

**Submission on behalf of ECPAT International to the Council of
Europe Lanzarote Committee**

**General overview questionnaire
on the implementation of the Lanzarote Convention**



January 2014

ECPAT International

ECPAT international is a global network of civil society organisations, represented by 81 member groups in 74 countries. ECPAT International was the primary impetus behind the three World Congresses against the commercial sexual exploitation of children (Stockholm, Sweden – 1996; Yokohama, Japan – 2001; Rio de Janeiro, Brazil – 2008), encouraging the world community to ensure that children everywhere enjoy their fundamental rights, free from all forms of commercial sexual exploitation.

Through collaborative efforts, ECPAT encourages governments to adopt measures to strengthen their child protection policies in compliance with international child-rights standards and their international obligations. This includes advocating for policy changes to address gaps in legislation; formulation of national plans of action; creation of effective bilateral and multi-lateral agreements; and advocating for States to commit to the ratification of international treaties to protect children, such as the Optional Protocol on the sale of children, child prostitution and child pornography.

ECPAT International has special consultative status with the Economic and Social Council of the UN (ECOSOC) and has received international recognition for its achievements, including the 2013 Conrad N. Hilton Humanitarian Prize. Collaboration with the private sector, as highlighted by the *Stop Sex Trafficking of Children and Young People* campaign, in partnership with The Body Shop, has drawn considerable recognition for ECPAT, including the praise of former US President Bill Clinton. The Campaign also led to one of the largest human rights petitions ever presented to the UN Human Rights Council in September 2011 (more than 7.2 million signatures), cementing ECPAT International's reputation as a global leader in influencing social change. Petitions collected in EU Member States (2.3 million signatures) were presented to the Commissioner for Home Affairs, Cecilia Malmström, who committed to prioritising the implementation of the Directive by EU Member States.

ECPAT International and ECPAT member organisations based in Council of Europe Member States have actively lobbied the Council of Europe towards the development and adoption of the Lanzarote Convention as well as the Council of Europe Convention on action against trafficking in human beings.

ECPAT International was invited by the Lanzarote Committee to present its Second Edition of Global Monitoring reports on the status of action against commercial sexual exploitation of children¹ were during the Fourth Meeting of the Lanzarote Committee (March 2013) in order to provide the Committee with specific information to be used in the Council of Europe monitoring of the Convention as well as in the discussion paper “protecting children against sexual violence: the criminal law benchmarks of the Lanzarote and Budapest Conventions” developed by the Secretariat of the Cybercrime Convention Committee.

ECPAT International welcomes the opportunity provided by this consultation to provide the Council of Europe Lanzarote Committee with inputs on achievements and also gaps and challenges regarding the protection of children against commercial sexual exploitation.

¹ ECPAT International, *Global monitoring reports on the status of action against commercial sexual exploitation of children*. Accessible at: http://resources.ecpat.net/EI/index_A4A.asp

ECPAT's contribution is based on the review of 17 Member States² of the Council of Europe which have ratified the Lanzarote Convention and where ECPAT has a presence.

This review draws on information contained in Global monitoring reports on the status of action against commercial sexual exploitation of children for each of those countries³.

Rather than provide responses to the entire questionnaire, this contribution will address the questions for which ECPAT International is able to provide relevant information. In total, responses to eleven questions are given (questions 3, 6, 7, 8, 10, 11, 13, 14, 15, 16 and 19).

The contribution also contains several recommendations for the Council of Europe in relation to strengthening the involvement/participation of civil society organizations in the monitoring process of the implementation of the Lanzarote Convention.

GENERAL FRAMEWORK

Question 3: Overview of the implementation

There has been a shift towards a systemic approach to child protection which means that now fewer countries are addressing CSEC through CSEC-specific National Plans of Action (NPAs) and/or policies. In some countries where such plans did exist in the past (see, for example, Belgium, Bulgaria, Czech Republic and Romania)⁴, these have not been renewed and measures to counteract CSEC have been integrated in NPAs for children or strategies to counteract violence against children in general. In Germany, Spain and UK, efforts were spearheaded to update the existing NPAs against CSEC while in Luxembourg and Sweden this update has not yet taken place.

Unfortunately, this policy shift has resulted in limited attention devoted to CSEC which seems to dilute the CSEC focus/coverage in more generalized policies. For example, the National Strategy for Child Protection 2008-2018 adopted by Bulgaria which targets child victims of violence generally, without addressing specifically CSEC manifestations or CSEC victims. It is essential that the holistic and systemic approach to child protection that many governments are now adopting does not divert the focus on the national agenda on children away from the pressing issue of CSEC or leads to reconsideration of its priority causing delay in implementation of previously agreed commitments or cancellation of plans.

