

CHAPTER V

Model Law^{1*} on Combating Child Sex Tourism

Introduction

On May 25, 2000, States Parties to the “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography” [Optional Protocol] agreed that the widespread and continuing practice of child sex tourism was a matter of deep concern as it directly promotes the sale of children, child prostitution and child pornography. Article 10 of the Optional Protocol states that:

“States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.”

“States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations. [...]”

Enacting specific legislation addressing the issue of child sex tourism is one of the first steps to be taken to combat the problem. However, most countries have not taken such a step and the few child sex tourism laws already in place still present inconsistencies and difficulties in practice. Harmonization of existing laws is therefore crucial to successfully address what constitutes a transnational crime. The Model Law on Combating Child Sex Tourism attempts to achieve both these goals, namely to serve as a guide to countries that wish to enact a comprehensive legal framework against child sex tourism, and to provide a model for harmonization of existing legislation.

The Model law is based on comparative models and aims to comprehensively address the problem of child sex tourism

by criminalizing the act and providing strict penalties as well as calling for effective preventive measures.

Model Law

Article I: DEFINITIONS

- A. A “**child**” is a person who is under the age of 18 years.²
- B. The term “**illicit sexual act**” is any sexual contact, including, but not limited to, the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.³
- C. “**Trafficking in persons**” means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴
- D. “**Child sex tourism**” means traveling with the purpose of engaging in commercial sexual relationship with a minor at destination.⁵

Article II: OFFENSES AND PENALTIES

(1) **Child Sex Tourism.** The following shall constitute the crime of child sex tourism:

- A. **Traveling with the Intent to Engage in Illicit Sexual**

Acts. A person who travels with the intent to engage in a sexual act with a child shall be fined and imprisoned for up to 30 years.⁶ The penalty shall include forfeiture of travel documents and any property used or intended to be used to commit or promote commission of the offense.

B. **Traveling and Engaging in Illicit Sexual Acts.** A person who travels and engages in a sexual act with a child shall be fined and imprisoned for up to 30 years.⁷ The penalty shall include forfeiture of travel documents and any property used or intended to be used to commit or promote commission of the offense.

C. **Attempt and Conspiracy.** Attempt or conspiracy to commit the crime of child sex tourism is punished with the same penalty provided for commission of the crime of child sex tourism.⁸

(2) **Child Sex Tourism as a Form of Trafficking in Persons.** It shall be considered an act of trafficking in persons when a person undertakes tours and travel plans consisting of tourism packages or activities utilizing a child for prostitution or sexual exploitation.⁹

(3) **Liability of Corporate Persons.**¹⁰ Any legal person directing, organizing, promoting, procuring or facilitating the travel of a person with the knowledge that such a person will engage in child sex tourism shall be liable.¹¹ Penalties include closure of business, withdrawing of licenses or authorizations, and freezing or confiscation of proceeds of crime.¹²

(4) **Double Criminality.** Liability of a person for the crime of child sex tourism is imposed regardless of whether such offense is punishable in the country where the act has been committed.¹³

Article III: PREVENTION

A. The State shall conduct research to examine the causes of child sex tourism, the profits generated there from, the link between child sex tourism and trafficking in children and related issues, including health and the spread of HIV/AIDS, that may help design an effective response to the problem.¹⁴

B. The State shall establish initiatives to enhance economic opportunity for victims of child sex tourism as a method to deter the crime. Such initiatives will include:

- a. Vocational training and job counseling;
- b. Programs to keep children, especially girls, in school;
- c. Grants to non-governmental organizations to advance the political, economic and educational role of women in their countries.¹⁵

C. The State shall conduct public awareness campaigns, particularly among potential victims of sex tourism, and shall develop and disseminate information warning travelers that sex tourism is illegal, will be prosecuted, and presents dangers to those involved.¹⁶

Article IV: PROCEDURES

A. **Statute Of Limitations.** The crime of child sex tourism shall not be subject to the statute of limitations.¹⁷

B. **Child Testimony.** The court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

- (a) The child will be unable to testify because of fear;
- (b) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court;
- (c) The child suffers a mental or other infirmity;
- (d) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.¹⁸

The attorney for the government may request and apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

C. **Cooperation.**¹⁹ Sending and destination countries shall promote communication and assistance in the prosecution of child sex tourism, including training of police officers in apprehending suspects, investigating cases, and questioning child witnesses.

