sector.⁵⁹

The [ASEAN Declaration against Trafficking in Persons, particularly in Women and Children](#) was adopted in 2004. It committed to, among others, the strengthening of border controls and monitoring mechanisms, exchange of information, the improvement of cooperation between law enforcement authorities and the establishment of a regional focal network to prevent and combat trafficking in persons.⁶⁰

Finally, the [ASEAN Treaty on Mutual Legal Assistance in Criminal Matters \(MLAT\)](#) signed in Malaysia in 2002 could have been a good opportunity for the signatory states (Brunei, Cambodia, Indonesia, Laos PDR, Malaysia, Philippines, Singapore, Vietnam, Myanmar and Thailand) to establish real commitments and obligations. It contains several provisions to help improve cooperation between security and law enforcement agencies and to enhance the regional response to transnational crime (collection of evidence, service of documents, identification of persons, etc.). Nevertheless, the treaty does not provide for extradition and state domestic laws take precedence over the treaty's provisions.⁶¹

55 Afroz Kaviani Johnson, "Protecting Children's Rights in Asian Tourism", *International Journal of Children's Rights* 22, 2014, p. 581-617.

56 Declaration of the Commitments for Children in ASEAN, 2001, Paragraph 15. Accessed 16 April 2015 on <http://cil.nus.edu.sg/rp/pdf/2001%20Declaration%20on%20the%20Commitments%20for%20Children%20in%20ASEAN-pdf.pdf>

57 ASEAN Tourism Agreement, 2002, Article 5(6). Accessed 16 April 2015 on <http://www.asean.org/news/item/asean-tourism-agreement>

58 Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, 2004. Accessed 16 April 2015 on http://www.mekongmigration.org/PDF%20for%20policy%20documents/MOU%20on%20Cooperation%20against%20HT%20_October%2029%2C%202004.pdf

59 Afroz Kaviani Johnson, "Protecting Children's Rights...", p. 584.

60 ASEAN Declaration against Trafficking in Persons, particularly in Women and Children, 2004. Accessed 16 April 2015 on <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-against-trafficking-in-persons-particularly-women-and-children-3>

61 ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, 2002. Accessed 16 April 2015 on <http://cil.nus.edu.sg/rp/pdf/2004%20Treaty%20on%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters-pdf.pdf>

Therefore, it is evident that at the regional level ASEAN countries have signed a certain number of documents and declarations to address child sexual exploitation. However, these treaties lack formal binding commitments, effective mechanisms to monitor implementation and impose strong consequences in case of non-compliance.⁶²

SOUTH ASIA

The South Asian Association for Regional Cooperation (SAARC) adopted in 2002 the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and also the SAARC Regional Convention on Preventing and Combating Trafficking of Women and Children for Prostitution. The latter was created as a response to the increasing number of transnational cases of trafficking for sexual purposes in the region. It has been criticised, among other reasons, for its narrow definition of trafficking for the purpose of prostitution which limits its effectiveness for any other manifestation of sexual exploitation.⁶³

AFRICA (including the Middle East and North Africa (MENA))

The *African Charter on the Rights and Welfare of the Child* was signed in 1990 and obliges States parties to protect the child from 'all forms of sexual exploitation and sexual abuse', preventing them specifically from 'the inducement, coercion or encouragement of a child to engage in any sexual activity; the use of children in prostitution or other sexual practices; and the use of children in pornographic activities, performances and materials'.⁶⁴ States parties are required to take all appropriate measures to prevent the abduction, the sale of, or trafficking of children for any purpose in any form.⁶⁵

The *Arab-African Forum against the Sexual Exploitation of Children* was held in Rabat (Morocco), from 24- 26 October 2001, to prepare for the effective participation of the Arab-African region at the 2nd World Congress against Commercial Sexual Exploitation of Children held in Yokohama (Japan). As a result of the Congress, the *Declaration of the Arab-African Forum against Sexual Exploitation of Children* was adopted. It included legal provisions to protect children from SECTT and also to involve travel agencies and tourism ministries of various countries in programmes that combat the sexual exploitation of children in travel and tourism.⁶⁶

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003) requires States parties to 'prohibit, combat and punish all forms of exploitation of children, especially the girl-child'.⁶⁷ Regarding 'child marriage', it states that legislation should specify the minimum age of marriage to be 18 years.⁶⁸

62 N. Ganesan, Ramses Amer, "International Relations in Southeast Asia: Between Bilateralism and Multilateralism", Institute of Southeast Asia, 2010, p. 49.

63 ECPAT International, "Strengthening Law Addressing Child Sexual Exploitation. A Practical Guide", 2008, p. 33.

64 African Charter on the Rights and Welfare of the Child, 1990, Article 27. Accessed 17 April 2015 on http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf

65 Ibid., Article 29.

66 The African Policy Child Policy Forum, "Sexual Exploitation of Children in Africa. Background Paper Prepared on Legal Frameworks and Law Enforcement for the African Technical Preparation Meeting for the World Congress III against Sexual Exploitation of Children and Adolescents", Dakar, Senegal, 2008.

67 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Article 13(g). Accessed 17 April 2015 on <http://www.au.int/en/sites/default/files/Protocol%20on%20the%20Rights%20of%20Women.pdf>

68 Ibid., Article 21(2).

Recently, the [African Union Convention on Cyber Security and Personal Data Protection](#) adopted in July 2014 has included as an obligation for the states to take the necessary legislative and/or regulatory measures to make the conducts related to child pornography a criminal offence (production, dissemination, possession, etc.).⁶⁹

Other commitments and declarations have been adopted by regional bodies such as Economic Community for West African States (ECOWAS), Economic Community for Central African States (ECCAS), Middle East and North Africa, and the Southern Africa Development Community (SADAC) in order to facilitate transnational cooperation against the CSEC. For instance, the Lomé Appeal on Trafficking in Children (1999), the Southern African Regional Network against Trafficking and Abuse of Children (SANTAC, 2002). The Cairo Declaration Regional Consultation for the MENA on the UN Study on Violence against Children (2005) or the adoption of multilateral agreements between members of ECOWAS and the ECCAS in order to strengthen cooperation on anti-trafficking measures in 2006 are some of the others.

Likewise, Arab countries have two main regional legal instruments. The first instrument is the [Arab Charter on Human Rights](#) adopted in 2004 by the League of Arab States and entered into force in 2008. It prohibits *'forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict'*.⁷⁰ The second instrument is the *'Covenant on the Rights of the Child in Islam'* adopted in 1994 by the Organisation of the Islamic Conference (OIC). It obliges the States parties to take the necessary measures to protect children from trafficking, all forms of torture or inhumane or humiliating treatment in all circumstances and conditions, and all forms of abuse, particularly sexual abuse.⁷¹

Although, lacking specific legal frameworks to address SECTT and concrete actions to fulfil the commitments and obligations, the region's activities against all manifestations of sexual exploitation of children has constantly been improving with a focus on SECTT. The [Gambia's](#) Tourism Offences Act 2003 states that sexual abuse of a child by a tourist is punishable by 14 years' imprisonment.⁷² [Kenya](#) Sexual Offences Act 2006 criminalises the conduct of tourists who engage in sexual activities with a child and also the facilitation of travel arrangements made by individuals or legal persons for this purpose.⁷³

