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*Preventing the Sexual Exploitation
of Children*

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Preventing the Sexual Exploitation of Children

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ABSTRACT

ECPAT International began its work as a campaign against the use of children in sex tourism in Asian countries. Over the years it has developed into an international NGO specialised in pursuing the implementation of the Stockholm Agenda for Action against the commercial sexual exploitation of children.

ECPAT can point to a measure of success in the number of countries that have taken the issue seriously and have adopted national plans to protect children. A number of new international instruments are now also available to lend weight to the work. These include the ILO Convention 182 on the worst forms of child labour, the Protocol against Trafficking in Persons to the Convention against Transnational Organised Crime, and the Optional Protocol to the Convention on the Rights of the Child. A second Congress in Japan at the end of this year will again focus world attention on the issue. But overall the problem is still acute, with new forms of child sexual exploitation manifesting themselves.

Lawyers have an important role to play in the protection of children in the legal environment. But protecting the victims of sexual exploitation and sexual abuse is a challenging ambition for the legal profession. The challenge is the search for justice while pursuing the right to a fair trial of alleged abusers. Children, as the victims of abuse, are not visible enough in the legal system.

There is a great need for lawyers to use their professional and personal qualities in favour of children, and a number of ways in which they can help to make the world a better place for children.

Preventing the Sexual Exploitation of Children

ECPAT International is the kind of organisation that most lawyers love to hate. Far too unscientific with the use of numbers, involving ourselves in legal issues without having the relevant expertise, making references to international human rights instruments when everyone knows that it is only national laws that can be properly enforced, etc. etc. But the World Congress on Family Law and the Rights of Children and Youth has espoused our cause since 1993, which either says something about your organisation's tolerance, or our organisation's innovation, or perhaps both. Your organisation could certainly be credited with a great deal of political discernment. In 1993 you called for the ratification of the Convention on the Rights of the Child (CRC), and now there are only two states in the world that have not ratified it.

Also in 1993 you called for the elimination of child labour and the commercial sexual exploitation of children. Now there is an ILO Convention especially dedicated to banning the worst forms of child labour including the use of children for sexual purposes. And its ratification is proceeding with the same kind of rapidity that accompanied the ratification of the CRC.

In 1997 you called for an end to the use of children in armed conflict. Now there is an Optional Protocol to the CRC that specifically addresses the use of children in armed conflicts.

Did you sense the public mood, or did the governments of the world follow your exhortations?

The cause you espoused at your Congress in 1993 was an end to the commercial sexual exploitation of children. This was the core of the ECPAT campaign which had started in 1990. The campaign developed from the revulsion felt by just a few social workers, church people, and NGO activists at the extent to which children were being used for sex within the tourism industry in some of the countries of Asia. Research carried out in Sri Lanka, Taiwan, the Philippines and Thailand, indicated a very serious problem of child sexual abuse by foreign paedophiles. The campaign was supported by the 1993 World Congress on Family Law and the Rights of Children and Youth when the ECPAT campaign (End Child Prostitution in Asian Tourism) was invited to address your Congress on the issue of child sex tourism. Later, in 1995, the campaigners succeeded in persuading the Swedish government to host a World Congress specifically addressed to the commercial sexual exploitation of children. On 31st August 1996, representatives from 122 states gathered in Stockholm and adopted the Stockholm Declaration and Agenda for Action against the Commercial Sexual Exploitation of Children.

At that time, commercial sexual exploitation of children (or CSEC) was a relatively new issue on the agendas of governments. Only Articles 34 and 35 of the Convention on the Rights of the Child provided clear international provisions against this particular denial of children's rights. Even among the human rights lobbyists, very few people made the link between tourism and exploitation of children; very few knew what child pornography actually meant. Furthermore, as distinct from domestic or institutional child sexual abuse, which is a common problem in every part of the world, child sexual exploitation was taken to be something that only happened in the developing world. But in the summer of 1996 the Mark Dutroux case broke in

Belgium. The sexual victimisation of Belgian children in the heart of western Europe through kidnapping, abduction, and torture brought home with horrifying clarity that sexual exploitation of children was everybody's problem.

