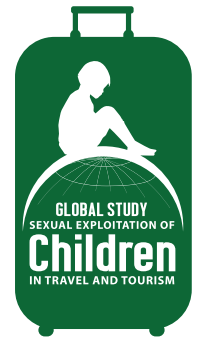


EXPERT PAPER

LAW ENFORCEMENT AS THE ENTRY POINT TO ACCESS JUSTICE



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

Child-friendly legislation against SECTT is increasingly enacted around the world, but the proper enforcement and implementation of these laws are often deficient. What are the most common flaws in implementation and how could they best be addressed?

INTRODUCTION

It's a familiar storyline for many international development professionals: you are looking to work on tackling a specific issue, which you know is affecting a population's well-being in a given country. As you start your analysis by dissecting the national legal framework looking for gaps, you realise most provisions you were looking for exist. The problem lies elsewhere: these otherwise adequate laws are not applied.

This is a reality that does not spare the issue of sexual exploitation of children in travel and tourism (SECTT). As detailed in this study, laws that protect children from sexual exploitation are in place in most countries. Their proper enforcement and implementation, however, are often problematic for a variety of reasons. Multiple obstacles exist at all levels of the law enforcement process and include social, political and judicial barriers. Of course, countries have different legal systems, frameworks, traditions and enforcement capacities – yet the challenges they face are often similar. This section looks at some common challenges faced in applying laws aiming to protect children from SECTT, as well as some of the ways in which these could successfully be addressed.

1. THE LAW CANNOT BE ENFORCED BECAUSE THE CRIME HAS NOT BEEN REPORTED.

Many points along the law enforcement mechanism can falter. However, when a crime involving SECTT is not reported in the first place, the law enforcement process cannot even get started. There are many reasons for low reporting of SECTT. For this publication, these can be divided into three sub-groups: social perceptions and cultural beliefs, poverty, and structural deficiencies.

a) Social perceptions and cultural beliefs:

- Stigma surrounding sexuality and sexual abuse that leads to feelings of shame and guilt by the child victim and his/her family
- Fear of stigmatisation and public exposure, especially when past reports of SECTT have been leaked and confidentiality was not preserved
- Fear of reprisals, often in the form of violence against the child or his/her loved ones
- The need to protect family honour and family members, even, and especially when the latter play a role in the abuse
- Gendered hierarchies which devalue women and girls and present them as marketable goods, hence trivialising their use as sexual objects and decreasing the seriousness of the offence
- The perception, fed by cultural beliefs, that sexual violence against children – especially girls – is not a serious problem (note that traditionally sanctioned forms of child sexual abuse, such as when a child is married, reinforce the view that a child may be used for sexual purposes and as a commercial commodity)

b) Poverty:

- Lack of resources and scarcity of income-generating activities which push children to exchange sex for necessities such as food or shelter, and which lead their families to condone their abuse in order to obtain a less precarious financial situation
- The perception, either the child's or others', that he or she has chosen to exchange sexual services for money, and, therefore, agrees to the transaction and is not a victim who has suffered a human rights violation

c) Structural deficiencies:

- Lack of mechanisms to inform children and other community members of laws protecting the former from sexual exploitation, leading to SECTT not being perceived as a crime and its victims not being perceived as such
- Reporting mechanisms which are non-existent, not child-friendly, not known, or difficult to access due to cost or distance
- Lack of child-sensitive rules and proceedings, inadequate staff specialisation, and corruption
- Lack of trust on the part of victims or their loved ones that justice will prevail even if the exploitation is reported
- Lack of counselling and support services for child victims, who may, therefore, question the use of reporting SECTT – especially given the psychological trauma linked to the various stages of the reporting, investigation, and prosecution phases.

Legal frameworks, social norms and law enforcement: an important interconnectedness

Because laws have an influence on social norms and reflect to a large extent what is considered acceptable behaviour in society, states whose national legislative frameworks do not explicitly criminalise the commercial sexual exploitation of children – including all roles in the offence – permit offenders to remain unpunished and undeterred to do harm. Furthermore, their societies are less likely to perceive sexually exploited children as victims in need of assistance.