Many countries have been successful in establishing multi-disciplinary coordinating mechanisms by fostering collaborative efforts among key stakeholders and in ensuring that resources are allocated to implement the NPA on children. However, more often than not, effective NPA implementation has been hampered amongst other things by: a) inadequate allocation of budget and qualified human resources; b) implementation of multiple sectoral action plans and insufficient coordination among the various actors, leading to duplication and a lack of optimization in the use of resources; c) shortage or absence of monitoring and assessment mechanisms to measure the impact of actions undertaken.

² Albania, Austria, Belgium, Bulgaria, Czech Republic, France, Estonia, Germany, Italy, Moldova, Netherlands, Romania, Russia, Spain, Switzerland, Ukraine, UK.

³ ECPAT International Global monitoring reports on the status of action against commercial sexual exploitation of children related to European countries published by ECPAT and available at: http://resources.ecpat.net/EI/index_A4A.asp

⁴ ECPAT International Global monitoring reports on the status of action against commercial sexual exploitation of children related to European countries published by ECPAT and available at: http://resources.ecpat.net/EI/index_A4A.asp

Question 6: National or local coordination, cooperation and partnerships

The importance of ensuring concerted responses to CSEC at national and local level has been increasingly recognized by governments in Europe. A number of partnerships among state actors, law enforcement authorities, NGOs, children and young people, community-based organisations and the private sector have been established in recent years. The main developments in this area include the following:

There has been a proliferation of initiatives (e.g. creation of working groups, task forces, committees, roundtables, etc.) to enhance coordination and cooperation against human trafficking, including child sex trafficking, while other manifestations of CSEC such as child sexual exploitation through ICT or in travel and tourism have received less attention, especially in countries in Central and Eastern Europe.

Initial progress in enhancing coordination of child victims' assistance has been reported in a number of countries. In Albania, for example, child protection units were established around the country to respond to child trafficking as well as to other forms of child abuse, exploitation and neglect. National Referral Mechanisms for adults and children affected by human trafficking were set up, amongst other things, in Bulgaria, Romania, Netherlands, and the UK while countries such as Belgium and Estonia adopted inter-agency guidelines to facilitate the identification of victims and the delivery of comprehensive and integrated support services. It is not clear whether institutions set up to address child trafficking also make provisions for victims of child pornography and child prostitution.

The private sector involvement in actions to address CSEC has generally increased due mainly to the role played by civil society organisations. For example, The Code of Conduct⁵ has been adopted by the tourism industry in 53 countries and the number of signatories has expanded together with efforts to ensure its implementation (especially in Austria, Netherlands, Germany, Sweden and Spain). To tackle the sexual exploitation of children through ICTs, the online industry (including internet service providers, mobile operators, content providers, and hosting providers, filtering companies, search providers, trade associations and the financial sector) has engaged in various initiatives, such as creation of/contribution to reporting hotlines and blocking systems, adoption of Codes of Conduct, developing filtering, etc. (see also sub-section on "Prevention"). In Sweden, a successful partnership with the financial sector has led to the establishment of a financial coalition against child pornography which enables the blocking of online payments for child abuse materials. Again, although the phenomenon of child sexual victimization online affects all countries in the region, most of these actions have been implemented in Western Europe.

However, there is still limited coordination, especially between local administrations and central government agencies and between state agencies and other actors (especially NGOs), including in the referral and assistance of child victims. In some countries (such as UK and Czech Republic), several branches of the government are working separately on the same issues. This type of replication leads to institutional overlap and also administrative confusion.

Whilst some countries have very good collaboration experiences among NGOs and with Governments, in others it is very limited, especially where there is no tradition of partnership between the civil society

⁵ www.codeofconduct.org

and the governmental authorities. Furthermore, meaningful involvement of children and young people in coordinating mechanisms or in the design and implementation of programmes to address CSEC remains rare, ad-hoc or tokenistic.

Of the 17 countries reviewed, seven countries have national coalitions of NGOs focused on CSEC issues.⁶ NGO participation should be defined by specific roles and responsibilities in order to give coalitions a much needed role in supporting governments with implementation and coordination.

Financial resources that are needed to ensure the functioning of existing coordinating mechanisms are often insufficient or not sustained. There is a general lack of data collection systems on CSEC. This is an impediment to the development of tailored and well-designed measures which severely hampers the evaluation of programmes and projects.

Question 7: International cooperation

At sub-regional level, the Council of Baltic Sea States (CBSS) comprising 12 Member States has been quite actively promoting collaboration against CSEC in the Baltic Sea region, especially through its Group for Cooperation on Children at Risk (EGCC, previously named Working Group for Cooperation on Children at Risk). The EGCC is comprised of senior officials from the ministries responsible for children's issues in the member countries of the Council of Baltic Sea States and the European Commission. It identifies, supports and implements cooperative efforts focused on children at risk, including those vulnerable or affected by sexual exploitation, among countries and organisations in the region.⁷ One of the most innovative and significant initiatives recently implemented by the EGCC is the ROBERT project ("Risktaking Online Behaviour Empowerment through Research and Training"). Involving Estonia, Sweden, the UK, Denmark, Italy, Germany, and the Netherlands and implemented between 2010 and 2012, it was intended to make online interaction safe for children and young people by empowering them through research and training.⁸