After the Congress, the NGOs present, fired with enthusiasm, demanded that ECPAT stay in existence and become an international non-governmental organisation, dedicated to defending children worldwide from child prostitution, child pornography and trafficking in children for sexual purposes. Child prostitution is the phenomenon of children being used for sexual intercourse. Child pornography is the use of children to make pornographic images. Trafficking in children for sexual purposes is the taking of a child from one place to another in order to use them for sexual purposes. By 'child' we mean persons under the age of 18. We are not dealing with the issue of *consensual* sex between young people. We are dealing with the issue of *exploitative* sex where adults pay a minor for sex, or use the results of sexual acts with a minor for commercial purposes, or sell a minor to be used for sexual purposes. The persons who carry out such acts may be paedophiles who seek sex with pre-pubescent children. But equally they may be non-paedophiles who choose a young person as their sexual partner even though that person is a minor. Or they may simply be criminals who have discovered that sex, like drugs, is a very marketable commodity. A person under the age of 18 is still a child within the meaning of the Convention on the Rights of the Child, and a 'minor' within the meaning of most legislations. Such a person is entitled to protection.

ECPAT's work since the World Congress of 1996 has been focused on the implementation of the Agenda for Action adopted at the Congress. In the past 5 years, we have witnessed many efforts at national, regional and international level to address CSEC. Those efforts will be evaluated in a second world gathering to take place in Yokohama, Japan, in December this year. There will also be a number of regional consultations to prepare for Yokohama.

At national level, we have seen countries engage in the drafting of national plans and strategies to protect children from sexual exploitation. Some of them are CSEC specific plans, but many are plans made in the context of the CRC, and containing CSEC provisions. The UNGASS has given impetus to such plans, and we can see a concentration this year of efforts to give renewed meaning to the CRC. The increasing and dangerous use of the Internet for sexual exploitation of children has also impelled governments to action. Twenty-nine states developed national plans, and three of these were not even at the Stockholm Congress. Twenty-one others have started the process of developing national action plans. A unique feature of the Agenda for Action is that it was promoted by NGOs, and although not a legally-binding document, it is being monitored by an NGO, a process that is tolerated by governments. France, in collaboration with NGOs, is beginning the process of evaluation of the French Plan. Taiwan is carrying out a similar exercise. In some countries, such as Thailand, we have witnessed quite remarkable developments in a short space of time. Thailand already had a plan when its representatives went to Stockholm; since then they have brought in new legislation, have introduced new child-friendly legal procedures, and have created an environment that encourages children to stay in school and encourages families to have fewer children. The end result is that the level of Thai children in prostitution has seriously declined, and those mostly at risk are actually the children from the poorer surrounding countries. Major

developments have also taken place in Sri Lanka, the Philippines and Cambodia where serious efforts have been made by governments to combat CSEC. However, the problem remains very serious in those countries.

At regional level we have finally seen the signing of the SAARC Convention against trafficking, and many projects against trafficking in the Mekong region. Indeed, Asia is the region in which most actions are being taken and where there is most effort to coordinate efforts between governments, intergovernmental agencies and NGOs.

In Africa, after a slow beginning, some countries are starting to make special efforts to address the sexual exploitation of children. This year June 16th which is the Day of the African Child was dedicated to the protection of children against sexual abuse and exploitation. Uganda, Senegal and South Africa are among the places where serious efforts are being made.

Central American NGOs have been tackling the issue, particularly in Costa Rica and Guatemala. Brazil stands out as a country where the government, NGOs and the tourism authorities have joined forces in a national plan. But in the rest of Latin America there is not much public concern, despite the efforts of the Inter-American Children's Institute within the OAS.

Eastern European countries, which face one of the most appalling vistas of sexual exploitation of children have been slow to react. Our view is that the level of organised violence in some of these countries has made it impossible for NGOs and even governments to take meaningful initiatives. And they are also still at such a low level of awareness and response that their main concern is sexual abuse within families and institutions. Their appreciation of the problems associated with the commercial sexual exploitation of children has yet to be developed.

Regional meetings have proved to be an impetus to the development of national plans in some regions. Following gatherings such as the Conference on Commercial Sexual Exploitation in the Baltic Sea Region in September 1998, the Regional Conference on CSEC in Fiji in 1998, and various meetings organised by ECPAT, as well as the Inter-American Institute of the Child in Latin America, there has been a noticeable increase in initiatives to develop national plans. It seems that once groups come together from various countries to discuss the issue, they are able to identify common concerns, and to start to find ways to address them. Out of the 29 national plans developed, eleven are in countries which attended regional meetings.

