

BEYOND BORDERS:
SEX WITH CHILDREN - IMPLEMENTING
EXTRA-TERRITORIAL LEGISLATION FOR
SINGAPOREANS

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An AWARE Position Paper
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Foreword from President of AWARE, Ms Tan Joo Hymn

Trafficking of human beings has reached epidemic proportions and has over-taken drug trafficking in terms of monetary gains made by traffickers. Human trafficking is modern-day slavery by a fancier name. The United Nations has commented on the lack of systematic research and reliable data, resulting in inadequate analyses and counter-measures. While all persons can be trafficked into sweatshops and bonded labour, women and girl children are also trafficked into prostitution in ever larger numbers, with its attendant risks of contracting sexually transmitted infections and HIV/AIDS. AWARE is therefore very pleased to be able to contribute to the body of research with this report. Much more research is still required on the trafficking of women, and it is becoming hard to ignore the large numbers of foreign and young faces in our red light districts. It is hoped that this report becomes the catalyst for further action.

Research for this report started over two years ago through the hard work and dedication of the Co-ordinator of the trafficking sub-committee and then President of AWARE Ms Braema Mathi and our long-serving volunteer-lawyers, Ms Halijah Mohamad and Ms Azmeen Moiz. I have the pleasure of writing the foreword for this report but the credit goes to the AWARE team and all the volunteers who have helped with different aspects of this task. We thank them all and take great pleasure to acknowledge them in our report.

This report adds to the many other reports and position papers AWARE has produced over the last twenty-one years. In true AWARE tradition, this report has been painstakingly researched and written up to advocate for much needed changes in order to protect the vulnerable. I'm sure we would all object vociferously if foreigners were to come to our shores to exploit our teenaged girls. We should then also not stand by in silence while increasing numbers of Singaporeans go to our neighbouring countries to have sex with underaged girls.

Thank you.

Preface

This report is aimed at giving you a quick insight into the legal intricacies in dealing with men or women who have sex with minors beyond our borders. We do know that enforcement of these laws is highly dependent on the level of cooperation between government agencies locally as well as transnationally. We also do know that standardization of investigations and prosecutions across national boundaries will remain a challenge in cases of sexual offences with minors outside Singapore. We do know that the costs can be huge for small outcomes. We do know that today South-East Asian children and women are popular and in demand by those who seek them for sexual gratification as paid, poorly paid and unpaid sex workers.

What we do not know is the exact number of Singaporeans who are directly paying children and women for sex. Nor do we know the number of Singaporeans who are - unwittingly or otherwise - having sex with minors in the region. We also do not know how many among these men or women are predatory - targeting just children for sex. We do not know the extent of abuse inflicted on the children by those who have sex with them. But we do know that Singaporeans are sexually active in the region and some do target minors. And we also know that many among us could just be standing by, just watching and shaking our heads in despair that these things are happening around us.

This report is an effort to get us all engaged and to offer possible solutions while acknowledging that extra-territorial legislation is a challenge. The report also makes it very clear that we have no choice but to ACT to curb sex tourism and to prevent children and women from being trafficked into the trade, a business that has over-taken the drug trafficking trade. It is imperative to have legislation that will reach out and bring home our Singaporeans who abuse children overseas and have them tried under our system.

This committee has remained motivated to get this job done and today, we take pride in presenting this report to you. We are grateful for the passion and dedication of our two lawyer-volunteers – Ms Halijah Mohamed and Ms Azmeen Moiz – who sacrificed much

of their personal time to complete the research and write this report. Through this effort we have also found a friend in the Pro-Bono Society of the Law Faculty at the National University of Singapore. The students led by Joseph Wong and June Lim and guided by Assoc Prof Lim Lei Theng, also added to the research. Ms Mary Katherine Burke, an intern at AWARE from Rutgers University, USA, and Ms Delia Paul, a volunteer with Transient Workers Count Too, also made valuable contributions to this project. We thank the National Committee of UNIFEM Singapore for their research support. The sub-committee also expresses its thanks to Ms Tan Joo Hymn, the Executive Committee and to the Secretariat for their support.

This has been one long haul, considering the various projects that many of us already handle as volunteers. I hope this report will inspire fruitful discussions. And, more importantly, we hope the legislation will be implemented as soon as possible and that more of amongst us will be part of the force to protect children and women who are trafficked into the sex trade.

Thank you.

Braema Mathi

Coordinator, Trafficking of Children

September 2006

Executive Summary

- Sex with minors in the region is easily accessible for many Singaporeans. Sex tourism is a reality in some places. Budget travel packages has opened travel to a whole lot of people. It is estimated that more than one million children are working in brothels in Asia.
- Extra-territorial Legislation (ETL) is one option to curb sex tourism and act as a deterrent. It also places a greater sense of responsibility on individuals to become more careful in the age specifics of the sex workers.
- ETL means there can be a knock-on effect on local laws governing age limits for consensual sex, sexual relationships between partners of the same sex, and children for commercial sexual exploitation.
- ETL is already applicable in a co-operative model in other areas such as Computer Misuse Act, Misuse of Drugs Act, Prevention of Corruption Act
- There are countries that have implemented ETL successfully. These include Germany, New Zealand, Australia, USA, Thailand, Cambodia
- ETL gives scope for up scaling on government's positions vis-à-vis Conventions on the Rights of the Child; Stockholm Declaration; Yokohama Global Commitment; ILO.
- Challenges with ETL enforcement are real as they deal with overcoming corruption to enforce laws, maintaining good co-operative transnational models, harmonizing on legal age for consent, gathering evidence, and verifying age of child.
- Such co-operative models along ETL principles already exist. Examples are the Mutual Assistance in Criminal Matters Act or the Mutual Legal Assistance Treaties

- ETL is being part of being a good ASEAN neighbour
- ETL means that Singapore cares about the children in the world and is a global player.

Recommendations

- To Implement Extra-Territorial Legislation to protect children in the region/world against sexual predators and those who run businesses such as brothels or massage parlours with children offering themselves for sex to other clients.
- To create a co-operative model either bilaterally or multi-laterally or through the Workplan following the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.
- To incentivise NATAS to promote the World Tourism Organisation guidelines and to structure good practices in the travel industry by this code of conduct for the protection of children from sexual exploitation
- To promote the ASEAN Travellers Code on all modes of transport in and out of Singapore, including the national carrier of Singapore
- To design a zero-tolerance for children being sexually exploited as an ASEAN Campaign and so promote co-operation regionally and for materials to be carried on ferries, planes, trains and at all border checkpoints.
- To develop a register of both sexual offenders and businessmen who exploit children for clients
- To carry out a Name and Shame Campaign with media
- To launch in Singapore a code against sexual exploitation of children as a CSR message for business travelers
- To be ready to support systems for children in other countries who have been traumatized by experiences involving Singapore predators

- To be part of an effort to rehabilitate children who have been sexually exploited
- To introduce gender sensitization into the school curriculum
- To set up an ASEAN network of police, immigration and foreign affairs officers to monitor vulnerable areas.
- To invest in research in this area for policy impact

INTRODUCTION

CHILD SEX TOURISM AND SINGAPOREANS: IMPLEMENTING EXTRA-TERRITORIAL LEGISLATION

AWARE hails the government for its intention to amend local laws to extend extra-territorial jurisdiction over those from Singapore who sexually exploit minors overseas. Extra-territorial legislation is a necessary first step in a whole suite of actions that are needed to prevent Singaporeans from having sex overseas with children – and to penalize those who do.

This report is, therefore, intended to:

- a. review existing legislation in Singapore
- b. review extra-territorial legislative approaches adopted by other countries
- c. review international conventions in the issue of extra-territorial jurisdiction
- d. review extra-territorial approaches Singapore has made in other legislation
- e. analyse enforcement difficulties
- f. recommend enforcement measures
- g. analyse features that need to be considered in model legislation.

Specifically, it is recommended that the government consults with industry bodies, including those in the outbound tourism industry, and community groups to develop a series of measures that will promote not only meaningful legislation but also laws which can be effectively enforced. It is further hoped that the new legislation will also focus on organizers of sex tours in addition to the offenders themselves.

What is Child Sex Tourism?

Definition

Definitions vary. A commonly accepted definition amongst NGOs and the tourism industry is "the exploitation of children and their communities, by persons who travel from their own country to another, usually less developed, to engage in sexual acts with minors."¹

Predators, the Internet and Tour Agencies

Predators who have sex with minors may range from pedophiles traveling specifically to exploit children to those who believe in a virgin will cure their ill health. Yet others are unaware of the child's true age. Anonymity, availability of children and being away from the moral and social constraints that normally govern their behavior can lead to abusive conduct in another country. They often justify their behavior by claiming that it is culturally acceptable in that country, that they are helping the child by providing some money. None of their excuses changes the fact that child sex tourists are often committing a criminal act under the laws of the country they are in. Today's tourism brings well-off visitors in contact with others in great financial need. Sex tourists take advantage of this disparity to exploit the most vulnerable members of society.

The anonymity and availability of the Internet has facilitated the rise of the child sex tourism industry. The Internet provides a venue for child sex tourists to communicate with each other to review specific destinations and make recommendations for circumventing detection and for the procurement of children.² Additionally, sex tour travel agencies are known to advertise tours catering to child sex tourists. According to the John Hopkins University study, there are 100 websites promoting child sex tourism in

¹ "Code of Conduct for the protection of Children From Sexual Exploitation in Travel and Tourism." ECPAT International. P 6. Quoting "Child Wise Tourism." ECPAT Australia. P 3. Found at: http://www.thecode.org/dokument/images/downloads/code_summary_english_4.pdf

² United States Department of Justice. "Child Sex Tourism." Found at: <http://www.usdoj.gov/criminal/ceos/sextour.html>

Asia alone. Travel agents and website owners, it says, advertise child sex tours to hotspots in Thailand, Vietnam and the Philippines.³

³ Mattar, Mohamed. "A Regional Comparative Legal Analysis on Child Sex Tourism and Sex Trafficking." Presented at the Regional Summit, "Tackling Demand for Child Sex Tourism and Sex Trafficking in Southeast and East Asia." April 25-29, 2005. Singapore. P 26-27

CHAPTER ONE

THE BACKGROUND TO THE GROWTH OF CHILD SEX TOURISM IN SOUTH-EAST ASIA AND GOVERNMENT ACTIONS TO ADDRESS IT

UNICEF estimates that there are over one million children working in prostitution in Asia.⁴ In South-east Asia, they may work unseen in brothels or operate casually in public places, seeking clients around beaches, bars and restaurants.⁵ Numerous inter-governmental and non-governmental organizations have researched and monitored the commercial sex industry in South-east Asia and have identified particular countries that are host to the child sex tourism industry. These include: Thailand, Cambodia, the Philippines and Indonesia (particularly Batam Island, just 40 minutes away from Singapore by ferry). Some governments of destination countries have made efforts to protect children and prosecute foreigners who have sex with them. Yet it is questionable if these efforts are enough.