69 African Union Convention on Cyber Security and Personal Data Protection, 2014, Articles 1 and 29(3). Accessed 17 April 2015 on http://pages.au.int/sites/default/files/en_AU%20Convention%20on%20CyberSecurity%20Pers%20Data%20Protec%20AUCyC%20adopted%20Malabo.pdf

70 Arab Charter on Human Rights of the League of Arab States, 2004, Article 10.2. Accessed 17 April 2015 on <http://www1.umn.edu/humanrts/instree/loas2005.html>

71 Covenant on the Rights of the Child in Islam, 1994. Accessed 17 April 2015 on <http://www.refworld.org/docid/44eaf0e4a.html>

72 Child Protection Alliance, "Child Sex Tourism, Fact Sheet". Accessed 20 April 2015 on <http://www.defenceforchildren.nl/images/13/1313.pdf>

73 Kenya, Sexual Offences Act 2006, Sections 13 and 14. Accessed 20 April 2015 on http://www.africanchildforum.org/cfr/Legislation%20Per%20Country/kenya/kenya_sexoff_2006_en.pdf

THE PACIFIC REGION

At the regional level, no legal instrument has been signed between the Pacific countries regarding sexual exploitation of children, and more specifically involving travel and tourism. Nevertheless, although slow, there is increased commitment to address the issue in the region. For instance, the celebration of the [East Asia and Pacific Regional Commitment and Action Plan against CSEC](#) in 2001 led to the adoption of the Stockholm Declaration and Agenda for Action by Cook Islands, Fiji, Marshall Islands, Federated States of Micronesia (FSM), Papua New Guinea (PNG), Samoa, Tonga and Vanuatu. Also, the [Pacific Regional Workshop on Poverty and CSEC](#) in 2003 which recognised the widespread but under-researched issue of sexual exploitation of children.⁷⁴

At the bilateral inter-governmental level, an example is the Memorandum of Understanding (MOU) between Fiji and Australia in December 1998. This was a big step in international cooperation to crack down on child abusers exploiting children in the Pacific islands and preventing both local child sexual abuse and sexual exploitation of children in travel and tourism.⁷⁵

Despite some timid progress in the Pacific, commitments and actions have not been consistent. Data on SECTT is extremely limited.⁷⁶ According to communities surveyed, SECTT has started to be sporadically reported in the Pacific countries, but only involving a few islands where the problem is growing. Fiji requires for a more intense legal coverage and law enforcement in the Asian region.⁷⁷ The aforementioned, situation is compounded by the low rate of ratification of the OPSC by the countries in the region.

LATIN AMERICA AND THE CARIBBEAN

The Latin America and the Caribbean region has several legal instruments that, while not directly addressing the sexual exploitation of children, contain some important provisions.

The main human rights instrument for the Americas is the 1969 American [Convention on Human Rights](#) concluded under the auspices of the Organization of American States (OAS). The Convention specifically recognises the right of protection of children: *'every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the state'*.⁷⁸

The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#), signed in 1994 criminalised the violence against women which include physical, sexual and psychological violence, and specifically mentions *'rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment'*.⁷⁹

74 UNICEF, "Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Pacific: A Regional Report", 2006. pp. 5-6.

United Nations, Office of the High Commissioner for Human Rights, Regional Office for the Pacific, "Human Rights in the Pacific – Country Outlines 2012", ISBN: 978-0-478-34997-9.

75 UNICEF, "Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Pacific: A Regional Report", 2006. pp. 5-6.

76 UNICEF, UNESCAP and ECPAT International, "Commercial Sexual Exploitation of Children and Child Sexual Abuse in the Pacific: A Regional Report", 2008. p. 15.

77 Save the Children, "The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis", 2005. p. 19.

78 American Convention on Human Rights, Article 19.

79 Inter-American Convention on The Prevention, Punishment and Eradication of Violence Against Women, 1994, Article 2. Accessed 17 April 2015 on https://d3gqux9sl0z33u.cloudfront.net/AA/AT/gambillingonjustice-com/downloads/224033/inter-american_convention_on_the_prevention__punishment_and_eradication_of_violence_against_women-convention_of_belem_do_para.pdf

More specifically, the [Inter-American Convention on International Traffic in Minors](#) signed in 1994 prohibits the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means, which include, among others, '*prostitution*' and '*sexual exploitation*'.⁸⁰ Given the transnational element of this crime, the instrument focuses on the mutual legal assistance among the States parties.⁸¹

Commercial and non-commercial sexual exploitation of children was addressed in the Regional Government Consultation on Child Sexual Exploitation held in Montevideo (Uruguay) in 2001.⁸² As a result, the countries adopted the [Montevideo Commitment](#) to articulate a strategy to progress towards accomplishing the goals of the Plan of Action of Stockholm. The commitment was aimed at regional and international cooperation, prevention, protection (including approval of specific laws), recovery and reintegration, child and youth participation, research and monitoring compliance. Although supported by commitments through the constitution of a Working Group, it lacks powers to impose consequences if the states do not fulfil their commitments.

Countries throughout Latin America have experienced SECTT, although in different forms and with different degrees of intensity. In many instances, a pattern of travelling from industrialised countries to developing countries is evident, with Canadian and American citizens travelling to the region to sexually exploit children. Some destinations have experienced SECTT for over twenty years ([Mexico](#) and [Brazil](#)), while others, like [Colombia](#), have begun to experience it in recent years.⁸³

Given the lasting and evolving nature of SECTT, the Latin America and the Caribbean region lacks specific regulation and formal binding commitments to address the crime.

80 [Inter-American Convention on International Traffic in Minors, 1994, Article 2](http://www.oas.org/dil/treaties_B-57_Inter-American_Convention_on_International_Traffic_in_Minors.htm), accessed 17 April 2015 on http://www.oas.org/dil/treaties_B-57_Inter-American_Convention_on_International_Traffic_in_Minors.htm

81 *Ibid.*, Article 1.

82 [Montevideo Commitment, "Committing to a Strategy against Sexual Exploitation and other forms of Sexual Violence to Children and Adolescents in Latin America and the Caribbean"](#), 2001. Accessed 17 April 2015 on <http://www.scm.oas.org/pdfs/2002/cp09996c.pdf>

83 [ECPAT International. "Combating child sex tourism: Questions and Answers"](#), 2008.

5. ELEMENTS OF NATIONAL LEGAL FRAMEWORKS ADDRESSING SECTT

Mechanisms to monitor implementation are also weak at the regional level.

Nevertheless, efforts in regards to SECTT have been stronger at the domestic level. Penal Codes of [Peru](#) and [Honduras](#), for instance, contain clear provisions criminalising SECTT.⁸⁴ [Costa Rica](#) amended its legislation in 2001 to prevent entry and residence application or entry visas, which could be rejected to foreigners who are linked to offences under the Law against Commercial Sexual Exploitation of Minors. Similarly, it may proceed with the cancellation of residency permits.⁸⁵ [Uruguay](#) passed a Decree in 2013 which established several obligations for tourist service providers. These included the adoption of a Code of Conduct, which must be fulfilled by directors, managers and employees. Reporting must be done to the Ministry of Tourism and Sports and to the National Committee for the Elimination of Commercial and Non-Commercial Sexual Exploitation of Children and Adolescents. Making a formal complaint to relevant competent authorities of all SECTT cases is an obligation under the Decree.⁸⁶ Nevertheless, these obligations are not concrete and lack a monitoring mechanism and legal consequences in case of non-compliance.

