

## **NGO Monitoring - ECPAT Sweden**

The first World Congress against Commercial Sexual Exploitation of Children was held in Stockholm on 27-31 August 1996. The initiator of the congress was the organisation ECPAT (End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes), which was founded in Chiang Mai in northern Thailand in 1990 by a group of NGO representatives from various countries in Southeast Asia. Together they determined that commercial sexual exploitation of and trade in children, within and outside the tourist trade in their countries, was not a matter of single cases but rather a fast-growing child sex industry.

Until the beginning of the 1990s, the world had closed its eyes to commercial sexual exploitation of children. Economic and other interests, in combination with weak legislation, lack of interest on the part of politicians and law enforcement agencies, as well as insufficient resources in the judicial sector, contributed to the phenomenon remaining close to unheard of, invisible and thus neglected.

Well organised groups of perpetrators could, without much restraint, give vent to their inclinations, particularly among socially and economically underprivileged children in developing countries. More and more "ordinary" adult persons from industrialised countries - vacation and business travellers – took advantage of this situation, many in the belief that they would run less risk of contracting HIV or other transmitted diseases when having sex with minors.

With this as a background, ECPAT was established in South-East-Asia. The ECPAT campaign soon won support also in the Western world and a large number of European countries, as well as the USA, Japan, Australia and New Zealand, joined in this work. Through insistent campaign efforts, ECPAT has succeeded in awakening international public opinion. Over the past years ECPAT has pushed through changes in law for increased protection of children, raised considerable awareness and increased understanding on the topic as well as political rallying in many countries.

The first World Congress against Commercial Sexual Exploitation of Children put commercial sexual exploitation of children on the international political agenda, whereby governmental representatives of 122 countries united in a Declaration and an Agenda for Action, fighting against commercial sexual exploitation of children (enclosed). The world's commitment to the Agenda was reinforced by the second World Congress in Yokohama, Japan, in December 2001, when 136 governments confirmed their undertakings and in 2008 by the third world congress in Rio de Janeiro.

ECPAT Sweden was established in 1996, with 23 NGO member organisations as well as individual members. Its Advisory Committee represents various sectors of society including media, youth, child psychologists, police, Parliament, tourism, and the Stockholm University. ECPAT Sweden works for maximum realization in Sweden of the Agenda for Action adopted by the Stockholm World Congress. In addition it works for Swedish and international conformity with Articles 34 and 35 of the UN Convention on the Rights of the Child. ECPAT Sweden has among many things developed a Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism, which is now implemented by the tourism industry in over 40 countries world-wide. In 2005 ECPAT initiated collaboration between the national Criminal Police and all the major Internet service providers in order to block child

sexual abuse materials on the Internet. To make it harder to use the financial systems for this trade, ECPAT started the process to form a financial coalition against child pornography in Sweden. This financial coalition is now in operation involving all the banks in the country. In collaboration with the Police, payments for child pornographic material are being identified and stopped. Over the years ECPAT Sweden has also conducted training on commercial sexual exploitation of children for police, prosecutors, judges, lawyers, teachers, as well as students of law, tourism, social work and journalism; organised wide-ranging awareness campaigns; and youth activities such as chat-conferences on child pornography and paedophile activities on the Internet. ECPAT Sweden has further been the only voice in Sweden highlighting the fact that Swedes go abroad with the purpose to sexually abuse children in developing countries. Furthermore, ECPAT has during the past ten years raised awareness on the vulnerability of children in the migration system.

## **Comments from ECPAT Sweden to the first Swedish government report on implementation of the Optional Protocol to the Convention on the Rights of the Child and on the sale of children, child prostitution and child pornography**

### **Conclusion**

The Optional Protocol is perhaps *the* prime legal tool in the global battle against the contemporary slavery where children are victims. ECPAT Sweden is therefore very concerned about the quality of the initial report of the Swedish government. Among our concerns is the fact that the reporting under the Protocol will become integrated with the general reports under the CRC every 5 years, which in practice means that Sweden has not had a formal and initial proper review of commitments made under the Protocol. ECPAT therefore asks the Committee to kindly request the Swedish government for an amended and substantial report on the implementation of the Protocol. ECPAT thereafter asks that the reporting requirement is not submerged with the reporting under the CRC since the issues addressed in the OPC run an apparent risk of being forgotten and even further less addressed.

### **1. Introduction**

#### **a. Methodology**

The report has been prepared by ECPAT Sweden. ECPAT collects information on the situation relating to CSEC in Sweden, and situations that are linked to Sweden. ECPAT acquires its facts and figures of situations through first hand information, reviewing reports, research, conversations with experts, foremost individuals working directly with the issues such as law enforcement representatives, decision makers at various levels (local, regional, national, global), private sector representatives in the tourism-, transportation-, IT- and finance industries, and through direct information as acquired by the ECPAT Hotline.

#### **b. General situation in Sweden impacting the topic**

Unfortunately, Sweden stands far from protecting children from all forms of sexual exploitation and sexual abuse and omits to take all appropriate national, bilateral and multilateral measures in accordance with the Optional Protocol and the CRC. On the contrary

Sweden is a country where e. g. economic crimes are more prioritised. Children may be sexually abused undetected. The Government lacks a fundamental strategy that is essential to prevent and protect children from commercial sexual exploitation. More could be expected from a country being one of the first in the world to ratify the CRC and to host the first World Congress against Commercial Sexual Exploitation of Children in 1996.

Some circumstances illustrate the range of the problems:

- Some cases of sexual exploitation of children are ignored in Sweden because of lack of resources and priority.
- Millions of images of sexual abuse of children are not investigated for the same reasons.
- The commercial sexual exploitation is sometimes punished by an economic penalty (normally a couple of hundred dollars).
- The commercial aspect of sexual abuse of children undermines the legal protection and sex buyers are punished by fine for the purchase but not the actual sexual offence.
- The legal protection against sexual abuse is largely limited to the age of 13 and children are then regarded and treated as adults.
- There is still no data, research or statistics on the extent of the problem of commercial sexual exploitation of children (sale of children, child pornography and child prostitution) and the number of children falling victims to commercial sexual exploitation.
- Professional groups working with and for children still lack compulsory regular training on commercial sexual exploitation, such as judges, prosecutors, police officers, social workers, teachers etc.
- There is very limited rehabilitation treatment and counselling offered to perpetrators.
- Sexual exploitation of children committed abroad by Swedes has been ignored by the government, despite the concern and recommendation raised in the *Concluding Observations* by the UN Committee on the rights of the child dated June 2009.
- Hundreds of asylum-seeking minors disappear yearly in Sweden; some of them have been found victims of commercial sexual exploitation.
- Sentenced sex offenders may work professionally with children, no prohibition exists.
- Corporate liability for associated crimes (to the Protocol) is not developed and sanctions are limited to monetary penalties.

Some of these facts are mentioned in the report by the Government. However, what is striking in the report is that there is no vision, no strategic plan for how to protect children from sexual exploitation involving all sectors and levels in the society. There is an enumeration of activities carried out, as well as current legislation but there is no substantive analysis of the activities undertaken, nor a critical assessment of the legislation and other tools to assure the protection and to fulfil the requirements set up in the Optional Protocol.

The Optional Protocol came into force in February 2007 in Sweden. The implementation should have increased the Government's efforts to act against commercial sexual exploitation. It is disappointing that in the year of 2011, there is neither statistics on the scale of commercial sexual exploitation of children in Sweden, nor is there adequate knowledge and understanding among professionals about the problem.