The Regional Cooperation Council (RCC) was officially launched in 2008 at the meeting of the Ministers of Foreign Affairs of the South-East European Cooperation Process (SEECP) in Sofia, as the successor of the Stability Pact for South Eastern Europe. Through a regionally owned and led framework, the RCC focuses on promotion and enhancement of regional cooperation in South East Europe (SEE) and supports European and Euro-Atlantic integration of the aspiring countries. Comprising 46 countries, organizations and international financial institutions,⁹ the RCC has put the fight against organised crime, including human trafficking, among the regional priorities.¹⁰ The RCC will coordinate its activities with the civil society regional networks which will be regularly consulted for experience sharing and ensuring sustainability in targeted areas of interest.

In spite of the several programmes and strategies aimed at promoting a coordinated approach against CSEC, regional cooperation in terms of sharing of information, expertise and good practices is far from being satisfactory, including at police and judicial level.

⁶ Albania, Austria, Czech Republic, Poland, Moldova, Russia and Ukraine.

⁷ <http://www.childcentre.info/>

⁸ <http://www.childcentre.info/robert/about-the-project/>

⁹ <http://www.rcc.int/pages/7/14/structure>

¹⁰ Regional Cooperation Council. Regional Cooperation Council (RCC) Strategy and Work Programme 2011 – 2013. Accessible at: <http://www.rcc.int/admin/files/docs/reports/RCC-Strategy-and-Work-Programme-2011-13-text.pdf>

The review of ECPAT's A4A country monitoring reports suggests that whilst human trafficking, including child sex trafficking, has attracted most of the cooperation efforts in the whole region, the fight against online child sexual exploitation has been prioritized by Western European countries but has not received sufficient attention in Eastern Europe.

Regional initiatives to address child sex tourism have remained sporadic across the whole region and the few actions undertaken in this area were mainly conducted by NGOs in Western Europe (such as ECPAT).

Question 8: Education, awareness raising and training

Awareness raising campaigns to prevent sexual exploitation of children during sporting events such as the Olympic Games in the UK and EURO 2012 in Poland and Ukraine have been conducted by governments in collaboration with NGOs. With regard to other sensitization activities on sexual exploitation of children in tourism, most of the efforts were promoted in Western Europe by NGOs such as ECPAT, but with limited support from national governments (see, for example, the "Don't look away!" campaign¹¹).

The Mario project, which is being implemented by Terre des Hommes in collaboration with ECPAT groups in Poland, Bulgaria, Romania, Netherlands and Belgium as well as with other organizations, is contributing to improving the level of protection of migrant children who are vulnerable to abuse, exploitation and/or trafficking in Central and South-Eastern Europe through transnational outreach research, advocacy (including towards EU institutions), trainings and direct support to professionals and empowerment of at-risk migrant children.¹² Other initiatives to reduce children's vulnerability to sexual exploitation have been conducted, especially in Eastern Europe, targeting mainly students and potential victims.

Some efforts have been spearheaded to deliver training on CSEC for relevant professionals and to integrate CSEC issues into school curricula for students. In France, the ministry of education along with travel industry officials has developed some guidelines on CST for the school curriculum.¹³ In Albania, in 2007 the Ministry of Education and Science established the inclusion of a specific module on trafficking in human beings in the national school curriculum.¹⁴ In Switzerland, with support from the government, a training tool on the commercial sexual exploitation of children for young persons (upper school and college level) has been recently developed and is available online, containing three modules and a special information section for teachers to prepare their lessons.¹⁵

There is still a lack of systematic anchoring of CSEC topics in the training and further education of relevant professional groups, such as police officers, immigration and asylum authorities, judges and public prosecutors, youth welfare officials, teachers, medical personnel, etc. Moreover, examples of

¹¹ http://www.ecpat.at/fileadmin/download/Dont_look_away-Warschau.pdf

¹² Information about Mario project can be found at: <http://marioproject.org/statics/marios-about>

¹³ "Child sex tourism. Growing problem of the world". 24 June 2013. Accessed on 27 August 2013 from: <http://www.tourism-review.com/travel-tourism-magazine-child-sex-tourism-serious-problem-of-the-world-article2155>

¹⁴ ECPAT International. Global monitoring status of action against commercial sexual exploitation of children: Albania. 2012. Accessed on 28 June 2013 from: www.ecpat.net

¹⁵ ECPAT International. Upholding commitments to protect children from trafficking. 2011. Accessed on 27 August 2013 from: http://www.ecpat.net/ei/Publications/Trafficking/upholding_commitments_children.pdf

integration of CSEC issues into the school curriculum for students are limited and rather than being compulsory, they are optional and not designed to be sustainable in the long-term.