Even in states which possess solid legal frameworks on SECTT, some social norms and attitudes increase social tolerance towards it. These include a lesser appreciation for girls and women than boys and men (although some boys are also exploited sexually); traditional practices that are harmful to women and girls, including female genital mutilation (FGM) and child, early and forced marriage (CEFM); the belief that domestic violence should be dealt with in the home; the banalisation of commercial sex, especially as a way to take advantage of the economic benefits of tourism; economic and social discrimination against certain ethnic, religious and social groups; and widespread corruption.

When all or some of these are present, perception of SECTT as a banal and acceptable coping mechanism increases. Not only does this tear down protection mechanisms normally offered by the community, but it can also lead community members to become complicit of the crime – especially if they benefit from it financially through the tourism economy.

Of course, police officers and justice personnel are not immune from the impacts of culture and tradition, and their society's views are often reflected in their personal actions and decisions. The perceived permissibility of SECTT therefore has an impact on the very functioning of public institutions mandated to combat it.

How might this be addressed?

Many elements are needed to encourage and facilitate reporting of SECTT. The first is to put in place, or improve, services which receive anonymous tips, protect the confidentiality of those who report, and follow-up on potential cases through investigation and victim support. Protecting those who report is of key importance, especially in contexts where people are afraid to report due to family pressure, corruption and ties to criminal networks known for their violent tactics. In many countries, centres that process confidential information linked to criminal activities are already set up. Information on those centres – including how to contact them – must be distributed widely so they can be known by the general public. In addition to being confidential, these services must be free, easy to access, child-friendly, and staffed with competent workers.

A second important element which is needed to increase reporting of SECTT cases is to reduce social tolerance towards this crime and to empower people to report it. Civil society has an important role to play on this front. The education, awareness and empowerment activities it develops are most successful when they include the following groups:

- Children who live in tourist destinations and are prone to exploitation
- Children and peer-to-peer groups living in areas known as the starting point for migration and trafficking to tourist destinations
- Parents, communities and local networks linked to child protection in touristic destinations or areas from which children are known to migrate to touristic destinations

- (including teachers, local or religious leaders, and staff of youth and women's groups)
- Staff working in the formal tourism industry (hotels, bars, restaurants, etc.)
 - People working in the informal tourism industry (taxi drivers, surf instructors, street vendors, etc.)
 - Travellers visiting destinations known as existing or emerging areas for sexual exploitation of children by tourists or travellers.

Sustainable capacity building and empowerment can be carried out in a number of ways. Some successful initiatives have taken the following approach:¹

1. Inform (about the physical and psycho-social consequences of SECTT for children and their communities; the legal consequences of promoting, facilitating or taking part in SECTT; and why, where, when and how to report suspected cases);
2. Train (to break down social tolerance to SECTT and to help people develop skills to prevent and report cases);
3. Mobilise (by involving actors from different groups in concrete actions so they can play a part in social change and understand the benefits of becoming SECTT prevention agents – and feel empowered to do so).

A third element is to develop formal mechanisms aiming to enhance communication between communities and police forces. Community policing, which focuses on preventing crime and on building relationships with communities,

1 For an example, see the following report: International Bureau for Children's Rights (2014). Preventing Commercial Sexual Exploitation of Children and Adolescents related to Travel and Tourism in Costa Rica: Analysis of a Bilateral Project. Available online: http://www.ibcr.org/images/contenu/publications/Costa_Rica%20int_EN.pdf

is one way forward. Another way is to follow the example of local child protection networks, developed in some communities to serve as key informants for law enforcement. These informants are local community members who are closely connected to areas with a high flow of tourists. Their role includes denouncing cases of SECTT to local security forces and supporting the investigation process of SECTT cases. In order to do so, they constantly engage with law enforcement child protection representatives in their jurisdiction, who in turn filter information and forward relevant details, data or queries to headquarters for immediate action.

