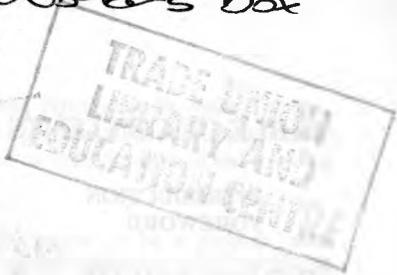


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Young Workers Box

PROCESSED



**CHILD PROSTITUTION  
IN  
SOUTHERN AFRICA:  
A SEARCH FOR LEGAL PROTECTION**

WORKSHOP REPORT BY  
NETWORK AGAINST CHILD LABOUR

**26-28 MARCH 1996**

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## INTRODUCTION & ACKNOWLEDGEMENTS

In October 1995 representatives from ECPAT (End Child Prostitution in Asian Tourism) visited several Eastern and Southern African countries. The purpose of the visit was to collect information on child prostitution and the impact of tourism on child prostitution and to assess whether to expand the ECPAT campaign to Africa.

Although child prostitution in tourism did not presently appear to be a problem, child prostitution was found to be widespread. One common problem identified by ECPAT in all these countries visited was a lack of legislation to protect children from prostitution and a general helplessness in how best to address the issue. So the idea of a workshop, focusing on legal aspects, was born with the aim to bring together stakeholders from the various countries to learn from each other's experiences and begin to formulate responses to child prostitution and prevent child prostitution in tourism.

The Network Against Child Labour (NACL) South Africa was able to organise a workshop with the financial support from Bread for the World. Participants from NGO's and governments from Kenya, Mozambique, Zambia, Zimbabwe and South Africa attended this first workshop on child prostitution in the region. Two international legal experts and advisers to ECPAT were present and partly facilitated the workshop, enriching our work with their expertise and world wide experience.

The aim of the workshop extended beyond a focus on the legal aspects of child prostitution. Other specific purposes were networking, exchanging each other's experience and achievements in order to develop strategies to combat child prostitution and finding a common ground for co-ordinated action.

The Human Science Research Council (HSRC) provided a venue for the workshop and catered for the event. Dr. Willem Schurink from the HSRC organised, together with the Child Protection Unit from the South African Police, a tour to Johannesburg in areas where child prostitution is considered rife. This gave the participants an insight into the situation in South Africa's largest city and "economic capital".

The two days of our workshop were intense and enriching. We all learned from each other's experience and realised that there are many common problems that could be tackled with mutual support and advice in order to change legislation, policies and attitudes in the respective countries in the Eastern and Southern African region to ensure that the problem of child prostitution is declining and eventually eradicated. Continued networking and intensifying contacts will be part of our future efforts to combat child prostitution.

The NACL wants to take this occasion to thank all participants for their efforts and contributions that made the workshop a success: Muireann OBrian and Denise Ritchie, who helped us in organising and facilitating. Thanks to our two volunteers, Rakgadi Masetha and Tilman Rapp for the organisation of the workshop and especially to Dr. Willem Schurink of the HSRC, as well as to the funder - Bread for the World.

With this publication we hope not only to reach stakeholders in South Africa and the region but to contribute our experience to world wide efforts to eradicate the degrading and often lethal practice of child prostitution by encouraging organisations and individuals to join a network in order to fight the problem.

**Part 1: 26 March 1996**  
**SITUATION ANALYSIS**

**A. COUNTRY PROFILES**

***SURVEY:***

COUNTRIES	KENYA	MOZAMBIQUE	SOUTH AFRICA	ZAMBIA	ZIMBABWE
<b>Population 1995</b>	28,75 mn	18mn	43,5mn	9,5mn	11,2mn
<b>Urban Population Growth</b>					
% in 1960	7	4	47	17	13
% in 1995	28	34	62	55	31
% in 2000	32	41	65	59	35
<b>Mean period of schooling 1992, pop. &gt; 25 years</b>					
Total	2,3	1,6	3,9	2,7	3,1
Female	1,3	1,2	3,7	1,7	1,8
Male	3,1	2,2	4,1	3,7	4,5
<b>Access to Health(1985-91)</b>	77%	39%	no data available	74%	83%
<b>Access to Safe Water</b>	50%	24%	no data available	48%	36%
<b>Access to Sanitation</b>	43%	24%	no data available	43%	42%
<b>GNP mn US\$ 1993</b>	6,743	1,375	11,8057	3,152	5,756
<b>GNP per capita 1993</b>	270	80	2,900	370	540
<b>Annual Growth 1985-93</b>	0,3	1,9	-1,5	1,8	-1,1
<b>External Debt US\$ mn 1992</b>	6,367	4,929	17,301	7,041	4,007
<b>External Debt % GNP</b>	65%	494,8	14,4 (GDP)	272,9	63,8

Source: Africa at a Glance  
African Institute in South Africa,1995

# I. KENYA

## REPORT

### LEGAL PROTECTION FROM CHILD PROSTITUTION IN KENYA

*Ms. Victoria Kattambo*, Law Reform Commission

*Ms. Mary Njuguna*, SNV Street Children Programme

*Ms. Akky de Kort*, ANPPCAN Kenya Chapter

#### 1. Introduction

Child prostitution is growing faster than adult prostitution in Kenya. The possible explanation for this is the danger of HIV/AIDS. There is a belief that having sex with young children is less risky than with adults.

Child prostitution as an issue cannot be viewed in isolation. It always goes together with adult prostitution. For example, a street mother living with her children in the streets and earning some money through prostitution will involve her children from an early age.

Advocacy against child prostitution as a strategy in fighting the problem needs support from NGOs as well as the Kenyan government. To create impact, these advocacy programmes should fight poverty as the root cause of prostitution.

#### 2. Examining the magnitude of child sexual exploitation in Kenya

Child sexual exploitation is rampant in Kenya and has been going on for sometime but has become increasingly alarming in recent years. However, data collection is unsystematic and information only exists as raw data as in, police records, hospital records, court records and social worker's reports or in the files of organizations. Nonetheless, manifestations of sexual exploitation against children are evident and take many forms, for instance; rape/defilement, incest, child prostitution, sugar daddism, child marriage and sex tourism. All these forms of child sexual abuse have been highlighted quite regularly in the local media.

The main pre-disposing factors for child sexual exploitation are social-economic in nature such as, economic hardships, children born out of wedlock and cultural practices. Of significance is the high urban growth rate (about 8 %) with more people migrating to the urban centres in search of employment. These have had a remarkable contribution to the breakdown of the nuclear and extended family systems, leaving the children vulnerable. In the situation of children born out of wedlock, many of them are left under the care of old grandparents who are incapacitated especially in providing the required parental care and guidance and such children are abused by relatives living with them. In many cases of father-daughter incest, the precedence is often a situation of an absent mother and the girl takes over the mother's roles in the house. In some communities also, child marriage is a norm and girls are married off to men as old as eighty after circumcision at the age of twelve.

Child prostitution is increasing at a high rate in many urban areas, especially Nairobi, Kiambu, Malindi, Mombassa, Kisumu, Kajiado and Busia. It is more evident especially among street girls and has been captured in the local newspapers in the 90s. A survey based on the magistrates court cases, (1988 figures) and field investigations in several districts shows the frequency of prostitution as being 44 % compared to other forms of sexual exploitation; early marriages 21 %, defilement 13 %, sex tourism 11 %, sex trafficking 10,1 % and pornography 1,9 %. Street children are exposed to prostitution at an early age and especially for the younger ones who automatically want to model the older. Many of the street girls will either engage in small activities such as hawking and begging during the day and later on switch to prostitution at night. Their clientele range from night guards to business tycoons. Many of the street children have been reared in the slum areas, by single mothers, some of them already initiated into the trade by their mothers and older siblings and they see sex as simple pastime for raising money.

Available data however, does not provide adequate information of the actual magnitude of child involvement in sex tourism, but there are some crude indications of such practices. For example a recent reported case where foreigners were found keeping minors in their hotel rooms. Similarly, from observation it is clear that tourists, visiting the coastal towns of Mombassa and Malindi are targeting young children, though it is difficult to tell the ages of the boys and girls involved.

Child prostitution is a very hidden phenomenon. The young children involved, mainly girls, are not allowed in bars, hotels and nightclubs. The only visible locations they are found in is in the streets. However, most of these children operate their business under the coordination of a pimp or contact person who either advertises their services or links them up with potential clients. Another observation is that women tourists, mainly foreigners of middle age are targeting young beach boys.

The sugar daddy syndrome continues to increase significantly as local old men woo young school girls in coercive relationships, presuming that the young school girls are free from HIV/AIDS. Also, closely related is the growing phenomenon of pupil-teacher affairs, which are quite common whereby a teacher threatens the pupil with punishment if she or he refuses to satisfy the latter's sexual urges or offering small favours in exchange for sex..

### **Causal factors associated with Child Sexual Exploitation**

- Economic circumstances/ poverty**

Where children leave home in search of basic necessities of life e.g. shelter, clothing, education and health, which their families can ill afford to provide.

- Social problems**

It has been found that in certain situations cases of laxity, indiscipline and immoral tendencies in parents have led children into developing unfavorable sexual habits. This is particularly the case with single parents.

- Tradition and culture**

Some traditions and culture legitimize child marriage in spite of its detrimental effect to the development of a child.

- **Child labour**

It was also found that child labour has a big influence on child sexual exploitation especially where employers do not pay these children well. Sometimes the employers take advantage and sexually abuse the child workers.

- **Statutory provisions on child abuse**

It has been observed that the law on child abuse and exploitation does not provide adequate protections.

### **3. Child sexual exploitation**

It is noteworthy that there are no specific policies and programmes on child sexual exploitation and prostitution. There are however laws, policies and programmes on child welfare which address the problem in one way or another. These are both governmental and non-governmental..

#### **3.1. The role of the government**

The Convention on the Rights of the Child was ratified and the 1990 World Declaration of Children, which focuses on the problems and unmet needs of women and children, was signed by the government in Kenya.

A National Programme of Action which encompasses the needs of children in especially difficult circumstances (a term used to include child prostitutes) and legislative reform are crucial tasks.

A special task force set up in 1991 to review legislation on children and to give effect to the principles enshrined in the convention aforesaid and the African Charter on the Rights and Welfare of the Child, 1990, presented its report in 1994. One of its recommendations (i.e. the enactment of a Children Bill) has already been acted upon by the Kenyan government.

The Bill aims at consolidating key legislation on children and marks the beginning of important policy and legislative changes aimed at addressing child welfare. It sets up a National Council for Children's Services comprising government and non-governmental agencies.

The Children's Department set up within the Ministry of Home Affairs and National Heritage has statutory responsibilities under the Children and Young Person's Act to provide for the protection and discipline of children (under 14-16 years) and Young Persons (16-18 years).

Relevant law enforcement agencies include the **police** (responsible for crime detection and prevention); the **courts** (the juvenile court has been established to deal with matters affecting children in need of protection and discipline) and the **probation department** (responsible for rehabilitation of offenders through alternatives to imprisonment). The department also carries out social investigations intended to guide courts. Note that the multiplicity of courts in matters affecting children has resulted in a suggestion for the establishment of family courts.

### **3.2. The role of law**

#### **3.2.1. Content of the legislation**

The Kenya Constitution and other laws generally provide several protections to children e.g. protection from neglect and various forms of abuse, protection from economic exploitation, protection from narcotic drugs; protection from sexual exploitation and abuse; protection from abduction, sale or other forms of exploitation; children rights to survival and development,etc.

Sexual exploitation is dealt with by two key statutes, namely: the Children and Young Persons Act (Chapter 141) and the Penal Code (Chapter 63).

The Children and Young Persons Act treats a sexually assaulted child and a child who is exposed to moral or physical danger as one in need of protection. Criminal charges can be brought against any person who by any act or omission knowingly or willfully causes a child to become in need of protection.

The Penal Code deals with offenses against morality which cover various forms of child sexual abuse. Several provisions are targeted at sex tourism, prostitution and pornography.

The Code provides for the offenses of defilement, bestiality, homosexuality, incest, sodomy, conspiracy to defile, indecent assaults, abduction for purposes of sexual abuse, defilement of idiots or imbeciles, procurement or attempts to procure any girl or woman to:

- \* have unlawful sex in Kenya or elsewhere;
- \* become a common prostitute either in Kenya or elsewhere;
- \* leave Kenya for purposes of becoming an inmate or frequent a brothel;
- \* become an inmate of a brothel or frequent a brothel in Kenya or elsewhere,

Other offenses which have implications for child sexual abuse are to be found in the **Public Health Act** (Chapter 242).

#### **3.2.2. Constraints in handling cases**

There are many constraints in the detection and general handling of sexual abuse and exploitation of children, viz.:

- The offenses are normally committed secretly. This minimizes detection and reporting.
- The testimony of children of tender years must be corroborated by other material evidence.
- Sometimes law enforcement agencies are reluctant to deal with cases affecting children and prefer to have them tackled as domestic matters.
- Cultural practices, e.g. child marriage, indirectly promote child defilement. This results in the undesirable application of double standards and reduces the seriousness of defilement under other circumstances.

The *on-going law review exercise* aims at addressing some of the above weaknesses. There may however be need to focus more attention on child prostitution and to revive a proposal made several years ago to enact a Sexual Offenses Act. It may very well be that an integrated approach will be preferred.

### **3.3. The role of social welfare in alleviation of child sexual exploitation**

A large proportion of child welfare services are provided by NGOs, CBOs, and **religious agencies**. Besides providing quite elaborate education and health services for children in especially difficult circumstances it is not clear how they specifically address the problem of child sexual exploitation. However, some programmes working with street girls in Nairobi offer comprehensive medical services for girls dropping into their centres. This includes providing treatment for STDs and in several cases caring for HIV/AIDS infected girls. However, except for on the street counseling done by a few NGOs working with street children, other prevention interventions and initiatives to influence policy makers are lacking. Recently, the Anti-Rape Lobby Group was set up in support of defiled women. This is a positive development but being the only body dealing in this problem for all categories of women, it may not be in the best position to address the specific problems faced by abused children.

