# Abolishing child sex tourism: Australia's contribution

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As a global phenomenon, child sex tourism is recognised by the United Nations as 'one of the worst contemporary forms of slavery' (United Nations 1989: para 33). It involves the commercial sexual exploitation of children by people who travel from their own country (the sending country) to another, usually less developed, country (the receiving country) to engage in sexual acts with minors (ECPAT Travel Industry Guide: 3).

Although child sex tourism is particularly prevalent in developing countries of the Asian region (Muntarbhorn 1991: para 26), there are well-organised child sex industries in areas such as Africa, South and Central America and Eastern Europe (ECPAT Travel Industry Guide). This article focuses on sex tourism in Asia, as the region's proximity offers Australians the greatest opportunities for involvement in child sex tourism.

Determining the number of children involved in commercial sexual exploitation is difficult, due to the clandestine nature of the industry. Estimates vary widely, but UNICEF believes that there may be up to one million prostituted children (under 18 years) throughout Asia alone.[1]

International concern regarding child sex tourism has intensified over the past decade, culminating in May 2000 when the United Nations General Assembly adopted the Optional Protocol to the *Convention on the Rights of the Child* on the Sale of Children, Child Prostitution and Child Pornography. This Protocol imposes detailed requirements on State Parties, designed to both protect children from commercial sexual exploitation and punish offenders.

Australia publicly supports the Protocol (DFAT 2001a), and became a signatory on 18 December 2001. Before considering ratification,[2] the Government intends to seek

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1 It is estimated that there are approximately 200,000 prostituted children in Thailand, 60,000 in the Philippines and 6,000 in Vietnam (Warburton & Camacho de la Cruz 1996).

2 Ratification involves the incorporation of treaty provisions into domestic legislation.

the views of the States and the Joint Standing Committee on Treaties (DFAT 2001b).

In light of these developments, it is an appropriate time to examine the effectiveness of current Australian legislation prohibiting child sex tourism, namely the *Crimes (Child Sex Tourism) Amendment Act* 1994 (Cth), to determine the extent to which Australia is complying with its international obligations.

## Child sex tourism: Current trends and issues

Child sex tourism presents a bleak picture, as the factors underlying the supply and demand for prostituted children encompass many complex and interwoven issues.

Poverty plays a primary role in supplying children for the sex tourism industry. Inequitable economic development has resulted in rural impoverishment in many Asian countries. The resulting low education levels and illiteracy constrain employment opportunities and economic choices. Families are often forced to migrate to the urban centres, where they face homelessness and unemployment. In extreme poverty, child prostitution may be the only source of income for a homeless street child or a family trapped in debt (Kanchanachitra 1999: 2).

Another instrumental factor in child prostitution is gender discrimination. Although young boys are sexually exploited, prostituted children are predominantly girls aged between 10 and 18 years (Kanchanachitra 1999: 3). The vulnerability of girl children to commercial sexual exploitation relates to the persistent gender inequalities within many of the receiving countries. With only a restricted income, families in Asian communities often prioritise the education of boys (Muntarbhorn 1991: para 34), reducing opportunities and heightening the risk of involvement in prostitution for girls. The subordinate status of women within these societies both exacerbates and is reinforced by the sexual exploitation of girl children.

Underlying elements contributing to the demand for prostituted children, such as mass tourism and technology, enable child sex tourists to experience a lack of personal accountability when exploiting children.

Flourishing travel and tourism industries are a significant force in generating demand within child sex tourism. Tourism gives potential offenders anonymity and enhanced opportunities to access vulnerable children. Once overseas, child sex tourists often act against their normal moral and social constraints, in the belief that they will not be held accountable (Hodgson 1994: 512). This preconception was exacerbated in Asia during the 1970s and 1980s, following the espousal of tourism as an ideal economic strategy for developing nations. Countries such as Thailand and

the Philippines were often promoted as sex destinations, with passive, submissive and exotic women and girls (ECPAT Travel Industry Guide). Child prostitution thrived within the sex tourism industry, with the undesirable legacy of such economic strategies remaining today (Beddoe 1998).

Rapid advances in technology, primarily the development of the Internet, have also created considerable demand for child sex tourism. Apart from simplifying the production and dissemination of child pornography, the Internet facilitates communication between practising and potential child sex tourists. Information about cities and establishments where prostituted children are available can be accessed, quickly, cheaply and anonymously.

Recently, there has also been an increase in demand for prostituted children as a form of safe sex, especially in the wake of the HIV-AIDS crisis in the Asia-Pacific region. Younger sex partners are perceived as being less likely to have contracted HIV or other sexually transmitted diseases. In actual fact, due to their physiological immaturity, younger children are more vulnerable to HIV infection and suffer a high rate of HIV infection and AIDS (O'Grady 1992).

