

Expert Consultation
Legal Frameworks, Procedures and Enforcement:
Preventing and Responding to Sexual Exploitation of Children and Adolescents
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Ladies and Gentlemen,

I would like to thank the organizers for inviting OHCHR to participate in this meeting of experts on the legal frameworks, procedures and enforcement to prevent and respond to sexual exploitation of children and adolescents.

All main international human rights instruments have provisions that are relevant to the protection of children from sexual exploitation. We heard about the role of the Committee on the Rights of the Child in monitoring the existence and implementation of a legal framework consistent with specific international standards to protect children from violence. I would like to highlight how the other human rights mechanisms play an important role in monitoring the development and implementation of legislation tackling specific aspects that are relevant to protect children from sexual abuse and exploitation.

In their consideration of states parties reports all human rights treaty bodies monitor: the ratification of relevant international standards; how such standards translate into national laws; the level of implementation of the relevant national laws; and the effectiveness of the national legal framework.

Let us look at some examples from recent concluding observations. CEDAW, CAT and HRC regularly welcome or recommend the ratification of, among others, the OP-CRC SC, as well as of the Palermo Protocol. CEDAW, CAT, CERD, CERCS, HRC and MWC have all welcomed or recommended the inclusion of exploitation of child prostitution, child pornography, sexual tourism and trafficking as offences in national criminal legislation.

CEDAW has expressed concerns at criminal codes providing for the criminalization of women and girls in prostitution and both the MWC and CEDAW have expressed concerns at restrictive definitions of trafficking in the legislation (when for example the definition only covers trafficking for prostitution and not other forms of sexual exploitation or when it covers only girls and not boys). HRC and others also have stressed the importance of adequate penalties for those engaging in sexual exploitation of children. CEDAW and CESCR have recommended prohibiting forced marriages and raising the minimum legal age for marriage to 18 for both boys and girls. CEDAW has recommended the implementation of legal reforms pertaining to victims' rights in criminal proceedings and the introduction of special legislative provisions to give priority to prosecution of those involved in the exploitation of child prostitution. CEDAW, CAT, CERD, CESCR and HRC have recommended the enactment and enforcement of legislation to protect the rights of victims of sexual exploitation and ensure compensation,

rehabilitation and social integration. CESCR recommended extraterritorial application of certain provisions of Criminal Code, allowing for criminal prosecution of persons, both nationals and non-nationals, for sexual crimes committed abroad. CEDAW, CAT and CERD regularly request information on how relevant legislation is implemented, including through requesting the provision of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions.

Treaty bodies also adopt general comments to give authoritative guidance and interpretation of specific provisions. Many of the general comments are relevant to the topic of discussion. They can refer to the specific protection afforded to children, as it is the case for general Comment 17 of the HRC; or to the specific issue of sexual exploitation, as it is the case for General Comment 19 of CEDAW on violence against women, highlighting the need for specific preventive and punitive measures to overcome trafficking and sexual exploitation. Other General Comments give guidance to on the implementation of rights, the violation of which can make children particularly vulnerable to sexual exploitation, as it is for example the case of general comment 30 of CERD, focusing on non-citizens and specifically referring to the obligation to avoid statelessness of children and allow both parents to transmit nationality.

Sexual Exploitation of Children is also a subject which is virtually of concern to all the special procedures of the Human Rights Council.

Just to make a few examples, in recent visits, the SR on the sale of children, child pornography and child prostitution: commented on how the illegality of prostitution makes children in prostitution more vulnerable to exploitation; recommended the definition of the age of consent; recommended the clear definition in legislation of the crimes of child pornography; highlighted the need for legislation to allow children to file, without parental consent, complaints of abuse; stressed the need for laws on clear and accessible procedures enabling victims of trafficking to get compensation; etc. The Working Group on Arbitrary Detention has made comments in its country visits on the vulnerability of children deprived of liberty to sexual abuse and exploitation by prison staff or by their co-inmates especially in the absence of legal procedures and criteria governing deprivation of liberty.

Special Procedures intervene through allegation letters or press releases to express concern about the human rights implications of legislation already in place or about to be enacted. Just to give an example, the SR on migrants, the SR on trafficking and the SR on the Sale of Children expressed concerns at the legislation in some Gulf countries providing that the legal status of migrant workers depended on the continued visa sponsorship of the employers and stressed how this made migrant workers, including girls, vulnerable to situations of exploitation, as those fleeing exploitative situations risked arrest, prolonged administrative detention and deportation.

Furthermore, through their thematic research, special procedures can advance the thinking in relevant areas. Let us think for example about the report of the SR on the sale of children on child pornography on the internet, which back in 2004 recommended *inter*

alia: the introduction of legislation creating the offence of “Internet grooming or luring”; the introduction of legislation on ISPs envisaging not only their obligation to remove or prevent accessibility to illegal material of which they have knowledge, but also establishing a minimum monitoring obligation to prevent online child pornography; considering the adoption of legislation on child erotica; and ensuring that legislation on child pornography protects all children under the age of 18, regardless of the age of consent to sexual activity and so on. To give another example, the SR on torture in his last report to the HRC- devoted to a gender sensitive definition of torture- highlighted how in absence of due diligence, trafficking of girls (and women) can be equated to torture. The report recalls relevant European jurisprudence according to which expulsion of a person to a State where he/she would be subjected to slavery or forced labour – including sexual exploitation- might raise issues under the obligation to prohibit torture.