The Children's Welfare Foundation noted in its report 2009 to the Government that "the knowledge of professionals on sexual exploitation is still relatively low in parts of Sweden."

According to the Children's Welfare Foundation, representatives from, for instance, the police, the social services and schools have drawn attention to difficulties in dealing with sexual exploitation with existing resources. As a consequence of lack of knowledge there are no structures or routines on how to prevent the problem and protect children from commercial sexual exploitation.

The lack of priority and understanding of the complexity of commercial sexual exploitation of children becomes highly visible when it comes to sanctions pertaining to the crimes relating to the *offender and demand side* of commercial sexual exploitation of children. For example that of the purchaser (possession of large quantities of child pornography, purchasing sex from a trafficking victim, purchasing sex in connection with travel in other countries), are practically none in Sweden as of today. Commercial sexual exploitation of children is often sanctioned with an economic penalty. The commercial aspect of the sexual abuse, the remuneration, seems to undermine the legal protection of children. When the child is close to the age of consent, which is 15 years old, there is practically no legal protection in Sweden. The arguments from the perpetrators that he/she believed the child was over 15 are in general accepted.

Furthermore, Sweden has a poorly developed system for offender management to prevent offenders from initiating exploitation (potential perpetrators) and recommitting exploitation (if already sentenced). Basically the only care and rehabilitation services that exist are within the prisons. Since most sex offenders do not receive a more severe penalty than an economic penalty, most sex offenders are not offered treatment. The Probation Service in recent years however also offer care and rehabilitation service for sex offenders, but it is not a routine to offer to all sentenced sex offenders.

The Government has further over the years failed to take any action against the fact that Swedish citizen's travel abroad in order to sexually abuse children. ECPAT Sweden has been the only organisation in Sweden that has drawn public attention to the issue in repeated media campaigns and has also persistently lobbied the Government. In 2011 ECPAT notes initiatives from authorities as well as the government to stem child sex tourism, which ECPAT welcomes.

In conclusion, Sweden stands far from protecting children from all forms of commercial sexual exploitation.

## **2. Substantive analysis**

### **a. General measures of implementation**

#### **Statistics**

Until today the issue of data collection remains a large challenge in Sweden as also mentioned in the governmental report. Data is lacking for almost all forms of sexual exploitation of children. There is no national estimation of the number of children in prostitution in Sweden, nor is there any estimation of the number of children being trafficked to and within Sweden for sexual purposes. The last number given was 400-600 children and women, estimated by the National Police in 2003.

Apart from the lack of statistics, another challenge is also the fact that it is not possible to follow a case from reporting or notification to verdict, which make the statistics very difficult to analyse. This has also been pointed out by various experts, e.g. the Faculty of Law at Stockholm University as recent as in 2011. The problem with the statistic is that it is not comparable. As noted in the governmental report, e.g. the number of notifications is compared with the number of prosecuted individuals, despite the fact that most of the notifications were made the previous year. Further if a person is convicted for a rape of a child, and remuneration has been provided to the child or to a third person, this will not be shown in the statistic. It is only the major crime, which will be registered in criminal statistics.

To summarize, the State Party still has to “*establish a coordinated approach between all entities collecting data on children and introduce a comprehensive system of data collection of victims of sexual exploitation*”, as recommended by the Committee in Concluding Observations, article 10, in 2005.

### **Action plans**

#### **Action Plan against sexual exploitation of children**

The National Action Plan against Sexual Exploitation of Children was updated in 2007 for the second time. The plan was supposed to be updated after the third World Congress against Commercial Sexual Exploitation of Children in Rio de Janeiro in 2008. However the update was postponed to be made after the Concluding Observations were presented in June 2009. Despite the criticism by the Committee the Swedish government decided to update the Action Plan in 2012.

ECPAT is of the view that the action plan in place from 2007 needs to be updated and become more comprehensive and reflect the commitments made during all the three world congresses against commercial sexual exploitation. ECPAT further recommend actions not only focusing on *Swedish children*. It is equally crucial to identify children that reside illegally in Sweden and that are in need of protection and care, as well as children in other countries affected by crimes of Swedish residents abroad. Sweden has a responsibility to prosecute and provide access to justice and remedy to these children since the principle of non-discrimination is key to the Convention on the Rights of the Child and Optional Protocol.

ECPAT welcomes that the Government’s objective and (one of many) aim of the Action Plan is to ensure that “*no child in another country is sexually exploited by persons from Sweden*”. But the 2007 National Plan of Action only outlines three planned activities of poor significance. ECPAT wishes to state that thus, during the period of the initial report (until 2009) the government has *not initiated or presented any substantial measure to prevent or combat child sex tourism*. Child sex tourism has until very recently been handled as a non-issue in Sweden, as already concluded previously. In 2009, after years of lobbying by ECPAT Sweden, the Swedish National Police allocated three police officers to work with child sex tourism on a project basis, which ECPAT welcomes warmly.

The plan should further e.g. include actions to tackle the demand side of the problem:

- more research on offenders,
- not excluding female and young offenders,
- awareness-campaigns,
- evaluation of preventive measures,

- propositions of new preventive measures,
- police liaison officers to be posted at the most frequent tourism destinations for Swedish residents and citizens and **men ska kolla på det mer noggrant sen...the**
- prohibition for *any* individual convicted for sexual offences against children to undertake work involving children.

### **Action Plan against prostitution and human trafficking**

After years of preparations and a prolonged process, the National Action Plan against prostitution and human trafficking (2008-2010) suggested several valuable measures addressing both children and adults in order to increase the protection and support, reinforce the preventive work, the quality and efficiency in the judicial system and increase the national and international co-operation.

However if the period of implementation had been longer, and the large amount of activities had been co-ordinated among all the actors and on a national level, the result had most probably been significant.

Combating sexual exploitation of children is an on-going process and unfortunately not "fixed" in a period of two years. ECPAT Sweden sincerely hopes that the government will follow-up the Action Plan and allocate further resources so that the valuable work carried out during the two-year period will not be wasted.

### **Legislation – short summary**

The Swedish legislation on commercial sexual exploitation is generally well-defined. The protection against commercial sexual exploitation is however limited for children between 13-17 years old. The age of consent at 15 years old seems to have undermined the legal protection, as well as the commercial aspect of sexual abuse of a child. In the latter case the offender is punished by fine for the purchase of a sexual act of a minor, but not the actual sexual crime. The punishments for the crimes *on the demand-side of the criminality* are very low and at the very bottom of the scale of Swedish crime sanctions. The average punishment for child pornography is for example a financial penalty, which is also the case when it comes to punishment for purchase of a trafficked victim (child or adult). To sanction the driving forces behind the crime with a fine could not be in accordance with the Optional Protocol. As a consequence of the low sanctions these crimes are not given priority.

## **b. Prevention**

### **Article 9.1 and 9.2. – Prevention programmes**

The prevention programmes mentioned in the governmental report refers to limited groups and does not cover the general public.

As per the requirements of the Optional Protocol, ECPAT would like to bring the following to the attention of the Committee;

1. There are no preventive programmes towards the general public when it comes to raise awareness of commercial sexual exploitation of children in Sweden or abroad. One third of all interviewed Swedish persons (in a survey on child sex tourism, carried out by a survey

company, “YouGov”, in December 2010, on behalf of ECPAT Sweden, please see the summary of the survey in appendix 1.) say they are uncertain of how to handle a situation of suspected prevalence of child sex tourism. Only thirty percent of those who came across child pornography report the material and only five percent reported to the police, according to a survey on child pornography (carried out by YouGov in December, 2010, on behalf of ECPAT Sweden).