A lack of effective law enforcement is a key factor in both the supply and demand for prostituted children. If the risk of prosecution is minimal, it is unlikely that brothel owners and child sex tourists will fear being held responsible for their actions.

## Characteristics of child sex tourists

There is no stereotypical profile of child sex tourists. Offenders range from affluent professionals participating in an organised sex tour, to individual tourists or business people engaging in sex with children on a casual experimental or opportunistic basis (Hodgson 1994). They may not satisfy diagnostic criteria for paedophilia, and only use prostituted children because they are cheaper or more readily available (O'Connell 1996).

The colonialist undertones in sex tourism also need to be considered. Enormous power and economic differentials are often inherent in relationships between wealthy tourists and children in a developing country. The sexual exploitation of people in less developed countries reinforces their subservient role in relation to wealthy countries (Graburn 1983: 437).

Australia needs to address child sex tourism as an international issue, in which its nationals play a significant role. Australians form a substantial proportion of the child prostitution clientele in South East Asia, and also participate in the child sex

industry as tour organisers and bar owners (Anglican General Synod 1993). Although precise statistics are not available, in 1995, it was estimated that Australians owned or managed up to 80% of the bars and hotels involved in the sex industry in Angeles City, the Philippines (Lauber 1995).

## The victims of child sex tourism

Child sex tourism constitutes a distinct aspect of the sex industry. While adult prostitutes should not be denied the right to choose prostitution as a source of economic livelihood (Murray 1998: 62), the exploitation of children needs to be differentiated, considering the common recruitment methods and potential impact upon the children concerned.

An economic analysis of child prostitution (for example, Cooper & Hanson 1998; Phillip & Dann 1998) perceives the children as 'entrepreneurs' who make a rational decision to maximise their income through sex work, due to the limited options available to street children and uneducated children from rural areas. While this may be true for some prostituted children (Montgomery 1998: 140), such arguments ignore the many children lacking knowledge regarding the effects of prostitution and the minimal chances for an 'equitable return'.

Many children involved in the Thai sex industry are trafficked from areas such as rural Thailand, Burma and Southern China into city brothels by procurement agents working on commission from bar and brothel owners. Children may be obtained from their parents with false promises of a legitimate hospitality job, sold into prostitution with the full knowledge of their parents, or abducted outright (Hodgson 1994). Similar methods are used in the Philippines (Lauber 1995). These approaches are often successful due to factors such as poverty, family breakdown and gender discrimination.

Once involved in the sex industry, children are often bound to a brothel by bondage contracts and are required to work until acquisition costs, including loans to their parents or travel costs, are repaid. Due to low wages, dishonest account keeping and bad working conditions, there may be little prospect of full repayment. Attempts to escape can result in threats, violence and imprisonment, with any remaining hope of flight defeated by poverty, lack of alternate occupations and low self-esteem (Lauber 1995).

Physically, the children can be permanently impaired if they are forced to endure a high volume of sexual services at a young age. The children may have continuously worked in pain and with active infections. In addition, exposure to HIV or AIDS may

leave them facing a painful premature death (Warburton & Camacho de la Cruz 1996).

Psychological effects may also be profound and long lasting. Prostituted children can suffer significant psychological trauma and stress, such as battered self-esteem following denigrating and dehumanising treatment by their 'employers' and customers (O'Grady 1992: 132). In addition, if prostituted children do return to their village, they may be socially ostracised by family members and the community, denying them support from traditional social networks (Anglican General Synod 1993).

An economic analysis of child prostitution therefore fails on two key accounts. The possible dangers in the sex industry are often concealed from potential recruits and prostituted children rarely gain promised benefits. In addition, the children concerned are generally too young to rationally analyse the consequences of becoming a prostitute. Without full knowledge and a rational basis for decision-making, prostituted children cannot be considered to be free economic agents choosing to maximise their income.

## International laws on child sex tourism

The denial of full and equal human status to prostituted children contravenes their basic human rights.[3] Over the past decade, the rapid growth in child sex tourism has attracted increasing international attention, resulting in a number of international initiatives and resolutions.

In 1989, the United Nations General Assembly adopted the *Convention on the Rights of the Child*, expressly recognising the need to protect children's rights. This has been followed by a number of global conferences specifically addressing child prostitution. For example, in 1996 UNICEF organised a World Congress against the Sexual Exploitation of Children, in Stockholm, followed in 2001 by a second Congress in Yokohama. At the Yokohama Congress, delegates reaffirmed the Declaration and Agenda for Action drafted at Stockholm, in which represented countries, non-governmental organisations and United Nations agencies committed themselves to a global partnership against the commercial sexual exploitation of children (World Congress 2001a).

