

# HANDBOOK ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY



# **HANDBOOK ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**UNICEF**  
Innocenti Research Centre

## The UNICEF Innocenti Research Centre

The UNICEF Innocenti Research Centre in Florence, Italy, was established in 1988 to strengthen the research capability of the United Nations Children's Fund (UNICEF) and to support its advocacy for children worldwide. The Centre (formally known as the International Child Development Centre) helps to identify and research current and future areas of UNICEF's work. Its prime objectives are to improve international understanding of issues relating to children's rights and to help facilitate the full implementation of the United Nations Convention on the Rights of the Child in both industrialized and developing countries.

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The book was prepared under the direction of the UNICEF IRC Implementation of International Standards Unit, overseen by Susan Bissell, with overall guidance provided by the IRC Director, Marta Santos Pais. Chapter I, the Introduction, was co-authored by Ms. Bissell and Clara Chapdelaine Feliciati, then Child Rights Project Officer. Ugo Cedrangolo of the Office of the High Commissioner for Human Rights was the main author of chapter II on the Content of the Optional Protocol. Daniel O'Donnell, Senior Child Rights Consultant with IRC, was the main author of chapters III and IV, on Implementation and Monitoring Systems, respectively.

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## ABBREVIATIONS

<b>ACT</b>	Alliance for Conflict Transformation (Cambodia)
<b>CRC</b>	Convention on the Rights of the Child
<b>ECOSOC</b>	Economic and Social Council (United Nations)
<b>ECPAT</b>	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
<b>Europol</b>	European Police Office
<b>ILO</b>	International Labour Organization
<b>INTERPOL</b>	International Criminal Police Organization
<b>IPEC</b>	International Programme on the Elimination of Child Labour (International Labour Organization)
<b>IRC</b>	Innocenti Research Centre (UNICEF)
<b>NGO</b>	non-governmental organization
<b>NPA</b>	national plan of action
<b>OPSC</b>	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>SAGE</b>	Standing Against Global Exploitation (The SAGE Project, California, United States)
<b>SENAME</b>	Servicio Nacional de Menores (National Service for Minors, Chile)
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund

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# FOREWORD

This handbook aims to promote understanding and effective implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). It describes the genesis, scope and content of the Protocol, and provides examples of measures taken by States Parties to fulfil their obligations under this instrument. The handbook is addressed principally to public officials and others who work with and for children, and whose duties and activities can help to enhance the protection of children from exploitation, whether on the national or local level.

The content is based largely on the experience of the Committee on the Rights of the Child, the treaty monitoring body established by the Convention on the Rights of the Child (CRC) to review progress made by States Parties on implementing the CRC and its Optional Protocols. The handbook also draws from the reports of the Special Rapporteur on the sale of children, child prostitution and child pornography and from a 2009 discussion paper by Ugo Cedrangolo titled 'The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Jurisprudence of the Committee on the Rights of the Child'. Data are also taken from studies by non-governmental

organizations (NGOs) that tackle the issues addressed in this handbook. The text is also informed by research done by other United Nations bodies and by UNICEF, particularly studies done by the UNICEF Innocenti Research Centre on the general measures of implementation of the CRC, child trafficking and the exploitation of children in travel and tourism.

Every child has the right to protection from all forms of exploitation. Many states have taken legal and other measures to prevent the sale of children, child prostitution and child pornography, to punish offenders and ensure that child victims are rehabilitated and reintegrated. An increasing number of states have made formal legal commitments to take measures in cooperation with other states, including by becoming parties to relevant international instruments, such as the Convention on the Rights of the Child and its Optional Protocols.

When the Convention was adopted in 1989, it was believed that the provisions concerning child protection, notably articles 19, 32 and 34–36, provided a sufficient framework to protect children from all forms of exploitation. With the 1996 World Congress against Commercial Sexual Exploitation of Children, it became increasingly clear that additional efforts



were needed to address the true extent of sexual exploitation, including the extraordinary and devastating impact of globalization and accelerated human mobility on the protection of children's rights.

Modern technologies have also led to new challenges and concerns, with disconcerting worldwide dimensions. The explosion of these technologies, particularly the Internet, has brought many benefits to humanity, but the consequences of their misuse are now evident. At the dawn of the 1990s, the exchange of files on the Internet was just beginning. As widespread and uncontrolled online access became commonplace, countless paedophile websites appeared, and child pornography made its way into the global and connected world on the screens of personal computers.

The exploitation of children has taken on a transnational character, frequently involving organized criminal groups and networks. Today, the most profitable activities of international organized crime are trafficking of arms, drugs and human beings, including children. Trafficking of children is most often connected to the sale of children, child prostitution and child pornography, as well as to child labour, child soldiering, illegal adoption and other forms of exploitation.

As a result of the growing globalization of child exploitation, the international community took immediate action. Using the same information technologies that facilitate the exploitation of children, people dedicated to child protection have attempted to increase global awareness. The explosive growth in circulation of information about old and new forms of child exploitation led to an innovative global movement to fight the practice.

Concurrently, a process of dialogue began among international and national experts and concerned individuals. It reflected on the potential to build upon the solid normative child rights framework to ensure the protection of children from exploitation. It was agreed that the best course of action would be to adopt a protocol to the CRC that would enhance the protection of children from sale, prostitution and child pornography. The main premises of the OPSC are that all children must be protected, that such exploitation is criminal in nature, and that the perpetrators must be identified and punished.

The OPSC builds on and enhances both the general principles of the CRC and its specific rights, such as those dealing with separation from parents, the illicit transfer of children and the issue of non-return. The Protocol also reinforces other provisions of the CRC, including articles 19, 32 and 34–36. It should be viewed holistically, as part of a web of interrelated legal obligations and as part of States' accountabilities for children's rights.

The Optional Protocol also draws inspiration from earlier human rights conventions, such as the following:

- 1921 International Convention for the Suppression of the Traffic in Women and Children, and its Protocol
- 1926 Slavery Convention
- 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

In turn, the Optional Protocol influenced the development of new international instruments, such as the following:

- 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ('Worst Forms of Child Labour Convention', No. 182)
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ('Palermo Protocol').

Each of these texts makes a unique contribution to child protection. They also demonstrate the international community's recognition of the

need for a strong position on the issue of child exploitation. The OPSC responded to this realization, becoming a centrepiece of international action to protect children from exploitation.

The sale of children, child prostitution and child pornography are, justifiably, emotionally loaded concepts. Moreover, the realities of child protection are complex, making it difficult to identify and establish the parameters of criminal behaviour. They also make it difficult to define these parameters in legal terms, to prosecute exploitative behaviour towards children and, above all, to prevent it from occurring in the first place.

Based on its review of reports by States Parties on implementation of the OPSC, the Committee on the Rights of the Child has made several observations:

- Many national authorities recognize the scope and extent of these crimes and attempt to address situations as soon as they are known.
- Some authorities, however, deny the very existence of the problem, or minimize the seriousness or incidence of these practices and their impact on children.
- Some authorities pride themselves on prevention efforts, yet they experience difficulties implementing effective and efficient measures against transnational criminal networks that take advantage of weak national laws and frequently operate hidden from public view.

The bitter reality is that, despite the CRC's pledge of protection for the child as a subject and a rights holder, children are still too often seen as objects and commodities. They are treated as merchandise rather than as persons whose rights must be respected and protected. Resolving this contradiction is the challenge that lies at the heart of implementing the OPSC.

A law is only effective when it takes into account the root causes of the problem it addresses. The crimes targeted in the OPSC are often associated with poverty, inequitable socio-economic structures, dysfunctional families, lack of education, rural-urban migration, gender discrimination, irresponsible

adult sexual behaviour, harmful traditional practices and armed conflicts. The presence of these causes does not excuse the crimes committed, but the causes need to be understood if preventive and responsive efforts are to work and to last.

In many parts of the world, countries are facing an enormous strain on resources associated with high birth rates, along with devastating child morbidity and mortality rates and the inability to guarantee children's universal access to food, health care and education. This presents enormous challenges for those working to ensure children receive the broadest possible protection.

The modern global economy favours the free circulation of capital and commodities and has also led to increased migration. Some of those who are 'on the move' are young people. The consequences of these population flows raise dramatic challenges for families and for the protection of children's rights.

Ill-perceived notions of 'cultural diversity' are also an obstacle to effective action against child exploitation. Child domestic labour and sexual initiation of teenagers are sometimes explained as traditional practices. However, they compromise the realization of children's rights and demand a process of social change.

Although child pornography and child prostitution are often economically motivated, these children are not 'working' – they are being exploited. They are being treated as objects rather than as people. The fatalistic acceptance of exploitation because 'this has always existed' and 'there is nothing new under the sun' is the enemy of effective action. This is especially true where protection measures are weak, where families are complicit and where officials condone or even profit from such abuse.

The history of childhood should not be written as one immutable storyline of exploitation, leaving no hope for change. The Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography are a central chapter of this story, and they provide objective reasons to believe in the capacity for evolution and improvement. The OPSC makes a forceful statement: Every child is entitled to protection

and has the right to respect for privacy, integrity and identity. Every child has the right to be considered a person in his or her own right.

The notion of the child as a full subject of rights is recent and has broken new ground. The child is no longer considered as a 'becoming adult', but as a person with his or her own rights. There is no ambiguity in this, and it represents a considerable step forward in history. Releasing children from their traditionally perceived status as 'minors' and 'dependents' is a decisive change in the perception of childhood.

The reporting and monitoring processes of the OPSC should promote a global vision of child protection. They require acting in a parallel and simultaneous way, in particular through:

- Prevention activities among the most deprived populations, who sometimes assert that they have no alternatives, and calling the attention of the authorities to the living conditions of these easily identifiable at-risk populations.
- Urging governments to improve laws and procedures for the prosecution of offenders as well as the care and protection of children identified as victims, to prevent their double victimization.

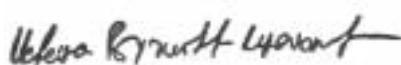
- Reinforcing procedures for transnational cooperation.
- Improving the quality of care in institutions for children who have been abused and exploited, and ensuring that staff are trained and aware of the importance of safeguarding children's rights.
- Providing psychological and social counselling for abused and exploited children, offering them assistance in a skilled, patient and respectful way.
- Identifying and prosecuting the perpetrators of these crimes against children.
- Encouraging the media to raise awareness of child exploitation in communities, to respect children's privacy and to avoid exploitative images and reporting.

The Optional Protocol is a valuable instrument. It has a unique potential to decisively enhance the protection of children from exploitation and fight the impunity of perpetrators. Its efficiency will increase if all States ratify it and act to implement its provisions effectively.

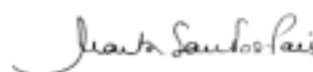
Our hope is that this handbook will help make this a reality!



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# 1

## INTRODUCTION

The Convention on the Rights of the Child (CRC) is supplemented by two Optional Protocols; one addresses the sale of children, child prostitution and child pornography, and the other the involvement of children in armed conflict. This handbook addresses the former issue.

The handbook offers guidance to States Parties and others who support the rights of children. It aims to improve the effectiveness of implementation of the Convention and its Optional Protocol on the sale of children, child prostitution and child pornography (OPSC), and to address the challenges that arise during this process. This chapter describes the circumstances leading to the drafting of the Protocol; explains the linkages between the CRC, the OPSC and other international instruments; and addresses relevant concepts and dimensions.

### The Convention and the Optional Protocol

The Convention on the Rights of the Child is the main international instrument for the protection of children's rights, including from all forms of abuse, violence, neglect and exploitation. A number of its provisions address these rights. Article 34 requires States Parties to protect

children from "all forms of sexual exploitation and sexual abuse." This includes the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performances and materials. Also important is article 39, which requires States to provide recovery and reintegration in an environment that fosters the health, self-respect and dignity of child victims of sexual exploitation.

The CRC is the first international treaty to place a comprehensive legal obligation on States Parties to protect children from all forms of sexual exploitation and abuse. This obligation is also an important landmark because it implicitly recognizes that sexual exploitation of children is likely to occur in every country in the world.

The first draft of the CRC contained no express mention of sexual exploitation of children. The earliest draft of the article that evolved into article 35 prohibited "neglect, cruelty and exploitation and traffic."<sup>1</sup> France suggested that reference to sale be added.

In 1987, the NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child proposed language similar to the present text of articles 34 and 35. Mexico, Senegal,

Venezuela (now the Bolivarian Republic of Venezuela) and the International Labour Organization (ILO) also supported this text and suggested that separate articles were needed.<sup>2</sup> Article 35 was therefore drafted, and covered the sale, abduction and trafficking of children. The present text was finally adopted in 1989.

The Optional Protocol criminalizes specific acts relating to the sale of children, child prostitution and child pornography, including attempt and complicity. It lays down minimum standards for protecting child victims in criminal justice processes and recognizes the right of victims to seek compensation. It encourages strengthening of international cooperation and assistance and the adoption of extra-territorial legislation, but it does not provide for exemption from the dual criminality principle. There are concerns that the OPSC does not protect children from victimization in criminal processes once they have been recognized as having had their rights violated.

Because the OPSC applies to specific forms of sexual exploitation, it is important to bear in mind that article 34 of the CRC gives children the right to protection from all forms of sexual exploitation and abuse and that all exploited children have these rights recognized by the CRC. This includes the right to recovery and reintegration in the light of article 39.

The general principles and general measures of implementation of the CRC are important tools in implementing the Convention and its Optional Protocols:

### ■ General principles

Article 2: The right to non-discrimination

Article 3: The best interests of the child

Article 6: The right to survival and development

Article 12: The right to express opinions freely in matters affecting him/her and to have those views taken into consideration.

### ■ General measures of implementation

- The process of law reform calls on States Parties to ensure the compatibility of existing and new legislation and judicial practice with the Convention.

- Independent national institutions for children's rights need to be developed – such as children's ombuds offices, child rights commissioners and focal points within national human rights institutions.
- Comprehensive national agendas or strategies for implementation of the Convention are needed; their relationship to the follow-up process to the 1990 World Summit for Children and the 2002 United Nations General Assembly Special Session on Children is important.
- Child rights-focused permanent institutions and structures within government are required to ensure coordination and pursue implementation.
- Allocation of resources to children "to the maximum extent of their availability" is key in States Parties' efforts to ensure implementation.
- Systematic monitoring of the implementation of the CRC is needed through effective child-related data collection, analysis, evaluation and dissemination.
- Education, training and awareness-raising on children's rights need to be promoted.
- The involvement of civil society, including children, is critical if there is to be progress on implementation.
- International cooperation.

## The Committee on the Rights of the Child

Compliance with the Convention and its Optional Protocols is monitored by the Committee on the Rights of the Child, a body of 18 independent experts elected by the States Parties to the CRC. In fulfilling this role, the Committee examines reports submitted by the States Parties, also taking into account information from other sources. This includes information provided by United Nations (UN) agencies, non-governmental organizations (NGOs, who sometimes submit alternative reports) and occasionally by ombudsmen, human rights commissions and other competent bodies.

States Parties to the OPSC must submit one report specifically on implementation of the Optional Protocol. Subsequently, information on its implementation must be incorporated into the periodic reports to the Committee on implementation of the CRC as a whole. By the end of the 49th session in October 2008, the Committee had considered 30 reports under the Optional Protocol.<sup>3</sup>

The Committee expresses views on the CRC and the OPSC in two main ways. After examining the reports of a State Party and discussing it with their representatives, the Committee adopts Concluding Observations that outline its views on the measures taken by the State Party. It makes recommendations on what further action it considers the State should take to fulfil its obligations. (Chapter 2 of this publication is largely based on the Committee's Concluding Observations.) The Committee also provides further guidance to States Parties through its General Comments and annual thematic discussions.

## Background to the Protocol

The United Nations Commission on Human Rights, the main UN human rights forum until 2006,<sup>4</sup> had a long history of concern with the sale of children, child prostitution and child pornography. In 1974, a Working Group on Slavery was established. Now called the Working Group on Contemporary Forms of Slavery, it holds annual hearings in which it considers, among other issues, severe forms of exploitation of children, including prostitution and trafficking. In 1992, the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography prepared by the Working Group.<sup>5</sup>

In 1990 the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography.<sup>6</sup> The Special Rapporteur, whose mandate extends to all UN Member States, plays a key role in raising awareness of these phenomena. The incumbent also works to combat sexual exploitation by publishing reports on specific cases, undertaking fact-finding missions to investigate trends and situations in a given country or region, and conducting national and regional workshops.

The 1994 report of the Special Rapporteur called for strengthening of prevention strategies by States Parties and other actors. It also called for addressing the root causes of the sale of children, child prostitution and child pornography.<sup>7</sup>

The same year, the Commission on Human Rights adopted a resolution on the need for effective international measures to prevent and eradicate the sale of children, child prostitution and child pornography. The resolution recalled the 1993 Vienna Declaration and Programme of Action that called for effective measures against female infanticide, harmful child labour, the sale of children and their organs, child prostitution and pornography and other forms of sexual abuse. The Commission also recognized UNICEF's work in these areas, and the efforts of the Committee on the Rights of the Child and the Special Rapporteur. The standards set by the ILO on exploitative forms of child labour were noted, as was a report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights. It called for a draft optional protocol to the CRC concerning elimination of sexual exploitation and trafficking of children. Ultimately, an open-ended working group of the Commission on Human Rights was established to draft a new optional protocol in cooperation with the Special Rapporteur and the Committee on the Rights of the Child.<sup>8</sup>

Thus began the thoughtful and deliberate process of drafting the Protocol. It was informed by the First World Congress against Commercial Sexual Exploitation of Children and by the efforts of the NGO community. In 1998, for example, a federation of child rights NGOs called for greater precision in terminology, the rejection of any notion of child 'consent' and recognition of the need for rehabilitation of victims.<sup>9</sup>

The Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. By October 2008, it had been ratified by 129 States.<sup>10</sup>

## The Protocol and other international instruments

The global concern with child exploitation that led to the adoption of this Protocol also led to

the nearly simultaneous adoption of two other important instruments: the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ('Worst Forms of Child Labour Convention' No. 182 of 17 June 1999) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the 'Palermo Protocol' of 15 November 2000).<sup>11</sup> As of July 2008, there were 169 States Parties to the 'Worst Forms of Child Labour Convention' and 124 States Parties to the 'Palermo Protocol'.<sup>12</sup>

The process of developing international standards continues. In 2005, the United Nations Economic and Social Council (ECOSOC) adopted a resolution that addresses an issue covered only in general terms by the OPSC – the treatment of child victims of crime in legal proceedings. In 2007, the Council of Europe adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. As of February 2009 the Convention had not yet entered into force.<sup>13</sup>

Most of the above-mentioned instruments are treaties and are therefore legally binding on States upon ratification. Many of the States that are parties to the OPSC are also parties to ILO Convention 182, or the 'Palermo Protocol', or both.<sup>14</sup> Most of the 28 States that have signed the European Convention are States Parties to the OPSC.

