

## **BACKGROUND PAPER**

### **THIRD MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

**7<sup>th</sup> to 9<sup>th</sup> SEPTEMBER 1998, JAKARTA**

#### **ITEM: ISSUES MANDATED BY THE SECOND REGIONAL WORKSHOP THE SEXUAL EXPLOITATION OF CHILDREN**

#### **BACKGROUND**

The second regional workshop of the Asia Pacific Forum of National Human Rights Institutions held in New Delhi from 10-12 September 1997 condemned the practice of the sexual exploitation of children and decided to exchange information on relevant laws and practices.

The workshop requested the Forum Secretariat to submit a paper for consideration at the next meeting of the Asia Pacific Forum of National Human Rights Institutions.

#### **PURPOSE**

The purpose of this paper is

- to review current legislation and policy amongst Forum member states
- to discuss the challenges that the preparation of a comprehensive and systematic compilation of legislation and practice would present

#### **RECOMMENDATIONS**

It is recommended that the Third Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions:

- participate in and contribute to the existing network of activities addressing the sexual exploitation of children.
- identify relevant activities/agencies with which to establish cooperative relations.
- request that the Forum Secretariat seek funding for Forum and individual Forum member related activities to combat sexual exploitation of children
- hold a workshop which would bring together representatives of national institutions, specialists and NGO's from the region to develop a program of activities to address the sexual exploitation of children

- initiate or carry out a survey of national actions directed at the sexual exploitation of children. The information could then be forward to the Forum Secretariat, which would ensure it is shared with relevant agencies
- establish a focal point on children's rights within each national institution to be responsible for liaison with relevant bodies engaged on the issue and to ensure that there is information exchange and cooperation with national organisations and governmental bodies.
- take necessary steps to submit and keep up to date information on national legislation against the sexual exploitation of children to either the Forum Secretariat and/or any organisation that the national institution cooperates with on combating the sexual exploitation of children.

## THE SEXUAL EXPLOITATION OF CHILDREN

The second regional workshop of the Asia Pacific Forum held in New Delhi from 10-12 September 1997 condemned the practice of the sexual exploitation of children and decided to exchange information on relevant laws and practices.

This paper presents the results of a review of current legislation and policy amongst Forum member states. It also discusses the challenges that the preparation of a comprehensive and systematic compilation of legislation and practice would present.

### SOME DEFINITIONS

Over the last decade, there has been a significant increase in public awareness of, and debate about, the sexual exploitation of children. Innumerable statements and writings have condemned the practice and exhorted governments to take urgent steps to combat it. It is not, therefore, the aim of this paper to rehearse the myriad issues that have been debated so thoroughly in other forums, notably the various UN human rights bodies and the 1996 World Congress against Commercial Sexual Exploitation of Children, held in Stockholm.

However, it is necessary and useful to lay down at the outset some markers for the discussion which will follow.

First, some definitional issues:

- **children:** we will be guided by the definition contained in the UN Convention on the Rights of the Child (CROC): *a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier*
- **sexual exploitation:** describes all forms of sexual abuse, violence and exploitation, including that carried out for commercial purposes and in non-commercial contexts, such as within families, child care institutions and amongst particularly vulnerable groups such as street children
- **a violation of human rights:** irrespective of how sexual exploitation is treated in domestic legal systems, it has been universally accepted as a violation of human rights. Article 34 of the CROC states:

*States Parties undertake to protect the child from all forms of sexual exploitation and abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

The CROC has been ratified by 191 states - only one state has not signed the CROC and one other has signed but not yet ratified. All Forum member States have ratified the CROC.

Secondly, some conceptual matters:

- sexual exploitation of children is as old as humanity. It is not a new phenomenon and any meaningful attempt to address it must recognise this.
- sexual exploitation of children is not exclusively nor necessarily associated with poverty. Although poverty is clearly an important underlying factor, sexual abuse arises from a wide variety of socio-cultural factors and is found at all socio-economic levels.
- sexual exploitation of children does not arise purely as a result of cross-border or international demand i.e., it is not just a matter of “sex tourism”. UNICEF and other authoritative bodies have shown that the main sources of child sexual exploitation are domestic.
- sexual exploitation of children covers a wide range of issues that all too often are seen as separate, discrete problems. Realistic attempts to combat child sexual exploitation must recognise that it can manifest as a contemporary form of slavery, as exploitative child labour, as trafficking in human beings, as incest, as domestic violence, as pornography;
- sexual exploitation of children clearly has a criminal dimension, but the people who commit sexual abuse come from all walks of life;
- sexual exploitation of children has consequences that go beyond the physical, psychological, emotional and spiritual effects on its victims. The spread of AIDS is but one of the health-related consequences that have a broader social impact.

