

## **Sotckholm Congress Panel Report: Law reform and enforcement**

The panel on law reform and law enforcement heard contributions from the Chair, Marta Santos Pais (Portugal), UN Committee on the Rights of the Child; Michael Tshishonga, Department of Justice (South Africa); Helia Barbosa, Centre for the Defence of Children (Bahia, Brazil); Agnes Fournier de St Maur (France), Interpol; Terry Lord, Department of Justice (US); Wanchai Rujanavong, Attorney General's Office (Thailand); and Martine Bouillon (France), Magistrate. The panel rapporteur was Muireann O Briain (Ireland), Lawyer.

It was pointed out that, in all our work for the better protection of children, the Convention on the Rights of the Child (CRC) is a common point of reference, providing a general framework for an integrated approach. The laws in each country which implement the CRC must see children as the subjects of rights, not as commodities. They should clearly define the crimes against them and provide remedies for those wrongs. But laws alone are not enough; they must be conveyed to society. They are only valid if they are living laws. The judiciary, the law enforcement personnel, the police, must provide effective judicial processes, and those processes must work fairly in favour of the common good, unaffected by class distinctions or the lack of education. It is also true that the organs of state need to be given the principled support of their government with clear priorities and adequate resources. There is a need everywhere to create a culture of responsibility so that our children everywhere, who are our future, can be protected.

On the more practical side, the meeting heard that Interpol in 1992 created the Standing Working Party on Offences against Minors, concretizing the joint efforts of the UN and Interpol for the protection of children. Important progress has been made in three years in international police cooperation. The priorities for the group are to reinforce the legislative arsenal of every member state, to provide or encourage the training of police forces, to encourage specialization within police forces and to facilitate cooperation and specialist international police assistance. The group is producing a handbook for police officers dealing with offences against minors. It is also forging channels of communication to wage war on the traffic in child pornography via the Internet. It is assisting the maintenance of databases and special registers which will assist in restricting the criminal activities of child sex offenders.

From the US, the meeting learned of the work being done to combat the problem of child pornography. Since 1982, when the US Supreme Court ruled that child pornography was directly related to the abuse of children, its sale and distribution has been banned. It is now illegal in the US to produce, distribute or possess child pornography, and even to produce it abroad if it is destined for importation. It is also a criminal act to travel internationally with the intent to engage in sexual conduct with children. Through the efforts of the postal services and the customs services, the use of international mail to traffic in pornography has virtually ceased. Much of the personal importation of such material has also stopped. Today the challenge is the computer-based traffic in pornography. Since 1993, the Justice Department has carried out more than 300 investigations and obtained almost 100 convictions. Two hundred and fifty investigations have been launched on the misuse of the America Online computer system to traffic in child pornography, and more than 50 convictions have been obtained. The Justice Department works with all the national law enforcement agencies as well as with those agencies in other countries. It believes that no one country can on its own address the problem of child sexual abuse and exploitation. It recommends international cooperation, as well as the use of the expertise and experience of local law enforcement officers.

The Thai experience in dealing with CSEC shows that things are changing rapidly. Countries which would not have extradited their nationals are now doing so; countries which would not have prosecuted offenders at home are now willing to do so. In this latter respect, the use of

extraterritorial legislation is a necessary tool, both as a deterrent and in case an offender escapes the local jurisdiction. The use of Mutual Assistance Treaties can ease the preparation of an extraterritorial case which otherwise would require national legislation and the use of diplomatic channels. Important changes have taken place in the national Thai legislation which involved the decriminalization of victims, increasing penalties for procurers, traffickers and customers, penalization of parents who well their children. New amendments to the Criminal Code will expand certain sections so as to include the protection of male children, to penalize procurers even for offences committed outside the country, and to make the mere possession of child pornography an offence. Procedural rules are also being introduced to facilitate the conduct of cases involving children and avoid causing trauma to them.

Finally, from the European Court of Human Rights, the meeting heard that, while the Court has not had any cases involving commercial sexual traffic in children, it would certainly hold member states responsible under the Convention on Human Rights for the acts or failure to act of official organs. The comment was made that such traffic has the quality of organized crime, and the perpetrators are often persons with strong connections in high places. The approaches to dealing with these crimes may have to be different from an investigation of ordinary crimes. Paedophilia is a growing phenomenon. Its danger must not be underestimated. The world must also become aware of the extent to which paedophiles insert themselves in jobs and situations where there are children, and take steps to avoid their recruitment. Furthermore, because these are recidivist offenders, ways must be found to impose adequate sanctions or to treat them.