Embassies shall cooperate in the prosecution of sex tourists, including immediately informing the sending country upon arrest of a suspect. Embassies of sending countries shall also immediately notify the police of a destination country if a convicted child sex tourist or sex tourist suspect has requested a passport to travel to such destination country.

Endnotes

^{1*} In the absence of a specific provision on sex tourism, national laws use extraterritorial application of existing penal laws to criminalize the offense. Some countries, such as Belgium and Sweden, extend the scope of jurisdiction not only to nationals, but also to residents in the territory of the country.

² The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990. The age of consent to sexual activities also varies between nations. For example, Australia's

- Crimes (Child Sex Tourism) Amendment Act of 1994 criminalizes sexual intercourse with a child younger than 16 years of age. Switzerland, the Netherlands and Belgium set the age of protection at 16. France and Sweden's age of protection is 15.
- 3 See 18 U.S.C. § 2246(3).
 - 4 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 20, 2000, art. 3(a), UN Doc. A/45/49 (2001), 40 I.L.M. 335, 378.
 - 5 World Tourism Organization Statement on the Prevention of Organized Sex Tourism, Adopted by the General Assembly of the World Tourism Organization, 11th Sess., Cairo (Egypt), Oct. 17-22, 1995, UN Doc. A/RES/338(XI). [hereinafter WTO Statement]. The widespread practice of traveling with the purpose of engaging in sexual activities with children has given rise to multiple definitions of child sex tourism. The Office of the United Nations High Commissioner for Human Rights has defined child sex tourism by focusing on the activities of facilitators, rather than on the purposes of tourists. It defines child sex tourism as "tourism organized with the primary purpose of facilitating the effecting of a commercial-sexual relationship with a child." Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Office of the U.N. High Commissioner for Human Rights, 52nd Sess., Agenda Item 20(b), U.N. Doc. E/CN.4/1996/100 (1996). Also, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) defines child sex tourism as "the commercial sexual exploitation of children by persons who travel from their own country to another usually less-developed country to engage in sexual acts with children." ECPAT, Frequently Asked Questions about CSEC [Commercial Sexual Exploitation of Children] at "Child Sex Tourism" page, available at <http://www.ecpat.net/eng/CSEC/faq/faq.asp>. In addition, the most basic definition of sex tourism, a practice that consists of an act: "tourism," and a purpose: "having sex" is provided by "TheFreeDictionary.com by Farlex," which defines sex tourism as "tourism, partially or fully with the purpose of having sex, often with prostitutes." TheFreeDictionary.com by Farlex available at <http://encyclopedia.thefreedictionary.com/tourism>. The Oxford Dictionary defines sex tourism as "the organization of holidays with the purpose of taking advantage of the lack of restrictions imposed on sexual activity and prostitution in some foreign countries." Compact Oxford English Dictionary, Sex Tourism, available at http://www.askoxford.com/concise_oed/sextourism?view=uk.
 - 6 See The PROTECT Act, 18 U.S.C. 2423 § 105(b) (2004). TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT.— A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.
 - 7 See The PROTECT Act, 18 U.S.C. 2423 § 105(c) (2004). ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.
 - 8 See The PROTECT Act, 18 U.S.C. 2423 § 105(e) (2004). Some legal systems allow for a shorter penalty for attempting to commit the crime. For example, article 56 of the Italian Criminal Code provides that attempt to commit a crime is punished with imprisonment for up to twelve years if the penalty for complete commission of the crime is life imprisonment or, in other cases, with the same penalty provided for the complete commission of the crime reduced by one third to two thirds. C.P., art. 56 (Italy).
 - 9 See Anti-Trafficking law in Persons Act of 2003 of the Philippines, Republic Act 9208, Section 4(d).
 - 10 Legal persons involved in the crime of child sex tourism include: travel agents, sex-tour operators, airlines, hotel chains, advertisers and criminal networks.
 - 11 The Australian law holds liable those who encourage, advertise, benefit from or assist a person to travel for sex tourism. See Crimes Act, Sections 50DA, 50DB (Austl.). The provisions are directed at travel agents, tour operators, pedophile networks, advertisers and emigrant Australian bar and brothel owners who participate in sex tourism. Like the penalty for the offender, the maximum penalty for these offenses is also 17 years imprisonment.
Colombian Law, Title XI – Crimes Against Sexual Liberty And Human Dignity, (Colom.), article 219, provides: "Any person who directs, organizes, or promotes tourist activities that include the sexual use of minors shall be punished by imprisonment of three (3) to eight (8) years."