At community level, one may not see much in terms of organized community action against child sex exploitation. This could be attributed to several factors, one being the stigma and shame that is attached to child defilement, which makes people shy away from the problem. This attitude even affects the actual reporting of cases, and, consequently, hinders the detection process. In addition, the breakdown of traditional family systems has led to individualism which in turn has led to apathy. Individuals do not have social support systems to depend on at the community level other than the government and other service providers. Lack of proper awareness of the problem and lack of information on where to report incidents of abuse as well as insufficient knowledge on the rights of the child compounds the situation further.

### **4. The role of the media and advocacy**

The media in Kenya is quite active in covering the child prostitution issue. Despite the fact that many articles on this issue appear in newspapers and magazines the information does not reach the public at large. Many abusers are tourists who more often than not come from other countries on sex tours.

The studies and research done on this issue are kept confidential by the organizations that have carried them out. The findings of these studies are then not really used for awareness purposes. The data compiled in many instances fail to provide specific statistics and therefore make it difficult to get a real picture of the magnitude of the problem.

There are only a few organisations which have specifically included child prostitutes as a target group and they try to cover this issue in their advocacy programmes. Some for example publish articles about child prostitution in their newsletters. The issue of child prostitution is also included in the campaigns about street children and especially the street girls programmes. There is an organization concentrating on the girl child and they cover the issue of child prostitution in a booklet on the girl child.

## **5. Activities and involvement of Human Rights groups**

In Kenya there are only a few organizations involved with the Rights of the Child. The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) Kenya Chapter, one of these organizations, facilitated a meeting between the End Child Prostitution in Asian Tourism (ECPAT) Team and organizations in Kenya involved with child prostitution in October 1995. Approximately 20 representatives from different NGOs came together and discussed with the ECPAT team the problem of child prostitution and tourism in Kenya. The NGOs planned a follow-up meeting in which a new group was born. The ECPIK — Coalition (End Child Prostitution in Kenya) has since met three times and its main concerns and plans are on networking, mobilizing a workgroup on child prostitution in the Kenyan coastal area and covering the issue in newsletters and newspapers. They have also had a radio interview in which two ECPIK members spoke on the issue of Child Prostitution and the Coalition. Future plans include: preparing for the World Congress on Commercial Sexual Exploitation of Children due to take place in Sweden, preparing a concept paper for research, contact with ECPAT Headquarters, ECPAT — Germany, ECPAT — UK, and preparations for a proposal/budget for ECPIK — Coalition activities.

## **PLANS FOR FUTURE ACTION**

### **Plans at National Level**

- Networking within Kenya and with other African countries on the issue of child prostitution.
- Research, in-depth study, gathering and dissemination of data.
- Awareness campaigns, public awareness.

### **Legislation:**

- Enactment of a legislative provisions that censure child sexual exploitation with stiff penalties for offenders.
- Separation of juveniles from adult offenders in the criminal justice systems.
- Family courts available even at grassroots level in combination with customary systems where relevant.
- The need to lobby for more focused policies on children. These should be reflected in development plans of NGOs.
- The on-going law review exercise should take account of fresh findings on problems affecting children. It should be an on-going exercise backed by an effective monitoring system. The National Children's Council should play the role of influencing critical policies on issues affecting children as well as monitoring the implementation of those policies through law and other approaches.
- The need to lobby for changes that will ensure provision of adequate resources for child welfare nationally and through international co-operation. Government efforts should however be augmented by community participation.

### **Plans at the African Regional level**

- Participating in the World Congress on Commercial Sexual Exploitation of Children to make sure that the African context is not left out in the Declaration and Plan of Action.
- There is need to establish the magnitude of child sexual exploitation at the regional level. This could be achieved through collaboration between governments and human rights groups such as ANPPCAN.
- Thereafter regional arrangements could follow, e.g. the preparation of an appropriate regional instrument to bind African countries. Comparative studies with other regions would be useful.

## **SUMMARY:**

### **KENYA: Pop. 28,75 mn**

Large child population (60 % of total)

#### **Legislation:**

New Child Act in preparation - there is already a Child and Youth Protection Act and Penal Code

Legislation needs to address:

- women's rights
- property issues (inheritance)
- juvenile/adult offenders/family courts

#### **Implementation:**

Task Force for the Convention on the Rights of the Child was formed - prostitution did not emerge as an issue of this task force

#### **Problems:**

Lack of preventive mechanisms

Lack of rehabilitation measures

Lack of community-level involvement/organized action

Lack of awareness

Lack of research

#### **Problems with implementation:**

Difficulties in detection

Child evidence needs corroboration (if child is the victim)

Police reluctance to intervene

Cultural differences/age of consent

Resources/care facilities

## II. ZAMBIA

### **REPORT**

#### **THE ZAMBIAN SITUATION**

*Ms. Merab Kambamu Kiremire*, Board Secretary, Tasintha Programme

Since there has not been much work done on child prostitution in Zambia, this presentation features the Tasintha Programme, a programme of women working with female sex workers for change towards positive life styles, as a case study.

#### **1. The Tasintha Programme**

##### **Background:**

- The programme started in April 1992 with a mission to address the issues of prostitution among women and children prostitutes in Zambia that include
  - \* Economic empowerment
  - \* Health, including reproductive health, standards and HIV/AIDS
  - \* Violence and Human Rights
  - \* Poverty
  - \* Child Welfare
- Up to 1992, there had not been any organisation dealing with this area, apart from occasional research attempts
- The programme, which has now been operational for 4 years, has a membership of over 1 000 ex sex workers involved in skills training and development for self reliance; and reaches out to approximately another 1 000 with health education and care.

It is situated on a 7.5 acre property with sufficient infrastructure to accommodate

- an administrative office space;
- a skills training centre;
- a pre school;
- a clinic;
- a production/business centre.
- a transit hostel; and
- a canteen to serve meals as both a service and an income earner.

##### **Prostitution and the economy:**

Over the four years the programme has been running, it has found out that, although prostitution has existed in Zambia for many years, it was little known or seen before the late 1970s. The 1980s witnessed increased levels of visible street prostitution.

Interestingly, this was the same period of Zambia's economic decline, which affected the country's social services, including education, health and welfare to the majority of its population, particularly the vulnerable, the poor, women and children.

## **2. Zambia: The Profile**

752 600 square kilometers

a population of approximately 9 million people with a growth rate of 3,5 %;

- over 50 % of whom were below 15 years of age in 1990;
- 52 % were women; and
- 55 % lived in towns.

By the age of 19, 2/3 of Zambian women are already mothers or pregnant.

Teenage mothers account for 21 % of all births and only 9 % use family planning

### **2.1. Employment**

Zambia's labour market is characterized by a lack of adequate formal employment opportunities, under-employment, and an acute shortage of skilled manpower.

Labour Force Surveys over the last 10 years have shown the unemployment rate progressing from 13 % in 1986 to over 20 % in 1992. Over 20 % among the youth 15 to 19 years of age are unemployed. For urban youth, the figure is over 48 %.

Formal employment has been on a steady decline from about 27 % in 1975 to 15 % in 1988. It has lagged behind growth, the labour force, rural-urban migration, and output of school leavers. While informal employment, now over 43 % has become the key reservoir of Lusaka's unemployed, the majority of whom (52 %) are females.

### **2.2. Education**

The decline has not only been at the economic level, it has also affected other important areas of human development such as education and the family.

Recent studies have indicated that education is in a crisis with an allocation of only 3 % of the National GDP, providing the equivalent of US \$ 0.25 per child.

In 1994, 50% of school-age children have no schooling opportunities. Sixty percent face ending their education at grade 7 each year. Less than half complete the Primary cycle. The majority of these are girl children. Only 17 % enter Junior Secondary school, and only 4 % Senior Secondary school.

Illiteracy remains very high, with one third of the population unable to read and write.

## **2.3. The Family**

Recent years have also witnessed increased disintegration of the family. In Zambia 33 % of the households are currently headed by females, 80 % of which live in extreme poverty and inadequate housing facilities for good child upbringing, a situation which undoubtedly greatly impacts on child behavioral patterns.

All these negative trends have had adverse consequences on the youth, particularly the female youth.

## **2.4. Child prostitution**

The Tasintha programme has also found that children as young as 11 years are involved in prostitution. The majority of these are daughters of prostitutes who are generally initiated into the trade as soon as they mature, children from families in extreme difficult situations or orphans.

Little girls are often key players in the petty street vending trade where adult members of the families including parents and guardians send the children to sell small wares and food stuffs such as roasted groundnuts, cigarettes and sweets around popular spots such as bars, taverns and bus stops. Such children are often hired into sexwork by tavern patrons who find the children both cheaper, and supposedly, safer from HIV/AIDS!

Others, are victims of rape, adult abuse and teenage pregnancies. Most of the children were also victims of domestic labour and subsequent abuse, recruits of old female prostitutes who practically trade in them; and male youth prostitutes who are victims of sugar mummies and homosexuality.

In the first year of the Tasintha programme it operated a children's component with as many as 400 children. However this was discontinued due to lack of adequate space but is due to recommence now that space is no longer a problem.

## **2.5. Prostitution and poverty**

The findings at Tasintha have left us with very little doubt, that in Zambia, prostitution is largely linked to poverty and lack of opportunities for the development and sustenance of an individual person.

It is for this reason that Tasintha advocates the protection of vulnerable women and children and the overall empowerment of such groups.

## **2.6. Prostitution and STDs, HIV/AIDS**

Although the programme does not test its members young or old, symptoms of HIV/AIDS are quite visible among many. The programme runs a health scheme where every member has access to medical care, support and advice (for members and their children). Of particular worry though, are the statistics which show a very high rate of HIV/AIDS amongst youth between 15-19 years, particularly the girls who account for four times the rate of boys. The majority of the girls are victims of sugar daddies.

Although Zambia, just like any other Third World country, has always had orphans, the number is now on the increase due to HIV/AIDS, predicted to increase to 430 000 in the year 1998. The majority of these will be females, without care, without opportunities, and prone to the streets and prostitution.

### **3. Prostitution and the Law**

#### **3.1. Zambian Constitution and Law**

The Zambian Constitution includes a Bill of Rights and provides for equality and protection of all. Prostitution is illegal in Zambia. However, there is no specific criminal charge on prostitution. So women and girls involved in prostitution are generally regarded as operating an illegal business and are often arrested as loiterers when caught in the streets by police, who also often brutalize the arrested women. The male customers face no charges, even when they exert violence on their clients, including beating them, leaving them in graveyards, and not paying for the services provided.

What is even more grave is the fact that since there can be no criminal action on the basis of health, men who transmit diseases such as STDs and HIV through negligence (from carelessness and refusal of protection) on women and girls in prostitution go scotch free.

#### **3.2. Children's Rights and Human Rights**

- Zambia is a signatory to the UN Convention on the Rights of the Child.
- It was also a key player in the proposal to include the girl child in the Africa Platform of Action which is now part of the Global Plan, adopted by the 4th UN Conference on Women in Beijing, China in September 1995.
- Zambia is also a key signatory to the OAU Charter.

Other efforts include:

- \* The establishment of the Children In Need Network in 1995,
- \* Ministry of Youth and Sports which is defining a new policy for the youth
- \* NICDSS - New policy on the "out of school" child

These instruments provide for a happy upbringing of children with safe lives and chances to opportunities into the future. The Ministry of Community Development and Social Services is responsible for those activities.

In practice it is very difficult for Zambia to fulfill its obligation to the UN Convention on the Rights of the Child. It will need to increase its efforts towards a higher standard of living in order to effectively implement these noble intentions for the benefit of all children.

## **PLANS FOR FUTURE ACTION**

In view of the fact that the Tasintha programme has already informally established that child prostitution exists in Zambia, it is recommended that a National Task Force be established to advocate and lobby for:

- Child friendly national economic and social policies and plans that deter and prevent the promotion of child prostitution, including
  - \* poverty alleviation
  - \* debt cancellation and fair terms of international trade
  - \* promotion for all (EFA), Health for All (HFA), pension schemes and family supports (to reduce family disintegration)
- Legal and legislative reforms to provide for practical mechanisms to end child prostitution
- Education and awareness programmes targeting both the public and community on the evils of child prostitution and the need to combat it
- Replicate Tasintha programme as an intervention and rehabilitation programme to heal and reintegrate sex workers (both young and old) and their offenders (recent focus)
- Continue the already commenced research and information gathering on prostitution in Zambia with government and the public at large
- Develop preventive programmes targeting vulnerable children.

The already existing Children In Need (CHIN) network could be strengthened to become such a national task force.

## **SUMMARY**

### **ZAMBIA Pop. 9,5 mn.**

#### **Underlying causes for child prostitution:**

Poverty: affects women and children the worst  
High unemployment  
Crisis in education 3 % of GDP  
High illiteracy rate

#### **Underlying causes directly related to child prostitution:**

High rate of teenage marriages and pregnancies  
½ m. orphans by 1998  
Family break-down  
Urbanization  
Breakdown of values  
Belief that younger people are HIV free \* use of children for prostitution  
\* sugar daddism

#### **Specific problems in connection with child prostitution:**

Domestic work - abuse of young people  
Older women pimping  
Male children prostituted  
High rate of STD  
Cultural attitudes/acceptance of prostitution as means of earning livelihood  
No specific law against child prostitution  
Customers not penalized  
Police violence/corruption  
No legal penalty for HIV etc. transmission  
New youth policy  
Prevention/Implementation is real problem (not legislation)  
NGO work in prostitution only since 1992

### III. ZIMBABWE

#### REPORT

#### LEGAL PROTECTION FROM CHILD PROSTITUTION IN ZIMBABWE

Mr. *Emmanuel Simbarashe Jumo*, Harare Legal Projects Centre

Ms. *Prisca Munonyara*, Zimbabwe Council of Churches

Ms. *Tsitsi Sadzamari*, Zimbabwe Republic Police

The Zimbabwean child is protected from child prostitution by means of legislation. The Government, non-governmental bodies and civil society have increasingly campaigned for the protection of the child in the wake of a larger number of cases being reported.

#### 1. Legislation

In Zimbabwe the legal definition of a child is found in the Children's Protection and Adoption Act. Chapter 33. Section 2 interprets the "child" to mean a person under the age of sixteen years and includes an infant. An "infant" is defined to mean a person under the age of seven years.