When a State is a party to two or more treaties that contain obligations on the same subject, it is obliged to fulfil all its obligations under each treaty. All of a State's treaty obligations, regardless of their source, are complementary. If a treaty contains a higher standard than another or addresses an issue not covered by another, the lower standard or the non-inclusion of the issue in the second treaty does not justify non-compliance with the complementary or higher standard recognized in the first. Of relevance is article 41 of the CRC, which calls on States to apply the "provisions which are more conducive to the realization of the rights of the child" and that may be contained in national and international law in force for that State. It is therefore important that States Parties ratify all relevant international instruments and adopt them into national law.

Examples would be the obligation to criminalize the sale of children in the OPSC and the obligation to criminalize trafficking in children in the 'Palermo Protocol' and the United Nations Convention against Transnational Organized Crime. Most acts that meet the definition of sale also meet the definition of trafficking, but there are some situations of sale that are not trafficking and vice versa (discussed in Chapter 2). A State that is a party to the OPSC and the 'Palermo Protocol' must criminalize not only acts that meet both definitions – acts that are both sale and trafficking – but also all acts that meet either definition – those that are sale but not trafficking, and those that are trafficking but not sale.

The 2005 UN resolution entitled Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime is not legally binding and does not codify customary international law.<sup>15</sup> They are, however, closely related to various provisions of the CRC and the OPSC, including the right to be heard in legal and administrative proceedings and the principle of the best interests of the child (articles 12.2 and 3.1, respectively, of the CRC), the right of victims of exploitation to recovery and reintegration (article 39 of the CRC) and the right to recovery of victims of sale and sexual exploitation (article 8 of the OPSC). It is therefore perfectly legitimate to take the Guidelines into account and to expect States to do so, in determining how these treaty provisions should be interpreted and applied in practice. The Committee on the Rights of the Child has endorsed these guidelines and encouraged States to take them into account in implementing the CRC and the OPSC.<sup>16</sup>

This is the legal position. As a matter of policy, a State should ratify and take all relevant international instruments into account when it undertakes law reform; develops strategies, programmes or policies; or creates new structures concerning matters addressed by the Protocol. This helps to ensure that the measures it adopts are comprehensive and coherent.

It is not possible to identify here all the provisions of the instruments mentioned above that are complementary to the obligations contained in the Protocol. However, some particularly relevant examples must be mentioned.

- ILO 'Worst Forms of Child Labour Convention' (No. 182), which includes the

trafficking, sale and prostitution of children, expressly applies to all people under age 18, eliminating the ambiguity caused by article 1 of the Convention on the Rights of the Child.<sup>17</sup> States Parties to Convention No.182 have a legal obligation to adopt programmes of action to eliminate all the practices it covers. They are also supposed to take preventive and protective measures that aim to achieve specific results by a certain date.<sup>18</sup>

- The ‘Palermo Protocol’, which covers the trafficking of children, also applies without exception to all persons under 18.<sup>19</sup> It expressly provides that the consent of persons under 18 is not relevant, eliminating the ambiguity that is sometimes inferred – correctly or not – from the silence of the CRC and the OPSC on the issue of the possible relevance of the ‘age of consent’ for child prostitution and child pornography.
- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, as its name indicates, covers sexual abuse as well as sexual exploitation.<sup>20</sup> Concerning child prostitution and pornography, it contains obligations to criminalize conduct for which criminalization is not expressly required by the OPSC, such as using the services of a child prostitute and possession of child pornography.<sup>21</sup> The Council of Europe Convention is also more detailed than the OPSC in terms of the kinds of preventive, repressive and restorative actions it obliges States Parties to take. To cite but one example, an article on corporate liability recognizes an obligation to adopt legislation making all persons within a corporation legally responsible for their actions.<sup>22</sup>

## Conceptual clarity\*

Some national legislation defines key terms such as sexual exploitation too narrowly and does not reflect the full scope of the international

\* This handbook uses terminology that adheres to the language of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. However, there has been an evolution in the terminology used since the adoption of the Optional Protocol, with many organizations now preferring to use the terms ‘sexual exploitation in prostitution’ and ‘sexual exploitation through abusive images’, which highlight the exploitative aspects of these phenomena, rather than ‘child prostitution’ and ‘child pornography’.

definitions. Conceptual clarity is important for ensuring that all stakeholders define and interpret terms in the same way. Similarly, legal concepts between states need to be compatible if bilateral and international cooperation are to be effective.

The following terms are found in the OPSC or relate to its implementation. They have been officially defined by the Committee on the Rights of the Child, other treaty bodies and United Nations organizations. Given the need for conceptual clarity within, among and between states, the use of these official definitions is recommended.

- **Child:** A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. (Article 1 of the CRC, adopted in 1989, entered into force in 1990.)
- **Children with disabilities** (the definition provided in the Convention is for persons with disabilities, including children): Children who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Article 1 of the Convention on the Rights of Persons with Disabilities, adopted in 2006, entered into force in 2008.)
- **Child exploitation:** [In the context of child trafficking], 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. (Article 3 of the ‘Palermo Protocol’, adopted in 2000, entered into force in 2003.)
- **Child prostitution:**<sup>23</sup> The use of a child in sexual activities for remuneration or any other form of consideration. (Article 2 of the OPSC, adopted in 2000, entered into force in 2002.)
- **Child pornography:** Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. (Article 2 of the OPSC.)
- **Debt bondage:** The status or condition arising from a pledge by a debtor of his personal



services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. (Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted in 1956, entered into force in 1957.)

- **Forced or compulsory labour:** All work or service which is exacted from any person under the menace of any penalty and for which the said person had not offered himself voluntarily. (Article 2 of ILO Convention Concerning Forced or Compulsory Labour No. 29, adopted in 1930, entered into force in 1932.)
- **Neglect:** The failure of parents or carers to meet a child's physical and emotional needs when they have the means, knowledge and access to services to do so; or failure to protect her or him from exposure to danger. (United Nations, World Report on Violence against Children, 2006, p. 54.)
- **Sale of children:** Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. (Article 2 of the OPSC.)
- **Serfdom:** The condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status. (Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.)
- **Slavery:** Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (Article 1 of the Slavery Convention, adopted in 1926, entered into force in 1927.)
- **Slave trade:** The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a

slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves (Article 1 of the Slavery Convention). This means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance. (Article 7 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.)

- **Torture:** Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity... (Article 1 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, adopted in 1984, entered into force in 1987.)
- **Trafficking:** (a) 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;...
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not

involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age. (Article 3 of the 'Palermo Protocol'.)

- **Violence:** The UN Study on Violence against Children, the outcome of the first global attempt to describe the scale of all forms of violence against children and its impact, defines violence against children in accordance with article 19 of the CRC, but also draws upon the definition of the *World Report on Violence and Health*, 2002. (United Nations Secretary-General's Study on Violence against Children, 2006, pp. 5-6.)

The intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity. (*World Report on Violence and Health*, 2002.)

From article 2 of the Declaration on the Elimination of Violence against Women 1993:

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Violence is the most comprehensive term as it encompasses physical, sexual and psychological/mental forms of maltreatment, including abuse and assault.

- **Worst forms of child labour:** From article 3 of the ILO 'Worst Forms of Child Labour Convention', No. 182, adopted in 1999, entered into force in 2000.

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.



# 2

## CONTENT OF THE OPTIONAL PROTOCOL

Article 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) provides that “States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.” Article 2 defines the conduct prohibited in the Protocol and must be considered together with article 3, which lists acts that, as a minimum, should be “fully covered” by the criminal or penal legislation of States Parties.

The obligations of States Parties to the Optional Protocol also concern the repression of these crimes. This includes issues such as extraterritorial jurisdiction, extradition, mutual legal assistance and seizure and confiscation of proceeds and instrumentalities (articles 4 to 7, respectively). Article 8 concerns the protection of victims, article 9 addresses prevention and article 10 covers international cooperation.

This chapter addresses these definitions and the obligations of States Parties. It takes into account the way the Committee on the Rights of the Child has interpreted them in its examination of the reports submitted by Parties to the Protocol.<sup>24</sup>

### Sale of children

The sale of children is defined by article 2 of the Optional Protocol as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” This broad definition is the outcome of a long debate as to whether the OPSC should cover only sale for the purpose of sexual exploitation or sale for any purpose.<sup>25</sup>

States tend to identify sale of children with trafficking in children. Indeed, many States Parties have legislation prohibiting trafficking in persons, but lack legislation specifically prohibiting the sale of children. However, although trafficking and sale of children are similar concepts, they are not identical, and article 35 of the Convention on the Rights of the Child (CRC) obliges States Parties to take measures to prevent both. The Committee often reminds States Parties to the OPSC that their legislation must satisfy its obligations with regard to the sale of children.

The international definition of child trafficking provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (‘Palermo Protocol’) does not specifically refer to the sale of children,

even though children can be sold at each stage of the trafficking process, as is clear from the definitions below:

- **Recruitment:** A child can be sold to a trafficker by parents or other caregivers, or by an institution.
- **Transport, transfer, harbouring:** During the movement of the child, the child can be sold by one trafficker to another.
- **Receipt:** The child can be sold by the trafficker to a final 'buyer'.
- **Exploitation:** The child can at any time be sold to another trafficker or exploiter.

Experience shows that a child can be trafficked without any element of sale occurring throughout the entire process. The sale of children is therefore not a necessary element of the definition of child trafficking: Recruitment can take place using deceit, force or abduction, but may also occur without any of these elements being present. Nor does there need to be a commercial transaction or even any broader "remuneration or other consideration" when the child is transferred. Equally important is the fact that the same trafficker(s) may be involved during transportation and exploitation, so the child is not necessarily transferred from one to another for remuneration or other considerations.

Additional differences between the sale of children and child trafficking pertain to movement and exploitation as defined in the 'Palermo Protocol'. The sale of a child is not necessarily linked to the purpose of exploitation by those who pay for the child, as is the case for child trafficking. This is true even though the OPSC addresses the sale of children in connection with various forms of exploitation. The sale of a child can take place without physical movement of the child, while the concept of child trafficking always involves an element of movement. Moving a person out of his or her social environment is a key element of the trafficking concept, as it enhances the vulnerability of the trafficked person.

In some cases, child trafficking and the sale of children overlap, and differences in the definition do not have any effect on the actual experience

of a child and his or her exploitation. However, the distinction is important with regard to the prosecution of perpetrators, creating indicators for identification and determining the best interests of the child, including with regard to the child's repatriation to his or her family. Finally, in order to more effectively address the trafficking and sale of children, it is important to identify the root causes and to pinpoint any gaps in child protection systems.

Legislation against trafficking in persons can be a valuable tool in implementing article 35 of the CRC and the OPSC. However, it is important that States Parties ensure that their legislation also prohibits forms of sale that do not constitute or are not related to child trafficking. While article 2 of the OPSC defines the sale of children, child prostitution and child pornography, article 3 identifies specific acts that must be criminalized. In so far as sale is concerned, paragraph 1(a) prohibits the "offering, delivering or accepting" of a child for the purpose of sexual exploitation, transfer of organs for profit, forced labour and adoption in violation of applicable legal instruments.

No international instrument defines sexual exploitation, and opinions differ on the distinction between sexual exploitation and sexual abuse. In the context of the OPSC, sexual exploitation clearly includes child prostitution and child pornography, which includes the production of child pornography or participation of children in pornographic performances.

Another practice that could be considered "sale for the purposes of sexual exploitation" is the so-called temporary marriage still practised in some parts of the world. Some types involve girls given in marriage to men – often older men – in exchange for money. These marriages may be for a few weeks or for several months, after which the girls are abandoned by their husbands and deprived of the rights acquired by marriage. In addition to the psychological trauma suffered, the victims are stigmatized by society and marginalized by their own families. The Committee on the Rights of the Child has discouraged this practice in several of its reports.<sup>26</sup>

The term sexual exploitation also includes some practices that are neither prostitution nor sale. They include sexual slavery and sexual

relations between an adult and a child under his or her control without compensation of any kind being given to the child. (Such practices would include sexual relations between a child in detention and a police officer or prison officer, a child domestic servant and his or her employer, or a child confined in a home for orphans or children with disabilities and staff members in the home.) If there is neither a sale nor compensation for sexual services, such practices may be considered as not falling within the scope of the OPSC. However, such practices are prohibited by the CRC and are a violation of a child's rights.<sup>27</sup>

Article 3 of the OPSC specifically requires States Parties to prohibit the offer, delivery or acceptance of children for purpose of "transfer of organs...for profit."<sup>28</sup> This is a narrow obligation; it does not cover the sale of a child's organs without sale of the child or the abduction of a child for the purpose of sale of organs.<sup>29</sup> The term "organ" does not include blood or tissue. Although proof of this practice remains elusive, where the legislation of parties to the Protocol is deficient in this regard, the Committee encourages them to remedy the gap.<sup>30</sup>

Article 3 also specifically requires States Parties to prohibit the sale of children for the purpose of forced labour.<sup>31</sup> The most widely accepted definition of forced labour is that contained in International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour (No. 29), which states: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>32</sup> ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ('Worst Forms of Child Labour Convention' No. 182) provides that the term includes the "forced or compulsory recruitment of children for use in armed conflict."<sup>33</sup>

The Committee has taken the position that sale of children for the purpose of engagement in armed conflict is covered by this provision of the OPSC.<sup>34</sup> It has also addressed the issue of sale of children for the purpose of camel racing under the prohibition of sale for the purpose of forced labour.<sup>35</sup> In both cases, it has adopted a broad interpretation of the requirement of

coercion that takes into account poverty, neglect and absence of opportunities.

Finally, article 3 requires States Parties to criminalize the act of "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption."<sup>36</sup> Although this provision applies only to the acts of intermediaries, the Committee has recommended that States Parties criminalize the activities of all those involved in the sale of children for the purpose of adoption. This interpretation finds justification in the fifth paragraph of article 3, which obliges States Parties to take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child "act in conformity with applicable international legal instruments."<sup>37</sup>

## Child prostitution

Article 2 of the OPSC defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration." Meanwhile, article 3 obliges States Parties to criminalize "Offering, obtaining, procuring or providing a child for child prostitution." The term "any other consideration" means that prostitution includes the provision of sexual services in exchange for goods, services or favours, as well as money. This would cover, for example, the exchange of sexual services for necessities such as food and shelter, or for drugs.

Unlike the 'Palermo Protocol', the OPSC does not contain a definition of the term 'child'.<sup>38</sup> However, the definition contained in article 1 of the CRC also applies to the OPSC. Some countries use varying ages – i.e. children younger than age 18 – in their legislation that defines child prostitution. In countries where prostitution is legal this may mean that the exploitation of children over the age of consent – often children aged 16 or 17 – is not a crime. Where prostitution is illegal and a child has not been identified as a victim of trafficking, it may mean that older children involved in prostitution are treated as offenders. In such cases, the Committee has consistently asked States Parties to set an age limit of 18 years for defining a child for all the offences covered by the OPSC.<sup>39</sup>

The issue of sexual exploitation of children in travel and tourism has often been raised by the Committee. Although this phenomenon is not identified as a distinct offence under article 3 of the OPSC, it is referred to in the Preamble as well as in article 10, which deals with international cooperation. 'Sex tourism' is directly related to the offences covered by the Protocol, since it often involves child prostitution and child pornography (as those who exploit child prostitutes often record their activities on film), and may also involve the sale of children. For these reasons, the Committee recommends that States Parties strengthen efforts to prevent and combat sexual exploitation of children in travel and tourism. Such efforts include, in particular, promoting responsible tourism through awareness-raising campaigns directed at tourists and cooperating closely with travel operators, non-governmental organizations (NGOs) and civil society organizations.<sup>40</sup>

## Child pornography

Article 2 of the OPSC defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." Article 3 requires States Parties to criminalize "producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2."<sup>41</sup> Pornography can, among other forms, be represented in live performances, photographs, motion pictures, video recordings and the recording or broadcasting of digital images. The Committee is particularly concerned about the widespread distribution and accessibility of child pornography through the Internet. It has strongly and consistently recommended that States Parties and the international community urgently tackle the issue. Specific recommendations have been made regarding adoption of legislation on the obligations of Internet service providers in relation to child pornography.<sup>42</sup>

Interpreted strictly, article 3(1)(c) of the OPSC obliges States Parties to punish the possession of child pornography only when this possession is "for the above purposes" – producing, distributing, disseminating, importing, exporting, offering or selling.<sup>43</sup>

The Committee on the Rights of the Child has nevertheless encouraged countries to prohibit simple possession.<sup>44</sup>

## Criminal, civil and administrative responsibility

Paragraphs 2 to 4 of article 3 of the OPSC cover a number of issues concerning responsibility for participation in the offences defined in the first paragraph of the article. Paragraph 2 contains a provision that States Parties shall criminalize the commission of sale of children, child prostitution and child pornography. Parties are also compelled to criminalize an attempt to commit any of the acts listed in paragraph 1 of article 3 as well as complicity or participation in any of the acts. This is to be done in accordance with each State's general legal provisions concerning attempt, complicity and participation.