2. Treatment of offenders: There are practically no prevention programs addressed to potential offenders, nor to prevent new crimes for punished offenders. The care and rehabilitation services that exist are within the prisons and limited treatment in open care. Since most sex offenders of commercial sexual exploitation of a child do not receive a more severe penalty than a financial penalty, most sex offenders never come close to being offered treatment. In recent years the care is also offered within the Probation service but it is not a routine to offer all sex offenders such care, when not sentenced to prison. Currently there are two projects in Sweden to which persons can turn, if they are about to initiate or recommit sexual exploitation of children; the Centre for Andrology and Sexual Medicine at the Karolinska University-Hospital, which assists individuals suffering from conditions such as compulsive sexual behaviour and sexual addiction, as well as the project called “KAST”, that offers support to buyers of sexual services via telephone, Internet and individual meetings. The Centre for Andrology and Sexual Medicine at the Karolinska University-Hospital is however only primarily available for residents, when it comes to treatment, in the Stockholm region. In a report by the National Board of Health and Welfare’s from 2011 one can read the following conclusion:

*”The National Board of Health and Welfare is of the opinion that tried treatment efforts should be further elaborated and be made available for men, women and children who have committed or run a risk on committing sexual offences. The availability to treatment for children with sexually oriented problematic behaviour and young people who have committed or run a risk of committing sexual offences, is restricted to the southern part of Sweden. The National Board of Health and Welfare emphasizes the importance of the development of regional proficiency centres to facilitate access for children and young people to evidence based treatment efforts geographically nearer their home district. The current level of understanding of children with sexual behaviours towards others is limited, as well as how their problems can be treated. Considerable efforts are called for in this field and the National Board of Health and Welfare recommends special investments in order to provide personnel in pre-schools, recreation centers, schools, social services as well as parents the support they require.”<sup>1</sup>*

3. Criminal record: Not all professionals working with children are covered by the obligation to show an abstract of the criminal record. The Swedish model is limited to a few professional groups and does not prohibit the employer to hire a person, who has been sentenced for sexual abuse of a child. It is a decision the legislator leaves to the employer.

4. Disseminate knowledge. There has been an improvement in regard to training on children’s rights, but there is still no compulsory systematic training on commercial sexual exploitation of children for all professional groups working with and for children.

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<sup>1</sup> Behandlingsinsatser för personer som har begått eller riskerar att begå sexuella övergrepp mot barn, Socialstyrelsen 2011 (Rehabilitation efforts targeting individuals who have committed or run a risk of committing sexual offences against children) page 8

5. Safety online Despite numerous contacts and meetings over the last twelve years with the National Agency for Education highlighting the risks of children becoming victims of commercial sexual exploitation when using the Internet, training is still made on ad-hoc basis in schools and not compulsory in the school curriculum. In the governmental report “Knowledge about Sexual Exploitation in Sweden” presented in 2004, the following is stated: *“The schools also have a responsibility to guarantee that the computers in school are only used for education. Technical filters, rules on how to use the computers and to teach children how to avoid the risks exposed when using the Internet needs to be addressed. This requires that teachers get knowledge about information technology and regularly are updated because of the fast development”*<sup>2</sup>. This is unfortunately not implemented, despite the fact that the need of training was also a concern raised in the Concluding Observations in 2005.

6. Legislation on grooming The Swedish legislation on grooming intended to target adult contacts with children for sexual purposes. The legislation came into force on July 1, 2009 and has so far resulted in one verdict despite the fact that a report by National Council for Crime Prevention (Brå) in 2007 showed that 30% of the Swedish teenagers had been sexually contacted by an adult.<sup>3</sup> The legislation is weak and ineffective. Instead of criminalising the mere fact that an adult contact a child for sexual purposes, the construction of the legislation requires that the adult make an arrangement to meet a child and take appropriate measures to do so. Because of the low penalty, fine or imprisonment for at most a year, police is not able to use appropriate tools when investigating.

7. The National C.I.D.’s child pornography group consists of nine police officers of which four police officers are dedicated to work with child sex tourism. For a numbers of years the group consisted of only two police officers. Following a public campaign in 2006/2007 by ECPAT Sweden, the group received more resources. Cases are still sometimes being outlawed because of lack of resources, despite the new organisation introduced in 2006 where local police also investigate child pornography cases.

8. ECPAT Hotline. The government refers to the ECPAT Hotline, to which the general public can report child pornography, trafficking in children for sexual purposes as well as child sex tourism. ECPAT Sweden has operated the ECPAT Hotline since 2005 without any financial contribution from the government and poor assistance in spreading information about the possibility to report the crimes under the Optional Protocol this way. The aim of the hotline is to increase the number of reports from the general public by giving an alternative anonymous way of reporting via Internet. The ECPAT Hotline receives a couple of hundred reports every month.

### **c. Prohibition and Related Matters**

#### **SALE OF CHILDREN**

##### **Article 2, 3.1 a, Sale of Children**

As per the requirements of the Optional Protocol, ECPAT would like to bring the following to the attention of the Committee;

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<sup>2</sup> SOU 2004:71, page 199, Governmental report ” Knowledge about Sexual Exploitation in Sweden

<sup>3</sup> Vuxnas sexuella kontakter med barn via Internet. Omfattning, karaktär, åtgärder. Rapport 2007:11, BRÅ (Adults sexual contacts with children through Internet. Extent, characteristics, Actions) Report by the National Council for Crime Prevention.

- Sale of children is prohibited in theory but weakly in practice. *Purchase of sexual act of a minor* is sanctioned with a fine as a minimum and 2 years imprisonment maximum. The law is infrequently applied. In practice, the law against prohibition against adult prostitution (purchase of a sexual service) is frequently used when the victim is a trafficked minor. The courts do not try the age intent of the perpetrator and consequently deprives the child protection and access to remedy. The closer the victim is to 18 years old, the easier a consent to sexual exploitation is accepted by the court. It is possible to say that the actual protection against sexual exploitation exists for children up to 12 years old.<sup>4</sup>
- Out of all the transactions defined under article 3.1.i, *offering, delivering, accepting a child*) and 3.1.ii.b) *offering, obtaining, procuring or providing a child for sexual exploitation*, the most weakly protected (normatively and in practice) is *accepting a child for sexual purposes*. ECPAT is appalled to see that the sanction for accepting a child for sexual purposes carries the less heavy sanction (purchase of sexual act of a minor). If there was no demand, there would be no supply or delivering.
- The other forms of transactions are prohibited under the *trafficking* provision of the Swedish Penal Code. The trafficking law is in practice limited to cross-border with foreign victims and not applied when it comes to Swedish cases.
- The penalties and sanctions available for trafficking or procurement reflect the gravity of such a crime, minimum 2 years to a maximum of 10 years. The offence of purchasing a sexual act / service (from a child/adult) is not at all punished with the view taken to reflect the gravity of such a crime.

### **Children in the migration system not protected from sexual exploitation - discrimination of foreign children**

#### **Unaccompanied minors**

Until recently children at risk in the migration system was only identified as those children that arrive unaccompanied and apply for asylum. Due to ECPAT Sweden's initial investigations, there is now statistics on how many such minors arrive and also on how many disappear in Sweden. There are also particular protective measures in place to increase the protection of these children, as described in the Government report. ECPAT welcomes these measures. ECPAT has worked to visualise these children during the past 10 years.