Where one is defining a prostitute in this particular content, The Criminal Law Amendment Act Chapter 58 would be the point of reference. It interprets a "prostitute to include any female who for money or reward habitually allows herself to be carnally known by diverse men, or solicits diverse men to have carnal connection with her." It would therefore follow that a male child is not covered by this definition. For the boy child protection would be found by means of the Children's Protection and Adoption Act and the criminal law.

In general, the Children's Protection and Adoption Act (Cap 33) does protect the child from *inter alia*, ill-treatment, neglect, abandonment or exposure in any manner that is likely to cause the child unnecessary suffering, injury or detrimental effect to his health or morals.

Section 8 of the Children's Protection and Adoption Act and Section 3 of the Criminal Law Amendment Act protects the child or young person (i.e. a person who has attained 16 years but has not attained the age of eighteen years) from residing or frequenting a brothel. It further criminalises as does the Criminal Law Amendment Act, the seduction, abduction, prostitution and the *causing or conducting a child to perform immoral acts*.

#### 2. The problem and the combat of child prostitution

In Zimbabwe relatively few cases involving child prostitution have come before the courts and even fewer cases have been recorded and reported in the press. The government through the Ministry of Health and Child Welfare and the Social Welfare department have encouraged cases relating to child abuse generally to be investigated and reported to police. The general public whilst calling for stiffer penalties for sexual offenders, remains

uneducated about the issue and hence fails to identify and understand the extent of the problem.

It can safely be submitted that parents in Zimbabwe are largely conservative when relating to or dealing with sexuality with their children. Sex remains taboo, so, when confronted with questions of sexual nature, both parents and children are unable to cope.

The police force has made tremendous strides in a bid to be seen as public defenders. They emphatically enforce the provisions of the relevant legislation by arresting the offenders and bringing them before the courts. Whereas it is accepted that they do a commendable job, queries have been raised as to the levels of their training with reference to sexually abused children. Specialized training in the handling of such cases needs to be implemented. The introduction of Community Relations Liaison Officers has been a great help in that the public can now approach the force on a 'personal' matter with greater confidence.

The discussion and proposals on victim friendly courts is another positive development, with help and lessons being drawn from the South African jurisdiction. The government through the office of the Attorney-General has already set up a task force to investigate the likely operations of these courts and training of personnel to staff these courts is at an advanced stage.

### **PLANS OF FUTURE ACTION**

- Child prostitution in Zimbabwe exists though it is rarely publicized let alone discussed. The extent of the problem remains uninvestigated. With the harsh economic realities prevailing owing to the effects of the I.M.F. and World Bank imposed economic structural adjustment programme this problem is likely to become prevalent.
- There is hence a need for structures to be established to deal with this issue. NGO's can play a vital role in counseling, investigating and education. Organisations such as CONNECT, Save the Child Foundation, The Child and Law Zimbabwe Project and others are already making headway in highlighting the problem.
- More will still need to be done as the growth in tourism and world exchange travel is likely to bring with it alien tendencies, attitudes and practices harmful to our children.

## **SUMMARY**

<b>ZIMBABWE</b>	<b>Pop. 11,2mn</b>
<b>Legal Aspects:</b>	
Child Protection Act is in course of preparation	
Age of consent is 16	
Male child not covered in definition of child prostitute	
Increasing abuse of male children	
Female child prostitute is an offender	
<b>Problems related to child prostitution:</b>	
Lack of public awareness	
Lack of an independent press	
Police enforcement operations not always directed to the problem, but to its manifestation (urban clean-up)	
Lack of training in police forces	
Lack of resources for police handling such cases	
Need for development of progressive policies	
Privacy protection negates rights of victim/child	
Conservatism	
Lack of sexuality education	
Confusion between cultural norms and sexual deviance	
Time limits for reporting	
Lack of research on extent of problem	
Problem likely to increase because of structural adjustment programmes.	
Need for growth in tourism	
Poverty/urbanization/sexual abuse of children/unemployment	
Sugar daddies - male and female victims	
Training of law/court personnel	
Rehabilitation * of the offender	
* of the child	

## **IV. MOZAMBIQUE**

### **REPORT**

#### **CHILD PROSTITUTION AND SEXUAL ABUSE OF MINORS IN MOZAMBIQUE**

Mr. *Gabriel L. Dava*, Ministry of Coordination of Social Action

##### **1. Background**

Mozambique is a country situated in the southern region of Africa with a population of about 18 million people, a large part constituted by children.

Although Mozambique has ratified international conventions on protection of children's rights, it is clear that the country is still far from entrenching the rights of children. This is mainly the result of 17 years of civil war and the economic problems the country faces, particularly the negative impact of the ongoing Structural Adjustment Programme.

Actually, as consequence of the war, we find thousands of children:

- \* with no access to shelter and food;
- \* with no access to education and health;
- \* orphaned or separated from their parents;
- \* sexually abused,
- \* with different kinds of physical and psychological traumas.

The war came to an end, but other crises emerged. On the one hand we have the structural adjustment programme which have a very negative impact on the urban areas.

On the other hand, the peace opened the country to the foreigners from different countries and backgrounds, with the coming of the blue helmets, numerous staff from relief agencies and peace agreement implementation bodies and, ultimately, the increasing number of tourists.

The combination of all of these factors creates conditions for violations of children rights, including child labour, child prostitution and sexual abuse and other threats to healthy and harmonious development of children.

##### **2. Child prostitution in Mozambique**

Child prostitution is a real phenomenon in Mozambique and it is spreading rapidly.

Child prostitution is used to mean sexual relations on condition of receiving payment either in money or in kind, involving persons under 18 years old.

This definition is important because it differentiates child prostitution from sexual abuse, which includes violation, rape and other forms of abuse.

Child prostitution is a new phenomenon in Mozambique, at least as a public issue. In 1994 the alliance of Save the Children in Mozambique referred publicly to practices of child prostitution by Italian soldiers under the UNOMOZ mission in the central province of Manica (the so called Beira corridor). After that, other information became public about the same behavior in other provinces by other soldiers under UNOMOZ.

However, we believe that child prostitution existed in Mozambique since the social, political and economic changes in early 1987, although it was not visible. The involvement of UNOMOZ soldiers increased the levels of the visibility due in part to the financial rewards offered by soldiers.

### **Causes:**

Research conducted on child prostitution concluded that the main causes for child prostitution are:

- The level of poverty in which most of the Mozambican families live, particularly in the urban areas;
- Degradation of moral values of the society, particularly the disintegration of family structures;
- Lack of sexual education;
- Weakness of legal structure and government institutions to monitor and discourage practices of child prostitution;
- Lack of schools and other facilities/activities for child recreation, particularly in the rural areas.

Those are some of the main causes. In fact, there are many other causes to be considered, for example cultural values and traditional beliefs.

### **Manifestation: Who, how and where:**

The child prostitution is clearly identified by groups as follows:

- Prostitution by children living with their poor parents in the suburbs. Those children offer themselves at any price to their clients and the place for sexual relations can be in any place hidden in the darkness.
- Prostitution by children living with their poor parents in urban areas, who charge relatively high prices for their services and are controlled by their patrons (which can be their parents or other person for whom they work). The sexual relation is conducted in places facilitated by the patrons (this can be a bar, motel or ordinary residence) or in cars along the beach. The income of those children is mostly to supplement the household income, and thus the protection from the parents or relatives.

- Prostitution by children who live in a relatively better economic condition and are students. They embark on prostitution to satisfy their ambition for luxury as they see friends and schoolmates dressing smartly and driving in nice cars or motorbikes.
- Prostitution by children who just want to imitate friends or his/her own hero as seen in television or other media.

### **Consequences:**

The main consequences of child prostitution are:

- Increase in sexually transmitted diseases including AIDS;
- Birth of non desired children;
- Death by clandestine abortion;
- Different types of mutilation;
- Psychosocial traumas;
- Increasing degradation of social and moral values and destruction of the family structure.

### **3. Existing Interventions**

As was mentioned before, the problem of child prostitution is relatively new. However, both government and NGO's are concerned about the situation and some practical actions have been carried out.

In February 1995, a national seminar on the issue was held by the Ministry of Social Action to discuss this issue and to define strategies for a coordinated intervention. This seminar involved government institution (including health, education, justice, home affairs) and national and international NGO's.

This seminar came up with a strategy in two directions:

1. Prevention, through advocacy and public awareness
2. Rehabilitation

- As to **prevention**, there are some actions in place such as:
  - 1.1. Public information about negative impact of child prostitution, the existing legal mechanism against those who promote or are involved with child prostitution and sexual education for youth. This is through the main national media (including TV), schools and pamphlets which are distributed to the citizens and tourists when they arrive at airports and border entry points.
  - 1.2. Sensitization of hotel, restaurant, bar and night club managers and workers to adhere to the law. It means not allowing rent of rooms for sexual relations particularly with children and not allowing children in such places, after certain hours as determined by the law.

1.3. Revision of children's legislation in order to promulgate a Comprehensive National Children Rights Act which addresses very clearly the issue of child prostitution and sexual abuse

- As to **rehabilitation**, few actions have been taken. What exists now in the field of health is the assistance for sexually transmitted diseases.

### **PLANS OF FUTURE ACTION**

The present efforts are on the level of policy formulation, strategy definition and co-ordination of different governmental and non-governmental institutions working in the field.

For the future, the strategy is to reinforce public education and advocacy.

Issues for consideration are:

- **Continuing law enforcement** by reinforcing institutional capacities and revision of all legislation on children in order to come out with a comprehensive Children's Law by the end of 1996.
- **Improving the implementation** and monitoring capacity of government and NGOs. This includes efforts to increase financial resources available for all activities regarding children's rights (amongst this: child prostitution). Furthermore this implies training of professionals as well as volunteers to work on local level with parents on prevention and rehabilitation.
- **Creation of income generation projects** for poor families with children involved in prostitution to create income alternatives.
- **Embarking on a programme for the physical and psychological rehabilitation** of children involved in prostitution. This rehabilitation includes the creation of rehabilitation centres where those children can have education and vocational training to create alternatives to the sex business.

## **SUMMARY**

### **MOZAMBIQUE**

**Pop. 18mn**

The war had a devastating effect on children.

Children: disabled  
suffering ill health  
displaced  
abused  
traumatized  
orphaned

#### **Underlying causes for child prostitution:**

Negative impact of ESAP, especially in urban areas  
Tourism  
Poverty  
Disintegration of family structures  
Urbanization

#### **Problems:**

Law is not clear enough / outdated / does not address child issues  
Rehabilitation process is urgently needed  
Need to create alternative income generating opportunities  
Need to improve services of training for law enforcement, social services personnel  
Need to reinforce capacity of NGOs for child right advocacy.  
Proof of age  
Weakness in enforcement of protection mechanisms

#### **Directly linked reasons for child prostitution:**

Children sent out to support family  
Children organised by pimps  
Students trying to earn money

#### **Strategies to combat child prostitution:**

Prevention: public awareness  
legislation  
Rehabilitation

## V. SOUTH AFRICA

### REPORT

#### CHILD PROSTITUTION IN SOUTH AFRICA: THE PROBLEM AREAS AND PROTECTIVE LEGISLATION

*Mr. Neville Chaine, National Institute for Public Interest Law & Research*

##### 1. Background and extent of the problem

South Africa presently is undergoing changes trying to balance the inequalities created by the Apartheid system. However, the latest Government Household Survey shows that the larger part of the population is still living in extremely difficult circumstances: 53% live with an income of less than R 170 per month. Poverty is therefore definitely key pull-factor into prostitution.

Like all social problems which have been swept under the carpet or were hidden during the political struggle, child prostitution and abuse now manifest themselves. With regard to child labour no profound research has been conducted yet, therefore articles based on punctual observations are the only source of information. An estimate 200,000 children are forced to labour in rural areas: for urban areas no estimates are available. With regard to child abuse, only in 1995 some 28,000 cases have been reported, but no reports or statistics about convictions are known.

Child prostitution is manifest and on the increase in certain spheres / areas:

- The former **migrant labour** system, disrupting thousands of families, has concentrated large numbers of men in hostels. It is obvious that such unnatural isolation has increased the demand for prostitution and has drawn prostitution into the towns/ dwelling areas. Punctual research conducted by the NACL has now shown that hostels are frequently "serviced" by school girls, i.e. in Soweto and Nansfield.
- The large commuter population has led to organised child prostitution around taxi ranks, where it seems that mainly employees of the **taxi industry** are the organisers and procurers.
- Due to it's size, South Africa has a large **trucking business**. Recent discoveries of an organised child prostitution system in the Pretoria and Maravessstad area involving around 300 children indicate that such structures have mushroomed at other points as well, where the demand by the trucking community exists.

- The extensive and highly exploitative system of **domestic workers** in South Africa is practically still in vigour. Although hidden within the households, it can be assumed that a lot of sex services, either forced or paid, are being rendered.
- Since tourism is rapidly increasing, attempts to organise sex tourism are to be expected. During raids in the **red light districts** of Johannesburg last year, children were found in acts of sex with tourists. Besides that, large numbers of (often minor) females have been brought into the country from South East Asia who are working in the numerous massage parlours.
- Lastly, the many **harbours** in South Africa are likely to foster prostitution and, in consequence, child prostitution.

Altogether, whilst child prostitution is manifest in many social spheres, no quantification can be made at present.

## 2. Legislation

The entire legal framework of South Africa stems from the colonial and apartheid era and is based on those precepts. On the one hand the legislation around sexuality and sex abuse was conceived as moral crusade. On the other hand, laws regulating sexual relations were instrumental for the purpose of racial separation. The Immorality Act for instance prohibited sex between persons of a different “race”, but also contains the provisions for prostitution and sex abuse.