In this chapter, important elements addressing SECTT in domestic legal frameworks are described and recommended to strengthen the legal combat against SECTT.

The development of SECTT specific extraterritorial legislation and effective extradition treaties are critical elements to ensure that travelling sex offenders are deterred as well as prosecuted for committing sexual offences against children abroad.

Through extraterritorial jurisdiction countries can deem an offence committed abroad as an offence committed within their borders. Under extradition, the state where the offender is found may be required to send him/her back to the country where the offence was committed.

The high incidence of SECTT worldwide can be linked to weak national and international legal frameworks that fail to adequately prevent and punish sexual offences against children. Even when a legal basis exists, lack of proper enforcement leads to the same failure. Failures of the legal system in countries where the crime is committed could be amended by the countries of nationality or residency of the perpetrators.

Although a significant number of countries have implemented extraterritorial legislation⁸⁷ enabling them to prosecute their nationals for crimes against children committed abroad, can be challenging, labour-intensive and expensive. The extraterritorial legislation often

84 Peru, Act No.28251/2004 Amendment of the Penal Code, Article 181-A.
Honduras, Decree No. 234/2005, Amendment of the Penal Code, 149-E.

85 María Cecilia Claramunt, "Costa Rica, Commercial Sexual Exploitation of Minors: A Rapid Assessment", ILO/IPEC, Geneva, 2002. p. 27. Accessed 20 April 2015 on <http://www.corteidh.or.cr/tablas/23663.pdf>

86 Uruguay, Decree 13 December 2013, establishing obligations for tourist service providers for prevention of the child sex tourism crime. Accessed 20 April 2015 on http://archivo.presidencia.gub.uy/sci/decretos/2013/12/mintur_535.pdf

87 According to ECPAT Netherlands, in 2001 at least 44 countries have implemented extraterritorial legislation. ECPAT Netherlands, "Child Sex Tourism", 2011. p. 21. Accessed 22 April 2015 on <http://www.defenceforchildren.nl/images/13/1406.pdf>

requires international cooperation, involving challenges to secure witnesses and other necessary physical evidence to carry out a prosecution. Therefore, not all countries have used their regulations to stop citizens from exploiting children abroad.⁸⁸

Extradition mechanisms face the same obstacles, plus the concrete articulation of the signed treaties. There are two kinds of extradition agreements: (i) *'list treaty'* under which extradition is only possible for an offence that is named in the treaty and (ii) *'dual criminality treaty'* which requires the offence be regulated in both countries associated with, at least, one-year imprisonment. Both could pose problems if the crime is not regulated in the treaty if the crime is regulated in a different way or requires diverse elements to be met between the countries or even if there is no an extradition treaty.

There are a number of obstacles hindering the enforcement of the extraterritorial jurisdiction and extradition that needs to be addressed at all levels. In particular, it is worth noting the following:

- Extraterritorial legislation is limited in its scope. Most of the countries restrict the application of their extraterritorial jurisdiction to the victim or perpetrator's nationality or resident status.

Recommendation: Countries should expand the category of perpetrators that can be prosecuted for SECTT crimes beyond nationality or resident status.

Belgium and **Sweden** have extended the application of extraterritorial jurisdiction to persons who have merely passed through their countries,⁸⁹ which suggest a progressive legal fight against SECTT in these countries for nationals and non-nationals. Specifically, the Swedish Penal Code extends its extraterritoriality legislation to Swedish citizens, Nordic citizens living in Sweden, foreigners and aliens domiciled in Sweden and aliens that became Swedish citizens after the crime was committed.⁹⁰

- Not all domestic legislation considers crimes of sexual exploitation of children extraditable.

Recommendation: Sexual crimes against children, and specifically SECTT, should always be considered an extraditable offence under domestic laws. States that do not include an extradition conditional on the existence of a treaty shall recognise the extradition between them following the conditions of the state required, as provided for in Article 5.3 of the OPSC, on the basis that there should be a general rule to ease the procedures.

For instance, the **Netherlands** requires an extradition treaty to extradite a national that has committed a sexual crime against a child abroad. This is a critical problem due to the fact that the country does not have extradition treaties with a majority of destination countries. Therefore, as stated by the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children,⁹¹ this is likely to be used by criminals to travel to countries with weak judicial and law enforcement capacity, a police force that is easy to bribe, or even to countries with a low age of sexual consent.

88 United Nations, General Assembly, Human Rights Council, "Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid", A/HRC/22/54, 24 December 2012, Paragraph 11.

89 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism..." p. 18 citing Naomi, L. Svensson, "Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws", 28 LOYOLA INT'L COMP. L. Rev. 641, 2007.

90 Eva J. Klan, "Nat'l Ctr. for Missing & Exploited Children, Prostitution of Children and Child Sex Tourism: An Analysis of Domestic and International Responses", 7, 1999.

91 The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism", Summary Report, The Hague, 2013.

- It is clear the dual criminality requirement has the potential to derail the conviction of SECTT offenders.⁹²

Recommendation: The elimination of the dual criminality requirement is essential to effectively combat SECTT crimes.

Moreover, its removal ameliorates the obstacle of inadequate SECTT legislation and law enforcement in destination countries and increases the scope of extraterritorial legislation.⁹³

In recent years, a number of countries have removed the requirement of double criminality. For instance, in 2005 Sweden eliminated the double criminality applicable in heinous sexual crimes committed abroad against children.⁹⁴ Denmark reviewed its extraterritorial legislation and since 2006, the requirement no longer applies. The UK did it in 2008 following an amendment to Section 72 of the Criminal Justice and Immigration Act 2008.

Moreover, if the dual criminality requirement is removed, it could overcome the differing age limits for sexual consent of SECTT victims. This issue is studied in-depth in Section 6. Regarding extradition, the dual criminality condition should be removed from the extradition treaties as well, because it is sufficient that the crime is regulated under the domestic legislation in which it took place.

- Complying with full procedures (formal request made by the state where the offence took place, formal acceptance of the perpetrator's national country, and/or necessary complaint of the victims) can consume a lot of valuable time in the prosecution as evidence grows stale, witnesses become less accessible and statutes of limitation run out.

Recommendation: It is also important to be flexible and ease the formal requirements of states' requests when facing a transnational SECTT crime and implementing extraterritorial legislation frameworks or extradition treaties.

For example, under parliamentary Bill C-15A, Canada eased the formal requirements of the state request, permitting prosecutions upon permission from the Canadian Attorney General.⁹⁵ The Lanzarote Convention, as stated before, obliges states to remove some of these formal requirements. In 1999, Japan passed legislation (Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children) removing the requirement for the victim to file a complaint to begin an investigation.

- Double jeopardy should never enable offenders to escape prosecution in their home country by serving a short-term or partial sentence abroad. Child sex offenders have to be punished with the corresponding sanction, without taking advantage of the weak or short sentences in the destination country.

Recommendation: Double jeopardy requirements should be limited to instances where a person was acquitted or if the sentence was served in full.

- Specific children's needs should be taken into account. As noted above, domestic penal codes rarely contain SECTT specific provisions. Consequently, prosecuting this crime under other statutory crimes could imply that legal protections are ostensibly equal for

92 Naomi, L. Svensson, "Extraterritorial Accountability..." p. 63.

93 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism..." p. 21.