A. INDONESIA

1. Background

Batam Island, Indonesia developed a reputation as a centre for the sex industry in the mid-1990s. Hotel and resort developments since the early 1990s have drawn large numbers of Singaporean weekend tourists and day-trippers to the island for shopping, golf and other forms of recreation. The main town of Nagoya is the centre for entertainment in the form of restaurants, karaoke bars and brothels. A recent Straits Times article reported that Batam has an estimated 6,600 sex workers and that

⁴ UNICEF – UK. “Commercial Sexual Exploitation.” Found at: http://www.unicef.org.uk/campaigns/campaign_sub_pages.asp?page=5

⁵ “Hails Entry Into Force of Optional Protocol On The Sale Of Children, Child Prostitution and Child Pornography.” UNICEF. Press Centre. January 18, 2002. Found at: http://www.unicef.org/media/media_18845.html

Singaporeans make up 70 to 80 per cent of their clients.⁶ According to Gadis Arivia, founder of NGO Yayasan Jurnal Perempuan, Singaporeans have sex with girls as young as 14.⁷ Furthermore, an estimated 600 Singaporean sex tourists travel to Batam every weekend. This report recorded interviews with girls as young as 14 working in the sex trade.⁸

In addition, a study by the International Labor Organization (ILO) estimated that revenues from sex tourism in Indonesia ranged from US\$1.2 to 3.3 billion a year.⁹ In the same year, there were 150,000 registered prostitutes; this number is thought to be an underestimate of the true number of prostitutes, most of whom are unregistered. The Yogyakarta Free Children Society estimated that 30 per cent of all prostitutes were underage.¹⁰ If the national estimate holds true for Batam, there could be around 2,000 child prostitutes on Batam and if, as reported, 70 per cent of their customers are Singaporean, then Batam is a significant sex tourism destination for Singaporeans.

2. Criminalization Of Child Sex In Indonesia (The Children Protection Act)

In 2002, Indonesia adopted the Children Protection Act, providing for the protection of children from commercial sexual exploitation. As of July 2004, the government was also deliberating a bill to combat trafficking in women and children.¹¹ After UNICEF established a case of tsunami-related child trafficking from Aceh in early 2005, the Indonesian government took the emergency measure of prohibiting travel by children out of the region, unless in the company of a parent.¹²

⁶ Chee, F. "It's Not All About Sex, Baby." The Straits Times. January 10, 2006
http://www.asianewsnet.net/level3_template4.php?l3sec=5&news_id=50915, accessed on 16 January 2006

⁷ Tan, Theresa. "Moves to Curb Worrying Rise in Child Sex Tourism." The Straits Times, April 27, 2005.
 Found at: http://www.unifemsingapore.org.sg/Trafficking/clippings/ST_moves.pdf

⁸ Cheong, Y. "Get Rea! Poll Finds Strong Support For Prosecution Of Child Sex Tourists."
<http://www.channelnewsasia.com/stories/singaporelocalnews/view/187496/1/.html>, accessed on January 15, 2006

⁹ International Labor Organization. "Press Release: Sex Industry Assuming Massive Proportions In Southeast Asia." August 19, 1998. Found at: <http://www.ilo.org/public/english/bureau/inf/pr/1998/31.htm>

¹⁰ Coalition Against Trafficking In Women. "Factbook on Global Commercial Sexual Exploitation: Indonesia." Found at: <http://www.catwinternational.org/factbook/Indonesia.php>

¹¹ However, this bill has not yet been passed

¹² Mattar, Mohamed. "A Regional Comparative Legal Analysis on Child Sex Tourism and Sex Trafficking." Presented at the Regional Summit, "Tackling Demand for Child Sex Tourism and Sex Trafficking in Southeast and East Asia." April 25-29, 2005. Singapore. P 26-27

B. THAILAND

1. Background

Thailand's reputation as a centre for sex tourism dates from the days of the Vietnam War, when demand from American servicemen on "R&R" (rest and recreation) was linked with the rise of prostitution. The growth of tourism in the 1970s and 1980s continued to support the practice, including the involvement of minors. By the early 1990s, campaigns by civil society groups had gathered steam, calling for strong measures against the involvement of children in commercial sex work.

2. Criminalization Of Sex With Children In Thailand

The Thai government, in cooperation with NGOs, industry bodies and UN agencies, has brought in a raft of measures to curtail the practice, including prevention and recovery measures for children involved in the sex trade.¹³ In Thailand, pimping is illegal and the penalties are more severe when child victims are involved. The law does not criminalize prostitution but it is an offence for prostitutes to solicit customers in public. ECPAT reports that police crackdowns on the prostitution of children have resulted in the locations for child prostitution shifting from within brothels to informal venues. In a number of separate cases in 2004, Thai police arrested various foreigners, including some Singaporeans, for human trafficking.

Interestingly, Thailand claims universal extra-territorial jurisdiction for all subjects for the majority of offences involving the sexual exploitation of children.¹⁴

¹³ ECPAT International. Online Database: Thailand. Found at: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/countries.asp?arrCountryID=173&CountryProfile=&CSEC=Prostitution,trafficking&Implement=Coordination_cooperation,Prevention,Protection,Recovery&Nationalplans=&orgWorkCSEC=&DisplayBy=optDisplayCountry

¹⁴ ECPAT International. "Database: Thailand." Found at: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/countries.asp?arrCountryID=173&CountryProfile=&CSEC=Overview,Prostitution,Pornography,trafficking&Implement=Prevention,Protection,Recovery&Nationalplans=&orgWorkCSEC=&DisplayBy=optDisplayCountry

The prosecution of Singaporean Darwis Rianto Lim in Thailand in 2004 was a well-publicized example of Singaporean involvement in the sex industry in Thailand.¹⁵ The 31-year-old, who taught at Singapore's Temasek Polytechnic, is now on the run after being arrested by undercover police officers from Thailand's Central Investigation Bureau (CIB) for picking up and paying a 16-year-old boy to have sex with him. Lim had allegedly posted notices on the Internet offering US\$200 for sex with two boys, one aged 12 and the other, 16. Lim was due to face charges in August 2005 in a Bangkok Court but did not turn up. He was out on 300,000 baht bail and still had his passport, after having skipped an earlier July 18 Court Date.¹⁶ It is fortunate that detection came about after tip-offs from US and Australian Interpol officers, who had monitored his attempts to buy sex with Thai boys over the Internet. Meanwhile, a US Customs and Enforcement agency officer posed as a pimp and met Lim with three boys, as ['as' reads strange here. 'and' may be better] Lim chose one. In many less developed countries, enforcement may never have taken place. Yet he escaped and is on the run. If he returns to Singapore and is not extradited back to Thailand to face court action, he can currently escape prosecution in Singapore. This makes Singapore a safe haven for pedophiles. However, when extra-territorial laws in Singapore are implemented, someone like him will be able to be prosecuted here.

C. CAMBODIA

1. Background

Cambodia's prostitution boom similarly dates from the UNTAC era in the early 1990s, when UN peacekeeping forces were based around the country for the 1993 UN-sponsored general election. Cambodia's shift to a market economy, and its openness to tourism and foreign investment from around this period provided a fertile climate for the open prostitution of minors in streetfront brothels and the growth of the infamous Svay Pak enclave on the fringe of Phnom Penh. Government crackdowns in the late 1990s drove some commercial sex work underground but Cambodia is still battling this problem. The

¹⁵ Tan, Theresa. "ASEAN Wages War On Child Sex Tourism." The Straits Times. April 28, 2005

¹⁶ Id

large presence of international humanitarian organizations in the country that are working closely with the government and local community groups, offers some hope that this problem can be eradicated.

2. Criminalization Of Child Sex In Cambodia

In Cambodia, pimping ("the promotion of prostitution") is illegal and the offence comes with much heavier penalties when it involves minors. Sex with minors under the age of 15 is an offence regardless of the prostitution context. Cambodia police have undertaken some large and very highly publicized raids of brothels, though the effectiveness of these actions and the treatment of some of the girls afterward have been called into question.

The Cambodian Ministry of Tourism has cooperated with UNICEF and a coalition of NGOs, including World Vision and Save The Children, to run awareness-raising programs on child-safe tourism for ministry officials, tourism staff, and guest-house and hotel owners.¹⁷

D. THE PHILIPPINES

In the Philippines, the government passed the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act¹⁸ (The Act). The Act creates criminal offences aimed at the sexual exploitation of children by various groups including patrons, procurers, advertisers, pimps and brothel owners. A section of the Act provides for the deportation and ban of convicted foreigners after they have served their sentences.

¹⁷ ECPAT International. "Database: Cambodia." Found at: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/countries.asp?arrCountryID=29&CountryProfile=&CSEC=Overview,Prostitution,Pornography,trafficking&Implement=Prevention,Protection,Recovery&Nationalplans=&orgWorkCSEC=&DisplayBy=optDisplayCountry

¹⁸ Republic Act No: 7610. Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992

CHAPTER TWO

THE RATIONALE FOR EXTRA-TERRITORIAL LAWS IN SINGAPORE AGAINST CHILD SEX TOURISM

The examples above expose the fact that Singaporeans, whether knowingly or not, are involved in the sexual exploitation of children overseas. They are clearly identified as the large majority of customers on Batam.

AWARE believes that the primary responsibility for protecting children from sex tourists, by having effective laws and enforcement, lies with the government of the destination country that represents the supply side of the equation. But it is also true that there are few prosecutions due largely to a weak or corrupted enforcement, particularly in the poorer destination countries.

However, the demand factor created by Singaporeans cannot be ignored. The cooperation of the governments of both countries, representing supply and demand, is necessary to break the cycle of sexual exploitation of children.

We are a developed nation in ASEAN and should be responsible for our own actions. Therefore, Singapore should act on the basis of its commitment to child protection and its obligations under international conventions (this is discussed further in this report).

Aside from addressing the morality of the situation, AWARE believes that there are sound reasons to enact extra-territorial legislation prohibiting child sex tourism:

- a. Many other countries have enacted extra-territorial legislation to prohibit child sex tourism. It is not a new phenomenon.

- b. Singapore has international treaty obligations to enact extra-territorial law to cover child sex offences;
- c. Singapore has already implemented other extra-territorial laws to address significant social problems, namely, the Misuse of Drugs Act, the Prevention of Corruption Act and the Computer Misuse Act. Singapore is not new to enacting extra-territorial laws when there is a need to deal with a social problem.

The announcement of the government of its intention to enact extra-territorial jurisdiction is highly welcome. Indeed, the public support for the proposed extra-territorial legislation has been tremendous. For the past two years in Singapore, there has been a high degree of public awareness on the need to impose extra-territorial jurisdiction. Magazines and newspaper features, conferences and T-shirts sales supported by celebrities have highlighted the issue. There is an ever-growing public realization that we are exporting our social pedophilic problems to other nations and that we are obliged to take the protection of these children to a much higher level. Online petitions have asked the Government to “make it a criminal offence to engage in sexual activity with anyone below 18 years of age.”¹⁹ Also, a recent Channel News Asia poll showed that 1 out of 5 pollsters knew of at least one Singaporean man who had sex with under-aged prostitutes abroad.²⁰

A. Current Laws In Singapore On Sexual Activities With Children

Until extra-territorial laws are added, it is not an offence in Singapore for our men to travel to another, usually less developed, country to engage in commercial sexual activities with children. Nor is it an offence for Singaporean businesses to facilitate or organize child sex tours to other countries. At present, they all escape prosecution in Singapore as there are no extra-territorial laws that target child sex tourism.

