

COLOMBO, SRI LANKA, 10-13 FEBRUARY 1999

R E P O R T

Third  
Hearings  
of the  
“International Cooperation in  
International  
the Struggle Against the  
Tribunal for  
International Dimension of  
Children’s  
Child Sexual Exploitation”  
Rights



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**Third Hearings of the International Tribunal for Children’s Rights on  
International Cooperation in the Struggle against the International Dimension  
of Child Sexual Exploitation, Colombo, Sri Lanka, 10-13 February 1999**

**REPORT**

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## **1. Background**

### **1.1. The Globalization of Child Sexual Exploitation**

One of the most disturbing features of contemporary society is the spread of child sexual exploitation worldwide. The phenomenon involves three particular forms of exploitation: child prostitution, child pornography and child sexual trafficking.

The phenomenon has its roots in many regions of the globe, and it is both traditional and modern. While there remain various negative age-old traditional practices which pressure children into sexual exploitation, e.g. cultural beliefs that sell children into sexual servitude, the modern aspects of the problem include the rampant spread of sexual tourism affecting children and the advances of technology which enable child pornography to be transferred via computers. There is regrettably a mass market ready to consume children sexually, and this is witnessed by the myriad of paedophiles and sex tourists who travel to other countries to sexually abuse children, on the one hand, and the growing trade and trafficking in children whereby children are moved illicitly across frontiers for sexual purposes, on the other hand. These are aggravated by the proliferation of child pornography on the INTERNET, adding new twists to the globalization of the problem. Sexual exploitation of children via such means is replicable ad infinitum and can be transmitted instantaneously across the globe with the flick of a switch or the push of a button.

The environment behind such exploitation includes poverty, family disintegration, discrimination, decline in human values, commercialisation, consumerisation, distorted use of technology, and criminality. These are based on the reprehensible treatment of children as objects of abuse rather than as subjects of rights. Precisely because the phenomenon is found both within countries and across frontiers - and it is spreading continually to new geographical areas, it is essential to promote closer national and international cooperation to counter its proliferation. Hence, the need for the globalization of norms and action to assist and protect child victims in a concerted manner.

### **1.2. The Convention on the Rights of the Child, the World Congress against Commercial Sexual Exploitation of Children, and the Statute of the International Criminal Court**

The global response in favour of child rights has been consolidated significantly by the adoption of a key international treaty, namely the Convention on the Rights of the Child (1989). It has been ratified comprehensively by the global community; over 190 countries are parties to the Convention, with only two countries failing to ratify it.

The Convention defines “child” as a person under 18 years of age, and it posits four key principles:

- ◆ non-discrimination
- ◆ the best interests of the child
- ◆ the child’s right to life, survival and development
- ◆ respect for the views of the child.

A pivotal concern of the Convention is to demand child-sensitive laws, policies, programmes and practices to help children worldwide. It underlines, in particular, the need for special protection measures to address the needs of children in various difficulties, including those who are exploited sexually. Article 34 of the Convention pinpoints the following:

“ States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful sexual practices;
- c) the exploitative use of children in pornographic performances and materials.”

Article 19 of the Convention adds the call for interdisciplinary measures to protect children from exploitation and abuse, while Articles 35 and 39 advocate measures against the sale and traffic in children and in favour of the psychological recovery and social reintegration of child victims respectively.

Implementation of the Convention is monitored by the 10 member international Committee on the Rights of the Child which considers reports from States Parties and makes recommendations for more effective implementation of the Convention at the national level. It is bolstered by the presence of the Special Rapporteur on the Sale of Children under the United Nations (UN) Human Rights Commission. The Special Rapporteur submits global reports annually to the UN on the issue of sale of children, child prostitution and child pornography.

In 1996 the world community advanced the call for better child protection by congregating in Stockholm to adopt the Declaration and Agenda for Action of the World Congress Against Commercial Sexual Exploitation of Children. The Declaration highlights the need to punish those who exploit children sexually, while not punishing the child victims. The Agenda for Action is a set of guidelines for measures concerning prevention, protection, recovery/reintegration of the child victims, as well as child participation in protecting their rights. It stipulates the need for the following measures, inter alia:

- “a) Develop or strengthen and implement laws, policies and programmes to protect children and to prohibit the commercial sexual exploitation of children, bearing in mind that the different types of perpetrators and ages and circumstances of victims require differing legal and programmatic responses;
- b) develop or strengthen and implement national laws to establish the criminal responsibility of service providers, customers and intermediaries in child prostitution, child trafficking, child pornography, including possession of child pornography, and other unlawful sexual activity;
- c) develop or strengthen and implement national laws, policies and programmes that protect child victims of commercial sexual exploitation from being penalized as criminals and ensure that they have full access to child-friendly personnel and support services in all sectors, and particularly in the legal, social and health fields;
- d) in the case of sex tourism, develop or strengthen and implement laws to criminalize the acts of the nationals of the countries of origin when committed against children in

- the countries of destination (“extraterritorial criminal laws”); promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions ,against those who commit sexual crimes against children in destination countries; and share relevant data;
- e) in the case of trafficking of children, develop and implement national laws, policies and programmes to protect children from being trafficked within or across borders and penalize the traffickers; in cross border situations, treat these children humanely under national immigration laws, and establish readmission agreements to ensure their safe return to their countries of origin accompanied by support services; and share relevant data.”

Since the World Congress, there have been notable law and policy reforms and improved enforcement in a number of countries. For instance, some twenty countries now have extraterritorial laws which can be used against their nationals and or residents if they perpetrate sexual crimes against children in other countries. A number of successful prosecutions have also taken place.

However, despite the norms mentioned, in a variety of regions, the phenomenon of child sexual exploitation is rife and escalating. This is compounded by poor law and policy enforcement, coupled with pervasive corruption. The legal process affecting child witnesses and victims, e.g. concerning their interrogation and questioning by law enforcers and lawyers, leaves much to be desired in that the lack of child-friendly procedures and personnel may further victimise the child who has already been sexually exploited .

On another front, a very significant recent development is the adoption of the Statute of the International Criminal Court (1998) in Rome which paves the way to the establishment of an international criminal court to prosecute individuals for genocide, war crimes, crimes against humanity and crimes of aggression. Among the many offences under the notions of war crimes and crimes against humanity are rape, sexual slavery and enforced prostitution. These can cover instances of child sexual exploitation whether in peace or in war. The Rome Statute also provides for protection of victims and witnesses, including through the use of videotaped evidence, and international cooperation and judicial assistance, all of which are related, in one way or another, to the issue of child sexual exploitation. Significantly, Article 68 of the Statute stipulates as follows:

“ 1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including age, gender as defined in Article 2, paragraph 3, and health, and the nature of the crime, in particular, but not limited to , where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

### 1.3 International Bureau for Children's Rights

The International Bureau for Children's Rights is a non-governmental organisation for the promotion and protection of child rights worldwide. The President of the Bureau is Judge Andree Ruffo and the Director-General is Pierre Dionne. The headquarters of the Bureau are in Montreal, Canada.

The Bureau has spearheaded a number of key activities against child sexual exploitation. These include a number of "public hearings" whereby panels of judges and lawyers drawn from many countries gather to hear evidence and other information informally on aspects related to the issue of child sexual exploitation. At the end of each "hearing", they make comments and recommendations so as to help mobilise the public, governments, and civil societies to take more effective measures to counter the phenomenon of child sexual exploitation. Effectively, they act as a kind of people's tribunal linked with members of the public and the media in a constructive process of "mediatization" whereby the collection and dissemination of information via the media and other sources are propelled as part of the search for improved child protection from sexual exploitation.