At international level there are new entry points to combat CSEC. An important new ILO Convention is in force since November 2000. This is Convention 182 against the worst forms of child labour. An Optional Protocol to the CRC on the sale of children, child prostitution and child pornography is also now open for ratification. Finally, a new Convention on Transnational Organised Crime has been opened for ratification, with a Protocol on Trafficking in Persons. International concern for the proliferation of crimes against children via the Internet has encouraged the efforts being made to draft a Convention against Cyber-Crime, and in every developed country of the world there are awareness-raising campaigns and tools to assist and protect children.

But the problem has not by any means gone away. Not only do children continue to be sexually exploited in very large numbers, but there are new forms of exploitation. The Internet is one. The Internet provides a method of locating children to exploit, whether through sex tourism information or by seeking out children over the Net. It also provides an almost safe environment in which to exchange and circulate vast amounts of child pornography. The countries represented here have done a great deal of awareness-raising with parents and in schools. But in many developing countries of the world, children are using the Internet in street cafes without any realisation of the dangers to themselves.

Adolescent prostitution is another phenomenon, whereby children, driven only by the desire for spending money, will prostitute themselves in their teens. No longer can we say that child prostitution is a result of poverty; consumerism is what drives many young people to cater to the deviant desires of older men and sometimes women. We are indeed in a world in which the pursuit of pleasure has lost all reason. Children are the object of great social concern. But equally they are reduced to sexual commodities in a world where fear of AIDS, search for youth, tolerance of sexual perversions and the sanctification of freedom of speech defy our humanity and our care for future generations.

The Yokohama Congress will provide a forum to explore these new problems, as well as some solutions to the older ones. The Congress is meant to review progress since 1996, but also to renew political commitment. There will be no question of re-writing the Stockholm Agenda for Action. Rather there will be a renewed dedication to it.

We need that renewed commitment to help us continue with our work. We want to see every country in the world develop a National Plan for Children; this Plan must contain provisions to combat CSEC, even before it becomes a problem. With the continuing scourge of sex tourism, the HIV/AIDS pandemic which causes people to search for younger sexual partners, the anonymous weapon against children that can be the Internet, and above all a universal failure to respect the rights of minors to a childhood, there is plenty to do.

What can lawyers do against CSEC?

Lawyers, by tradition, are concerned to use their skills for the protection of human rights and the restoration of justice. A person wronged is supposed to be able to get the best possible representation, and until legal aid was a feature of our legal systems, lawyers were often willing to give their services for free. Free legal services to children were not, however, common. Children were the property of their parents, and not known for their capacity to give coherent instructions, so their needs for protection were channeled to the social services and the non-governmental sector. In the NGO world of lawyers, the concern was for Juvenile Justice and the rights and protection of children within the criminal justice system, as well as the protection of children from torture, the death penalty, and other human rights abuses. The only dedicated international NGO for children's lawyers is Defence for Children International, which has done, and continues to do, a great deal through its 60 national sections around the world for children in the justice systems. There are also many

professional associations of lawyers willing to dedicate part of their time and energy to child protection, especially in relation to custody disputes.

Many lawyers recognise that parents are not always the best custodians of children, and that the child often has insights that deserve to be heard in the best interests of the child himself. Many lawyers also are sympathetic to children who become the perpetrators of crime, recognising that children are not born criminals, but are often driven to criminality by factors which should be brought to the attention of the court in the interests of fairness and humanity. They are therefore prepared to act professionally in the best interests of the child.

But the child victims of sexual abuse do not often appear before the courts. Furthermore, sexual abuse and exploitation are sensitive issues on which one cannot expect activism from any profession, except perhaps social workers who understand the silent trauma suffered by victims. Lawyers are not lobbyists. They do not take to the streets in protest. If they have political views they keep them for the dinner-table. And besides, the legal profession has its own quota of paedophiles, and its own quota of survivors of sexual abuse. It is therefore understandable that the legal profession does not have a lot to say about the sexual exploitation of children.

But what is surprising is the lack of appreciation among the legal profession that children are the subjects of rights, now clearly enunciated in the Convention on the Rights of the Child. Lawyers will be careful not to give offence to defendants or witnesses who are women or from racial or other minorities, because the non-discrimination tenets of international law have been well ingrained in our psyche. But children are not seen as the holders of equally important rights to their dignity.