¹⁹ Yin. “Netting Child-Sex Tourists.”

²⁰ Cheong. “Get Real Poll Finds Strong Support For Prosecution Of Child Sex Tourists.”

We do, however, have a range of offences to protect Singaporean children and children in Singapore from sexual exploitation, though it is observed that they vary in nature as they stem from three different pieces of legislation. For instance, the age of consent and penalties in these offences are not uniform, and boys and girls are treated differently under the law. Again, none of these offences are extra-territorial in nature and apply strictly to sexual acts taking place in Singapore.

1. Age Of Consent And Sexual Exploitation Of Girls

Under Section 375(e) of our Penal Code (“PC”), the age of consent is 14 years. Anyone having sexual intercourse with a girl below this age commits mandatory rape. This offence is considered aggravated if there is no consent (child rape) and/or it results in injury to a girl under 14 years of age (Section 376 (2) Penal Code).

Section 140 (1)(i) Women’s Charter makes it an offence for anyone to have carnal connection with any girl below the age of 16 years except by way of marriage. Consent is irrelevant.²¹ Similarly, Section 140 (1) (g) and (h) of the Woman’s Charter make it an offence to detain a woman against her will to have carnal connection, or in a brothel.

2. Homosexual Exploitation

Section 377 of the Penal Code prohibits homosexual relationships, regardless of age and sex. There are also provisions against outrage of modesty and indecent assaults to any person (Section 354 and 354 A PC). It is aggravated when committed against children under 14 years of age. The penalty is 3 years’ minimum imprisonment.²² Also under 377A of our Penal Code, anyone who facilitates or commits gross indecency against male persons can be punished with imprisonment of up to 2 years.

3. Sexual Exploitation Of Boys And Girls

The Children’s and Young Persons Act (CYPA) criminalizes sexual exploitation of children (under 14 years) or young persons (14 to 16 years). Under Section 7, which is

²¹ Tay Kim Kuan v. P.P. (20001) 3 SLR Accused had sexual intercourse with girl 15 years old, legislative intent here is to offer blanket protection to girls under 16 who are deemed incapable of giving consent

²² Section 377A PC

gender-neutral, indecent and obscene acts against persons under 16 years of age are punishable. In addition, we have other offences, namely, any person who contributes to the delinquency of a child or young person commits an offence. Section 11 (1) also restricts the participation of children and young persons (i.e. collectively those under 16 years of age) in public entertainment that is immoral or prejudicial to the health and physical fitness of a child or young person.

4. Trafficking

There are also various offences relating to the trafficking in children or the use of children for prostitution, which are set out in sections 372, 373, 373 A of the Penal Code and Sections 140 (1)(a) to (f), 141, 142, 143, 145, 146, 148. Sections 12 to 18 of the CYPA also apply.²³

Extracts of the above statutes are set out in the attached Appendices A and B.

Therefore, it is evident that local laws (and enforcement) do exist to guard against sexual activities with Singaporean children and children in Singapore. Although sexual abuse of children does exist in Singapore, the assurance that law enforcement will be swift and punishments, heavy have a great deterrent effect. According to Mr Vivien Balakrishnan, over the past five years, the Ministry for Community Development, Youth and Sports investigated a yearly average of 188 complaints of alleged child abuse. The number of physical abuse case in Singapore fell between 2003 and 2004.²⁴

B. Analysis Of Other Extra-Territorial Legislation Enacted In Singapore

Extra-territorial laws are not unknown to Singapore. Parliament has seen sufficient justification to enact extra-territorial legislation in relation to the Misuse of Drugs,

²³ See CYPA, Chapter 38. Found at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_legdisp.pl?actno=2001-REVED-38&date=20030115&method=whole&doctitle

²⁴ Yin, Jasmine. "Action Against Abuse." Today. November 17, 2005. This suggests that legislation and follow-up action does have a deterrent effect on sexual crimes against children

Computer Crimes and the Prevention of Corruption. In moving forward with the implementation of extra-territorial jurisdiction for child sex tourism, it is useful to analyze and understand the boundaries of extra-territorial legislation that has been previously enacted in response to specific social situations.

1. Misuse of Drugs Act

The Misuse of Drugs Act (CAP 185) makes it an offence for a controlled drug to be smoked, administered to oneself or consumed outside as well as within Singapore.²⁵ It covers both Singapore citizens and Permanent Residents. Evidence is confined to urine samples testing conducted under section 31 of the Act. However, the accused bears the burden of proof.

In a debate on the Misuse of Drugs Amendment Bill, extensions to the jurisdiction of the Central Narcotics Bureau to cover addicts that have consumed the drug overseas were recommended because:

- a. There has been a noticeable trend of Singaporeans consuming drugs abroad.
- b. There are many more Singaporeans traveling to countries where drugs are available.

Also contained in the debate was the point that Singapore considered extra-territorial legislation necessary because drug trafficking is an international problem. Similar parallels to child sex tourism can be made when Singaporeans travel abroad to get their fix of child sexual prostitution.

2. Computer Misuse Act²⁶

Under the Computer Misuse Act, broad powers are given for a person committing an offence under this Act outside Singapore to be dealt with as if the offence has been committed in Singapore. Regardless of his nationality or citizenship, as long as the accused or the relevant evidence (computer, data or program) was in Singapore, the

²⁵ Section 8(b), 8 (A) (1) and (2)

²⁶ CAP 50A

accused can be caught under this act.²⁷ So if the accused committed the crime (e.g. hacking) overseas, the evidence (e.g. computer, program, data being hacked into) had to be found in Singapore and Section 15 further empowers a police officer to have access, inspect and check the operations of any computer or associated apparatus or material. The presence of evidence in Singapore aids enforcement of the law.

This Act targets 4 main areas, namely, unauthorized access, unauthorized modification, unauthorized use or interception of computer service and computer-assisted crime when a computer is used to commit further offences. The motivation is to address the inadequacies of the Penal Code. There was recognition of an “advancing tide of high technology crimes” even though computer crimes form a minority in Singapore. Similar computer crime legislation is also found in many other countries. The UK Computer Misuse Act 1990 influenced the drafting of Singapore’s version of computer crime legislation.

3. Prevention of Corruption Act²⁸

This Act addresses acts of corruption taking place outside and within Singapore and is actionable against citizens of Singapore only (Section 37). The target of the legislation is twofold. It applies the territoriality and nationality principle:

- a. Everyone in Singapore who commits corruption in Singapore
- b. Every Singapore citizen, regardless of where they commit the offence.

The extra-territorial dimension was added under the 1966 Amendment Bill.

Unfortunately, the Bill was passed without much debate.

Taw Cheng Kong v. PP²⁹ is the only case in Singapore to deal with the extra-territorial provision in the PCA. TCK was GIC’s (Government of Singapore Investment Corporation Pte Ltd) Regional Manager (Asia Pacific) based in Hong Kong. He accepted bribes from the MD of the Rockefellers’ Far East branch and directed GIC to

²⁷ Section 11(3)

²⁸ CAP 241

²⁹ 2 SLR 410, 1998

subscribe for certain unit trusts and shares of various other companies at the instigation of the said MD. The Court of Appeal construed that the objective of the Act was to prevent corruption. The Act was not directed merely at the civil service in Singapore, but all Singapore citizens globally. However, in view of international comity, the PCA is limited only to Singapore citizens when the offence is committed abroad.

It is clear then, that this is an extremely broad piece of legislation that can tackle acts of corruption by a Singaporean abroad which have no impact on Singapore. A citizen can fly to, for example, Indonesia and be involved in a corrupt practice and can be prosecuted in Singapore upon his return (especially if he is not prosecuted in the country where the corrupt act was committed due to weak enforcement, etc). It must have been anticipated that weak enforcement was endemic where the Act targets global corruption conducted by a Singapore citizen when overseas that has no impact on Singapore. However, the Court of Appeal held that the Parliament of a sovereign Singapore has full legislative powers to enact any law. Therefore, Parliament is capable of enacting legislation with extra-territorial effect. The one caveat appears to be that it is limited only to citizens in view of international comity.

C. OTHER COUNTRIES THAT HAVE EXTRA-TERRITORIAL LAWS ON CHILD SEX TOURISM

Thirty-two countries have extra-territorial criminal laws addressing child sexual exploitation, according to an ECPAT Study 2001.³⁰ According to Dr Vitit Muntarbhorn,³¹ the laws fall into three categories:

- a. Extra-territorial laws specifically targeting child sex tourism, based upon the premise that traveling abroad with the intent of abusing a child is punishable in

³⁰ Muntarbhorn, Vitit. "Conference Paper: Extra-Territorial Criminal Laws To Combat Trafficking in Humans." Graduate Institute of International Studies Geneva. P. 111. Found at: http://hei.unige.ch/conf/psio_230502/files/muntarbhorn.pdf

³¹ Id

home country: Germany (1993); Australia and France (1994), Ireland, UK and Belgium (1995), New Zealand (1995), Canada (1997), US (2003).

- b. Extra-territorial laws targeting child abuse: Algeria, Austria, Cyprus, Denmark Ethiopia, Finland, France, Germany, Iceland, Italy, Japan, Mexico, Morocco, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, New Zealand and Taiwan.
- c. Extra-territorial laws applying to all serious offences including offences against children: China, Laos and Thailand.³²

Dr Muntabhorn's report is attached as Appendix E.

This report focuses only on the first category of legislation specifically to do with child sex tourism laws. Different countries have different approaches to extra-territorial jurisdiction and it is instructive and rewarding to analyze key features of their legislation. Extracts of the relevant legislation are attached as Appendix D.

1. AUSTRALIA

1994 Crimes (Child Sex Tourism) Amendment Act³³

Features:

- a. The offender covers both citizens and residents and corporate entities (e.g. tour operators) that are incorporated in Australia
- b. The age of consent is 16
- c. The definition of sexual acts and exploitations are satisfactorily wide; and
- d. There is no double criminality requirement.

³² Id

³³ 105 of 1994

In 1994, Australia criminalized acts relating to child sex tourism in the Crimes (Child Sex Tourism) Amendment Act. This Act stands as a single piece of legislation addressing extra-territorial jurisdiction and, in our opinions, is especially instructive. The Act makes it an offence to:

- a. Engage in sexual intercourse with a child under 16, while outside Australia;³⁴
- b. Induce a child to engage in sexual intercourse with a third person outside Australia;³⁵
- c. Participate in sexual conduct such as indecency involving child under 16 while outside Australia;³⁶ and
- d. Act or omit to act, whether in Australia or not, with the intention to benefit from, or encourage, such an offence. Examples include advertising an offer to assist a person to commit such offences, or assisting a person to travel outside Australia in order to commit an offence. This means conspiracy charges may be brought against tourism organizers.³⁷

Furthermore, the Amendment Act permits the use of video link testimony if the witness is outside Australia. The Amendment Act prohibits the use of the child's prior sexual experience as evidence, and the Court has the discretion to determine which questions are appropriate.