The governmental analysis of children at risk seems to end with the identification of unaccompanied asylum-seeking minors and efforts assuring that they do not disappear. There are however other risk situations. Unaccompanied asylum-seeking minors, who are placed with relatives or their family, may run a risk of commercial sexual exploitation. More than half of all unaccompanied minors are placed with families or relatives<sup>5</sup>. When a child is picked up from a special unit by a person who claims to be a family-member or a relative, the kinship is not always controlled. The family placement of foreign children is not investigated as extensive as for Swedish children. In a report conducted by Save the Children in 2008, "What has happened – unaccompanied asylum-seeking minors – reception since the municipalities have taken over the responsibility of accommodation and care") one can read the following:

<sup>4</sup> Stockholm University, Faculty of law, statement on the proposed new law on sexual crimes, page 4.

<sup>5</sup> Ds 2004:54, s 66, Governmental report 2005:54, page 66.

...”The municipalities are doing an investigation; they control the criminal register of the police and visit the family. But it is difficult; the children can be brought to Sweden by smugglers and are forced to different undertakings. Normally one gathers information about the background, but in these cases this is not done. It is a private placing and the families would never be approved as foster homes...”

...”If they are treated as Swedish children? No, they are not. My workload is for example much bigger than that of other social workers and when it comes to Swedish cases the investigation is much more extensive....”<sup>6</sup>

### **Other groups of children at risk of sexual exploitation**

Today ECPAT takes a wider perspective of children at risk in the migration system. There are also other groups of children than unaccompanied asylum-seeking minors, who are at risk of commercial sexual exploitation in the migration system. It may be children arriving to Sweden after supposed custodians, children arriving with adults falsely acting as legal custodians, undocumented children, children of irregular immigrants, children entering Sweden with the use of look-alike-passports etc.

The following fictive case illustrates the problem with children arriving after supposed custodians. Parents A and B arrive to Sweden in the year of 2003 and register at the Migration Board. In the investigation they mention that they have three children, including their ages. The three children are accompanying the parents. No questions are asked and it is assumed that these children are those of their parents. In 2005, another child arrives to the Migration Board without parents. The same parents, A and B, claim that the child is theirs. Even if there is no legal document supporting this, and even if they did not declare the existence of this child in the first investigation of their family situation in 2003, it is presumed that the child is also theirs. Even if the asylum investigator finds something in the situation that appears to contradict, the only remedy at hand is to alert the social services or the police for follow up. Such follow up may take weeks in practise. The legal presumption is that the child is that of the claimed custodians, and not even if there is reason to believe this is not the case, does the Migration Board have enough remedies to not give away the child to the claimed parents or custodians. It has come to ECPAT Sweden’s knowledge that this loophole is used to smuggle children to Sweden for exploitation. A woman testified in an interview in 2004 ( in Swedish Television) that she was offered 7000 USD to smuggle a child to Sweden, register it as her own and then leave it.<sup>7</sup> Even if the Migration Board is doing a review of its routines, it is urgent that immediate protective mechanisms are put in place to protect potential victims.

Children entering Sweden with the use of look-alike-passports is another group of children at risk of exploitation. ECPAT learnt about a case in 2004 where a Somali woman had been travelling between Sweden and Somalia 23 times during a period of ten months. It was suspected that she at least 16 times had brought children that were not her own, in the name of her own children. The police investigation was closed due to lack of evidence. The use of look-alike-passports has been highlighted several times in the annual reports on trafficking by the Swedish National Police. However, another risk situation is when children do not have

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<sup>6</sup> Extract from the Swedish report ”Hur har det gått? Ensamkommande barn –mottagande sedan kommunerna tagit över boende och omvårdnad”, (What has happened – unaccompanied asylum-seeking minors – reception since the municipalities have taken over the responsibility of accommodation and care)- - conducted by Save the Children, presented in spring 2008

<sup>7</sup> Documentary at the Swedish Television, ”Uppdrag Granskning”, September 2004.

their own passports or social security registration number and are unknown to the authorities, e.g. children born in Sweden by parents that are irregular immigrants/ in hiding.

The conclusion is that the Government has to take the starting point of a child's perspective to identify risks. Organized criminal groups and others interested in trafficking children to or through Sweden will not only look to abuse the system of unaccompanied asylum-seeking minors, but obviously try all possible ways. The intelligence gathering and analysis must improve, in order to enable detection of new groups of children at risk of commercial sexual exploitation in the migration system. Further routines and collaboration between responsible authorities, such as the Migration Board, the Police, the National Board of Health and Welfare and also the municipalities, must improve and increase to better protect all children at risk in the migration system.

Regrettably the child perspective is still lacking when it comes to prevention, repatriation, care, rehabilitation of victims of trafficking. The understanding of which groups of children are at risk of becoming victims of trafficking for sexual purposes or any other purpose is still very limited, even outside the migration system.

If national children are poorly protected from sexual exploitation, in Sweden foreign children and children in hiding are even less protected.

## **CHILD PROSTITUTION**

### **Article 3.1 b, 3.2, 3.3 Child Prostitution**

As per the requirements of the Optional Protocol, ECPAT would like to bring the following to the attention of the Committee;

- The law does not explicitly define *child prostitution*. However, all the criteria as defined in the Optional Protocol are covered in the application of the act *purchase of sexual act of a minor*, as described in the preparatory work to the law.
  - All sexual activity would be included.
  - Exchange of benefits may be in cash or in kind
  - The exchange of benefit may be given to another person on behalf of the child.
  - It may be organised through networks, individual pimps or take place on one-on-one basis.
- All intermediaries and facilitators seem to be covered under the laws of *trafficking* and *procurement* – offering, obtaining, procuring, providing.
- Children in prostitution are not criminalized, unless they have also acted as facilitators or intermediaries.
- The requirement of double criminality is not removed for the offence.

In chapter 6 Brottsbalken, (the Penal Code), provision 11, is the prohibition to purchase a sexual act from a person. It is intended to be applicable to adults in prostitution, but has come to be used in all cases when the age of the victim is unknown for some reason (and mostly the issue of the age is not even tried or investigated by the prosecutor or police).

Although it has been concluded that the Act of prohibition to purchase a sexual act from a person, has had positive impacts regarding the traffickers' reduced readiness to operate in Sweden, the blunt way of using it by the judges has led to decreased protection in trafficking cases, when the victims are minors vis-a-vis the sex offenders. The sanctions range between a financial penalty and a charge of six months imprisonment. In a case from 2001, the Supreme Court of Sweden states that the normal sanction is a set number of fines, for purchasing sex. In the mentioned case there was no involvement of any third person. It was a woman who had carried out a sexual act on a man for compensation. Even if this case has no resemblances to trafficking cases at all, this case has become the norm for judging men purchasing sexual acts from trafficking victims. Even in cases where the victims are minors, the purchaser of the sexual act or the abuser, will only receive a fine. The perpetrator does not even have to be present in court, since it can be handled as an administrative sanction. The payment slip can also be sent to the address of the workplace in order to avoid familiar inconveniences for the perpetrator. However, in 2007 one case was tried in a court of appeal, where women were victims of a trafficking ring. A number of factors were tried against the sex purchaser to indicate whether he could be held responsible for purchasing sex from a trafficked victim. Such factors included considerations regarding the victim's origin; if she was foreign, spoke Swedish, appeared drugged; the appearance of control, her sexual integrity during the sexual act (i.e. could she stop it if she wanted, did she have control); third party involved, negotiation of the price, settlement of the exploitation. The case resulted in conditional sentence, which is an important signal to forthcoming cases. However, as of until today, 2008, no other cases have used this as a precedence and a way of reasoning when inferring a punishment on the sex offender. Nor has the Supreme Court ruled according to the court of appeals to confirm a change in sentencing, confirming the court of appeal's reasoning. Therefore, it must be interpreted that a change in the law is required. The prostitution law has currently been under review, but the altered legislation that enters into force in July 2011, has not sufficiently taken this into consideration (the new sanctions will range between a financial penalty and a charge of one year imprisonment).