94 Government of Sweden. "Fact Sheet, New Legislation on Sexual Crimes". Accessed 20 April 2015 on <http://www.sweden.gov.se/sb/d/5076/a/46797>

95 Canada, Criminal Law Amendment Act, 2001.

child victims residing domestically and those abroad. But, the latter has special needs due to the fact that they may be confronted with a different jurisdiction or, included but not limited to, linguistic or cultural disparities (e.g. if the child has to be in a different country during the judicial process). This failure might be compensated by the inclusion of provision designed to facilitate SECTT prosecutions⁹⁶ or through the adoption of extraterritorial legislation specifically targeting SECTT.⁹⁷ Either method should provide additional protection for vulnerable children.

Recommendation: Child victim testimony via video or satellite link should be accepted as valid evidence in court, in order to avoid re-traumatization of victims by travelling to culturally unfamiliar states or resulting testimony compromised or misconstrued for that reason.

For example, **Australia's** extraterritorial legislation permits children to testify by video-link under certain circumstances (cases where personal appearance in court would involve unreasonable expense or inconvenience, psychological harm, or sufficient stress to prevent the children from testifying reliably).⁹⁸ In 1996, an Australian court rejected the testimony of two Cambodian boys who alleged that John Holloway, an Australian diplomat, sexually abused them. The children did not appear credible to the Australian court because the children could not accurately testify with regard to their birth dates and dates of when the sexual exploitation allegedly took place.

Nevertheless, the Australian Federal Police (AFP) prefer in the first instance for offenders to be prosecuted in the country in which they committed the harm/offence. This is for a number of reasons including: (i) the offence is committed in their jurisdiction; (ii) it increases awareness of local law enforcement agencies of the crime and encourages them to investigate and prosecute offenders; (iii) it educates local communities that this is a serious crime against their children that does cause harm and should not be tolerated; (iv) sends a message to offenders that they will face severe penalties and sentences with prison conditions much harsher than those in Australia; and, (v) court processes involving foreign victims and witnesses can be complex and costly in support of prosecution in Australia.⁹⁹

- In some countries, prosecution is discretionary (as opposed to compulsory). For example, the Japanese Code of Criminal Procedure prescribes standards to be used by prosecutors in deciding whether to institute a prosecution in a given case. A prosecutor that refuses to prosecute a case involving a child victim should always be required to justify the decision.¹⁰⁰

Recommendation: Prosecutors are required to justify refusals to proceed with a SECTT case in countries that have discretionary prosecution rules.

- In SECTT cases, consistent preservation and custody of the main evidence between sending and destination states remain problematic for effective prosecution.

Recommendation: Sending countries need to progress in that area by, for instance, training groups of specialised liaison police officers placed in countries with a high prevalence of SECTT crimes by their nationals. In addition, destination countries should ease their legislation to facilitate the work of these professionals.

96 Jeremy Seabrook, "No hiding place: Child Sex Tourism and the Role of Extraterritorial Legislation", 2006, p. 656-657.

97 United States, Protect Act of 2003. Pub. L. No. 108-21, Article 105(c).

98 Australia, Crimes Amendment Act (Child Sex Tourism Act), No. 105, 1994, Division 5.

99 AFP, "Thematic Paper: Australian travelling child sex offenders: Strengthening cooperation between law enforcement agencies and analysing trends", 26 May 2015.

100 ECPAT International, "Extraterritorial Laws. Why they are not really working and how they can be strengthened", September 2008, p. 12.

Training should also be provided in order to have the best possible range of evidence collected in the destination country.¹⁰¹ (i) victims and witness statement testimony should be taken as soon as possible, (ii) any interview of the offender should be recorded, (iii) gathering of documentary evidence such as customs, border control records or, if it is the case, hotel records and (iv) provision of knowledge about the appropriate steps to ensure the admissibility of physical evidence.

One good example is [Thailand](#), which has empowered the state's Attorney General to directly gather and transfer evidence to prosecuting states¹⁰² through the Mutual Legal Assistance in Criminal Matters Act of 1992. The [Netherlands](#) has a large group of liaisons officers located in several countries where their nationals most commit sexual crimes against children.¹⁰³ AFP has a number of liaison officers in key regional destinations, including Cambodia, Indonesia, Philippines, Thailand, and Vietnam.¹⁰⁴ The US and some other Western countries have also placed liaison officers in the SECTT destination countries (e.g. [France](#) or the [UK](#)).

- It is not uncommon for states to impose other conditions for the prosecution of crimes committed abroad such as limitation periods, which establish the time during which proceedings must be initiated. Once that period has elapsed, proceedings cannot be instituted.

Recommendation: Ensure that the prosecution of SECTT cases is subject to statutory limitations that begin only after the child has reached the age of 18.

For example, [Switzerland](#) has extended the statute of limitations until the victim is 25 years old in cases of sexual crimes against children.¹⁰⁵

Extraterritorial jurisdiction and extradition in SECTT cases necessarily require effective international cooperation to deter and prosecute travelling sex offenders.¹⁰⁶ Essential actions to be taken for every country are the following:

Recommendation: Rapid and complete exchange of information through the use of diplomatic channels and close communication through relationships based on trust.

An example of good practice is the placement of national police liaison officers in destination countries to help with investigations and prosecutions. The [Netherlands](#) has implemented this practice of cooperative investigating and prosecuting Dutch travelling sex offenders through the stations liaison officers for the police or the Royal Marechaussee (in 43 of 69 countries identified as destinations for SECTT). They exchange operational information between the Dutch investigative services and their counterparts in other countries to tackle serious, organised cross-border crime and advise the Dutch government on how to best facilitate cooperation.¹⁰⁷

101 G8 Experience in the Implementation of Extraterritorial Jurisdiction for Sex Crimes Against Children, Document for the Meeting of G8 Justice and Home Affairs Ministers, Munich, 23-25 May 2007, pp. 4-5.

102 Thailand, Act on Mutual Assistance in Criminal Matters, 1992.

103 The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism", Summary Report, The Hague, 2013.

104 AFP, "Thematic Paper. Australian travelling sex offenders: Strengthening cooperation between law enforcement agencies and analyzing trends", 30 April 2015.

105 Anita Marfurt, "Que fait la Suisse en matière de prévention, de législation et d'intervention face au tourisme sexuel impliquant des enfants?", Chapter included in "Tourisme sexuel impliquant des enfants: prévention, protection, interdiction et soins aux victimes", pp. 151-164.

106 United Nations, General Assembly, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, A/HRC/28/56, 22 December 2014.

107 The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism", Summary Report, The Hague, 2013.

Recommendation: Harmonised data collection systems, evidence transmission and admissibility requirements.

Recommendation: Joint investigations and collaboration and coordination in the prosecution or resolution of conflicts of jurisdiction.

In November 2000, police in **Japan** arrested Akihisa Kuga and six other Japanese nationals for producing child pornography in Thailand, the first arrest under 1999 Japanese extraterritorial legislation. Thai police arrested Kuga in Thailand, and the Japanese embassy in Thailand alerted the Japanese police in Tokyo that Kuga received a replacement passport from the embassy. Following notification, Japanese police started an investigation. In cases of extraterritoriality prosecution, critics stress the importance of effective and timely international cooperation between police forces to uncover evidence that will satisfy the sending country's judicial standards.¹⁰⁸

Recommendation: Cooperate with local NGOs that know the cultural, social and legal settings.

