



Sexual exploitation ; Legal
Framework, OPSC and
Role of the Committee

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PLAN

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AFFIRMATION

**EVERY CHILD HAS A
RIGHT TO PROTECTION
FROM ALL FORMS OF
EXPLOITATION**

Introduction (1)

- 1996 **Stockholm Congress** demonstrates that sexual exploitation was a very huge phenomenon and with a very large range of manifestations, including prostitution and pornography
- The explosion of **new technologies**, (Internet), has brought many benefits, but consequences of its perversion are evident
- exploitation of children has taken a trans-national character, frequently involving organised criminal groups and networks. Today, the most profitable activities of international organised crime are **trafficking of arms, drugs and human beings, including children.**

Introduction (2)

It's why UN adopts an additional, and optional, Protocol to the CRC to enhance protection for children from sale, prostitution and child pornography, built on the main premise that such exploitation is

- **criminal** in nature,
- that **all children must be protected**
- and that the **perpetrators must be identified and punished**

The Texts (old and new)

The Protocol draws inspiration from **earlier conventions**, such as:

- the **1921** Convention for the Suppression of the Traffic in Women and Children, and its Protocol
- the **1926** Slavery Convention
- the **1949** Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- the **1956** Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- the **1979** Convention on the Elimination of All Forms of Discrimination against Women
- the **1993** Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

It has, in turn, influenced the development of **new instruments**, such as:

- the **1999** ILO Conv. No. 182 (Worst Forms of Child Labour)
- the **2000** Palermo Protocol

Texts : CRC and OPSC

- The **CRC** : main instrument on the protection of children from all forms of abuse, neglect and exploitation. **Art. 34** requires SP to **protect children against "all forms of sexual exploitation and sexual abuse"**
- **Art. 39** requires SP to provide **recovery and reintegration** to exploited children, sexually exploited children amongst others
- The prohibition of this violation of the rights by the almost universally ratified CRC is important because it recognizes that sexual exploitation of children is not limited to poor countries, **but is present in every country**

CRC and OPSC

- The OPSC is a specific instrument aimed to criminalize specific acts relating to the sale of children, child prostitution and child
- Because the OPSC applies to specific forms of sexual exploitation, it is important to bear in mind that **article 34 CRC** gives children **the right to protection from all forms of sexual exploitation and abuse and that all victims have the rights recognized by article 39 of the CRC.**

Protocol and Other International Instruments

The global concern with exploitation of children is linked to simultaneous adoption of two other important instruments:

- **International Labour Convention No. 182 on the Elimination of the Worst Forms of Child Labour**, adopted 16 June 1999, 166 SP
- **The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (Palermo Protocol)**, adopted 15 November 2000, 119 SP

The process of developing international standards continues :

- **In 2005**, the UN ECOSOC adopted a resolution, **Guidelines on Justice for Child Victims and Witnesses of Crime (15.112005)**
- **In 2007**, the CoE's **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**, not yet into force. This Convention covers sexual abuse + sexual exploitation ; (with obligations to criminalize conducts whose criminalization is not expressly required by the OPSC, such as using the services of a child prostitute or possession of child pornography ; and the legal persons responsibility .

All of its treaty obligations are complementary .

OPSC (1)

- Adopted on 25 May 2000, and entered into force on 18 January 2002. It's now ratified by 129 States (as by 01.10.2008) For the moment, 49 SP have reported and the Committee has examined 27 reports (as by 08.10.2008).

OPSC (2)

Global picture

- a) **Art. 1** : “*States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.*”
- b) **Art.2** defines the conducts that are prohibited in the Protocol, and must be read together with
- c) **Art. 3**, which includes a list of acts that, as a minimum, should be “fully covered” by the criminal legislation of States Parties.
- d) **The obligations** of States Parties to the OPSC concern primarily the repression of these crimes, and issues : extraterritorial jurisdiction, extradition, mutual legal assistance and seizure and confiscation of proceeds and instrumentalities (**Art 4 – 7**).
- e) **Art. 8** concerns the protection of victims,
- f) **Art. 9** concerns prevention and
- g) **Art.10** international cooperation.