The Australian Act does not have a double criminality requirement but has a double jeopardy requirement. Further, prosecutions have generally been successful where evidence was collected solely in Australia, without the need to refer to overseas or child witnesses. Where evidence was sought from overseas and witnesses had to be brought from overseas, convictions were less successful. Recently, the Australian authorities have 1,555 pedophiles on watch for fear that they will travel to tsunami-affected countries and trawl for victims.

³⁴ S 50BA

³⁵ S 50 BB

³⁶ S 50 BC

³⁷ S 50 DA and S 50 DB

2. CANADA

Features:

- a. Offenders citizens and permanent Residents
- b. Age of consent: 18
- c. Definition of offence: Offences related to child sex tourism such as child prostitution but also of child sexual exploitation offences, e.g. indecent acts, child pornography. Criminalizes traveling or conspiracy to travel with the purpose of sexual exploitation.
- d. No double criminality requirement
- e. Child friendly: The 1997 amendment provides special protection for young complainants who testify against their exploiters.³⁸

Amendments to the Canadian Criminal Code in 1997 and 1999 allow for the prosecution of citizens and permanent residents involved in the sexual exploitation of children, including acts committed abroad. The 1997 Criminal Code Amendments³⁹ permitted the prosecution of Canadian citizens or permanent residents who sexually abuse children, including engaging in the prostitution of children, while outside Canada. Notably, the 1997 Amendment makes various child sexual exploitation offences, including indecent acts/exposure, child pornography and incest applicable to extra-territorial legislation.

The 1999 Amendments⁴⁰ provide the police more effective tools to gather evidence against people who sexually exploit children, including police decoys and electronic surveillance for prostitution-related cases. Further child witnesses and witnesses outside Canada may provide in-court testimony via video or audio-link, or videotaped evidence.⁴¹

³⁸ See Section 715.1 Videotaped evidence and s 486 (2.1)

³⁹ Section 7 (4.1) Bill C-27

⁴⁰ Bill C-51

⁴¹ See Clause 113, LS-320E. Goetz, David. Law and Government Division. "Bill C-40: A New Extradition Act." Found at: <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/LS/c40-e.htm#2.%20Extraditable>

In 2004, Canada eliminated the requirement that the country where the offence was committed had to instigate criminate proceedings, thus enabling the Canadian government to institute criminal proceedings on its own.⁴² However, the Canadian Acts do not have a double criminality requirement. The defense can raise double jeopardy as a defense when acquitted or convicted.⁴³

Canadian law applies to both citizens and residents and makes it an offense to:

- a. Engage in sexual activity with a child under 18, in any of the sexual exploitation offences enumerated in s.7(4.1), whether or not for profit;⁴⁴ or
- b. To invite a minor to sexual touching;⁴⁵ sexual exploitation;⁴⁶ making, distributing, selling or possessing child pornography;⁴⁷ prostitution of a person under 18;⁴⁸ and the same activities if conducted over the Internet.⁴⁹

The Canadian government is constantly developing its extra-territorial protection for children, as exemplified by the recently passed Bill C-20 in 2005, which criminalizes “sexually exploitative” sexual relations between an adult and a minor between the age of 14 and 18:⁵⁰

“The age of consent is 18 years where the sexual activity involves exploitative activity, such as prostitution, pornography or where there is a relationship of trust, authority or dependency. For other sexual activity, the age of consent is 14 years.”⁵¹

⁴² The prosecutor must have the Attorney General’s consent to prosecute. See § 7 (4.3)

⁴³ Accused can raise defense of autrefois acquit, autrefois convict or pardon when Accused has been tried and acquitted, convicted or pardoned in another country in relation to the same activity

⁴⁴ The United Nations World Tourism Organization. “Canada, Legislation Against Child Sex Tourism.” Found at: http://www.world-tourism.org/protect_children/legislation_country/canada.htm

⁴⁵ See s.152

⁴⁶ See s.153

⁴⁷ See s.163.1(1)

⁴⁸ See s.212(4)

⁴⁹ Clauses 5(2) and (3) of C-15A amended s.163.1 to ensure that these criminal prohibitions extend to analogous conduct in an Internet context

⁵⁰ Canada’s Department of Justice. “Frequently Asked Question: Age of Consent to Sexual Activity.” Found at: <http://www.justice.gc.ca/en/dept/clp/faq.html>

⁵¹ Id

This closes the lacunae between the extra-territorial and domestic offense against adults having sexual relations with minors under 18. An exception exists domestically for minors engaging in sexual relations between the ages of 14 and 18.⁵² The previous age of consent between adults and minors left minors vulnerable to predatory adults, as demonstrated by the case of an American man who lured a 14-year-old boy to an Ottawa hotel room in March 2005.⁵³ In September 2005, the Canadian Parliament voted to raise the age of consent for domestic sex crimes from 14 to 16 years, but this amendment was not passed.⁵⁴

Additional reforms proposed by Bill C40, an act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, Immigration Act and Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other Acts in consequence, will also allow for the use of video and audio-link technology to gather evidence and provide testimony from witnesses outside Canada.

3. NEW ZEALAND

1995 Crimes Amendment Act⁵⁵

Features:

- a. The offender covers citizens and permanent residents and corporations
- b. Age of consent is 16 years.
- c. No double criminality requirement
- d. The definition of the offense is satisfactorily wide.

The Crimes Amendment Act 1995 was introduced in August 1995 in response to international concern about the growing sexual exploitation of children by foreigners in a number of countries.

⁵² Id

⁵³ Beyond Borders, Inc. "Canada's Abuser-Friendly Age of Consent." Found at: <http://www.beyondborders.org/Publications/Fact%20Sheet%20-%20Age%20of%20Consent%20in%20Canada.pdf>

⁵⁴ Canada's Department of Justice. "Frequently Asked Question: Age of Consent to Sexual Activity."

⁵⁵ Article 144A, 144B

The Act created a new extra-territorial offense, under section 144A of the Crimes Act 1961, which made it a crime to engage in any sexual conduct with children under 16 years of age that, if done in New Zealand, would be an offense.⁵⁶

The Act also created a second offense, under section 144C of the Crimes Act, which prohibits acts done in New Zealand in order to assist or encourage others to travel overseas for the purpose of having sex with children or to promote child sex tours. The provision covers such activities as booking tickets and reserving accommodation, providing transport to overseas destinations, and printing or publishing information to promote child sex tours. The offence is targeted at those who deliberately help others to travel overseas for the purpose of having sex with children.

There is no double criminality limitation and the New Zealand government may instigate criminal prosecution with the consent of the Attorney-General.

In 2005, this Act was amended through the Crimes Amendment Act (No 2) 2005. The amendment was made in response to calls for a review of the laws relating to sexual offences. S 144 A was also amended to comply with this major overhaul. “The Act created a new extra-territorial offence, under section 144A of the Crimes Act 1961, which made it a crime to engage in any sexual conduct with children that, if done in New Zealand, would be an offence.”⁵⁷

4. UNITED STATES OF AMERICA

Protect Act of 2003⁵⁸

Features:

- a. Age of consent is 18 years

⁵⁶ “Protecting Our Innocence: New Zealand’s Plan of Action Against the Commercial Sexual Exploitation of Children; Child Sex Tourism.” Found at: <http://www.justice.govt.nz/pubs/reports/2002/protect-innocence/chapter-3.html>

⁵⁷ Id

⁵⁸ Prosecuting Remedies and Tools Against the Exploitation of Children Today Act of 2003. 18 U.S.C. § 2423 (Supp. 2004)

- b. Definition of offence: wide. This is no requirement to prove act of sexual exploitation if the accused traveled abroad with the intent of having sex with minors
- c. Offenders: Individuals legally residing in US as well as US citizens, including international students, Green Card holders, trainees and other legitimate guests of US.
- d. Applies to corporate bodies and not just individuals - child sex tour operators and their co-conspirators.
- e. Anyone involved in furthering the illicit acts, e.g. a business that hosts a sex tourism website or advertises or facilitates the activity in other ways (not limited to just the actual sex exploiters and principals involved in organizing the illicit businesses).
- f. Maximum sentence is 30 years.
- g. No double criminality requirement

The Protect Act comprehensively strengthens US law enforcement's ability to prevent, investigate, prosecute and punish violent crimes committed against children within and outside the USA.⁵⁹ The Protect Act prohibits American citizens from traveling abroad to engage in sex with a person under the age of 18, regardless of the destination country's age of consent. The Protect Act does not require prosecutors to prove the actual act of sexual activity. The intention to travel abroad to have sex with minors is itself an offence.

The Bush Administration has been an ardent advocate of domestic anti-sexual exploitation legislation that has a broader international effect. In July 2004, President Bush stated:

"We will not tolerate American citizens abusing innocent children abroad. Sex tourism is an estimated billion-dollar-a-year business worldwide. No American should have part of

⁵⁹ Fraley, Amy. "Child Sex Tourism Legislation Under The Protect Act: Does It Really Protect?" St. John's University School of Law
Found at: <http://www.stjohns.edu/media/3/12ecf9fbc928453aab9730d4a278d697.pdf>

it. We're working with governments in South-east Asia to track down on pedophile sex tourism ... and many nations in that region have made substantial progress.⁶⁰”

Since the Protect Act was enacted, 14 US residents have been placed in federal custody on charges of child sex tourism.⁶¹ Further, individual states in the US have begun investigating and prosecuting sex tour operators. In 2005, the New York State Attorney-General brought criminal charges against Big Apple Oriental Tours for "promotion of prostitution".⁶²

5. GERMANY

Germany's domestic criminal laws have extra-territorial provisions allowing it to prosecute nationals for child sex offences committed abroad.⁶³ However, double criminality limits the application of extra-territoriality. Child sex tourism is punishable in Germany only if the act is punishable at the place of its commission, or if the place of its commission is subject to no criminal law enforcement. In addition, the Act applies to foreigners in Germany's jurisdiction who have not or cannot be extradited.

Section 7 of the Penal Code. Applicability to Acts Abroad in Other Cases:

(1) German criminal law shall apply to acts which were committed abroad against a German if the act is punishable at the place of its commission or the place of its commission is subject to no criminal law enforcement.

