



**Optional Protocol to the Convention on the Rights of the Child on the sale of
children, child prostitution and child pornography (2000)**

**2011
CHILD RIGHTS
NGO REPORT
AUSTRALIA**

CHILD RIGHTS TASKFORCE JULY 2011

This report to the United Nations Committee on the Rights of the Child (Committee) has been prepared by the Child Rights Taskforce Steering Committee and project managed by the National Children's and Youth Law Centre (NCYLC). The co-convenors of the Taskforce are NCYLC and UNICEF Australia.

NCYLC is dedicated to promoting the human and legal rights of Australia's children and young people. NCYLC's human rights advocacy includes project managing this and the previous shadow report to the Committee. NCYLC is also Australia's only legal centre offering legal information and advice to all Australia's children and young people, wherever they may be.

UNICEF Australia is a National Committee of the United Nations Children's Fund and plays a vital role in generating public support and funds for UNICEF's life saving work in over 150 developing nations. UNICEF Australia works to educate the Australian public, children and young people about global development issues affecting children and advocates for the rights of all children in Australia with the aim to achieve equity and rights for all.

This publication does not contain legal advice and you should seek professional advice before taking any action based on its contents. Children, young people and those advocating in their interests can seek legal information and advice via the website *Lawstuff*, at www.lawstuff.org.au.

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Copies of this report and more information are available to download at www.childrights.org.au.

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2011 NGO Report on Australia’s compliance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)

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1 About this report

i. How this report was written

This report to the Committee has been project managed by NCYLC and prepared by a coalition of organisations committed to the protection and promotion of child rights in Australia.

A steering committee provided strategic guidance and input throughout the reporting process and comprised the following individuals and organisations: Matthew Keeley and Ahram Choi (NCYLC), Sarah Hoff (on secondment to NCYLC from Mallesons Stephen Jaques), Aivee Chew (UNICEF Australia), Ben Schokman (Human Rights Law Centre), Alanna Hector (NAPCAN), Chris Varney (2009 Australian Youth Representative to the United Nations), James McDougall (former Director, NCYLC) and Meagan Lee (Mallesons Stephen Jaques).

Information in this report is current as at 8 July 2011.

ii. Acknowledgements

The authors would like to acknowledge the organisations identified in the List of contributors that provided content and expert guidance. The authors would also like to acknowledge the financial support provided by the Australian Federal Attorney-General's Department, the Sidney Myer Fund and the Humphries Family Fund. The authors also acknowledge the generous in-kind support provided by NCYLC, UNICEF Australia, Steering Committee Members, Mallesons Stephen Jaques, the University of New South Wales, the volunteers and secondees of NCYLC. The special contribution of Stephanie Puris is also gratefully acknowledged.

iii. References to 'child' and 'children'

Throughout this report the term 'child' or 'children' is used and as the context permits this also refers to all young people up to the age of 18 years.

iv. References to 'Australian Government'

Throughout this report the term 'Australian Government' is used and as the context permits this refers to either the Australian Federal Government or the Australian Federal Government working in collaboration with the governments of states and territories.

v. List of contributors

The following organisations contributed to or advised on the submission:

- Anti-Slavery Project
- Australian Youth Affairs Coalition
- Child Wise
- NAPCAN

- National Children's and Youth Law Centre
- Red Cross Australia
- Uniting Church in Australia
- World Vision Australia

vi. List of supporting organisations

This report is endorsed by the following organisations:



2 Overview

In its 2005 Concluding Observations¹ (**Concluding Observations**), the Committee on the Rights of the Child (**Committee**) recommended that Australia become a party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography² (**the Optional Protocol**), which Australia had signed on 18 December 2001.

We welcome Australia's ratification of the Optional Protocol on 8 January 2007, and now provide the following report on Australia's compliance with it.