Although a case does not include the consideration of the victims' age, this may depend on the fact that the victims' ages were unknown in this particular case. However, it is important that in this distinction between purchase of a trafficked person and person who is not trafficked, the consideration of the victim's age be included, where a lower age should lead to a more severe sanction for the exploiter, sex offender / buyer.

In practice, traffickers have all interests in making victims appear to be older than 18 years. Thus, as a consequence when prosecutors and police do not ask questions about the age of the victim, the prohibition to purchase sex of an adult will be used when the victim is under-aged and the child deprived of its protection

## **CHILD PORNOGRAPHY**

### **Article 3.1.c, 3.2, 3.3 Child Pornography**

As per the requirements of the Optional Protocol, ECPAT would like to bring the following to the attention of the Committee;

- Child pornography is not defined in the law itself but defined by its preparatory work. "Any representation" however does not in Swedish law mean just "any"

representation. Textual descriptions, audio and simulated images of adults are not covered. Sketched images or cartoons are covered by the prohibition whether made by hand or by a computer or other means. Sketched images made for personal use are not prohibited as long as the picture is not intended for dissemination, transfer, granted use, exhibition or in any other way be made available to others. ECPAT would like to bring to the attention of the Committee that during 2011, there is a strong (freedom of expression-based group) opinion in favour of exempting cartoon material, ie depicted images from criminalisation. However, it should be noted that the Swedish government has made a reservation to the interpretation of “*any representation*” which ECPAT acknowledges but wishes to see that it is changed over time to provide for a full protection of children from sexual exploitation.

- The law covers: producing, distributing, disseminating, offering, selling. It is unclear whether importing and exporting is included.
- Possession is criminalised.
- A child is defined as a person whose pubertal development is not complete or, if it is apparent from the picture and its attendant circumstances, the victim is less than 18 years of age. A strict age limit of 18 is only applied when it comes to producing.
- Accessing, downloading (is actually covered by possession) and since 2010 viewing child pornography is also prohibited.
- Posing is prohibited and covered in its own act, Chapter 6 of the Penal Code, Section 8 – “A person who promotes or exploits performance or participation in sexual posing by a child less than fifteen years of age shall be sentenced for *exploitation of a child for sexual posing* to a fine or imprisonment for at most two years”. This also applies to a person who commits such an act against a child who is fifteen but not eighteen, if the posing is by its nature likely to damage the child’s health or development.
- The Child Pornography offence is not regarded a sexual offence against children. The offence is placed in Chapter 16, among crimes against public order. A transfer of the provision to chapter 6, would not only indicate the seriousness of the crime in accordance with the Protocol, but also give the child an evident right to claim damages, which is not the case at present.
- Grooming is covered in its own act. The offence of grooming is committed with intention of committing any sexual offence against a child and since *child pornography*, is not deemed a sexual offence against children it is not included.
- There exists no obligation for Internet Service Providers, credit card companies and other entities to report child pornography.
- Child pornography is sentenced with a fine or a maximum of six years. In practise it is rare with imprisonment.
- The requirement of double criminality is not removed for all acts of the offence.

### **Article 3.4 – Legal liability for legal entities**

ECPAT regrets that the State has not taken further measures on establishing corporate liability for related crimes. Sweden is about to ratify the European Council Convention on Sexual Exploitation and Sexual Abuse and no change to the penal code on corporate fines is proposed. The corporate fines are limited to monetary penalties. Even if this is an effective punishment on corporations to hamper an activity that is unwanted, other sanctions should be considered that strive to change prerequisites in the corporate environment and thereby other forms of sanctions / penalties should be considered. One of such could be penalty accompanied with an order or command to change a particular behaviour or condition. In this

way, a preventive function could also be achieved. When this is done, it should be considered that the effect needs to be noticeable for the corporation, that the company can be compelled somehow to undertake measures to prevent the same problem again and that the purpose of the penalty in the relevant context is given consideration. The aim of this is that there should be a preventive view added in remediating the fault committed.

The law gives exemptions for prosecuting suspected crimes, and situations where crimes have been committed by negligence and where the punishment of the offence is limited to a physical persona penalty; in such situations prosecution will be initiated only if necessary from a public point of view (Chapter 36, sections 7-10 a of the Penal Code on *corporate fines*, SFS 2006:283) which in practice thus will come to be applied only rarely.

This is a cause for concern, since the crimes: purchase of sexual act of a minor, purchase of sexual services (a crime directed towards adults, but since the age of the victim is seldom if never evidenced, especially where foreign children are victims it is relevant and often used as an instrument where minors are victims) and the child pornography are most often sanctioned with a penalty. Thus, many situations of legal liability would be at hand, it would be allowed to be exempted under this exception. In practice, all crimes that are at the core of the Protocol will thus fall on the side. The committee should require that legal person's liability for these crimes always are tried.

To make corporate responsibility for CSEC-related crimes effective, a child rights due diligence should be required of companies. In the situation of CSEC, this would require for example:

- A hotel to be alerted to the fact that receptionists may be using their position to facilitate tourists to bring children to their rooms for sexual exploitation, thereby being complicit in the abuse.
- An Internet Service Provider to think proactively about how to prevent child pornography to be hosted spread or facilitated through their technology provision. That they were not aware of what was happening is not enough. A due diligence process in this regard would specifically consider child pornography as a risk to children's rights and not just as an immoral / illegal breach of contract with obligating parties.
- Internet site owners (as follows by article 9.5) to prevent and actually prohibiting production and dissemination of material advertising offences described in the protocol, according to article 9.5. In essence, a due diligence process will alert the Internet site owners to look for these type of sites and close them down as well as terminate contractual arrangements with them, and report to the police. Failure to act once these risks are apparent to the site owners should accordingly entail a responsibility for failure to act.
- A finance institution (e.g. a bank, credit institution or any other financial service provider) to think proactively about how their payment systems can be misused to pay for child pornographic material. These institutions should prevent child pornography online through blocking of payments on the Internet for child pornography.
- A tour operator to have informed and trained their personnel to encourage tourists to report on suspected cases, establish local contacts including with law enforcement on the place of destination for preventive and active measures, to have a written plan on how to deal with suspected cases. The same diligent approach should be applied in the supply chain including when contracts are signed with hotels, restaurants etc. Good

practice exists in this field, and is codified in the *Code of Conduct against Child Sex Tourism for Tour Operators* (thecode.org) and the six criteria that suppliers of tourism services commit themselves to implement are the following. It is possible to say that these criteria are codified minimum requirements and any due diligence process for the travel and tourism industry should include, as a minimum the below measures.