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3 Child sex tourism breaches a number of general principles recognised by international human rights law, such as the right to life, liberty and security of the person under the *Universal Declaration of Human Rights* (1948) and the prohibition of slavery, servitude and forced labour under the *International Covenant on Civil and Political Rights* (1966).

The *Convention on the Rights of the Child* (CRC) entered into force in September 1990. It has achieved almost universal ratification, including both sending and receiving countries such as Australia,[4] Thailand, the Philippines and Fiji, and provides a comprehensive set of international legal norms for the protection and wellbeing of children.[5] Apart from articles requiring State Parties to safeguard important rights such as education, health, and protection from physical/mental abuse, the CRC contains a number of specific obligations regarding the sexual exploitation of children. For example, under art 34, State Parties are to protect children from all forms of sexual exploitation and sexual abuse.

## Optional Protocol to the *Convention on the Rights of the Child* on the Sale of Children, Child Prostitution and Child Pornography

The potential effectiveness of the CRC in combating child sex tourism was considerably enhanced by the adoption of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography ('the Optional Protocol') in May 2000. This Protocol entered into force on 18 January 2002, and as of March 2002 had 93 signatories and 20 State Parties. Signatories include Australia, Cambodia and the Philippines.

Although the CRC contains broad principles for the protection of children, the Optional Protocol imposes much more comprehensive and detailed requirements on State Parties regarding the commercial sexual exploitation of children.

Under the Optional Protocol, State Parties must criminalise the sale of children, child prostitution, child pornography and associated activities (art 1), whether the acts occur domestically or transnationally, or on an individual or organised basis (art 3). Apart from criminalising these offences, State Parties are obliged to implement preventative measures, with an emphasis on protecting vulnerable children. They are also required to give all appropriate assistance to child victims to ensure their full social reintegration and physical and psychological recovery (art 9).

In addition, State Parties agree to strengthen international co-operation to prevent, investigate and punish activities involving the commercial sexual exploitation of children. This involves measures such as mutual legal assistance and development programs (art 10).

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4 Australia ratified the CRC in December 1990.

5 Art 1 defines a child as every human being below the age of eighteen years.

By codifying principles condemning the commercial sexual exploitation of children, these international agreements can play an important role in combating child sex tourism. However, as there is no central authority to enforce the rights under these conventions, their practical effectiveness depends upon successful incorporation into domestic legislation.

A number of countries, including Australia, have attempted to meet their obligations by enacting appropriate legislation. Unfortunately, as discussed below, the Australian legislation has encountered practical problems limiting its impact on child sex tourism.

## Australian legislation on child sex tourism: The *Crimes (Child Sex Tourism) Amendment Act 1994*

Although adopting and ratifying treaties such as the CRC and its Optional Protocol is important, the challenge lies in successfully enacting domestic legislation to enforce these rights.

The *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) (CST Act) was enacted to implement CRC Article 34 into Australian law, adding Part IIIA (Child Sex Tourism) to the *Crimes Act 1914* (Cth). Although the sexual exploitation of children was already an offence under State criminal law, the CST Act was the first Australian statute to specifically address child sex tourism.

The CST Act criminalises a wide range of sexual activities committed overseas with children under 16 years, enabling Australian citizens, residents and corporations to be charged for their behaviour abroad (s 50AD). Before the CST Act, child sex tourists returning to Australia were only liable for offences such as possession of illegal pornography (Hodgson 1994).

The most serious sexual offences under the CST Act include engaging in sexual intercourse with a child while outside Australia (s 50BA) or inducing a child to engage in sexual intercourse with a third person (s 50BB), and are punishable by 17 years imprisonment. In determining the sentence to be imposed, the court must take the age and maturity of the victim into account (s 50FD(1)).

The CST Act has recently been amended in an attempt to reduce the distress caused to child witnesses in sexual assault proceedings.[6] As yet no cases under the reformed

6 Under the *Measures to Combat Serious and Organised Crime Act 2001* (Cth).

legislation are available. These amendments are discussed in greater detail below.

While Australia can be commended for implementing legislation such as the CST Act, questions arise as to whether this law is significant only as a declaration of principle, or whether it represents real progress.

## Has the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) been successful in combating child sex tourism?

At face value, the CST Act appears to have been reasonably effective in addressing child sex tourism. Since July 1994, Australia has prosecuted ten people for offences relating to child sex tourism in countries such as Cambodia and the Philippines, more than many other countries with similar extra-territorial legislation. Eight of these prosecutions have resulted in successful convictions, with sentences ranging from six months to twelve years. Such outcomes help to dispel the belief that child sex tourists will not be held personally accountable for their actions.