In summary, we commend the Australian Government on the existing legislative framework and the further actions taken by the Government to strengthen this framework to implement the Optional Protocol. We also commend the Government on its co-operation with non-government organisations (**NGOs**) to address the issues raised by the Optional Protocol. Our recommendations primarily address the following issues:

- co-ordination of service delivery between all levels of government;
- the fact that Australia is a destination country for child trafficking victims;
- the lack of architecture, protocols and services specifically dealing with child victims of trafficking and sexual abuse material; and
- the need for continued targeted international programs addressing child protection of the most vulnerable children.

This report significantly addresses the issue of child trafficking due to the recognised overlap between this issue and those which are the subject of the Optional Protocol.

3 Implementation of the Optional Protocol

3.1 General measures of implementation

The Optional Protocol has largely been incorporated into Australian law through a framework of federal, state and territory legislation, the details of which are discussed in the Australian Government's Initial Report under the Optional Protocol (**Australian Government Report**).³ The Committee in its *Concluding Observations* recognised changes to the *Criminal Code Act 1995* (Cth) in 2005 whereby, inter alia, trafficking in persons and child pornography have been criminalised. We note that in certain circumstances, offences at a state or territory level, rather than at a federal level, may be applicable. We also note that the Australian Government has introduced new legislation since the last reporting period.⁴

We commend the Australian Government on the existing comprehensive legislative framework and the Government's

efforts and actions to strengthen this framework and implement the Optional Protocol.

3.2 Co-operation between the Government and NGOs

We commend the Australian Government for working collaboratively with NGOs to address the issues raised in the Optional Protocol. In particular, we recognise the goodwill and commendable level of communication that exists between government agencies and NGOs in dealing with these issues.

For example, the National Roundtable on People Trafficking (**NRPT**) was first convened in June 2008 to strengthen Australia's response to people trafficking through a partnership between the Australian Government and NGOs. The NRPT seeks to prevent trafficking, protect victims and prosecute offenders. We commend the progress of the Working Group of NGOs established by the NRPT, in particular, the publication of the *NGO Guidelines for Working with Trafficked People*,⁵ which sets out ten key principles for NGOs working safely and ethically with trafficked people. At the latest NRPT held in May 2011, issues related to the sale of children (including the commercial sexual exploitation of children and children in labour trafficking situations) within Australia and the region.

We also commend the efforts of AusAID sub-regionally – supporting Australian and other NGOs in the Greater Mekong Sub-region on the prevention of and reporting of child sex tourism, and protection of child victims and prosecution of offenders, through regional and national projects.

3.3 Data collection

In paragraph 68 of the *Concluding Observations*, the Committee recommended that the Australian Government conduct a comprehensive study to assess the nature and magnitude of the problems of sexual exploitation and trafficking in persons, especially with respect to children.

The Australian Institute of Criminology (**AIC**), Australia's national research and knowledge centre on crime and justice, has undertaken various studies of sexual exploitation and trafficking in persons, including a study on trafficking of children in the Asia Pacific,⁶ trafficking of women for sexual purposes,⁷ and studies of the criminal justice response to people trafficking.⁸ However, to date, we are unaware of a comprehensive assessment being undertaken on sexual exploitation and trafficking with respect to children entering and residing in Australia.

We recognise that obtaining and analysing data on child trafficking and sexual exploitation can be a difficult exercise in the Australian context for the following reasons. First, there are so few identified cases of child trafficking and sexual exploitation in Australia, that the amount of data on these issues that can be obtained and analysed in a study is limited.

According to the AIC, '[a]s a criminal activity and a relatively new crime type, information and knowledge about the nature and extent of trafficking in persons to and within Australia is still emerging'.⁹ Second, issues of privacy in Australia limit the availability of this data. Given these circumstances, data collection on these issues will necessarily be a long-term project. The AIC is aware of these matters and is addressing them in its research into national and regional trafficking activities.

We anticipate that we will be able to report on the nature and magnitude of child trafficking and sexual exploitation with respect to children at a later stage once relevant and reliable data becomes available.

3.4 Protection of the rights and interests of child victims (Articles 8 and 9)

Generally, the Australian Government's architecture for victims of crime is not set up to protect the rights, interests, and special needs of children. There is a need for the Australian Government to develop adequate and appropriate administrative structures and protocols to specifically protect the rights, interests, and needs of child victims of trafficking and sexual exploitation as cases do arise.