Cooperation with local NGOs can provide crucial support to national and foreign authorities investigating a case, based on the valuable knowledge they have regarding the local culture, social and legal aspects that can impact a case.

Recommendation: SECTT and attempt and conspiracy to commit SECTT should be regulated as a crime.

Regulate SECTT as a separate offence and, in particular, the attempt and conspiracy to commit such an offence would ease the prosecution because the alleged perpetrator could then be arrested at the point of departure, before arrival in the destination country.¹⁰⁹

For instance, the **US** and **Australia** include attempts to sexually abuse or exploit children overseas as an offence. **Ireland** criminalises national citizens or ordinary residents that intentionally travel with the purpose of meeting a child for sexual exploitation.

The investigation, prosecution and subsequent conviction and sentence of 20 years' imprisonment of John W. Seljan by the U.S. government was based, among other crimes, on the attempt to travel to engage in sexual acts with minors. Mr. Seljan was arrested at the Los Angeles airport as he attempted to board a flight to the Philippines where he intended to have sex with two girls aged 9 and 12 years. Evidence was given after customs inspectors, conducting routine checks, discovered sexually suggestive letters in internationally bound packages sent by Seljan.¹¹⁰

Recommendation: Invest in capacity-building in destination countries.

Recommendation: Provide sufficient financial and human resources to implement above measures.

Recommendation: Finally, cooperation treaties (both, bilateral and multilateral) are necessary for the effectiveness of the extraterritorial jurisdiction.

108 Daniel Edelson, "The Prosecution of Persons Who Sexually Exploit Children in Countries Other than Their Own: A Model for Amending Existing Legislation", *Fordham International Law Journal*, Vol. 25: Iss. 2, Article 5, 2001.

109 EUROJUST, "Eurojust Tactical meeting on Travelling child sex offenders. Final Report.", 14-15 September 2011. Accessed 22 April 2015 on http://www.eurojust.europa.eu/Practitioners/operational/Child-protection/Documents/2011-09_tcso-report.pdf

110 United States vs. Seljan. U.S. Courts of Appeals for the Ninth Circuit, 14 August 2007.

Extradition enforcement should also be strengthened by including specific obligations and consequences in case of breach or failure of the commitments/duties. Nevertheless, formal agreements can also entail lengthy and bureaucratic procedures, which may hamper the success of the investigation. Therefore, personal, direct and informal contact with law enforcement and judicial authorities in the destination country is crucial and should be encouraged.

In conclusion, national legal responses to target SECTT are required to address existing gaps, through laws or binding treaties, not only to effectively prosecute travelling sex offenders but also to send a strong and clear message to them. It should stress that countries will not let offenders avoid justice. It should also ensure legal measures to prevent crimes and protect victims from being sexually exploited. Travelling sex offenders cannot have the perception that they may evade justice and thus urgent attention and a strong legal response is required.

6. AGE OF SEXUAL CONSENT

The critical legal issue hampering justice for SECTT victims is the discordance between the age that a person is considered a child and the age of sexual consent. Differences among countries, especially if they have the double criminalisation requirement, may endanger the prosecution of this crime. The differences in the definition of child and the age of sexual consent have made the prevention of and protection against SECTT more challenging and complicated, especially for extraterritorial law enforcement.¹¹¹

A lot has been written about the legal age of childhood. Some authors have proposed harmonising the age limit to 18 years to get a universal definition as stated in the CRC, based on its binding provisions or the character of customary international law due to its near-universal ratification.¹¹² But the truth is that the CRC allows members to set divergent age protections.¹¹³ Another argument for a universal standard of 18 years is that persons under that age simply cannot give informed consent.¹¹⁴ But, this argument could reject cultural or social values about sexual maturity, as well as the belief about the law's relationship to sexual development and expression in different countries.

Generally speaking, the domestic establishment of an age of majority under 18 has the direct consequence for certain persons in the age-gap until 18 years old (for instance, between 14 and 18 years old). They can be excluded from the scope of the CRC's protection because they will not be considered children in their national jurisdictions.¹¹⁵ Therefore, **states should seek consistency with the international standards across all their laws containing age references so as to reduce children's vulnerability to sexual exploitation.** This includes addressing a review of the age of sexual consent.

111 Naomi L. Svensson, "Extraterritorial Accountability...", 2007, p. 24.

112 Jeremy Seabrook, "No hiding place...", p. 52.

113 CRC, Article 1.

114 Naomi L. Svensson, "Extraterritorial Accountability...", p. 656.

115 Committee on the Rights of the Child, "Concluding observations: The Islamic Republic of Iran", 31 March 2005, paragraph 22.

Varying ages of sexual consent can frustrate the prosecution of a person for sexual crimes committed against a child in another country. For instance, if the defendant argues, that the alleged victim legally consented under the laws of the country when the incident occurred.¹¹⁶ Regarding SECTT, criminal preference draws offenders to states with a lower age of sexual consent, because the victim's age constitutes an element of the offence. Therefore, successful prosecutions would require the child is recognised as such in both countries.

Nevertheless, there are some ways to solve the problem:

1. First, if states are unwilling to amend the age of sexual consent for reasons relating to culture, the double criminality requirement must be removed from SECTT legislation so as to improve its efficacy¹¹⁷ and also specific legal provisions, regardless if the age of sexual consent is established under 18.
2. Second, criminalization of sexual offences committed against children abroad establishing different penalties. That is to say, recognise the criminal act of sexually exploiting children under 18 years old in any case, but take into consideration the age of sexual consent by imposing lower penalties.

For example, the [Australia](#), [Cambodia](#) and the U.S. define a child as one who is under 16 years old. The three of them have ratified the CRC and the OPSC that clearly sets up the 18-year age for a child. Nevertheless, in Australia, an interesting legal technique to try to overcome the age barrier in SECTT has been implemented.

In April 2010, the Australian Parliament inserted Division 272 into the Criminal Code entitled '*Child Sex offences outside Australia*' that acknowledges a broader agenda than the former title and represents the Australia's legislative response to the CRC and the OPSC.¹¹⁸ Regarding the aforementioned, new legislation included offences for young victims. A young person is defined to mean a person of at least 16 years, but less than 18 years old. The offences must be committed by a person in a position of trust or authority over the young person. These sexual offences against children abroad contain lower penalties of 10 and seven years' imprisonment respectively, rather than the 20 and 15 years' terms for the offences against persons less than 16 years.¹¹⁹ Previously, Australia only criminalised offences against a person less than 16 years, consistent with the domestic age of consent. That is a good legal response to protect all children until 18 years old when countries are reluctant to change the age of sexual consent.

3. Third, the so-called mechanism 'close in age' whereby exemptions apply to children younger than the age of sexual consent who nonetheless engage in sexual activity with another person of a similar age.

This is the case in [Finland](#) and [Norway](#). Also, in the [U.S.](#) a lower age applies when the age gap between partners is minimal, or when the older partner is below a certain age.¹²⁰

116 Defense for Children International, "Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children", p. 257.

117 Amy Fraley, "Child Sex Tourism Legislation under the PROTECT Act: Does it really protect?", *St. John's Law Review*: Vol. 79: Iss 2, Article 7, 2005.

118 Danielle Ireland-Piper, "Extraterritoriality and the Sexual Conduct of Australians Overseas", *Bond Law Review*. Vol. 22: Iss.2, Article 2, 2010.