## **SCOPE OF THE REVIEW**

The first objective of this review was to locate any existing database of information on legislation and practice. The review looked at the following:

- ratification by Forum member’s States of relevant international human rights instruments;
- constitutional provisions addressing sexual exploitation of children;
- specific legislation addressing sexual exploitation of children, including legislation on: child labour, trafficking, prostitution, slavery, domestic violence and pornography;
- national action plans addressing the above, including national agendas for the implementation of various international initiatives such as the Stockholm Agenda for Action.

Enquires with a range of specialist NGOs, individual experts, UN agencies and government departments failed to locate any comprehensive and systematic compilation of legislation and practice.

However, in response to our enquires we were able to gather information on existing law in some regional states, presented in the annex. This annex covers information relating to the current protection of children against sexual exploitation. The protection is found in either the Criminal Code, in the Juvenile Acts, in other specialised legislation, or in all. However the review found that the legislation is often inconsistent with other statutes in domestic jurisdictions and thus creates unnecessary problems that can exacerbate suffering amongst the children.

In addition, we were made aware of several important projects either underway or about to commence which will, upon completion, provide a valuable resource for those seeking information about legislation and practice in various states. These are discussed below.

The major thrust of this paper, therefore, will be to set out the nature and scope of the problem presented by the current inadequate state of information about legislative responses in the various jurisdictions encompassed by the Forum.

## **THE NATURE AND SCOPE OF THE LEGISLATIVE FRAMEWORK**

Bearing in mind the definitional and conceptual points raised above, it is clear that a meaningful compendium of legislative and policy responses to the sexual exploitation of children needs to encompass a wide range of law and practice.

Combating sexual exploitation of children is not simply a matter of passing a single piece of legislation on child sex tourism. It must address central issues in the criminal code as well as related law in terms of welfare, child protection, customs, censorship, privacy, communications, the treatment of child witnesses and rules of evidence.

Legislation in some regional states has shown inconsistencies on the definition of child, including age definitions and definition on the basis of gender.

Recent case history has shown how prosecutions under child sex tourism legislation can be undermined by legal and procedural rules which are insensitive to the special needs of child victims and witnesses.

In most, if not all, cases it will be found that there is a complicated patchwork of legislation and policy which is relevant to the issue of child sexual exploitation. Inevitably, this will involve overlapping and even contradictory laws, duplication and gaps.

For many states, the first attempts to draft and implement laws dealing with the sexual exploitation of children merely reveal the extent to which the legal framework is out of sympathy with the task at hand. In some cases, existing laws related to the issue are often based on customary law or very old statutes or legal norms dating back to colonial times. In federal states there is the problem of harmonising laws across different jurisdictions.

The complexity which exists at the national level would then be repeated at the regional level where there is always difficulty in harmonising diverse national approaches. One regional grouping, the European Union, has made a start on joint approaches with the adoption of the *Joint Action to combat trafficking in human beings and sexual exploitation of children of 24 February 1997*.

## **BEYOND LEGISLATION**

Drafting and implementing good laws is, of course, just the first step. Putting those laws into practice requires a major complementary effort. Issues such as, but not limited to, legal assistance, inadequate reporting systems, lack of knowledge within the law enforcement authorities, insufficient protection of child witnesses and victims as well as long court proceedings need to be addressed properly. This involves the development of appropriate public policy and programs, education and monitoring/reporting arrangements.

It would appear that in most States there is a lack of information exchange across the many government agencies that have responsibility for the protection of children's rights. The compilation of this information would require extensive liaison and, ideally, the operation of a central point within the bureaucracy charged with the responsibility of maintaining a

comprehensive database on government policy and programs. Such a function is implicit in the requirement set out in the Convention on the Rights of the Child for States to provide to the Committee on the Rights of the Child comprehensive, periodic reports on the implementation of the Convention. For example, concern in Fiji on the issue, has led to the appointment of a commissioner to conduct a review of the existing legislation.

## RESOURCES

Although there is currently no single, comprehensive compilation of existing law and practice, work is underway on developing such a database.

As a follow-up to the Stockholm Congress Against Commercial Sexual Exploitation of Children, the NGO, **ECPAT** (End Child Prostitution, Child Pornography and Trafficking), will soon begin work on a database which monitors implementation of the Agenda for Action adopted at Stockholm. This will include information on legislation and related responses.

In Geneva, there is a **Focal Point against Sexual Exploitation of Children** which is undertaking a variety of exercises to compile information of programs, projects and efforts to promote the rights of children. The Focal Point was established following the Stockholm World Congress in order to have a more lasting mechanism to ensure a coordinated implementation and monitoring of the Agenda for Action adopted unanimously in Stockholm. The Focal Point has a web site on the Internet at the following address: [www.childhub.ch/dcifp/dci\\_home\\_uk.html](http://www.childhub.ch/dcifp/dci_home_uk.html).