The First Public Hearings of the International Tribunal for Children's Rights took place in Paris from 30 September to 2 October 1997. Its theme was "Extraterritorial Legislation in Response to the International Dimension of Child Sexual Exploitation". The hearings made a number of recommendations concerning extraterritorial laws and related implementation, including the following, inter alia:

- “ a) investigations should not be carried out in ways that:
  - i) are psychologically damaging to children;
  - ii) put children at risk of intimidation or physical danger;
- b) children must be protected from intimidation and physical danger, as well as undue disruption to their lives, identities or economic security, during the period before and after court proceedings;
- c) the best interests of the child (Article 3(ii) of the Convention on the Rights of the Child) and the right to have his/her opinion taken into account in all decisions taken on his/her behalf (Article 12 of the Convention on the Rights of the Child) should be the guiding principles in decisions about whether a child should:
  - i) travel to the country of the accused to give evidence;
  - ii) give evidence by video link, either between countries or in the country of the accused;
  - iii) give evidence in court;
  - iv) give evidence in some other place;In all such decisions, due consideration should be given to the child's age, maturity and culture.
- d) child victims in sexual exploitation cases pursued through the application of extraterritorial legislation should not be cross-examined aggressively and in particular not to a greater extent than adults or than children who are nationals of the country of the accused. Domestic legislation should be amended to ensure that this is the case;

- e) a child's prior reputation should be inadmissible evidence;
- f) the interpretation of rules and procedures should be flexible in order to reflect the principle of the protection of children. Systems should adjust to the special vulnerabilities of children;
- g) interpreters in investigative and legal proceedings should receive specialist training to enable them to deal sensitively with sexually exploited children. They should be able to express themselves fluently in both the dialect of the child and language of the court. They should be aware of the cultural mores of the child's society and social group;
- h) law enforcement and legal professionals should receive specialist training in communicating with and listening to sexually exploited children;
- i) victims support services should be alerted to and involved in all cases involving extraterritorial legislation and the sexual exploitation of children to provide culturally-appropriate counseling and socio-economic support to children at all stages in the process, including follow-up;
- j) children who have been victims of sexual exploitation or traffic should not be repatriated unless follow-up support can be provided and certainly not if there is evidence that repatriation might threaten their physical security;
- k) the implementation and consequences of statutes of limitation should be researched and reviewed."

The Second Public Hearings of the International Tribunal for Children's Rights were held in Fortaleza, Brazil from 11 to 15 May 1998. In focusing on the international dimension of child sexual exploitation and the experiences of Brazil, it aimed to re-examine certain recommendations from the First Public Hearings, in particular the observation that:

" The international dimensions of the sexual exploitation of children should not be exclusively identified with sex tourism, nor yet confined to either developed or developing countries. Although extraterritorial legislation is important, it is one tool among many, and it is necessary to examine successes, failures and obstacles to the implementation of international law, in general, not only extraterritorial legislation."

The discussions were often linked with the situation in Brazil. The recommendations from the Second Public Hearings included the following, inter alia:

- “3. All efforts taken in an attempt to combat sexual exploitation must promote the status of children and adolescents as legal subjects (sujets de droit) and not as legal objects (objets de droit), for whom measures are taken;
- 4. Witnesses speaking on the efficiency of aid and reintegration services for children and adolescent victims confirmed that we cannot speak of a right to sexuality if they cannot even benefit from minimal standards of education, health, culture, strengthened ties to the community, security and leisure. In order to guarantee respect and greater enjoyment of this right while pursuing the fight against sexual exploitation, all other social rights must be respected through effective social policies universally applied. These policies must be developed in direct response to the needs identified above.

5. Therefore, the fight against sexual exploitation depends on the implementation of efficient economic development policies favouring a better general distribution of wealth, of land and goods. Moreover, it is important, when developing measures applicable to the various sectors, to include job creation, with legal protection of job offers and where this is insufficient, providing guaranteed minimal revenues within the social security systems.
6. Finally, as to the procedures designed to minimise economic, cultural, political and social factors which allow for commercial sexual exploitation to exist and grow, it is essential to go over current legislation relative to commercial sexual exploitation in general with a view to:
  - ◆ Fully legally recognise the rights of children and adolescents to their sexuality;
  - ◆ Permit adequate classification of violations to these rights;
  - ◆ Clearly define the penalties to which exploiters and clients are subject.

At the same time, it is essential to promote that the legal and justice administration system be equipped with better infrastructure, without which there can be no effective or uniform application of the law. The high levels of impunity are in most cases due to discretionary and arbitrary application of the law.”

The enormous global interest in laws and policies concerning child sexual exploitation, especially their extraterritorial dimensions, influenced the Bureau to organise the International Meeting on Extraterritorial Legislation in Response to International Dimensions of Child Sexual Exploitation, as a precursor to the Third Public Hearings. Convened in Madrid from 26 to 27 November 1998, and in cooperation with the Ministry of Justice of Spain, a number of representatives from countries with extraterritorial laws exchanged information on their application in their respective jurisdictions. The Conclusions of the Meetings included the following, inter alia:

- “ 7. However important the work of international bodies may be, in particular as regards serving as coordinating instruments between the Member States and giving political impetus to action, it is at the national level where the work must be carried out. The participants were reminded that the first responsibility to prosecute these odious crimes rested with the country where the offence was committed, which needed to have an efficient legislation.
8. However, there were still many problems in terms of legislation in many States, in spite of recent progress through Article 34 of the 1989 UN Convention. Problems relate to differences in legislation and difficulties to collect and use evidence. Coordination was difficult at both national and international level and judicial cooperation still presents substantial obstacles to an efficient prosecution of child sex offenders. The requirement of double criminality continues to create difficulties in prosecution (the age of consent differs from one state to another between 12-18 years) and it is often difficult to prosecute, for instance, tourists abusing children because of corrupt police or other officials. Problems of criminal procedure exist as well and video-link testimony is often only possible for rich and developed countries.

[...]

12. Particularly important for an effective implementation of the laws are law enforcement officers. INTERPOL has set up a special group to study the problems and EUROPOL will, since the Convention has now come into force from 1 October, play an increasingly important role to the Member States of the European Union. As suggested by Director General Debrulle, the EU should also consider how best to use the Member States' liaison officers, for instance by organising regional meetings between them.
13. Sharing of information between law enforcement officers was important, as Mr. Lord, Chief of the child prostitution and obscenity section of the US Department of Justice, reminded the participants, and "Operation Cathedral" had been particularly successful in this respect. 14 countries had been involved, more than 750,000 pictures had been seized (40,000 different pictures in one country) and law enforcement was able to continue to share information to ensure continued co-operation.

[...]

15. Training of judges, prosecutors and law enforcement personnel is of vital importance to an effective implementation of decisions taken. It was encouraging to learn that a number of countries (United Kingdom, Germany, USA) had sent police officers to train their counterparts in Thailand, Philippines, Vietnam...although one could hope for a better coordination between these initiatives, also within each country.

[...]

17. In this context, governments were recommended to examine the role that these NGOs have to protect the rights of children and allow, where possible, the right for the NGOs to represent the children in court (in French: "constitution en tant que partie civile"). In fact, one could observe a trend in modern criminal procedural law in some countries to allow so-called victimless crimes, and crimes involving particularly vulnerable victims (like children) to be able to be represented by NGOs or other entities which were recognised as having that capacity [...].
18. Another question which was raised was the importance of working together with industry, and in particular with travel agencies. NGOs like ECPAT had sensitized industry to action and made it aware of its responsibilities [...]."

These developments provided an appropriate backdrop for organising the Third Hearings of the International Tribunal for Children's Rights.

## **2. The Third Hearings**

### **2.1. Aims**

The aims of the Third Hearings were to focus on the issue of “international cooperation” to counter child sexual exploitation worldwide, and to follow-up and reinforce the various findings of the first two hearings. The Third Hearings were titled: The Third Hearings of the International Tribunal for Children’s Rights on International Cooperation in the Struggle Against the International Dimensions of Child Sexual Exploitation. They were organised in Colombo, Sri Lanka from 10 to 13 February 1999.

The focus of the discussions were the following:

- ◆ judicial cooperation and training
- ◆ the protection of child victims and child witnesses through child- friendly procedures
- ◆ child sexual exploitation and the INTERNET

For details of the various presentations at the Third Hearings, see Appendix 1.

### **2.2. Membership**

The members of the International Tribunal for Children’s Rights for the Third Hearings were the following:

- ◆ Judge Shiranee Tilakawardene, Sri Lanka (President of the Tribunal)
- ◆ Judge Josiane Bigot, France
- ◆ Judge Roch Lalande, Canada

Regrettably due to travel difficulties, two other members were unable to attend, namely Judge Claire Suzanne Degla, Benin, and Maria de Graca Diniz Costa Belov, Counsel and Law Professor, Brazil.

The Secretary of the International Tribunal was Professor Vitit Muntarbhorn, Thailand ,who also prepared the report of the Third Hearings.

For profile of the judges, see Appendix 2.

### **2.3. Procedures**

The Tribunal heard presentations from a variety of participants ranging from government representatives to non-governmental organisations (NGOs) and the representatives of

intergovernmental organisations. The themes dealt with by the Hearings are given below in the section on Structure and Appendix 1. Basically, each theme would be analysed by various presentations, followed by questions from members of the Tribunal and interventions by the participants.