(2) German criminal law shall apply to other acts which were committed abroad if the act is punishable at the place of its commission or the place of its commission is subject to no criminal law enforcement and if the perpetrator:

a. was a German at the time of the act or became one after the act; or

⁶⁰ Mattar, Mohamed. "Child Sex Tourism: The Scope Of The Problem And The Appropriate Response." Shared Hope International and the World Against Trafficking Alliance. P 81

⁶¹ www.usinfo.state.gov/gi/archive/2005/Jul20-607872.html. [see if more cases]

⁶² Equality Now. "Women's Action Archives: 12.3." October 2005. Found at: http://www.equalitynow.org/english/actions/action_1203_en.html

⁶³ Section 7 of the Penal Code

- b. was a foreigner at the time of the act, was found to be in Germany and, although the Extradition Act would permit extradition for such an act, is not extradited, because a request for extradition is not made, is rejected, or the extradition is not practicable

German laws and regulations that can be used to prohibit or prevent the organization and advertising of sex tours and trips. Sec. 1 of the Unfair Competition Law and sec 119, 120 of the Public Order Act could potentially be applied together with other provisions in the German Penal Code.⁶⁴

6. UNITED KINGDOM

Sexual Offences Act 2003

Features:

- a. Age of consent: 16
- b. Prohibited acts. Extra-territoriality apply to a broad menu of sexual offences set out in Schedule 2, e.g. rape, sexual assault of a child under 13 and 16, statutory rape, etc.
- c. Double criminality applies.
- d. Offenders: Applies to nationals or residents of UK. Also includes any attempt, conspiracy or incitement to commit that offence and aiding, abetting, counseling or procuring the commission of the offense.
- e. Sexual Offenders Register. The rationale behind this is that it is preferable to track and help or counsel convicted offenders than to let them go underground and become more dangerous.

Section 72 Sexual Offences Act 2003 enables courts in the UK to prosecute UK nationals and residents who commit sexual offences against children abroad. This provision was formerly in the Sexual Offenders Act 1997 before it was repealed by and reenacted in the

⁶⁴ Sec. 111 and - in connection with sec.127 - sec. 176, 182, 180 Penal Code

Sexual Offences Act 2003. This section reenacts Part 2 of the Sex Offenders Act and updates the list of offences to which the provisions apply.⁶⁵

The Act criminalizes sexual misconduct of any UK citizen or resident for acts committed after 1997. The Act criminalizes the commission of sexual offenses as well as the attempt, conspiracy and encouragement of such sexual misconduct, and the aiding and abetting the commission of such offense. Persons convicted under these provisions must register with the Sexual Offenders Register. The rationale behind this is that it is preferable for convicted offenders to be tracked and helped or counseled rather than to allow them to go underground and become more dangerous.

Unfortunately, extra-territorial jurisdiction is subject to double criminality, as hereafter explained.

Section 72 also goes on to state that, subject to ss2, any act done by a person in a country or territory outside the UK which (a) constituted an offense under the law in force in that country, and (b) would constitute a sexual offense to which this section applies if it had been done in UK, constitutes that sex offense under the law of that part of the UK

(3) An act punishable under the law in force in any country or territory constitutes an offense under that law for the purposes of this section. However, it is described in that law.

(4) Double criminality condition is satisfied if defendant serves on prosecution a notice within 3 days before the hearing stating condition is not met, showing grounds, requiring prosecution to prove that it is met.

D. INTERNATIONAL CONVENTIONS TO ENACT EXTRA-TERRITORIAL LAWS PROHIBITING CHILD SEX TOURISM

A review of the prospective extra-territorial jurisdiction on child sex tourism will not be complete without analyzing Singapore's international obligations on this issue.

⁶⁵ See Appendix D

Singapore appears to have obligations under the Convention of the Rights of the Child (“CRC”) and the International Labour Organisation Convention 182 (“ILO 182”) to combat the commercial sexual exploitation of children and this extends to enacting extra-territorial legislation. Treaties below that Singapore has signed, adopted or ratified are contracts under international law. Those treaties that Singapore has not signed are addressed further in this report.

International Instruments	Singapore’s position
1989 Convention of the Rights of the Child (CRC)	Acceded to on October 5, 1995 Ratified on November 4, 1995
2002 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (“OP”)	Not signed
1996 Stockholm Declaration and Agenda for Action	Not signed
The Yokohama Global Commitment 2001	Not signed
International Labor Organization’s (ILO) Convention 182 “Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour”	Ratified on June 14, 2001
ILO Recommendation No.190 on Worst Forms of Child Labor	Adopted in 2000

1. CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Article 34 requires Singapore to:

“... take all appropriate national, bilateral and multilateral measures to prevent (a) the inducement of 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.”

Singapore has not made any reservation or preemptive declaration with regard to this provision of the CRC. Singapore has also not yet signed, acceded to or ratified the Optional Protocol to the Convention On the Rights of the Child On the Sale of children, Child Prostitution and Child Pornography (“OP”). The OP explicitly suggests that, with reference to “obtaining a child for child prostitution,” each State Party shall ensure that, as a minimum, it is fully covered under its criminal or penal law, whether such offences are committed domestically or transitionally.⁶⁶

Although Article 34 possibly obliges Singapore to legislate extra-territorially for child sex tourism, it is not clear if children outside the boundaries of Singapore are the beneficiaries of Singapore’s convention obligations for purposes of extra-territoriality.

However, fellow State CRC signatories Canada and Australia consider that, as parties to the CRC, there is a clear obligation to enact extra-territorial laws to protect children both within and outside their national boundaries. Both these countries have cited Article 34 of the CRC as sufficient basis for extra-territorial jurisdiction.

It is especially noteworthy that Australia and Canada enacted extra-territorial legislation before their involvement with the Optional Protocol.⁶⁷ Both the Australian and Canadian

⁶⁶ Id

⁶⁷ Australia signed the OP on December 18, 2001, but has not ratified the OP. Source: “Treaty Ratification and Reporting History Australia.” (May 20, 2005)

http://www.un.or.th/ohchr/countries/ratification_reporting/Australia-treaties%20and%20reporting.doc

Canada signed the OP on November 21, 2001 and ratified on September 14, 2005. UN 11.c. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child

governments have publicly stated the enactment of their extra-territorial legislation was part of their CRC obligations. Both countries enacted their legislation prior to ratifying the Optional Protocol to the Convention on the Rights of the Child on The Sale Of Children, Child Prostitution And Child Pornography.

2. INTERNATIONAL LABOR ORGANIZATION CONVENTIONS

Since ratifying the CRC in 1989, Singapore has continued its commitment to the protection of children's human rights through additional international instruments. Singapore ratified ILO Conventions 182⁶⁸ and 190⁶⁹ respectively, which aim to curb the worst forms of child labor, including slavery and prostitution. Article 3 of ILO Convention 182 defines child prostitution as one of the worst forms of child labor. Article 8 requires treaty members to take appropriate steps to assist one another in giving effect to the provisions of this convention through enhanced international cooperation and/or assistance including support for social and economic development and we would additionally argue that implicit in fulfilling treaty obligations is the introduction of extra-territorial laws.

Further Sections 11 (b) and 15 of ILO 190 set out measures that ratifying countries can adopt, including specific extra-territorial provisions.⁷⁰

pornography New York, 25 May 2000. Ratifications and Reservations. Found at: http://www.ohchr.org/english/countries/ratification/11_c.htm. The Honorable Lloyd Axworthy, the former Canadian Minister of Foreign Affairs, in his address to the 52nd Session of the United Nations Commission on Human Rights stated: "Although there is not yet any international legal agreement to deal specifically with child sex tourism, there exists and emerging international consensus that would permit states to deal effectively with this issue. The Convention on the Rights of the Child provides a sufficient basis for this extension of jurisdiction."

⁶⁸ Convention Concerning The Prohibition And Immediate Action For The Elimination Of The Worst Forms Of Child Labour" (ILO No. 182), 38 I.L.M. 1207 (1999), *entered into force* November 19, 2000.

⁶⁹ International Labor Organization. "Recommendation Concerning The Prohibition And Immediate Action For The Elimination Of The Worst Forms Of Child Labor Adopted By The Conference At Its Eighty-Seventh Session, Geneva, June 17, 1999." Found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm>

⁷⁰ Section 11. "Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by (a) gathering and exchanging information concerning criminal offences, including those involving

3. YOKOHAMA GLOBAL COMMITMENT 2001 AND STOCKHOLM DECLARATION AND AGENDA FOR ACTION 1996

The Stockholm World Congress Against the Commercial Sexual Exploitation of Children (CSEC) in August 1996 was the first high-level international forum on this issue.⁷¹ The meeting, at which 122 countries were represented, produced a Declaration and Agenda for Action, based on the UN Convention of the Rights of the Child.⁷² At the 2nd World Congress on CSEC in Yokohama in 2001, countries reported back on their commitments in the form of the Yokohama Global Commitment 2001.

Singapore was also not involved in both the 1996 Stockholm Declaration and Agenda for Action and the Yokohama Global Commitment 2001, both of which (Article 4(d) and article 2 respectively) prescribe extra-territorial jurisdiction. This has prompted the Committee of the Rights of the Child in response to Singapore's 2003 periodic report, to urge Singapore toward ratification.⁷³

The Singapore government has publicly stated that it fully supports the intentions of the 1996 Stockholm Declaration in protecting children and will examine its details carefully before deciding to formally adopt it. Dr Maliki Osman stated in Parliament during September 2004 that Singapore's obligations under the CRC support the principles in the

international networks; (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances; (c) registering perpetrators of such offences." Section 15: "Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following: (d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;" Found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm>

⁷¹ ECPAT International. "THE YOKOHAMA GLOBAL COMMITMENT 2001 (Final)." Found at: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/wc2/yokohama_outcome.doc

⁷² *Id.*

⁷³ The relevant text of the Stockholm and Yokohama Declarations are exhibited in the Appendix C

Stockholm declaration and that the government will look into whether it can commit itself to the level of specificity before formally ratifying the declaration.⁷⁴

With the government's announcement on implementing extra-territorial laws for child sex offences, perhaps it is timely and consistent to look into ratifying the OP, Yokohama and Stockholm Conventions. Extracts of the relevant provisions of these conventions are set out in Appendix C.

⁷⁴ Singapore Hansard. "Oral Answers Questions on 1996 Stockholm Declaration and Agenda for Action." Dr Amy Khor Lean Suan; Dr Amy Khor Lean Suan (Hong Kah); The Parliamentary Secretary to the Acting Minister for Community Development, Youth and Sports (Dr Mohamad Maliki Bin Osman. Found at: http://www.parliament.gov.sg/parlweb/get_highlighted_content.jsp?docID=16176&hlLevel=Terms&links=CONVENT,RIGHT,CHILD&hlWords=%20Convention%20on%20the%20Rights%20of%20the%20Child%20&hlTitle=&queryOption=1&ref=http://www.parliament.gov.sg:80/reports/public/hansard/title/20040902/20040902_S0005_T0001.html#1

CHAPTER THREE

OVERCOMING ENFORCEMENT DIFFICULTIES

The most challenging aspect of any extra-territorial legislation is the implementation and effective enforcement. Evidentiary and procedural difficulties are endemic in any type of extra-territorial legislation and this is evident from the small number of prosecutions (even in cases that do not involve sexual exploitation against children such as the MODA, PCA and CMA).

A. EVIDENCE GATHERING

The success of a case rests on the strength of its evidence. Much depends on where the evidence is available. An analysis of successful prosecutions in other countries suggests that prosecutions run more efficiently and with a positive outcome where the evidence is collected in the home country, in this case, Singapore without the need to obtain much evidence from overseas. This is illustrated in prosecutions in several countries of seasoned pedophiles who bring back photographic mementos of their exploits.