1.	<i>To establish an ethical policy regarding commercial sexual exploitation of children.</i>
2.	<i>To train the personnel in the country of origin and travel destinations.</i>
3.	<i>To introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.</i>
4.	<i>To provide information to travellers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.</i>
5.	<i>To provide information to local "key persons" at the destinations.</i>
6.	<i>To report annually.</i>

Situations of negligence should also be covered, where a person in charge of supervising a situation has not conducted a careful due diligence with respect to preventing CSEC. Requirements of such due diligence must be for it to substantiate a risk-approach where violating children's rights are seen as a *risk to children's rights* and not just as a risk to the business. That is how a human rights due diligence approach is different to a legal compliance or regular due diligence process. A failing human rights due diligence for example, would be situations where companies are unprepared for how to deal with the event of an employee possessing child pornography on his work place computer. When this comes to the knowledge of the employer, they decide to delete the illegal abuse material rather than handing it to the police, as should be done since it is evidence material. This act by the employer is not only unsuitable and uninformed, but also criminal since it consists of destroying evidence material. ECPAT Sweden experiences that this type of situation occurs often, because there is a lack of information, not because of ill will or bad intention. The solution is not to one time off, punish each employer with an economic penalty (under the Swedish quoted law from 2006) that conducts this unsuitable act. The solution is to require employers to conduct human rights due diligences so that they are prepared to act responsibly with this type of situation. In this case, it would be much more beneficial to the cause of eliminating CSEC to prescribe that the company adopt a policy to prevent repeating the same mistake (deleting the images) in future situations.

#### **d. Protection of the Rights of Victims**

##### **Article 8, 9.3, 9.4**

As per the requirements of the Optional Protocol, ECPAT would like to bring the following to the attention of the Committee;

##### **Article 8.1.a**

The Child Advocacy Centers in Sweden in general lack knowledge and experience of commercial sexual exploitation.

Research reports confirm that when it comes to prosecution of sexual abuse of children, especially small children, careful consideration is made. The cases presented in court are rather difficult for the court to handle. The national frequency of prosecution for sex offences against children, over the last ten years, lies between 10 and 15%, which means that 85% to 90% of the cases never result in prosecution (or in a summary penal order/waiver of prosecution).<sup>8</sup>

### **Article 8.1.b Information, Crime victim portal**

The crime victim portal referred to in the report by the Government does not include any specific information to children. The authority does not have any available information at all addressed to children specifically. Although the authority has available information for adults in several languages ECPAT notes that there is no information available in Polish, Lithuanian, Estonian, and Tai etc – common countries of origin when it comes to victims of trafficking (adults and children).

### **Article 8.1.c Views of the child and 8.3**

Despite efforts from, among others the Crime Victim Compensation and Support Authority, in improving the behaviour towards children victims of sexual exploitation in the legal system, Swedish Save the Children, who meets sexually abused children witness that children feel mistrusted in the legal procedure. Children experience that just the fact that they are children, they are met with skepticism. Save the Children further witness that they meet parents, police officers and prosecutors that describe the hopelessness to handle these cases and that they feel it is not even worth the pain to report suspicious cases of sexual abuse against children. According to them the requirement of high level of evidence makes it impossible to get justice for abused children.<sup>9</sup>

A recent lawsuit from the Supreme Court (Case no. B 2937-10 issued in Stockholm on 28 December 2010) regarding sexual abuse on a child by the child's parent, has even increased the requirements of level of evidence. In the referred lawsuit two witnesses confirmed the child's story about sexual abuse and that they were convinced he spoke the truth. The Supreme Court stated: "*However, according to their testimonies the boy's statements were brief and imprecise and therefore their testimonies do not provide any clear support for the information provided by the boy in the case.*" The requirement that the boy should have explained in detail about the sexual abuse of a parent does not relate to the reality the law has to legally try.

The quotation below, from the referred verdict, illustrates the total lack of child focus and knowledge of children's reactions to sexual abuse.

*"TP (the boy) provided detailed descriptions of the first two occasions of abuse ..... Prior to this, he had answered 'no' several times during the investigations when asked whether any such abuse had taken place. He explained this by saying that he felt ashamed and assumed that he would not be believed. His account of the abuse appears to be manifestly lacking in detail in comparison with how he recounted other circumstances. In general his account appears to be short and vague."*

Please find the lawsuit enclosed in appendix 2.

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<sup>8</sup> C Diesen och E Diesen, Abuse against women and children – the legal procedure, 2009

<sup>9</sup> [http://www.rb.se/press/kommentarer/Pages/Radda\\_Barnen\\_kraver\\_oversyn\\_av\\_lag\\_om\\_overgrepp.aspx](http://www.rb.se/press/kommentarer/Pages/Radda_Barnen_kraver_oversyn_av_lag_om_overgrepp.aspx) (Save the Children Sweden, demands a review of the legislation regarding sexual abuse of children. 2011)

### **Article 8.1.e**

The Government has not made any comments on article 8.1.e. However ECPAT can witness that no training to media has been made in order to avoid inappropriate dissemination of information of child victims. There has been several occasions over the years where foreign child victims of trafficking have been identified via media.

### **Article 8.4 Training of prosecutors, judges, social services and victims.**

ECPAT is still very concerned that none of the enumerated groups have compulsory regular training in the fields of child sex tourism, child prostitution and child pornography, victim- and offender psychology.

The quotation below from a recent judgment of the Supreme Court (Case no. B 2937-10 issued in Stockholm on 28 December 2010, page 3 appendix to the Supreme Court Record, please see appendix 2) urge to consider carefully the use of behavioural science experts, which in the light of lack of training should be of utter importance when it comes to offences under the Optional Protocol.

*"5. The engagement of behavioural science experts in sexual offence cases may in some cases constitute a valuable aid for the courts. For example, they may help to provide useful background information and draw the attention of the court to potential sources of error. However, the courts should carefully consider in each particular case whether an expert needs to be appointed. There is virtually never any reason to appoint an expert to assess the credibility of someone who is being questioned or has been questioned before the court. (Cf. NJA 1991, p. 446.)*

### **Article 9.3 Support and protection**

It is deemed difficult if not impossible for children and adults, who have been victims of trafficking to receive a permanent residency in Sweden for asylum or other humanitarian status reasons. This practice and view has also been confirmed by the Swedish National Police. In effect, the situation and possibility for victims to stay in Sweden depends on their "value" as "evidence persons" in criminal proceedings, (if ever initiated), towards the traffickers. The officer of the preliminary investigation may apply for a temporary permit for the victim if the person may play a role in the criminal case.

It is very apparent that Swedish judges have no understanding of the specificity of the victim's situation and appearance in court. Even if the Palermo Protocol clearly and explicitly states that any purported or claimed willingness or intent of the child to participate in the exploitation is invalid, Swedish courts take this into consideration when judging the illegality of the traffickers and crimes committed.

In addition, there are obvious differences between the support given by social services to Swedish children at risk and foreign children at risk, as for example illustrated in the Save the Children Sweden report about unaccompanied asylum seeking minors.<sup>10</sup>

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<sup>10</sup> "Hur har det gått? Ensamkommande barn –mottagande sedan kommunerna tagit över boende och omvårdnad", (What has happened – unaccompanied asylum-seeking minors – reception since the municipalities have taken over the responsibility of accommodation and care)- - conducted by Save the Children, presented in spring 2008

### **Article 9.4 Compensation**

Compensation is hard to receive in cases of sexual exploitation, in part because many of the crimes require the identification of a perpetrator, or are offences against the state.