We note that, as part of the Australian Government's Anti-Trafficking Strategy, the Australian Government currently funds and administers the Support Program for Victims of Trafficking, which is managed by the Australian Red Cross in partnership with the Office of Women.¹⁰ This support uses a strength-based case management model and provides support for clients to meet their basic needs for safety, food, accommodation, mental and physical health and wellbeing. The Program also includes financial assistance and access to legal advice for victims of trafficking. Whilst the Program recognises that clients are vulnerable and have individualised and varied needs, children and young people are a particularly vulnerable group and require child specific services with specialised skills. The service provided by the Australian Red Cross is a generalist service and does not have the necessary resources and expertise to provide specialist, child specific services for child victims.¹¹

Cases involving child victims raise a number of complex and significant issues that distinguish them from adult victims, which affect the nature and extent of the service delivery required to meet the special needs of children. These include the appointment of guardians and other guardianship issues, access to education, care, appropriate housing separate from adults, and specialised training and resources for on the ground support. These issues significantly increase the time and costs required to deliver appropriate services to child victims, which is estimated as being four times greater than for adult victims.¹²

The current lack of clarity on the issue of guardianship poses significant challenges to providing child victims with adequate child protection services. This is particularly evident in cases where children and young people are trafficked into Australia on substantive visas such as a student or tourist visa, and their guardian or sponsor was involved in the trafficking. In such cases, the (federal) Minister of Immigration has the authority to delegate the guardianship responsibilities to state or territory child protection authorities, but there is currently no mandate for the child protection authority to take responsibility for the child, leaving the child essentially without a guardian. There is a lack of clarity on who then becomes the child's de facto guardian and the scope of a guardian's obligations.

Recommendation: that the Australian Government review the current legislation on guardianship as it applies to children and young people who have been trafficked into Australia and develop clear reporting and accountability guidelines, especially where children with substantive visas are concerned.

Other NGOs, such as the Anti-Slavery Project, Scarlett Alliance, Australian Catholic Religious Against Trafficking and Project Respect have received funding from the Australian Government for anti-trafficking work.¹³ As at 2011, the Victorian Government is the only state government that provides dedicated funding to support services for victims of trafficking, and these services are provided by Project Respect.¹⁴

In our view, the current funding arrangements for victims of trafficking fail to adequately take into account the extra costs associated with high need child victims. Should there be an increase in cases involving *child* victims, we envisage far more support would be required from the Australian Government.

Moreover, child victims require immediate access to an Independent Children's Lawyer who has the capacity to deal with the range of issues that arise in the case of a child victim, particularly in relation to immigration and guardianship. The appointment of an Independent Children's Lawyer should be incorporated into a child-specific victim support program to provide specialist advice to the child victim on their options, independent of government agencies such as the Australian Federal Police.

Recommendation: that the Australian Government develop architecture and protocols that ensure that the rights, interests, and special needs of child victims are met.

We acknowledge the UNICEF Guidelines on the Protection for Child Victims of Trafficking¹⁵ and in particular Guideline 2.6. Accordingly, we specifically recommend that child victims and children of victims of trafficking be guaranteed access to information in a child-friendly format (and where required, with interpretative assistance) on all matters

affecting their interests, such as their situation, entitlements, available services, and the family reunification and/or repatriation process.

Recommendation: in developing the appropriate architecture and protocols, the Australian Government should recognise the significantly greater investment required for service delivery for child victims (as opposed to adult victims) and factor these increased costs into any Government-funded victim support program. In particular, we recommend the implementation of an adequately-funded child-specific victim support program that would provide comprehensive and culturally appropriate services to address the range of complex and significant issues involved in cases of child victims, and would include immediate access to an Independent Children's Lawyer to assist the child victim in addressing these issues.