In Australia, at least two significant cases made it to trial as a result of a third party making a complaint to the police following the discovery of offensive material in Australia, usually photographs.⁷⁵ The defendant was successfully prosecuted on the basis of photos in his possession and his own subsequent admission. In Regina v Anthony Richard Carr⁷⁶, the defendant had taken a sexually explicit video of a child estimated to be 5 yrs old in the Philippines.

⁷⁵ Queen v. Jesse Spencer Pearce (Unreported decision, Queensland Court of Appeal, August 8, 1997)

⁷⁶ Unreported judgment of His Honor Judge Saunders, District Court of New South Wales, Criminal Jurisdiction, April 26, 1996

It is anticipated that forensic pathologists may well be needed to ascertain if the child in the pictures taken is under-aged and if the person in videos introduced as evidence is indeed the defendant.⁷⁷

Prosecutions entirely dependent on evidence from overseas is far more problematic and the following highlights some difficulties of transnational evidence gathering:

1. Difficulties in Obtaining Evidence From Overseas

Difficulties may include locating witnesses and the need to use interpreters during the preparations for the trial and the trial process. Also if the evidence is received pursuant to “letters rogatory” or Mutual Legal Assistance Treaties, discussed below, foreign law will still govern the standards of evidence gathering there.

For example, a witness may be permitted to testify according to his country’s standards for criminal proceedings. A Singaporean consulate officer may, in theory, be allowed by the host country to administer oath to witnesses before recording their testimonies abroad. Whilst Thailand permits such voluntary depositions for some consulates, according to Thai practice, its witnesses are allowed to refuse to take such an oath. Under such circumstances, Singaporean procedural safeguards when obtaining witness testimony may not be observed such that strict Singaporean statutory requirements may not be met.

1.1 Child Witnesses

- a.* The victims are an important factor in the investigation and prosecution. However, there are difficulties in taking testimony from child victims of sexual abuse and trauma that must be taken into account and accommodation made accordingly.

⁷⁷ Regina v. Lee, Perth District Court, May 28, 1999

- b. “It is well documented that child witnesses who have been sexually abused are likely to retract their allegations for a number of reasons, including a fear of retribution, intimidation and the desire for privacy. Similarly, child witnesses who have been sexually abused may give inconsistent accounts of the abuse. Again, the reasons for this are complex and varied and can include confusion or loss of memory.”⁷⁸

Singapore has many child-friendly provisions in place to protect the interest of child witnesses, which should be extended to foreign child witnesses whilst giving evidence here.

Under Section 364A of the CPC, Singaporean courts may permit witnesses in Singapore to present evidence vide live-video or TV link in any trial if the witness is less than 16 years of age or if it is under Section 354 –358 , 357- 377 PC, Part X Women’s Charter, and Sections 35 and 51 under the CYPA. This provision should be extended to cases where the child witnesses are from overseas. For example, Australian courts are empowered under the Crimes (Child Sex Tourism) Amendment Act 1994 to take evidence by video link and can even administer oaths and affirmations by video link.⁷⁹ This is to avoid confrontation.

Under Section 153 of the Women’s Charter, an order may be made for certain proceedings to be closed to the public and for a blanket ban on the name or address or particulars of the witness which may lead to identification. Amendments, if need be, must be geared toward treating child witness from abroad with sensitivity and integrity during court proceedings here.

Further, in 1998, we have put in place the Vulnerable Witness Support Program, to help children who are under 16 years who have to testify. Under the program, supported by

⁷⁸ David. Fiona. “No. 156 Child Sex Tourism.” Australian Institute of Criminology, Trends and Issues in Criminal Justice.” June 2000. P. 3

⁷⁹ Division 5, Section 50EA; 50EB; 50EC

prosecution agencies, a child witness or victim is assigned a volunteer from Singapore Children's Society for emotional support before and during the Court hearing.⁸⁰

Other countries have made similar accommodation for child witnesses. In Canada, reforms in the criminal law have recognized that children can be just as credible and reliable witnesses as adults; the special needs of child victims/witnesses have also been accommodated in the criminal justice system. Delays in getting a case to trial, the lack of family or institutional support, the age of the child and his or her lack of education may all conspire to undermine the quality of a child's evidence. The provision of a guardian ad litem for a child witness could ease the burden on the child and protect his or her interests.⁸¹

1.2 Verification of Victim's Age

A vital part of the prosecution of child sex tourism crimes is determining the age of the alleged victim. Difficulties may arise in ascertaining birth records, therefore, alternative measures for proving the child's age should be considered. For example, the Australian Crimes (Child Sex Tourism) Act 1994 makes provision for alternative methods of proving the age of a person under the age of 16, such as by appearance or from medical opinion.⁸²

1.3. Law Enforcement Coordination

Cooperation is required from law enforcement and NGOs in the destination country where the crime is committed to facilitate arrest, search, seizure, attachment and surrender of property, the subpoena and appearance of witnesses, and the transmission of information records. The police there need to be well trained in shadow surveillance and tracking. Successful execution of enforcement cooperation schemes with the Thai and Australian Police led to the arrest and conviction of Australians Christopher Ronald White and former diplomat Robert Michael Scoble.

⁸⁰ Yin, Jasmine "Don't Be Afraid Of The Court, Child." The Straits Times. November 16, 2005

⁸¹ David. "No. 156 Child Sex Tourism." P 4

⁸² Division 6, Section 50FA

1.4. Reporting

The ultimate barrier to the enforcement of child sex tourism is the low level of reporting from the victims (or their parents),⁸³ or indeed, any other third party in the know. An international and local hotline for reporting Singaporean child sex tourists should be made available and widely publicized.

1.5. Corruption

Corruption in destination countries reduces the effectiveness of the legal system to investigate and prosecute cases of trafficking and sex tourism. NGOs have reported numerous cases in which police demand fees from victim's families before they agree to investigate allegations.⁸⁴ In addition, law enforcement officers are said to accept bribes from sex tourists.⁸⁵

1.6. Costs

The costs involved in bringing cases to court are generally high, partly because of the need for law enforcement agencies and witnesses to travel between countries but also partly because of the need for translation and interpretation services.

How to overcome enforcement problems?

There is a clear need to be transparent and self critical about overcoming enforcement barriers. Strong political will be needed to establish systems that surmount the difficulties highlighted above. This has been illustrated in other instances of non sexual extra-territorial crimes earlier discussed in this report and indeed in transnational crime such as terrorism, where enforcement is notoriously complex. The resolve to find a solution must be there for the solution to be found.

⁸³ Id

⁸⁴ Mattar, "A Regional Comparative Legal Analysis on Child Sex Tourism and Sex Trafficking," P. 28

⁸⁵ Id. At 30

Other governments with extra-territorial child sex offence laws have been successful in prosecuting the perpetrators. As of 2005, Australia reports that it prosecuted 17 child sex tourism cases since the Amendment Act's enactment in 1994.⁸⁶ Further, 28 Australians have been arrested in destination countries on child sex offenses.⁸⁷ In the US, there have been 14 arrests and several successful convictions under the 2003 Protect Act.⁸⁸ As shown by other countries with extra-territorial legislation, there had been several arrests, prosecutions and successful convictions of offenders. Refer to Appendix F for convictions in other countries with extra-territorial laws.

AWARE recognizes that enforcement child sex tourism laws will not be as easy as “booking a motorist for speeding” but the deterrent effect of this legislation is invaluable. The knowledge that the offender will be likely to be confronted with public shame and criminal penalties is a huge deterrent, as is the consequent destruction of the notion that Singapore is a safe haven for people who abuse children abroad. Furthermore, since extra-territoriality “travels” with a Singaporean, it would also extend to intra-familial sexual abuse of Singaporeans with Singaporean children committed overseas.⁸⁹

B. LEGAL TOOLS TO AID INFORMATION EXCHANGE FOR SUCCESSFUL ENFORCEMENT

At the Sixth International Society for Prevention of Child Abuse and Neglect (ISPCAN) Asian Regional Conference, the Minister for MCYS, Dr Vivian Balakrishnan, called on delegates from government agencies and NGOs to take the opportunity to share their experiences in protecting the children of Asia. He cited the example of how cooperation

⁸⁶ Child Safe Cambodia. “Australian Jailed for Child Sex Tourism Offences Committed in Viet Nam.” Found at: <http://www.childsafe-cambodia.org/abusenews.asp>

⁸⁷ Australian Federal Police. 2003-2004 Annual Report. P. 37. Found at: http://www.afp.gov.au/__data/assets/pdf_file/3649/annual_report.pdf

⁸⁸ As of May 17, 2006. U.S. Immigration and Customs Enforcement. “Fact Sheet: Child Sex Tourist.” Found at: <http://www.ice.gov/pi/news/factsheets/sextourists.htm>. In 2003 alone, the US government arrested 25 people under “Operation Predator” for child sex tourism offenses. About.com “The Facts About Child Sex Tourism.” Found at: <http://crime.about.com/od/sex/a/cst1.htm>

⁸⁹ The Queen vs. Andrew. Justin Harman, unreported decision of His honour Judge Ross, Melbourne County Court 1997. See Also David. “No. 156 Child Sex Tourism.” P 2-3

among countries can work toward eradicating one of the biggest problems in this region – child sex tourism.⁹⁰

Similarly, AWARE promotes the creative and combined use of information exchange. There are many existing ways of achieving transnational cooperation on law enforcement through instruments such as Mutual Assistance Treaties, Memoranda of Understanding, Extradition treaties, ASEAN codes and agreements as well as amendments to our local legislation such as the Criminal Procedure Code (this has been discussed above) and Extradition Acts. And, most of all, a strong will in engaging other international institutional intelligence-sharing and enforcement bodies and NGOs.

Without these components it would be very difficult, if not impossible, to gather the necessary evidence to support a conviction of a returning offender. In the long term, the success would mean establishing a system that is self-sustainable, based on what has been learned from cases so far, and finding sufficient resources to support such a system. The international tools are a good platform to use and the burden of investigating and prosecuting child sex tourism is a shared one, removing the need to create an ad hoc enforcement strategy.

Some international tools that are already in place are discussed below.

1. The Mutual Assistance in Criminal Matters Act

The Mutual Assistance in Criminal Matters Act⁹¹ empowers Singapore to enter into arrangements with other countries for international cooperation in criminal matters. Section 17 of the Act empowers the Minister for Law to designate foreign countries to which Singapore has agreed to provide assistance given the existence of a treaty, memorandum of understanding or other agreement in which the country has agreed to provide Singapore with assistance.

⁹⁰ Yin. “Action Against Abuse.”

⁹¹ Cap 190A

As of May 27, 2003, the Minister for Law has declared the United Kingdom of Great Britain and Northern Ireland, and the United States of America as prescribed foreign countries for the purposes of the Act.⁹² Assistance under specified provisions of the Act is limited to investigations into terrorism-financing offenses as defined in S 2(1) of the Terrorism (Suppression of Financing) Act 2002 (A16/2002).