2. THE LAW IS NOT ENFORCED DUE TO INADEQUATE LAW ENFORCEMENT AND JUSTICE ACTORS' LIMITED CAPACITY TO ACT ON SECTT, INCLUDING ON PROCESSES REQUIRING TRANSNATIONAL COLLABORATION.

Once a suspected SECTT case has been reported to local law enforcement authorities, it is important that a process gets underway to investigate the alleged offense and, if a crime has indeed been committed, arrest and prosecute the offender(s). If this does not occur, the law is not enforced, which leads to a culture of impunity and paves the way for organised crime and the permissibility of abuse. Primary responsibility for the investigation, arrest and prosecution lies with the State in which the crime took place (the receiving State). However, if the latter does not have the will or the capacity to lead these, the perpetrator's country of origin (the sending State) can step in.

From a policing standpoint, a common gap in enforcing SECTT-related laws has to do with the insufficient capacity of officers. This may include, challenges for police and justice training academies to provide adequate training on prevention and on investigation techniques, either because they are not mandated to do so, because the curriculum is weak, or because trainers themselves are not properly prepared.

Weak transnational police-to-police collaboration is another important challenge in enforcing SECTT-related laws. In some cases, the sending state's authorities fail to properly inform their foreign counterparts that a registered child sex offender is travelling to their territory. This may either be because they lack a mechanism which permits them to collect that information, because their own institutions (eg. immigration authorities, law enforcement agencies, etc.) which possess such information lack internal coordination and communication mechanisms, or because they lack a system and set of procedures to guide the sharing of information with receiving states' authorities. Furthermore, diplomatic relations with some countries are an important hindrance to information sharing. On their part, the receiving country authorities sometimes fail to take action when informed by a sending country that a child sex offender is travelling to their territory, either because of neglect, lack of capacity or lack of resources to act.

Jumping forward past the abuse, its reporting and the investigation by competent authorities, we confront barriers which are at play during the prosecution phase. Prosecuting an individual who has taken part in or facilitated a sexual offense committed against a child is often a complex affair. In addition to a legal framework that penalises acts related to SECTT, it is necessary for the receiving State to have both the will to prosecute and an able judiciary. If it does not have the desire and the capacity to prosecute the perpetrator, the latter can be tried under the principle of extraterritorial jurisdiction which allows a State to prosecute its nationals for crimes committed abroad. When a state wants to try the alleged perpetrator of a crime who is not on its territory, it must appeal for an extradition request.

Yet, to implement extraterritorial laws and extradition procedures, states must have signed bilateral or multilateral agreements or be subject to such obligations through multilateral treaties. The most significant of which is the Optional Protocol to the UN

Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (hereinafter referred to as 'OPSC'). Countries that have adhered to this instrument have an obligation to try individuals who commit such crimes or to extradite them so they can face prosecution in another State.

Cases in which the sending and receiving states are not parties to the aforementioned OPSC and have no mutual legal assistance treaty may fall into a legal gap. This situation can make prosecution impossible and, therefore, lead to impunity. It can also cause diplomatic tensions. Despite the treaty-based obligation of a State to extradite a person, there is no way to force a country to transfer an individual if they refuse to do so. In addition, many legal obstacles can add further complexity, including the unilateral imposition of prerequisites to extradition, misunderstandings and differences in legal systems that lead to rejection of applications, heavy evidentiary requirements, the complexity of procedures, costs related to extradition requests, not to mention a myriad of political obstacles.

If the barriers to extradition are successfully overcome, another set of challenges remain. These include the prosecutor having to make a difficult decision surrounding the victim's testimony, which, if demanded, causes additional trauma by requiring the victim to be flown into the perpetrator's country. In addition, the victim is compelled to confront challenges of language, cultural barriers, discomfort associated to testifying in a foreign environment and being prevented from returning to normal activities linked to home and school life. Empirical evidence will also have to be transported to the perpetrator's country and will risk being tampered with or lost. Bureaucratic complications and delays may also occur. All of this leads to a long process that may result in a shorter sentence, or dismissal of the case all together.