Children of victims of trafficking

In many instances of trafficking, the victims involved have children, and in a majority of cases the children are located overseas. When such cases arise, structure and funding arrangements of the Australian Government currently fails to address this issue. Settlement in Australia and support for these children must be factored into the victim support framework, including the Support Program for Victims of Trafficking. To assist in this process there should be priority processing of visa applications in cases involving victims of trafficking who are separated from their children. These measures will ensure that the rights of the child, including the right to family and family reunification, as well as the best interests of the child are protected.

Recommendation: that the Australian Government recognise the needs of the children of victims of trafficking in any support program for victims of trafficking, and specifically factor in their settlement in Australia and required support services.

Recommendation: that the Australian Government provide for priority processing of visa applications in cases involving victims of trafficking who are separated from their children.

Guidelines and protocols for government agencies

While recent guidelines for working with trafficked people¹⁶ have been developed by NGOs and Australian Government agencies to assist NGOs working with trafficked people, we are not aware of any publicly available Australia-specific guidelines or protocols for government agencies and their members who work with child victims, including child witnesses, or children of victims of trafficking, that ensure that the rights of these vulnerable categories of children are fully protected.

Recommendation: that the Australian Government develop appropriate guidelines and protocols for government

agencies and their members when working with child victims, child witnesses and children of victims of trafficking, to ensure that the rights of the child are fully protected.

Child victims and the criminal justice system

The current victim support program emphasises support for victims of trafficking who are participating in law enforcement processes. A recent discussion paper released by the Australian Government's Attorney-General's Department, which deals with the criminal justice response to people trafficking and slavery, reparation for victims of people trafficking and witness protection programs,¹⁷ sets out the special legal provisions that exist at the federal level to protect child victims and child witnesses.

While recognising the existing comprehensive legislative framework that criminalise activities including slavery and people trafficking, if a child victim or a child of a victim of trafficking is identified, an additional priority of the Australian Government should be to ensure that the best interests of the child is a primary consideration in the enforcement of the law, policies, protocols and administrative measures, rather than just applying criminal legislation to the perpetrator.

The best interests of the child must be carefully considered and assessed before deciding on the most appropriate course of action for child victims, especially when it comes to criminal proceedings. The benefits of involving a child victim in a criminal proceeding must be carefully weighed against any negative consequences (such as possible trauma caused by adversarial criminal proceedings, and whether or not there is effective witness protection, security and privacy) in order to determine whether it is in the best interests of the child. It is in this regard that the development of stronger architecture, protocols and cooperation between the federal and state/territory governments is needed.

Recommendation: that, in cases involving child victims or children of victims of crime, the Australian Government prioritise the best interests of the child as a primary consideration in laws, policies, protocols and administrative measures and address gaps in service provision for the benefit of child victims, particularly the need for child victims to be separately represented by an Independent Children's Lawyer.

We note with great interest the recent report by the United Nations Special Rapporteur on trafficking in persons¹⁸ containing a thematic analysis of the right to an effective remedy for trafficked persons, including the special factors to be considered in realising the right to an effective remedy by trafficked children.

Recommendation: that in cases involving child victims, the realisation of a right to an effective remedy for these trafficked children be guided by the general principles of the Convention on the Rights of the Child. In particular, the

principle that the best interests of the child shall be a primary consideration in all actions concerning children should be placed at the centre of all efforts to provide redress to children. This should entail respect for children's rights and freedoms accorded to them under international human rights law, as well as the children's views on their best interests, with due weight given in accordance with the age and maturity of the children concerned.

Consideration of the best interests of the child also extends to the determination of the most appropriate form of reparation for a child victim.

Recommendation: that reparative measures toward child victims be geared to building a comprehensive child protection system which will guarantee children's rights.

Australia has introduced visas specifically relating to trafficking to allow child victims to remain lawfully in Australia throughout the criminal investigation and prosecution processes.¹⁹ However, child victims who may not wish to participate in the process are not eligible to receive permanent visas to remain in Australia.²⁰

Recommendation: that the Australian Government reform the current visa regime to protect all child victims of trafficking and sexual exploitation, regardless of whether they participate in law enforcement processes.