Paragraph 3 of article 3 provides that States Parties shall make the offences identified by the OPSC – including attempt and complicity – "punishable by appropriate penalties that take into account their grave nature." To date, the Committee has not often addressed this provision of the Protocol, although it addressed one case in which light penalties for sexual offences against children precluded the exercise of extra-territorial jurisdiction.<sup>45</sup>

Paragraph 4 of article 3 is an unusual provision concerning the liability of legal persons for the offences defined in paragraph 1 (but not paragraph 2) of article 3. This provision is framed in obligatory language but is qualified by the words "as appropriate". Liability may be criminal, civil or administrative, depending on the legal principles recognized by the legislation of the State Party, since in many legal systems criminal responsibility cannot be imposed on enterprises or firms. The Committee has referred to this provision only in a limited number of cases.<sup>46</sup>

Article 7 of the OPSC is similar. It obliges States Parties to take measures, subject to the provisions of their national law, to provide for seizure of instrumentalities used to commit or facilitate the offences covered by the Protocol and proceeds derived from such offences, and to take measures aimed at closing premises used for such purposes.<sup>47</sup> This obligation applies to all the offences mentioned in article 3, including attempt and complicity.

## Jurisdiction and extradition

Article 4 of the OPSC concerns jurisdiction over acts of sale of children, child prostitution and child pornography.

Paragraph 2 provides that States Parties “may” establish jurisdiction over such offences according to the principles of active personality (which means that the alleged offender is a national of the State in question or has habitual residence in its territory). Another component is passive nationality, and this means that the victim is a national of the State.

Paragraph 3 of article 4 requires each State Party to give its courts jurisdiction over the sale of children, child prostitution and child pornography “when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.” The clause referring to the nationality of the offender is ambiguous. However, a similar provision of the Convention against Transnational Organized Crime, also adopted in 2000, clearly indicates that the relevant nationality is that of the State where the alleged offender is present.<sup>48</sup> Comparative law tends to confirm this; legislation barring the extradition of citizens is not unusual, while legislation precluding the extradition of foreign nationals to their own country is unknown.

This paragraph must therefore mean that States Parties to the OPSC must adopt legislation to the effect that, if they do not extradite one of their nationals to a country that requests his/her extradition for involvement in the sale of children, child prostitution or child pornography – because the crime took place in the territory of the requesting State, for example – its own courts must have jurisdiction to prosecute. In effect this limits the discretion that the previous paragraph gives States regarding jurisdiction over offences committed by its nationals abroad. It should be noted that article 5, which concerns extradition, provides that a State Party that refuses a request for extradition on this ground must not only recognize the jurisdiction of its courts over the crime, but must also “submit the case to its competent authorities for the purpose of prosecution.”

The Committee on the Rights of the Child often enquires whether States Parties prosecute their

nationals for those crimes covered by the Protocol that are committed abroad. This is particularly important where children are exploited in travel and tourism. The Committee has expressed concern over the application of the principle of double criminality to the offences covered by the OPSC. Double criminality exists when an offence committed abroad can be punished only if it is considered a crime in both the country having jurisdiction over the suspect and the country where the offence was committed. The Committee has welcomed the abolition of the double criminality requirement with respect to these offences.<sup>49</sup>

Article 5 of the OPSC regulates extradition in considerable detail. Paragraph 1 provides that the offences “shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them.” Paragraph 2 contains provision for a State Party to extradite upon receiving a request from another State Party to the Protocol with which it has no extradition treaty. Accordingly, the Protocol itself provides a sufficient legal basis for extradition for the offences that it defines.

Paragraph 3 of article 5 concerns States Parties to the Protocol that do not make extradition conditional on the existence of a treaty. This paragraph provides that they shall recognize the offences defined in the Protocol as extraditable offences between themselves. The Committee has objected to the practice of States that limit extradition to the existence of bilateral agreements or conditions of reciprocity.<sup>50</sup>

Paragraph 4 of article 5 is somewhat complicated. It provides that, for purposes of extradition between States Parties, offences shall be treated as if they occurred in the territory of all parties required to assert jurisdiction in accordance with article 4.

Two provisions of article 4 are obligatory: paragraphs 1 and 3. Paragraph 1 provides that States Parties shall establish their jurisdiction over these offences when they are committed in their territory or on board a ship or aircraft registered in that State.

Thus, for example, if State A has an obligation under article 4, paragraph 3, to assume



jurisdiction over nationals who commit crimes abroad because its constitution prohibits the extradition of nationals, all parties to the OPSC must treat offences committed by nationals of that State as if they had been committed in State A, for purposes of extradition. For example, if a citizen of State A is located in State B and has committed child prostitution in State C, and State A requests State B to extradite him, State B must respond to the request as if the crime had been committed in the territory of State A.

It should be noted that the provisions of article 5 concerning extradition address the offences defined in paragraph 1 of article 3. They do not cover attempt or complicity, which are covered by paragraph 2 of article 3.

## Mutual legal assistance

Article 6 of the OPSC requires that States Parties provide one another “the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1.” Obligations of this kind are a common feature in treaties concerning internationally recognized crimes. The assistance covered by article 6 includes, in particular, assistance in obtaining evidence.

Article 7 of the OPSC specifically requires States Parties to “Execute requests from another State Party for seizure or confiscation of goods [i.e. instrumentalities used in the commission or facilitation of offences] or proceeds.”<sup>51</sup> The obligation to provide assistance contained in article 6 applies only to offences listed in paragraph 1 of article 3. Meanwhile, the obligation contained in article 7 applies to any offence covered by the OPSC.

These provisions are reinforced by paragraph 1 of article 10, which recognizes a general obligation of States Parties to “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.” The Committee has not commented on the obligations contained in articles 6 and 7, but it does encourage States Parties to enter into

bilateral and multilateral agreements for the detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.<sup>52</sup>

## Prevention

Article 9 of the OPSC requires States Parties to “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol [giving] “particular attention...to protect children who are especially vulnerable to such practices.”<sup>53</sup>

This article contains two paragraphs that describe specific kinds of preventive measures. Paragraph 5 requires States Parties to “take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.” Paragraph 2 of article 9 sets forth a more general obligation to “promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol.” The principle of participation is recognized as well. States Parties are obliged to “encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.”

It is noteworthy that the Committee on the Rights of the Child puts considerable emphasis on the issue of prevention. It also places importance on adopting a holistic approach that addresses the root causes, such as poverty and underdevelopment, that contribute to the vulnerability of children to sale, prostitution, pornography and sex tourism.<sup>54</sup> States Parties are encouraged to pay particular attention to the protection of children. The Committee considers that children living on the street, in remote areas or those living in poverty are especially vulnerable to these crimes.<sup>55</sup> In some cases, the Committee has emphasized the need to focus on children affected by war, drought and famine, including displaced children.<sup>56</sup>

The Committee also stresses the importance of the obligation to raise public awareness of the

harmful effects of the offences referred to in the Protocol, especially among children and their parents. Likewise, it emphasizes the value of active participation of children, victims and their families. The Committee particularly insists on the importance of compliance with this obligation in countries where, for religious, social, cultural or other reasons, it is difficult to have public discussions on sale, prostitution and pornography.<sup>57</sup> The Committee has welcomed dissemination of material drawing attention to the unlawful character of child prostitution, seeing it, in particular, as a contribution to the struggle against sexual exploitation of children in travel and tourism.<sup>58</sup>

Certain preventive measures not specifically mentioned by the Protocol have been identified by the Committee. These include effective birth registration systems to ensure that children do not fall into a legal limbo that makes them more vulnerable to the offences covered by the Protocol.<sup>59</sup>

## The rights of child victims

Article 8 of the OPSC requires that States Parties “adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process.” This detailed article contains 10 provisions on the treatment to which child victims are entitled and one provision on the rights of those who work with child victims. There is also a final paragraph safeguarding the rights of accused persons to a fair and impartial trial.

Article 9 has two provisions on the rights of child victims. Paragraph 3, like article 39 of the CRC, recognizes the right of victims to assistance in achieving social reintegration and full physical and psychological recovery. Additionally, paragraph 4 recognizes the right of child victims to have “access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.”

Article 8 contains specific rights for children and duties for States. It gives children the right to:

- Procedures that recognize children’s vulnerability and special needs, as witnesses and in general (article 8.1(a));
- Be informed of their rights, their role, the scope, timing and progress of the proceedings and of the disposition of their cases (article 8.1(b));
- Have their views, needs and concerns presented and considered in proceedings where their personal interests are affected in a manner consistent with the procedural rules of national law (for child victims) (article 8.1(c));
- Appropriate support services throughout the legal process (article 8.1(d));
- Privacy and the confidentiality of information concerning their identity (article 8.1(e));
- Safety and protection against intimidation and retaliation (article 8.1(f));
- Procedures free from unnecessary delays (article 8.1(g)).

Article 8 assigns States the duty to:

- Investigate, even when the age of the victim needs to be clarified (article 8.2);
- Consider the best interests of the child victim as a primary consideration (article 8.3);
- Provide appropriate training to all those who work with child victims (article 8.4).

Paragraph 5 of article 8 recognizes the right to protection of those who work with child victims or are involved in efforts to prevent sale, prostitution and pornography affecting children.

In 2005, the United Nations Economic and Social Council adopted a resolution entitled *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes*.<sup>60</sup> The Guidelines cover in additional detail several of the issues addressed in article 8 of the OPSC, and the Committee on the Rights of the Child encourages States Parties to take these international standards into account.<sup>61</sup> The Committee also specifically encourages States to use interview rooms designed for children and to avoid direct contact between child victims and witnesses and alleged perpetrators, for instance by using audio or video recordings of their statements.<sup>62</sup>

One of the Committee's main concerns regarding treatment of such children is that they are not treated as offenders as a result of the exploitation they have suffered due to prostitution or other offences covered by the Protocol.<sup>63</sup> The Committee also insists that 'double victimization' must be avoided. In one instance, for example, it urged a State Party "to apply child-sensitive procedures to protect children from hardship during the justice process, inter alia by using special interview rooms designed for children, child-sensitive methods of questioning; and by reducing the number of interviews, statements and hearings."<sup>64</sup>

The Committee also stresses compliance with the obligation to assist children in social reintegration and physical and psychological recovery. In particular, it calls for ensuring that the relevant services are accessible throughout the country to all children who need them and that those persons providing such services have the necessary training.<sup>65</sup> The ability of children who have been involved in sale, prostitution and pornography to bring their situation to the attention of agencies or to access services for assistance is another concern for the Committee. Telephone helplines have been an important measure recommended in this regard.<sup>66</sup> More generally, the Committee recognizes the usefulness of independent human rights institutions for children and similar institutions that can help ensure respect for the rights of child victims of sale, prostitution and pornography.<sup>67</sup>

## International assistance and cooperation

Article 10 of the OPSC is devoted to international assistance and cooperation. Paragraph 1 makes a broad commitment for States Parties to promote "international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations." In addition, it contains an obligation to cooperate in law enforcement, as discussed in the paragraphs above.

Paragraph 2 of article 10 encourages States Parties "to promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation." Paragraph 3 emphasizes the need to address, at the international level, the root causes of these offences, such as poverty and underdevelopment. Finally, paragraph 4 calls upon countries "in a position to do so" to provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

For the Committee, international cooperation is integral to implementing the OPSC, and it particularly encourages the provision of technical assistance and aid aimed at combating the root causes of these offences.<sup>68</sup>

# 3

## IMPLEMENTATION OF THE OPTIONAL PROTOCOL

This chapter identifies good practices in implementing the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), particularly with regard to prevention, law enforcement and assistance to victims. Reports of States Parties to the Committee on the Rights of the Child are a useful source of information on implementation. Thus they were consulted extensively for this chapter. However, one limitation is their tendency to focus mainly on actions taken by the States Party; they rarely contain information on the impact of those actions.<sup>69</sup> In preparing this handbook, other sources were consulted, including documents from the International Labour Organization (ILO) and the Hague Conference on Private International Law, as well as reports of the Special Rapporteur on the sale of children, child prostitution and child pornography.<sup>70</sup>

The ILO ‘Worst Forms of Child Labour Convention’ No. 182 obliges States Parties to take steps to eliminate the sale of children, child prostitution and child pornography.<sup>71</sup> Since 1995, the organization’s International Programme on the Elimination of Child Labour (IPEC) has funded projects focused on eliminating these violations of child rights, and has published a study evaluating several of

them.<sup>72</sup> The organization has also published ‘Guidelines on the design of direct action strategies to combat commercial sexual exploitation of children’, which incorporates examples from IPEC projects.<sup>73</sup>

The scarcity of well-documented good practices is striking. Practices are often cited as positive examples based only on anecdotal evidence. Further efforts are urgently needed to identify good practices based on evidence of their impact.

With this caveat in mind, the following section highlights practices identified as positive by the sources cited above and by the authors of this handbook. It also includes selected lessons and recommendations from United Nations (UN) and ILO sources.

### Prevention of exploitation

The ILO-IPEC evaluation of projects provides a number of lessons. Regarding prevention of child prostitution, it concludes that, while there is a relationship between poverty and child prostitution, other causal factors are at least as important, if not more so. These include family breakdown, parental substance abuse, sexual abuse in the home and peer pressure. The evaluation concludes, “It is important...to move

beyond the uninformed assumption that the poorest children must by definition be the targets of programming 'because they are at higher risk'."

The evaluation also challenges the effectiveness of education as a preventive measure. It cites data from Thailand that indicate that 76 per cent of children in prostitution were enrolled in, or had completed, primary school, and some children had attended secondary school. According to this source, prevention programmes addressed to children, especially adolescent girls, should also take into account factors such as the importance of peer pressure and the glamour associated with some forms of prostitution, and the fact that some children enter into prostitution voluntarily.

Programmes designed to make children aware of the risks of sexual exploitation are common. Evaluations of these efforts are rare, however, and need to be encouraged.

Some successful initiatives are described in the following sections.

### ■ Combating vulnerability

**Thai Women of Tomorrow, Thailand:** This non-governmental organization (NGO) has established a volunteer force of current and former teachers. The volunteers inform girls and women in villages about the hazards of the commercial sex trade and the realities of life for those involved. Volunteers are recruited from the community and equipped with knowledge, advocacy skills and basic informational materials. Supervision is minimal but is provided on a continuous basis. The ILO's 2000–2001 project evaluation concluded that the project could be replicated and adjusted to suit different cultural contexts. The volunteers were found to be well prepared and committed to the task. A likely part of the project's success is the fact that, as the individuals are selected partly for their standing in their communities, their messages are more likely to be heard.<sup>74</sup>

The project also provides direct assistance to girls at risk. Young girls nominated by the volunteer teachers receive cash along with financial counselling. For instance, the recipients are introduced to older girls who have used their money wisely. The evaluation found that this

approach empowered the girls to finance their schoolwork and fend off pressure from their families to earn an income.<sup>75</sup> The payments are financed by donors, including from the community, which also helps raise awareness of the issue of child prostitution among the wider community.<sup>76</sup> The evaluation noted that it is impossible to reliably measure the impact on child prostitution, but growing community support and the increasing number of volunteers are valid indicators of success.

#### **Visayan Forum Foundation, the Philippines:**

The organization provides temporary shelter, information and referral services to children at risk. These children are identified largely through carefully developed linkages between its workers and the owners and operators of inter-island ferries. The ILO evaluation found that this approach, which identifies at-risk children and offers them services at the location where they are vulnerable, is an extremely effective protection mechanism.<sup>77</sup> Although the programme aims to combat trafficking and child domestic labour, the evaluation found that this approach could also be used to prevent child prostitution.

#### **Spaces for Comprehensive Development,**

**Mexico:** The NGO Espacios de Desarrollo Integral (Spaces for Comprehensive Development) studies the needs and dynamics of a neighbourhood and then establishes clubs or centres that offer children and adolescents access to leisure activities, informal education and information on children's rights and sexual health.<sup>78</sup> The clubs also promote community awareness of child prostitution and the participation of children in the community in raising awareness about the issue. The programme was praised by the Special Rapporteur on the sale of children, child prostitution and child pornography in the report of his visit to Mexico from 4 to 15 May 2007.

#### **National Center for Missing & Exploited Children, United States:**<sup>79</sup>

This non-governmental body, established in 1984, helps parents locate missing children, including runaways, abducted children and children lost in natural disasters or accidents. The centre operates a 24-hour telephone hotline that enables parents to report lost or missing children. An urgent alert is circulated when a child is reported abducted. The centre serves as a national clearing house on missing children and

has received statutory status. It also publishes research, supports law reform, conducts awareness-raising campaigns on the dangers of sexual exploitation and abuse of children, and has trained more than 200,000 persons, mainly law enforcement officers. Efforts to locate missing children can be considered prevention activities because of the vulnerability of runaways to sexual exploitation.<sup>80</sup> Fourteen other countries have established similar centres that participate in a global network.<sup>81</sup> The Special Rapporteur has referred to the work of the organization as good practice.

***Village Safety Net Programme, Cambodia:***

Supported by Terre des Hommes and the Alliance for Conflict Transformation, this programme brings together local authorities and the public, including children, to participate in awareness-raising and education activities that highlight the risks to children and what each member of the community can do to help reduce those risks. It also encourages the establishment of local child protection networks. Children participate as peer and community educators, using techniques such as role play and theatre. Advocacy aimed at the police and other local officials encourages effective law enforcement, and is essential to the success of the programme and the safety of child participants.