*“Procuring may as such confer the right to damages for a violation in some cases. However, one precondition is that the perpetrator subjected the person to whom the procuring offence refers – in this case the Aggrieved Party – to a serious violation of personal integrity, e.g. by him having exploited in an offensive or atrocious way the Aggrieved Party for the purpose of casual relations for payment (cf. Swedish Government Official Reports – SOU 1992:84, p. 268).*

*The procuring offence committed by XX did not include any such elements that mean that it constituted such a serious violation of the Aggrieved Party’s integrity that there should be a liability to pay damages. The Aggrieved Party’s action for damages against XX shall consequently be rejected.”*

In addition, a review carried out by the Crime Victim Compensation and Support Authority in 2010<sup>11</sup>, concerning court decisions in criminal action regarding human trafficking and similar crimes, showed that only a little more than half of the victims claimed damages from the perpetrator, partly due to the fact that the victims were afraid. Furthermore, the authority *“considers that it should be possible to view victims of trafficking as an injured party in the criminal process and for them to access compensation or damage for violation of integrity irrespective of the classification of the offence.”* Further the County Administrative Board in Stockholm’s report<sup>12</sup> on safe return for victims of trafficking for sexual purposes, stated that there are difficulties concerning injured parties legal counsels, since their formal assignment ends when the verdict is notified by the court. Therefore leaving a gap in the responsibility in terms of overseeing that the damages are actually being paid to the victim.

### **International Assistance and Cooperation**

In the governmental report it reads that *“Sweden provides global, regional and bilateral support for both technical and financial development assistance to counteract trade with children, child sex tourism and child prostitution.”*

ECPAT would like to point out that the primary obligation of the state is to make sure that child sex tourism is prevented. To assist other countries does not remove this primary obligation.

### **Article 10.1 Prevention, detection & regarding Child Sex Tourism**

#### **Child Sex Tourism**

##### **Brief background**

ECPAT Sweden is of the opinion that Sweden has until very recently constituted a sanctuary for sex offenders who abuse children in other countries. Over the years, ECPAT Sweden has been the only organisation in Sweden that has drawn public attention to the issue and persistently lobbied the Government about this problem. This is done despite Sweden, in

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<sup>11</sup> *Utbetalning av brottskadeersättning till offer för människohandel, Redovisning av ett regeringsuppdrag, 2010* (Compensation for victims of trafficking, Report to the Government).

<sup>12</sup> *Länsstyrelsen Stockholm, Ett Tryggare återvändande, (The County Administrative Board in Stockholm, A safer return) report 2010:03*

1996, being the host of the First World Congress against the Commercial Sexual Exploitation of Children.

As a result of an ECPAT questionnaire directed to all members of the Swedish Parliament in the spring of 2006, it transpired that most MPs considered that Sweden should adopt a leading position within the EU to combat child sex tourism. Notwithstanding this position, it can be mentioned that the Swedish Government did not act when the French Minister of Tourism, Léon Bertrand, at an informal meeting of ministers in Malta in October 2005, presented an initiative for the EU to take action against child sex tourism. The 'French initiative against child sex tourism' was raised at a number of subsequent EU meetings, but was subsequently discontinued owing to the lack of support from any other EU country. Sweden had a prime opportunity to demonstrate its responsibility and commitment to this issue and contribute to child sex tourism being put on the European agenda. However, this was not done. In the report of the Ministry of Enterprise, Energy and Communications to the EU, which was sent to France within the framework of the fact-gathering conducted in conjunction with the French initiative, the following was reported by the Swedish Government regarding its measures in the area of tourism:

*"We have no new national initiatives in Sweden in the fight against child sex tourism since The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code) was initiated in April 1998 by ECPAT Sweden in cooperation with Scandinavian tour operators and the World Tourism Organization. As you certainly know you find all further information on [www.thecode.org](http://www.thecode.org)." E-mail from the Ministry of Enterprise, Energy and Communications received by ECPAT Sweden on 8 December 2006*

### **Code of Conduct against Child Sex Tourism**

ECPAT Sweden, as indicated by the above quote, took the initiative in 1997 for a Code of Conduct for the travel sector, which is now being implemented by companies throughout the world and whose message has reached tens of millions of travellers. Our work with the 'Code of Conduct' is completely voluntary. The travel sector has worked with this over the last 10 years and the scope of this work extends far beyond the sector's obligations according to law. However, the travel sector cannot take over the role and responsibility of the central government for this work.

### **Child Sex Tourism in Sweden**

The Government's aim according to the Action Plan is that:

***"No children in other countries shall be exposed to sexual exploitation by individuals from Sweden"***

Since ECPAT Sweden (in early 2008) was only aware of a few cases of child sex tourism, although 46 years have elapsed since the introduction of extraterritorial legislation, ECPAT Sweden at the beginning of 2008, took the initiative to a study to be conducted by the University of Stockholm. The objective of the study was to look into how many reports of sexual exploitation of children committed abroad that resulted in prosecution and conviction. If the results revealed few reports and convictions ECPAT wished to find out the underlying reasons in order to be able to draw conclusions with the objective of making proposals for improvements.

The researchers Professor of procedural law Mr Christian Diesen and his research assistant Ms Eva L. Diesen, studied all police reports made in Sweden on sex offences during the years 2004, 2005, 2006 and 2007. During this period there were about 45,000 such reports, of which 15,000 were referable to sex offences against children aged under 15. About one per cent (1%) of the reports related to sex offences committed abroad. Of the 322 reports on sex offences abroad (the offences contained in Chapter 6 of the Swedish Penal Code (BrB), and human trafficking for sexual purposes and child pornography offences) that were analysed, there were only four cases of commercial sexual exploitation of children, of which two involved child sex tourism. None resulted in prosecution.

Professor Mr Christian Diesen at the University of Stockholm summarizes as follows in October 2008:

*“In general, it is impossible to avoid the impression that sex offences against children – despite ‘everyone’ considering that this involves horrible offences – are not a kind of offence given any priority in Sweden. The position of the crime investigation authorities is often that it is too difficult to achieve results in these cases. If they also involve children abroad, the investigation situation normally appears to be quite hopeless and they give up before they have started. In some respects this pessimism involves investigators considering that they do not have the resources to enable any meaningful investigation, and those investigations that are to be conducted in international cooperation are too cumbersome and protracted. The remedy for this is to increase their resources. This should be done in combination with increased knowledge, changes to the system and routines to ensure that knowledge is safeguarded, and that this knowledge is also passed on to international cooperating partners at the same time as foreign experience is utilised. Sweden has much to contribute internationally as regards protection of the child in legal proceedings (with aggrieved party counsel, a special representative for children, rapid and considerate proceedings, etc.), but is inefficient and dysfunctional as regards investigations relating to child victims of sex offences, whether within their home country or abroad.”* Please see enclosed appendix 3 - “Sex Offences Abroad with a Swedish link”, by Professor Christian Diesen and research assistant Eva Diesen, Faculty of Law, Stockholm University.

In summary, it can be concluded that child sex tourism has so far been considered a non-existent type of offence in Sweden, which becomes very clear when reading article 10 in the state report. Swedes wishing to exploit children sexually have been given the green light to travel abroad knowing that the risk of getting caught is very slight.

In 2011 however, ECPAT notes initiatives from authorities as well as the government to stem child sex tourism, which ECPAT warmly welcomes.