OPSC (3)

AGE

- The OPSC does not define the child, **consequently, the definition contained in article 1 of the Convention itself is applicable to the OPSC** (unlike the Palermo Protocol, which covers the trafficking of children and applies without exception to all persons under 18 (art. 3 d))
- The Committee has consistently asked SP to set **at 18 years** the age limit used for defining a child for all the offences covered by the OP (Syria, Vietnam...)

Consent

- Certain SP criminalize prostitution of children below the “age of consent”.
- The Committee has expressly **affirms that the consent of persons under 18 is irrelevant**, eliminating the ambiguity that is sometimes inferred from the silence of the CRC and Protocol on the issue of the possible relevance of the “age of consent” for prostitution and pornography.

OPSC (4)

SALE

- Sale of children is defined by Art.2 as “**any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration**”.
- States tend to identify sale of children with *trafficking* in children. Indeed, many States Parties have legislation prohibiting trafficking in persons, but lack legislation specifically prohibiting the sale of children.
- Although the concepts of trafficking and sale are similar, and article 35 of the CRC obliges States Parties to take measures to prevent both. Actually, **they are not identical.**

OPSC (5)

Others forms of sale:

- **temporary marriages** still practiced in some parts of the world . The Committee has discouraged this practice. Syria, Sudan, Bangladesh
- Art. 3 prohibits the offer, delivery or acceptance of children for purpose of “**transfer of organs... for profit.**” Qatar, Andorra
- Art. 3 prohibits the sale of children for **forced labour**, cf. ILO No. 29: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. ILO Convention No. 182 on the Worst Forms of Child Labour provides that the term includes **the forced or compulsory recruitment of children for use in armed conflict.** The Committee has taken the position that sale of children for the purpose of engagement in armed conflict is covered by this provision of the OPSC. Sudan
- article 3 criminalizes the act of “improperly inducing consent, as an intermediary, for the **adoption of a child.** This provision applies only to the acts of intermediaries, but the Committee has recommended that SP criminalize the activities **of all those involved** in the sale of children for the purpose of adoption. Guatemala, France, Uganda

OPSC (6)

Child Prostitution

- Art. 2 defines child prostitution as **“the use of a child in sexual activities for remuneration or any other form of consideration”**.
- **Art. 3** obliges States Parties to criminalize **“Offering, obtaining, procuring or providing a child for child prostitution”**.
- Exploitation in **travel and tourism** is an issue often raised by the Committee. **“Sex tourism” is directly related to the offences covered by the Protocol**, since it often involves child prostitution and child pornography (those who exploit child prostitutes often record their activities on film) and may also involve the sale of children. GP Marocco : special offence
- The Committee recommends that States Parties strengthen efforts to prevent and combat the sexual exploitation of children in travel and tourism, (responsible tourism , awareness campaigns for tourists and travel operators, NGOs and civil society organizations) Viet Nam, Costa Rica, Guatemala, Chile

OPSC (7)

Child Pornography

- Art. 2 OPSC defines child pornography as “**any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.**”
- **Art. 3** requires SP to criminalize the “producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2”. Pornography can take the form of live performances, photos, motion pictures, video and the recording or broadcasting of digital images.
- The Committee is concerned : widespread distribution and easy accessibility of child pornography through **the Internet**. Recommendations Turkey, Viet Nam, Sudan, Costa Rica
- The Committee nevertheless has encouraged countries **to prohibit simple possession**, as does the CoE’s Conv. (Chile, Costa Rica).
- See also **The CoE Convention on Cybercrime (2001)**: list of offences prohibited in article 9 (1) (e)

OPSC (8)

Criminal, Civil and Administrative Responsibility

- Par.2,3,5 of **art. 3** cover a number of issues concerning **responsibility for participation in the offences** defined in the first par. of this article. They have to criminalize the attempt and complicity or participation in any of these acts. This is to be done in accordance with the national law. .
- 4th par. of art. 3 concerns the **liability of legal persons for the offences** defined in the OPSC. Liability may be criminal, civil or administrative, depending on the legal principles recognized by the legislation of the SP, since in many legal systems criminal responsibility can not be imposed to enterprises or firms. (Iceland) Art.7 OPSC is similar.