After the hearings on a daily basis, the members of the panel would convene to discuss the highlights of the day and prepare the conclusions and recommendations which the panel would present at the final session of the Third Hearings on the last day of the hearings. They were assisted throughout by the Secretary of the Tribunal.

As compared with the first two Hearings, the Third Hearings were more informal and relaxed, with the atmosphere akin to a workshop where a variety of people and organisations came together to exchange information, to share and learn about the latest developments. Many presented life situations and concrete case studies, including the experiences of real prosecutions and trials emanating from extraterritorial and other laws on child protection.

At the final session on the last day of the Hearings, the President of the Tribunal presented the conclusions and recommendations of the Tribunal. These are incorporated in this report and are found in the final section of the report titled “Tribunal Conclusions and Recommendations”.

#### **2.4. Structure**

The Third Hearings were structured so as to combine presentations and discussions in an open and participatory manner on the following themes:

- ◆ judicial cooperation and training in matters of sexual exploitation
- ◆ the protection of child victims through child-friendly procedures
- ◆ sexual exploitation of children and the INTERNET

For details of daily sessions, see Appendix 1.

With regard to the first theme, the tribunal received and discussed information on how countries are assisting each other to counter child sexual exploitation whether at the multilateral, regional or bilateral level. This was coupled with case studies drawn from various countries such as the United Kingdom and the Philippines, including the field experiences of End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT), Christian Aid, and the PREDA Foundation.

With regard to the second theme, the tribunal covered the issue of child-friendly procedures in relation to the protection of child victims and witnesses with a general overview from the International Bureau for Children’s Rights and case profiles from Australia and Cambodia, including World Vision, LICADHO and the Cambodian Center for the Protection of Children’s Rights, in addition to a video presentation; the video titled “A Case for Balance” had been produced by the National Society for the Prevention of Cruelty to Children, United Kingdom.

With regard to the third theme, the tribunal was briefed on the latest developments concerning child pornography and the use of computers, in particular the INTERNET, in generating and transmitting such material. This was coupled with field situations drawn from the International Bureau for Children's Rights, Redd Barna, and Casa Alianza operating in Central America.

Keynote addresses and special presentations included the following:

- ◆ Opening address by H.E. The Minister of Justice for Sri Lanka, Professor G.L.Peiris;
- ◆ Keynote address by Harendra de Silva, Chairman, Child Protection Authority, Government of Sri Lanka;
- ◆ Speech by Judge Andree Ruffo, President of the International Tribunal for Children's Rights, Canada;
- ◆ Speech by Professor Ravindra Fernando on behalf of Dr. A.T.Ariyaratne, President of the Sarvodaya organisation, Sri Lanka
- ◆ Speech by Collin Glennie, Director, UNICEF-Sri Lanka.

These culminated in the presentation of the conclusions and recommendations of the Tribunal on the last day of the hearings. (See *infra*.)

Field trips were also organised for the participants to visit projects in Sri Lanka with the help of World Vision and the Sarvodaya organisation.

The various challenges facing the three themes mentioned above and leading to the conclusions and recommendations of the tribunal are highlighted in the following sections of this report.

### **3. Judicial Cooperation and Training in Matters of Child Sexual Exploitation**

#### **3.1. Transparent Context**

Throughout the discussions, there was emphasis on the need to analyse the context facing child sexual exploitation and to render it more transparent. In his opening address, the Minister of Justice underlined the socio-economic context facing children and their families, in particular the poverty which may pressure children into prostitution. This was made more complex by the armed conflicts ravaging some countries, including Sri Lanka, which made child protection all the more difficult.

These factors were reemphasised by Mr. De Silva from the Child Protection Authority of Sri Lanka. He also noted that, till recently, physical abuses, as well as sexual abuse, in the family setting had been denied by society. However, the information was becoming more transparent not only in regard to child sexual abuse and exploitation but also other forms of exploitation , such as child labour.

Discussions concerning the context confronting children included the following:

- ◆ sex tourism is both an international phenomenon and national problem;
- ◆ there are links between domestic abuses and sex tourism; the child victim already abused at home may be pushed into sexual exploitation outside the home;
- ◆ gender issues should be addressed; these include the fact that in some societies, girls may be more protected than boys due to the societal protection of the girls' virginity;
- ◆ there is extensive internal and cross frontier trafficking of children for sexual purposes;
- ◆ programmes for child assistance and protection sometimes suffer for problems of management and sustainability;
- ◆ while the demand and supply factors leading to child sexual exploitation need to be countered, the perpetrators who are part of the demand factor are often more united than those seeking to overcome them;
- ◆ awareness raising, education and training on the issue of child sexual exploitation remain limited;
- ◆ the issue of recovery and reintegration of victims of abuse and exploitation, including sexual exploitation, is not adequately addressed;
- ◆ law and policy enforcement in relation to child rights suffer from low priority setting, inadequate or misallocated resources, and corruption;
- ◆ there is weak monitoring of the situation concerning child abuse and exploitation, coupled with a lack of or unreliable statistics;
- ◆ there are inadequate restrictions on paedophiles to prevent their associating with children, e.g. an abuse may arise from a situation of adoption of a child by a paedophile;
- ◆ there is intermittent mistrust between government organisations and NGOs working for child protection.

### **3.2. Cooperative Action**

Despite the many difficulties facing measures against child sexual exploitation, the various presentations and discussions cited many examples of cooperative action which have a positive impact on child rights.

For instance, new laws have been adopted to accord greater protection to children, e.g. the Philippines' legislation on child protection and Sri Lanka's recent legislation against child trafficking. Government agencies at times cross refer cases to the police leading to successful prosecutions. These cover not only local perpetrators but also foreign perpetrators. In cross-border cases, cooperation between countries has also led to several instances of action against those exploiting children, e.g. cooperation between Sri Lanka, the Netherlands and Switzerland.

The role of civil societies, including NGOs, in this setting is essential. Instances of NGO initiatives and effective cooperation between NGOs and government personnel were given by several participants at the Third Hearings. These include the action of the PREDA Foundation in the Philippines under the leadership of Father Shay Cullen. Not only does it help to pursue cases

against perpetrators but also it provides facilities for the recovery and reintegration of the child victims, including therapy and its relationship with the possibility of forgiveness and the potential of seeking justice. Its work supports local action, community involvement, such as by means of the Barangay system, and cooperation with government authorities, such as the Department of Social Welfare. PREDA also provides training on these issues, giving internships to train workers to help children overcome their traumas and to gather evidence for prosecutions, while using special interviewing facilities to document child testimonies, such as by means of videos.

A major concern is to protect not only the child victims but also their protectors. Both are often harassed by the perpetrators and their accomplices. Interference with child witnesses, such as by pressure on their families, is a continual threat. NGOs may at times become discouraged in filing cases against the perpetrators for fear of a backlash from the latter, such as being subjected to multiple lawsuits initiated by the alleged or actual perpetrators.

Despite such difficulties, case profiles from the Philippines cited by Father Cullen and Sergio Cruz, a children's rights lawyer from the Philippines, showed that success is possible against the wrongdoers. This is influenced by the presence of strong legislation against child sexual exploitation, greater priority setting for child protection, and recognition of the role of NGOs in child rescue and protection. This is all the more important as it is often NGOs which lead government authorities to expose the exploitative situations.

Cooperation would need to address the root causes as part of preventive action as well as curative action, such as prosecutions of the perpetrators and compensation for the victims. The former may entail development assistance and employment for families, while the latter may be linked to access to legal and other assistance and aid.

Discussions concerning the presentation from the Philippines raised the issue whether it would be preferable for the child to be a witness than a complainant and prosecutor in the case and whether NGOs could be a complainant in place of the child victim. If the child is a mere witness, this may reduce the demands for his/her presence in court and minimise the traumas which may ensue from an insensitive legal system. As a witness, the child would only have to appear in court once, whereas he/she would have to appear many more times as a complainant/prosecutor. Lessons from the field suggest the following guidelines for cooperation between child rights' workers in regard to prosecutions of the offenders and protection of the child victims:

- find a trustworthy prosecutor
- lobby for child-friendly judicial system and personnel
- link up with good police
- respect the rights of the accused
- train social workers to help children
- ascertain the medical evidence quickly, such as by means of medical examination of the child victim shortly after the abusive incident
- avoid multiple medical examinations of the child victims, as this may lead to further traumas for them.

Added to this is the dimension of regional cooperation which may also contribute to greater child protection. One suggestion from the discussions was to establish an international children's court for the Asian region. This goes hand in hand with the need for more regional cooperation, especially as many problems are cross border by nature.