ECPAT further welcomes that the Swedish government is about to remove the requirement of double criminality for almost *all* relevant crimes in the context of the protocol. Yet, until the date of signature the following crimes are still under the requirement of double criminality:

- Purchase of sexual act of a minor (is suggested to be removed by the government)
- Exploitation of a child through sexual posing except from grave (suggested to be removed by the government)
- Sexual molestation of a child
- Grooming of a minor
- Child pornography (except for grave forms of possession and the production)

This means that these crimes are effectively still under the requirement of double criminality. The Swedish authorities actively refer to these crimes as “less serious sexual offences against children” which is the motivation to why the double criminality is not removed. ECPAT would like to hold out that *there are no sexual offences against children that can be deemed as less serious*. Furthermore, the character of the offence should not bear consequence on the possibility for the victim to access justice or remedy. And in effect, the maintenance of the double criminality requirement on these crimes limits the access to justice and importantly *the access to remedy of foreign children*.

### **Article 10.2. Assistance to child victims**

A Swedish state report (*The County Administrative Board, Stockholm, Ett Tryggare återvändande (A safer return), report 2010:03*) reveals and confirms ECPAT's understanding of lacking child perspective. Firstly, a child perspective is missing when the process for safe return is handled by Swedish authorities. Routines for collaboration and cooperation between authorities and organizations are missing. Secondly, communication and cooperation between actors in the home country is lacking. There is a particular need for a child perspective when children are to be returned home. The state report recommends that guidelines are developed, and ECPAT supports this finding, and would like to prompt that this should be undertaken urgently. Kindly also refer to article 9, for similar issues discussed there.

### **Conclusion**

Sweden stands far from protecting children, in Sweden and abroad affected by Swedish offenders, from commercial sexual exploitation in accordance with the Optional Protocol and the Convention on the Rights of the Child. Commercial sexual exploitation of children is still a non-issue among the general public and even among professionals working to protect children's rights against commercial sexual exploitation. The general legislations are in place but the penalties are too low and therefore the crimes are not given priority. The combination with several involved ministries and a lack of a fundamental strategy reaching over several years, involving all actors in the society, influence the result and impact of the activities carried out in Sweden to combat commercial sexual exploitation of children. Each enumerated activity in the governmental report is warmly welcomed but without a strategy focusing on demand, how to fight the probability and to increase the effectiveness to support children from a low age and a plan how to foresee new risk situations, it will be hard to fulfil the Swedish governments' own vision that no children in Sweden shall be sexually exploited and no children in other countries shall be exposed to sexual exploitation by individuals from Sweden.

It is imperative that the Swedish Government accepts its responsibility and fulfils its commitments according to the Agenda for Action from the first World Congress against Commercial Sexual Exploitation of Children in Stockholm 1996, and the subsequent action plans adopted in Yokohama and Rio de Janeiro, and also fulfils the commitments under the Convention on the Rights of the Child and its Optional Protocol to protect all children throughout the world, in a way that does not involve discrimination of children in other countries.

## **Recommendations**

ECPAT Sweden would like to make the following recommendations:

### **a. General measures of implementation**

#### **1. An amended proper report by the government and separate reporting of the Optional Protocol**

ECPAT asks the Committee to kindly request the Swedish government for an amended proper report to show implementation of the Protocol. ECPAT thereafter asks that the reporting requirement is not submerged with the reporting under the CRC since the issues addressed in the OPC will be forgotten and even further less addressed.

#### **2. Data collection of commercial sexual exploitation**

Establish coordinated approach between all entities collecting data on children and introduce a comprehensive system of data collection of victims of sexual exploitation, as recommended by the Committee in Concluding Observations, article 10, in 2005.

#### **3. Update the Action Plan against sexual exploitation of children**

Urgently update the Action Plan against sexual exploitation of children and present substantial measures to:

- to protect all children in Sweden including foreign children
- to tackle demand
- increase contributions to effective international co-operation
- follow up all activities addressed to children in the Action Plan against prostitution and human trafficking
- prevent child sex tourism

#### **4. Exclude financial penalty from the punishment of the offences under the Optional Protocol**

### **Article 9.1 and 9.2. – Prevention programmes**

1. Launch awareness raising campaigns towards the general public regarding sexual exploitation of children in general and in particular child sex tourism and the importance to report offences under the Optional Protocol.

2. Increase and make available treatment for offenders, for men, women and children who have committed or run a risk on committing sexual offences, in all parts of Sweden.

3. Prohibit individuals, being sentenced for a crime under the Optional Protocol, to work with children, regardless if the employment is in the public, private or non-profit sector.

4. Exclude the screening of the criminal record when it comes to crimes under the Optional Protocol.
5. Make education about commercial sexual exploitation of children compulsory for all professionals working with and for children.
6. Make education about commercial sexual exploitation and the risks connected thereto a compulsory part of the school curriculum.
7. Revise the grooming legislation and criminalise the mere fact that an adult contact a child for sexual purposes.
8. Increase the intelligence gathering and analysis in order to enable detection of new groups of children at risk of commercial sexual exploitation.

## ***b. Prohibition and Related Matters***

### **Article 2, 3.1 a, Sale of Children**

1. Review the legislation “Purchase of sexual act of a minor” since the law sanctions sexual abuse of children and legalize commercial sexual exploitation of children.
2. Investigate and raise awareness on trafficking within Sweden.

### **Article 3.1.c, 3.2, 3.3 Child Pornography**

1. Apply a strict age definition of 18 years old to all acts (only production as per today)
2. Place the child pornography with the rest of the sexual offences in chapter 6.
3. Exclude fines from the sanction and remove the requirement of double jeopardy from all acts of the offence.
4. Make it compulsory for Internet Service Providers, site owners, web hotels, domain name registries, photo shops to report child pornography to the police.

### **Article 4 Jurisdiction**

Remove the requirement of double criminality for the remaining offences under the Optional Protocol:

- chapter 6, section 9, of the Penal Code (purchase of a sexual act from a child)
- chapter 6, section 8, of the Penal Code (exploitation of a child for sexual posing),
- chapter 6, section 10a (grooming)
- chapter 16, section 10 a, of the Penal Code (child pornography - except for grave forms of possession and the production)

- Sexual molestation of a child chapter 6, section 10.

### *c. Protection of the Rights of Victims*

#### **Article 8.1 Procedures, investigation, child centre, witness support**

1. Review the possibilities to introduce special courts or specially trained judges for crimes under Optional Protocol.
2. Arrange special trainings addressed to media in order to avoid inappropriate dissemination of information of child victims.

#### **Article 9.3 Support and protection**

Facilitate for victims of trafficking to receive a permanent residency in Sweden.

#### **Article 9.4. Compensation**

Make the compensation to children being violated of an offence under the Optional Protocol compulsory.

### *d. International Assistance and Cooperation*

#### **Article 10.1 Prevention and detection**

1. Appoint a government inquiry regarding sex offences committed against children abroad by Swedes.
3. Establish contacts with the Prosecutor-General in those countries that are considered to be particularly adversely affected by child sex tourism, with the aim of establishing cooperation agreements, routines and action plans covering the reporting of child sex tourism.
4. Make the group of police officers dedicated to work with child sex tourism at the Swedish National Police permanent.
5. Introduce mandatory regular training for all police liaison officers about commercial sexual exploitation of children, with a special focus on child sex tourism.
6. Establish action plans at the Foreign affairs administration for routines in cases of suspected child sex tourism.