3.5 Co-ordination between federal and state/territory governments

While there exists a framework of federal, state and territory legislation to criminalise activities addressed by the Optional Protocol, the service delivery that is required to assist child victims operates at the level of the state and territory governments. Accordingly, in a federal system where responsibility for policies and services is spread across the different levels of government, coordination between the federal and state/territory government agencies is crucial to the protection of the rights and interests of child victims.

In relation to measures currently being implemented by the Australian Government to protect the rights and interests of child victims, the Australian Government Report provides that:

'[w]here a minor is identified as a victim [of people trafficking] the matter would be referred to the relevant State/Territory authority responsible for child protection issues and a case management approach with specific attention to the rights and welfare needs of the child would be implemented'.²¹

Recommendation: that the Australian Government ensure effective coordination between the federal and state/territory government agencies in their service delivery to child victims.

Recommendation: that the Australian Government clarify the nature and extent of the 'case management approach' implemented in relation to child victims, in particular, whether it ensures that the best interests of the child is a primary consideration, recognises the special needs of child victims, and facilitates and supports their full social integration and physical and psychological recovery, as required by the Optional Protocol.

National Children's Commissioner

We commend the Australian Government on its proposal to introduce a National Children's Commissioner under the National Framework for Protecting Australia's Children. We envisage that this Commissioner would greatly assist in ensuring a coordinated national approach to government decision-making on issues that affect child victims.

Recommendation: that the Australian Government should give full consideration to the matters that arise during the inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010 in its deliberations on the role of a National Children's Commissioner, in accordance with the recommendation of the Senate Legal and Constitutional Affairs Legislation Committee.²²

3.6 Sexual exploitation and domestic trafficking

In relation to the Committee's recommendation at paragraph 69 of the *Concluding Observations*, Australia is now a party²³ to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**TIP Protocol**),²⁴ supplementing the United Nations Convention against Transnational Organized Crime, to which Australia is also a party.²⁵ The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth) fulfils most of Australia's legislative obligations under the TIP Protocol by creating new and revised offences that criminalise trafficking in persons.

We encourage and support the Australian Government in its current review of the Criminal Code and related legal framework to ensure that domestic legislation is completely in line with the TIP Protocol (i.e. so that the legal framework enables the Government to effectively prohibit and prosecute all forms of trafficking, especially in regards to children).

Notwithstanding the Committee's recognition of 'positive developments' in the context of prevention of trafficking and forced prostitution, such as the adoption of the National Plan of Action to Eradicate Trafficking in Persons, the Committee raised the concern that Australia continued to be considered a destination country for child victims of sex trafficking.²⁶ This concern is reiterated by the US Department of State's 2011 Trafficking in Persons Report (2011 TIP Report)²⁷, which identifies Australia primarily as a destination for women subjected to forced prostitution, and, to a lesser extent women and men in forced labour.

As discussed above, we are unaware of a comprehensive study on the issue of domestic trafficking with respect to children being undertaken.

Recommendation: that the Australian Government supports continued and future research on the extent of and issues surrounding domestic trafficking with respect to children.

The 2011 TIP Report recommends that Australia increase its efforts to proactively identify trafficking victims among vulnerable groups, such as foreign workers, foreign students in Australia, foreign and Australian women involved in the sex industry, and children.

Recommendation: that the Australian Government should clarify the steps it has taken to address concerns that Australia continues to be a destination country for child victims of trafficking.

3.7 Community education

Article 9 requires the Australian Government to promote awareness in the public at large through information, education and training programs about the preventive measures and harmful effects of the offences referred to in the Optional Protocol, and encourages the participation of the community, children and child victims in these initiatives, including at the international level.

According to the Australian Government Report, the Australian Government is committed to an anti-trafficking strategy that includes a Communication Awareness Strategy targeted at victims of trafficking in the sex industry and those who are likely to come into contact with them.²⁸

In March 2009, Project Respect, an Australian NGO that works with survivors of trafficking, recommended to the Australian Government a number of reforms to Australia's counter-trafficking response. Reforms include three recommendations based on developing targeted community education materials on trafficking for labour and sexual exploitation that are accessible to both trafficked persons and the wider community.²⁹ Project Respect has identified the need for a wider community education program on the issue of trafficking to be developed and resourced by the Australian Government.