How might this be addressed?

A first step in addressing challenges to law enforcement in relation to SECTT offenses is to reiterate the importance of states ratifying the OPSC. Doing so reinforces states' commitment to establishing mechanisms needed to prevent, investigate and judge SECTT crimes, and imposes an obligation on states to either try or extradite alleged offenders. It also serves to facilitate transnational judicial cooperation.

Another fundamental element in ensuring improved enforcement and implementation of SECTT-legislation, both national and extraterritorial, is to strengthen the capacities of law enforcement authorities and justice personnel. This is especially important in receiving countries, since they have the primary jurisdiction to investigate and prosecute crimes committed on their territory, and special attention should be given to actors working in tourist centres.

More concretely, law enforcement and justice personnel would benefit from training that allows them to recognize the underlying dynamics of SECTT, to gain solid knowledge of the laws that protect children from SECTT, and to acquire the skills needed to apply these laws in a child-friendly way.²

More specifically, this includes, while not being limited to, police capacity to receive SECTT complaints and to investigate, by collecting useful evidence. It also includes prosecutors' capacity to file SECTT accusations (internal directives and designated teams specialised on this issue can be useful in this regard), and judges' capacity to comprehend and take into account the particularities of SECTT offenses.

Law enforcement training centres should therefore ensure that specific training on SECTT is part of the initial mandatory curriculum, and delivered by qualified trainers who are not only experts on the legal framework but are also cognisant of societal norms on children, gender, and social justice and can adapt the course to target those norms. Often, standard operating procedures and collaboration protocols with those responsible to protect children within the national child protection system and with foreign law enforcement agencies should be strengthened before being integrated into training. Working with liaison officers from various countries should improve the flow of information and communication between all parties.

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- 2 Training should lead to the development of a set of core competencies:
1. Knowledge, endorsement and implementation of children's rights in general, and of specific legislation on SECTT in particular
 2. Knowledge and application of ethical and deontological standards relevant to SECTT
 3. Knowledge of children, including of various elements of vulnerability
 4. Practical communication skills for interaction with children and relevant family or community members, including on social taboos and sensitive topics

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5. Collaboration with all formal and informal stakeholders for better coordinated interventions – including victim support mechanisms and law enforcement agencies from various countries
 6. Efficient use of working tools adapted to children, including interview guides.

In this regard, enhancing police-to-police cooperation between countries should be a top priority, as well as enhancing international cooperation between immigration authorities, child protection services, and other key actors such as the British law enforcement agency, Interpol. Sharing a global child sex offender registry would not only help by providing a shared database and increasing the information available to all, but it would also give law enforcement a tool on which to deepen this collaboration. Political will to tackle SECTT is absolutely paramount in securing the budgets and mechanisms needed to increase information gathering and sharing (both intra- and trans-nationally) on registered child sex offenders' movements. Although we know that most child sex offenders have never been arrested and are not registered as such, better communication and prevention regarding those who are, is indispensable.

Furthermore, strengthening transnational partnerships between states to increase judicial cooperation and facilitate access to evidence and witnesses to the State pursuing the case, will go a long way in bridging law enforcement gaps in cases tried based on extraterritorial principles.

3. LAW ENFORCEMENT IS NOT YET ADEQUATELY EQUIPPED TO RESPOND TO THE USE OF NEW TECHNOLOGIES AND STRATEGIES IN FACILITATING SECTT OFFENSES.