- The Irish Sexual Offenses (Jurisdiction) Act (1996) (Ire.), Section 3 provides: (1) A person who, in the State, makes an arrangement to transport a person to a place in or outside the State or who authorizes the making of such an arrangement for or on behalf of another person, knowingly for the purpose of enabling that person or any other person to commit an offense, which is an offense by virtue of section 2 (1) of this act, shall be guilty of an offense.
- (2) A person who transports another person from a place in the State to a place in or outside the State, knowingly for the purpose of enabling that person or any other person to commit an offense, which is an offense by virtue of section 2 (1) of this act, shall be guilty of an offense. A person who publishes information which is intended to or, having regard to all the circumstances, is likely to promote, advocate or incite the commission of an offense, which is an offense by virtue of section 2 (1) of this act, shall be guilty of an offense.
- The Irish Sexual Offenses (Jurisdiction) Act (1996) (Ire.), Section 5 provides: Where an offense under this act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other similar officer of such body, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offense and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offense.
- 12 Law 269 of 1998 Against the Prostitution of Minors, Pornography, Sex Tourism and Other Contemporary Forums of Slavery, (Italy) article 7, provides that the penalty for the legal person involved in sex tourism is confiscation of the proceeds of crime, closing of business and withdrawing of any license or authorization for operating the business. Law n. 146 of March 16, 2006 (Italy) implementing the Transnational Crime Convention, provides that the legal person is subjected to the monetary sanction of 600 to 1,000 shares of the corporate body for the crimes of trafficking in persons and slavery or servitude. Moreover, the legal person is subjected to a two-year freezing of the proceeds of crime. When this is not possible, the judge orders the seizure of money or other properties of the legal person for an amount equal to the proceeds of crime.
 - 13 Double criminality provisions exist to disallow enforcement of a law against an offender who acts in a country where the offense is not a crime. The Swedish law, for example, requires double criminality. The law mandates that a Swedish citizen who has committed a crime outside of Sweden is liable only if the act is criminal both in Sweden and in the country where the offense occurred. The penalty for the crime may not exceed the maximum penalty prescribed for the crime under the law of the country where the offense was committed. Swedish Penal Code 2:2 1 paragraph 7. Belgium, The Netherlands and Switzerland also require double criminality. Germany and Australia do not require double criminality.
Non bis in idem or double jeopardy means freedom from repeated prosecution or punishment for the same offense, irrespective of the prosecuting system. See M. Cherif Bassiouni, Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions, 3 Duke J. Comp. & Int'l L. 235, 288 -289 (1993). Legal systems differ as to when jeopardy attaches. Some approaches to double jeopardy are limited to the non applicability of double punishment, but do not exclude repeated prosecution. Id.
 - 14 The U.S. Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, Public Law No. 108-193, (2004) Section 112A. RESEARCH ON DOMESTIC AND INTERNATIONAL TRAFFICKING IN PERSONS, provides the following: "The President ... shall carry out research, including by providing grants to nongovernmental organizations, as well as relevant United States Government agencies and international organizations, which furthers the purposes of this division and provides data to address the problems identified in the findings of this division. Such research initiatives shall, to the maximum extent practicable, include, but not be limited to, the following: (1) The economic causes and consequences of trafficking in persons; (2) The effectiveness of programs and initiatives funded or administered by Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking; (3) The interrelationship between trafficking in persons and global health risks."
 - 15 See U.S. Trafficking Victims Protection Act (TVPA) of 2000, Public Law 106-386, Section 106. PREVENTION OF TRAFFICKING. (a) ECONOMIC ALTERNATIVES TO PREVENT AND DETER TRAFFICKING.— The President shall establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include— (1) microcredit lending programs, training in business

development, skills training, and job counseling; (2) programs to promote women's participation in economic decisionmaking; (3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking; (4) development of educational curricula regarding the dangers of trafficking; and (5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