Funding of community education materials should ensure, in particular, that there are adequate materials available for those who have actually experienced a crime covered by the Optional Protocol. In particular, we recommend that the Australian Government develop and distribute multilingual materials for both child and adult victims, including in the context of acting as witnesses in the law enforcement process.

Recommendation: that the Australian Government develop, fund and resource more effective and targeted anti-

trafficking community education and awareness-raising programs and materials that specifically address the problem of child trafficking, for victims in particular, as well as the wider Australian community.

3.8 Online child sexual abuse material ("child pornography")

The expansion of technology through the 21st century has resulted in the sexual exploitation of children being distributed globally through the internet. Chapter 10 of the UN Office of Drugs and Crime (UNODC) report on *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010)³⁰ estimates that the commercial online sexual abuse industry generates 50,000 new child sexual abuse images each year.

UNICEF in the Philippines has reported that Australians have been involved in setting up commercial child sexual abuse internet businesses in that country, selling web camera access to clients in Europe, the US and Australia.³¹ Fortunately, the Australian Government has been demonstrably forceful in prohibiting the publication of online child sexual abuse material in line with Articles 1 and 3 of the Optional Protocol.

Australian authorities have also been directly involved with global investigations into child sexual abuse internet sites, which is identified under Article 6. Recently, the Queensland Police in conjunction with the Australian Federal Police (AFP) were key figures in the destruction of a global child pornography ring. Investigations led to the charging of 21 Australians, and rescued 21 children from sexual exploitation during raids conducted globally in Australia, the US, UK, Mexico and Russia.³²

We commend the Australian Government for hosting the fourth biennial Virtual Global Taskforce (VGT) Global Conference in December 2010 which brought together over 200 international delegates, primarily in law enforcement, from 23 countries to improve the response to preventing and deterring online child abuse. We support the AFP in its current role as Chair of the VGT working with international law enforcement agencies to combat online sexual exploitation of children, and commend the AFP for working collaboratively with relevant Australian NGOs to inform this inter-agency collaboration. We commend the AFP's involvement in designing the "Report Abuse" function on the VGT website which is streamlined so that any person in the world wishing to report suspected online child abuse is now taken directly to the relevant VGT member agency's reporting web page.

Recommendation: that the Australian Government ensure internet service providers restrict access to child abuse sites in order to deter child sex offenders from accessing these images and blocking inadvertent access from users seeking other material. This is consistent with Article 7, which

stipulates that State Parties should take measures aimed at closing premises used to commit offences including the publication of child abuse material for internet users.

3.9 International co-operation

Article 10 requires the Australian Government to take all necessary steps to strengthen international co-operation for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. Further, it requires the Australian Government promote international co-operation to assist child victims in their physical and psychological recovery, social reintegration and repatriation, as well as to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to these acts. The Australian Government is also required to provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

According to the Australian Agency for International Development (**AusAID**), the government agency responsible for managing Australia's overseas aid program, focussing on the eight Millennium Development Goals is fundamental to addressing the underlying causes of trafficking and exploitation of children and young people, and providing long-term, sustainable solutions.³³

AusAID, in partnership with other agencies, supports a number of activities to directly combat people trafficking, labour exploitation and child sexual exploitation. The focus of the aid program's efforts is to assist governments and communities to prevent trafficking, punish offenders, and support and protect victims. For the past eight years, AusAID's main regional anti-trafficking project has been the Asia Regional Trafficking in Persons Project (**ARTIP, formerly called ARCPPT**) which is scheduled to complete in August 2011.