119 Australia, Criminal Code, Division 272 "Child Sex offences outside Australia, Sections 272.12 and 272.13.

120 ECPAT International, "Strengthening. Laws Addressing Child Sexual Exploitation. A Practical Guide", 2008, p. 49.

4. Fourth, domestic laws could include the distinction between the sexual activity taking place in the context of a child's sexual development and the sexual activity which is exploitative in its very nature.

Canada enacted two different ages of consent: The age of 18 years is the threshold where the sexual activity involves exploitation. Such as prostitution, pornography or where there is a relationship of trust, authority or dependency. Age of consent for sexual activity of a non-exploitative nature was raised from 14 to 16 years in 2008.¹²¹

Consequently, while preserving cultural and social values about sexual maturity and sexual development and expressing freedoms related with age, every child until 18 years old has to be protected against sexual crimes committed by travelling sex offenders. Countries have several options to choose from to implement a well-balanced, solid and effective legal framework that respects national approaches on the issue.

7. OTHER LEGAL ISSUES

In the fight against SECTT, a range of legal and law enforcement issues could be addressed.

ATTEMPTS TO COMMIT OR PROCURE

The emphasis of prosecutions appears to be based on the offender's behaviour. That means that as long as the crime has not been committed (the child has been sexually abused, the facilitator has been paid by the travelling offender, etc.) police lack the skill and capacity to investigate and prosecute. This amounts to criminal negligence that does not help deter travelling sex offenders and repeat offenders.¹²²

Recommendation: The attempt to commit or to procure SECTT and the conduct of grooming should be criminalised and severely penalised.

This offers several enforcement advantages:

- Authorities can apprehend offenders before the exploitation takes place.
- No proof that the act of sexual exploitation occurred is required for a conviction, although establishing proof of intent is sometimes challenging. Recent cases¹²³ have held that proof of intercepted correspondence, possession of child pornography, travel arrangements to destination states should be sufficient to initiate prosecution.
- Prosecutors can rely solely on the state's evidence and avoid the difficult and costly task of collecting evidence overseas.

121 Canada, Criminal Code, Article 153(2), amended May 1, 2008 by the Tackling Violent Crime Act. Accessed 23 April 2015 on <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

122 UNDOC, "Protecting the future...", p. 29.

123 U.S Immigration and Customs Enforcement, "Fact Sheet: Operation Predator". Case of John Seljan.

- Expansion of the legal arsenal of SECTT as a strong deterrence measure for travelling sex offenders.

Australia prohibits the intention of procuring a child for sexual purposes for a travelling sex offender.¹²⁴ Grooming a child to engage in sexual activity outside Australia is punishable with a maximum penalty of 12-years imprisonment. Under both the procurement and the grooming offences, the offender needs to only believe that the child or young person is under 16 or 18 years old, respectively, and it is irrelevant that a child is a virtual person, represented as a real person. This could make operations by police and law enforcement officials who might pose as potential victims¹²⁵ easier to carry out.

Ireland has criminalised the conduct of a person who ‘intentionally meets, or travels with the intention of meeting, a child, having met or communicated with that child on two or more previous occasions, and does so for the purpose of doing anything that would constitute sexual exploitation of the child’.¹²⁶

Under the **U.S.** PROTECT Act 2003, criminal liability exists if the accused has travelled with the intent to engage in sexual conduct with a minor. It requires that the travel has to be made (arrival to the destination country) and proof that the defendant had formed his criminal intent at the time he began to travel. The first condition should be removed. If enough evidence is collected prior to the travel, the suspect should be arrested and investigated in-country, easing the burdens of the police and judicial procedures as previously noted.

TRAVEL RESTRICTIONS

A review of documented cases shows that travelling sex offenders who have their passports confiscated prior to release on bail are repeatedly successful in securing new passports at their embassies to subsequently leave the country.¹²⁷ This situation reveals, firstly, poor communication practices between local authorities and foreign states and, secondly, that releasing foreign sex criminals on bail is a failure¹²⁸ as in a number of cases, the offenders recommit the crime.

Recommendation: Release on bail should be impossible in SECTT cases.

One good example: **Sri Lanka** tightened its law and curbed corruption by making paedophilia a ‘non-bailable’ offence, which prevents alleged perpetrators from leaving the country.¹²⁹

In the **Netherlands**, the Dutch Passport Act allows the country to refuse a passport to a person convicted as a paedophile within the previous 10 years or to cancel the passport by entering the person’s name in a register of persons who can be denied a passport or whose passport can be cancelled. This can be done even if there is a valid reason made by a minister (and not by a court) to suspect that he or she will be guilty of sexual violence against children. In these cases, the country where the person is staying should be informed

124 Australia, Criminal Code, Division 272 "Child Sex offences outside Australia, Section 272 (14).

125 Danielle Ireland-Piper, "Extraterritoriality and the Sexual Conduct... ", p. 21.

126 Ireland, The Child Trafficking and Pornography Act 1998, amended by Section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007, Section 3.

127 Jeremy Seabrook, "No hiding place...", p. 13.

128 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism...", p. 16.

129 Kalen Fredette, "International Legislative Efforts to Combat Child Sex Tourism...", p. 16 citing the Facebook on Global Sexual Exploitation: Sri Lanka.

by the Netherlands. Besides, the minister can refuse to issue a passport to Dutch nationals who are living in another country and who are being prosecuted or have been convicted and subsequently, tried to flee the country. However, if the perpetrator has been released on bail, the Dutch embassy cannot refuse to issue an emergency passport.¹³⁰

Offenders registered on the **Australian** National Child Offender Register must provide seven days' notice of intended overseas travel. Non-compliance with reporting obligations and/or knowingly supplying police with false/misleading information attracts a maximum penalty of five years' imprisonment.¹³¹

The **Swiss** law imposes a 10-year ban on convicted paedophiles working with children. The ban can be extended for five or more years or even extended to a life ban in certain circumstances.¹³² The Netherlands has also regulated a travel ban for convicted sex offenders.¹³³

Under the **UK's** Foreign Travel Order, offenders were previously prohibited from international travel for a period of time, and/or forced to surrender their passports.¹³⁴ This order has been replaced by Sexual Harm Prevention Orders (SHPO) and Sexual Risk Orders (SRO) which came into force by the Anti-Social Behaviour, Crime and Policing Act 2014. Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned of a sexual or violent offence, including where offences are committed overseas. The court needs to be satisfied that the order is necessary, among others, for protecting children from sexual harm from the defendant outside the country. The orders prohibit the defendant from doing anything described in them, and can include a prohibition on foreign travel. A prohibition contained in a Sexual Harm Prevention Order has effect for a fixed period, specified in the order, of at least five years, or until further notice. The order may specify different periods for different prohibitions. Failure to comply with a requirement imposed under an order is an offence punishable by a fine and/or imprisonment. Moreover, registered UK offenders must report overseas travel of any duration.

Recommendation: Restrictions of passports, travel notifications and travel bans should be imposed in a justified and proportional way for travelling child sex offenders with a high potential for recidivism thus necessitating child sex offender registries.

These binding measures serve to monitor nationals convicted of travelling sex offenders through legislation that restricts their travel. Also, it helps destination countries to monitor suspects or convicted perpetrators or to even deny them entry.