Despite these apparent successes, the Act's operation falls far short of its potential, although the recent procedural reforms noted above may improve its practical operation. To permanently decrease demand for prostituted children, the CST Act needs to ensure continued accountability for offences under the Act. Unfortunately, procedural and evidentiary deficiencies in the operation of the CST Act have constrained its performance. Firstly, the CST Act as originally drafted lacked child friendly procedures that allow child witnesses to give accurate and convincing evidence. Secondly, the impact upon the child is generally not considered in sentencing. Finally, limited resources and inadequate recognition of investigatory difficulties have restricted the operation of the Act. These flaws are primarily due to the inadequate conversion of the Act's ideals into practical procedures.

## Child witnesses under the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth)

Reconciling the rights of a child victim with the rights of the accused is an enduring problem in criminal proceedings. It is exacerbated under the CST Act by the international dimension of the offences. Apart from the normal difficulties in ensuring that children can adequately function within the justice system, child witnesses under the CST Act face additional challenges resulting from cultural issues and language barriers (House of Representatives Standing Committee 1994).

## The treatment of child witnesses

Although the relevant provisions have now been amended in order to make proceedings more child-friendly, the CST Act as originally drafted did not sufficiently address the trauma potentially suffered by child witnesses.

Due to the difficulty and cost of locating child victims, only two prosecutions under the CST Act have relied on child witnesses—*R v John Scott Holloway*[7] and *R v Robert Marlow*. The case of *Holloway* highlights the deficiencies in the CST Act's treatment of child witnesses, especially in regard to the lack of appropriate procedures and cross-cultural understanding.

In April 1996, Holloway was charged with engaging in sexual intercourse with two 14-year-old boys in Phnom Penh, Cambodia, following extensive investigations by non-governmental organisations and the Australian Federal Police. The prosecution case relied heavily on the evidence of the two boys, due to difficulties in obtaining evidence such as videos and photos in Cambodia. The boys were brought to Australia, and gave evidence in court from a separate room, through closed circuit television and interpreters.

Following the committal proceedings, the Magistrate found that although there was *prima facie* evidence of a crime being committed, the boys' testimony was unreliable, and so the charges were dismissed. Although offenders should only be prosecuted on reliable evidence, the Magistrate's decision did not adequately consider the cultural and language factors influencing the content and manner of the boys' evidence.

Firstly, the court system failed to recognise that Australia and the courthouse was a very foreign environment for the boys. From living on the streets of Cambodia, they were flown into a strange country, where they were staying in a 5 star hotel, and facing significant attention from the media. In addition, inherent assumptions within the adversarial court system in Australia generated an impression that the boys were confused and therefore unreliable. As the court was not briefed on cultural aspects, they assumed that once interpreters were supplied, no further concession to the cultural and language background of the witnesses was required.

The boys were also extensively cross-examined for three days during the committal proceedings in a rigorous and confronting manner. In particular, they were cross-

7 Although the decision is not available, ECPAT has collated further information about the case and its background (ECPAT 1999a).

examined about their 'sexual reputation' and prior sexual experiences (David 2000). While such cross-examination would not have been allowed under State sexual offences legislation, at the time the CST Act did not expressly prohibit such questions. As well, Holloway's lawyers used the cross-examination to undermine the boys' credibility, continually referring to them as prostitutes and street children.

Following the dismissal of the *Holloway* case, the Australian Federal Police (AFP) were reluctant to pursue other cases relying on child witnesses (ECPAT 1999a; Allen 1998). In favourable circumstances, however, such testimony may be successfully used. For example, in the case of *Robert Marlow* the committal proceedings included testimony by four Fijian boys brought to Australia for the hearing. The case went through to trial, and Marlow was convicted in May 2000. *Marlow* can be distinguished from *Holloway*, in that the Fijian Police Commissioner actually observed Marlow in a swimming pool with the boys. While the corroborating evidence of the Fijian Police Commissioner would have increased the children's credibility, the case does indicate the potential of child witnesses in successfully prosecuting offenders.

## Considerations in sentencing offenders

Apart from considering the needs and characteristics of child witnesses, proceedings under the CST Act should take the impact on child victims into account.

As noted above, the court is only required to consider the age and maturity of the victim when determining the sentence to be imposed.[8] While the judge is permitted to take other factors into account, such as the nature and circumstances of the offence, the personal circumstances of the victim, and any resulting injury,[9] the CST Act does not compel such consideration. Since proceedings under the Act generally involve anonymous victims from overseas, significant aggravating circumstances may be ignored in sentencing, as happened in the case of *R v Jesse Spencer Pearce*.