Let me also very briefly touch upon the Universal Periodic Review (UPR) mechanism of the HRC. As you know, the UPR builds on the recommendations of SPs and TBs, as well as on information provided by civil society organizations, UN agencies and other stakeholders. The first three cycles of the UPR have addressed to some extent the issue of sexual exploitation of children. In the case of the Czech Republic and Japan reference was made to amendments to the Criminal Code and the passing of new legislation to criminalize possession of child pornography and introduce stricter punishment for associated crimes. The final report on Pakistan recommends that the issues of child abuse, child trafficking, sexual exploitation be addressed by strict enforcement of national legislation adopted in conformity with relevant international instruments. In the review of the Netherlands, it was recommended that the country undertake an in-depth study on trafficking and exploitation of children, particularly with regard to sexual abuse, child prostitution and child pornography, as a basis for urgent remedial action in this regard.

These few examples highlight how existing mechanisms already cover issues related to the legislative framework for the protection of children from sexual exploitation. It is true that in some cases these issues are addressed systematically, while in others only incidentally, but I believe we need to look at the different mechanisms and procedures as a system and therefore we must consider all their recommendations together. There is a lot of talking about overlapping and duplication of mandates, but I prefer to talk about possibilities for synergies. I believe that there is added value in having different mechanisms look at the issue from different perspectives. Let us think for example about the crucial role of CEDAW in highlighting the links between sexual exploitation and other forms of discrimination against girls. Recommendations by different bodies should build on and reinforce one another. For this to happen we need, on the one hand, consistent attention by all relevant mechanisms to different aspects of the phenomenon and, on the other, greater coordination and cooperation among all mechanisms.

First let me say a few words about how can we encourage the different mandates to more systematically look at issues surrounding sexual exploitation of children. As you know, all the mechanisms function on the basis of the information they receive. Traditionally, information on children is submitted by child-rights NGOs as well as UNICEF and other stakeholders to CRC and rarely to other TBs. An effort is needed to engage more

consistently with other treaty bodies, as well as with special procedures and with the UPR mechanism. Sometimes it is just an issue of submitting the same information to different mechanisms. At country level, often there is a lack of awareness of UN human rights mechanisms and their relevance to issues such as child sexual exploitation. The child rights constituency has an important role to play in raising awareness and encouraging actors at national level to submit available info to relevant bodies and to engage with them. A lot of simple steps can be taken: issues of specific concern can be brought to the attention of relevant procedures with the request that they be investigated through thematic reports; relevant partners can be warned about planned visits of special procedures so that they can engage in a dialogue with them and raise issues of concern; specific cases can be brought to the attention of relevant procedures, including concerning relevant legislation; information can be submitted in connection with the preparation of general comments by human rights treaty bodies for relevant aspects to be taken into account; finally, relevant information can be submitted to OHCHR for UPR sessions or contacts can be established with delegations to suggest issues to be raised during the dialogue with States.

OHCHR is making efforts to promote greater engagement on violence against children, including sexual exploitation, of all human rights mechanisms. We have briefed the annual meetings of TBs and SPs on relevant aspects; we brief all new special procedures-mandate holders when they come to Geneva for an orientation session; and we prepare personalized notes for all of them highlighting issues that can be addressed under their respective mandates, as well as ways in which they can mainstream child-rights issues into their mandate. We send out to partners a monthly update on upcoming SR's mission to encourage the submission of relevant information. We have prepared standard list of issues on violence against children, including sexual exploitation, to be raised by MWC and CAT under the different articles of the respective conventions during the dialogue with states and we plan to do the same for other treaties.

As mentioned, we also need to encourage more coordination and cooperation, so as to achieve greater coverage and consistency. The SR on the sale of children has announced her intention to organize a meeting with the SR on trafficking, the SR on Contemporary Forms of Slavery and possibly others to discuss coordination in relevant cross-cutting issues. This will certainly be a good opportunity to discuss how to cooperate in the area of sexual exploitation of children. Also, the Coordinating Committee of Special Procedures could be approached with ideas for issues surrounding sexual exploitation of children to be the subject of joint action by several relevant procedures (be they statements, joint thematic reports, joint missions) TBs are also moving towards the preparation of joint general comments. For example, the MWC and CEDAW are working on a joint general comment on migrant women. Similar experiences could be encouraged on issues surrounding sexual exploitation, under the leadership of CRC. The soon to be appointed SRSG on VAC, in close coordination with SRSGCAAC and CRC should also act as a hub to coordinate and share information and expertise between all the relevant mechanisms.

To summarize, I believe it would be important that the Rio Congress: recognize the important role played by all human rights mechanisms in monitoring the development and implementation of legal frameworks to protect children from violence; recommend greater attention by all mechanisms to the issue of sexual exploitation of children under their respective mandates; recommend that as a follow-up to the Congress sexual exploitation of children be discussed as an area for cooperation and coordination in annual meetings of different mechanisms including the possibility for joint initiatives and action; recommend greater involvement of all different actors with all relevant HR mechanisms in the area of sexual exploitation of children; and recommend that the SRSG on VAC promote coordination and cooperation between all human rights mechanisms in the area of sexual exploitation of children.

Thank you.