The role of NGOs in mobilising the community for child protection was further highlighted by Jack Arthey representing ECPAT UK. He cited, in particular, the example of non-governmental work in the United Kingdom in lobbying successfully for the passage of an extraterritorial law against child sexual exploitation. It has also propelled the travel industry to take action against child sex tourism, in addition to convincing governments to adopt the child welfare initiative below.

Moreover, the issue of inter-regional cooperation was addressed. Of note is the child welfare initiative under the Asia-Europe Meetings (ASEM). Although ASEM is primarily concerned with economic and political cooperation, the non-governmental sector has lobbied successfully to incorporate issues of transparency, accountability, human rights and the social dimension, resulting in the child welfare initiative. The latter provides for more training and judicial cooperation on child protection between the two regions. This entails improved police cooperation, exchange of intelligence and information, and more youth participation. British policemen have also helped to provide training to Philippine police, while an exchange of liaison officers is being explored. A computer website is being set up to provide information on personnel and organisations working on child protection, as well as legislative and policy-related data bank. These ideas were concretised by a Plan of Action adopted by a meeting of experts from the two regions, held in London in October 1998. A follow-up meeting of police and law enforcers against cross-border crimes will take place in 1999. ECPAT will proceed with a project to promote international youth participation against sexual exploitation in 1999.

The lessons learnt include the key role of NGOs in mobilising public opinion and government support for law reform and the importance of allocating resources for constructive changes. However, while NGOs may become partners of governments in child protection work, they need to preserve the right to challenge governments where action on child rights is deficient. They need to pressure for sufficient human and financial resources to respond to the issue.

Lourdes Balanon , Director of Social Welfare and Development, the Philippines, confirmed the good cooperation enjoyed by the government and NGOs in the Philippines. In noting the ASEM process and the adoption of a key plan of action for children in the Philippines, she cited examples of bilateral cooperation between the two regions in the form of a Memorandum of Understanding between the United Kingdom and the Philippines whereby assistance is given by the United Kingdom to train Philippine police in interview techniques in regard to child victims and evidence gathering to prosecute offenders, while preventing retraumatisation of the child victims. A parallel initiative is being explored with the Netherlands to promote child friendly procedures such as the use of audio-visuals to document children's testimonies. On another front, cooperation with Sweden is being promoted to establish therapy centres for child assessment and recovery, as well as to form multidisciplinary teams for child

protection. There is also the need to recognise that the experts are often the children themselves, as they are close to the issue in question, and Manila will be hosting an international conference for children on the issue of child sexual exploitation in the near future.

Cooperation between NGOs and government agencies both within the Philippines and other regions has led to the successful prosecutions of paedophiles and sex tourists both in the Philippines as the destination country and in the countries of origin of the sex exploiters. In particular, concerning extraterritorial cases, such cooperation may relate to the following:

- ◆ field visits by the law enforcers of the countries of origin to the destination country to ascertain the evidence may be encouraged;
- ◆ if child victims are to be taken to the countries of origin of the sex exploiters to give evidence, they should be accompanied by those familiar to them, who would help them adjust to the new environment;
- ◆ other means of apprehending perpetrators, such as extradition, may be explored;
- ◆ non-formal and formal arrangements to share evidence and help in judicial proceedings may be promoted; these are exemplified by mutual cooperation agreements;
- ◆ arrangements, such as the Memorandum of Understanding between the United Kingdom and the Philippines noted above, should be supported to providing training and other know-how, especially to law enforcers.

Discussions concerning these presentations revolved around the impact of NGOs on government policy and whether there needs to be a regulatory body for NGOs to promote greater cohesion. While the impact of NGOs was underlined, there was a reticence to support such a regulatory body for fear of government control and manipulation of NGOs. However, registers of NGOs to facilitate contacts would be useful. These already exist to some extent; ECPAT, for example, has published a directory of organisations working on the issue.

In regard to the sentencing of convicted sex exploiters, while some countries permit capital punishment, there is the international trend which is against such penalty. With respect to the tracking of convicted paedophiles, it was noted in the discussions that the United Kingdom has a register of sex offenders whereby they are obliged to report to the authorities concerning their movements both at home and abroad.

However, various challenges remain in regard to cooperation both at home and abroad. They including the following:

- ◆ lack of special courts and judges to deal with cases of child abuse and exploitation;
- ◆ the obligation in some countries of the child victim to confront the accused in court, even though this may be traumatic for the child;
- ◆ further injustices for the child victim, e.g. while the exploiters may find it relatively easy to get bail once they are apprehended, the child victims at times land up in confinement and are treated as criminals rather than victims;
- ◆ no mandatory obligation in some countries to report cases of child abuse and exploitation to the authorities for action;

- ◆ inadequate training for the local community and law enforcers to respond to the rescue and protection of child victims;
- ◆ insufficient number of social workers and counsellors to help the child victims, and paucity of training programmes available to them;
- ◆ lax implementation of the Convention on the Rights of the Child at the national and local levels;
- ◆ inadequate involvement of children and young persons in programmes of child protection;
- ◆ insufficient allocation or misallocation of resources.

#### **4. The Protection of Child Victims through Child-friendly Procedures**

##### **4.1. Child-sensitive Process**

A continual concern raised throughout the Third Hearings was to what extent legal and judicial procedures, indeed the whole legal process and system, are sensitive to the needs of the child victims or witnesses. Are they friendly towards the children or do they retraumatise them ?

Roger Walker of World Vision, Australia , together with Naly Pilorge of LICADHO, Cambodia and Khou Akha of the Cambodian Center for the Protection of Children’s Rights, Cambodia, traced the history of various cases against foreign paedophiles, especially an extraterritorial case concerning an Australian diplomat alleged to have sexually exploited two Cambodian street children. It took some two years to bring the case to court in Australia. In the court proceedings that ensued in Australia as part of the latter’s extraterritorial law, the children were taken to Australia to give evidence. They were subjected to long periods of aggressive cross-examination in an environment alien to them, and gave confusing answers. They were even unsure about who the defence lawyers were during the committal proceedings. The judge dismissed the case, thus acquitting the accused of the alleged sexual exploitation of the children. The two children were then returned to Cambodia, and the NGO responsible for them was not even given the flight details of their arrival in Cambodia. Their futures are uncertain, and one of them travels to and from the Thai border, probably involved in prostitution.

While the rights of the accused are to be protected, this case has pinpointed the imbalances facing child victims and witnesses; the legal process and system are often insensitive to the needs of the children and may further traumatise them.

The anomalies facing child victims and witnesses, including in extraterritorial situations, are exemplified by the following:

- ◆ justice delayed is justice denied;
- ◆ the police may not be favourable towards prosecution of the alleged paedophile or sex tourist, even though there are grounds for prosecution;
- ◆ in federal systems, the federal police may claim that child protection is a federal matter and thus should be taken up at the state level rather than the federal level;

- ◆ there is little understanding of the cross-cultural dimensions of the issue, including the nuances of different languages, and the role of the authorities and the public's perception - and the child's perception of them;
- ◆ there may be a lack of videotaping facilities to document the child's testimony in the pre-trial stage and the lack of a video-link or other facilities during the trial to prevent the child victim from having to physically confront the accused;
- ◆ experience in using such facilities in extraterritorial cases may be lacking, e.g. is the video-link by means of video-conferencing to be used with the accused in his/her country of origin while the victim remains in his/her own country ?;
- ◆ the pros and cons of taking the child victim to give evidence in a foreign country where the accused is a national or resident are not weighed in a balanced manner, especially in view of the fact that the legal system and the court structure and procedures of the latter country are likely to be alien to the child;
- ◆ if the child victim is to travel to a foreign country to give evidence, is he/she accompanied by someone with whom he/she is familiar and who can be of support throughout the proceedings ?
- ◆ the questioning or cross-examination of the child victim or witness may be aggressive, traumatic and confusing to the child; this is evidently the case in the common law system where the defence lawyer often resorts to aggressive cross-examination, while the inquisitorial role of judges in the civil law system may result in parallel traumas for the child;
- ◆ child victims and witnesses are sometimes not kept in adequately safe shelters and they are at times under the threat of harassment and pressure on their families and themselves to terminate the prosecution;
- ◆ NGOs helping child victims and witnesses may be under similar threats.