AusAID has recently commenced a regional program specifically to combat child sex tourism. Project Childhood is a four year, \$7.5 million program to prevent the commercial sexual exploitation of children in the Greater Mekong Sub-region (GMS). The United Nations Office on Drugs and Crime (UNODC) is driving the Protection Pillar, strengthening law enforcement capacity to combat child sex tourism, working with Interpol and assisted by the Australian Federal Police. The Prevention Pillar, being implemented by World Vision Australia, is building resilience and awareness in priority communities and working with partner governments to improve preventive measures, including reporting mechanisms such as hotlines. This program builds on the AusAID-funded Association of Southeast Asian Nations (ASEAN) 5-year Transition Plan for a Sustainable Response to Child Sex Tourism in South East Asia (\$0.5m; 2007-2009), facilitated by the Australian NGO Child Wise.

AusAID has supported successive projects in the ASEAN region since 1994 to raise awareness of child sex tourism, gain support and commitment for child protection within the tourism sector and build tourism capacity to combat child sex tourism in ASEAN member countries.

AusAID is also supporting the TRIANGLE Project (being implemented by the International Labour Organization (ILO) from 2010-2014) which aims to prevent labour exploitation in the GMS, especially of migrants, as well as the MTV Exit (End Exploitation and Trafficking) Campaign which is a multimedia initiative focusing on innovative public awareness-raising on the various forms of trafficking in the GMS.

AusAID also has a significant partnership through the aid program with the United Nations Children's Fund (UNICEF) which includes the protection of children from violence, exploitation and abuse.

In addition, AusAID contributes to a range of international anti-trafficking projects through the AusAID-NGO Co-operation Program and a number of child-specific anti-trafficking programs (including support to the physical and psychological recovery of trafficked and sexually abused children, social integration, and repatriation) conducted by organisations such as UNICEF, World Vision, Save the Children, and Child Wise.³⁴

Recommendation: that the Australian Government continue to fund innovative international interventions and child protection system work that fills the gaps in the response in areas of prevention, protection and the criminal justice responses to child trafficking and child sex tourism, and that this work be expanded to other regions outside the Asia Pacific.

International agencies are now recognising the specific and particular vulnerabilities of children on the move and children affected by mobility to exploitation and abuse – including the worst forms of labour, trafficking and sexual exploitation. Children affected by mobility – including stateless children - face discrimination due to their irregular status and face barriers when trying to access protection services, as well as health and education. These issues are not age and gender neutral as they affect both girl and boy children of all ages in different ways. Supporting the development of comprehensive and effective national child protection systems is critical (including improving governance and accountability, ensuring quality services are available and utilised, and ensuring equitable resource allocation). Important also is the support for building resilient communities (including children, parents, teachers, community workers, duty-bearers) in at-risk areas to protect children from exploitation and abuse. Effective child protection service delivery mechanisms include reporting, referral, monitoring and complaints procedures, and effective co-ordination of community child protection

structures and functions, and linkages with existing national child protection systems.

The Committee also recommends that the Australian Government support programs that advocate for and assist in the development of comprehensive and effective child protection systems internationally.

Recommendation: that further review, research and data collection is undertaken to increase the evidence-base on the specific risks for these particularly vulnerable children to exploitation and abuse.

Appendix 1 - Recommendations

Recommendation: that the Australian Government review the current legislation on guardianship as it applies to children and young people who have been trafficked into Australia and develop clear reporting and accountability guidelines, especially where children with substantive visas are concerned.

Recommendation: that the Australian Government develop architecture and protocols that ensure that the rights, interests, and special needs of child victims are met.

We acknowledge the UNICEF Guidelines on the Protection for Child Victims of Trafficking and in particular Guideline 2.6. Accordingly, we specifically recommend that child victims and children of victims of trafficking be guaranteed access to information in a child-friendly format (and where required, with interpretative assistance) on all matters affecting their interests, such as their situation, entitlements, services available, and the family reunification and/or repatriation process.

Recommendation: in developing the appropriate architecture and protocols, the Australian Government should recognise the significantly greater investment required for service delivery for child victims (as opposed to adult victims) and factor these increased costs into any government-funded victim support program. In particular, we recommend the implementation of an adequately-funded child-specific victim support program that would provide comprehensive and culturally appropriate services to address the range of complex and significant issues involved in cases of child victims, and would include immediate access to an independent children's lawyer to assist the child victim in addressing these issues.