OPSC (9)

Jurisdiction and Extradition

- **Art. 4** concerns jurisdiction over acts of sale of children, child prostitution and child pornography. Its first par. provides that SP shall establish their jurisdiction over these offences when committed in their territory
- **Par. 2** provides that SP “may” establish jurisdiction over such offences according to the principles of active personality (the offender is a national or has his habitual residence in its territory) ; or the passive nationality (the victim is a national of the SP).
- **Par. 3** requires each SP to give jurisdiction over the sale of children... “when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.”
- This is to link with **Mutual Legal Assistance** which includes, in particular, assistance in **obtaining evidence**. USA **Art. 7** specifically requires SP to “**Execute requests** from another SP for seizure or confiscation of goods ...or proceeds...”

OPSC (10)

Prevention

- Art. 9 requires SP to “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol giving particular attention ... to protect children who are especially vulnerable to such practices.
- Par. 5 requires SP to “take appropriate measures aimed at effectively **prohibiting the production and dissemination of material** advertising the offences described in the present Protocol.”
- Art. 9, par.2 sets forth a more general obligation to “**promote awareness in the public at large**”, including children, through information by all appropriate means, education and training,

OPSC (11)

The Rights of Child Victims

- Art. 8 asks that SP “**adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process.**” This detailed article contains 10 provisions on the treatment for children victims.
- In addition there is one provision on the rights of those who work with child victims.
- There is also a final par. safeguarding the rights of accused persons to a fair and impartial trial.
- Art. 9 has also 2 provisions on the rights of child victims. **Par.h 3**, (cf. 39 CRC), recognizes the right to assistance in achieving social reintegration and physical and psychological recovery. And **par. 4** recognizes the right of child victims to “access to adequate procedures to seek... compensation for damages from those legally responsible.”
- **10 specific rights and duties** (France, Spain, USA, Austria)

OPSC (12)

- the right to procedures that recognize their **vulnerability and special needs**, as witnesses and in general (art.8.1(a))
- the right to be **informed of their rights**, their role and the scope, timing and progress of the proceedings and of the disposition of their cases (art.8.1(b))
- the victim's right to have **his or her views**, needs and concerns be presented and considered in a manner consistent with the procedural rules of national law (art.8.1(c))
- the right to **appropriate support** services (art.8.1(d))
- the **right to privacy and to the confidentiality** of information concerning the victim's identity (art.8.1(e))
- the right to **safety and protection** against intimidation and retaliation (art.8.1(f))
- the right to a procedure free from unnecessary **delays** (art.8.1(g))
- the duty of the State to **investigate even when the age of the victim** needs to be clarified (art.8.2)
- the duty to consider the **best interests** of the victim as a primary consideration (art.8.3)
- the duty to provide **appropriate training** to all those who work with child victims (art.8.4)

The Committee also insists that “**double victimization**” must be avoided (GP : Japan, Philipines)

OPSC (13)

International Assistance and Cooperation

- Art. 10 devoted to international assistance and cooperation. **Par. 1** contains a general commitment to “international cooperation and coordination between their authorities, national and international NGOs.”. (GP : USA)
- **Par. 2 encourages SP to promote international cooperation to assist child victims (physical + psychological recovery, social reintegration and repatriation, if appropriate.**
- **Par. 3** : the need to address, at the international level, the root causes of these offences : poverty, underdevelopment, (holistic approach).
- Par. 4 calls upon countries “in a position to do so” to provide financial, technical or other assistance
- **For the Committee, cooperation is integral to implementation of the OPSC.** (Iceland, Spain, Morocco, Qatar)