In learning from the mistakes of the past, the presentations concerning the Cambodian-Australian experience and related discussions highlighted the following needs for the future:

- ◆ promote closer links between the authorities of the countries of origin and destination countries to gather evidence and ensure the safety of victims, witnesses and NGOs providing help;
- ◆ expedite the hearing of cases;
- ◆ provide facilities to help victims pending court hearings;
- ◆ allow videotaped evidence of the child's testimony and support the possible use of video-link facilities in transfrontier cases, so that the child victim or witness would not need to travel to a foreign country to give evidence, unless this is in the best interests of the child;
- ◆ train and use experienced law enforcers and other personnel to act in a child-sensitive manner;
- ◆ provide emotional, human and financial support for the child victims and those who help them, e.g. NGOs;
- ◆ establish special courts, procedures and personnel to try these cases at the national and international levels;

- ◆ explore not only criminal proceedings against the accused but also civil litigation against him/her;
- ◆ use increasingly DNA evidence;
- ◆ bolster investigations at times with private investigators;
- ◆ act sensitively towards cross-cultural differences;
- ◆ prevent aggressive and confusing questioning or cross-examination of the child;
- ◆ prohibit references to the child's past history to undermine his/her credibility;
- ◆ provide for proceedings in camera;
- ◆ enable the child victim and witness to familiarise himself/herself with the court environment prior to trial;
- ◆ test the question of whether or not to prosecute the alleged wrongdoer, not from the angle of the fervour of the community or the organisation to seek retribution , but from the angle of whether it is in the best interests of the child to pursue the case; will more harm be incurred by the child as a result of the proceedings , in which case the prosecution should not proceed?

#### **4.2. Innovative Procedures**

The advent of innovative, child-friendly procedures was outlined by Jean-Francois Noel , an international legal consultant attached to the International Bureau for Children's Rights, Canada. This was followed by a presentation of the video titled "A Case for Balance" as a mock trial with child-friendly judicial system and personnel.

The protection of children must be the first priority, and the best interests of the child must be the guiding principle in all actions concerning children. These are linked with responses to the issues of how to prosecute alleged sex exploiters, how to document children's evidence, how to question child victims and witnesses both in the pre-trial and trial stages, how to protect them from intimidation, and how to follow up cases so as to promote the safe recovery and reintegration of child victims and witnesses. In effect, there need to be:

- ◆ accessible protection programmes for child victims and witnesses, and
- ◆ child friendly procedures.

In regard to protection programmes, a recent guiding light is Article 68 of the Rome Statute of the International Criminal Court which states the following:

- “ 1. The Court shall take appropriate measures to protect the safety , physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in Article 2, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for Article 67, the Chambers of the Court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The victims and witnesses units may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.”

A key concern is to determine who is responsible for guaranteeing the safety of the child and for shouldering the costs. This is particularly pertinent to extraterritorial cases where various expenses, such as videotaping, translation and travel costs, will be involved.

In regard to child-friendly procedures, this is increasingly an international issue and was highlighted at the Hearings. The special needs of child victims and witnesses must be borne in mind. These have been underlined by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) whose Article 6 stipulates these measures, inter alia:

- a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- c) Providing proper assistance to victims throughout the legal process;

- d) Taking measures to minimize the inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

Mr. Noel advocated that the special needs of children in these situations should be reflected as follows:

“First, since for most children, testifying in a criminal trial will induce a high degree of anxiety and since the judicial process in itself will rarely be a pleasant experience for them, such cases should be dealt with in an expedited and predetermined fashion. This means that certainty is needed about the trial date and the manner in which the child will testify, and that unnecessary delays should be avoided, Likewise, the child’s waiting period at court should be kept to a minimum.

Second, ,most children will need to familiarise themselves with the surroundings in which they will be asked to testify. Should they opt for the video-link set-up, they should be provided with the opportunity to see the equipment and practice prior to trial.

Third, information about the child’s individual needs should be made available to the court as early as possible, so that necessary accommodations can be planned in advance.

Fourth, necessary efforts should be made to make the child feel as comfortable as possible. That may include doing away with formal attire and/or adapting the language used, not only in the way the judge and the attorneys address the child, but also between the professionals themselves. Necessary efforts should also be made to insure that the child understands who the people are as well as what is going to happen.

Fifth, child witnesses have special needs regarding the way in which they are questioned. Questions should be kept both simple and short. Therefore, complex questions should be broken-up into individual questions that the child can understand and answer without confusion. Questions should also be asked one at a time, giving the child time to answer and follow a structured approach.”

With respect to child-friendly methods to adduce evidence, there are three innovative possibilities:

- ◆ the use of videotaped evidence where the child’s testimony is taped prior to the trial and is used during the trial;
- ◆ video-link during the trial whereby the child would not have to confront the accused but would relay his/her testimony and answers to questions posed in court;
- ◆ international video-link of the child’s testimony.

The first two methods are already being used in some countries, such as Canada, while the third type is now being experimented with between Fiji and Australia. These methods can help to attenuate the traumas felt by the child victim and witness in that he/she would not have to

come face to face with the accused. More information is needed on the expenses involved in using these procedures.

These concerns were confirmed in the video presentation during the Third Hearings titled “A Case for Balance”. The discussions that ensued at the Third Hearings raised additional issues including the following:

- ◆ how to deal with the situation where the perpetrator and the victim are both children;
- ◆ the need to produce a book of good practices concerning child-friendly procedures;
- ◆ how to provide more training for judges in regard to human rights and child-friendly procedures, granted that judges can help to minimise the aggressive cross-examination which may adversely affect the child victim and witness;
- ◆ options, other than video-link, which may reduce the traumas faced by the child in court and which may be less expensive than video-link, e.g. the use of screens to block off the accused from the child;
- ◆ how to make child victim support programmes work more effectively;
- ◆ the need for more involvement of psychologists and psychiatrists in child-friendly procedures as part of multidisciplinary teams;
- ◆ the need to involve NGOs and lawyers in child-friendly procedures.

## **5. Sexual Exploitation of Children and the INTERNET**

There were substantial contributions from Pierre Dionne, Markus Aksland, Ann Birch and Ana Salvado on this theme and they underlined the following challenges:

### **5.1. Impact of the INTERNET**

The advent of the INTERNET can have enormous benefits for education and information flows. It is estimated that there are more than 123 million users, half of whom are in North America. The INTERNET itself is a space where freedom of expression can be enjoyed and lead to many positive results. However, such freedom has its parameters and must not be used to exploit children. In regard to the latter, regrettably, there is a negative side to the INTERNET, in particular the availability of child pornography on the INTERNET with children used as objects of exploitation by various individuals and networks. Child pornography is often found and conveyed by various newsgroups and “chat-rooms” on the INTERNET. In addition, children might also be jeopardised as viewers or end users of harmful material on the INTERNET, such as adult and child pornography.

With regard to child pornography, it should be recognised that the damaging material is replicable ad infinitum and the harm done to the child is multiple. This should be illegal material, and there is a need for laws targeted to prevent its manufacture, distribution and possession; while these exist in many countries, some countries fail to have such laws, especially against the possession of child pornography. There is also a key role to be played by INTERNET service

providers in preventing and removing information and sites which cater to child pornography. It was noted in the presentations at the Third Hearings that UNESCO had recently organised an international conference on the issue of paedophilia on the INTERNET which raised the need for legislation targeted against child pornography, as well as the need to promote the constructive role of law enforcers, INTERNET service providers, children and parents against the threat of child pornography. Law enforcement may be assisted by the presence of “cyberpolice”, while “screenpeace” can be an idea for an agency which helps to monitor the INTERNET. This may be assisted by the adoption of Codes of Ethics by the INTERNET industry which can help to mobilise the industry against child pornography.

With regard to protection of children from harmful material which may threaten them as viewers or end users, a variety of methods can be evolved to help rate or classify the types of information available on the INTERNET and enable parents and the children to block off the harmful material. This is bolstered by the availability of various filtering systems which can help to screen the information coming through. These methods can also be part and parcel of Codes of Ethics adopted by the INTERNET industry. They can be reinforced by hotlines to receive complaints from INTERNET users which can then activate the industry to take action against those conveying child pornography and or other harmful material via the Internet. This may include requests to remove certain types of material from the INTERNET and cross-referral to law enforcers in case of breaches of the law.