The **UN Committee on the Rights of the Child** has developed a valuable body of documentation that would be of benefit to national institutions. In addition to concluding observations and general comments on the reports of States, the Committee has developed a wide ranging and active program of activities that include Committee members travelling to states and regions in order to establish cooperative relationships with those working on the implementation of the Convention.

The Committee participates in a large number of child-related meetings and has also held a series of meetings with United Nations bodies and specialised agencies as well as non-governmental organisations. It has conducted a preliminary survey of technical advice and assistance in the framework of the Convention which has been prepared within the scope of the Plan of Action in the Office of the High Commissioner for Human Rights.

The Committee recently announced that it would more systematically integrate into its work the *1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, the various instruments dealing with slavery as well as the *UN Programme of Action on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Programme of Action on Child Labour*.

The **UN Sub-Commission on Prevention of Discrimination and Protection of Minorities** has established a Working Group on Contemporary Forms of Slavery. The Working Group recently agreed with the Committee on the Rights of the Child to share relevant information on common objectives and reinforce possible areas of cooperation. The Working Group indicated that it would focus special attention in 1999 on the issue of sale and trafficking in human beings, including children, and in principle offered its expertise to assist the Committee, including in the area of the drafting of general comments.

The United Nations Children's Fund (**UNICEF**) works for the survival, development and protection of children, and is guided in its programmes by the Convention on the Rights of the Child. UNICEF publishes two annual reports - *The State of the World's Children* and *The Progress of Nations* - which provide a systematic summary of key statistical indicators on child survival and well-being. UNICEF recently announced activities planned for the follow-up to the World Summit for Children (2001) and also announced that it would update in the near future the Implementation Handbook of the Convention on the Rights of the Child.

The fight against child labour has been a priority for the International Labour Organisation, (**ILO**), since its inception in 1919. Twelve International Labour Conventions have been adopted by ILO member States which have a direct bearing on child labour. Since the early nineties, the ILO has mounted a major offensive against it through its *International Programme on the Elimination of Child Labour* (IPEC) by assisting member States in carrying out operational activities to solve child labour problems.

**INTERPOL** established a Standing Working Party on Offences Against Minors in 1992. The Standing Working Party includes law enforcement officials from 29 different States who are responsible for ensuring that international information exchange and cooperation takes place.

The **OECD** carries out a range of activities, including empirical research, forums and the negotiation of international agreements which impinge on children's rights. In Paris on 25 March 1998, the OECD held a forum on *Internet Content Self-regulation* which addressed among other matters child pornography on the Internet.

The Movement Against Paedophilia on the Internet, **MAPI**, is a volunteer organisation of professors and researchers from the Computer Science Department and from CITA (Cellule Interfacultaire de Technology Assessment) of the University of Namur (Belgium).

MAPI has four aims:

- to study the problem of the paedophilia market and of the diffusion on the Internet of information encouraging sexual exploitation of children;
- to inform Internet users and raise their awareness level about the problems linked to the diffusion of such information;
- to lead legal, technical and ethical research on existing solutions to restrict this diffusion of information;
- to develop various recommendations for those who provide access and sites for web pages, for those who use news groups to spread information of a paedophilia nature, as well as for the political and legal arenas.

Individual nation States are also undertaking work in this area. For example in **Australia**, the Federal Department of Health and Family Services is currently overseeing the first national stocktake of legislation and policy related to child sexual exploitation. As part of the national follow-up to the Stockholm World Congress, the Federal Department of Health and Family Services commissioned the Australian Institute of Criminology to review and document existing domestic legislation and policy/programs on child sexual exploitation.

Although the review's terms of reference are domestic, there will be some information on international developments because the report covers the implementation of the Child Sex Tourism legislation (which Australia introduced in 1994 to allow for prosecution of offences committed by Australian nationals overseas) and Internet pornography.

It is hoped that the report will be finalised before the end of 1998. It will be made public, including on the Internet. However, at this stage, it appears that there will be no provision for maintaining the information as an on-going database which can be updated as law and practice changes.

For the purposes of this Forum meeting it may be of interest to note that the report itself took two full time workers three months to complete and that the process was supported by legal and library resources. In addition to these resources, the Department of Health and Family Services established a working group to supervise the overall project.

### **POSSIBLE FORUM ACTION**

The Forum is well placed to participate in, and contribute to, the existing network of activities addressing the sexual exploitation of children. This should take place both at the level of the Forum as a representative regional body and at the level of individual member institutions at the national level. It is important that any action by the Forum or its members does not duplicate activities already underway or planned. Given the resources available to the Forum and its members, it would seem most appropriate to first identify relevant activities/agencies and, second, to establish good cooperative relations with them.