- With regard to sex abuse, common law prohibits kidnapping, abduction, including abduction for the purpose of child marriage, exposing an infant, indecent assault, rape and incest. Statutory law is explicit with regard to prostitution: The Immorality Act prohibits any form of sex work for reward of any sort. In terms of the Sexual Offences Act there are a number of provisions prohibiting the sexual exploitation of all persons. The penal code defines the age of consent (to have sex with another person) inconsistently: for girls it is 16 years of age, for boys 19 years.
- With regard to children’s rights, important achievements were made: South Africa’s new constitution has a section (Section 28) entrenching the rights of children which includes the right to be protected from ill-treatment, neglect and abuse. Statutory law, like the Child Care Act, covers a broad spectrum of abuse and neglect. However, it focuses on “conventional” forms of abuse, whereas abuse in the form of sexual exploitation by child prostitution is considered as something different.
- Recent discussions focus on the interpretation of the ill-treatment clause, whether it includes child sexual exploitation or not. Furthermore there are debates about the decriminalisation of prostitution.
- In order to implement legislation more fully, an ambitious Child Protection Plan in the form of a “National Plan of Action” is being discussed. This plan tries to organise the co-operation of different governmental departments concerned with

child issues and the NGOs in order to implement the paramount clause which is putting the best interest of the child first.

### **3. Problems**

When the new constitution is put in place these legal provisions will have to be revised and adapted. But the major concern is the great lack of law enforcement and prosecution of offences related to sexual exploitation of children.

### **PLANS OF FUTURE ACTION**

- NACL and NCRC to liaise with all other relevant bodies
- NACL to endeavour to influence policy in the NPA
- Approach the Interministerial Committee on Children and Youth at Risk to co-ordinate an integrated plan to address and highlight the issue of child sexual exploitation
- Submission to the Portfolio Committee on Welfare on amendments to the Child Care Act, which addresses the issue of child sexual exploitation
- Co-ordinated research and intervention
- Education and public awareness and lobbying
- National seminar with the aim to specifically formulate policy and law reform

## **SUMMARY**

### **SOUTH AFRICA**

**Pop. 43,5mn**

#### **Problems related to child prostitution:**

Sexual exploitation was/is seen as morality issue  
Poverty linked to sex work and sexual exploitation  
Unemployment  
Child labour  
"Commuter industry" / migrant labour / domestic workers  
immigrant sex workers / seamen  
Rehabilitation: of abused children  
of offenders  
Lack of research  
28 000 cases of child abuse were reported in 1995

#### **Legal Aspects:**

Legislation needed, laws are outdated for current problems/ new solutions  
Implementation of laws  
Prostitution is a crime, "person" does not exempt children  
Balance between rights of accused and rights of victims  
Lack of resources endanger court reforms  
No mechanisms to control use of children in pornographic material

## **B. INTERNATIONAL ACHIEVEMENTS ON LEGAL PROTECTION FROM CHILD PROSTITUTION**

### **I. INTERNATIONAL LEGISLATION**

*Muireann O Briain, ECPAT.*

#### **International Instruments:**

- 1923 Convention on the Suppression of the Circulation and Trafficking of Obscene Publications
- 1926 Slavery Convention
- 1949 Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others  
(at present ratified by 70 countries, consolidated all Slavery Conventions)
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery  
(ratified by 114 countries)
- 1989 Convention on the Rights of the Child(CRC)  
(ratified by 186 countries)

Article 34 of the CRC states:

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

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

This obligation extends not only to children in their own country but to all children. On the base of the CRC ECPAT pushed the extritoriality legislation in various countries.

- The revised 1961 Haag Convention on the Protection of Children: deals with the attribution of jurisdiction, the determination of applicable law and the establishment of international co-operation to provide protection for children who are not in their country of habitual residence.
- The proposed Optional Protocol on the Rights of the Child: Some countries have been pushing for an Optional Protocol, followed by the Human Rights Commission deciding that guidelines should be elaborated on the sale of children, child prostitution and child pornography. These guidelines should deal with national obligations within the framework of international co-operation to implement the relevant articles of the CRC.

#### **International Labour Organisation(ILO) Instruments:**

- Forced Labour Convention 1930
- Abolition of Forced Labour Convention

#### **Refugee and Humanitarian Law:**

- Convention relating to the Status of Refugees 1951

#### **Regional Treaties:**

- African Charter on the Rights and Welfare of the Child 1990

Article 27 requires States to take measures to protect the child from all forms of sexual exploitation and sexual abuse and obliges them to prevent the use of children for prostitution.

- Inter American Convention on International Trafficking in Minors 1994

## **II. NATIONAL LEGISLATIVE AND ENFORCEMENT INITIATIVES**

*Muireann O Briain, ECPAT.*

### **1. Introduction**

The international norms which emerge from the Conventions and other international instruments establish the obligations under international law on States in relation to the protection of children from commercial sexual exploitation. These obligations then have to be translated into national legislation and into the enforcement mechanisms in each country. Article 34 of the Convention on the Rights of the Child (CRC), for example provides for protection from 'unlawful' sexual activity, leaving it to each State to enact legislation determining what kinds of activity are to be outlawed. This paper will examine specific national legislative and procedural provisions by which some countries have sought to protect children. Such provisions do not exist in a vacuum, but depend on the efficacy, capacity and will of the executive and of the law enforcement personnel in each jurisdiction to implement them. This paper will therefore also point to problems of enforcement and some solutions. Finally, commercial sexual exploitation of children is part of a complex web of factors. A major part takes place on the national scene. Increasingly, it is flourishing in the context of tourism and trans-border activities. It calls for multi-disciplinary solutions and co-operation between agencies at the national and international levels. The nature and effectiveness of such co-operation is, therefore, an important issue of concern and discussion in this paper and for the follow up on the national level of the work at the World Congress scheduled in August 1996.

### **2. National Legislative and Procedural Provisions**

Domestic legislation protective of children may be found in a wide variety of instruments, such as provisions for health care, social welfare, housing, obscenity laws, guardianship and custody. Now the Convention on the Rights of the Child has provided for the first time a comprehensive set of international legal norms for the protection and well-being of children. Ratifying states may have to initiate new legislation or revise existing legislation to achieve these norms and comply with their obligations. It would appear that the Convention has encouraged states to examine their protective provisions in a more comprehensive manner than heretofore, but their responses towards enforcement of its provisions will inevitably depend on the maturity of their existing domestic provisions vis-a-vis child care, their own stage of economic development and the cultural and economic criteria which inform their approach to the care of the nation's children.

#### **2.1. Offences involving children**

In the *Philippines*, the Republic Act 7610, which came into force in 1992, specifically addresses the 'Special Protection of Children against Child Abuse, Exploitation and

Discrimination' including Child Prostitution and other Sexual Abuse (Art. III), Child Trafficking (Art. IV) and Obscene Publications and Indecent Shows (Art. V). The Act also requires the formulation, by the Departments of Justice and of Social Welfare and Development, of a comprehensive programme to protect children against commercial sexual exploitation. Regulations under the Act provide for the reporting and investigation of child abuse cases and for measures to prevent the trafficking of children. What is highly significant about this legislation is that it was originally prepared by a non-governmental group consisting of child protection experts and activists. Through their grass-roots experience they were able to address the specific problems of Filipino children in the overall context of the government's obligations under the Convention on the Rights of the Child. The Philippine government, having requested the non-governmental assistance and having enacted the legislation, achieved as a result concrete legislative provisions and a national policy for the protection of children against commercial sexual exploitation.

On the other hand, *Brazil's* Law No. 8069 of 13 July 1990 entitled 'Statute of the Child and Adolescent' which is intended to provide for the "full protection of the child and adolescent" has no specific provisions for addressing the commercial sexual exploitation of children. Rather the Act is like a Charter for children, outlining fundamental rights and duties, with policies for enforcement and guidelines for their implementation. It is a matter for the individual state governments to translate the Charter into regulations at local state level.

In *Sri Lanka*, the ratification of the CRC led to the formulation of a policy document in 1992 on the rights of children, intended to lead to comprehensive legislation protective of children. A Technical Committee, appointed to consider legislation directed at child abuse, identified certain areas for reform. However, rather than suggesting a separate Act dealing with sexual offences against children, the Committee recommended amendments to the existing Penal Code and to the Code of Criminal Procedure. Thus, the age of consent was raised from 12 to 16 years, new offences of sexual exploitation of children and of trafficking as well as new offences relating to the use of children in pornography were created. Significantly, here again, the Technical Committee had included non-governmental representatives who had been actively engaged in combating the sexual exploitation of children in Sri Lanka. Through the amendments to the Penal Code, their concerns have been legislatively addressed in a pragmatic and comprehensive manner.

In *Thailand*, the approach to protective legislation has also involved amendments to the Penal Code. There has been a firm governmental commitment since 1993 to eliminate child sexual exploitation. Amendments to the Code at that time provided serious penalties for those who engaged in the sexual abuse of children and updated the laws on pornography. New amendments this year (1996) will mean that while prostitution per se will no longer be a crime in Thailand, soliciting and publicising for the purposes of prostitution will be punishable. Engaging in prostitution with a person under the age of 18 will be punishable if the act takes place in "a place of prostitution". However, if the act takes place elsewhere, the age of consent is 15. Boy children continue to lack adequate protection in that rape and unlawful sexual intercourse cannot be committed against male children by virtue of a judicial interpretation of the provisions of the Code.

## **2.2. Pornography**

The relevance of pornography to the protection of children against commercial sexual exploitation is not always recognised in legislation despite the specific injunction of Article 34(c) of the Convention on the Rights of the Child that states must take measures to prevent the exploitative use of children in pornographic performances and materials. New technologies being used for the production and transmission of pornography have been so rapid in development and sometimes so difficult to penetrate, that the law has not been able to keep up with them. The experience of police officers in this area has led the Standing Working Party on Offences against Minors of INTERPOL (SWP) to recommend (1995/96) that member countries enact legislation which would make it an offence to produce, distribute or possess child pornography in its present and potential future forms. In January 1995, the *Netherlands* government passed legislation, amending the Penal Code (Art. 240b), and making it an offence to distribute, make, import or possess pornographic material depicting children manifestly under the age of 16; transfer or possession of such material on a data carrier is included in the offence. In July 1994, the *Austrian* parliament passed an amendment (Section 207a) to the Penal Code to outlaw the trade in child pornography. It is also an offence in *Canada*, in *Germany* and in the *United States*. In 1994, the U.S. Penal Code was amended to allow federal authorities to prosecute persons involved in the production overseas of child pornography, if that pornography is intended for importation into the United States. In many countries, laws do not reflect the fact that such pornography is a manifestation of the sexual exploitation of a minor

## **2.3. Reporting**

An issue for national legislatures concerned with child sexual abuse, whether commercial or otherwise, is that of reporting. The *Philippine* Regulations under Republic Act 7610 encourage the reporting of cases of sexual abuse and impose mandatory reporting provisions for hospitals, doctors, nurses, teachers and law enforcement officials. In some countries there is a reluctance to impose mandatory reporting duties. Experience in the *United States* showed that a high percentage of cases reported due to an imposed duty were unfounded. The SWP, however, has urged the implementation of legislation which would require individuals and specifically professionals and others having the care, custody or control of children to report suspected abuse to the relevant investigative authorities.

## **2.4. Extra-territorial legislation**

While domestic legislation on child commercial sexual abuse is normally directed to the protection of the State's own children against abuse by nationals, this type of abuse has international aspects. Sexual exploitation resulting from tourism and foreign visitors, trafficking of young people across borders to supply brothels in other countries, abductions from one country to another, inter-country adoptions and even the transfer of pornography via computer networks or simply across borders are all issues which involve other jurisdiction. Responses within national legislatures are varied, depending on how the specific problems affect each jurisdiction. Several countries from which

large numbers of tourists are believed to travel to exploit children abroad have responded by introducing legislation to give their domestic courts extra-territorial jurisdiction in respect of offences committed against children abroad. In *New Zealand*, the Crimes Amendment Act which came into force in April 1995 makes it an offence for a New Zealand citizen or permanent resident to engage in conduct outside of New Zealand with a child under the age of 16 if such conduct would be an offence in New Zealand. *Australia's Crimes (Child Sex Tourism) Amendment Act of 1994* specifies (in Section 50 BA) that "a person must not, while outside Australia engage in sexual intercourse with a person who is under 16". In March 1996, an Australian was convicted under the new legislation of offences committed against children in the Philippines. Extra-territorial jurisdiction for offences against children abroad became law in *Belgium* (April 1995), in *France* (February 1994) and in *Germany* (September 1993) all by amendments to each country's Penal Code. The Australian Act and the French and German amendments enable prosecutions to be taken against nationals of those countries even if the crime alleged is not a crime in the jurisdiction in which it was committed; thus there is no double criminality requirement - the national legislative provisions will protect foreign children.

The Penal Codes in the *Scandinavian countries* already enabled the prosecution of citizens of those countries at home for crimes committed abroad, without specifying the crimes in detail. Under such provisions, three men were convicted in August 1990 in Norway for sexual abuse of boys in the Philippines and in Thailand. A Swedish national was convicted in Stockholm in June 1995 for offences committed in Thailand.

The Penal Code in *Japan* has extra-territorial effect in relation to certain crimes including sexual crimes with violence against children under the age of 13 or persons unable to resist such an attack.

## **2.5. Sex Tourism Legislation**

Tourism for the purposes of sex with minors has been dealt with by legislative changes in several countries. In the *United States*, the 1994 Violent Crime Control and Law Enforcement Act criminalises domestic or foreign travel with intent to engage in sexual acts with a juvenile. The 1994 *Australian* legislation creates the offence of benefiting from or encouraging such travel. The 1995 *New Zealand* legislation makes similar provisions.

A different approach is offered in the *United Kingdom* where a Sexual Offences (Conspiracy and Incitement) Bill was referred in February 1996 by Parliament to a Standing Committee for consideration. The proposed legislation would make it an offence to conspire with or to incite a person to commit certain sexual offences abroad.

## **2.6. Trafficking or Sale of Children**

The issue of child trafficking has been addressed in the *Philippines* in the Republic Act 7610 (Art. IV) by provisions which control foreign travel by children and the adoption of children in return for a consideration, as well as any acts of trading and dealing with children for money. In *Thailand* proposed amendments to the Penal Code will penalise

guardians who sell children in their care. Selling, buying, transporting of persons under the age of 18 years for the purposes of unlawful sexual gratification will be criminalised by an update to an Act of 1928 (the Trafficking of Women and Girls Act), even if the young person has consented. A feature of the new provisions is that the trafficked person is recognised as a victim and not as an offender. In *Sri Lanka*, the recent amendments to the Penal Code create the offence of 'trafficking' in section 360c in terms very similar to those of the Philippine legislation.