A number of challenges remain to be addressed including the following:

- ◆ how to reduce the technological gap between developing and developed countries, especially the fact that the INTERNET is primarily being used in developed countries;
- ◆ how to implement laws against the manufacture, distribution and possession of child pornography, and promote law reform where existing laws fail to cover these elements ;
- ◆ how to ensure that laws prohibit not only general forms of child pornography but also computed generated child pornography;
- ◆ how to encompass not only pictures representing child pornography but also “depictions” ,such as by means morphing and pseudo-child pornography;
- ◆ how to promote self-regulation ,such as Codes of Ethics, from the INTERNET industry and ensure their effective implementation;
- ◆ how to interlink between governments, law enforcers, the INTERNET industry and NGOs to establish commonly agreed standards as a kind of “co-regulation”, and provide services and remedies, such as hotlines to receive complaints, where there are allegations of violations of child rights on the INTERNET;
- ◆ how to evolve ratings classification so as to rate the type of information coming through the INTERNET;
- ◆ how to provide greater access to filtering systems to block off harmful material and educate the public, especially parents and children to use them;

- ◆ how to compel INTERNET service providers to retain the allegedly illegal material for a certain period of time to help the police with investigations;
- ◆ how to harmonise the laws and policies in different countries on these issues.

## **5.2. Community Responses**

It should be emphasised that the INTERNET has a great potential also for child protection. The experiences of Casa Alianza, an NGO, working on child protection in Central America, confirm this. This NGO has an extensive INTERNET web which helps to spread and collection information which can be used constructively against paedophiles and other seeking to abuse children. It is a manifestation of a community response using the INTERNET well for child protection.

This has led to a variety of arrests and prosecutions of those sexually exploiting children, ranging from local exploitation to cross-border trafficking, such as into the United States. Many have been detained for child pornography, and the INTERNET has been used as a tool to denounce sexual exploitation and promote child rights. This is also witnessed by the growth of NGO monitoring on the web , such as “Pedowatch”, against child sexual exploitation.

Discussions during the Third Hearings raised additional issues which encompass the role of the State, intergovernmental organisations, the INTERNET industry and the community, including NGOs, including the following:

- ◆ how to explore the possibility of a software programme or virus to block child pornography sites;
- ◆ how to boycott servers who host child pornography and to promote servers who refuse to host child pornography;
- ◆ whether UNESCO will help as a monitor on this issue.

## **6. Additional Inputs**

The Third Hearings benefited greatly not only from the presentations in relation to the three main themes above but also special presentations by guest speakers such as Professor G.L Peiris, the Sri Lankan Minister of Justice, Mr. Harendra de Silva of the Sri Lankan Child Protection Authority, Judge Andree Ruffo of the International Bureau for Children’s Rights, Professor Ravindra Fernando, and Collin Glennie of UNICEF -Sri Lanka. On the final day of the deliberations, there was an open forum/round-table for general discussions prior to the presentation of the Conclusions and Recommendations of the Tribunal. The open forum was assisted by reflections from Aneeta Kulasegaran of the Child Welfare Association of Malaysia, Karn Sermchaiwong of Child Rights Asianet, an NGO based in Bangkok, and Vandhna Navayan of the Fiji Women’s Crisis Centre.

Emphasis was placed on the following:

- ◆ the need to tackle the global problem of child sexual exploitation by even closer cooperation between governments, politicians, the media, NGOs, the

- industry and the community at large, especially in regard to awareness-raising, education, legislation, law enforcement and information exchange;
- ◆ the shift from the former “basic needs” approach leading to discretionary welfare action for children to the more modern advocacy of child rights whereby the State and other power groups must respond to children on the basis of universal standards, especially the Convention on the Rights of the Child, as a matter of obligation rather than discretion ;
  - ◆ the call for universal ratification and implementation of the Convention on the Rights of the Child;
  - ◆ the need for more child and youth participation in protecting child rights;
  - ◆ the advocacy of comprehensive laws for child protection and child-friendly procedures, including discarding the need for the child to take an oath in court and the need in some systems to corroborate children’s testimonies;
  - ◆ access to technical assistance to help promote such laws, procedures and other interventions to help child victims and witnesses;
  - ◆ the need to test all actions by complying with the notion of the best interests of the child;
  - ◆ the call for multidisciplinary teams to help children;
  - ◆ promotion of closer links between NGOs across the globe, including email and letter writing in support of each other’s activities and to lobby for good lawyers to work on cases against child sexual exploitation;
  - ◆ more training on psychological interventions to help the child victims;
  - ◆ more public education with animated methodology to raise interest against child sexual exploitation;
  - ◆ the institution of public tribunals in other countries where cases against exploiters are blocked in a country;
  - ◆ the need to promote the principle of non-discrimination and human dignity;
  - ◆ the call for sustainable interventions to help child victims covering detection, investigation, prosecution, punishment and follow-up of offenders.

## **7. Tribunal Conclusions and Recommendations:**

The following Conclusions and Recommendations were delivered in plenary by Judge Shiranee Tilakawardane (President of the Tribunal) on behalf of all members of the Tribunal on 13 February 1999:

### **CONCLUSIONS**

#### **Introduction:**

The Third Hearings of the International Tribunal for Children’s Rights on International Cooperation in the Struggle Against The International Dimensions of Child Sexual Exploitation were held in Colombo, Sri Lanka, from 10 to 13 February 1999. The members of the Tribunal were as follows: Judge Shiranee Tilakawardane (Sri Lanka) (President of the Tribunal) , Judge

Josiane Bigot (France), and Judge Roch Lalande (Canada). The Hearings were organised by the International Bureau for Children's Rights, Canada. The three themes addressed were the following:

- Judicial Cooperation and Training in Matters of Child Sexual Exploitation
- The Protection of Child Victims through Child-friendly Procedures
- Sexual Exploitation of Children and the INTERNET

The evidence and information submitted to the Tribunal and related discussions led to the following conclusions:

## **I. Justice Denied**

1. Although the 1989 Convention on the Rights of the Child has received near universal ratification, the justice system facing child victims of sexual abuse/ exploitation is deficient in many countries.

2. While most systems have special juvenile courts and procedures to deal with child offenders, this is not the case with child victims of sexual abuse and exploitation. In the latter situation, child victims have to resort to adult courts where the procedures and personnel are not sufficiently child-sensitive. It is thus essential to have special courts, judges and procedures for child victims, on the one hand, and child offenders, on the other hand.

3. Current difficulties confronting the child victim include the following:

- aggressive questioning or cross-examination
- apathetic law enforcement
- corruption and collusion
- the legal obligation of the child to come to court to face the alleged adult abuser directly
- lack of videotaping facilities to document the child's testimony to be used in court
- inadequate training for legal and other personnel dealing with child victims
- lack of quality law enforcers
- insensitivity towards the age and gender of the child, and particular disadvantages for the girl child
- cultural discrepancies
- imbalance between the rights of the accused and the rights of the child.

4. The judicial process which is supposed to protect the child often aggravates the situation, exemplified by the following:

- children are kept for several years in worse facilities, in spite of the fact that the alleged offender has been arrested and has been released on bail;

- child victims are detained with child or other offenders and are subjected to further corruption.

5. Detection, investigation and prosecution are often slow, and in some systems, there is no mandatory reporting of child sexual abuse/exploitation cases to the authorities.

These shortcomings lead to further traumatising of the child victim and are tantamount to a denial of justice for the child victim.

## **II. A Damaging Environment**

6. There is a commonality of key problems between countries, such as inadequate judicial and other cooperation, and regional concerns, which are part of a damaging environment for child victims, including the following:

- political interference
- corruption
- cross border and internal trafficking for sexual purposes
- sex tourism, both local and foreign.

7. A key question is to what extent economic deprivation has impact on child sexual abuse/exploitation. Economic instability creates an environment of vulnerability which may result in child sexual abuse/exploitation.

8. Lack of education and awareness on the part of government agencies, law enforcers and the general public compounds the problem of victimisation.

9. Political insecurity has a negative impact on child protection. This is related to the issue of the weakening of infrastructures in armed conflicts. Regrettably and wrongly, child protection is not seen as a vote winner by many politicians.

10. Decentralisation and community mobilisation have yet to be maximised to help children and their families. Essential facilities remain inaccessible to the victims in many settings.

11. There are evident linkages between different forms of abuse/exploitation which may result in child sexual abuse/exploitation, e.g.

- ◆ family sexual abuse can drive the child victim out of the home and into the web of commercial sexual exploitation;
- ◆ domestic child labour may be interrelated with child sexual abuse/exploitation;
- ◆ drug abuse and alcohol abuse , including among parents, may lead to violence which drives children into situations of abuse and exploitation.