Question 10: Preventive intervention programmes and measures

In terms of measures to address the demand for sex with children, some initiatives have focused on raising awareness of the client side of commercial sexual exploitation, teaching them to look out for possible signs that a person is a victim of CSEC. In Belgium, for example, since 2004 the government in collaboration with the private sector and NGOs such as ECPAT Belgium, has been implementing the “Stopchildprostitution.be” campaign targeting all Belgians travelling abroad: tourists, businessmen, the army on a foreign mission, the embassy personnel, development-aid workers, and bus and truck drivers.

Some Council of Europe countries have adopted measures to prevent further victimisation, through the implementation of offender management measures, though current national systems vary greatly across Council of Europe states. Whilst some states already have comprehensive management systems dealing with sex offenders, other states have no such arrangements. In recent years, some Eucountries such as Malta have made efforts to develop “sex offenders registers” while others have adopted barring systems to prevent offenders from working with children and other vulnerable people (for example, Germany and Denmark).¹⁶

There is a paucity of programmes to address the demand for sex with children. Basic research that would enable target-oriented and target-group specific preventive measures is still needed. New areas/aspects which would require further analysis include, inter alia, prostitution of boys, “independent youth prostitution”, link between child labour and CSEC, CSE of children with disability, “sexting” and sexual offending among youth, etc.

Question 11: participation of the private sector, the media and civil society

ECPAT International in partnership with The Body Shop carried out a three year (2009-2012) global campaign against the sex trafficking of children and adolescents. The campaign, implemented in 20 EU Member States, substantially contributed to the development of research on child trafficking for sexual purposes at the regional level. Research conducted by ECPAT member organisations within the framework of the campaign led to greater understanding of the issue of child trafficking for sexual purposes within the context of Europe and emerging trends and challenges. ECPAT member organisations also developed country score-cards which show progress made by concerned EU Member States between 2009 and 2012 with regard to the prevention and repression of trafficking as well as the provision of adequate referral mechanisms and support services for child victims.

In addition to the production of research on the issue, ECPAT and The Body Shop have conducted high level advocacy events to hold EU governments accountable for protecting children from trafficking. Signed petitions on the issue of child sex trafficking were handed over to representatives of governments in the following Council of Europe Member States: Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Romania, Russia, Spain, Sweden, Ukraine and the UK. In June 2011, ECPAT International and The Body Shop presented the largest human rights petition in EU history to the European Commissioner for Home Affairs, Cecilia Malmström. During the press conference

¹⁶ Altamura, A. The rights of child victims of commercial sexual exploitation in practice at EU and Member States’ levels. ECPAT International’s Journal Series n. 3, July 2012. Accessed on 27 August 2013 from: http://www.ecpat.net/ei/Publications/Journals/ECPAT%20Journal_July2012.pdf

Commissioner Cecilia Malmström stated that “in response to the 2.3 million people who have signed this petition, I commit that we will do our utmost to ensure that Member States give priority to the implementation of the Directive”. This campaign helped put the issue of child

Several countries have also established systems to block access to child abuse materials (UK, Denmark, Finland, France, Italy, Malta, Norway, Sweden and Switzerland), most of which are coordinated under the CIRCAMP network (see above) though they were mainly set up on the basis of a voluntary opt-in approach by individual ISPs (rather than a legislative mandate on all ISPs).¹⁷ Mobile operators that are part of the GSMA (a global association representing the interests of the worldwide mobile communications industry), together with the European Commission, have created a European Framework for Safer Mobile Use by Younger Teenagers and Children. Within the Framework, operators have offered to provide mechanisms for parents to control access to content by children on their mobiles; provide advice and raise awareness regarding the safe use of mobile communications by children; support the classification of commercial content according to national standards; and support national authorities in the fight against illegal content on mobiles. As part of the agreement, the mobile operators and content providers also agreed to develop self-regulatory codes of conduct to roll out the Framework at national level. In its implementation report to the European Commission dated June 2010, three years after the signature of the Framework, GSMA Europe explained that operators in all the 27 EU Member States, covering 96% of all EU mobile customers, had developed codes of conduct to deliver the Framework.

Mobile phone companies have also joined the “Mobile Alliance Against Child Sexual Abuse Content” launched in 2008 by the GSMA to obstruct the use of the mobile environment by individuals or organisations wishing to consume or profit from child sexual abuse content. Members of the Alliance are working to prevent access to websites identified as hosting child sexual abuse content, while also implementing “Notice and Take Down” processes that enable the removal of any child sexual abuse content posted on their own services. They are also supporting and promoting ‘hotlines’ for customers to report child sexual abuse content discovered on the Internet or on mobile content.¹⁸ Another initiative worth noting is the “Better Internet for kids” Coalition between tech CEOs and the European Commission established in 2011 which brings together all type of industry players, including device manufacturers, and has achieved a number of results (e.g. it has facilitated exchange of good practices; all 31 Coalition members now provide parental control tools and/or age appropriate settings; etc.).¹⁹