In "developed countries", the issue of trafficking is addressed often in the context of immigration. Inter-country adoptions, inter-country marriages, entry of foreign workers, all may involve trafficking. The Council of Europe has suggested that the activities of artistic, marriage and adoption agencies be supervised, that travel abroad by children be the subject of surveillance by immigration authorities and that young victims of trafficking be assisted and protected. In the recent changes to *Belgium's* Penal Code (April 1995), the traffic in human beings was criminalised. The *European Union* has responded to the problem of trafficking by expanding the mandate of its Drug Unit (March 1995) to enable that unit to monitor traffic in human beings. The SWP has made several relevant recommendations designed to protect children from being trafficked. These include a recommendation that member countries impose greater supervision and control on inter-country adoptions and that a data base be established with records of persons and organisations who have been found to be involved in the traffic of children. Reflecting the Council of Europe Recommendation, the SWP also recommends increased surveillance by immigration authorities and assistance to the victims of trafficking.

## **2.7. Procedures and the Child Witness**

It is generally accepted that there is considerable difficulty in prosecuting cases with an international dimension. Differences in language, legal systems, procedural requirements and the expense of bringing witnesses from abroad are some of the problems. In the context of legislating to protect children against sexual exploitation by their nationals abroad, these difficulties have been relied upon by the *British* government in refusing to accept a Bill which would give U.K. Courts extra-territorial jurisdiction for offences committed against children abroad. On the other hand, certain governments have adopted creative responses to the difficulties, such as the *Australian* government. The Australian courts are empowered under the Crimes (Child Sex Tourism) Amendment Act 1994 to take evidence by video link and can even administer oaths and affirmations by video link.

Procedural difficulties are endemic in any case involving sexual abuse of a child and not only those with an international dimension.

The Children in Trouble: *Expert Group Meeting*<sup>2</sup> in November 1994 in Vienna addressed some of the issues and particularly in Part V of its report, dealing with the Exploitation of Children, urged that sanctions for sexual exploitation of children be applied against the adults rather than the child victims and that sexually exploited children be given access to the mechanisms of justice, such as legal aid, safe housing

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<sup>2</sup> Under the auspices of the U.N. Crime Prevention and Criminal Justice Division

and support services. In *Canada*, reforms in the criminal law have recognised that children can be just as credible and reliable witnesses as adults. The special needs of child victims/witnesses have also been accommodated in the criminal justice system. Delays in getting a case to trial, the lack of family or institutional support, the age of the child and his or her lack of education may all conspire to undermine the quality of a child's evidence. The provision of a *Guardian ad Litem* for a child witness could ease the burden on the child and protect his or her interests. In the *Philippines*, under the Rules and Regulations on the Reporting and Investigation of Child Abuse cases, a *Guardian ad Litem* must be appointed by the court as soon as a complaint of child abuse has been filed.

Some interesting changes are envisaged in the *Thailand* Criminal Procedure Code which would ease the burden on the child of giving evidence. The proposed changes include the video-taping of a child's statement to police officers and the use of that video as evidence in court. Cross-examination of the child on the contents of the video will only be allowed through a psychiatrist. Provision is also proposed for pre-trial depositions by victims who may be vulnerable to delays in proceedings, such as street children. Once the deposition has been taken and the alleged offender has had an opportunity to confront the witness, the deposition can be used in court. The problems of undue influence on the child and of detaining the child until the child may thus be avoided.

The Evidence Act in *New Zealand* was amended in 1989 to provide some flexibility to judges in the taking of evidence in child sex abuse cases. The judge can take the advice of relevant qualified persons as to the effect on the child of giving evidence and can direct the admission of video-tape evidence, or the giving of evidence by closed-circuit television. Other jurisdictions have similar provisions.

It appears to be generally accepted that child witnesses need to be protected from the trauma of court proceedings and of confronting their abuser. Where the abused child is a street child or a trafficked child, the proof of his or her age can be a problem. The *Australian Crimes (Child Sex Tourism) Act 1994* makes provision for alternative methods of proving the age of a person under the age of 16, such as by appearance or from medical opinion.

## **2.8. Rights of the Accused**

There are difficulties in reconciling the rights of the accused with the rights of the child to protection. In relation of bail, for example, it has been seen that child abusers arrested in a foreign jurisdiction are very likely to jump bail; yet to refuse them bail would be to infringe their basic right to be presumed innocent until proven guilty. Either the offence has to be categorised as serious enough to automatically deprive an accused of bail, or the prosecution has to oppose bail on the ground that the accused is foreign and therefore very likely to leave the jurisdiction. In relation to proof of an offence and given the difficulty of actually finding a criminal in the very act of abusing a child, there appears to be merit in shifting the burden of proof when the protection of a child is at issue, and in so framing the laws that the onus is on the accused to justify his being in the company of a child who is not a relative. Thus, in the *Philippines*, under the provisions of Republic Act 7610, merely to be found alone with a child who

is not a relative inside a hotel or vehicle or other place constitutes an attempt to commit prostitution, and an offence under Article III, section 6. Under section 5(a), the mere verbal offer of a child for the purposes of prostitution constitutes the offence of sexual abuse.

### **3. Enforcement and Prevention on a National Level**

Legislation and procedural measures are not enough in themselves to protect children from commercial sexual exploitation. The laws must be enforced. The principal agencies for their enforcement will be the police and immigration officials and the prosecution and judicial authorities. How effectively these authorities function will depend not only on the resources made available to them, but also on the extent to which the society in which they carry out their duties regards the protection of children as important. Why is it, for example, that many child abusers will travel to another country and feel themselves immune from prosecution for acts which they would be afraid to commit in their own jurisdictions? Why is it that in some societies there is a high level of tolerance of sexual exploitation of children by adults? Why is it that in some countries the police do not even know that there are laws against sexual abuse of children, or do not know what those laws say? In some countries children are available to be exploited by foreigners, because they are already abused on a massive scale by their own nationals. If society does not place a high value on the nation's children and demand that the law is enforced in their interests then the public officials will not be effective.

Some suggestions arising from the experiences in various countries of enforcing the law to protect children from sexual abuse point to ways in which enforcement could be improved:

#### **3.1. Central Authority**

In the *Philippines* there is an Inter-Agency Task Force against Child Abuse under the Department of Justice with responsibility for the prosecution of child abuse cases. As a result, there have been a number of successful prosecutions and this has in turn increased public confidence in the office and has increased the level of reporting. In *Thailand*, a Child Rights Protection Division has been established within the office of the Attorney General to monitor child sexual abuse cases.

#### **3.2. Special Child Care Units in the Police Force**

In the *United Kingdom*, a special Paedophile Unit at New Scotland Yard tracks down offenders against children. It has a mandate to be pro-active for the protection of children and has therefore a considerable amount of flexibility in finding ways to prevent abuse, rather than only reacting to actual complaints of abuse. Unfortunately, it is only one unit for the entire country.

In this context, it should be noted that the *Beijing Rules*<sup>3</sup> recommend specialisation within national police forces of police officers who frequently or exclusively deal with juveniles and that the Economic and Social Council requested the Secretary General of the *United Nations* (Res.1989/66) in May 1989 to "ensure effective programme interlinkages within the United Nations system between juvenile justice, within the framework of the Beijing Rules and situations of 'social risk', especially.....child abuse, child sale and trafficking, child prostitution and street children."

### **3.3. Status, Training and Resources of Police Authorities**

In many countries, the laws cannot be effectively enforced because the police forces are corrupt. The reasons for this may be partly to do with a society which places a low value on respect for the law, but they are also to do with poor pay, poor working conditions and promotional structures which are not based on merit or ability. In *Sri Lanka*, the emphasis by the government on economic development through tourism is said to have made the police reluctant to implement the laws against child abusers in case this would have a negative impact on the country's economy and thus weaken their chances of promotion. In the *Philippines*, child abusers have 'escaped' from police custody in circumstances which indicated that bribery of police officials had occurred. There are many such stories about many countries. Sexual offences against children must be treated as serious crimes and police officers must be appreciated and rewarded for detection of such crimes in the same manner as they would be for the detection of any other serious crimes.

Adequate training of police and prosecuting officers is essential for the handling of child sexual abuse cases. Some developed countries such as the *United Kingdom, Sweden, Australia* and *New Zealand* have given overseas aid to developing countries in the form of training for police officers.

Finally, the police must be adequately resourced in terms of manpower, equipment and back-up services to enable them to do their job properly. They will not be encouraged to rescue children from brothels if they have nowhere to bring them or no means to return them to their families. They cannot track down abusers unless they have adequate means of transport and communication.

### **3.4. Missing Children Registries**

Missing children may not always be identified as the possible victims of sexual abuse. The role of the police forces has been to find such children and restore them to their families. However, it is now being recognized that such children may have been running away from abuse and that they should not be returned without some investigation of the reasons for their disappearance. The SWP has recommended the establishment of specialised centres in every country where such children may be debriefed and cared for before the question of return to their families is settled. The SWP has also recommended that children missing for more than 6 months should be made the subject of international Missing Persons Notices at INTERPOL headquarters.

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<sup>3</sup> U.N. Standard Minimum Rules for the Administration of Juvenile Justice. General Assembly Resolution 40/33 of 29 November 1985.

### **3.5. Customs Surveillance**

The valuable role which the Customs Services can provide in detecting and preventing child abuse is gaining recognition. In cases in which the customs services have worked with the police forces in following up on a seizure of illegally imported pornographic material, important finds have been made, even leading to the cracking of whole paedophile networks. In *New Zealand*, a Customs Child Pornography Project was established in 1992. The work of the Project involves the interception of child pornography or other child exploiter-related intelligence in the process of normal customs surveillance and then following up on those interceptions in co-operation with the police. The *U.S.* Customs Service has a Child Pornography and Protection Unit which has been operating effectively for many years. The Paedophile Unit in the *U.K.* police force works in close co-operation with the Customs authorities.

### **3.6. Telephone Help Lines**

Telephone Help Lines for children are increasingly recognised as a valuable way in which children can seek help against sexual abuse. The SWP has recommended that all member countries institute such Help Lines.

### **3.7. Interdisciplinary Approach to Law Enforcement**

It is not unusual for several government agencies to become involved with an abused child. Police, social welfare, education and health authorities may all have a responsibility and liaison between them should occur. In *Britain*, liaison between such bodies is mandatory. What is not the norm, however, is co-operation between official bodies and NGOs. *Thailand* is experimenting with such co-operation with its Child Rights Division in the Attorney General's office which has developed a network which includes non-governmental representatives. In *Canada*, provincial/territorial governments, police and NGOs have been working on improving the sharing of information between authorities and NGOs in relation to child sexual abuse. (This was particularly aimed at enabling NGOs and other employers who hire people to care for children to screen out known sex offenders.)

Experience has shown that state authorities have neither the resources nor the time to monitor situations in which there may be sexual exploitation of children. While they should in no way replace the national law enforcement authorities, child care NGOs are uniquely capable of not only caring for abused children, but also of detecting abuse and of gathering evidence on which an offence may be successfully prosecuted. Several successful prosecutions in the *Philippines* and in *Thailand* have been based on evidence gathered or detected by NGOs. Unfortunately, in most cases, the financial resources of NGOs caring for sexually abused children are woefully inadequate.

The *U.N. Expert Group Meeting* developed a series of recommendations to combat the use of children for criminal activities and the exploitation of children which went beyond law enforcement. Among these recommendations are suggestions for engaging the mass media in awareness-raising activities, the development of educational programmes and multi-disciplinary training programmes, the development of

'community watch' programmes and the engagement of the tourist industry and the business sector in protecting the rights of children. In *Australia* and *New Zealand*, the tourist industry has participated in the distribution of information leaflets which warn travellers that sexual abuse of children abroad is a serious offence.

#### **4. Punishment and Deterrence**

The penalties for child sexual abuse are quite severe in most countries. In some cases involving extra-territorial jurisdiction there is a question of whether the crimes should be classified as minor, thereby making them more susceptible to being successfully prosecuted, or as serious, thereby making them more susceptible to the imposition of a heavy penalty. In *France*, in February 1994, extra-territorial jurisdiction was extended to the offence of engaging in sexual conduct with a person under the age of 15 by an amendment to the French Penal Code. It is the only offence which can be tried as a misdemeanour under France's extra-territorial jurisdiction. As a misdemeanour, however, an offence will be more easily prosecuted successfully than if it had been classified as a serious offence.

On the other hand, there is a risk that offences against foreign children will be seen as less serious than the same offences committed against nationals if the penalties are less severe for a crime committed abroad. In *Norway*, three men convicted in 1990 of offences committed against foreign children received custodial sentences, the Supreme Court of Norway rejected a defence argument that the punishment should be less severe than it would be for crimes against Norwegian children. In *Sweden*, in 1995, a man received a custodial sentence of 3 months and had to pay compensation to the foreign child he had abused. It has been suggested in relation to that case that the penalty would have been greater if the abused child had been Swedish. In the same year, in *Thailand*, a British Guyana citizen was sentenced to a total of 50 years in prison for offences committed against 5 Thai boys.

The degree of injury to the child would normally be a consideration for any court which prepares to sentence a convicted offender. But does a court have to be actually presented with evidence of physical or psychological injury - a requirement with which it would be difficult to comply if the child is a foreigner? Should there instead be a judicial presumption that all sexual abuse of a child is damaging to the child? If the abuse has resulted in a child being infected with the HIV/AIDS virus, should this be an additional aggravating circumstance justifying increased penalties? The payment of financial compensation to a child victim has the positive advantage of permitting the child a fresh start in life, particularly if the child has been driven by poverty into prostitution.

There is a serious problem of recidivism particularly in relation to offenders who could be classified as paedophiles (i.e. persons with a sexual perversion in which children are the preferred sexual object). When discussing penalties for such offenders, the question arises as to whether penalties on them should continue after the service of their sentence and/or the payment of their fines. The SWP has recommended that countries consider whether persons who have been convicted of sexual offences against minors should be subjected to registration and restriction of their activities if those activities

lace them in contact with children. It is a matter of concern that paedophile abusers will often insert themselves in employment or social situations which allow them to have access to children. In *Canada*, amendments to the Criminal Code (section 161) in August 1993 enable a court to impose a prohibition order on a convicted sex offender which will prohibit him from attending places where children congregate, or from seeking employment which involves being in a position of trust or authority towards children.