What is also surprising is the extent to which lawyers will go to defend child sex abusers. Despite overwhelming evidence that paedophiles will re-offend, their lawyers will argue for them to be released into the community. Lawyers will attack a social worker's integrity rather than try to see *with* the social worker if a mistaken accusation might have been made. Instead of being seen as an impartial witness, the social worker will be treated as hostile by a defence attorney. Lawyers will vehemently defend the paedophile's so-called right to freedom of expression to possess child pornography. They will seek to trip up child witnesses in the witness box or on the other side of a video screen. They will seek to persuade judges that a child's accusation cannot possibly be the truth. Lawyers may not be lobbyists, but these defence tactics are in essence political strategies. They relegate the child victim to a non-rights holder, and elevate the abuser into the only person whose rights must be defended. This is not a search for justice, but a perversion of the justice system.

The world is in need of lawyers who will draw a line between getting the accused off at any price, and ensuring him a fair hearing. The oaths we make on taking up the profession are not oaths to get our clients' off, come what may; they are oaths to uphold justice and the rule of law.

My comments are not made only from 25 years of experience at the Bar. In ECPAT we have witnessed in the past 3 years a long-drawn out Canadian case in which an admitted paedophile took on the judicial system up to the Supreme Court in defence of his right to 'possess' child pornography for his own personal use. This right was

equated with the right to free speech, as if these pictures of sexual depravity with children, of which he possessed hundreds, were a key to valuable and important thoughts. Lawyers and judges were drawn, in all seriousness, into the arguments for and against. Hardly a word was heard for the anonymous children in the pictures whose privacy and whose private parts had been invaded for the perverse 'personal' enjoyment of the defendant.

Earlier we witnessed a case in Australia in which illiterate Cambodian street children were sneered at by the lawyers defending a high-ranking diplomat. The very fact that the children were given food by an NGO was a basis for claiming subversion of their evidence. The fact that the children smiled in court was claimed by the defendant's lawyers as a sure sign that they were lying. The defendant got all the respect due to a man presumed innocent; the victims got no respect for their culture or their vulnerable station in life.

In a current case in Thailand, the lawyer for a Canadian defendant himself bought off the families of the victims and police witnesses. To him, little girls of 9 and 10 were just pawns in a power-struggle where money could buy the dismissal of his client's case.

In Guatemala, lawyers managed to hold up a case of compensation for the murder by policemen of a street child for nine years.

You may say that there are some bad eggs in every basket, and of course it is also true that lawyers do sometimes represent sexually abused and sexually exploited children. In countries that appoint a lawyer to represent the victim of sexual abuse, lawyers will seek to make the court understand the damage that has been done to the victim by the abuser. In some legal systems lawyers can be appointed a 'partie civile' to defend the interests of the victim and the public, even to obtaining monetary compensation for the victim in the criminal trial of the abuser.

But, by and large the legal profession does not further the cause of child protection. As a profession, at least in so far as children are concerned, lawyers do not give priority to concern for human rights and the rule of law. On the contrary, personal advancement, financial gain, tactical manoeuvres and the winning of their case dominate most lawyers' agenda.

A refocusing of those personal agenda in favour of child rights could vastly improve the plight of child victims of sexual abuse and exploitation. Lawyers could insist on the use of child-friendly procedures for witnesses who are minors, and apply those protections in their own court behavior and attitudes, no matter whose 'side' they are on. They could systematically treat the child witness as an injured victim, and refuse to allow the accused child abuser to use the court to promote paedophilia. This should be so even in the case of a so-called 'victimless' crime where the accused is in possession of child pornography. It does not matter that the body in the picture is not identified. This is a person who was sexually abused. Lawyers could take their responsibilities to 'justice' more seriously and put protection of children as a high priority to achieving justice in society. They could try to see through the aggressive mutinous behavior of a sexually abused or exploited victim to the wounds that have been inflicted and the self-loathing generated in that child. They could even provide

their services through Defence for Children International to promote better conditions for child victims in the poorer countries of the world.

It would also be my hope that lawyers, as individuals, would show concern for all children deprived of their rights, including child victims of sexual abuse or exploitation. When lawyers speak, they are listened to. Don't save your concerns for the professional environment; let them be heard in favour of humanity and the marginalised. Report crimes against children. Report child abuse. Refuse to play the 'old boys' network' game of knowing what your colleagues or friends are up to, but failing to denounce them. There are too many victimised children; one of them might have been you.

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