¹⁷ McIntyre, T.J. Child Abuse images and Cleanfeeds: Assessing Internet Blocking Systems. 2011. In RESEARCH HANDBOOK ON GOVERNANCE OF THE INTERNET, Ian Brown, ed., Edward Elgar, 2012. Accessed on 27 August 2013 from: http://www.academia.edu/771272/Child_Abuse_Images_and_Cleanfeeds_Assessing_Internet_Blocking_Systems

¹⁸ GSMA. European Mobile Industry Observatory 2011. Accessed on 28 August 2013 from: www.gsma.com

¹⁹ European Commission. Press release “Europe’s top tech executives and Commission affirm commitment to collaborate, not compete to improve the internet for kids”. 4 June 2013. Accessed on 27 August 2013 from: http://europa.eu/rapid/press-release_MEMO-13-504_en.htm?locale=en

PROTECTION AND PROMOTION OF THE RIGHTS OF CHILD VICTIMS OF SEXUAL EXPLOITATION AND ABUSE

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

There is a limited presence of child-sensitive reporting mechanisms and police units in most Council of Europe states. Another shortcoming is the non-prosecution and non-application of penalties to the victims for their involvement in criminal activities committed as a result of being subjected to CSEC crimes. Regrettably, there are still a number of countries in the Council of Europe that criminalise children for offences relating to prostitution (Levy A., 2004; ECPAT International, 2012a). Equally worrying is the absence in several Council of Europe countries of effective witness protection programmes for child victims and, when required, for their families, which contribute to discouraging the filing of complaints (Fundamental Rights Agency, 2009).

In the Netherlands, the website Helpwanted.nl established at the end of 2007 by the private Hotline combating Child Pornography on the Internet is intended specially for young people between 12 and 18 years old to report online sexual abuse and receive advice directly from employees. Parents and caregivers can also find information about the safe use of Internet. In 2010 the Hotline received 327 reports through helpwanted.nl, the majority referring to sexual abuse by means of webcam. Several activities have contributed to the greater public awareness of Helpwanted. Besides the 'Cyberlokker' (cyber groomer) video that was broadcasted in September 2010 reaching more than 300,000 young people on TV Stations TMF, MTV or Comedy Central, Microsoft promoted Helpwanted through the youth channel RU Live TV. In addition 100,000 free cards (so-called Boomerang cards), were distributed to over 200 schools and 2,000 Hyves pages also received digital cards. Thanks to support from partner organisations and private enterprises, the Hotline was able to distribute educational material free of charge (ECPAT International, 2011).

Question 14: Helplines

With regard to the system of reporting sexual exploitation of children and helping those in need at EU level, the 2011 *EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography* has called on Member States to further promote the harmonised numbers for services of social value "116 – xxx" introduced by Commission Decision 2007/116/EC of February 2007. Established in a number of EU States but not yet fully implemented, these services provide an essential channel for making complaints and providing support as required. A survey conducted in 2011 to examine the level of awareness among European citizens and usefulness of this initiative has however exposed a lack of information about the hotlines/helplines that are available, confirming that publicising these tools is a necessary strategy for ensuring their full use (Eurobarometer, 2011). The final ECPAT-The Body Shop "Stop Sex Trafficking of children and Young People Campaign" impact report recently published has highlighted similar challenges. According to this review, in 86% of the 21 EU Member States analysed, helplines are not staffed with personnel adequately trained to handle cases of child trafficking and sexual exploitation; moreover, many of these helplines are not fully accessible to children due to limited advertising, language barriers and cost of the service. The lack of specialization affects both the "116-xxx" numbers that the EU has recommended to expand as well as the hotlines to report human trafficking that have been set up across several EU countries (see, for example, the newly established anti-trafficking hotlines in Sweden²⁰ and Austria²¹) (ECPAT International, 2012). An exception is the

²⁰ <http://safetrip.se>

national 116000 hotline created in April 2009 by the Belgian government and operated by the child rights NGO, Child Focus, which provides support to parents of missing children but also to children at risk or victims of trafficking and sexual exploitation, 24 hours, 7 days a week (ECPAT International, 2010). Child Focus works closely with the Belgian police and has conducted several awareness raising activities to inform children and other target groups about this service.²²

Hotlines to report suspected cases of sexual exploitation of children in tourism have also been recently created in some EU countries as a result of collaboration between police and NGOs, especially ECPAT member groups (e.g. Netherlands, Denmark,²³ Austria, Switzerland²⁴, Belgium²⁵ and Germany) (ECPAT International, 2011, 2012a, 2012b). Similarly a wide network of hotlines and help-lines to file complaints about online child sexual abuse material and to provide information and advice to children, young people, parents and teachers about how to stay safe online has been established all over Europe as part of the EU Safer Internet Programme.²⁶

Helplines have also been established in other Council of Europe states. On 1st June 2009, UNICEF and CRCA/DCI Albania established the Albanian National Child Helpline (ALO 116), a national 24/7 free of charge service to children across the country. The main goal of the helpline is to protect the rights of children at risk and in need, while ensuring that they have access to a range of prevention and protection services in the context of a broader child protection system and referral mechanism. In 3 years of work, ALO 116 has received more than 400,000 phone calls from children from all over Albania²⁷.