Pearce was a 76-year-old Australian man, who was investigated after he propositioned a 14-year-old boy in Byron Bay. The police searched his home and found photographs of the defendant engaged in an indecent act (attempted sexual intercourse) with an Asian female aged between 11 and 14 years, as well as sexually explicit photos of Asian boys.

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8 *Crimes Act 1914* (Cth), s 50FD(1).

9 Under *Crimes Act 1914* (Cth), s 50FD(2) the court can consider other relevant factors, such as those listed in s 16A(2).

During a police interview, Pearce admitted that he was diagnosed as HIV positive in 1993. Following his diagnosis, he had frequently gone to Thailand for the purpose of engaging in sexual activity with children.

After being convicted and sentenced to nine years imprisonment for the indecency charges and numerous offences under Queensland law, Pearce appealed his sentence to the Queensland Court of Appeal. Their decision is concerning. Besides focusing upon the domestic offences, the appeal judgment does not discuss Pearce's HIV status, apart from a brief mention in the background facts. Since Pearce knowingly exposed children to a serious illness, it is arguable that this should have increased his culpability.

In contrast, although the adverse impact on the victim is generally not considered to be a relevant circumstance, consent by the child has been raised as a mitigating factor in a number of cases, including *Holloway* and *Lee v R*. The ability of an impoverished, prostituted child to consent to exploitation is, at the very least, questionable. In these cases, the absence of brutality was interpreted to indicate that the sexual activity was consensual, and in *Lee* the sentence was accordingly reduced.

The decisions in *Lee*, *Holloway* and *Pearce* ignore the circumstances of the children concerned. To overcome this problem, it may be necessary for the CST Act to specify additional factors for consideration in sentencing, emphasising the circumstances and impact upon the victim.[10]

## Difficulties in obtaining evidence under the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth)

Offences involving child sexual abuse are notoriously difficult to investigate and prosecute, even when the conduct occurs within Australia. Such challenges are significantly increased in proceedings under the CST Act (House of Representatives Standing Committee 1994: 13).

While the CST Act assumes that a thorough overseas investigation can be conducted, this will only be possible if a Mutual Assistance treaty exists between Australia and the country concerned. If there is no such legislation, then the AFP will have restricted investigation and surveillance powers and will need to rely upon the assistance of foreign law enforcement agencies, constraining their ability to obtain

10 This is also consistent with Article 8 of the CRC, which requires State Parties to ensure that the child victim's best interests are a primary consideration under the criminal justice system.

the required evidence. Even if the law enforcement officers in the countries concerned are committed to prosecuting those who sexually exploit children, their limited resources may make it impossible to prioritise such investigations. Furthermore, Australia has no coercive powers to ensure that witnesses from overseas countries attend court to give evidence, and so prosecutions can only proceed with the willingness of the witness.

For instance, in *Holloway*, the Cambodian police were not actively involved in the investigation of Holloway, due to insufficient resources and poor training (ECPAT 1999a). In addition, as Australia and Cambodia do not have a Mutual Assistance treaty, the AFP could not search property in Cambodia (for example, to look for incriminating photos or videos), and so were limited to interviews.

As a result, prosecutions under the CST Act have generally only been successful when the majority of evidence can be obtained in Australia (David 2000), as in *Pearce*, *R v Anthony Richard Carr* and *Lee*, where the prosecution relied on photos and/or videos that the offender had brought back to Australia. Even in these cases, their costly, time consuming and complicated nature can be a frustrating factor (ECPAT 1999a).

## Potential reform

Although legal initiatives should only be one element of a multi-faceted response, the CST Act could potentially play a more constructive role following appropriate reforms.

### *Considering the rights of the witness*

The right to a fair trial is a fundamental characteristic of the common law tradition. It is necessary, however, to balance this right against the needs of the witnesses, especially where children from overseas are involved.

Following the *Holloway* case, the Government reviewed the operation of the CST Act, due to concerns as to how the child witnesses were examined (Hansard 2001). Subsequently, the *Crimes Act 1914* was amended in an attempt to reduce the distress experienced by child witnesses in sexual assault proceedings.[11]

Under these reforms, evidence of a child witness' sexual reputation or sexual

11 Under the *Measures to Combat Serious and Organised Crime Act 2001* (Cth), commencing October 2001.

experience is inadmissible, unless substantially relevant to facts in issue in the proceeding.[12] In addition, the court can disallow the cross-examination of a child witness if the questions are inappropriate or unnecessarily aggressive.[13]

While it is arguable that such reforms will prejudice a defendant's right to a fair trial, they are based on successfully operating State precedents and extensive community consultation (Hansard 2001). While no cases under the amended Act are available as yet, compelling greater consideration regarding child witnesses may significantly change the conduct of proceedings in cases such as *Holloway*.