New technology has facilitated and expanded access to children for sexual purposes. Criminal gangs organised in complex and changing networks reel in enormous profits by exploiting children. They are skilful at using emergent technology to ensure their trade proliferates and their revenues are protected. On what is known as the darknet – the section of the internet that is not accessible through regular search engines but is nonetheless easy to access and navigate by users worldwide – advanced privacy

and decentralisation technologies to ensure the anonymity of web surfers and web publishers. Chatrooms reachable through the darknet enable perpetrators to exchange information on accessing children for sex all over the world. As law enforcement improves on the ground in one location, chatroom members inform each other and share tips on avoiding detection and information on other locations in which law enforcement is poor. Transactions linked to the sexual exploitation of children throughout the world are made in cryptocurrencies, and operations in which money is transferred through a series of accounts, making it very difficult and time-consuming for law enforcement to track individuals on both ends of these transactions, and to locate and rescue its child victims. Although law enforcement agencies constantly monitor the 'darknet' for CSEC perpetrators, tracking them down requires extensive resources, and is generally very challenging. Despite the best efforts of some law enforcement agencies, perpetrators often seem to be two steps ahead in using technology to do harm.

How might this be addressed?

Law enforcement agencies face large obstacles in keeping up with evolving technology and strategies. Increasing multi-stakeholder collaboration (including law enforcement agencies, technology companies, government bodies and civil society) will lead to improved information exchange, concerted efforts, and better knowledge of new tactics and trends. These are increasingly necessary. Budgets and political will to support technological solutions that can counter the advances made by organised crime are now of paramount importance, as is law enforcement training on these technologies.

While current methods are already improving, and operations have been successful in taking down an important amount of abuse material from the darknet, some experts suggest that law enforcement agencies ought to adapt their policies to include harm reduction and other progressive law enforcement strategies.³ Although this is politically sensitive and large-scale policy changes in bureaucratic organisations are difficult to secure, multi-stakeholder task forces are one way to inform policy development. One such example is the Digital Economy Task Force, launched in July 2013 to

guide efforts from government agencies, law enforcement, corporations, academia, public and non-profit agencies, and key industry players in addressing some of the risks surrounding the digital economy. As players from a wide realm contribute to law enforcement's understanding of how new technologies are used to facilitate the sexual exploitation of children, including in travel and tourism, the hope is that they will be able to assist them in finding new ways to protect children, both on and offline.

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3 IHS Jane's Intelligence Review, 30 December 2014. Law enforcement struggles to control darknet. Available online: <http://www.janes.com/article/47455/law-enforcement-struggles-to-control-darknet>.

ABOUT THE AUTHOR

Geneviève developed a passion for child protection during her travels abroad, during which she witnessed the international community's important challenges in preventing and eradicating commercial sexual exploitation of children in travel and tourism. She has since completed a Master's degree in International Development and Globalisation, focusing her academic efforts on the barriers to eliminating sexual violence in schools in Ghana, and has been contributing to the work of Beyond Borders, ECPAT International's Canadian representative. She also worked for the Canadian Department of Foreign Affairs and International Trade, the Canadian International Development Agency (CIDA), and local community organisations in Montreal, and has collaborated with World University Service of Canada (WUSC), the Centre d'étude et de coopération internationale (CECI) and Oxfam Novib. During her career, she has led working groups on the protection of children from violence, organised multi-stakeholder sessions on the issue, and written related publications including a guide on legislative and programmatic frameworks for child safety and security in school environments. Furthermore, she has collaborated with community, regional and national actors working on the eradication of commercial sexual exploitation of children (CSEC), facilitated workshops on the Sexual Exploitation of Children in Travel and Tourism (SECTT) and developed solid research and community consultation experience. Co-founder of Girls' Clubs in Ghanaian schools, she also possesses proven experience in program development and currently heads the IBCR's program on child protection against CSEC. She is a trilingual communicator and works in French, English and Spanish.

Name: Geneviève Proulx

Title/position: Programme Manager, Prevention of Commercial Sexual Exploitation of Children

Education: Master's degree in International Development and Globalisation (University of Ottawa, 2012); Bachelor's degree in Psychology (University of Ottawa, 2007)

Email address: genevieve.m.proulx@gmail.com; g.proulx@ibcr.org

Contact

Global Study on Sexual Exploitation of Children in Travel and Tourism

Email: globalstudysectt@ecpat.net

Website: www.globalstudysectt.org