The Safer Internet Center in Russia, founded in 2008 by ROCIT (an Internet-society NGO) and Soprotivlenie (a victim support NGO), operates with the support of the Public Chamber of the Russian Federation to provide public awareness on issues pertaining to Russian youth and support to children. The center provides research, a hotline, a helpline, a youth panel, a division dedicated to missing and exploited children, and several other projects.²⁸

In Ukraine there is a national Internet hotline against child pornography. Since 2006, the All-Ukrainian Network against CSEC, an ECPAT affiliate, has actively worked to prevent the violation of the child rights through supporting the work of the Internet hotline against child pornography, amongst other things.

Moldova has not yet established a specialised Internet reporting hotline on child abuse materials and online sexual exploitation of children

²¹ http://www.iomvienna.at/index.php?option=com_content&view=article&id=451&Itemid=168&lang=en

²² <http://www.childfocus.be/fr/organisation-2/communication/campagnes> and <http://www.childfocus.be/fr/disparitions/la-ligne-d-urgence-116-000>

²³ www.stopsextourisme.dk

²⁴ <http://www.fedpol.admin.ch/content/fedpol/en/home/themen/kriminalitaet/kindersextourismus0/formular.html>

²⁵ <http://www.childprostitution.be/02.php>

²⁶ <http://www.saferinternet.org/web/guest/helplines>

²⁷ Albania Alternative Report to the Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Prepared by CRCA/DCI Albania, ACTSEC and The ALO 116 at 8 ON January 2012, Tirana; Albanian National Child Helpline - ALO 116 available at

http://al.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_AL&PageId=4481, see also Kristi Pinderi, ALO 116" - the round the clock service only for children, CRCA website, 25 January 2010, Available at

http://crca.ampaserver.com/index.php?option=com_content&task=view&id=92&Itemid=84http://al.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_AL&PageId=4481

²⁸ Safer Internet Day. Safer Internet Russia. Accessed on June 1, 2011 from: <http://www.sidfair.org/web/russian-federation/home/-/blogs/child-internet-day;jsessionid=E53F631A01947538782E9704472E4497>

Question 15: Assistance to victims

A major problem continues to be the identification of children vulnerable or subjected to sexual abuse and exploitation online. As recent figures clearly show, the percentage of children identified in abusive images is very low in EU member states, ranging from 33 victims per million inhabitants in Norway to 1,5 victims in the UK.²⁹ Other shortcomings recently identified are as follows: a) many actors concerned with children's well-being offline simply do not engage with children's experiences online as yet (e.g. professionals who work in schools, social work, health practice and mental health services); many schools teach little in the area of online child safety; c) further parental involvement should be encouraged; d) there is a lack of evaluation of industry-led initiatives from a child perspective; e) there is a need to enhance the sharing of best practices, especially from wealthier to less wealthy countries.³⁰

PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN

Question 16: Criminal law offences

1. Child pornography

Some areas where important gaps remain are related to child pornography: (i) its definition including different types of materials (especially virtual child pornography); (ii) the non-criminalization of online solicitation of children for sexual purposes (grooming) and of viewing/accessing; as well as (iii) the lack of a reporting requirement for ISPs.

1.1 Legal definition of child pornography

Article 20.2 of the Lanzarote Convention defines child pornography as “...any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes”.

The analysis of legislation on child pornography in the seventeen Council Member States reviewed shows that although all of them have adopted punitive provisions specifically related to child pornography, only five states' legislation contains a definition of child pornography which is compliant with the Lanzarote Convention: Bulgaria, Czech Republic, Moldova, UK and Ukraine. In Belgium, France, Luxembourg, the Netherlands, Spain, Switzerland and Ukraine domestic criminal laws do not contain a specific definition of child pornography.

The lack of a clear and comprehensive definition of child pornography is a major obstacle with regard to the provision of legal protection to children against exploitation in child pornography and may lead to confusion and difficulties in interpretation by the judicial authorities.

Virtual child pornography (defined in by Article 20.3 of the Lanzarote Convention as “*simulated representations or realistic images of a non-existent child*”) is explicitly included in the definition of child

²⁹ <http://news.bbc.co.uk/2/hi/programmes/newsnight/9532058.stm>

³⁰ Livingstone, S. “The Case for European Level Action on Child Safety Online”. Posted on 15 July 2013. Accessed on 27 August 2013 from: <http://blogs.lse.ac.uk/mediapolicyproject/2013/07/15/the-case-for-european-level-action-on-child-safety-online/>

pornography in Austria, Belgium, Bulgaria, Germany, Italy, Luxembourg, Netherlands, Poland, Romania, Ukraine and the UK.

1.2 Prohibition of child pornography

Article 20.1 of the Lanzarote Convention prohibits the following conduct related to child pornography:

- Production
- Offering or making available
- Distributing or transmitting
- Procuring child pornography for oneself or for another person
- Possessing child pornography
- Knowingly obtaining access, through information and communication technologies, to child pornography.