130 The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism", Summary Report, The Hague, 2013.

131 Afroz Kaviani Johnson, "Protecting Children's Rights...", p. 590.

132 Cristina Odero, "Banning paedophiles", Le News, 1 May 2014. Accessed 20 April 2014 on <http://lenews.ch/2014/05/01/banning-paedophiles/>

133 The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism", Summary Report, The Hague, 2013.

134 "Victoria unveils tougher laws to keep track of offenders who travel overseas", ABC News Australia, 20 August 2014.

RECIDIVISM

Sexual exploitation of children is sometimes carried out transnationally by criminal organisations or by individual persons who have been tried and convicted in more than one country. At the domestic level, many legal systems provide for a different, often harsher, penalty where someone has previous convictions. In general, only conviction by a national court counts as a previous conviction. Traditionally, previous convictions by foreign courts were not taken into account on the grounds that criminal law is a national matter and that there can be differences of national law, and because of a degree of suspicion of decisions by foreign courts.

Recommendation: Reoffending should be regulated as an aggravating circumstance in every country, regardless of the crimes being perpetrated abroad or in-country.

MAXIMUM PENALTIES

The U.S. PROTECT Act 2003 increased the maximum potential incarceration time from 15 to 30 years. Australia has incorporated a maximum 25-years imprisonment for aggravated offences.

Recommendation: Increasing maximum penalties for SECTT related offences based on the serious harmful effects they cause in child victims.

PERSISTENT OR MULTIPLE SECTT OFFENCES

Regarding the number of SECTT cases that involve long lasting exploitative situations against children by sex offenders that live within foreign communities, persistent conduct should be penalised more strongly in SECTT legislation, through a separate offence or as an aggravating circumstance.

Australia represents a good practice to follow. Persistent sexual abuse of a child outside Australia carries a maximum penalty of 25 years' imprisonment. This involves three or more separate occasions of engagement in sexual intercourse or sexual activity with a child or causes the child to do so in the offender's presence. The conduct does not need to be the same on each occasion. It is not necessary to prove the exact dates or circumstances of the occasions on which the conduct occurred. This raises concerns for the defendant where evidence is vague or circumstantial, as can happen when dealing with a child or young victims or witnesses or overseas evidence.¹³⁵ In these cases, the judge or the jury must be satisfied beyond reasonable doubt about the material facts of the three occasions.¹³⁶

Sexual offences involving multiple children at the same time should be criminalised separately or at least as an expressly aggravating circumstance within the domestic laws.

Recommendation: Both, persistent or multiple sexual offences against children should be penalised separately or as an aggravating circumstances.

¹³⁵ For instance, in the case *R. vs Martens* (2009) 262 ALR, 148 (Chesterman J.), Mr. Martens had been convicted of child sex offences under Crimes Act of 1994 relating to conduct alleged to have taken place in Papua New Guinea with a 14-year-old girl, was granted a pardon by the Queensland Court of Appeal on the basis of problems with evidence given by a child witness.

¹³⁶ Australia, Criminal Code, Division 272, "Child Sex offences outside Australia", Section 272.11(7)(b).

CONSENSUAL SEX BETWEEN PEERS

Sexual activities of young adolescents who are discovering their sexuality and engaging in sexual experiences with each other in the framework of sexual development should not be criminalised, as well as sexual activities between persons of similar ages and maturity.

Recommendation: Criteria to determine sexual consent between peers should be provided for in the legal framework to avoid misunderstanding and subsequently clarify its non-exploitative situations.

OBLIGATION TO REPORT SUSPECT CONDUCTS

Reporting of suspected sexual exploitation of children should be mandatory for persons in positions of parental or professional responsibility. This obligation needs to be complemented by protection mechanisms, because, in some situations they can be threatened or be subject to violent consequences.

Besides, anonymous complaints must be accepted as evidence as long as they are solid, without requiring the personal testimony of the person who is reporting. Authorities are obliged to investigate the case and bring it to the court without requiring testimony.

Recommendation: Domestic legislation needs to include the obligation to report any suspects regarding a sexually exploitative situation against a child. Non-compliance should have strong sanctions. Also, protection mechanism should be regulated for reporting persons. Reasonable anonymous complaints must be accepted as evidence, and they should also act as the first step to initiate an investigation.

6. KEY RECOMMENDATIONS

The following recommendations include amendments to international, regional and domestic legal instruments. It should be noted that normally at an international level, changes take longer. Conversely, at the domestic level, the impact is more direct and requires less time. Nevertheless, a comprehensive and homogenous legal framework at all levels is essential in the fight against SECTT.

Recommendation 1 – Common legal terminology for SECTT

From a legal point of view, given the complexity of the elements of SECTT and the differences between countries, a common understanding of the phenomenon needs to be implemented, at the international level. Legislation should comprise a clear and individual naming of the SECTT offence, considering all types of perpetrators and situations where SECTT can occur, avoiding transnational barriers and dilution with other types of sexual exploitation crimes against children. Agreement on commercial and non-commercial elements within the term 'exploitation' should be adopted, to include a range of contexts and relationships that can take place. An accurate, common and comprehensive legal articulation of SECTT should be addressed to ensure harmonisation, targeted and effective law enforcement responses. This will significantly inform regional and national policy makers in creating and applying the right holistic initiatives to address the issue.

The international community must acknowledge the seriousness of these heinous and senseless crimes and provide some recourse to past victims as well as protection to those who may be the targets of such crimes in the future.

Recommendation 2 – Ratification and update of international instruments

The full ratification of the existing international conventions and protocols regarding child rights and, more specifically, sexual exploitation of children, should be addressed as a matter of urgency. At a minimum, it would represent the country's commitment to the prevention and protection that potential victims and existing victims require.

Nevertheless, in addition to the aforementioned, a comprehensive framework for SECTT and strengthening of accountability for States parties must be updated in the international legal instruments. Apart from regular monitoring and reporting of the commitments, failure to fulfil obligations at the international level must be at least published on a regular basis. Governments should be accountable for the commitments made by signing and ratifying international instruments and their performance should be monitored effectively and on a regular basis.

Recommendation 3 – Strengthening legal responses and accountability at regional level

The European legal framework has made important progress in the fight against SECTT by legally addressing key measures and practices learned from the evolving phenomenon that should serve as valuable reference for other regional approaches. However, to ensure real law enforcement, effective monitoring and accountability systems need to be put in place.

Regarding other regional legal frameworks, they all should adopt specifically binding and harmonised instruments addressing SECTT to guide and enhance domestic laws. Again, legislation is useless without real law enforcement measures and proper accountability systems. Hence, both issues must be enforced at the regional level as a strong and effective tool to combat SECTT.

Recommendation 4 – Revision and implementation of the extraterritorial legislation and the extradition mechanisms

Considering the transnational nature of SECTT, it is of critical importance that extraterritorial legislation and extradition mechanisms should be adopted without any practical barriers. This urgently requires countries to comply with the following checklist:

- Expand the type of offenders to be prosecuted for SECTT crimes. Nationals, non-nationals (residents, domiciled, foreigners in-country) and companies must also be included.
- SECTT should be extraditable in every domestic law. The lack of a treaty should not hamper the extradition between two countries providing that, if that is the case, an international binding obligation should be activated.
- Removal of the dual criminality requirement in extraterritorial legislation and the extradition, both law or treaty scheme.
- Ease any formal requirement that can hinder the timely implementation of the investigation and/or prosecution procedure in extraterritorially or extradition mechanisms. In particular, removal of the prior victim's report or denunciation and formal request or acceptance of the sending and destination and/ or third countries involved.
- The principle of double jeopardy should not be applied unless the person was acquitted or the sentence was served in full.
- Prosecutor's refusal to proceed in a SECTT case requires qualified justification.