Indeed, paedophiles have even been known to establish their own 'child care' organisations as a front for their unlawful activities. It is therefore important that institutions which care for children should themselves require to be registered and supervised by a competent authority. Furthermore, it has been suggested that persons applying for positions of employment in institutions which are responsible for the care of children should be required to produce a clean police record as part of their job application. Volunteers for work with child-care agencies in developing countries should be required to produce references which can be checked with domestic agencies in their countries of origin.

## **5. Enforcement and Prevention through International Co-operation**

Given the international dimensions to the sexual abuse of children in today's world, co-operation between governmental law enforcement agencies and co-operation through the inter-governmental police agency, INTERPOL, is vitally important. Such co-operation should develop simplified procedures so that the problems of language and differing legal systems can be minimised.

### **5.1. Information Sharing via INTERPOL and Bilateral Contacts**

INTERPOL already maintains a database of criminals and the SWP has recommended increased and improved sharing of information for the database in respect of individuals and organisations involved in the traffic of children, child pornography and the sexual exploitation of children.

The extent to which extra-territorial legislation is being extended to cover sexual offences against children committed in another country has been detailed above. Its effective application requires co-operation between prosecuting authorities in relation to the gathering and presentation of evidence.

Bilateral contacts between police forces and customs authorities have already proved effective in identifying paedophile networks with world-wide connections.

### **5.2. Mutual Assistance Treaties**

Mutual Assistance Treaties are a vehicle for more formal methods of communication. By reducing into the form of a written agreement the rules which will be observed for such things as the taking of statements from witnesses, the provision of records and other evidence, the service of documents etc., the evidential quality of the material is assured, and the delays inherent in the diplomatic channels of communication are

avoided. The *United Nations* Crime Prevention and Criminal Justice Division has drafted a Model Treaty on Mutual Assistance which was adopted by the General Assembly in December 1990<sup>4</sup> and is available as a resource to all states. National laws can also provide unilaterally for the conditions under which mutual assistance will be extended to other states in criminal matters. *Thailand*'s Law BE 2535 entitled 'The Act on Mutual Assistance in Criminal Matters' sets out the conditions under which assistance may be extended to requesting states, even without a treaty.

### **5.3. Extradition**

Extradition is another vehicle for international co-operation in criminal matters. Some countries would prefer to extradite a child abuser back to the country in which the offence was committed. It is generally believed that a treaty is necessary between two countries before a national of one can be extradited to the other. However, this is not the case for many *European* states which have national laws determining the conditions under which nationals will be extradited to face charges in another state. A 'Model Treaty on Extradition', again drafted by the *United Nations* Crime Prevention and Criminal Justice Division was adopted by the General Assembly in December 1990<sup>5</sup> and is available as a resource to all states. In *Germany*, extradition to states with which there is no bilateral extradition treaty is streamlined by the use of 'agreements' which require only a fraction of the input necessary in the negotiation of a treaty. For each individual case it is then only necessary to refer to the terms of the agreed arrangements.

### **5.4. Police Liaison Officers**

A co-operative method of preventing or assisting in the detection of crimes of sexual abuse against children is the placement by states of Police Liaison Officers in countries to which their nationals travel in large numbers. Liaison officers have been used in the fight against drug trafficking for some time and there is a strong demand from the non-governmental sector that such officers be placed for the purpose of combating child sexual abuse. There is a view that officers placed to combat child sexual abuse must be specialised for that field of enquiry and should not be also combating the drugs trade or other serious crime. The *U.K.* National Crime Intelligence Service (NCIS) has suggested that Crime Liaison Officers be placed in certain countries, available for all criminal investigations. The SWP has, however, recommended the posting of specialised officers.

### **5.5. Development Aid**

International co-operation via development aid to promote child protection has also already been mentioned. Such assistance, if used for training, can have long-term effects on the capacity and understanding of law enforcement officials in combating sexual crimes against children.

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<sup>4</sup> GA 45/117

<sup>5</sup> GA 45/116

## **6. Conclusion**

It must be realised that the legal environment reflects the political environment and that unless a state and its society give priority to the protection of children, the laws will not protect them. The will to protect children must first be there.

This paper has attempted to identify the legal norms which have set the standards to be observed and to look in a general way at the responses from national legislatures, also taking into account the enforcement and implementation mechanisms which are available.

It is hoped that states, in formulating their own national plans, will be able to draw on the experiences outlined in the paper and find solutions in the interests of their own and the world's children.

**In order to foster the most effective implementation of the Convention on the Rights of the Child in this sphere the following proposals are made:**

- It is suggested that the reporting obligations in Article 44 of the CRC be used by states, not just to fulfil their legal obligations under the Convention, but as an opportunity for a thorough analysis and review of their national legislative provisions for the protection of children. This work should be done with the active participation of non-governmental organisations who are involved in the care of children, as well as with those departments of state which have responsibilities affecting children and those that ensure compliance with international treaty obligations. Through such an interdisciplinary review, legislative gaps in child protection could be identified. A National Plan could then be prepared to address in a comprehensive way through legislation the needs of children in each State.
- Secondly, it is suggested that a Task Group, again including NGOs as well as law enforcement personnel and child care authorities, be established in each State to identify or propose effective mechanisms within the jurisdiction to monitor and combat sexual exploitation of children. Monitoring of children at risk, care of abused children, evidence-gathering against child abusers, protection of child witnesses - all these are tasks for which mechanisms must be devised to respond to local problems and local needs.
- Finally, it is suggested that in each State, an Ombudsperson for Children, or an institution or body fulfilling similar functions, be appointed with responsibility not only to receive and deal with complaints from children, but also to advise the government on problems affecting children in general within the jurisdiction and to recommend solutions.

These are some ways by which a practical start could be made in securing better implementation of the provisions of the Convention on the Rights of the Child.

### III. SUCCESSFUL INTERNATIONAL LEGISLATIVE, ENFORCEMENT AND CAMPAIGN INITIATIVES

*Denise Ritchie, ECPAT New Zealand*

#### **1. Extra-Territorial Legislation in Tourist- Sending Countries**

Usually law is based on territoriality, i.e., in the case of commercial sexual exploitation, it would protect the national children from abuse by nationals. In countries from which many tourists are assumed to travel abroad for sex, it was felt that domestic legislation in some countries where the offences of child prostitution occur, is not able to protect children effectively enough. In assuming responsibility, some tourist-sending countries have introduced specific legislation to give their domestic courts extra-territorial jurisdiction in cases of offences committed against children.

##### **1.1. Civil Law Countries** which are enforcing existing codified legislation:

- Sweden (1962)
- Norway (1963)
- Denmark
- Finland
- Iceland
- Switzerland
- Japan

##### **1.2. Civil Law Countries** with recent enactment of extra-territorial legislation:

- Germany (June 1993)
- France (February 1994)
- USA (September 1994)
- Belgium (March 1995)

##### **1.3. Common Law Countries**

- Australia (July 1994)
- New Zealand (July 1995) (Total = 13 Countries)

##### **1.4. Distinctions :**

- **Age of the child:** In Japanese extra-territorial law the child abroad is protected up to the age of 12, in Sweden up to 15, in Australia and New Zealand up to 16, in the USA up to 18 (USA in line with the UN Convention).
- **Criminality:** In Germany, France, Australia and New Zealand their citizens are prosecuted, regardless whether it is a crime in the country where child prostitution

takes place or not. Sweden and Norway only prosecute if it is a criminal offence in the country where the prostitution takes place.

- **Penalties:** These vary a lot, e.g. the maximal penalty for sexual intercourse with a 15-year old child: Sweden up to 4 years, New Zealand up to 14 years, Australia up to 17 years.

## **2. Recent case law**

OFFENDER	CITIZENSHIP	PROSECUTED IN
Bolin	Swedish	Sweden
3 males	Norwegian	Norway
Scott	British	Cambodia
Carr	Australian	Australia
Breuer	German	(Germany)
Pendragon	Australian	Thailand
Clarke	British	Phillippines
Nierenz	German	Thailand

- **Bolin, Bengt**

Swedish Paedophile, late 60s

Arrested in Pattaya, Thailand on 19 February 1993 for having sex with a minor (sexual activities with Thai boy aged 13,5 years). fled to Sweden while on bail.

Following international co-operation between Swedish and Thai authorities, evidence gathered 12-15 June 1995: Bolin on trial in Swedish Court on extra-territorial legislation.

22 June 1995: Bolin found guilty. Sentence to 3 month imprisonment. Ordered to pay 100,000 baht (plus interest) compensation to victim.

- **3 Norwegians**

On 10 August 1990, 3 Norwegian citizens (43, 49 and 51 years) were found guilty in the Norwegian Supreme Court of sexual offences against boys aged 13 years and under in Philippines and Thailand. Some offences occurred 7-8 years previous. Sentenced respectively to 1,5 year, 8 months and 6 months imprisonment.

- **Scott, Dr. Gavin**

British medical doctor working in Cambodia. Initially charged with sexual assault, judge changed charge to rape. Found guilty in October 1995 of attempted rape of 5 teenage boys under Article 33 of the UNTAC Law in Phnom Penh. Received a 2 year prison sentence. 5 months to be served in prison; 19 months suspended sentence and 5 years probation. Ordered to pay compensation to the children ( US\$ 400 per child).

- **Carr, Dr. Anthony**

Australian, 43 years old. Arrested on 30 August 1995 on 8 charges relating mostly to alleged child sex crimes in Australia, but including one act of indecency against a child (Filipino girl aged between 5-7 years) in the Philippines.

First Australian to be charged under extra-territorial legislation, enacted July 1994.

8 March 1996: pleaded guilty; convicted. Yet to be sentenced.

- **Breuer, Thomas**

German businessman. Arrested January 1996 with Dutch national for sexually abusing a 9 year old Filipino girl. Fled to Germany while on bail. Pressure currently being applied on German Government to enforce extra-territorial legislation.

- **Pendragon, Bradley**

Australian, 35 years old. First Australian to be prosecuted for child rape in Thailand. Admits to having had sex with at least 5 girls aged 8 - 12 years. Charged in Chiang Mai with the rape of nine year old hill tribe girl in 1993. Stood trial in January 1996. Adjourned to March 1996.

- **Clarke, Michael John**

English tour operator, 49 years old. Arrested June 1995 in Olongapo City, Philippines for allegedly selling Filipino children to foreign paedophiles. Trial ended January 1996. No verdict as yet.

- **Nierenz, Bernhard**

German, 37 years old. Arrested in Thailand, 2 December 1994. Sentenced 11 March 1996 to 40 years and 4 months imprisonment. Convicted of the following charges: sexual abuse of 4 boys under 15 years; separating 4 children under 15 years from parent/guardian; encouraging children to go astray; possession of child pornography. appeal expires 11 April 1996.

### **3. Campaign Strategies** (the New Zealand approach)

1. An ***Embryonic Group*** came together and tried to
  - i) set up goals/ a vision for their activities
  - ii) increase TV documentaries on the matters
2. A ***National Conference*** was organised, which turned out to be the key of effectiveness:
  - i) ***Keynote Speakers*** from different fields were engaged. It was aimed to get the highest ranks possible on the panel, all of them in a position to effect changes.
    - (1) Local
      - (a) Political (MP)
      - (b) Police
      - (c) Legal (International Human Rights Lawyer)
      - (d) Doctors for Sexual Abuse Care
      - (e) Sex Offenders Unit
    - (2) International
      - (a) Fr Shay Cullen (Philippines), an acknowledged expert
  - ii) Responsible ***Media*** coverage was the gateway to public interest:
    - (a) TV : commitment from key stakeholders (e.g. Police, Legislator, MP) was achieved, from that moment they could be held responsible.
      - (b) Press Release
  - iii) Petition
    - (a) Circulated to attendees, and handed on to their respective contact groups, followed up with public interest in the action

The National Conference achieved publicity and, significantly, brought politicians and other high profile persons to embark on the campaign, where they became leading figures and themselves started to work for it. When their support slacked off, the respective opposition politicians were contacted and the necessary pressure was created.

3. A ***Committee*** was formed:
  - (i) ***Working Committee***, bringing on board all possible professional expertise
    - (a) legal
    - (b) law enforcement
    - (c) travel
    - (d) social work

- (ii) *Consultants* from government and other relevant institutions
  - (a) Police
  - (b) Customs
  - (c) Doctors for Sexual Abuse Care
- (iii) *Campaign Co-ordinator* with full time position was employed

4. **Press and Media Releases:** continuous updating on any news and cases concerning child prostitution and sex tourism kept the public interest going.

5. **Lobbying MPs** continued, emphasising international obligations and responses by other countries

- (a) Support of government politicians was the first aim
- (b) Opposition politicians were the tool to control the implementation of government announcements
- (c) Questions in the House made the campaign it a matter of Parliament

6. **Bill introduced**

7. **Select Committee Submissions** made sure that the working group was supervising the drafting process. Before the hearings the experts were all contacted to convince them of the campaign's proposals.

8. **Law Enacted**

9. A **Work Plan** was made by the committee, trying to cover all the differentiating fields of work coming up with the enactment of the law. The following fields were covered by different persons/ groups in order to allow the campaigners to maintain their profession:

- (a) *Political awareness*: e.g. addressing groups from other countries who work in this field
- (b) *Law Enforcement*: anticipating changes on new aspects arising from the new legislation, e.g. standards of evidence for extra-territorial cases
- (c) *Education*: Networking with neighbouring NGOs; reaching out to churches and other institutions working on the ground to inform and educate the public (e.g. on 31th March, the international day for the child victim of prostitution).
- (d) *Travel and Tourism*: presence on travel and tourism fairs, updates in the travel media, participation in programmes for the training of travel agents
- (e) *International Programmes*

## **C. LEGISLATION - WORKING GROUP I**

*compiled by: Wolf-Tilman Rapp, Network against Child Labour*

### **I. GENERAL MATTERS**

#### **1.1. Customary Law and Civil Law**

At present, the common task is the implementation of international law and standards which give special attention to the protection of children, first of all the UN Convention on the Rights of the Child, ratified by all 5 countries represented.