Only four countries out of the 17 countries reviewed have adopted legal frameworks which prohibit all of the above mentioned conduct: Czech Republic, France, Netherlands and Sweden.

- **Prohibition of knowingly obtaining access, through information and communication technologies, to child pornography,**

Out of the 17 reviewed countries, only five countries have adopted adequate legal provisions prohibiting knowingly obtaining access, through information and communication technologies, to child pornography: Austria, Czech Republic, France, Netherlands and Sweden.

In this regard it is important to highlight that the governments of Russia and Bulgaria have both made a reservation not to implement Article 20. 1 (f). This means that both states are not legally bound to adopt and implement legal provisions prohibiting knowingly obtaining access, through information and communication technologies, to child pornography. Such reservations are a major obstacle to the development of a comprehensive legal framework protecting children from child pornography and sexual exploitation through the use of the Internet.

The Lanzarote Committee should address specific recommendations to the governments of Bulgaria and Russia in order to withdraw their reservations.

- **Prohibition of (mere) possession of child pornography,**

The Explanatory report on the Lanzarote Convention explains that the Convention Article 20 1 (e) requires the criminalisation of possession of child pornography, by whatever means, such as magazines, video cassettes, DVDs or portable phones, including stored in a computer system or on a data carrier, as well as a detachable storage device, a diskette or CD-Rom.

Out of the 17 countries under review, mere possession of child pornography is not prohibited in the following countries: Estonia, Russia and Ukraine.

The government of Russia has made a reservation to not implement Convention Article 20 1 (e) on possession of child pornography. This reservation constitutes an obstacle to the development of a legal framework providing a comprehensive legal protection against child pornography.

In Albania, the Children's Human Rights Centre of Albania (CRCA), member of the ECPAT member organisation in Albania, contributed to strong advocacy work on the follow up by the government of Albania of the Concluding observations of the Committee on the Rights of the Child on the implementation of the Optional OPSC (October 2012³¹) which was successful, and as of May 2013, Article 117 of the Criminal Code was amended to prohibit the possession of child pornography.

In Austria the mere possession of child pornography is not punishable if the material depicts a minor over 14 years who consented or it is for his own private use and there is no risk of dissemination (Article 207° of the Penal Code).

The possession of child pornography involving adolescents between 14 and 18 years old should be criminalised regardless of the child's consent. Similarly, the manufacture or possession of virtual pornography involving adolescents over the age of 14 should be criminalised more uniformly.

2. Prohibition of the Solicitation of children for sexual purposes (grooming)

Article 23 prohibits the solicitation of children for sexual purposes: "Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child (...), where this proposal has been followed by material acts leading to such a meeting".

Children are increasingly using online platforms and being lured through different social media and chat services that allow the offenders to interact with them. In this context lack of laws criminalising grooming offences is an urgent gap that needs to be addressed.

The prohibition of online solicitation of children for sexual purposes (grooming), is prohibited in 10 countries³² out of the 17 reviewed by ECPAT.

Article 227-22-1 of the French Penal Code prohibits soliciting children for sexual purposes through the use of a computer system. The offense is punishable with 2 years of imprisonment.

3. Child prostitution

3.1 Legal definition of child prostitution

Under Article 19.2 of the Lanzarote Convention, child prostitution means the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised

³¹ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – Concluding observations: Albania (October 2012). Accessible at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPSC-ALB-CO-1_en.pdf

³² Austria, Bulgaria, France, Germany, the Netherlands, Poland, Romania, Spain, Sweden and the UK.

as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

All seventeen Council of Europe Member States have legislation that specifically addresses child prostitution. However, the following six states fail to provide a comprehensive definition of child prostitution: Belgium, Estonia, Germany, Italy, Luxembourg, Poland, and Spain.

Switzerland has made significant progress in harmonising its national legislation on child prostitution with Article 19 of the Lanzarote Convention as its revised legislation on child prostitution applies to all children under 18. Before, children between 16 and 18 were not provided with any legal protection against prostitution. In September 2013, the Penal Code provisions addressing child prostitution and child pornography were amended in order to criminalise obtaining children between 16 and 18 years of age for child prostitution, which is now punishable by a term of imprisonment not exceeding 3 years. Anyone procuring or providing children under 18 years old for child prostitution will face up to 10 years in prison. However, the Swiss legislation does not yet contain a comprehensive definition of child prostitution.

Article 600bis of the Italian Penal Code prohibits sexual acts with minors between 14 and 18 years old committed in exchange for payment or other economic consideration.

In France, Article 225-12-1 of the Penal Code prohibits soliciting, accepting or obtaining, in exchange for remuneration or a promise of remuneration, relations of a sexual nature with a minor who engages in prostitution.

Article 240.3 of the Russian Criminal Code does not provide a thorough definition of what acts fall under prostitution nor does it address the issue of remuneration. Relevant articles do not target clients obtaining a child for prostitution.