***Centres for children at risk, Ukraine:*** The Special Rapporteur praised two centres for children during a mission to Kiev and surrounding areas of the Ukraine from 22 to 27 October 2006. These included a residential facility operated by the city and a day care centre operated by religious groups. Although prevention of sexual exploitation is not a stated goal of the centres, they are designed to address situations that place children at risk of sexual abuse and exploitation. The residential facility houses boys and girls who have run away from home or been abandoned by their parents. The services offered are simple – shelter, health care, food, cultural and sporting activities, and enrolment in public schools. The Special Rapporteur praised the “human scale” of the facility and the professionalism and dedication of the staff.<sup>82</sup> For at-risk children who live with their families and attend local schools, the non-residential facility offers meals and educational and social enrichment programmes, such as help with homework, access to computers, a library and sporting activities.<sup>83</sup>

***Regional youth participation project, South Asia:***<sup>84</sup> The Youth Partnership Project works with child victims of commercial sexual exploitation in South Asia. It aims to reduce the vulnerability of children who have been trafficked and gives them the opportunity to participate in peer-support programmes, public advocacy and community awareness campaigns. The project involves collaboration between ECPAT International and various national NGOs – Aparajeyo in Bangladesh, SANLAAP in India and Maiti Nepal in Nepal. Children and staff of the three countries make regular visits to facilitate sharing of experiences.

Youth trained in media and advocacy skills conduct awareness-raising campaigns geared towards source communities in an effort to reduce the numbers of children trafficked to other cities and neighbouring countries. The project also works with trained caregivers and local organizations to teach them to provide quality psychosocial care for child survivors. The youth hope to improve the lives of child survivors and persuade adults at all levels to end the trafficking and sexual exploitation of children.

***Exploitation awareness programme, United Kingdom:*** From 2005 to 2007 the London Prevention Education programme was implemented in schools, pupil referral units and residential facilities for children aged 13 to 16.<sup>85</sup> The activity consisted of single 45-minute sessions on awareness of risk (risky individuals and relationships, and techniques used to lure children into exploitation); the social, psychological and medical consequences of exploitation; and services for victims and those at risk. Its aim was to reduce the risk of involvement in any form of sexual exploitation, including relationships with older or abusive partners or the informal exchange of sexual services for favours, shelter or drugs, as well as ‘formal’ prostitution. The methodology included group discussion of case studies covering exploitation of children of both genders.

The UK organization Barnardo's evaluated the programme over the period 2005 to 2007. Since it would not have been feasible to measure the impact in terms of subsequent avoidance of sexual exploitation, the evaluation focused on the extent to which beneficiaries understood key messages and self-reported changes in attitude. The evidence suggests that most beneficiaries

“found the programme useful, in terms of demonstrating the consequences of actions, like drug-taking and placing themselves in risky situations.” They were also “more aware of risky relationships and adults as a result of attending the sessions...[and] had a good awareness of services available to at-risk young people.”<sup>86</sup> The ability to recall key messages some months after the activity was limited, however, leading the evaluators to recommend that messages be reinforced over time to improve knowledge retention.<sup>87</sup>

The participants said they appreciated the attitudes of the presenters, which, in turn, influenced how much the participants learned. One student told evaluators, “They listened to me. Once they said something, they gave me the opportunity to speak...there is no wrong answer. It was good for people to decide together.”<sup>88</sup> Participants suggested that the presentations be longer and more interactive.<sup>89</sup>

## ■ Internet safety

The Internet has become a popular medium for those wishing to identify and contact children who may be vulnerable to sexual exploitation. A study published in 2003 concerning Internet use by students aged 9 to 16 in five European countries indicates that 24 per cent to 36 per cent of those who use the Internet have received unwanted sexual comments, 19 per cent to 39 per cent have been invited to meet face to face, and 12 per cent to 26 per cent have agreed to such meetings.<sup>90</sup> In the Taiwan Province of China, 5 per cent of secondary school students participate in ‘paid companionship’. This arrangement is facilitated by Internet dating services and often involves the provision of sexual services by the students.<sup>91</sup>

Programmes designed to make children aware of the risks of Internet communications and of the precautions they should take have become commonplace. The European study noted above tends to confirm the effectiveness of such programmes: Two thirds of the students in Ireland had been exposed to awareness activities in school, and the students as a whole demonstrated higher awareness of basic Internet safety rules than students in Nordic countries.<sup>92</sup> Their behaviour also revealed greater compliance with such rules. Only 12 per cent of the Irish students had met in person

someone they first met online, for example, as compared to 17 per cent to 26 per cent of the Nordic students.<sup>93</sup>

The Special Rapporteur also praised a project in Ireland that provides online self-help modules to aid the rehabilitation of persons who access and download child pornography from the Internet.<sup>94</sup>

**Youth congress on online safety.** In July 2008, the first International Youth Advisory Congress was held in London. The Congress focused on online safety and security. Nineteen countries were represented by a total of 148 children aged 14 to 17. The event was organized by the UK Child Exploitation and Online Protection Centre and supported by the Virtual Task Force, an international alliance of law enforcement agencies addressing child sexual exploitation. Comments from the young people included:

*“I have always been told not to talk to strangers that I meet on the street, but nobody told me not to talk to strangers on the Internet.”*

*“Restrictions alone do not work. Freedom to use the Internet, in combination with information on the risk and other protection measures, is the best combination.”*

*“Young people listen to other young people, therefore youth should be involved in developing safety messages on the Internet.”*

In preparation for the Congress, 764 young people aged 11 to 17 from all over the world completed an online survey.<sup>95</sup> Some of the findings were as follows:

- Almost 40 per cent of respondents said they rarely speak about what they do online with their parents/guardians because they do not seem to take an interest.
- 73 per cent said they have access to the Internet whenever they want, with no restrictions on what they view.
- 44 per cent said they had come across images or content they thought were inappropriate for their age.

During the Congress, the young people met with representatives from government, industry, law enforcement, education and the media. During a creative discussion on online security, the young people gave concrete suggestions on how to improve Internet safety, including:

- Broadcasters and advertisers should show films on online safety on television, the sides of buses, on billboards and in online pop-ups screens.
- Industry should develop a mandatory and universal 'report abuse' button on the toolbar of every browser and on all social networking sites. This would require only two clicks to report a problem, without users even having to leave the web page.
- An international online safety industry advisory panel should be established, made up of youth and industry leaders, to represent and report on current issues in their countries to government authorities.
- Governments should use their collective power to pressure the media and industry to promote online safety.
- Teachers, politicians, parents and other adults should be educated to enhance their understanding of online safety issues and to enable them to pass their wisdom on to other adults and young people.
- The term 'child pornography' should be replaced in the CRC with 'child abuse images'.
- Article 6 of the CRC (relating to survival and development) should be expanded to cover both the online and offline worlds.
- A global youth advisory online forum should be made accessible to registered users so that young people have a place to post their opinions and experiences.

A complete summary of the recommendations can be found on the Congress website.

The Congress was the beginning of a process that led to development of a Children and Young Persons Online Charter. It will be used as the basis for a submission to the United Nations as part of the Omnibus Resolution on the Rights of the Child, 2009.

## ■ Reducing demand in the sex trade

Most prevention programmes focus on children at risk of sexual exploitation in the context of prostitution, and on their families. The evaluation done by IPEC suggests that prevention should also focus on reducing demand through advocacy with clients and potential clients, in particular men. According to the Special Rapporteur, this approach is based on the belief that "the majority of men who purchase sex from child prostitutes are probably 'situational offenders' who do not have a distinct preference for children but may use a situation or opportunity to sexually exploit an accessible child."<sup>96</sup> A specialist in the field has pointed out that "the majority of the several million men who annually exploit prostitutes under the age of 18 are first and foremost prostitute users who become child sexual abusers through their prostitute use, rather than the other way around."<sup>97</sup> There is also research indicating that many clients of prostitutes "were dissatisfied with the experience and wanted to stop."<sup>98</sup>

The Special Rapporteur has endorsed programmes designed to reduce the demand for prostitutes and urges States to study programmes directed at clients and potential clients.<sup>99</sup> A study cited by the Rapporteur contains information on a number of such programmes in Canada and the United States.<sup>100</sup>

Programmes aimed at reducing demand are quite diverse. Some have a religious orientation and address a wider variety of behaviours, including use of pornography and infidelity.<sup>101</sup> Some shame clients through confrontations with former prostitutes, while others appeal to the user's self-interest by educating clients about the health risks of commercial sex.<sup>102</sup> Many are diversion programmes that allow participants to avoid prosecution, but some are for convicted offenders and still others are completely voluntary. Several of the programmes last for six to eight hours, but some are as long as eight weeks.<sup>103</sup>

Evaluations of such programmes address both self-reported changes in attitudes and beliefs and rates of recidivism. In one study that surveyed some 750 participants, 97 per cent indicated that they do not intend to resume using the services of prostitutes. The beneficial impact was found to be less for habitual



users.<sup>104</sup> Rates of recidivism are very low, but the significance of this is unclear since rates of recidivism for sentenced clients who do not participate in such programmes is also very low. Below is a summary of a widely recognized programme mentioned by the Special Rapporteur in a report on a 1996 mission to the United States.<sup>105</sup>

**First Offender Prostitution Program, California, United States:** The First Offender Prostitution Program in San Francisco is a diversion programme for men arrested for soliciting a sexual act from a prostitute.<sup>106</sup> Established by Standing Against Global Exploitation (The SAGE Project), an NGO that works with sex workers on rehabilitation, the programme was designed by former prostitutes. It aims to reduce the number of cases brought before the court, reduce crimes linked to prostitution (such as drug use and violence) and address the root causes of prostitution, including violence and misogyny. The programme is implemented with the support of the police, prosecutor, courts, probation department, Office of the Public Defender, Department of Public Health, Office of the Mayor and community groups.

Approximately 75 per cent of the men who are arrested for soliciting the services of a prostitute enrol in the programme and pay for and attend an eight-hour course. First-time offenders are allowed to participate in lieu of prosecution. More than 550 men participate in the course each year. The curriculum includes:

- Laws and facts on prostitution;
- Prevention and treatment of HIV and AIDS and other sexually transmitted infections;
- Effects of prostitution on neighbourhoods;
- Survivor testimony on the effects of prostitution on women;
- Dynamics of pimping and child prostitution;
- Behaviour and expectations of clients, and challenges to men's capacity for intimacy.

The testimony of former prostitutes who disabuse men of myths concerning prostitution (for example, that prostitutes enjoy their work and that prostitutes are not all drug users) is a crucial part of the programme.

In a survey of men completing the programme, 97 per cent said that it is unlikely or highly unlikely that they would solicit a prostitute again, and the recidivism rate of men who completed the course is under 1 per cent. Programmes based on this model have been adopted in many North American cities.

### ■ Travel and tourism

Programmes to prevent the sexual exploitation of children in travel and tourism, many focusing on prostitution, have proliferated in the recent past. The importance of sexual exploitation in travel and tourism is highlighted by data from some countries, which indicates that as many as 80 per cent of men who admit to using prostitutes have done so during business trips or tourism abroad.<sup>107</sup> Such programmes often emphasize the criminal penalties attached to exploitation of children and the possibility of prosecution in a person's own country for acts committed abroad, thanks to laws recognizing extraterritorial jurisdiction.<sup>108</sup> Data on the effectiveness of such efforts are scarce, but the Special Rapporteur has reported that communication projects, such as in-flight videos and websites aimed at preventing sexual exploitation in travel and tourism, have been effective in raising awareness and potentially strengthening travellers' willingness to take action when confronted with these violations.<sup>109</sup>

### ■ Sale of children/international adoption

Documentation of good practices aimed at preventing the sale of children is rare. One exception is a reference by the Special Rapporteur to action taken by Paraguay to end the irregularities that had plagued inter-country adoption. The Rapporteur noted that "Between 1990 and 1995, approximately 3,000 babies left the country as a result of inter-country adoptions that were riddled with irregularities." He endorsed the adoption of legislation suspending international adoptions, thus "putting an end to trafficking in babies for inter-country adoptions."<sup>110</sup>

### Law reform

The OPSC imposes a number of legislative requirements. Article 2 obliges States Parties to incorporate certain offences in their criminal law and ensure that the corresponding penalties take

into account their gravity. Articles 4 and 5, concerning court jurisdiction over offences committed outside the territory of the State Party and extradition, requires review of legislation to ensure compliance, as does Article 7, which concerns the closure of facilities, seizure of materials used in the commission of relevant crimes and confiscation of proceeds.

Some obligations, such as protecting the rights of exploited children in the criminal justice process, require a combination of law reform and other action, such as establishing and funding services or programmes. Other obligations, such as strengthening international cooperation, may be satisfied through legislation or other means – such as adoption of policies, guidelines or agreements – depending on the State's legal and institutional traditions.

There are gaps concerning child prostitution and pornography in the criminal laws of many States Parties. Common gaps are laws that only criminalize the prostitution of children below the 'age of consent' or that define prostitution in gender-specific terms, or exclude certain sexual acts. For example in South Asia, some national legislation on trafficking often focuses on sexual exploitation of women and girls, which neglects trafficking of boys for sexual exploitation. The laws of some countries focus on the immorality of sexual activities rather than the exploitation and abuse that have occurred. As a result, trafficking survivors may be held legally accountable for acts committed as a result of sexual exploitation.<sup>111</sup> Laws that comply with all the requirements of the OPSC have not been identified, but there are examples of laws adopted in order to remedy some of the most important gaps in legislation.

The child protection act adopted by *the Philippines* in 1992, for example, complies with many of the requirements of the OPSC. The Act criminalizes the prostitution of boys and girls below the age of 18, as well as the attempt to commit child prostitution and the use of children in pornographic performances.<sup>112</sup> Child prostitution is broadly defined to include "lascivious conduct" as well as intercourse and providing sex under coercion or the influence of an adult, syndicate or group, even if payment or consideration is not involved.<sup>113</sup> The law authorizes immediate closure of establishments that promote or facilitate child prostitution, child pornography or trafficking of children.<sup>114</sup>

In *Japan*, the law on *Punishing Acts related to Child Prostitution and Child Pornography, and for Protecting Children*, adopted in 1999 and amended in 2004, also complies with many of the requirements of the Optional Protocol.<sup>115</sup> It prohibits the prostitution of any child below the age of 18 and defines prostitution broadly to include not only intercourse but also "similar" acts and acts "for the purpose of satisfying one's sexual curiosity".<sup>116</sup> The use of child prostitutes is punishable by five years' imprisonment and the facilitation of child prostitution by imprisonment for seven years.<sup>117</sup> Production, distribution, sale, possession or transportation of child pornography as a business is punishable by up to three years of imprisonment.<sup>118</sup> Legal entities whose employees commit such crimes can be fined up to 10 million yen.<sup>119</sup> The law gives Japanese courts jurisdiction over nationals involved in child prostitution and child prostitution abroad, and recognizes the duty to provide children who have suffered mental or physical damage, or both, as a result of prostitution or pornography, with protection and recovery assistance.<sup>120</sup> According to ECPAT, the amendment to the law "has had a significant deterrent effect."<sup>121</sup>

Both Japan and the Philippines have also adopted laws or rules to make participation in legal proceedings less of a burden for child survivors and witnesses. Japan's code of criminal procedure was amended in 2000 to allow child witnesses to testify without being seen by the defendant, from behind a screen or via video link.<sup>122</sup> In 2000, the Supreme Court of the Philippines adopted a Rule on Examination of a Child Witness that allows child witnesses to be questioned through an intermediary ('facilitator'), recognizes the right to be accompanied by one or two support persons of his or her choice, imposes on the court a duty to "protect children from harassment or undue embarrassment"; authorizes testimony by video link and eliminates the requirement of corroboration.<sup>123</sup>

The Law against the Exploitation of Prostitution, Pornography and Sexual Tourism to the Detriment of Minors adopted by the parliament of *Italy* in 1998 prohibits the sexual exploitation of all children under the age of 18 (previous law protected only those under age 16) and increases applicable prison sentences.<sup>124</sup> Some of the proceeds from fines and seizure of materials

used in the commission of crimes involving the sexual exploitation of children are put into a fund for victim rehabilitation.<sup>125</sup> Italian courts are given jurisdiction over child prostitution and pornography committed abroad.<sup>126</sup>

Italian legislation concerning child pornography was strengthened in 2006 with the adoption of Law No. 38 on Provisions to Fight the Sexual Exploitation of Children and Child Pornography. The use of children under 18 in the production of pornography and the sale of pornographic materials featuring children under 18 are now punishable by up to 12 years imprisonment and fines of up to €250,000.<sup>127</sup> Distribution of child pornography, whether or not for remuneration, and possession of child pornography, are punishable by up to three years of imprisonment.<sup>128</sup> The law covers computer-generated or modified images that resemble children as well as representations of actual children.<sup>129</sup> The law also established a system for exchange of information between the banking system and the government to facilitate investigation of financial transactions related to child pornography.<sup>130</sup>

The OPSC obliges States Parties to criminalize the sale of children, including “improperly inducing consent to adoption.” The Hague Conference on Private International Law, which supervises implementation of the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, has pointed to legislation adopted by Chile and Lithuania as examples of good practice.<sup>131</sup> In **Chile**, Adoption Act No. 19,620 of 1999 provides that “anyone who requests or accepts any form of consideration for facilitating the transfer of a minor for adoption” may be sentenced to a term of imprisonment of up to three years, or five years if the perpetrator is a public servant, attorney, physician, nurse, social worker or person having custody of the child acting in a public or professional capacity.<sup>132</sup> In **Lithuania**, the Criminal Code of 2003 punishes the sale of children (for this or any other purpose) by up to eight years imprisonment.<sup>133</sup> The Hague Conference encourages States Parties to publicize the penalties for sale of children for purpose of adoption so as to maximize their deterrent effect.<sup>134</sup>

## Law enforcement

Law enforcement is an essential part of efforts to combat the sale of children, child prostitution

and child pornography. The Special Rapporteur has pointed out that weak law enforcement leads to a “culture of impunity” that he considers one of the main causes of sexual exploitation of children:

*A culture of social and legal impunity for exploiters encouraged the demand for sexually exploitative services such as child prostitution. The problem generally does not seem to result from a lack of legal provisions criminalizing sexual exploitation, but rather from an implementation gap. Respondents pointed to a lack of effective law enforcement measures, difficulties in reporting crimes to the authorities and ensuring their effective investigation. Some respondents also stressed that not enough technical and human resources were dedicated to combating sexual exploitation. Non-governmental organizations operating in a range of countries also explained that corruption and the complicity of police and officials in cases of trafficking exacerbated the problem of impunity. In addition, a number of respondents noted a failure to adequately protect and assist victims in the criminal process, causing victims to refuse to testify.<sup>135</sup>*

It is noteworthy that since the adoption of the Convention on the Rights of the Child in 1989, many countries have undertaken programmes aimed at raising awareness of child rights for law enforcement personnel, prosecutors and judges. It is hoped that the training will raise these officials’ commitment to enforcement of legislation against the sale and sexual exploitation of children.