Hopefully, a similar declaration can be made with respect to countries that Singaporean men frequent for child sex tourism when extra-territorial law is introduced.

2. Mutual Legal Assistance Treaties

Transnational criminal investigations often require law enforcement from the country of origin and the country where the criminal act transpired to cooperate for a successful criminal prosecution. A Mutual Legal Assistance Treaty, or MLAT, is a tool for law enforcement officers to further evidence gathering in such investigations. MLATs are bilateral or multilateral treaties that formalize cooperation between the signatory countries to provide legal assistance to one another.⁹³ These treaties may include provisions on “request(s) for assistance, search, seizure, attachment and surrender of property, measure for securing assets, service of judicial decision, judgments and verdicts, appearance of witnesses, and expert witnesses and transmittal of information of records.”⁹⁴

Without MLATs, the prosecution’s success depends on voluntary and individual efforts of one country to collaborate and convince foreign law enforcement officers to cooperate. The MLAT provisions explicitly regulate the summons of witnesses, the production of documents and records, the collection of evidence, the identification of persons and request for searches and seizures.⁹⁵

⁹² Mutual Assistance in Criminal Matters Act (Cap. 190A) (Prescribed Foreign Countries) Order (O 2) (S 261/2003)

⁹³ S.K Andrews at 449

⁹⁴ Mattar. “Child Sex Tourism: The Scope of the Problem and the Appropriate Responses.” P. 35

⁹⁵ Sotonye Leroy Wakama. “Transnational Organized Crime and the Role of Extradition and Mutual Legal Assistance Treaties.”

On November 29, 2004, Singapore signed the Mutual Legal Assistance Treaty in Criminal Matters with Brunei, Cambodia, Laos, Malaysia, the Philippines and Vietnam. The Treaty requires the parties to provide each other with legal assistance in criminal matters. Such assistance includes the taking of evidence, service of documents and recovery of the proceeds of crime. All assistance rendered under this Treaty is subject to the domestic laws of the respective countries. In other words, assistance will be rendered only if provided for under the domestic laws of a country, and if the relevant safeguards in those provisions are satisfied. The Treaty will come into effect only after it has been ratified and enabling legislation has been enacted. A copy of the Treaty is in Appendix G.

This MLAT is the first treaty on legal cooperation among ASEAN member states⁹⁶ and forms the basis for closer cooperation between ASEAN law enforcement agencies in tackling serious crimes. It is hoped that it will be used meaningfully to facilitate enforcement under the proposed new extra-territorial jurisdiction relating to child sex offences.

3. Extradition

In order to prosecute child sex tourists effectively under extra-territorial laws, extradition to Singapore from foreign states needs to be reviewed. This is to ensure that Singaporeans on the run can be extradited to Singapore to face charges. The Extradition Act applies to the extradition of fugitives for specific extraditable offences within Commonwealth countries.⁹⁷

The Extradition Act now includes “rape, indecent assault, trafficking offences.” Child sex tourism needs to be included as an extraditable crime in the Act

It is interesting that the Extradition Act will extend only to non-Commonwealth countries where there is an extradition treaty in place.⁹⁸ Therefore, we need to identify all relevant bilateral treaties between Singapore and, particularly, countries in Asia to see if they

⁹⁶ Ministry of Law Announcement. November 29, 2004

⁹⁷ Section 29 and 30 of the Extradition Act

⁹⁸ Section 14 – 16 Extradition Act

cover child sex tourism as an extraditable crime. In addition, child sex tourism needs to be included as an extraditable act when Singapore is concluding treaties with other countries, so that the requisition for surrender can also be applied to child sex offenders.

It is interesting that ASEAN hails an extradition plan for a regional extradition treaty that will help address terrorism and transnational crimes, including trafficking children more effectively. Reportedly, this measure could be adopted by next year in the form of a multilateral treaty.⁹⁹ According to the report, ASEAN has been mulling over a multilateral extradition treaty since 1976 but has so far made little progress, although several member nations have bilateral extradition treaties with each other.¹⁰⁰

4. Analysis Of Enforcement Difficulties And Information Exchange In Relation To Terrorism Acts And Maritime Offences Act. International Agencies And Law Enforcement Officers

Singapore uses early warning systems and the exchange of intelligence to prevent terrorists from attacking foreign countries. Information is shared amongst intelligence agencies (such as Interpol and Aseanapol) and law enforcement agencies. It would also be useful to analyze, and perhaps adopt where applicable, a similar information exchange program as that in the Terrorism Acts and Maritime Offences Act, which cover areas where transnational enforcement and information exchange are complex. This could be instructive from the perspective of coordination and intelligence sharing between law enforcement agencies on both national and multilateral levels as well as cooperation within ASEAN. Ong Keng Yong, Secretary-General of ASEAN,¹⁰¹ has suggested that some measures for dealing with terrorists could be applied to child sex offenders. So too, we say, should information exchange.

⁹⁹ Asian Political News. "ASEAN Extradition Treaty Could Be Completed By Next Year, Malaysia Says." October 3, 2005. Found at:

http://www.findarticles.com/p/articles/mi_m0WDQ/is_2005_Oct_3/ai_n15662860

¹⁰⁰ "Difficult Issues in Singapore Indonesia Extradition Treaty." Agence France Presse. October 17, 2005. <http://www.singapore-window.org/sw05/051017af.htm>. There has been no recent news of a signed treaty

¹⁰¹ <http://www.aseansec.org/93.htm>

5. Police Investigators

A cooperative method of preventing or assisting in the detection of crimes of sexual exploitation of children is the placement by States of Police Liaison Officers in countries to which their nationals travel in large numbers. Liaison officers have been used in the fight against drug trafficking for some time, and there is strong demand from the non-governmental sector that such officers be placed for the purposes of combating child sexual exploitation. For example, New Zealand has police liaison officers in Thailand to facilitate the flow of information regarding New Zealand offenders operating there.¹⁰²

There is a view that officers placed to combat child sexual exploitation must be specialized for that field of enquiry, and should not also be combating the drugs trade or other serious crime. However, the UK National Crime Intelligence Service (NCIS) has suggested that “Crime” Liaison Officers be placed in certain countries, available for all criminal investigations.

6. Institutional Networks

Singapore should make use of and enhance existing institutional law intelligence and enforcement networks such as Interpol and NCIS for information gathering for child sex tourism. Such networks include as Interpol, ICE (US Immigration and Customs Enforcement), VGTC (Virtual Global Taskforce) and NCIS (National Criminal Intelligence Agency) as well as local and international NGOs including ECPAT International (End Child Prostitution, Child Pornography), ChildWise and WorldVision.

For example, New Zealand police worked with the Interpol’s established network of law enforcement contacts and the existing child sexual exploitation investigative team, Project Sapphire.¹⁰³ Also in the case of Darwis Rianto Lim in Thailand as discussed above, his detection came about due to tip-offs from US and Australian Interpol officers

¹⁰² Id

¹⁰³ New Zealand Department of Justice. “PROTECTING OUR INNOCENCE: New Zealand’s National Plan of Action Against the Commercial Sexual Exploitation of Children.”

and a US Immigration and Customs Enforcement agency officer who posed as a pimp and met Lim with three boys, of whom Lim chose one.

CHAPTER FOUR

MODEL LAW

Dr Mohamed Mattar, a well known scholar on the issue of sexual exploitation, presented a model law on extra-territorial jurisdiction in his paper “Tackling Demand for child Sex Tourism and Sex Trafficking in Southeast and East Asia”. This is reproduced in Appendix H. In legislating for child sex tourism, Dr Mattar’s model is highly instructive as a guide on the salient features of a model law.¹⁰⁴ AWARE also finds the Australian Crimes (Child Sex Tourism) Amendment Act 1994 very instructive and this is set out in Appendix I.

AWARE proposes the following key characteristics in a model law for extra-territorial jurisdiction:

1. Drafting

The act be a separate piece of legislation, similar to the Australian 1994 Crimes (Child Sex Tourism) Amendment Act. Alternatively, an amendment of the Penal Code, the Women’s Charter or the Children and Young Persons Act may be easily made to include child sex tourism.

2. Prohibited Acts

Prohibited acts should be widely defined to include not only the acts of sexual intercourse (i.e. penetration of vagina and anus) but also oral sex, molestation, as well as acts of indecency that should include any act involving the human body that is offensive.

¹⁰⁴ Mattar. “A Regional Comparative Legal Analysis on Child Sex Tourism & Sex Trafficking.” Regional Summit, “Tackling Demand for Child Sex Tourism and Sex Trafficking in Southeast and East Asia.” April 25-27. P. 68 – 75

As in countries such as Australia and Canada, there should be no requirement that victims file a complaint to initiate the proceedings.

3. Offenders

Offenders must include: the clients, the tour operators and businesses that benefit from the child sex trade including hotels and advertisers. Therefore, any legislation must criminalize individuals as well as corporate bodies, such as hotels and tour agencies that cater to or passively permit the sexual abuse of children through their services, as well as sex tour operators, including the booking of tickets and reservation of accommodation) and those who print or publicize sex tours, whether through the Internet or otherwise. Convicting a sex offender removes one perpetrator but putting a sex tour agency out of business hinders several at one go.

4. Application To Residents And Citizens

It should cover not only Singapore citizens and corporate entities, but also permanent residents (similar to the Misuse of Drugs Act). In other cases some nations have more broad approaches, for example Belgian criminal law covers not only the misconduct of its nationals but also residents and those passing through.¹⁰⁵ The U.S. law includes individuals legally resident in the U.S., including any visa holders.

5. Age Of Consent

A child should be defined as a person under 18 years of age. Leading experts in the field of child commercial sexual exploitation suggest the age of child be set at the international standard of 18 years of age. The Convention on the Rights of the Child also defines a child as a human being younger than 18 years of age.

Dr Muntarbhorn observed that, in practice,¹⁰⁶ it should be recognized that in several counties, there are different ages of sexual consent at the national level as compared with those in the extra-territorial provisions. For example, in Canada, the age of consent is 14

¹⁰⁵ Muntarbhorn, Vitit. "Conference Paper: Extra-Territorial Criminal Laws To Combat Trafficking in Humans."

¹⁰⁶ Id

under local laws but 18 in extra-territorial provisions. In Singapore, the age limit for statutory rape is 14 years¹⁰⁷ and that for carnal connection is 16 years.¹⁰⁸ However, AWARE recommends the limit of 18 years of age for the purposes of child sex tourism. Additionally, there should be statutory measures aimed at proving the age of a victim, as birth records from some destination countries may be non-existent.

6. Element Of Intent

Traveling with the intention of engaging in acts of sexual exploitation of children should be an offense. There should be no need for sexual activity to take place. The intention could be evidenced by notices to buy sex with children over the Internet, as in the case of Singaporean Darwis Rianto Lim.¹⁰⁹

7. Double Jeopardy

The concern over “double jeopardy” laws in Singapore may be relevant in the case of a Singaporean returning home after being convicted and having served his sentence abroad. He cannot be prosecuted twice for the same offense. However, realistically, prosecutions rarely occur in the countries where the child sex acts take place, especially where there is a fair amount of corruption. Thus, local extra-territorial law would most likely be prosecuting a Singaporean child sex tourist for the first time – without fear of double jeopardy.