12. Effective coordination and cooperation among and between government agencies and civil societies, including NGOs, are still lacking in many countries. In some countries, there is a governmental mistrust of NGOs, while the standing of NGOs to intervene on behalf of the child victim in court cases is not yet recognised in all countries.
13. Resources are not adequately allocated or available for child assistance and protection.
14. The recovery and reintegration process of the child victim is deficient in many settings. While counselling and psychological interventions are essential, they are not accessible or available in many cases, especially in many developing countries.
15. Data and information concerning the real situation are often lacking. There may also be a conflict between government statistics and non-governmental data.
16. The monitoring process is weak on many fronts, with inadequate evaluation of how laws, policies, programmes and procedures impact themselves on the child victim.

### **III. The INTERNET Challenge**

17. The advent of the INTERNET can bring many benefits, such as access to information to enrich the educational process. It can be an important instrument for child protection, and a key challenge is to use it constructively to promote child rights. The technology which is at the heart of the INTERNET is essentially neutral; it is the human imagination and action which can use it positively or otherwise to affect society, including children.
18. The negative side of the INTERNET is seen in the increasing flow of some forms of information, such as adult child pornography, which may harm children as end users, on the one hand. On the other hand, it may be manipulated to help create and transfer child pornography, i.e. the use/abuse of children as objects of pornography. The former situation is generally known as 'harmful content', while the latter is known as 'illegal content'. Child pornography is simultaneously both 'harmful content' and 'illegal content'. While there may be a debate concerning whether adult pornography should be prohibited or not at the national level as 'harmful content', in international law and many legal systems child pornography is now illegal as it is considered to be 'illegal content'.
19. Questions arise concerning not only the responsibility of the producer of such child pornography, but also the intermediaries who help to provide access to such pornography, particularly the INTERNET Service Providers, and the end users. Likewise, parents have a key role in preventing the harmful content from reaching the children, as well as to prevent children from being abused/exploited as part of child pornography.
20. Various approaches currently being adopted at the national level in many countries include the following :

- targeted regulation to prohibit child pornography, including that on the INTERNET, and covering not only its production and distribution but also its possession;
- self-regulation whereby the computer industry sets up its own mechanisms and standards to encourage members of the industry to abide by child rights and to encourage ratings and filtering systems to help certify the type of information available and enable parents and others to block the undesirable information which may otherwise be available to children;
- co-regulation involving joint action by government agencies, the computer industry and NGOs to monitor against child pornography on the INTERNET and providing mechanisms ,such as hotlines, to receive complaints from the public with the possibility of cross-referring to law enforcement agencies for further action.

21. However, several countries are faced with the following obstacles:

- lack of a law against child pornography;
- lack of a law to prohibit child pornography on the INTERNET;
- lack of a law to cover the possession of child pornography, even though there may exist a prohibition against its production and distribution;
- lack of a law to criminalise pseudo-child pornography, such as morphing.

## **RECOMMENDATIONS**

### **A) CHILD-FRIENDLY LEGAL SYSTEM/PROCEDURES**

1. A regional international court of child rights, with child-friendly procedures, is needed to enhance child protection.
2. At national and local levels, special courts, judges and procedures – child-friendly and gender-sensitive - to deal with situations of child abuse/exploitation are recommended. Judges and other law enforcers, including the police and prosecutors, at all levels need to be trained and sensitized to promote and respect child rights. A pool of trainers/educators has to be developed.
3. The guiding instrument for action to assist and protect children is the Convention on the Rights of the Child. This is complemented by the Declaration and Agenda for Action of the 1996 World Congress against Commercial Sexual Exploitation of Children (“The Stockholm Declaration and Agenda for Action”). A key principle is the best interests of the child. Legislative and related improvements may comprise the following:
  - raise the age for protection of the child from sexual exploitation ( child prostitution, child pornography and child sexual trafficking) ; the preferred age

for protecting the child absolutely from sexual exploitation, irrespective of sexual consent, is under the age of 18

- elevate the profile of child rights in the political agenda and set a higher priority for child protection, while inviting all politicians and political parties to have a policy on child protection
  - implement effectively laws and policies on child protection
  - introduce extraterritorial laws to cover the misdeeds of one's nationals and residents when committed against children in other countries
  - promote effective law enforcement in both the destination countries and the countries of origin of child sex abusers/exploiters
  - recognise the role of NGOs to intervene on behalf of the child victim
  - oblige professionals and others who come into contact with information on child abuse/exploitation to report it to the authorities
  - establish registers of convicted paedophiles so as to facilitate tracing of their movements
  - provide more incentives for quality law enforcement
  - establish specialised police units on child protection with trained personnel, including women police officers
  - suppress corruption.
4. The quest for child-friendly procedures is based upon the need to avoid retraumatisation of the child victims/witnesses via the judicial or other processes , especially in the pre-trial and trial stages. Such procedures could include the following:
- inform child victims/witnesses of their role in regard to the court proceedings
  - allow their views to be heard and respected
  - provide proper assistance, including legal aid and assistance, and the availability of a lawyer to help them throughout the proceedings
  - minimise inconvenience to them and respect their privacy
  - reduce delays in the proceedings
  - eliminate aggressive questioning or cross examination of child victims
  - provide for trials in camera
  - protect the identity of the child victim
  - prepare the child victim for the judicial process and avoid rushing to prosecute alleged abusers if the child victim is not ready to go to court
  - ensure early medical examination of the child and avoid multiple reexaminations
  - record the child's testimony as early as possible after the abusive incident, with other witnesses at hand
  - provide adequate translations/interpretations and translators/interpreters who are sensitive to the child's needs
  - keep the child in a safe environment
  - provide for videotaping of child testimonies and video-link in court to prevent confrontation between the child and the alleged abuser.

5. The special needs of the child victims/witnesses should be catered to; these include the following:
  - expedite the hearing of cases before the court
  - enable them to familiarise themselves with the court surroundings
  - inform them of the different roles of the key persons at court, such the judge, the defence lawyer, the prosecutor etc.
  - inform the court of their special/individual needs
  - help them to be comfortable in the proceedings
  - encourage the questioning to be short and clear so as not to confuse them.

## **B) CHILD PROTECTION VIA THE INTERNET**

6. Countries should be called upon to provide a legal framework to protect children from sexual abuse/exploitation via the INTERNET as follows:
  - enact/reinforce legislation against child pornography
  - ensure that such legislation covers not only the production and distribution of child pornography but also its possession
  - extend the scope of such law to encompass the INTERNET
  - provide against pseudo-child pornography
  - implement well the laws concerned.
7. The response of the computer industry, especially the INTERNET Service Providers, against child pornography should be promoted. This may entail self-regulation through a Code of Ethics, as well as a mechanism to receive complaints and cross-referral to the law enforcement agencies.
8. Children and parents should be made more aware of not only the benefits of the INTERNET as a tool of education and communication but also the underlying threats. This entails the following actions:
  - more education for parents and children to be vigilant against harmful and/or illegal content
  - more use of ratings and filtering systems to block such content.
9. Software to block and erase child pornography on the INTERNET should be developed.

## **C) INTERVENTION AND COOPERATION**

10. Networking and cooperation between government agencies and NGOs should be fostered. This should be enhanced by community mobilisation to involve the business sector, including the computer and tourism industries, the media, local communities, leaders, parents and children as a vigilant force against child sexual abuse/exploitation. A directory of NGOs working on child protection should be identified and/or compiled for broad dissemination.
11. Multidisciplinary teams comprising lawyers, doctors, social workers, psychiatrists/counsellors, etc. should be formed to provide integrated interventions to help the child victim. These need to be coupled with more accessible services, including the following:
  - toll-free hotlines to receive complaints
  - billboards giving addresses of help for victims
  - television/radio spots and mobile facilities reaching out to child victims
  - therapy centres to assist victims
  - pool of experts in forensic medicine to help with cases
  - units to assist in the collection of evidence, including DNA fingerprints.
12. Resource mobilisation and allocation should be maximised to reduce duplication; there can be more pooling of information, personnel, budgets and other resources for the best interests of the child.
13. Greater dissemination of child rights and related laws, policies etc. is required. This should go hand in hand with circulation of information, training, awareness raising, sensitization and education of target groups, such as law enforcers, to motivate them to protect children and of the community at large as child protectors. The issue of education about sexuality in a culturally sensitive manner also has to be tackled effectively.
14. Local, national, regional and international cooperation should be enhanced to tackle the phenomenon of child sexual abuse/exploitation. This may be formal (e.g. by treaty), informal (e.g. by personal contacts) and/or mixed and may comprise the following:
  - a regional treaty/convention against the trafficking in children
  - extradition treaties
  - mutual cooperation agreements to ascertain the evidence to assist prosecutions
  - memorandum of understanding between different countries to promote training on child protection, information exchange and development assistance
  - stationing of police liaison officers in different countries
  - joint police/immigration information sharing and action in cooperation with INTERPOL and related agencies
  - community participation in the detection, investigation and prosecution of cases, as well to ensure the recovery and reintegration of child victims in a child sensitive manner.