The Special Rapporteur has also praised efforts towards the implementation of witness protection laws. Such programmes will be designed to encourage more witnesses to cooperate with law enforcement authorities in investigating and prosecuting such crimes.<sup>136</sup>

Many countries have also established specialized law enforcement units to combat the distribution of child pornography via the Internet as well as other uses of the Internet linked to the sale and sexual exploitation of children. As is noted throughout this handbook,

international cooperation is essential in order to identify the producers and distributors of child pornography, the users and the children exploited, as well as to disrupt distribution.

The following are examples of noteworthy projects:

In **South Africa** in 2002, the Special Rapporteur on the sale of children, child prostitution and child pornography visited specialized police sections called Child Protection Units.<sup>137</sup> The units were first established in the mid-1980s to ensure that exploited children were handled by specially trained police officers. The mandate of some officers was later expanded to include sexual crimes with adult victims. At the time of the mission, there were 33 Child Protection Units and an additional 12 units providing specialized services to victims of sexual offences of all ages. Even where services are provided to both children and adults, efforts are made to make the premises child friendly. The children's section of the Johannesburg unit, for example, has a small playground. Upon arrival, all children are given a kit with personal care items.

Police officers assigned to these units receive four weeks of special training. They are assisted by psychiatrists and social workers who help survivors deal with their trauma through an empowerment programme. Before a case comes to court, the children are able to familiarize themselves with the courtroom and are oriented on how to answer questions and on other practical matters regarding their participation in the proceedings. The Special Rapporteur called these practices "extremely impressive" and well designed to "increase public confidence that victims of sex offences will not be further traumatized by their decision to report an offence."

After a mission to the **United States**, the Special Rapporteur praised a police programme that ensures interdisciplinary attention to the needs of children who have been sexually exploited. In San Francisco, the police department has experts on 24-hour call to respond to cases involving child prostitution and pornography. The subsequent investigation follows an approach, instituted in 1984, whereby a social worker, a doctor or nurse therapist and a police officer immediately attend to the child. The state then provides the

child with psychological support and medical care, up to a value of \$15,000 over a lifetime. This is particularly important, since experience shows that most rehabilitated children can cope as long as they have counselling. Police officials also believe that it is key for trauma specialists to work with survivors of sexual abuse and rape. Since for survivors law enforcement is the first entry point into the criminal justice system and immediate confidence-building is needed, this is of particular importance.<sup>138</sup>

From 2003 to 2005 a research project in London, **United Kingdom**, commissioned and funded by the Bridge House Trust and carried out by Barnardo's Policy Research Unit, investigated the nature and need for services among young people at risk of sexual exploitation. Data were collected from over 100 people, including child protection coordinators and lead officers working on sexual exploitation in 30 boroughs of London. This included representatives from the police, health services and education departments, the voluntary sector and young people. The research presented a number of recommendations, including that governments should remove provisions to arrest and prosecute young people who are considered to "persistently and voluntarily return" to prostitution. It also recommended that the local authorities develop a protocol on how to deal with sexual exploitation and actively promote it among agencies for a proactive identification of young people at risk. It further suggested that authorities promote inter-agency capacity-building on providing responses to young people at risk of sexual exploitation.<sup>139</sup> The research concluded that active investigation of cases of missing or runaway children often produces valuable information about sexual exploitation of children.<sup>140</sup>

Some countries have adopted policies that shift the law enforcement focus from prosecution of prostitutes to prosecution of clients. The **Republic of Korea** adopted this approach in 2004 and later informed the Special Rapporteur that a new law providing sentences of up to a year for the clients of sex workers "helped bring about changes in men's perception of prostitution as an act of violence against women and a matter of human rights violation." It added, "Tougher punishment has in turn resulted in a substantial decrease in the number of brothels (about a 36 per cent

decrease from pre-enactment days) and in the number of men who purchase sex (about 86.7 per cent were reported to have used sexual services less frequently).<sup>141</sup> Although the practice of prosecuting sex workers rather than clients does not apply to the sexual exploitation of children, reversing this practice and focusing on clients of sex work in general nevertheless has a beneficial impact on child prostitution to the extent that it is embedded in general sex work.

In 2003 the Special Rapporteur carried out a mission to **Brazil**. He concluded that, although national implementation of the landmark 1990 law on child rights had been disappointing, valuable practices existed in some states and municipalities.<sup>142</sup> One example is the specialized courts for prosecution of crimes against children and specialized prosecutor units established in three large municipalities. In one, the creation of a specialized court and prosecutor unit significantly reduced delays in adjudicating cases: "Previously, the delay between the reporting of a case and the decision of the court was 3 to 16 years. In 2002, this was reduced to less than one year in 65 per cent of cases."<sup>143</sup>

In addition to steps taken to make the courtroom more child-friendly, one court has adopted a programme of outreach activities designed to bring it closer to the children of marginalized communities. Court staff visit the community each month, providing birth certificates, identity cards and work permits, and the judge invites children living or working on the street to lunch each week.<sup>144</sup> The Special Rapporteur called such practices commendable and an "inspiring model" within the judiciary.<sup>145</sup>

During a mission to **Albania**, 31 October to 7 November 2005, the Special Rapporteur praised the creation of a special criminal court (the Court of Serious Crimes) and the specialized branch of the Prosecutor's Office for serious crimes, which has competence over trafficking. The work of these institutions resulted in increased and more effective prosecution of those engaged in the trafficking of children and adults.<sup>146</sup>

In his report on a visit to **Mexico**, 4 to 15 May 2007, the Special Rapporteur welcomed the adoption of legislation giving federal law enforcement agencies jurisdiction over the

sexual exploitation of children. He also praised efforts made by prosecutors to combat corruption and to increase awareness of the issue of sexual exploitation of children. These efforts will gain the confidence of the public, whose reluctance to report cases to the authorities has been a major obstacle to law enforcement.<sup>147</sup>

In 1997, the earlier mentioned National Center for Missing & Exploited Children in the **United States** established a unit to combat child pornography. Following initiation of an effort in 2002 to identify children through analysis of photos, more than 1,000 exploited children have been identified.

The Special Rapporteur has praised a specialized police unit established in the **Ukraine** to combat child pornography by monitoring the Internet, mentioning in particular the importance of cooperation with international agencies such as Europol and INTERPOL.<sup>148</sup>

## Assistance to survivors

### Key elements of IOM programmes

On the basis of visits to many facilities and programmes for children who have been sexually exploited, the Special Rapporteur has commended the *IOM Handbook on Direct Assistance for Victims of Trafficking* published by the International Organization for Migration in 2007.<sup>149</sup> The handbook covers the following topics:

**Medical care:** The physical and mental well-being of child survivors is critical to their recovery. Health practitioners are responsible for employing health-promoting strategies that help children reclaim and develop their competencies for an active and meaningful life. Recognizing the risks children face in their home environment is essential to assessing health needs and options for integration and reintegration planning. The health and safety of all residents and staff in a shelter are also of the utmost importance.

**Psychological assistance:** Each shelter should have staff responsible for providing direct psychological assistance to those who have been trafficked. International standards state that children have the right to express their views freely in all matters concerning them,

and their views should be “given due weight in accordance with the age and maturity of the child” (article 12 of the CRC). Practitioners must provide full information at a level children can comprehend to allow them to participate in decisions affecting their well-being, and the children’s views must be taken seriously. It is also important to inform children about their rights and obligations vis-à-vis other residents of the shelter.

**Interviews:** It is important to find out as much as possible about the child’s case prior to the interview, to make clear and friendly introductions, and to create a space that is safe and comfortable for conversation. Discussions with children about sexual abuse are best carried out by professionals or by an individual with whom the child has already established a strong rapport.

**Education:** Learning is a cornerstone of child development. It is necessary to begin fostering learning by offering classes and tutorials or entering children in local school programmes, when safe and appropriate.

**Recreational activities:** Shelters should plan daily recreational activities for residents, giving them the opportunity to work with others, undertake constructive tasks, regularize sleeping hours and so forth. Physical exercise enhances fitness, body control and confidence. Arts and crafts activities are therapeutic, foster skills and, like sports, enable children to interact with other children in a healthy environment.

## NGO programmes for survivors

Non-governmental organizations are the main providers of services for survivors of sexual exploitation and other forms of abuse. Following are summaries of several such programmes in diverse countries around the world.

In the **United Kingdom**, Barnardo’s operates voluntary non-residential programmes for children and young adults who have been sexually exploited and for those at high risk. The approach used by the agency’s 16 centres has four pillars: Access, assertive outreach, attention and advocacy.<sup>150</sup>

**Access** refers to provision of services in a safe, attractive atmosphere and to the awareness needed by service providers to identify exploited and at-risk children and refer them to

the programme. **Assertive outreach** means persistent efforts to win the trust of potential beneficiaries in the community where they feel comfortable. This is necessary because most exploited children do not initially recognize their own exploitation and many have had negative experiences with service providers. **Attention** refers to staff members’ efforts to develop personal protective and supportive relationships with each child; typically they have been deprived of this type of relationship, which has increased their vulnerability to exploitation. **Advocacy** refers to assisting beneficiaries in obtaining needed assistance such as shelter, health care, education, employment, parenting skills, treatment of dependencies and legal services. Receiving the right kind of support at the right time can be a turning point in the lives of exploited and at-risk children.<sup>151</sup>

An evaluation of 226 children under age 18 who had been sexually exploited and had been involved in the programme for at least 12 months found that 34 per cent “were in a currently stable situation and had completely exited exploitative relationships”, and 75 per cent “showed a significantly reduced level of exploitation.”<sup>152</sup>

In Kolkata (**India**) the NGO Sanlaap, in cooperation with Terre des Hommes, operates a project designed mainly for children or minors who are victims of commercial sexual exploitation and trafficking.<sup>153</sup> It also provides shelter to the children of prostitutes and children at risk. The programme follows a holistic, rights-based approach, emphasizing personal contact and compassion as key to protection and healing. Services provided include education, vocational training, counselling (individual, group and family) and legal assistance, as well as cultural activities in the form of traditional dance.<sup>154</sup> Girls living in the shelters elect their own leaders who are responsible for running the home, and some beneficiaries become peer counsellors.<sup>155</sup> Around 250 girls live in four shelters, and follow-up services are provided to those who have returned to the community. This project is seen as a model of comprehensive, low-cost care that provides protection and assistance consistent with international standards of care. Guidelines for the operation of such facilities, based in part on the Sanlaap experience, were developed by the NGO Planète Enfants (see Box 1, page 28).<sup>156</sup>

## Box 1

### Principles regarding care facilities for children who are sexually exploited in prostitution

**The institution as a last resort.** The well-being of women and children is best promoted in a family setting. Should this be unavailable, informal ‘family-like’ care provided in the community, such as care by the extended family or foster care, is the next best option. Formal residential settings are appropriate only if informal settings are unavailable, or the victim requires formal institutional care for legal, medical or psychological reasons.

**Rapid reintegration.** The care facility has an obligation to periodically review placements with the objective of reintegrating the victim into the family or an alternative community setting quickly and effectively. Prolonged institutionalization is discouraged since it bars effective reintegration of children.

**Consent.** Consent should be sought from children prior to their placement in residential care, but their consent can be waived by their parents, guardians and persons in authority for reasons of their protection and well-being.

**Access to family.** All children and adults in care have the right to meet and interact with family members, including those who are in prison or who may have committed abuse.

**Access to appropriate information.** All persons in care have the right of access to all information (in a child-friendly or age-appropriate way) about their situation, identity and family and medical condition, among other issues. Denial of information is acceptable only for reasons of protection or risk of possible psychological distress.

**Participation in decisions.** All children and adults in care have the right to express their opinions and participate in decisions on all matters affecting them, including residency, treatment, education and occupational training.

**Association with others.** The care facility has the obligation to provide all persons in care with access to persons in the surrounding community and the support of peers, and to encourage positive relationships and attachments.

**Healing environment.** The care facility should create a healing social and physical environment. The social environment should include friendly, positive, non-authoritarian interaction between residents and staff; adequate time and opportunity for recreational activities; and access to friends and family. The physical environment should include a personal space for each resident (a private bed, a place for storage of personal belongings, the opportunity to personalize private space with one’s own belongings such as photographs and mementos), and comfortable, clean, home-like surroundings.

Source: Adapted from Frederick, J., *Guidelines for the Operation of Care Facilities for Victims of Trafficking and Violence against Women and Girls: Rationale, basic procedures and requirements for capacity building*, Planète Enfants, Kathmandu, 13 March 2005.

Casa Alianza has established shelters for child victims of commercial sexual exploitation in **Honduras**. This programme provides assistance in social reintegration to some 80 to 90 children each year. Activities include legal assistance, drug rehabilitation, vocational training and counselling, sports, cultural activities and guidance in developing self-esteem and setting goals. Follow-up services are provided for some of the children who have been reintegrated into their families.<sup>157</sup>

A ‘transit home’ facilitates the reintegration of exploited children in the **Taiwan Province of China**.

Children who have been released from residential programmes operated by the government may enter the home, which is operated by ECPAT. Participation is voluntary and based on a contract between ECPAT and the beneficiary. The duration of stay ranges from 1 month to 21 months.<sup>158</sup>

**Paraguay** has a programme for victims of sexual exploitation that the Special Rapporteur considers to be a model.<sup>159</sup> Run by an NGO, girls are identified through outreach on the street and in brothels. When an outreach worker believes a

girl is ready, she is invited to sign a 'contract' committing her to participate in what is called a multi-stage journey back to life. The process takes about three years and includes five stages: welcome, integration, exploration, life plans and training for life.<sup>160</sup>

In *Romania* the NGO Reaching Out operates a shelter for females aged 15 to 24 who have been trafficked.<sup>161</sup> The programme's philosophy is to "empower women and girls to restore respect and esteem for themselves through a personalized approach."<sup>162</sup> Vocational training provided through the programme allows participants to gain skills. The young women leave the programme only after getting jobs and some savings. Before returning to the community, they are expected to prepare a budget and have sufficient savings to meet their expenses for at least three months.<sup>163</sup>

Many shelters and rehabilitation programmes focus on girls and women, providing less protection for boys who have been sexually abused or exploited. The treatment of boys who have been sexually abused differs from the treatment of girls. Families may believe that boys, consistent with the stereotype of boys as being 'strong', are less affected by the abuse.<sup>164</sup>

The Special Rapporteur has developed a set of recommendations for shelters harbouring children who have been forced or sold into prostitution (see *Box 2, at right*).

## Frameworks for implementation

The Committee on the Rights of the Child has emphasized the importance of the general measures of implementation for putting the CRC into effect.<sup>165</sup> It has not commented on the importance of such measures for the OPSC. But the OPSC reporting guidelines contain a section on general measures,<sup>166</sup> and there is no doubt about the importance of comprehensive national plans or strategies, coordinating mechanisms and other such measures as the framework for actions aimed at prevention, law enforcement and assistance to survivors.

Delegates to the First World Congress against Commercial Sexual Exploitation of Children adopted an Agenda for Action to "strengthen comprehensive, cross-sectoral and integrated strategies and measures" leading to "national agenda(s) for action and indicators of progress,

## Box 2

### Special Rapporteur's recommendations on shelters for children exploited in prostitution

At a minimum, shelters should provide the following services and facilities:

- A place of residence with decent living conditions and a homey environment;
- Appropriate food and clothing;
- Full medical aid, including hospital treatments and surgeries, if needed;
- Competent and specialized staff;
- Psychological counselling;
- Education facilities that allow children to follow the appropriate school curriculum;
- Legal aid and court representation, if the victim so requires;
- Translation and interpretation services in a language the victim understands, if needed;
- Personalized care in order to ensure the best interests of each child are met;
- Participation in appropriate recreational activities and diverse programmes of rehabilitation and reintegration. These could include education/vocational skills programmes, and support in finding employment, when relevant;
- Security both inside and outside the shelter, particularly to protect minor victims who are still vulnerable to their exploiters and to traffickers (who often belong to criminal groups);
- Participation of civil society should be encouraged and facilitated.

*Source:* Adapted from: United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, A/HRC/7/8, United Nations, New York, 9 January 2008, para.75.

with set goals and a time frame for implementation."<sup>167</sup> The global commitment made by countries that participated in the Second World Congress includes closer networking between national and local authorities and other key governmental and non-governmental actors; adoption and implementation of national and regional agendas, strategies and plans of action; and allocation of adequate resources.



The Third World Congress against Sexual Exploitation of Children and Adolescents, which took place in Rio de Janeiro, Brazil, in November 2008, provided an opportunity to reconfirm those pledges and make new commitments to ratify and implement the OPSC through the general measures of implementation.

According to ECPAT, 28 countries have adopted comprehensive national plans of action for combating commercial sexual exploitation of children.<sup>168</sup> ECPAT has developed a model plan of action that lists the following objectives:<sup>169</sup>

1. Identify ongoing causes of vulnerability and patterns of exploitation among girls and boys experiencing commercial sexual exploitation, and gaps in existing legislation, policies and services that protect children.
2. Ensure public, political, community and official awareness of child abuse and commercial sexual exploitation of children.
3. Ensure international cooperation and coordination in prosecution of offenders and protection of children.
4. Ensure that there are comprehensive laws that cover all aspects of commercial sexual exploitation of children.
5. Enforce laws to protect children from commercial sexual exploitation.
6. Ensure that children are not victimized by the legal system.
7. Reduce factors that make children vulnerable to commercial sexual exploitation.
8. Ensure that children are educated to protect themselves against commercial sexual exploitation.
9. Prevent computer-literate children from being sexually exploited.
10. Provide health care and sex education for young people.
11. Encourage community understanding of the rights of the child, especially protection and prevention of commercial sexual exploitation.

