

Expert Consultation

Legal Frameworks, Procedures and Enforcement: Preventing and Responding to Sexual Exploitation of Children and Adolescents

In Preparation for World Congress III against Sexual Exploitation of Children and Adolescents

Bern, 13-14 October 2008

Recommendations for Theme 2: Legal Frameworks, Procedures and Enforcement

Preamble of the outcome document: recalling international standards on the rights of the child in particular the CRC and the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography, the recommendations of the UN Study on Violence against Children, the UN GA Special Session on Children and other relevant processes, instruments and commitments.

1. International Legal Framework

Ratification of International Instruments

Ratify all relevant international instruments to protect children from all forms of violence, including sexual exploitation (by November 2009, 20th anniversary of the CRC), in particular CRC and both Optional Protocols, ILO Convention 182, Palermo Protocol, Council of Europe Conventions on trafficking in human beings, on sexual exploitation and abuse of children and on Cybercrime)

Implementation of International Instruments

Ensure effective implementation of international standards and instruments, including the harmonisation of national legislation with international standards by November 2009.

Ratification and implementation of the Optional Protocol to the Convention on the Rights of the Child

Promote the ratification, implementation and understanding of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in the broader framework of the Convention on the Rights of the Child, raising public awareness about the international legal framework that exists, in languages that make this framework known to all citizens, including children and adolescents.

Regional and international human rights courts

Regional and international human rights bodies and mechanisms need to be operational and function effectively in connection with regional and international instruments.

2. National Law Reform and Implementation

A comprehensive approach to national law reform

A comprehensive and multi-sectoral approach to national law reform, in line with the general measures of the Convention on the Rights of the Child, needs to be promoted, including through development of independent human rights institutions, measures for multi-stakeholder cooperation including cooperation with civil society; allocation of resources for the national law reform,

implementation and on-going monitoring of progress. A comprehensive national legal framework for the protection of children from sexual exploitation and for victim assistance needs to bridge the relevant provisions under criminal law with the national child protection legislation and system.

Funds need to be allocated for national implementation of the framework, and, ODA for implementation should be provided in partner countries.

Defining sexual exploitation and abuse in national criminal law

In conformity with relevant international standards all forms of sexual violence, including sexual exploitation and abuse of children, need to be criminalized under national law.

National law needs to define all forms of sexual exploitation and sexual abuse of children and distinguish sexual exploitation and abuse from consensual sexual intercourse above the legally defined age of consent.

The principle of non-criminalization of child victims of crime

In line with the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, child victims of crime should be protected from criminalisation. As acknowledged by the Guidelines, “children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses”¹. The guidelines define child victims of crime as “children and adolescents, under the age of 18, who are victims of crime (...) regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders”.² This broad approach calls for protection of child victims of crime from prosecution independent of any form of “consent” or active involvement of a child in the offence, and also independent of national laws defining the age of criminal liability. The guidelines also call for applicability of the established principles beyond the criminal law system to include “processes in informal and customary systems of justice (...) and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.”³ The principle of non-criminalization is specifically reaffirmed also for victims of trafficking under the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* issued by the UN High Commissioner for Human Rights: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”⁴

Safeguarding the rights of child victims and witnesses of crime

Member States need to give priority attention to the protection of child victims and witnesses of crime, in line with article 8 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on the rights of child victims and with the principles defined in the 2005 UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

Non-discrimination

Member States need to ensure the protection of all children, including child victims of crime, from discrimination in line with the Convention on the Rights of the Child article 2, which calls on states to respect and safeguard the rights of the child without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Compensation for victims

¹ United Nations Children’s Fund, United Nations Office on Drugs and Crime: *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime*. Economic and Social Council Resolution 2005/20. 22 July 2005. paragraph 7 e.

² United Nations Children’s Fund, United Nations Office on Drugs and Crime: *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime*. Economic and Social Council Resolution 2005/20. 22 July 2005. paragraph 9 a.

³ United Nations Children’s Fund, United Nations Office on Drugs and Crime: *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime*. Economic and Social Council Resolution 2005/20. 22 July 2005. paragraph 6.

⁴ United Nations Economic and Social Council: ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. E/2002/68/Add.1. 20 May 2002. p. 3. See also UNICEF: Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe. 2006. pp. 1004-105.

Child victims of crime should receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive in line with UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

Prevention of crimes against children involving new technologies

In order to criminalize all aspects of sexual exploitation of children in pornography, it is important to criminalize also the simple possession of child abuse images and to define “possession” independently of the technology used to view these images. Possession needs to be interpreted as also including ‘accessing’ to cover situations where one may view on-line child pornography but not upload it onto the pc.

Addressing demand

National legislation should criminalize demand for all forms of sexual exploitation and abuse of children. In addition to criminalization, preventive intervention programmes and measures need to be strengthened to evaluate and prevent the risk of offences being committed, including therapy and treatment for persons who fear that they might commit sexual crimes against children.

Adequate sentences for perpetrators

National law needs to provide for adequate penalties for perpetrators of crimes against children, while ensuring conformity with international human rights standards (OBS: this is designed to avoid death penalty or life imprisonment).

Corporate liability

The national legal framework should address corporate liability and criminal responsibility of legal persons to prevent and report cases of sexual exploitation of children. Corporate liability extends to all elements of the private sector, including the travel and tourism industry, credit card companies, internet service providers and internet café owners, job agencies, modelling agencies, centres for language training and international exchange programmes, sports industry and clubs, civil society organizations, etc.