15. The physical and psychological damage incurred by the child victim needs to be dealt with more effectively. This may imply the availability of mandatory counselling and other psychological help.
16. Legal aid and assistance should be made more accessible to the child victim.
17. All interventions affecting child victims must be made more child- and gender- sensitive, bearing in mind the particular plight of the girl child.
18. The “best practices” concerning interventions to help children should be collected and disseminated to improve performance.
19. Victim protection programmes and programmes to protect child rights defenders from harassment should be enhanced.
20. Monitoring of laws, policies, programmes and personnel dealing with child protection needs to be promoted so as to assess their impact on children and improve their capacity.
21. Data and information concerning child sexual abuse/exploitation should be made more systematic and transparent, as they will have direct impact on the types of interventions needed to help children. Regional and national data banks should be established to collect experiences, laws, policies, court judgements etc. concerning action against child sexual abuse exploitation.
22. Activities/programmes to assist and protect children should be assessed from the angle of sustainability to prevent the problems leading to abuse/exploitation, to protect the children affected ,and to promote their recovery and reintegration, including follow-up of cases, as well as their participation in enhancing child rights.
23. Child and youth participation should be maximised, and their networks should be supported as part of a civil society force against child sexual exploitation.
24. The International Bureau for Childrens Rights is invited to take the following actions effectively:
  - compile urgently the “best practices” concerning child-friendly systems and procedures with a view to broad dissemination of the findings
  - request governments, the computer industry, NGOs and other concerned actors to provide information on the use of the INTERNET, especially the current situation concerning child pornography
  - request governments, the computer industry, NGOs and other concerned actors to send updates of legislation concerning child pornography, including criminalisation of the possession of child pornography
  - collect and disseminate information on extraterritorial laws and contact points for follow-up of cases

- support training programmes for law enforcers and community watchdogs on investigation techniques against child sexual exploitation, including in regard to the INTERNET.

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(Drafted by Prof. Vitit Muntarhorn,  
Secretary of the International Tribunal for Children's Rights (Third Hearings),  
1999.)

## **PROGRAMME**

### **Tuesday 09-02-99**

- 19:00 – 20:30
- Official Reception
  - Presentation by Harendra de Silva, Chairman of the Child Protection Authority, Government of Sri Lanka
  - Presentation by Judge Andrée Ruffo, President of the International Bureau for Children's Rights
  - Address by the Minister of Justice for Sri Lanka, Prof. G.L. Peiris

### **Wednesday 10-02-99**

08:30 – 09:30 *Registration*

#### **09:30 – 12:00 *Morning Session***

- 09:30 – 09:45
- Official Opening Statement by the President of the Tribunal, Judge Shiranee Tilakawardane
- 09:45 – 10:45
- Keynote address by Harendra de Silva, Chairman, Child Protection Authority, Government of Sri Lanka

10:45 – 11:00 *Coffee-Break*

11:00 – 11:30 ➤ Questions by Members of the Tribunal

11:30 – 11:45 ➤ Interventions by participants

12:00 – 13:30 *Lunch* (Guest Speaker: Andrée Ruffo, President, International Bureau for Children's Rights)

#### **13:30 – 16:00 *Afternoon Session***

- Judicial co-operation and training in matters of child sexual exploitation  
International co-operation in matters of child sexual exploitation
- 13:30 – 14:15 ➤ Presentation by Shay Cullen, President, Preda Foundation, Philippines
- 14:15 – 15:00 ➤ Presentation by Sergio Cruz, Children's Rights Lawyer, Philippines
- 15:00 – 15:15 *Coffee-Break*
- 15:15 – 15:45 ➤ Questions by Members of the Tribunal
- 15:45 – 16:00 ➤ Interventions by participants

### **Thursday 11-02-99**

#### **09:30 – 12:00 *Morning Session***

- Judicial co-operation and training in matters of child sexual exploitation (continued)  
Judicial co-operation at the international level
- 09:30 – 10:15 ➤ Presentation by Jack Arthey, Director, Christian Aid, representing ECPAT-UK
- 10:15 – 11:00 ➤ Presentation by Lourdes Balanon, Director of Social Welfare and Development, Philippines
- 11:00 – 11:15 *Coffee-Break*
- 11:15 – 11:45 ➤ Questions by Members of the Tribunal
- 11:45 – 12:00 ➤ Interventions by participants
- 12:00 – 13:30 *Lunch* (Guest speaker: Ravindra Fernando, Centre for the Study of Human Rights, Faculty of Law, University of Colombo)

- 13:30 – 16:00**      **Afternoon Session**
- The protection of child victims through child-friendly procedures  
Extraterritorial prosecution of child sexual exploitation and child-friendly procedures
- 13:30 – 14:15      ➤ Presentation by Roger Walker, World Vision, Australia
- 14:15 – 15:00      ➤ Presentation by Naly Pilorge, Vice director, LICADHO, Human Rights in Cambodia and by Khou Akha, Investigation Program Coordinator, Cambodian Center for Protection of the Children’s Rights in Cambodia, Cambodia
- 15:00 – 15:15      *Coffee-Break*
- 15:15 – 15:45      ➤ Questions by Members of the Tribunal
- 15:45 – 16:00      ➤ Interventions by participants

**Friday 12-02-99**

- 09:30 – 12:00**      **Morning Session**
- The protection of child victims through child-friendly procedures (continued)  
New and innovative ways to insure that children participating in the criminal judicial process are protected from further harm and that their special needs are met
- 09:30 – 10:15      ➤ Presentation by Jean-François Noël, International Legal Consultant, Canada
- 10:15 – 11:00      ➤ Presentation of “A Case for Balance”, video produced by the National Society for the Prevention of Cruelty to Children (NSPCC), United Kingdom
- 11:00 – 11:15      *Coffee-Break*
- 11:15 – 11:45      ➤ Questions by Members of the Tribunal
- 11:45 – 12:00      ➤ Interventions by participants
- 12:00 – 13:30      *Lunch* (Guest speaker: Colin Glennie, Director, UNICEF-Sri Lanka)

- 13:30 – 16:00**      **Afternoon Session**
- Sexual exploitation of children and the INTERNET  
The struggle against sexual exploitation on the INTERNET and the its use to prevent and denounce child sexual exploitation, and to promote the rights of the child
- 13:30 – 14:15      ➤ Presentation by Pierre Dionne, Director General, International Bureau for Children’s Rights
- 14:15 – 15:00      ➤ Presentation by Markus Aksland, Redd Barna - Sri Lanka
- 15:00 – 15:15      *Coffee-Break*
- 15:15 – 16:00      ➤ Presentation by Ann Birch, Media Specialist, Casa Alianza, Central America and Ana Salvado, Documentation Director, Casa Alianza, Central America
- 16:00 – 16:30      ➤ Questions by Members of the Tribunal
- 16:30 – 16:45      ➤ Interventions by participants

**Saturday 13-02-99**

- 09:30 – 12:00**      **Morning Session**
- 09:30 – 11:00      • Round-table on international co-operation against sexual exploitation of children  
Panel members: Ms. Aneeta Kulasegaran, Malaysian Council for Child Welfare  
Ms. Vandhna Narayan, Fiji Women’s Crisis Centre  
Mr. Karn Sermchaiwong, Child Rights ASIANET
- 11:00 – 11:15      *Coffee-Break*
- 11:15 – 11:45      • Closing Presentation by the President of the Tribunal, Judge Shiranee Tilakawardane
- 12:00 – 14:00      *Lunch*
- 14:00 – 17:00      • Visit to the Sarvodaya Shramadana Movement of Sri Lanka  
Presentation by A.T. Ariyaratne, President of Sarvodaya  
Visit of Sarvodaya’s field services

## **Appendix 2: Profile of the Members of the Tribunal**

Judge Shiranee Tilakawardane (President of the Tribunal)  
Sri Lanka Court of Appeal,  
Colombo, Sri Lanka

Judge Josiane Bigot  
Tribunal de Grande Instance  
Strasbourg, France

Judge Roch Lalande  
Ontario Provincial Court, retired  
Canada

The tribunal was assisted by the Secretary of the International Tribunal for Children's Rights (Third Hearings):

Professor Vitit Muntarbhorn  
Faculty of Law, Chulalongkorn University  
Bangkok, Thailand