12. Provide services to rescue and protect children from commercial sexual exploitation.

ECPAT also recommends children's active participation in policy and programme development (see Box 3, page 41). The Declaration and Agenda for Action of the First World Congress included child participation as a specific point of action (section 6), as follows:

- a) Promote the participation of children, including child victims, young people, their families, peers and others who are potential helpers of children so that they are able to express their views and to take action to prevent and protect children from commercial sexual exploitation and to assist child victims to be reintegrated into society; and
- b) Identify or establish and support networks of children and young people as advocates of child rights, and include children, according to their evolving capacity, in developing and implementing government and other programmes concerning them.

Unfortunately, documenting positive practices on national frameworks for combating exploitation of children has not been a priority thus far for the relevant UN bodies. Only a small number of references to best practices have been identified. Among them is the Special Rapporteur's favourable comments on the general measures of implementation of the OPSC in his reports on country visits. He has praised the Parliamentary Mixed Commission in **Brazil** for an investigation of violence and sexual exploitation of children and adolescents. Established in 2003, the Commission analyses legislation with a view to amending inadequate laws and filling gaps, assesses the impact of public policies to identify deficiencies and good practices, and investigates representative cases.<sup>170</sup> The Special Rapporteur concluded that the Commission had done a great deal to raise awareness of the issue of sexual exploitation of children.<sup>171</sup>

In 2006, a seminar was held in Estonia to identify best practices in combating sexual exploitation of children in **Estonia**, the **Netherlands** and the **United Kingdom**.<sup>172</sup> Participants concluded that key practices include early identification, immediate

protection, harm reduction and long-term recovery assistance. They agreed that protection efforts are most effective when implemented holistically through inter-agency mechanisms involving both child protection and criminal justice professionals.<sup>173</sup> The value of national plans was also underlined, as follows:

*Every country needs a National Action Plan against child sexual exploitation which is regularly reviewed and fully implemented by national government. A Plan can identify specific appropriate legal and policy frameworks, how these should operate on local and regional levels and what resources are required to be effective. It is also necessary because such a plan can then inter-connect with other national/local strategies of specific relevance – e.g. crime reduction, substance misuse, child protection, sexual offending, education, health, anti-violence*

*etc. Doing so will ensure that the issue of child sexual exploitation is kept more firmly and clearly on the agenda of diverse professional groupings and government departments who need to act in relation to combating child sexual exploitation.*<sup>174</sup>

In situations of international trafficking for purposes of child prostitution, cooperation between and among countries is essential for prevention, law enforcement and assistance to child survivors. One positive example is a mechanism established with the support of ILO-IPEC in the area adjoining the borders of **Argentina, Brazil and Paraguay**.<sup>175</sup> A committee was formed with representatives of groups fighting child prostitution from three municipalities, one in each country. It has carried out public-awareness activities and trained teachers, community workers, police, judges and prosecutors.<sup>176</sup>



# 4

## MONITORING SYSTEMS

This chapter addresses the tools and systems for monitoring of sexual exploitation of children, which are fundamental to prevention and protection. It also highlights sources of data in countries lacking comprehensive monitoring systems, as well as independent monitoring initiatives such as those undertaken by non-governmental organizations (NGOs).

Monitoring occurs on two levels. Narrowly it assesses efforts designed to systematically register violations of human rights, and broadly it assesses progress in implementing international human rights standards, such as article 43 of the Convention on the Rights of the Child (CRC). It is possible, for example, to monitor sexual exploitation of children as well as implementation of the obligations contained in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). These types of monitoring overlap but are not identical.

The importance of monitoring, especially in the broader sense of the term, is widely recognized. Accordingly, the Committee on the Rights of the Child made the following comment on the importance of monitoring implementation of the Convention on the Rights of the Child (CRC):

*Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.<sup>177</sup>*

It is important to recall the Committee's guidelines for States Parties on preparing obligatory reports concerning the OPSC. As with reports pertaining to implementation of the CRC itself, the guidelines give considerable emphasis to the kinds of data considered essential to evaluate implementation.<sup>178</sup>

The Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children urges States to develop monitoring mechanisms and databases on "children vulnerable to commercial sexual exploitation, and on their exploiters, with relevant research and special attention to disaggregating data by age, gender, ethnicity ...[and] circumstances influencing commercial sexual exploitation." The Global Commitment made at the Second World Congress also recognizes the importance of "national monitoring mechanisms." Likewise, the 2006 United Nations Study on Violence against Children calls for establishing robust monitoring systems to track progress in protecting children from all forms of violence, abuse and neglect.

The International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ('Worst Forms of Child Labour Convention') also requests that States Parties establish mechanisms to monitor the sale of children, child prostitution, child pornography and the other particularly grave forms of exploitation covered by the Convention. The recommendation related to the Convention (Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour) states, in part:

*Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.*<sup>179</sup>

## Quantitative and qualitative indicators

In 2006, the Committee on the Rights of the Child adopted revised guidelines for reporting on implementation of the OPSC.<sup>180</sup> Many of

the indicators are qualitative and refer to questions such as adoption of laws or policies, but many quantitative indicators are also used.<sup>181</sup> They include:

1. Indicators on the extent and characteristics of sale of children, child prostitution and child pornography, such as:
  - Number of child victims of sale, disaggregated by the reason for the sale (sexual exploitation, transfer of organs for profit, forced labour, illegal adoption and other forms of sale);<sup>182</sup>
  - Number of child victims of trafficking, disaggregated by type of exploitation and whether or not the trafficking is international;
  - Number of children engaged in any form of prostitution, disaggregated according to the nature of the prostitution (heterosexual or homosexual, commercial, linked to sex tourism, sexual slavery, sexual exploitation of child domestic workers, sexual exploitation of students by teachers, sexual exploitation linked to religious practices);
  - Data on production, importation, distribution and consumption of child pornography within the territory, disaggregated according to the medium used (photographic images, video recordings, digital images distributed via the Internet, etc.);
  - Data indicating increases or decreases of the above-mentioned practices or products over time.
2. Indicators regarding preventive measures, which include any available data on the impact and effectiveness of prevention measures.
3. Indicators regarding law enforcement, such as:
  - Number of prosecutions and convictions for the offences defined by the OPSC, disaggregated by offence;
  - Number of child victims of sexual exploitation placed in detention facilities during criminal investigations or proceedings;
  - Number of child victims of sexual exploitation placed in the custody of foster parents, guardians or others;

- Number of programmes that assist child victims of sexual exploitation during criminal proceedings and the nature of the agencies offering such services (i.e. governmental vs. non-governmental);
- Number of requests for extradition made or received for any of the offences referred to by the Protocol and whether such requests have been honoured or denied;
- Results obtained through multilateral, regional and bilateral arrangements regarding mutual legal assistance.

#### 4. Indicators on assistance to victims, such as:

- Number of agencies that provide assistance to child victims and their locations, disaggregated by the nature (public or private) of the agency;
- Number of children who receive such assistance by age and sex, type of abuse suffered and whether assistance is provided in a residential or non-residential setting;
- Results of evaluation(s) of the assistance provided;
- Unmet demand for such services, if any;
- Number and amount of any awards (compensation) made to victims of sale of children, child prostitution and child pornography as a result of legal or administrative proceedings or settlements supervised by legal or administrative bodies.

The indicators used by the Committee to assess efforts by States Parties to comply with their obligations under the OPSC are also useful to the States. They can help in analysing the nature and extent of the practices prohibited by the OPSC within a State's territory and may be useful in developing plans, strategies and policies aimed at eliminating them and in evaluating the effectiveness of the measures taken.<sup>183</sup>

## Criteria for disaggregating data

Data used as a basis for developing plans, strategies and policies are more useful when disaggregated according to criteria that help the measures focus on those most in need. Similarly,

data on the impact of measures are more useful when disaggregated to reveal details about where they are most and least effective.

The Committee on the Rights of the Child has indicated that "Data included in the reports submitted pursuant to article 12 of the Protocol should be disaggregated, to the extent possible, by sex, region, age and by nationality and ethnicity, if relevant, and any other criteria that the State party considers relevant and that would help the Committee come to a more accurate understanding of the progress made in implementing the Protocol and any remaining gaps or challenges."<sup>184</sup> Another provision of the guidelines specifically reinforces the importance of data on the number of child victims of sale, prostitution and pornography who are foreign or stateless.<sup>185</sup>

The ILO's Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour likewise indicates that the data States collect on 'worst forms' of child exploitation should be disaggregated by, among other factors, geographical location and the sex and age of the child.<sup>186</sup>

## Mechanisms for monitoring and data collection

Few reports to the Committee describe national systems for monitoring or data collection on the sale of children, child prostitution and child pornography. Neither are there many attempts to quantify the impact of measures taken to prevent such practices, enforce the law or assist child survivors. The report of **Chile** on the OPSC mentions that, in 2002 and 2003, a national study was carried out, supported by the International Labour Organization/International Programme on the Elimination of Child Labour (ILO/IPEC) programme, on the extent and nature of child prostitution.<sup>187</sup> The study concluded that some 3,700 children were involved in prostitution and that their average age was 12 to 13.<sup>188</sup>

This led to the establishment in 2004 of a permanent national inter-agency system for collecting data on cases of child prostitution and other 'worst forms of child labour'.<sup>189</sup> The system is coordinated by Servicio Nacional de Menores (SENAME, the National Service for Minors).

Sources of information include the national police, criminal investigative police and relevant units of the ministries of labour, education and health. Twenty-two per cent of registered cases concern commercial sexual exploitation.<sup>190</sup>

The Office of the Public Prosecutor also keeps detailed records on several crimes involving the sexual exploitation of children: obtaining the sexual services of a person under the age of 18; promoting or facilitating the prostitution of persons under the age of 18; production of child pornography, sale of child pornography and acquisition or storage of child pornography.<sup>191</sup> The data are disaggregated by the following criteria:

- Offence against and sex of the victim
- Offence and age of the offender
- Offence and sex of the offender
- Outcome of the proceeding (this includes, among others, acquittal, conviction, dismissal, decision not to proceed and temporary suspension)
- Sentence imposed (for those cases that result in a conviction).

SENAME provides preventive services to children at risk and rehabilitative services to children who have been exploited through or in prostitution and pornography. Data are disaggregated by region, sex and age, and the percentage of children who successfully complete rehabilitation programmes is documented. The data have been useful in identifying bottlenecks in the prosecution of cases and in presenting the case for expanding services for children who have been sexually exploited.<sup>192</sup>

In those countries that have not yet established such inter-agency monitoring mechanisms, law enforcement agencies can be useful sources of data, especially those agencies working towards development of more comprehensive data collection and monitoring systems. For example, in *Bangladesh* in 2004, the police established a national network that collects data on trafficking of persons with a view to monitoring the investigation and prosecution of this crime and the treatment of victims.<sup>193</sup> Each of the 64 district headquarters compiles data and sends it to a

'monitoring cell' at national police headquarters, which in turn sends periodic reports to the Ministry of Home Affairs. Certain cases are selected for closer follow-up. The Ministry of Foreign Affairs also maintains data on the number of persons detained abroad who are awaiting repatriation. The information collected by the police monitoring system includes the number of:

- Case investigations opened
- Suspected traffickers involved
- Cases involving public officials
- Suspected traffickers (children and adults) arrested
- Traffickers convicted
- Suspected traffickers acquitted
- Victims recovered (disaggregated by age and gender)
- Children/women/men returned to parents/guardians or admitted to safe homes operated by the Ministry of Social Welfare or NGOs.

According to official sources, this system "is significantly contributing to combat the problem of trafficking in women and children more effectively and efficiently."<sup>194</sup> Although the government recognizes that sexual exploitation of children and adolescents is "a significant problem," no similar system exists for compiling data on child prostitution and pornography.<sup>195</sup>

## Other sources of data

Even some countries lacking comprehensive national monitoring systems produce reports to the Committee containing information that illustrates the usefulness of baseline studies and rapid assessments. The value of such information in the design of prevention activities is self-evident.

Effective implementation of the OPSC also requires monitoring the effectiveness of prevention and rehabilitation programmes. Costa Rica's report cites the results of a prevention programme designed to train unemployed adolescents for legitimate

employment in the tourism sector.<sup>196</sup> The data covered the number of graduates and dropouts who found employment in the tourism sector as well as the number of graduates and dropouts who did not find employment.<sup>197</sup>

## Independent monitoring

The Committee has also observed that, while “Self-monitoring and evaluation is an obligation for Governments.... The Committee also regards as essential independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions.”<sup>198</sup>

Reports of the Special Rapporteur contain some examples of the value of data compiled by NGOs. A report on a mission to the **Russian Federation**, for example, contains interesting data compiled by Médecins du Monde through anonymous questionnaires completed by children seeking medical treatment. Seventy-seven per cent of girls, of a sample of 56 girls

aged 11 to 18, admitted receiving gifts and money in exchange for sexual services, but none of the girls considered themselves to be involved in “regular prostitution.”<sup>199</sup> Over half had suffered sexual violence before they had even started an active sex life.<sup>200</sup> Most of the girls reported having had their first experience of sexual intercourse between the ages of 11 and 13, and only 36 per cent had voluntarily agreed to the intercourse.<sup>201</sup> Such data, although not necessarily representative of patterns in other parts of the country, provide valuable input into the design of policies and programmes on the local level. They also demonstrate the importance of further research and can be used to help build awareness and the political commitment needed to devote attention and resources to sexual exploitation of children.

The organization ECPAT has published a series entitled Global Monitoring Reports on the status of action against commercial sexual exploitation of children, which covers 69 countries.<sup>202</sup> Many of the national reports contained in the global overview contain valuable data on various forms of sexual exploitation of children.





# 5

## RECOMMENDATIONS

### A rights-based approach to implementation

This handbook is aimed at helping those persons and organizations implementing and supporting implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). It is clear that preventing and responding to violence, exploitation and abuse are essential to ensuring the rights of all children – from survival to development, protection and participation – and to effective implementation of the OPSC. This chapter summarizes the recommendations made towards that end.

It can be difficult to articulate the essence of the 'rights-based approach'. In the context of the issues addressed by the OPSC, it focuses on prevention, law enforcement, protection, empowerment and participation of affected and at-risk children, their families and communities. Full application of the Convention on the Rights of the Child (CRC) and OPSC has the potential to eventually break the vicious cycle of exploitation and victimization that shatters the lives of children, families and communities. It will do so when individual human rights are fully respected and protected and vulnerable groups are empowered, preventing violations, or at least stopping them before harm occurs.

Approaches that respect human rights also call for cooperation among stakeholders and sectors. Multisectoral cooperation promotes collaboration between departments at national and sub-national levels, and among all professionals working with and for children. The media and the private sector are also key – the media can raise awareness of the issues and report on them responsibly, while the private sector can help prevent sexual exploitation through corporate social responsibility. Examples can be seen especially in the travel and tourism sector.

A child rights-based approach is not just about laws, but it does require a strong national legal framework together with international cooperation. Together they safeguard children's rights and help identify and punish those who exploit children. Two additional factors are critical: proper law enforcement and monitoring. Police and other law enforcement actors and institutions must be free from corruption. A strong monitoring system can identify children at risk of sexual exploitation as well as track those who have been assisted, ensuring effective rehabilitation.

Many of the root causes of sexual exploitation can be found at the community level. Deep-rooted gender discrimination and patriarchal

social structures can lead to a climate that tolerates exploitative relationships between men and women, and between adults and children. Lack of reliable and child-friendly reporting mechanisms; social stigma relating to the sale, sexual abuse and exploitation of boys and girls; and fear of reporting a neighbour or family member are other factors that may facilitate and perpetuate all forms of exploitation, including those covered by the OPSC.

Many children are not aware that they are entitled to protection and are similarly unaware of mechanisms that offer help and encourage them to question what is happening to them. Equally problematic is the assumption that children identified as victims are helpless. While for some children this may be true, others have the capacity to deal with their situation and may have the key to finding solutions. This is an argument for learning from children – listening to and considering their views. Several provisions in the CRC reflect children's right to participation. Meaningful participation by children can raise their self-esteem and increase their confidence to challenge potential future abuses. In addition, consulting with children and adolescents and taking their views into account is important to ensure that relevant policies and other measures are child friendly, adequate and appropriate for children and adolescents.

## Components of a child protection system

A child protection system is made up of a set of laws, policies, regulations and services, particularly social welfare, education, health, security and justice. Together they support preventative measures and responses to violence, abuse and exploitation of children. Coordination between and among sectors and levels of government, as well as agencies outside of government, is crucial. Strengthening this system requires policy reform, institutional capacity building, planning, resource allocation, monitoring and promotion of systems to store and analyse information. Families and communities also need to be supported and strengthened to address exclusion, separation of family members, violence and exploitation – before and after they occur.

Establishing a child protection system is primarily the government's responsibility, although in many cases support from the private sector or non-governmental organizations (NGOs) may be needed. Regulatory mechanisms and standard setting are critically important. As the general principles of the CRC point out, the state must provide for and regulate the protection of all children under its jurisdiction from any kind of exploitation or abuse. Actions must be guided by the child's best interests, rights to protection from discrimination, survival and development, and to express a view and have it respected.

As part of a systematic child protection response, States Parties must take all appropriate bilateral and multilateral measures to prevent the abduction, sale or trafficking of children for any purpose or in any form (article 35 of the CRC). Article 39 of the CRC requires States Parties to promote recovery and social reintegration of sexually exploited children, among others. Such pledges imply obligations that extend beyond national borders.

### **Ratification of treaties: Every state, all the standards**

Since treaties inform, reinforce and complement each other, State Parties should ratify and adopt all relevant international and regional instruments on children's rights. They should adhere to the highest standards set in the treaties they ratify. States may, and should, even set national standards that exceed the international framework – given that it is only a required minimum.

The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse is particularly pertinent to the OPSC. Member States of the Council of Europe as well as non-Member States may adhere to the Convention, which puts the child at the centre of state action, recognizes the child's right to a remedy, and prioritizes prevention, assistance to victims and appropriate responses for perpetrators.