These implementation efforts confront a situation of national legal systems and laws, marked by two peculiarities:

- *Dual Legal Standards of Civil and Customary Law*

In four of the countries the Constitution explicitly acknowledges Customary Law, whereby the balance between Civil and Customary Law is mostly defined by a constitutional principle. This principle grants the pre-eminence of Human Rights stated in a Bill of Rights, over customary law in case of conflicting provisions (e.g. in South Africa, the Equality Clause trumps Customary Law). Yet in every day life and jurisdiction a number of directly conflicting issues occur which have to be decided by different courts.

- *Uniform International Standards and Pluriform Customary Laws*

International standards aiming at a controllable uniformity confront varying customary practises and laws of up to 42 ethnic groups within a country (like in Kenya), all deeply entrenched in the respective cultural value system.

These conflicts between International Law and Customary Law or Civil Law and Customary Law are of permanent and practical relevance. The reason is that the very core issues of customary law are family matters, thus directly affecting children in their status and treatment:

- Children are generally subjected to the far-reaching authority of the head of a family.
- Matters of marriage, inheritance and succession are still largely regulated by customary law.
- Certain customary practises, still accepted as customs in some areas, are a great challenge to both Human Rights and Civil Law, such as abduction of girls of minor age for the purpose of marriage, or the handing over of children as compensation for a loss of life to the affected side in family conflicts/feuds.

### ***Solutions:***

Several issues affecting the **implementation of International Standards** were discussed in order to find strategic solutions:

#### **1. Necessity of *constitutional changes* to fully implement the Convention on the Rights of the Child:**

In most of the countries such efforts to change current practices elicit political opposition from tradition-orientated influence groups or stakeholders of power. This results in a general cautiousness of African governments on issues concerning culture. In Kenya, where constitutional changes are considered to be necessary, a 2/3 majority is blocked by MPs orientated against opening the constitution towards international standards that are said to be based on western values. In Zimbabwe, a house of traditional leaders must be consulted when legislation affecting customs and traditions are decided on. This provision tends to refer initiatives or efforts aimed at the implementation of international standards back to parliament.

#### **2. Weight and effect of *existing Child Rights Clauses* in some Constitutions:**

Such a clause in the Zimbabwean Constitution theoretically outrules provisions of civil or customary law, but often is not applied in every day jurisdiction. In South Africa both an extensive Child Rights clause, including a “paramount clause” which places the best interest of the child first, and a Limitation Clause are entrenched in the new Constitution. Yet a lot of lobbying and reference cases are still seen to be necessary in order to feed these constitutional standards into the Justice System.

#### **3. *Specific Acts* deciding / ruling about conflicting provisions of customary and civil law:**

Only in Zimbabwe has such an Act been under discussion, but due to the complexity and diversity of disputed issues no final draft for the legislative was achieved.

#### **4. Prospects of *Training Programmes* for Traditional Leaders and Judges:**

Training of traditional leaders was assessed sceptically since the majority of them seem conservative and believe child protection standards as an interference into their traditional domains. Yet such efforts with an expected new generation of traditional leaders should not be undermined.

Training of judges was seen to be a vital instrument both to enable them to balance customary and civil law and to apply constitutional provisions protecting the child.

#### **5. Efforts to strengthen *Customary Law*:**

Especially in rural areas customary law was considered as a valuable functioning system for ruling every day life and dealing effectively with child matters. Therefore the application of customary law should be encouraged after examining whether certain provisions are conflicting with the referent constitution. Since customary law is to be understood as a dynamic system able to incorporate cultural changes provision standing in the way of child protection could be changed under the influence of a Human Rights culture. Certain customary provisions especially in favour of the child might be used as incentives and measures to change a Constitution, as happened in Uganda.

## 6. The Principle of *Restorative Justice*:

The focus on restorative instead of distributive practise of justice, presently being introduced in South Africa, which aims at healing processes and placing matters of conflict back to the community level, was highlighted as specifically appropriate for the sensitive issues of child protection.

### 1.2. Pimps

Starting from the observation that due to ineffective police control of pimps these tend to be less penalised, the following problems were stated:

- First of all, it is extremely difficult to identify pimps in action. It is already difficult for the police to survey the whole locality wherein child prostitution is usually going on and to spot the child him- or herself when offering his or her services. Usually the pimps are even more hidden and can only be convicted in a situation where they either approach potential customers or receive money.
- Secondly, very little money is earned in child prostitution. For a South African town like Pretoria the pay for sexual intercourse with a child prostitute was estimated R 30 to R 70, whereas for countries like Kenya or Zambia as little as sometimes a “packet of chips” was assumed to be realistic.

This throws light on the whole *background* of the social environment of child prostitution in the countries represented: Child prostitution occurs within an environment of poverty.

- Streetchildren: The striking fact that hardly any street girls are to be seen, has led to the assumption amongst street child workers in South Africa that due to the threat of harassment for girls in the streets, the latter very soon have to search protection. This protection is in the form of either a male partner providing shelter for physical services or often pimps/ brothel owners. As so many runaway girls obviously disappear quickly it is clear that their “partners”/ pimps are even less visible.
- Cases have been revealed of children being forced into prostitution individually by family members they were staying with.
- An entire “culture” of prostitution within certain residential areas was reported from Zambia and Kenya. This involves a whole family structure or clans with its hierarchy. Mothers being prostitutes themselves often seem to introduce their children into a kind of “family business”, whereby the children are not only instructed thoroughly, but their mothers or elder brothers (sometimes drug dealers themselves) who protect them, become their pimps at the same time. Also, children living in areas with high prostitution rates often get exposed to prostitution especially when both parents are working and control is lacking.

Certain general perceptions of pimps as usually being males and single have to be redefined: Women are involved in pimping as well. The problem of pimps has also to be seen in connection with drug trafficking and the entire unfavourable environment of child prostitution.

**Solutions:**

It is necessary to consider the *legal prosecution and the social problem* of pimps as one task, starting by sensitising the criminal justice system.

1. To handle the underlying *social problem* efforts have to be made to provide housing for families outside the areas of high prostitution as well as educational work with prostitute mothers, instead of jeopardising them twice for prostituting themselves and introducing their children into prostitution for lack of income alternatives.
2. It was considered to be necessary to prosecute pimps as *criminal offenders*, targeting especially organized co-operatives of pimps. The legal instruments provide for this. In Zimbabwe “anyone who causes or facilitates the commission of immoral acts against children” can be prosecuted. In South Africa the Criminal Procedures and Sexual Offences Act provides for action being taken against pimps, especially if they use drugs or other illegal ways of enticement to get control over the child prostitutes. Yet in reality very few cases of successful prosecution are known. For instance in a case in Pretoria a pimp “renting” out four girls for prostitution was only fined R1500.

### **1.3. The child as criminal**

It was a common view that the child prostitute must be recognised entirely as a victim. Existing legislation considering child and procurer as offenders should be changed, as recently happened in Thailand and the Philippines. The problem of sexual offenders and procurers under 18 seems to become relevant in connection with gang-related violence in South Africa, which increasingly involves minors.

**Solutions:**

For both groups, child prostitutes and juvenile procurers, the adequate judicial form of the family-conference has to be developed further. Progress has been made in cases involving children from broken families and street children by extending the notion of “family”. Persons in direct relationship with the affected child (e.g. social workers or other children) were included to establish the frame of the “family” necessary.

### **1.4. The boy child**

As boys increasingly get involved in prostitution, it was agreed that legal protection is necessary and should be equalised with the protection for girls. In South Africa, for instance, presently boys are legally protected up to the age of 19 and girls up to 16 regarding sexual intercourse. This discrepancy is likely to be challenged and balanced according to the equality clause in the new constitution.

Two **tasks** were stated:

1. Legal provisions and penal codes must be revised to include boys, as recently happened in Sri Lanka and Thailand.
2. The often differing definitions of age between boys and girls have to be balanced, in line with international standards.

The age of consent again appeared as a crucial factor, deeply affecting all matters around child protection. Since unbalanced definitions are even entrenched in the UN Convention on the Rights of the Child (e.g. the exception from the definition of age of 18 years: the permission to recruit and send to war at the age of 15 already), additional Optional Protocols are seen to be necessary to standardise the age. This would represent an internationally consistent measure allowing to adapt all relevant provisions of national laws.

### **1.5. Child Pornography**

For clarification, different definitions of child pornography were compared. The Council of the EU for instance defines child pornography widely as "any (audio-) visual material which depicts children in sexual context". However, other definitions only see explicitly sexual depiction of children as child pornography and distinguish this from "child erotica".

The legal situation in South Africa was discussed, where child pornography has become a problem (less in the other represented countries). Probably the legislation can soon be changed here, to define not only the production and distribution of child pornography as illegal, but its *possession* as well. This would correspond with recommendations of Interpol, which see the use of this material as the actual manifestation of the offence. The amendment should take into account the fact that child pornography is mostly "home made", i.e. the possessor is the producer and potential distributor at the same time.

Two problems regarding the *production and distribution* of child pornography are on the increase:

- Lobby organisations in South Africa are concerned that recent bilateral trade agreements will make effective control and prosecution of South African standards on import and export of child pornography more difficult, given the weakness of International Public Law and the extensive interpretation of the freedom of expression in the trade partner countries.
- The possibilities of both production and distribution of child pornography are growing rapidly with the advance of computer technology. This concerns especially an exploding number of on-line-services and users and technical facilities (morph images) which make it possible to change a pornographic picture of an adult into that of a child. According to the necessity of legal control of these developments, expanded definitions of child pornography have been suggested in some countries which include computer-generated child pornography. The problem of defining when a user of computer-generated child pornography becomes a *possessor* remains difficult. At least, when such material is loaded down from the main frame onto the memory medium, this transfer clearly marks possession.

#### ***Solutions:***

Recent successful actions and strategies to combat the production and distribution of child pornography were reported:

1. With regard to computer-transmitted child pornography, legal action has been taken in some European countries to prohibit or block certain groups in on-line-services which transmit or offer communication-lines about child pornography.
2. With regard to visual material of child pornography, successful combined efforts were taken by customs and police units. By prosecuting a traveller in possession of only a few pornographic photos of children, a large collection of material and extensive address-lists were found which facilitated the smashing of an international network of hundreds of paedophiles. The most promising strategy was considered to be the prosecution of any material evidence of child pornography to trace paedophiles and their nets, making use of their tendency to meticulous documentation of their victims, practises, material and contacts. Therefore, further co-operation of customs and police on national level as well as an international linking-up has to be established urgently.

### **1.6. Reporting of child abuse**

Generally, the protection from child abuse and in particular prostitution is inhibited by the difficulty around the reporting of cases. Making reporting mandatory has led to different experiences. Such a law in the Philippines has helped to increase reports amongst professionals dealing with children (teachers, doctors, social workers), but in the USA has also led to over-reporting, paralysing the departments involved.

*Problems* with regard to reporting are: The fear of reporters to take an abuse into consideration and to give wrong indications about such a delicate issue. This is caused by a general unpreparedness of professionals and private persons to deal with the problem. On the other hand, experience shows strong efforts of abusers to intimidate reporters and even department officials dealing with child abuse. This contributes to the tendency of reluctance and refusal to report. Therefore anonymous reporting should be made possible. However, the departments in charge (e.g. the Child Welfare in South Africa) seem to sometimes refuse to follow up anonymous reports without the support and preparedness of the reporters to give affidavits and testimony in court.

*Legal Provisions* on reporting vary:

In South Africa, the Child Care Act makes it mandatory for professionals to report indications of abuse, but the Prevention of Family Violence Act (1993) demands that any reporting be done at the local police station. Although the acts will have to be amended in order to have simpler reporting procedures, the clear tendency is to extend reporting facilities on the ground and to get private persons to report as well. In Zimbabwe and Kenya reporting is not mandatory, but the representatives recommended it for their countries.

*Solutions:*

Combined efforts were proposed to improve reporting on child abuse:

1. Making reporting mandatory was mostly considered as both helpful and necessary.

2. This reporting system cannot be put in practise without the creation of adequate structures on the ground which will have to gain the confidence of the public. Therefore they must be well equipped especially to follow up an effective enforcement of the law, i.e. achieving convictions.
3. The overall strategy has to be *education*, a) of police and welfare officials to deal with the delicate matter and the reporters, b) of professionals working with children, to recognize abuse and to report in principle, c) of the public not to over-react but encouraging people to recognize abuse and to support the respective government departments actively.

## **2. EVIDENTIAL MATTERS**

### **2.1 Proof of Age**

Law enforcement of offences against children is often hampered by the problem that proof of the age of a child through a birth certificate is not available, especially if the child lives on the street or in difficult circumstances.

#### **Solutions:**

The amendment of an Australian Act, following such a case against a sex offender introduced the following four ways of proof of age as legal, if documents are not available: 1.appearance, 2.scientific opinion, 3.medical record on the child which contains necessary information, or 4. even a copy of the latter (enabling the use of extra-territorial records). Lobbying for amendments of this kind in the relevant national laws was recommended. It was seen necessary to overcome the situation where a crime against a child can not be judged in court only because traditional judicial measures of evidence are not applicable or met.

### **2.2. Corroboration of the Victim**

In court cases on sexual offences the corroboration and testimony of the victim, especially the child victim is very sensitive. Therefore in Zimbabwe and New Zealand the corroboration of the victim in cases of sexual offences is no longer conditional to sentencing the case. In South Africa, corroboration is still necessary, especially in cases of single witnesses. But in these cases special court settings are provided (see below).

## **3. PROCEDURAL MATTERS**

### **3.1. Child-friendly Courts**

In order to avoid a second traumatisation of a child victim through the trial itself, child victims have to be protected, but at the same time the validity of the court procedures has to be assured.