- A child victim's testimony via video or satellite link should be accepted in court as valid evidence.
- Statutory limitations in SECTT cases should ensure its start, at least, only after the child has reached the age of 18 years.

Both in extraterritorial or extradition procedure, mutual legal assistance between countries is essential. Therefore, following measures need to be ensured:

- The availability of extraterritorial jurisdiction in itself does not alleviate the obligations of destination countries to strengthen their laws and provide effective law enforcement and prosecutions within their domestic legal systems. More support must, therefore, be given to destination countries by building their capacity to enact and enforce local laws to stop SECTT. In particular, the following concrete measures can be taken: consistent preservation and custody of the main evidence (physical and also documents), training groups of specialised liaison police officers placed in countries with high prevalence of SECTT crimes by their nationals and, testimonies of the victims, witnesses and offenders.
- Removal of undue obstacles to the provision of mutual legal assistance between countries in SECTT cases. Obligations and concrete procedures need to be agreed upon from the onset. Non-fulfilment of the obligations should have consequences for the obstructive state. In order to avoid obstacles, relationships should be based on trust and informal contact.
- Exchange of information among law enforcement agencies must be facilitated through timely and effective channels. For these purposes, data collection, registration and notification/reporting systems as well as the transmission of evidence and admissibility requirements need to be harmonised.
- Joint investigations, including cooperation with local NGOs.
- Ensure enough financial and experienced human resources are devoted to SECTT within the cooperative processes.

Mutual legal assistance is essential in guaranteeing that, wherever the case took place or the prosecution, the offender is brought to the justice. In addition to the implementation of legal measures, its effectiveness requires technical capacity, economic investment and awareness-raising and commitment of countries worldwide.

Recommendation 5 – Address an age-related protective regulation

Despite the differences regarding cultural and/or social values about sexual maturity and age of sexual consent, every person under 18 years needs to be protected from SECTT within each country's domestic regulations. States should urgently eliminate the double criminality requirement as recommended before but, moreover, they should include in their regulations a solution for the problem of different ages. Some domestic laws demonstrate good implementation regarding this matter: (i) establishment of different grades on the penalty taking into account the national age of sexual consent, (ii) differentiation between the exploitative sexual activity taking place in the context of a child's sexual development, and in the course of which consent is most relevant, (iii) sexual activity which is exploitative in its very nature. The latter would be a crime when the victim is under 18 years, regardless the age of sexual consent.

Recommendation 6 – Regulation of attempts to commit or procure SECTT

Domestic legal systems should criminalise both travelling with intent to commit a sexual offence against a child and the actual commission of sexual offences against children abroad, thus targeting both predatory and situational/opportunistic offenders. Moreover, the attempt to procure a child for SECTT must be criminalised.

Recommendation 7 – Restrictions for convicted travelling sex offenders

SECTT should be regulated as a non-bailable offence in every legal framework globally. Travel bans and restrictions of passports should be ensured, based on proportional and justified grounds, to travelling sex offenders with high potential recidivism. The criteria for these binding measures should be regulated to provide legal certainty, depending on the gravity of the offence and the type of offender (preferential, situational or paedophile). The effectiveness of these measures depends on having the required staff (judicial or police) that can supervise their fulfilment and also on the appropriate exchange of information systems available to the national police and other foreign law enforcement agencies.¹³⁷

Recommendation 8 – Recidivism

Reoffending should be regulated as an aggravating circumstance in every country and, hence, taken into account when sentencing.

Recommendation 9 - Increase of maximum penalties for SECTT offences

Given the serious harmful effects children suffer during and after being victims of SECTT, maximum penalties must be regulated and enforced by domestic laws, as well as the aggravating circumstances and the sanctions associated. International and regional frameworks should include the minimum penalties as a limit for countries. Penalties must reflect the gravity of the crime perpetrated and based on the legality and proportionality principles.

Recommendation 10 - Criminalisation of persistent or multiple SECTT offences

SECTT cases involving long lasting exploitative situations against children and/or multiple children needs an adequate targeted legal response. The available alternatives are their criminalisation as a specific type of SECTT crime or the inclusion as an aggravating circumstance that would raise the imposed penalty.

Recommendation 11 - Regulation of consensual sex between peers

Sexual consent between peers and criteria to determine it ('close in age', similar sex maturity and development) should be provided for in the legal framework to avoid misunderstanding. Non-exploitative situations should be clarified.

Recommendation 12 - Regulation of the obligation to report suspect conduct

Reporting of suspected sexual exploitation of children should be mandatory for persons in positions of parental or professional responsibility. Non-fulfilment must be penalised but protection mechanisms for these persons should be put in place, in case they suffer threats or negative consequences as a result of their report.

Also, anonymous complaints must be accepted as evidence, after appropriate investigation, which should be mandatory for the authorities. If reasonable indications of a crime are found, the case should be brought before the court, without requiring the personal testimony of the anonymous complainant.

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¹³⁷ For instance, the National Rapporteur on Trafficking in Human Beings has recommended the production by the ministries of foreign affairs of a monthly list of nationals who are in custody or have been released on bail in another country for crimes related to sexual exploitation of children. The list is to be available to the national police and other foreign law enforcement agencies. The Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, 'Barriers against child sex tourism', Summary Report, The Hague, 2013

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ACRONYMS

ACPO	Association of Chief Police Officers
ACRO	ACPO Criminal Records Office
AFP	Australian Federal Police
ASEAN	Association of Southeast Asian Countries
CEOP	Child Exploitation and Online Protection
CRC	Convention on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
DNA	Deoxyribonucleic Acid
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community for West African States
EU	The European Union
FSM	Federates States of Micronesia
ICC	International Criminal Court
ICPC	International Child Protection Certificate
ILO	International Labour Organization
INTERPOL	International Criminal Police Organization
NGO	Non-Governmental Organisation
MENA	Middle East and North Africa
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
OAS	Organization of American States
OIC	Organisation of the Islamic Conference
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PNG	Papua New Guinea
SAARC	South Asian Association for Regional Cooperation
SADAC	Southern Africa Development Community
SANTAC	Southern African Regional Network against Trafficking and Abuse of Children
SECTT	Sexual Exploitation of Children in Travel and Tourism
SHPO	Sexual Harm Prevention Orders
SRO	Sexual Risk Orders
TIP	Trafficking in Persons
UN	United Nations
UNWTO	World Tourism Organization

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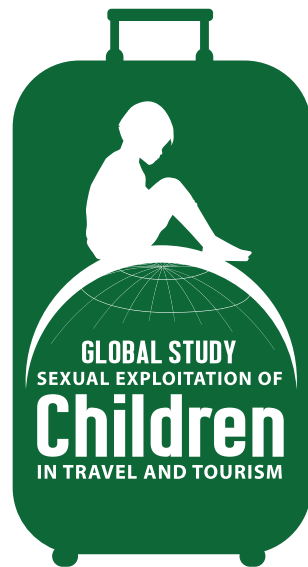
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