Once a State ratifies a treaty, it sets in motion a process of law reform. Implementation of these laws needs to be supported by the allocation of sufficient resources and the development of plans of action and coordination mechanisms.

### Box 3

#### Children's participation in developing a national plan of action

Children in Bangladesh played a key role in developing a national plan of action (NPA) as part of preparations for the Second World Congress against Commercial Sexual Exploitation of Children in December 2001. The development of the national plan was guided by a core group of representatives of governmental and non-governmental organizations (NGOs). The principal stages in the process were as follows:

- Preparation of a background paper on good practices and priorities
- Consultations with eight groups of children who had experienced sexual exploitation and trafficking or were at risk
- Consultations with key stakeholders
- Consultation with stakeholders in Dhaka.

Two rounds of consultations were held with children. During the first round, participants included both children at risk of sexual exploitation and abuse, and those who had already been exploited or abused. The group comprised boys and girls at risk of sexual abuse; girls who had been trafficked for sexual purposes and later rescued and placed in a shelter home; boys and girls involved in prostitution on the streets; girls engaged in prostitution in brothels; boys living in brothels; and girls rescued from brothels and living in safe homes run by various NGOs. Eighty-one children aged 10 to 17 participated in the consultation, all of whom were associated with NGO-run programmes.

The child participants were asked to describe the challenges faced by children in their situations, and to provide ideas about how to improve the children's conditions and life choices. They were also asked to provide feedback on the findings of and recommendations made in the draft background paper on good practices and priorities to combat sexual abuse and exploitation of children. Their comments were incorporated into the final version of the paper and ultimately in the national plan of action.

The sessions generated a rich pool of information and ideas. These were shared with government and civil society stakeholders at three sub-national consultations held prior to drafting of the NPA, and at a national consultation organized to review the first draft. One of the researchers who had coordinated the consultations with children was engaged to draft the NPA. Thus children's inputs were, to a large extent, incorporated into the draft and significantly improved its focus and relevance, and its ability to address the challenges they face.

In early 2002, steps were taken to start implementing the NPA. This included the formation of a national committee with responsibility for implementation and monitoring of the plan. A second round of consultations was planned to report to the children on the outcome of the committee's work and other subsequent developments, and to seek their views regarding a possible role in implementing the national plan of action. The NGO briefed the children about the additional consultation to determine their interest. Those participants from the first consultation who were unavailable were replaced by other children of the same age group.

The second round of consultations yielded a wealth of ideas from participants regarding specific actions children can take to prevent and respond to cases of child sexual abuse, sexual exploitation and trafficking. Another important result was children's views about their role in implementing the NPA. This included how they envisaged contributing to the process, what actions they believed they could take, their perceptions of the need for partnerships with others, their strengths, areas in which they needed support and the potential risks associated with their involvement.

*Source: UNICEF Innocenti Research Centre, South Asia in Action: Preventing and responding to child trafficking - Analyses of anti-trafficking initiatives in Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka, UNICEF IRC, Florence, (forthcoming in 2009).*

These in turn need to be linked to robust monitoring systems, including a mandated and adequately funded independent human rights institution for children. Awareness-raising, training and the engagement of civil society – as well as children and adolescents – are all necessary to support the implementation process. These are all general measures of implementation of the CRC and are also relevant to the OPSC.

## Prevention

Some social norms and traditional practices may contribute to an environment that increases children's vulnerability to abuse and exploitation. In such cases, it is important to support community mobilization and awareness-raising on child rights, specifically on matters covered by the OPSC, and on support services to ensure child protection. These actions are part of a holistic approach that also includes support for livelihood and income-generating activities.

Mobilization among communities also helps empower them to assert the rights of children and women and to prevent abuse and exploitation. Commitment and pressure from communities can help promote social change and overcome harmful social norms. The focus on involving boys and men in efforts to prevent sexual exploitation is essential and needs to incorporate broader messages and reflections about masculinity and gender inequalities. It is also important to encourage community members – including men and boys – who take a stand against gender discrimination and sexual exploitation of children. The power of community leaders should also be harnessed in order to change harmful social norms. These actions will go a long way towards influencing others.

The private sector has an important role to play by promoting responsible travel and tourism, among other things. Adopting codes of conduct (such as the tourism industry's voluntary Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism), is a small but important step. Awareness-raising campaigns directed at tourists who cooperate with travel operators, NGOs and civil society organizations are proving effective. Internet cafe owners and managers can also introduce safeguards for

young people who utilize their services. Some innovation has occurred, not least the use of the Internet to raise awareness about the potential risks to children and adolescents.

Ultimately, prevention efforts need to be documented, assessed and evaluated in order to have the greatest impact. Monitoring tools and indicators are critical, as is allocation of sufficient resources for prevention activities.

## Protection

Governments have a responsibility to protect children from being sold, sexually abused and exploited, and from the effects of or involvement in the development of pornographic material. Effective reporting mechanisms are needed that will lead to punishment of the perpetrators of such crimes. The prevailing 'culture of impunity' for perpetrators must be addressed. Victim support services are also necessary. Measures should be taken to ensure that an exploited child is never criminalized. Equal protection is key – for girls and boys and for children of different ages and backgrounds. It is essential that services are accessible to children with disabilities and that information is made available in all the languages understood by the children.

Child survivors of sexual exploitation must be provided with short- and long-term measures for their full recovery. These measures should take into account the child's age, experiences and evolving capacities, and should be sensitive to the diversity of the child (e.g. ethnicity, ability status). A supportive network of child-friendly services should be established. This requires building the capacity of authorities and professionals who work with and for children – law enforcement personnel, prosecutors, judges and others. The training should include specific methods through which children who have been sexually exploited can be identified, consulted and supported.

Judicial procedures must be child sensitive, taking the best interests of the child into consideration and providing children who have been exploited with access to legal remedies. To ensure their full recovery, it is essential that such children receive medical care, psycho-social assistance, education and recreational activities. All authorities involved in the justice

process – from local police officers to judges in national courts – should be trained in child rights, child participation and protection.

Children must be given a voice in all matters concerning them, including in judicial proceedings, when relevant and appropriate. They should be kept fully informed about their cases and their rights, and their views, needs and concerns should be considered in any proceeding that affects their personal interest. The judicial system must protect the child's identity and privacy, provide the necessary protection to the child's relatives, and avoid unnecessary delays in processing cases and remedies. Children's views must be heard and taken into account, starting with the initial reporting to local authorities and ending with the final evaluation of the recovery and reintegration process.

Other protection measures include creation of special criminal courts with competence over child trafficking, and establishment of specialized law enforcement units that work to stop online distribution of child pornography. Important components of a protection system include education and information, including life skills training for boys and girls, age-sensitive information about issues relating to sexuality, promotion of birth registration and provision of identity cards. These actions help build self-esteem and can also empower children who have been sexually exploited to make informed decisions.

### **Empowerment**

Empowering sexually exploited children and children at risk is integral to prevention and protective initiatives, and national legal and policy frameworks need to recognize this. So far, it is fair to say that empowerment and the recognition of children as actors – albeit with evolving capacities – have received scant attention. Empowerment measures include building children's self-esteem by educating them on child rights, sexuality, sexual exploitation and other protection concerns, and also by ensuring their meaningful participation in decision-making.

Recognizing the exploited child as a victim of crime is essential to establishing both the innocence of the child and the accountability of the perpetrator. However, limiting the focus to

the child as 'victim' fails to take into account the agency and evolving capacities of the child. It leads to dealing with children as passive recipients of services and places decision-making solely with adults. A human rights-based approach recognizes children's agency and capacity to make informed decisions, overcome challenges and plan for the future. In this perspective, children are seen as active participants in their own development and recovery from abuse and exploitation. This means that children must receive adequate support and assistance and participate in decisions regarding their recovery, reintegration and active participation in society, including in policy making.

To be most effective, measures aimed at implementing laws should be part of comprehensive national plans and strategies involving international, national and local authorities. More efficient implementation of international standards for protecting children's rights and additional resources and structures for implementing national plans of action are essential.

### **Monitoring**

States Parties must develop monitoring systems that can assess the situation and track progress in implementing international standards. Mechanisms for systematic and comprehensive data collection, analysis and dissemination are urgently needed. The data should be disaggregated by age, gender, nationality and form of exploitation so they can be compared across countries and over time. International cooperation is at the heart of the OPSC. Thus cooperation across and among States will need to become stronger and to be sustained if the OPSC is to be effective.

There is a need for data that can clarify the dynamics of the phenomenon of child exploitation, given the complexity of the concepts of the sale of children, sexual exploitation, child pornography and child abuse. Quality data will enable more accurate monitoring of the effectiveness of activities aimed at prevention and providing assistance to exploited children. State Parties are putting measures in place, and it will become increasingly important that they analyse, monitor and share successful interventions with

other governments, NGOs and civil society actors. Qualitative data are essential to understanding why some communities, families and children are more vulnerable than others. Such data will also provide useful information on children's perceptions of services and of their life options. Effective monitoring systems are critical to prevention, which needs to be prioritized over remedial actions.

Finally, independent monitoring mechanisms are needed. The State is responsible for overseeing implementation of the OPSC, but other actors are also important. These include ombudsmen

for children, human rights institutions, commissioners for children, and rapporteurs on the sale of children, child prostitution and child pornography. Operating nationally and internationally, these monitoring bodies can assist in identifying gaps in implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and in the documentation of good efforts. They are also well placed to help develop more effective strategies to protect children from sale, child prostitution and child pornography.

# ANNEX

## OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 and entered into force on 18 January 2002

### *The States Parties to the present Protocol,*

*Considering that*, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

*Considering also* that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

*Gravely concerned* at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

*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,

*Recognizing* that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

*Concerned* about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,



*Believing* that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

*Believing* also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

*Noting* the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

*Encouraged* by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

*Recognizing* the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

*Taking due account* of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

*Have agreed as follows:*

## ■ Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

## ■ Article 2

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

## ■ Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
    - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
      - a. Sexual exploitation of the child;
      - b. Transfer of organs of the child for profit;
      - c. Engagement of the child in forced labour;
    - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
  - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
  - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
  3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
  4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
  5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

#### ■ Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
  - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
  - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### ■ Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

## ■ Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

## ■ Article 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
  - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;
  - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

## ■ Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
  - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
  - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
  - (d) Providing appropriate support services to child victims throughout the legal process;
  - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
  - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
  3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
  4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
  5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
  6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

## ■ Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

## ■ Article 10

1. 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. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

## ■ Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

## ■ Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

## ■ Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

## ■ Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

## ■ Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

## ■ Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

## ■ Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.



# NOTES

## CHAPTER 1

- 1 Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, HR/PUB/07/1, Vol. II, United Nations, New York and Geneva, 2007, pp. 713-715 (citing article IX of the Polish draft, 1978).
- 2 *Ibid*, p. 717.
- 3 UNICEF Innocenti Research Centre, 'Legal Frameworks for Combating Sexual Exploitation of Children', Thematic Paper No. 2 for World Congress III Against Sexual Exploitation of Children and Adolescents (internal document), UNICEF IRC, Florence, 2008, p. 7.
- 4 The United Nations Commission on Human Rights was established in 1946 and was replaced by the Human Rights Council by United Nations General Assembly Resolution A/RES/60/251 of 15 March 2006.
- 5 United Nations General Assembly, Need to adopt efficient international measures for the prevention of the sale of children, child prostitution and child pornography, Resolution 48/156, United Nations, New York, 7 March 1994.
- 6 Commission on Human Rights, Resolution 1990/68, 'Sale of Children', United Nations Economic and Social Council, New York, 7 March 1990.
- 7 Commission on Human Rights, Report submitted by Mr. Vitiit Muntarhorn, Special Rapporteur, in accordance with Commission on Human Rights resolution 1993/82, E/CN.4/1994/84, Office of the High Commissioner for Human Rights, Geneva, 14 January 1994, paras. 232-234, 249 and 251.
- 8 United Nations General Assembly, 'Need to adopt efficient international measures for the prevention and eradication of the sale of children, child prostitution and child pornography', Resolution 49/210, United Nations, New York, 17 February 1995; Office of the United Nations High Commissioner for Human Rights, 'Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication', Resolution 1995/78, OHCHR, 8 March 1995.
- 9 United Nations General Assembly, Resolution 49/210, op. cit., OHCHR Resolution 1995/78, op. cit.
- 10 UNICEF Innocenti Research Centre, 'Legal Frameworks for Combating Sexual Exploitation of Children', op. cit.
- 11 United Nations General Assembly, 'United Nations Convention against Transnational Organized Crime' Resolution 55/25, United Nations, New York, 15 November 2000.
- 12 International Labour Organization, ILOLEX, <[www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182](http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182)> and United Nations Office on Drugs and Crime, <[www.unodc.org/unodc/en/treaties/CTOC/signatures.html](http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html)>, respectively, both accessed 1 July 2008.
- 13 Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, <[www.conventions.coe.int](http://www.conventions.coe.int)>, accessed 1 February 2009.
- 14 For example, of the 129 States that were Party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as of October 2008, the majority were also Parties to the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ('Worst Forms of Child Labour Convention').
- 15 The resolution entitled Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also does not codify customary international law, which also is binding. See: United Nations Economic and Social Council, Guidelines on Justice involving Child Victims and Witnesses of Crime, Resolution 2005/20, United Nations, New York, <[www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf](http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf)>.
- 16 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 12, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Office of the High Commissioner for Human Rights, Geneva, Concluding Observations on Bangladesh, CRC/C/OPSC/BGD/CO/1, 5 July 2007, para. 33; on Chile, CRC/C/OPSC/CHL/CO/1, 18 February 2008, para. 30; on the Republic of Korea, CRC/C/OPSC/KOR/CO/1, 2 July 2008, para. 43; and on the United States, CRC/C/OPSC/USA/CO/1, 25 June 2008, para. 38(c).
- 17 International Labour Organization, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization, Geneva, 17 June 1999, article 2.



- 18 *Ibid*, articles 6 and 7.
- 19 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 3(d). Adopted in: United Nations General Assembly, Resolution 55/25, United Nations Convention against Transnational Organized Crime, United Nations, New York, 8 January 2001.
- 20 The definition of sexual abuse contained in article 18.1 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse includes “sexual activities” between an adult and a person below the age of consent defined in national law, or characterized by abuse of a position of trust, authority or influence or the dependence or disability of the child.
- 21 *Ibid*, article 19.1(c) and 20.1(e), respectively. (A State Party may reserve the right not to apply article 20.1(e) in certain narrow circumstances (article 20.3)).
- 22 *Ibid*, article 26.
- 23 There is growing agreement among activists, service providers and others working with children to use the term ‘sexually exploited children’ or ‘children exploited in the context of commercial sexual exploitation’ in order to avoid the stigmatizing label ‘prostitute’.
- CHAPTER 2**
- 24 The Committee on the Rights of the Child began to examine reports submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in June 2005. As of October 2008, the Committee had examined the reports of 30 States Parties.
- 25 The debate during the drafting process was especially focused on the definition of sale as well as on whether the Protocol should have covered only the sale of children for the purpose of sexual exploitation or also the sale of children for any other purpose, including the case of illegal adoptions and trafficking in organs. See, for example, ‘Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication, Report of the Working Group on its third session, E/CN.4/1997/97, United Nations, New York, 2 April 1997, para. 19.
- 26 See, for instance, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 12, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Office of the High Commissioner for Human Rights, Geneva, Concluding Observations on Syrian Arab Republic, CRC/C/OPSC/SYR/CO/1, 31 October 2006, paras. 23-24. See also: Concluding Observations on Sudan, CRC/C/OPSC/SDN/CO/1, 8 June 2007, paras. 17-18; and on Bangladesh, CRC/C/OPSC/BGD/CO/1, 5 July 2007, paras. 24-25.
- 27 United Nations, Convention on the Rights of the Child, United Nations, New York, 20 November 1989, article 34.
- 28 United Nations, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, United Nations, New York, 25 May 2000, article 3.1(a)(i)(b).
- 29 Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (‘Palermo Protocol’) prohibits trafficking in persons for purpose of “the removal of organs”; and in 1991 the World Health Assembly adopted guidelines on organ transplantation that ban the sale of organs of any person (WHA Resolution 44.25 of 13 May 1991).
- 30 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, op. cit., Concluding Observations on Qatar, CRC/C/OPSC/QAT/CO/1, 2 June 2006, paras. 21-22; and on Andorra, CRC/C/OPSC/AND/CO/1, 17 March 2006, paras. 12-13.
- 31 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, op. cit., article 3.1(a)(i)(c).
- 32 International Labour Organization, Convention concerning Forced or Compulsory Labour, International Labour Organization, Geneva, 28 June 1930, article 2.1. (This definition is followed by exclusions covering compulsory military service, civic duties, prison labour, services required during a natural disaster and “minor communal services”)
- 33 International Labour Organization, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization, Geneva, 17 June 1999, article 3(a).
- 34 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, op. cit., paras. 35 and 36. (The sale of children for the purpose of engagement in armed conflict is also prohibited by the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.)
- 35 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, op. cit., paras. 33-34; and on Qatar, op. cit. paras. 31-32 and 35-36.
- 36 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, op. cit., article 3.1 (a)(ii).
- 37 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Viet Nam, CRC/C/OPSC/VNM/CO/1, 17 October 2006, paras. 25-26; on Syrian Arab Republic, op. cit., paras. 28-29; on Guatemala, CRC/C/OPSC/GTM/CO/1, 8 June 2007, paras. 25-26; and on France, CRC/C/OPSC/FRA/CO/1, 15 October 2007, paras. 18-19. Many countries interpreted the term “applicable international legal instruments” as referring to the 1993 Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.
- 38 Article 3 (d) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (‘Palermo Protocol’) defines a child as any person under the age of 18.
- 39 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Syrian Arab Republic, op. cit., paras. 14-15 and 19-20; on Viet Nam, op. cit., paras. 10-11; and Bangladesh, op. cit., paras. 26-27.
- 40 See United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Viet Nam, op. cit., paras. 16-17; on Costa Rica, CRC/C/OPSC/CRI/CO/1, 2 May 2007, paras. 22-23; on Guatemala, CRC/C/OPSC/GTM/CO/1, 2007, paras. 33-34; on Bangladesh, op. cit., paras. 20-21; and on Chile, op. cit., CRC/C/OPSC/CHL/CO/1, 18 February 2008, paras. 18-19.
- 41 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, op. cit., article 3 (1)(c).
- 42 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Turkey, CRC/C/OPSC/TUR/CO/1, 9 June 2006, paras. 17-19; on Viet Nam, op. cit., paras. 10-11; on Costa Rica, op. cit., paras. 14-15; on Sudan, op. cit., paras. 23-24; on France, op. cit., paras. 16-17; and on Chile, paras. 22-23.
- 43 In contrast, the Council of Europe Convention on Cybercrime (2001) prohibits “possessing child pornography in a computer system or on a computer-data storage medium” (article 9(1)(e)). However, States Parties may reserve the right not to apply, in whole or in part, this provision (article 9.4). The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) goes further in obliging parties to criminalize the possession of child pornography, although it also contains a clause providing that they may reserve the right not to apply, in whole or in part, provisions concerning the production and possession of pornographic material if this material consists exclusively of simulated representations or realistic images of a non-existent child or involves images that are produced and possessed by children over a certain age with their consent and solely for their own private use (article 20(3)).