Some possible courses of action which member national institutions and the Forum might wish to consider are

#### **Thematic meeting**

- The Forum and member national institutions may wish to consider holding a workshop which would bring together representatives of national institutions, specialists and NGOs from the region and develop a program of activities to address the sexual exploitation of children.

#### **Focal points**

- To establish a focal point on children's rights (with a focus on combating the sexual exploitation of children)
- This would involve a focal point within each national institution (and possibly a focal point within the Forum Secretariat) which would be responsible for liaison with regional and international bodies engaged on the issue.
- If relevant skills are not sufficiently available, national institutions may wish to consider the possibility of recruiting appropriate staff.

#### **Liaison and networking**

- The focal points would be primarily concerned with ensuring that there is good information exchange and cooperation between the national institution and:
  - (a) relevant domestic organisations
  - (b) other national institutions (i.e, Forum members)
  - (c) relevant regional or international organisations (governmental, non-governmental and inter-governmental)
- Each national institution could consider developing a consultative process with national organisations active in the field, or alternatively could nominate the focal point as a representative to relevant national committees/working groups.

### **National surveys**

- Each national institution could initiate or carry out a survey of national action directed at combating the sexual exploitation of children.
- The information could then be forwarded either to the Forum Secretariat, which would ensure it is shared with relevant agencies, or directly to the agencies with whom the focal points have established linkages or cooperative arrangements (such as ECPAT) for use in their own database project.

### **Resources and technical assistance**

- Individual national institutions and the Forum could investigate possible financial and/or technical assistance available from the UN Voluntary Fund or other UN and international agencies.
- Individual national institutions and/or the Forum could consider approaching the UN Committee on the Rights of the Child to arrange a regional meeting to discuss issues concerning child sexual exploitation

### **Lobbying**

- Individual national institutions could consider how best to lobby their respective governments in order to:
  - (a) generate awareness and understanding of child sexual exploitation
  - (b) promote the implementation of relevant international standards and action plans e.g., the Convention on the Rights of the Child and the Agenda for Action adopted by the Stockholm Congress on Commercial Sexual Exploitation of Children
  - (c) promote the development and effective implementation of good legislation
  - (d) promote the development of appropriate policies/programs for the implementation of the legislation.
- The Forum could consider how it might lobby relevant regional bodies, eg, ASEAN, in order to mobilise political attention and support at the regional level.



Annex

***Legislation on sexual exploitation of children<sup>1</sup>***

***Australia***

The legislation regarding sexual exploitation of children can be found both within the Federal and State/territory legislation. The legislation on extraterritorial application will be found in the Federal Crimes Amendment Act 1994. The State/territory legislation varies, but sexual offences, including exploitative use in pornographic performances and material, of children are punishable in all jurisdictions.

***Fiji***

Sexual abuses of children are governed by the Penal code chapter 17 as criminal offences. Chapter 16 contains offences against morality. All sorts of pornographic activities involving children, including the use of all sorts of digital media, are from 1997 (Juvenile Act Amendment) regarded as criminal offences.

***India***

Sexual exploitation of children as well as trafficking of children or minors is an offence under the Penal Code and the Immoral Traffic (Prevention) Act. The Juvenile Justice Act provides for the care, protection, treatment and rehabilitation of neglected or delinquent juveniles.

***New Zealand***

The Crimes Act (with amendments) has extraterritorial application to New Zealand citizens and to persons ordinarily resident in New Zealand. It is a criminal offence to engage in any activity to promote or organise child sex tours, so-called “sex holidays”. All forms of sexual exploitation of children are considered criminal offences under the Crimes Act, including pornographic performances and material.

***Indonesia***

Child sexual abuse is considered a criminal offence under the Penal Code. Offences under the Code include trafficking of children and deriving profit from prostitution.

***Philippines***

The Republican Act 7610 on special protection of children against child abuse, exploitation and discrimination makes it a criminal offence to engage in sexual activity with children, sexual abuse of children, using children in pornographic activities and indecent shows and trafficking children for the purpose of sexual exploitation.

***Sri Lanka***

Under the Criminal Code sexual exploitation of children constitutes a criminal offence. Sexual activities that do not fall within the definition of

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<sup>1</sup> The information in this appendix is based upon the information available to the Secretariat of the Asia Pacific Forum as of 28 August 1998.

sexual exploitation of children can however fall within the jurisdiction of other criminal offences such as rape and sexual assault. It is also a criminal offence to engage children in pornographic activities, in indecent exhibitions and shows as well as engage in trafficking of children.