- 16 The United States Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) Public Law No. 108-193, Section 3(e)(1) provides: “(e) COMBATING INTERNATIONAL SEX TOURISM.— (1) DEVELOPMENT AND DISSEMINATION OF MATERIALS.— The President, pursuant to such regulations as may be prescribed, shall ensure that materials are developed and disseminated to alert travelers that sex tourism (as described in subsections (b) through (f) of section 2423 of title 18, United States Code) is illegal, will be prosecuted, and presents dangers to those involved. Such materials shall be disseminated to individuals traveling to foreign destinations where the President determines that sex tourism is significant.

Law To Fight Trafficking in Persons n. 25-353 of 2004, (Ecuador), Article 20, provides: “Executive Function: The Executive shall take the necessary steps to inform Ecuadorians regarding sex tourism. They shall alert citizens that to travel to another country to engage in sexual relations with a minor or with a victim of trade of persons can constitute a crime in the country of destination or country of origin, or could constitute abuse of minors. Such measures should include: Cooperation with airlines, hotels, taxis and others to jointly produce educational material that can inform them as to the sex tourism test of their clients and warn them that they should not facilitate such behaviors. Warn the citizens and employees of the companies dedicated to tourism, that a crime can be committed when someone has sexual relations with a minor, practices sex tourism or visits a brothel where one can find women and minors who are victims of the trade and exploitation of persons. Provide updated information with respect to the links between HIV/AIDS and other sexually transmitted diseases and the trade and exploitation of persons.”

Law n. 269 of 1998 Against the Prostitution of Minors, Pornography, Sex Tourism and Other Contemporary Forums of Slavery (Italy) provides: “1. Tour operators who organize collective or individual trips to foreign countries are obliged, for at least 3 years from the date given in para.2 to insert in a prominent manner in their advertising material and programmes, or otherwise in the travel documents given to customers, as well as in their brochures and catalogues (whether for single or multiple destinations), following notice: “Obligatory notice for the purposes of Article... of law No...- Italian law punishes with imprisonment offenses relating to child prostitution and child pornography, even if these offenses are committed abroad.” 2. The materials referred to in paragraph 1 include illustrative material and advertisements or other documentation which is made available after 180 days from the entry into force of this law. 3. Tour operators who fail to comply with the obligations in paragraph 1 will be liable to a fine of from 2 to 10 million lire.”

- 17 For instance, the U.S. PROTECT Act of 2003, Public Law No: 108-21, Section 202 provides: “No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.”
- 18 See 18 U.S.C. § 3509 providing that: “(2) Videotaped deposition of child.— (A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.
- (B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

- (I) The child will be unable to testify because of fear.
- (II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.
- (III) The child suffers a mental or other infirmity.
- (IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.
- (ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.
- (iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--
- (I) the attorney for the Government;
- (II) the attorney for the defendant;
- (III) the child's attorney or guardian ad litem appointed under subsection (h);
- (IV) persons necessary to operate the videotape equipment;
- (V) subject to clause (iv), the defendant; and
- (VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

- (iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.”

Australia (Victoria State); Evidence Act 1958

37D. Video link evidence from overseas in certain proceedings

: When court may take evidence by video link

“50EA. [T]he court may direct that a witness give evidence by video link if:

- (a) the witness will give the evidence from outside Australia; and
- (b) the witness is not a defendant in the proceeding; and
- (c) the facilities required by section 50EC are available or can reasonably be made available; and
- (d) the court is satisfied that attendance of the witness at the court to give the evidence would:
- (i) cause unreasonable expense or inconvenience; or
- (ii) cause the witness psychological harm or unreasonable distress; or
- (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.”

- 19 See, e.g. Article 10 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc.A/RES/54/263 of 25 May 2000, 39 I.L.M. 1285, which states that: “States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.” See also: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 266 U.N.T.S. 3, which provides that “States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions” on the ending the slave trade.

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