- 44 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Chile, *op. cit.*, paras. 23-24; and on Costa Rica, *op. cit.*, paras. 14-15 and 24-25.
- 45 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Andorra, *op. cit.*, paras. 16-17.
- 46 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Iceland, *CRC/C/OPSC/ISL/CO/1*, Office of the High Commissioner for Human Rights, Geneva, 21 June 2006, paras. 13-14.
- 47 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, *op. cit.*, article 7(a) and (c).
- 48 Article 15.3 of the United Nations Convention against Transnational Organized Crime of 15 November 2000, states: "Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals."
- 49 See: United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Andorra, *op. cit.*, paras. 14-15; on Qatar, *op. cit.*, paras. 23-24; on Iceland, *op. cit.*, paras. 15-16; on Bangladesh, *op. cit.*, paras. 28-29; and on Denmark, *CRC/C/OPSC/DNK/CO/1*, 17 October 2006, paras. 17-18.
- 50 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Qatar, *op. cit.*, paras. 25-26.
- 51 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, *op. cit.*, article 7(b).
- 52 This is particularly the case for bilateral agreements aimed at tackling cross-border trafficking. See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on China (including the Macau Special Administrative Region), *CRC/C/OPSC/CHN/CO/1*, Office of the High Commissioner for Human Rights, Geneva, 24 November 2005, paras. 18-19.
- 53 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, *op. cit.*, article 9.1.
- 54 See United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Morocco, *CRC/C/OPSC/Mar/CO/1*, 17 March 2006, paras. 34-35; on Viet Nam, *op. cit.*, paras. 21-22; on Sudan, *op. cit.*, paras. 17-18; and on Chile, *op. cit.*, paras. 21-22.
- 55 See United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Morocco, *op. cit.*, paras. 32-33; on Syrian Arabic Republic, *op. cit.*, paras. 25-26; and on Viet Nam, *op. cit.*, paras. 21-22.
- 56 See United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, *op. cit.*, paras. 17-18.
- 57 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Kazakhstan, *CRC/C/OPSC/KAZ/CO/1*, 17 March 2006, paras. 11-12; on Turkey, *CRC/C/OPSC/TUR/CO/1*, 9 June 2006, paras. 28-29; on Guatemala, *op. cit.*, paras. 16-17; and on Bangladesh, *op. cit.*, paras. 20-21.
- 58 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Costa Rica, *op. cit.*, paras. 22-23; on France, *op. cit.*, paras. 12-13; and on Spain, *CRC/C/OPSC/ESP/CO/1*, 17 October 2007, paras. 21-22.
- 59 See United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, *op. cit.*, paras. 19-20; and on Bangladesh, *op. cit.*, paras. 22-23.
- 60 United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, United Nations, New York, 22 July 2005.
- 61 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, *op. cit.*, para. 30; on Bangladesh, *op. cit.*, paras. 33; and on Chile, *op. cit.*, para. 30.
- 62 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Morocco, *op. cit.*, paras. 28-29; and on Denmark, *op. cit.*, paras. 21-22.
- 63 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Morocco, *op. cit.*, paras. 23-24; on Iceland, *op. cit.*, paras. 13-14; on Sudan, *op. cit.*, paras. 29-30; on Bangladesh, *op. cit.*, paras. 32-33; and on Chile, *op. cit.*, paras. 29-30.
- 64 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Spain, *op. cit.*, para. 36.
- 65 United Nations, Optional Protocol on the sale of children, child prostitution and child pornography, *op. cit.*, articles 8.4 and 9.3. See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Costa Rica, *op. cit.*, paras. 18-19; on Sudan, *op. cit.*, paras. 31-32; on Guatemala, *op. cit.*, paras. 22-23; on Chile, *op. cit.*, paras. 31-32; on Syrian Arabic Republic, *op. cit.*, paras. 21-22; on Viet Nam, *op. cit.*, paras. 17-18; and on Bulgaria, *CRC/C/OPSC/BGR/CO/1*, 21 January 2008, paras. 29-30.
- 66 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Iceland, *op. cit.*, paras. 20-21; on Denmark, *op. cit.*, paras. 26-27; on Kyrgyzstan, *CRC/C/OPSC/KGZ/CO/1*, 4 May 2007, para. 23; on Bangladesh, *op. cit.*, para. 38-39; and on Chile, *op. cit.*, para. 36-37.
- 67 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Sudan, *op. cit.*, paras. 21-22; on Bangladesh, *op. cit.*, paras. 36-37; and on Chile, *op. cit.*, paras. 17-18.
- 68 See, for example, United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under the OPSC, Concluding Observations on Iceland, *op. cit.*, para. 25; on Spain, *op. cit.*, para. 38; on Morocco, *op. cit.*, paras. 11-12; and on Qatar, *op. cit.*, paras. 15-16.

### CHAPTER 3

- 69 As of October 2008, 129 States were parties to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. By the end of its 49th session in October 2008, the Committee had considered 30 reports under the Optional Protocol. See: UNICEF Innocenti Research Centre, 'Legal Frameworks for Combating Sexual Exploitation of Children', Thematic Paper No. 2 prepared for World Congress III Against Sexual Exploitation of Children and Adolescents (internal document), UNICEF IRC, Florence, 2008, p. 7.
- 70 The final report of Mr. J.M. Petit, Special Rapporteur on the sale of children, child prostitution and child pornography from July 2001 to May 2008, makes a point of identifying good practices. United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Jean Miguel Petit, A/HRC/7/8, United Nations, New York, 9 January 2008. Unless otherwise indicated, all references in this chapter to "the Special Rapporteur" are to Mr. Petit.

- 71 International Labour Organization, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization, Geneva, 17 June 1999, article 1.
- 72 International Programme on the Elimination of Child Labour, 'Action against Trafficking and Sexual Exploitation of Children - Going where the children are: An evaluation of ILO-IPEC programmes, Thailand, Philippines, Colombia, Costa Rica and Nicaragua', International Labour Organization, Geneva, June 2001, available at <[www.ilo.org/ipeinfo/product/viewProduct.do?productId=629](http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=629)> (accessed 27 March 2008).
- 73 International Programme on the Elimination of Child Labour, 'Guidelines on the design of direct action strategies to combat commercial sexual exploitation of children', International Labour Organization, Geneva, 2007, at <<http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=8270>>. The experiences from which the IPEC examples are derived are not identified, however. In general, ILO/IPEC documentation on sale and sexual exploitation of children focuses more on measuring these phenomena than on evaluating activities designed to eliminate them and help exploited children.
- 74 International Programme on the Elimination of Child Labour, 'Action against Trafficking and Sexual Exploitation of Children', op. cit., p. 32.
- 75 Ibid., p. 39.
- 76 Ibid.
- 77 Ibid., p. 31.
- 78 United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit – Addendum, Mission to Mexico, A/HRC/7/8/Add.2, United Nations, New York, 28 January 2008, para. 27.
- 79 The information in this paragraph is taken from the website of the National Center for Missing & Exploited Children, United States, <[www.missingkids.com](http://www.missingkids.com)>, accessed 28 March 2008. Also see the report of the Special Rapporteur, in which he identified as good practice the activities of the organization: United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, A/HRC/7/8, op. cit., para. 26.
- 80 As the then Special Rapporteur (Ms. Ofelia Calcetas-Santos) stated in 2000, "the evidence suggests an association, rather than a direct causal link, between childhood physical and sexual abuse, running away from home and subsequent involvement in prostitution." See United Nations Economic and Social Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, E/CN.4/2000/73, United Nations, New York, 14 January 2000, para. 140.
- 81 See, for example, the report of the Special Rapporteur on a mission to Belgium for a description of a centre with characteristics similar to the National Center for Missing & Exploited Children in the United States. United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Addendum Report on the mission of the Special Rapporteur to Belgium and the Netherlands on the issue of commercial sexual exploitation of children (30 November-4 December 1998), E/CN.4/2000/73/Add.1, 22 December 1999, paras. 72-75.
- 82 United Nations General Assembly, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, Addendum, Mission to Ukraine, A/HRC/4/31/Add.2, United Nations, New York, 24 January 2007, para. 37.
- 83 Ibid., para. 38.
- 84 The information in these two paragraphs is taken from: UNICEF Innocenti Research Centre, *South Asia in Action: Preventing and responding to child trafficking, Summary Report (advance version)*, UNICEF IRC, Florence, 2008, p. 25.
- 85 Skidmore, P. and B. Robinson, 'It could be anyone', Evaluation Report of the London Prevention Education Programme, Barnardo's, Essex 2007, <[www.barnardos.org.uk](http://www.barnardos.org.uk)> accessed 2 April 2008. The evaluation also covered training of teachers and social workers.
- 86 Ibid., pp. 24-25.
- 87 Ibid., p. 7.
- 88 Ibid., p. 25.
- 89 Ibid.
- 90 National Centre for Technology in Education, *SAFT Children's Study – Investigating online behaviour*, 'Executive Summary', NCTE, Dublin, May 2003, pp. 7 and 11, available at <[www.ncte.ie/documents/SAFTexecsummaryMay26.pdf](http://www.ncte.ie/documents/SAFTexecsummaryMay26.pdf)>, accessed 3 April 2008.
- 91 ECPAT, *Global Monitoring Report on the status of action against commercial sexual exploitation of children – Taiwan*, ECPAT, Bangkok, 2006, p. 11, citing J. Ho, 'From Spice Girls to Enjo Kosai: Formations of Teenage Girls' Sexualities in Taiwan', *Inter-Asia Cultural Studies*, vol. 4, no. 2, 2003.
- 92 National Centre for Technology in Education, *SAFT Children's Study – Investigating online behaviour*, op. cit., p. 13.
- 93 Ibid., p. 11.
- 94 United Nations Economic and Social Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, E/CN.4/2006/67, United Nations, New York, 12 January 2006, para. 115. The project can be accessed at <[www.croga.org](http://www.croga.org)>.
- 95 Feinstein, C. and C O'Kane, 'Child Participation, Sexual Abuse and Exploitation', *Innocenti Working Paper*, UNICEF Innocenti Research Centre, Florence, forthcoming in 2009. Also see the congress website for a summary of the recommendations made, <[www.iyac.net/corporate/press.htm](http://www.iyac.net/corporate/press.htm)>.
- 96 United Nations Economic and Social Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2006/67, op. cit., para. 39. (This approach is, of course, incompatible with an approach that views prostitution as a consequence of male oppression of women and advocates the empowerment of women and prohibition of all prostitution as the solution. The evaluation expressly urges the establishment of programmes that depart from "traditional religious and feminist" approaches.)
- 97 N. Hotaling, founder and Director of The SAGE Project, 'Increased Demand Resulting in the Flourishing Recruitment and Trafficking in Women and Girls', Expert Meeting on Prevention of International Trafficking and Promotion of Public Awareness Campaign, Seoul, 2003, cited by D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', August 2004, p. 22, <[www.uri.edu/artsci/wms/hughes/demand\\_sex\\_trafficking.pdf](http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf)>
- 98 Hughes, D., 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., p. 15.
- 99 "The Special Rapporteur stresses that educational programmes as well as awareness-raising activities are essential to reduce demand for services deriving from sexual exploitation. He calls upon States: ... (h) To further study measures that directly target and educate potential clients of commercial sexual exploitation of children...." United Nations, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2006/67, op. cit., para. 130.
- 100 Ibid., Note 11 (which cites Hugues, D., 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit.).
- 101 An example of a programme aimed at reducing the demand for prostitutes is AVENUE. The programme is described in D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 45-46.
- 102 Longer programmes include the psycho-educational Prostitution Offender Program of Portland, Oregon and a Salvation Army counselling programme in Omaha, Nebraska, described in D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 36-37 and pp. 46-47, respectively.

- 103 Project Pathfinder, described in D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 35-36.
- 104 See, for example, D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 38-41.
- 105 United Nations Economic and Social Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, Addendum, Report on the mission of the Special Rapporteur to the United States of America on the issue of commercial sexual exploitation of children (9-20 December 1996), E/CN.4/1997/95/Add.2, United Nations, New York, para. 91.
- 106 Hughes, D., 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 33-35, 38.
- 107 Ibid., p. 30, citing Høigård C. and L. Finstad, *Backstreets: Prostitution, money and love*, Pennsylvania State University Press, University Park, Pennsylvania, 1986 (regarding Norwegian men), and note 97 (regarding Swedish men).
- 108 See, for example, D. Hughes, 'Best Practices to Address the Demand Side of Sex Trafficking', op. cit., pp. 47-50.
- 109 United Nations, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2006/67, op. cit., para. 108.
- 110 United Nations Economic and Social Council, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit, Addendum, Mission to Paraguay, E/CN.4/2005/78/Add.1, United Nations, New York, 9 December 2004, paras. 44-45. Also see para. 46.
- 111 UNICEF Innocenti Research Centre, *South Asia in Action, Summary Report*, op. cit., p. 11.
- 112 *Republic Act 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act)* of 17 June 1992, [the Philippines] article III, sect. 5 and article V, section 9.
- 113 Ibid.
- 114 Ibid., article VII, section 11.
- 115 The text of the Japanese *Act Punishing Acts related to Child Prostitution and Child Pornography, and for Protecting Children* (but not the 2004 amendments) is available from the International Labour Organization, at <[www.ilo.org/dyn/natlex/docs/WEBTEXT/53924/65175/E99JPN02.htm](http://www.ilo.org/dyn/natlex/docs/WEBTEXT/53924/65175/E99JPN02.htm)> (accessed 26 May 2008).
- 116 *Act Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children*, op. cit., section 2.2.
- 117 Ibid., sections 5 and 6.
- 118 Ibid., section 7.
- 119 Ibid., section 11.
- 120 Ibid., sections 10 and 15.
- 121 ECPAT, *Global Monitoring Report on the status of action against commercial sexual exploitation of children – Japan*, ECPAT, Bangkok, 2006, p.14, available at <[www.ecpat.net/A4A\\_2005/PDF/EAP/Global\\_Monitoring\\_Report-JAPAN.pdf](http://www.ecpat.net/A4A_2005/PDF/EAP/Global_Monitoring_Report-JAPAN.pdf)>, (accessed 26 May 2008).
- 122 United Nations Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under article 44 of the Convention, Second periodic reports of States parties due in 2001 – Japan, CRC/C/104/Add.2, 24 July 2003, Office of the High Commissioner for Human Rights, Geneva, para. 93.
- 123 *Rule on Examination of a Child Witness* [the Philippines], 2000, Sections 10, 11, 19, 22 and 25. Available at <[www.chanrobles.com](http://www.chanrobles.com)>.
- 124 *Law against the Exploitation of Prostitution, Pornography and Sexual Tourism to the Detriment of Minors* [Italy], Act No. 269/1998 of 3 August 1998; United Nations, Committee on the Rights of the Child, Consideration of Reports submitted by States parties due in 1998, Italy, CRC/C/70/Add.13, Office of the High Commissioner for Human Rights, Geneva, 12 July 2002, para. 316. (Sentences are now up to five years for using the services of a prostitute aged 14 to 16, up to three years for using the services of prostitutes aged 16 to 18, and up to 12 years for promoting or profiting from child prostitution. Sexual relations with children under age 14 are punishable by sentences of up to 10 years, whether or not prostitution is involved).
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The guidelines are intended for facilities for women and adolescent girls who are victims of prostitution and other abuses, including trafficking and physical or sexual violence. Although the Special Rapporteur mentions them favourably, he has stated that “children who are victims of commercial sexual exploitation...are in need of special, separate programmes and facilities catering specifically to their needs [and] should not be together with victims of domestic abuse and violence or with adults,” para. 73. The Guidelines are available at <www.childtrafficking.com>.
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#### CHAPTER 4

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*Guidelines for the Operation of Care Facilities for Victims of Trafficking and Violence against Women and Girls*, Planète Enfants, 2005, available at <[www.childtrafficking.com](http://www.childtrafficking.com)>

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*The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice, Guide No. 1*, Hague Conference on Private International Law, 2008, <[www.hcch.net/index\\_en.php?act=publications.details&pid=4388](http://www.hcch.net/index_en.php?act=publications.details&pid=4388)>

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## DATABASES AND WEBSITES

Barnardo's website, containing downloadable publications on sexual exploitation of children, <[www.barnardos.org.uk](http://www.barnardos.org.uk)>

Croga.org online self-help programme for rehabilitation of consumers of child pornography, <[www.croga.org](http://www.croga.org)>

INTERPOL online database of legislation on sexual offences against children, <[www.interpol.int/Public/Children/SexualAbuse/NationalLaws/Default.asp](http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/Default.asp)>

Terre des hommes online digital library, <[www.childtrafficking.com](http://www.childtrafficking.com)>





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