The workshops which followed considered the issues of: law enforcement; protection of the victims; extraterritorial laws; laws for the protection of children; monitoring of the paedophile; and children in conflict with the law.

Arising from the reports of the workshops, these are the problems and issues that were of concern to the participants:

- There is a great need for public acknowledgement and acceptance that children are being sexually abused for commercial purposes. It is difficult to generate concern when poverty is a major factor in CSEC.
- Corruption and a lack of accountability among public officers and officials.
- Lack of adequate resources and training for police and public servants.
- Lack of consistency in laws which affect children, such as the age of consent.
- There are problems in collecting evidence for sexual offences, with different standards of evidential requirements in different countries. A lack of information sharing can increase the problems.
- The judicial and legal systems are often not child-friendly. Immigration rules can also make matters worse for child victims. Children can be subjected to HIV testing and suffer consequent discrimination.
- There is a lack of screening programmes, screening mechanisms and post-incarceration treatment programmes for child abusers.
- The privacy rights of victims are often given less priority than the privacy rights of offenders.
- Rules relating to reciprocity for extradition and dual criminality are impediments to the penalizing of offenders.
- There are potential difficulties of overlapping jurisdiction between Europol and Interpol in relation to police work against the trafficking of human beings.

Here are the major suggestions and recommendations that emerged from the workshops:

1. There must be full implementation of the CRC by all states, with an adequate monitoring system to check and evaluate progress. Basic international standards to combat CSEC should be elaborated. Where states have made reservations, they should be encouraged to withdraw them.
2. Training must be provided for law enforcement personnel, including police and judges. Training in new technologies is also necessary to enhance communication and the gathering of information. Specialization in the police, law enforcement personnel and judiciary is necessary. Particularly in relation to the police, there should be specialized officers and units in each country to handle cases involving offences against minors, and specialized liaison officers based in countries to which child abusers travel in large numbers.
3. Ways must be found to agree on a common age of consent for sexual encounters. (It appears that the age of 18 in the CRC is not acceptable in many countries as an age of consent.)
4. National legislations should provide that the rights of a child victim will take precedence over the rights of an offender, if these are in conflict. Children should be eligible for compensation by the perpetrators of crimes against them. Ways should be found in national legislations and procedural rules to protect child victims in relation to the giving of evidence, such as videotape and video link evidence. Child victims should be provided with free legal assistance. If it is necessary to detain children while the case is being prepared or is proceeding, the circumstances of their detention must be caring and have the ability to respond to their physical and psychological needs. It is also suggested that child abuse cases should be heard in special and child-friendly courts. Witness protection programmes may be necessary in some cases.
5. There should be a centralized database relating to the movements of paedophile offenders. Some consider that such a database should also be available in relation to STD carriers.
6. There should be an international central register of missing children.
7. The public must be educated through awareness campaigns. Protecting children from becoming victims is a global responsibility.
8. There must be public recognition that CSEC is big business, motivated by profit, and that it needs to be addressed as a serious crime. The profits of offenders should be seized and used in rehabilitation programmes.
9. Monitoring of child abusers should be developed via national and international registers (see 5 above), which should be accessible by law enforcement officials. Monitoring should be developed in local communities by Community Notices and screening mechanisms for job applications. It is recommended that such screening and monitoring should apply as far as possible to suspected as well as convicted offenders. Due to electronic communication potential, such monitoring can now be done on a worldwide basis. Monitoring could also be tied in with other national and international screening systems such as passport and visa application systems.
10. The principles of international law should be better explained to legislators and politicians so that problems which are perceived as obstacles to law changes can be overcome. For example, the principles of dual criminality, reciprocity and double jeopardy are not always correctly understood.
11. Extraterritorial legislation is a valuable tool for the pursuit of child abusers. All countries should be obliged to either extradite or prosecute.
12. There was support for the improved mechanisms which a Protocol to the CRC would provide in harmonizing enforcement procedures. However, efforts to have a protocol agreed

and ratified should not distract from the national and bilateral improvements that can be made in the meantime to prosecute offenders and combat CSEC.

13. There was some support for increasing the proposed jurisdiction of the International Criminal Tribunal to include the sexual exploitation of children. There was also support for the suggestion that such exploitation should be categorized as a crime against humanity.
14. The Commission on Crime Prevention and Criminal Justice is asked to elaborate an international convention or other legally binding instrument against trafficking in children.