### *The need for increased resources*

Because of the difficulties and costs in systematically monitoring and investigating potential offences overseas, transgressions under the CST Act tend to be detected fortuitously, either incidentally to offences committed within Australia, or upon disclosure by the offender.

For example, Carr and Pearce were both initially arrested for offences under State legislation. Pornography involving children overseas was discovered after the police searched their houses. Lee's offences were only detected after he boasted to his workmates about his exploits in Cambodia.

Although the AFP is responsible for deciding which investigations to prioritise, their failure to actively monitor Australian involvement in child sex tourism is to some extent due to inadequate government funding.

When presenting the CST Bill to Parliament, the Commonwealth Government asserted that the CST Act would not lead to additional costs, as expenses from investigations and prosecutions would be paid from existing budgetary allocations for the AFP (Hansard 1994: 77). This was discredited by representatives from the AFP, who estimated that a single prosecution could cost $90,000 (House of Representatives Standing Committee 1994).

Unfortunately, the Government's position has not changed. The AFP specialist child sex tourism unit, Operation Morocco, was closed down in November 2000, and such crimes are now handled within the general structure of the AFP.

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12 *Crimes Act 1914* (Cth), ss 15YB and 15YC.

13 Ibid, s 15YF.

It is arguable that the Australian Government should not allocate extensive resources to help children in foreign countries. The Government, however, needs to take responsibility for the actions of its citizens overseas when they sexually exploit children.[14] Although the legislative reforms regarding child witnesses discussed above indicate some commitment by the Government to address child sex tourism, the overall impact of such reforms will be restricted without adequate funds for enforcement.

## Judicial interpretation of the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth)

As discussed above, procedural and investigatory difficulties have impeded the effectiveness of the CST Act. To a large extent, however, the operation of the Act depends on how the legislation is judicially interpreted. Such interpretation varies between different judges and courts. These disparities are highlighted by a comparison between the earliest case (*Carr*) and the latest available case (*Lee*).

It might be expected that judicial attitudes towards the child victims would be more enlightened in later cases, considering the greater public awareness of the issues involved. In fact, the opposite appears to be true.[15]

Carr was arrested in August 1995 after indecently assaulting a 3-year-old child in a Sydney shopping centre. On searching his premises, police found a number of videos, including a home video taken in the Philippines, depicting a young girl around 5-years old posing naked. Carr admitted to paying her uncle $50 to film the child.

Carr was charged with committing an act of indecency on a child under 16, under the CST Act. He was sentenced to two years for the act of indecency, plus another five years for the offences under NSW law.

The judgment by Saunders J shows compassion for the situation of the Filipino child, recognising both the economic exploitation inherent in the action, as well as the distressing impact upon the young child personally. He noted that (at 7–8):

> In my view the prisoner's offence must be regarded as a very serious one. It was so

14 The Government recognised this when the CST Bill was introduced. For example, Hansard 1994: 73.

15 A potentially confounding factor is that a trial judge decision (*Carr*) is being compared with an appellate court decision (*Lee*).

> regarded by Parliament because of the maximum penalties provided. The offence was committed against a very young child who was obviously distressed at the time, and the prisoner was in a position of influence through a provision of money to the victim's apparent relative.

Saunders J also noted that while the sentence of 2 years was not adequate when viewed in isolation, the total sentence of 7 years was an appropriate punishment for the Commonwealth and State offences that Carr had committed.

In contrast, the decision in *Lee* further objectifies the child victims involved. Lee was charged in 1997 with sexually assaulting young girls in Cambodia and with a number of offences under Western Australia. He was arrested after he told workmates about his exploits, and showed them photos of himself engaged in sexual acts with young girls. Lee had posed at least 14 different naked girls and taken photos focusing on their genitals. The girls ranged in age from 11 to around 15 years, with some subjects showing obvious signs of distress.

Lee was convicted in May 1999 and sentenced to 12 years imprisonment for offences under the CST Act. On appeal to the Full Court of the Western Australia Supreme Court, his sentence was reduced to 10 years. In the appeal decision, Kennedy J[16] noted that Lee had systematically abused young girls during his stay in Cambodia, with no concern as to the impact of his offences on the victims. However, he found that the original sentence was excessive, especially considering that there was no evidence to indicate that the intercourse was not consensual.

In his judgment, Kennedy J did not recognise the considerable personal impact upon the children, categorising them as 'Asian children in poverty', rather than individual victims of child sexual abuse, and so accordingly reduced the sentence. In addition, despite acknowledging the economic and power disparities between the offender and the victim, Kennedy J still found that the sexual activities could have been consensual.