Good Practices

The Child Protection Act, The Philippines (1992):

- an example of legislation that complies with many of the requirements of the OPSC :
- It criminalizes the prostitution of boys/ girls below 18, as well as the attempt to commit child prostitution and
- the use of children in pornographic performances.
- Child prostitution is defined broadly to include “lascivious conduct” as well as intercourse
- the immediate closure of establishments that facilitate child prostitution, child pornography or trafficking of children
- In 2000 The Supreme court adopted a Rule for examination of witness, which allow the presence of a support person, authorises video link and the questioning through a facilitator

Good Practices (2)

Law Punishing Acts related to Child Prostitution / Pornography and Protecting Children (1999, revised 2004) JAPAN

- prohibits the prostitution of any child below 18
- Use of child prostitutes is punishable by 5 years and the facilitation of child prostitution by 7 years
- Production, distribution, sale, possession or transportation of child pornography as a business is punishable by up to 3 years imprisonment
- Legal entities can be fined up to 10 million yen
- Japanese courts jurisdiction over nationals involved in child prostitution and child prostitution abroad, and the duty to provide children with help in recovering
- The Criminal Procedure Code of Japan was amended in 2000 to allow child witnesses to testify from behind a screen or via video link, with the assistance of a person who provides moral and psychological support

The Special Rapporteurs

Special Rapporteur on the sale of children, child prostitution and child pornography

- The new SR is **Mrs Najat Maalla M'jid**, appointed on 26 March 2008. after Juan Miguel Petit, Ofelia Calcetas-Santos, Vitit Muntarbhorn.
- The SR's framework for action is established by the OPSC and the Convention itself, these being the most specific international legal instruments on the subject.
- The first limitation of the task is the definition of the word “**child**” itself, **article 1 CRC is the norm.**
- In principle, the mandate will follow the definitions of art 2 of the OPSC. But for the SR, the notion of the “sale of children” may be interpreted more broadly, to **cover “child trafficking”**
- The various situations and violations need to be considered as part of a **holistic approach of human rights.** For that purpose a close cooperation and ongoing collaboration with particular human rights protection and promotion mechanisms ; the first is the CC Committee.

SP (2)

The cooperation between CRC Committee and SP will include :

- sharing informations,
- country visits and report's communication,
- Identifying possibilities and of follow-up missions to specific countries
- paying particular attention to the follow-up to the CObs of the Committee,
- identifying and listing examples of best practice

SR (3)

To add :

- The Special Rapporteur on Trafficking in Persons, especially in Women and children : the mandate can overlap with the mandate of the SR on sale, prostitution and pornography, even if the mandate is not limited to children
- The Special Rapporteur on contemporary forms of Slavery, who can also be interested in the issues of sexual exploitation...

A Manual on OPSC

- Aim of the Manual is to **promote the accurate and consistent understanding** and implementation of the OPSC.
- The Manual describes the **genesis, content and meaning** of the OPSC and gives **examples** of measures taken States Parties in order to fulfil their obligations under this instrument.
- It is addressed principally to **public officials and professionals** whose duties and activities are linked to the protection of children from exploitation, at the national or local level.

A Manual on OPSC (2)

- Much of the Manual is **based on the experiences of the CRC Committee** and draws from the **reports of the Special Rapporteur** on the sale of children, child prostitution and child pornography. Data for the manual also comes from studies of NGOs,
- Importantly, the Manual is based also on researches of UNICEF, other UN bodies and **UNICEF Innocenti's research** on the General Measures of Implementation of the CRC, its work on child trafficking and the research on the exploitation of children in travel and tourism

CONCLUSION

**Recognize the exploited child
as a victim of crime
is essential to establish both
the innocence of the child and
the accountability of
perpetrators !**