Link to organized crime

It is important to link criminal law and child protection law also with organized crime laws, in particular provisions regarding the seizure and confiscation of criminal assets and special investigation techniques. Law enforcement agencies need to be supported in their fight against organized crime, including through political commitment by governments and human and financial resources to act effectively.

Screening and training of professionals working with and for children

Standard training and training curricula for professionals working with and for children need to include training on child rights and child protection and to address the issue of protection from sexual exploitation. Professionals also need to be qualified to be prepared to receive and follow-up to reports of children. Likewise, professionals working with and for children need to be screened and offenders need to be excluded from re-hiring.

3. Law Enforcement

Offender registries

National law enforcement agencies need to register perpetrators of child sexual exploitation and abuse to prevent re-offending and to ban them from entering occupation sectors where they are in direct contact with children. Travelling sex offenders need to be prevented from re-offending abroad through imposition of foreign travel orders. Information from national registries need to be accessible for law enforcement agencies nationally and shared between countries.

Training, knowledge and understanding

Member States need to provide for training of law enforcement officials and the judiciary on child rights, in particular the right of the child to be protected from any form of violence, exploitation and abuse, and the rights of child victims and witnesses of crime. While promoting conceptual clarity with regard to different forms of sexual exploitation and abuse of children, it is also important to better understand linkages between different types of crimes against children. In addition, different profiles of perpetrators need to be better understood for law enforcement reasons.

Extraterritorial legislation for the prosecution of travelling sex offenders:

In order to strengthen the successful application of extraterritorial legislation, judicial cooperation mechanisms need to be developed and made functional, including through agreements for cross-border law enforcement cooperation and mutual legal assistance. Further to the strong focus on developing extraterritorial legislation, more attention needs to be given to relating extraterritorial legislation to national child protection legislation. States should remove double criminality from criminal legislation relevant to sexual exploitation.

In the spirit of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the principle of double criminality must not be an argument against extradition for crimes committed according to the definitions of Article 3.

National law enforcement cooperation

Member States should establish specialized and central units within the country and internationally to reduce duplication of investigation efforts in cases related to child abuse images. National legislation should promote evidence flow and sharing between law enforcement agencies.

Within these units Member States should include well trained officers to address the sexual exploitation of children and adolescents (not only sexual abuse images).

Facilitate reporting of child abuse images and illegal content websites

States should facilitate the reporting by the general public of child abuse images and illegal content websites, including through reporting forms that are easily accessible and can remain anonymous. Reporting should be encouraged by public awareness raising and sensitization campaigns.

Law enforcement should put in place the necessary tools to 'block' /arrest illegal web sites.

Cooperation through Interpol

Member States are called upon to join and participate actively in the Interpol international child abuse images database and support it through political commitment and resources. This database is an important tool to facilitate cross-border cooperation of law enforcement agencies globally for the identification of perpetrators of child sexual exploitation and abuse as well as child victims. As of October 2008, only 35 Member States of Interpol partake in this database.

4. Monitoring and Oversight

Strengthened reporting procedures and follow-up

Member States should promote the protection of children from sexual exploitation through awareness of reporting procedures to international and regional human rights bodies and mechanisms. Human Rights Special Procedures need to be well informed and supported by networks of national experts and practitioners. Political commitment is needed to ensure that recommendations issued by Treaty Bodies are followed-up and implemented at national level. The outcomes of the World Congress III Against Sexual Exploitation of Children and Adolescents shall be mainstreamed into international and regional reporting and monitoring tools.

Coordination between Treaty Bodies

All existing human rights mechanisms need to address more consistently the issue of violence against children, including sexual exploitation, and should seek to strengthen integration, including through common reporting and common databases on sexual exploitation of children, through thematic reports and joint initiatives on the issue of sexual exploitation of children.

The United Nations needs to enhance synergy and effective coordination of all existing human rights mechanisms and Treaty Bodies, and strengthen the role of the Human Rights Council to promote this process.

5. Conceptual Clarity and Agreed Terminology

International legal standards, in particular the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography) provide terminology and definitions for different forms and manifestations of sexual exploitation of children, which need to be reflected in national legislation and used to prevent the stigmatization of child victims. Since the adoption of these instruments, the understanding of child exploitation as a form of violence against children has advanced and a rights-based terminology is called for, including by acknowledging that sexual exploitation and abuse of children is a criminal act under international standards in all its forms and manifestations.

The following terminology is therefore recommended:

Sexual exploitation of children in prostitution (previously “child prostitution”)

Sexual exploitation of children in pornography (previously “child pornography”)

Sexual exploitation of children in travel and tourism (previously “child sex tourism”)

6. Research

More quality research is needed to identify gaps in national legislation and reasons for non-enforcement and to assess the impact of the national law and policy framework on children, including child victims of sexual exploitation. Comparative research on cross-border aspects of legal frameworks, procedures and enforcement should be encouraged to yield evidence for more effective bilateral, regional and multilateral cooperation to prevent sexual exploitation of children.

7. Statute of Limitations

The statute of limitation for initiating proceedings with regard to sexual offences should be no upper time limit where feasible in national law, and for a minimum of 25 years after the complainant has reached eighteen years of age.

8. Definition of a child

As per the CRC, the child is defined as anyone under the age of 18. States should ensure that the age of consent for a young person to engage in consensual activity is as high as possible and in no way undermines the protection from exploitation of persons below 18.