In the light of such decisions, further judicial education regarding the incidence and impact of child sex tourism may be necessary, so as to increase consistency in attitudes and sentences. Judges would then be better equipped regarding the intention and issues underlying the CST Act.

16 Justices Murray & Wallwork gave similar decisions.

## Conclusion: Does the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) fulfil Australia's obligations under the *Convention on the Rights of the Child*?

The CST Act's purpose is meeting Australia's obligation under the CRC to protect children from sexual exploitation and abuse, whatever their nationality. Although addressing the underlying social, economic and cultural factors exacerbating child prostitution in receiving countries is also necessary, the Act was intended to be a model law that would provide 'a real and enforceable deterrent to the sexual abuse of children outside Australia' (Hansard 1994: 73).

This is an undeniably important goal. The crucial question, however, is whether this goal has been achieved. If the success of the CST Act is to be evaluated according to the number of successful prosecutions, then the performance of the Act has been fairly commendable.

If, however, the success of legislation criminalising international breaches of human rights is to be measured against its success in protecting the victims concerned, then the operation of the CST Act must be considered disappointing. While the situation should improve following the recent child-friendly procedural amendments, the problematic judicial attitudes in the cases that do reach trial and inadequate resources allocated to investigation and enforcement raise questions regarding the Government's commitment.

It is important to note, however, that the CST Act is not intended to bear primary responsibility for ensuring that the sexual exploitation of children in other countries is punished (Hansard 1994). Child sex tourists are only prosecuted under the CST Act when they escape liability in the country where the offences were committed, such as where the country concerned is unwilling or unable to prosecute.

For maximum effectiveness, child sex tourism and its underlying causes need to be addressed within the countries concerned. It is therefore important to examine initiatives by governments and non-governmental organisations in receiving countries.

### *Government and regional initiatives*

The ideal strategy for combating child sex tourism is to prosecute the majority of offences in the countries where they were committed. This would both emphasise the unacceptability of sexually exploiting children, and generate significant logistical advantages in gathering evidence and obtaining witness testimony (Hodgson 1994; Allen 1998).

Unfortunately, however, the number of successful prosecutions in Asia has been low. Even where legislation is in place to address child prostitution, governments in the Asia-Pacific region are often reluctant to enforce the laws strictly (Hodgson 1994).

There are a number of reasons underlying this reluctance. Economically, the tourism industry is an important income source in the Asia–Pacific region. Sex tourism has often been seen as a way to attract foreign revenue, rather than as a violation of children's rights (Warburton & Camacho de la Cruz 1996). It can also be argued (for example, Ryan & Kinder 1996: 507) that sex tourism fulfils the same kinds of needs underlying general tourism, such as fantasy fulfilment, novel experiences, and relaxation, with both existing outside the normal standards of behaviour.

Furthermore, law enforcement officers are usually low paid, increasing their vulnerability to bribery by relatively wealthy foreign tourists and the sex trade industry. Even where police refuse the temptations, inadequate resources limit their effectiveness (Muntarbhorn, 1991). It can also be difficult to stop suspects from leaving Asia for overseas countries, even if there is a desire to prosecute and reasonable evidence is available (Orme 1993: 14).

Over the past few years, however, many governments in the Asia–Pacific region have begun to realise that addressing child sex tourism is necessary to ensure their future development. The following discussion focuses on initiatives in the Philippines as a case study regarding the use of integrated strategies.

In the Philippines, the commercial sexual exploitation of children is relatively widespread, with UNICEF estimating that around 60,000 children (under 18 years) are involved in the sex industry and NGOs estimating up to 100,000 (ECPAT Development Manual). Child prostitutes are widely available to tourists and locals in bars, brothels, streets and beaches.

As a first step, the Philippine Government implemented legislation exempting all children below 18 years from criminal liability for prostitution, enabling them to seek assistance from law enforcement officials without fear of prosecution. In addition, the *Republic Act No 7610 1992* (Philippines) specifically addresses child prostitution and other sexual abuse (art III), child trafficking (art IV) and obscene publications (art V). Significant penalties are imposed on clients, brothel owners, procurers and advertisers (art VII). Merely to be found alone with a child who is not a relative inside a hotel or other place constitutes an attempt to commit prostitution, and is an offence (art III).

Apart from legislation, the Philippine Government has implemented initiatives such

as women's desks at police stations and anti-child abuse divisions within the National Bureau of Investigation and Department of Justice (ECPAT 1996). In addition, the Ministry of Social Welfare in Metro Manila has developed rapid response teams containing police officers, social workers and NGO support teams, with the purpose of both apprehending offenders and offering immediate support to the children involved (World Congress 2001b: 5). These programs have resulted in several successful prosecutions, in turn increasing public confidence and the level of reporting.