***Solutions:***

Due to different situations in terms of equipment and court structures different solutions are in practise:

1. In South Africa, where child friendly courts are established in Cape Town, Johannesburg and Pretoria, a new system requires that the same magistrate and prosecutor remain with a case once they have taken it over. Generally, for victims over 16 years special assistance is provided by a trained social worker. For children under 16 years a new court setting is provided. The victim does not have to face the offender, but can testify in a separate room with video transmission. Furthermore, the child gives evidence to a trained intermediary who acts as a sort of interpreter to vocalise also other kinds of expression of the child, like gestures etc.
2. In Zimbabwe, where such specific facilities are not yet in place, several actions are taken in the Regional or High Courts that are dealing with matters of sexual offences, to make the trial more child-friendly. The space of time for the trial is set as short as possible, especially the sessions in which the child has to be present in the witness box. The hearings take place *in camera* with as few persons present as possible and the magistrate has to follow a “victim-sensitive” style and tone during the procedures.

**3.2. Rights of Offenders / Victims**

The principle of the presumption of innocence of the accused until refutation becomes problematic in cases of child abuse, given all the obstacles regarding the presentation of evidence such as sensitivity of the offence, traumatisation and minor age of the victim, and the frequent absence of further eye-witnesses, etc. Thus special attention has to be given to preserve the rights of the victim.

***Solutions*** on different levels were suggested :

1. Extending legislation on sexual offences which allows for prosecution in cases where a suspicious gathering with a child was witnessed (Philippines). This also takes the fact into account that offenders are rarely caught in the act but rather seen making contact.
2. Specific guidelines on judicial procedures (South Africa) can oblige presiding officers in court to take a more active role in finding the truth, thus positioning the judiciary more on the side of the victim (yet retaining the presumption of innocence).
3. Careful selection of court personnel (e.g. entrusting women with cases of girl victims) and compulsory training on the psychological injuries of sexual offences must be lobbied for to achieve a higher sensitivity amongst the judiciary towards the situation and human rights of the victim.
4. Generous bail regulations and premature release of convicted offenders from prison should be restricted for paedophiles because of their high rates of recidivism..

## **D. PROTECTION - WORKING GROUP II**

### **1. Prevention Strategies**

It was highlighted that any strategy has to follow realistic and achievable aims. Therefore not the prevention but the combat and control of the problem has to be aimed at, given the increasing incidence of child prostitution and the relative weakness of the NGOs involved.

Their *priorities* have to be formulated at national level, once a certain degree of networking and organisation amongst the NGOs has taken place. The starting point of any strategy must be to target the environment where child abuse and child prostitution are occurring. Once discovered, the cases should be discussed in public and lobbying must be conducted. These actions, adapted to the specific domestic setting of the problem ought to be planned, co-ordinated and tackled on national level, before international problems (like sex tourism) and co-operation are addressed.

With regard to the *root cause* of child prostitution in the Eastern and Southern African countries, namely poverty, the participants expressed the necessity to combat policies and structures which increase poverty (inadequate national policies, structural adjustment programmes imposed, etc.) but at the same time to target the problem of child prostitution specifically.

#### ***Solutions:***

After having achieved a necessary degree of awareness and organisation amongst NGOs, the different groups of society and role-players, the problem can be addressed with the following actions:

1. In order to avoid campaigns remaining unresolved, it was proposed firstly to identify high risk groups for child prostitution and to co-operate with professionals working with them (community and social workers, teachers etc.), conscientizing and educating them and their social environment (families) about the menace.
2. The surrounding urban population can be made conscious about what is going on around them by awareness campaigns in affected areas
3. Customers of child prostitution should be identified and exposed in the media within their environment wherever possible to deter others.
4. Politicians and persons of influence (e.g. chiefs) can be addressed by an active pressure-group in a twofold way: after having spotted those interested in the problem they have to be provided with information and their support must be obtained for lobbying on the level of policies and legislation. Where cases of child prostitution become public they should be called upon to intervene.

5. Through the activities mentioned, civil society can be made aware, but it is necessary to have more education and training to get active and reliable support from the public. This will be needed to bring about changes in legislation. A greater public attention may at least support vigilance about child prostitution and may slowly shift the perception of prostitution away from merely moral judgement, enabling both decriminalisation of "adult" prostitution and a more effective prosecution of child prostitution.

## **2. Alternatives for Income Generation**

The root cause for child prostitution is seen undoubtedly in poverty, yet the provision of skills training for children involved in or threatened by prostitution is posing a dilemma: if they get involved, such programmes might deprive them further of the right to a decent school education as they tend to go straight to the "labour market" (even if prohibited by law). On the other hand they need an income base to replace the alternative of prostitution.

***Solutions:***

1. Making school education available to child prostitutes was seen as a priority. This proved to be successful in Kenya where children affected by prostitution were placed in formal and informal schools. However, rehabilitation facilities must back up this step. School education has to include skills training for 11-15 year olds, which enables children to take up remunerable work quickly after they leave school or drop out.
2. To improve the income base, skills training programmes must target the whole family in order to keep children in their social context whilst the family is financially uplifted. For this purpose credit schemes have to be made accessible to really empower families to start /improve small family businesses.

## **3. Research**

The need for research was expressed by all participants in order to get a clearer picture of the background that pushes children into prostitution (high risk groups) and on the hidden structures and places of child prostitution. However it was agreed that the purpose for such research must be clear. For the participants it was circumscribed as 'enabling to monitor and prosecute child prostitution'. Thus the co-operation with research institutes / government commissions etc. is only useful to the extent that the commercial aspect of abuse, i.e. especially prostitution, is dealt with. Embarking on research projects which cover 'child abuse' in all aspects may not bring the required information. It must be a project that specifically focusses on child prostitution.

***Solutions:***

1. The basic step would be to put all available information from existing sources as well as completed studies together. From there efforts of further research in a particular direction can be targeted.

2. Projects working with street children and children in especially difficult circumstances are vital for the task of research, as they have direct contact with affected or endangered children. As these mostly have constraints in terms of staff and funding, the following procedure seems necessary to:

- aim at joint efforts of lobby-networks / organisations concerned with children's rights etc. with such projects,
- provide them with the necessary funding, staff and infrastructure for this extra activity,
- co-ordinate this on national level (ECPAT-Branches, South African Law Commission etc.).

For this research in the field which involves affected children, it must be assured that victims are not only to be used as sources for information but are offered assistance and the necessary help in their situation.

#### **4. Information -Sharing**

As in some of the countries represented, documentation centres for the collecting and providing of information do not exist, and as funds for research are difficult to obtain, priority should be given to the possibilities of sharing information.

##### ***Solutions:***

1. To assess the situation of child prostitution on *national level* in the first place, there are constraints : Material collected /written is often rudimentary and the regularity of information exchange can not be assured due to other work priorities. Nevertheless, national networking must be developed further for the purpose of action and information sharing.

2. Besides that information specifically regarding *legal issues*, legislative initiatives and cases of child prostitution can be shared and obtained through the international ECPAT- Network and the ECPAT-Bureau in Bangkok.

3. Bi- or multilateral contacts made at the workshop itself can contribute much to a steady flow of information, foremost with regard to the specific African situation and problems.

#### **5. Rehabilitation**

Given the enormous difficulties in the rehabilitation of sexually abused children, the question arose as to whether or not the efforts of the few NGOs concerned with child prostitution should be shifted and concentrated around the task of prevention, trying to avoid more children being drawn into prostitution. However, the task of rehabilitation can not be simply dismissed. Enabling one child to overcome the injuries obtained by this kind of abuse is saving one life from this extreme burden.

The task of rehabilitation has to be freed from the fixation to "succeed", displayed in numbers. Besides, children involved in prostitution still constitute a "pull factor" to other children to imitate them.

The main requirements for those involved in rehabilitation were seen to be “training, time and exercise”, in order to reach and communicate with an abused child.

***Solutions and experiences:***

1. Material on rehabilitation techniques may be available from the Centre for the Protection of Child Rights (Thailand) or the Prida-Foundation (Philippines).
2. Although the rehabilitation attempts made with street children may reach their limits when it comes to children who have been on the streets for a long time, the efforts with other children are promising and should be continued.
3. In Zambia, positive progress has been made with the rehabilitation of prostitutes. Starting with the realistic assumption that for almost all women, prostitution is the only possible way of income generation, the creation of income alternatives was introduced and prioritised. Many women disgusted with the necessity of prostituting themselves could quickly be trained for small scale production of crafts.

**Rehabilitation of child sex offenders /molesters ?**

The general difficulty was expressed that amongst child sex offenders and especially paedophiles an attitude of self-assurance and sublimation of the crimes they commit is prevailing. However, legal problems with privacy issues can be expected if legal means of control of offenders after imprisonment are introduced.

***Solutions:***

1. Yet certain legal steps seem possible. Canadian courts can impose orders on convicted offenders after jail, e.g. to stay away from certain places. The possibility of imposing compulsory psychological treatment and supervision was also considered viable.
2. Monitoring child sex offenders via the labour market could be achieved, if employers in sectors dealing with children (schools, aid agencies, children's homes, etc.) would make it a condition for employment to produce a clean police record. For this purpose a data-base on offenders including police records might be established. The priority however would be to educate employers by creating awareness on the problem of child sex offenders and on their possibilities of control via the work-contracts.

## CONCLUDING STATEMENT

Some twenty participants from five Eastern and Southern African countries have met for two days at the Human Sciences Research Council(HSRC) in Pretoria with two legal advisors from the campaign to End Child Prostitution in Asian tourism(ECPAT) to discuss legal issues surrounding the commercial sexual exploitation of children in Africa. The meeting was organised by the Network Against Child Labour, an NGO with some 50 member organisations and hosted by the HSRC.

The participants, who included police personnel, child care workers and lawyers, stressed that their governments must be encouraged to lend full support to the First World Congress against the Commercial Sexual Exploitation of Children which will take place in Stockholm in August of this year. They expect their governments, all of whom have ratified the Convention on the Rights of the Child, to make a Commitment to the implementation of the Congress Plan of Action, and to act positively to fulfil their duties under the Convention to protect children from commercial sexual exploitation.

NGO's must follow-up with their governments to ensure that commitments are implemented and that progress is recorded. In this respect, the participants welcomed the opportunity provided by the World Congress for governments to demonstrate their commitment to the world's children and to the provisions of the Convention.

The participants are all committed to working in their respective jurisdictions to improve the laws and the mechanisms protective of children, and are aware of the dangers inherent in increasing reliance on tourism as a means of earning foreign currency. There is no doubt that the prostitution of children is fundamentally linked to the deep poverty affecting large parts of the populations in the Eastern and Southern African countries. This degradation will continue as long as the problem of poverty continues to affect such countries, and in this respect, their adherence to Structural Adjustment Programmes which demand the imposition of restrictions on health, education and social welfare spending must be questioned. Debt relief and fair international terms of trade would make a significant contribution to the problem of prostituted children.

It was agreed that more research was required to identify the scope of the problem and to concretise the debate about how to effectively protect children against sexual exploitation. The proper training of police, social workers, prosecutors and the judiciary to handle child sex abuse cases is also as essential in Eastern and Southern Africa as it is in the rest of the world. The application of Overseas Development Aid to this end should be considered. The establishment in South Africa of a special Child Protection Unit dedicated to the detection and prosecution of child abuse is a welcome development, mirroring similar developments in some other countries. The capacity of the Unit should be enhanced, and other countries in Africa should consider the establishment of similar units.

The relevance of child pornography to the pursuit of child sex offenders was debated and emphasised. Adequate collaboration between law enforcement agencies in relation to the seizure of pornographic material depicting children would enhance the investigation of crimes of child sex abuse. Countries which have not already done so should enact legislation making the production, distribution and possession of child pornography a criminal offence.

The Eastern and Southern African countries represented at the meeting have recognised the challenge of finding ways to reconcile their traditional cultures and values with the standards accepted by them from international instruments including the Convention on the Rights of the Child. This process can be a dynamic one from which the protection of children is enhanced. However, there are difficulties in implementing effective legislation which cannot be ignored. The basic principle that the best interest of the child is paramount must dictate all change and should not ultimately contradict traditional values and customs.

## **APPENDIX**

### **PROGRAMME OF THE WORKSHOP**

#### **1st DAY: 26TH OF MARCH 1996**

08:30 TEA

09:00 WELCOME (Dr. Schurink HSRC and Viktoria Perschler, NACL)

09:15 WELCOME and INTRODUCTION (by Phirosaw Camay, Chairperson of the NACL)

09:45 REGIONAL OVERVIEW

(Presentation by one representative from each country for 15 minutes each)

10:30 TEA

10:45 REGIONAL OVERVIEW(continued)

11:45 DISCUSSION

12:45 LUNCH

13:30 INTERNATIONAL OVERVIEW OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN(FOCUS ON LEGAL ASPECTS) (ECPAT Legal Experts)

15:30 TEA

15:45 QUESTION AND ANSWER SESSION

16:45 CLOSURE DAY 1

EVENING:

Tour through Johannesburg (Hillbrow and Down Town) with Child Protection Unit

**2nd DAY: 27TH OF MARCH**

08:30 SUMMARY/IDENTIFICATION OF COMMON  
PROBLEMS/NEEDS/SOLUTIONS

08:45 WORKING GROUP I  
LEGISLATION - Common Key Problems, Solutions and Strategies

10:30 TEA

10:45 WORKING GROUP I

12:30 LUNCH

13:30 WORKINGGROUP II  
PROTECTION - Common Key Problems, Solutions and Strategies

15:00 TEA

15:15 WORKINGGROUP II

16:15 DISCUSSION ON THE WAY FORWARD

17:15 CLOSURE

MOZAMBIQUE

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## **ABBREVIATIONS:**

ANNPCAN	The African Network for the Prevention and Protection against Child Abuse and Neglect
CRC	Convention on the Rights of the Child
ECPAT	End Child Prostitution in Asian Tourism
ECPIK	End Child Prostitution in Kenya
ESAP	Economic Structural Adjustment Programme
EU	European Union
HSRC	Human Sciences Research Council
ILO	International Labour Organisation
IMF	International Monetary Fund
INTERPOL	International Police
NACL	Network Against Child Labour(South Africa)
NCRC	National Children's Rights Committee(South Africa)
OAU	Organisation of African Unity
SWP	Standing Working Party on Offences against Minors of Interpol
STDs	Sexually Transmitted Diseases
UNOMOZ	United Nations Observer Mission in Mozambique
UNTAC	United Nations Transitional Authority in Cambodia