8. No Double Criminality Requirement

Double criminality cannot be included in a child sex tourism extraterritorial law. As Dr Mattar observed, removing double criminality smoothes the progress of prosecution of sex tourists in his home country if there is no defense that the acts he committed were legal in the country where they took place.¹¹⁰ Further, according to Dr Muntarbhorn, the international trend is toward discarding double criminality.¹¹¹

¹⁰⁷ S: 375 PC

¹⁰⁸ S: 141(1)(i) WC

¹⁰⁹ Tan. “ASEAN Wages War On Child Sex Tourism.”

¹¹⁰ Mattar. “A Regional Comparative Legal Analysis on Child Sex Tourism & Sex Trafficking.” P. 62-63

¹¹¹ Muntarbhorn, Vitit. “Conference Paper: Extra-Territorial Criminal Laws To Combat Trafficking in Humans.”

9. Sex Offenders Registry

This has been adopted in countries such as the United Kingdom and the United States of America.¹¹² As mentioned above, the rationale behind this is that it is preferable for convicted offenders to be tracked and helped or counseled than to allow them to go underground and become more dangerous. Under the UK's 1997 Sexual Offenders Act, a registration requirement is imposed on newly convicted sexual offenders.¹¹³ The duration of the registration requirement depends on the sentence length, type of offence, age of the offender and age and gender of the victim.

a. Change of Residence

Offenders are required to inform the police in person of any change of address within 3 days and all offenders must reconfirm notified details annually. Non-compliance incurs fines or up to 5 years of imprisonment.

b. Travel notification

As under UK law, registered sex offenders traveling abroad must notify the police if they intend to be outside the country for 3 days or more.¹¹⁴ This must be done no less than 7 days prior to his or her departure. Detailed information is required, including the date of departure, destination country, point of arrival, countries in addition to initial destination, details of accommodation for the first night outside the country, date of re-entry and point of arrival for return. If notification becomes inaccurate at any time up to 24 hours before departure, a fresh notice must be made in person. If an offender has all the specified information, he or she cannot be prevented from leaving the country. If the offender has the information and fails to disclose it, then he is in breach of legislation. However, if his

¹¹² In the UK "The Sex Offenders Act of 1997," c. 51, as amended by the Criminal Justice and Courts Services Act 2000, 2000, c. 43 In the US 42 U.S.C. 14071, commonly referred to as "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration" and P.L. 104-236; 110 Stat. 4093; 42 U.S.C. 14072(b), commonly referred to as "Pam Lychner Sexual Offender Tracking and Identification Act of 1996."

¹¹³ As amended by Sexual Offences Bill, HL Bill 26

¹¹⁴ UK Sexual Offences Act 2003, Chapter 42, Sections 97-103

travel company suddenly changes the offender's information without his notice, this is not a breach of the legislation.

c. Foreign Travel Orders

Penalties should include foreign travel orders – as is done in the UK- where those who are convicted can be prevented from traveling to specified countries where there is a risk that they can abuse children.¹¹⁵

10. Other Penalties

Additional civil remedies should be available to compensate victims and his or her family. This may be another form of deterrence to potential offenders. The confiscation of assets and properties and benefits of the offenders may be more applicable to corporate bodies and individuals, e.g. brothels owners, tour operators and advertisers etc engaging in child sex tourism. Other forms of penalties upon conviction include the mandatory revocation of licenses and authorization of the continued registration of that entity and the discontinuation of the entity's operations that gave rise to the commission of the offences. Revocation of the passports of repeat offenders could also be considered.

¹¹⁵ U.K. Sexual Offences Act 2003, Chapter 42, Sections 113-122

CHAPTER FIVE

PUBLIC AWARENESS AND COOPERATION

There are three main instruments that are significant in awareness building and cooperation, namely, initiatives in tourism, the media and the ASEAN framework.

1. Tourism Industry

In tandem with extra-territorial legislation, AWARE recommends that government agencies work in close cooperation with the outbound tourism industry to develop industry measures that will reduce and prevent child sex tourism and provide responsible outbound tourism services. This can be done by:

- a. Designating focal points on the issue within their national tourism administrations, who will work with others on practical child protection measures such as telephone hotlines (domestic and international) for reporting of cases (in the case of Singapore, it may be the Home Affairs Ministry that takes the lead);
- b. Launching national awareness-raising campaigns for airline industries and tourism personnel on the relationship between child prostitution and tourism in other countries; and
- c. Including provisions on the prevention of sexual exploitation of children in tourism in national master plans, including protection for whistleblowers.

The World Tourism Organization developed guidelines to assist the work of these designated focal points within national tourism administrations (NTA).¹¹⁶ The guidelines suggest possible partners for NTA focal points, including tour operators and their associations, travel agents and their associations, airlines, passenger handling agents, cruise lines, managers of computerized reservations systems, tourism editors, managers of tourism portals, hotel chains, tour guides and taxi driver associations. These personnel are instrumental in generating awareness of commercial sexual exploitation of children.

It is suggested that their work be structured around the Code of Conduct for the Protection of children from Sexual Exploitation of Children in Travel and Tourism. The World Tourism Organisation, ECPAT and Nordic tour operators developed this code of conduct in 1999.¹¹⁷

The Code requires signatories to:

- a. Establish a corporate ethical policy rejecting the commercial sexual exploitation of children and introducing such clauses in suppliers' contracts
- b. Train tourism personnel
- c. Provide information to travelers
- d. Report annually on their progress.

As of April 2005, 241 travel companies from 21 countries had signed the code.¹¹⁸ The world's largest tour operator, JTB, and the Japanese Association of Travel Agents, are signatories. No company from Singapore has signed yet. ECPAT works with the travel industry to implement the code in Australia, Germany, Italy, the Netherlands, Sweden and the United Kingdom, supported by the World Tourism Organization with funding from the European Union.

¹¹⁶ World Tourism Organization. "Child Prostitution in World Tourism Watch." Found at: http://www.world-tourism.org/protect_children/index.htm

¹¹⁷ "Code of Conduct for the Protection of Children From Sexual Exploitation in Travel and Tourism." http://www.thecode.org/dokument/images/downloads/code_summary_english_4.pdf. Adopted by the thirteenth session of the General Assembly of the World Tourism Organisation on October 1, 1999

¹¹⁸ Id

However, the ASEAN Tourism Agreement¹¹⁹ in its preamble reaffirms ASEAN's adherence to the WTO code. Also, clause 6 of Article 5 states that ASEAN nations are to take stern measures to prevent tourism-related abuse and the exploitation of people, particularly women and children.

The ASEAN Travellers Code was adopted¹²⁰ thereafter, based on a draft submitted by ChildWise. Basically, this code provides guidelines and warnings to tourists to be responsible travelers when visiting the region. It urges travelers to help prevent the abuse and exploitation of people. The code also calls on travelers to consider people's rights, particularly women and children, and to be mindful of the activities undertaken and the businesses they support. Most importantly, it warns travelers that sexual exploitation of children is illegal in ASEAN countries and that laws are in place to prosecute travelers in their home country for sexual exploitation of children conducted overseas. Customs and Immigrations checkpoints in ASEAN countries are required to publicize this code.

Some governments have made particular efforts; for example, the Tourism Authority of Thailand distributes literature on the issue at tourism offices and airports. Italian law requires tour operators to highlight Italy's laws against child sex tourism in advertising materials.¹²¹ We should borrow such features, which have worked in other countries, and implement them in Singapore on popular sex travel routes to Thailand, Batam and Cambodia.

2. The Media

Following the enactment of extra-territorial legislation, the government should undertake a major media campaign to ensure that travelers are aware that child sex tourism is illegal and that offenders will be prosecuted. Additionally, the public should be encouraged to pass on information through telephone hotlines or other designated information points that may lead to the prosecution of offenders.

¹¹⁹ November 4, 2002, Phnom Penh

¹²⁰ 21 January 2005, Langkawi, Malaysia

¹²¹ World Tourism Organization. "Italy Legislation." Found at: http://www.world-tourism.org/protect_children/legislation_country/italy.htm

Elements of the campaign may include:

- a. "Take One" brochures at points of departures such as Changi Airport and ferry terminals;
- b. Billboard advertising, both print and electronic;
- c. Distribution of press packages and interviews with domestic and international media;
- d. Warning messages on video displayed on air, road and ferry transport, similar to the current warnings against drug offences;
- e. Electronic messaging on ticket reservation systems; and
- f. Heightened messaging during the run-up to festivals and holidays – times when Singaporeans depart on trips.

3. ASEAN Cooperation

There are existing frameworks in ASEAN covering the trafficking of women and children which can be used to develop the cooperation, detection, enforcement and prosecution of child sex tourism crimes committed overseas within ASEAN.

As a member of ASEAN, a framework for transnational cooperation between Singapore and its neighbors has been set by the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.¹²² This has been further strengthened by the recent Joint Communique of the Fifth ASEAN Ministerial Meeting on Transnational Crime in Hanoi on November 29, 2005.

According to the former UN Special Rapporteur On The Sale of Children, Dr Vitit Muntarbhorn, a Professor of Law at Chulalongkorn University, it would be a logical extension of this effort if Singapore were to promote a program to respond to the ASEAN declaration on the trafficking of women and children. Singapore could help set up a

¹²² November 29, 2004, Vientiane, Laos

regional anti-trafficking network and develop training programs for ASEAN immigration and law enforcement officials in the detection and prosecution of offenders.¹²³

Although these initiatives relate to trafficking, it is hoped that the issue of child sex tourism will benefit from the same or similar transnational cooperation.

¹²³ Tan. "Moves to Curb Worrying Rise in Child Sex Tourism."

CHAPTER SIX

CONCLUSION: THE TIME IS NOW

The tide of public opinion in Singapore is turning against the commercial exploitation of children. AWARE reiterates that extra-territorial legislation is but a necessary first step in a whole suite of actions needed to prevent Singaporeans from engaging in sex with children beyond its borders. Professor Vitit Muntarbhorn fittingly ended his article¹²⁴ by stating that extra territorial criminal laws should not be romanticized; they need to be advocated and posited with the many realities... to be truly relevant to the situation and accessible and pertinent to the victims. We hope this report has highlighted some of the other important measures and actions that need to be reviewed.

We reiterate our call for Singapore to ratify the Yokohama and Stockholm Conventions as well as the Optional Protocol to the CRC.

Finally, it is also hoped that there will be programs aimed at treating convicted child sex offenders to prevent them re-offending as well as measures aimed at preventing convicted child sex offenders from obtaining jobs where they will pose a risk to children in Singapore.

END

¹²⁴ Muntarbhorn, Vitit. "Conference Paper: Extra-Territorial Criminal Laws To Combat Trafficking in Humans."

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Appendix I

AUSTRALIAN CRIMES (CHILD SEX TOURISM) AMENDMENT ACT 1994