Despite these new measures, the enforcement of laws against child prostitution by the Philippine Government has been irregular in the past (Asian Economic News 2000; ECPAT 1996). However, there are hopes that this may be changing. In January 2000, the Interior and Local Government Secretary ordered a crackdown against prostitution syndicates responsible for supplying girl children and women to the sex trade in Manila (The Manila Times 2000). While there are likely to be future difficulties, these initiatives have the potential to address child sex tourism more effectively.

In addition to measures implemented within specific countries, an important regional initiative was instigated in March 2000, when the Philippine and US Governments co-hosted the Asian Regional Initiative Against the Trafficking of Women and Girls (ARIAT). Representatives from 16 countries in the Asia–Pacific region were present, as well as representatives from intergovernmental and non-governmental organisations in the region. The conference developed a Regional Action Plan, focusing on practical strategies aimed at prevention, protection, prosecution, repatriation and reintegration.

In addition to the ARIAT initiative, regional consultations were held prior to the 2001 World Congress Against Commercial Sexual Exploitation of Children. While there is always the risk that such undertakings will generate rhetorical documents rather than practical change, these gatherings help to appraise strategies and foster partnerships.

### *Initiatives by non-governmental organisations*

The success of these legislative and regional initiatives greatly depends on the extensive work performed by non-governmental organisations (NGOs) in receiving countries. Legal reforms operating in isolation are unlikely to address adequately the issues underlying child sex tourism. Instead, multifaceted responses are often necessary to generate more beneficial outcomes for the children concerned.

NGOs in the Asia–Pacific region are running wide-ranging community 'grassroots' projects to combat child sex tourism. The programs are generally established to address specific risk factors for child prostitution, such as poverty, family disintegration and discrimination.

For example, End Child Prostitution, Pornography and Trafficking (ECPAT) runs a prevention program in Northern Thailand. It funds local NGOs in northern Thailand that give vulnerable children alternative options to the commercial sex industry. This includes awareness raising, education, vocational training and income generation assistance, as well as changing the attitudes and behaviour of parents and villagers. Due to the program, the number of children leaving the villages to work in areas where the child sex industry is well established has been greatly reduced (ECPAT 1999b). While it is important to ensure that the offered occupational skills accurately reflect job market needs, such programs indicate the potential of measures designed for a particular social, economic and cultural context.

## *Conclusion*

The CST Act was enacted to implement Australia's obligations under the CRC. Although it may not be the optimal solution, in many ways the Act has achieved its objectives. By incorporating the CRC provisions relating to child sex tourism, it has resulted in a number of convictions and increased accountability for these offences.

Despite these successes, problems with procedural and evidentiary provisions in the CST Act have restricted its operation, limiting its impact on the child sex tourism industry. In addition, the Act does not satisfy some of Australia's potential obligations under the Optional Protocol to the CRC, namely to prevent child prostitution, protect vulnerable children and assist child victims.

In order to fully utilise the potential of the CST Act, Australia needs to develop strong partnerships with receiving countries. Some initiatives have already been made. For example, in October 1997 the Australian and Philippine Governments signed a 'Memorandum of Understanding for Joint Action to Combat Child Sexual Abuse and Other Serious Crimes' (MOU). Although not legally binding, the MOU formalises cooperation between Australia and the Philippines in combating serious crime, including child sexual abuse. Relevant authorities are required to give prompt and confidential assistance and exchange intelligence and information (Department of Family and Community Services 2000; Piotrowicz 1998).

A similar Memorandum of Understanding was signed with Fiji, in December 1998 (Department of Family and Community Services 2000). This MOU with Fiji is

particularly important, given the sharp increase in child sex tourism in the Pacific, following increased pressure on the industry in South East Asia (ECPAT 1998).

Apart from such governmental affiliations, Australia's greatest contribution to abolishing child sex tourism may be in assisting NGOs to implement programs aimed at prevention, protection and rehabilitation. The Australian Government already has a reasonably strong record in this area. For example, in 1999–2000, the Australian overseas aid program provided $18 million to initiatives directly aimed at combating the sexual exploitation of children (Department of Family and Community Services 2000: 4).

Therefore, while further reform of the CST Act is desirable to ensure a strong legal framework, Australia can also contribute to abolishing child sex tourism by both pursuing international cooperation in prosecuting offenders, and providing funds for programs that address causal factors such as poverty and discrimination. The CST Act will then become one component in a range of evolving government strategies addressing child sex tourism. ●

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