- **Exemption of child victims from prosecution**

In several Council of Europe Member States children are not explicitly exempted from punishment for prostitution related crimes³³. Whereas there is a need to recognize that young people and especially adolescents, have the right to have sexual relationships with their peers as long as they have the capacity to freely consent to them, the consent of a young person below 18 can never be considered as free or relevant in situations where another person is offering some form of reward (money, housing, protection, goods, etc.), including on the Internet. The issue of young people criminalized or unprotected above the legal “age of consent” requires particular attention and needs to be urgently addressed to ensure all children below 18 are adequately protected against any form of sexual exploitation.

³³ Belgium, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, UK.

In Ukraine, children between the ages of 16 and 18 years of age who engage in prostitution can be penalized under administrative law, while at the same time those who buy sexual services from children are not subject to legal responsibility.

In Albania, the Committee on the Rights of the Child has urged the government of Albania to adopt a legal provision that would expressly exempt child victims of prostitution from any criminal prosecution. Currently, a minor can be legally prosecuted for engaging in prostitution, even though in practice minors are not prosecuted.

Question 19: Jurisdiction (extraterritorial legislation)

Extraterritorial legislation covering child prostitution and child pornography related offenses are in place in all 17 reviewed Council of Europe member states. These laws entail that that these countries apply extraterritorial jurisdiction to offenses committed abroad by their nationals.

However, in several countries the double criminality principle is a requirement for the implementation of extraterritorial legislation. The double criminality principle means that the offence must be prohibited in both the home country of the perpetrator and in the jurisdiction where the offence took place. In countries³⁴ where the criminal or penal code has a prerequisite for double criminality, a national can travel to another country with a weak legal framework to engage in child sex tourism without any consequence. The perpetrator can rely on the defence that the child sexual exploitation that would be a crime in their own country was not illegal in the jurisdiction where it took place.

In its concluding observations for numerous countries worldwide, the Committee on the Rights of the Child has repeatedly recommended that double criminality should not be a prerequisite for conviction under extraterritorial legislation.

None of the seventeen Council of Europe member states reviewed make prosecution conditional upon the filing of a complaint by the victim or on a formal request of the State of which the victim is a national.

³⁴ Albania, France (with the exception of child prostitution related offenses), Czech Republic, Estonia, Poland, Romania, UK.

Recommendations

Recommendations to the Lanzarote Committee with regard to the involvement of civil society organisations in the monitoring process of the Lanzarote Convention:

- The Lanzarote Committee General overview questionnaire on the implementation of the Lanzarote Convention is the same for civil society organisations and States, and may be too technical for civil society organisations. There should be a specific monitoring tool designed for and with civil society organisations to report on the implementation of the Convention.
- The General overview questionnaire is sent at the same time to both States and civil society organisations. This questionnaire requires an onerous amount of information gathering regarding national legal and policy frameworks, which it is often difficult for civil society to provide and may duplicate the information provided by the States. It would be more efficient for the state reports to be made available to civil society organisations at an earlier time in the reporting process, to enable civil society organisations to build on this information where applicable and respond with critical analysis on the gaps/inconsistencies of content in the report rather than repeating the same process of legal and policy analysis. Similar to the UN Committee on the Rights of the Child review process, civil society organisations (including children) would then have the opportunity to review the state reports in order to supplement information contained in those reports, and where possible to provide a regional overview and analysis. Civil society reporting would then have an increased added-value for the Lanzarote Committee.
- Recommendations made by the Lanzarote Committee in the Implementation report for each reviewed country should be action-oriented, allowing civil society organisations to better monitor these recommendations.
- The Lanzarote Committee should recommend a process for States to share Implementation reports with various stakeholders, including NGOs, Academia, Law Enforcement, the ICT industry, the Private Sector and children and youth.
- Similar to the EU Civil Society Platform on trafficking in human beings, there should be a Council of Europe platform to encourage the dialogue between the Lanzarote Committee and civil society organisations from Council of Europe member states having specific expertise in the area of child protection. This platform could be to engage civil society organisations in a more systematic monitoring process of the implementation of the Lanzarote Convention and in the implementation of the recommendations of the Lanzarote Committee contained in the states' implementation reports.

- Civil society organisations having expertise in child protection should be increasingly involved in the identification of thematic priorities for future Thematic monitoring rounds as they have key information regarding issues that should be given priority in their region.

Therefore, ECPAT International recommends the Lanzarote to review its Rules of Procedure in relation to “Monitoring of the implementation of the Convention” (Rules 22 to 28) in order to provide an increased participation/contribution of civil society in the monitoring process the implementation of the Lanzarote Convention by State parties.

In order to promote of the ratification of the Lanzarote and Budapest Conventions and strengthen global efforts to combat the commercial sexual exploitation of children, ECPAT International recommends that the Council of Europe replicates the regional conference on cybercrime (held in the Philippines in 2013) in other regions of the world.