Recommendation: that the Australian Government recognise the needs of the children of victims of trafficking in any support program for victims of trafficking, and specifically factor in their settlement in Australia and required support services.

Recommendation: that the Australian Government provide for priority processing of visa applications in cases involving victims of trafficking who are separated from their children.

Recommendation: that the Australian Government develop appropriate guidelines and protocols for government agencies and their members when working with child victims, child witnesses and children of victims of trafficking, to ensure that the rights of the child are fully protected.

Recommendation: that, in cases involving child victims or children of victims of crime, the Australian Government prioritise the best interests of the child as a primary consideration in laws, policies, protocols and administrative measures and address gaps in service provision for the benefit of child victims, particularly the need for child victims to be separately represented by an Independent Children's lawyer.

Recommendation: that in cases involving child victims, the realisation of a right to an effective remedy for these trafficked children be guided by the general principles of the Convention on the Rights of the Child. In particular, the principle that the best interests of the child shall be a primary consideration in all actions concerning children should be placed at the centre of all efforts to provide redress to children. This should entail respect for children's rights and freedoms accorded to them under international human rights law, as well as the children's views on their best interests, with due weight given in accordance with the age and maturity of the children concerned.

Recommendation: that reparative measures toward child victims be geared to building a comprehensive child protection system which will guarantee children's rights.

Recommendation: that the Australian Government reform the current visa regime to protect all child victims of trafficking and sexual exploitation, regardless of whether they participate in law enforcement processes.

Recommendation: that the Australian Government ensure effective co-ordination between the federal and state/territory government agencies in their service delivery to child victims.

Recommendation: that the Australian Government clarify the nature and extent of the 'case management approach' implemented in relation to child victims, in particular, whether it ensures that the best interests of the child is a primary consideration, recognises the special needs of child victims, and facilitates and supports their full social integration and physical and psychological recovery, as required by the Optional Protocol.

Recommendation: that the Australian Government should give full consideration to the matters that arise during the inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010 in its deliberations on the role of a National Children's Commissioner, in accordance with the recommendation of the Senate Legal and Constitutional Affairs Legislation Committee.

Recommendation: that the Australian Government supports continued and future research on the extent of and issues surrounding domestic trafficking with respect to children.

Recommendation: that the Australian Government should clarify the steps it has taken to address concerns that Australia continues to be a destination country for child victims of trafficking.

Recommendation: that the Australian Government develop, fund and resource more effective and targeted anti-trafficking community education and awareness-raising programs and materials that specifically address the problem of child

trafficking, for victims in particular, as well as the wider Australian community.

Recommendation: that the Australian Government ensure internet service providers restrict access to child abuse sites in order to deter child sex offenders from accessing these images and blocking inadvertent access from users seeking other material. This is consistent with Article 7, which stipulates that State Parties should take measures aimed at closing premises used to commit offences including the publication of child abuse material for internet users.

Recommendation: the Australian Government continue to fund innovative international interventions and child protection system work that fill the gaps in the response in areas of prevention, protection and the criminal justice responses to child trafficking and child sex tourism, and that this work be expanded to other regions outside the Asia Pacific.

Recommendation: that further review, research and data collection is undertaken to increase the evidence-base on the specific risks for these particularly vulnerable children to exploitation and abuse.

Appendix 2 - Case Study

Domestic sexual trafficking

Facts

The parents of a 12 year old Gold Coast teenager prostituted their daughter using a website to hire up to 200 clients. The parents carried on a prostitution service from a permanently leased motel room and later from an address at an industrial estate. The girl testified that her parents would take her out of her special-needs school, citing medical appointments and proceeded to prostitute her to certain clients. Evidence adduced during the trial found that in the period 20 February 2004 to 9 July 2004, there were 28 bookings that were procured through a website that had been established to attract business to the prostitution service.

After receiving a tip-off about the website, the girl's parents were arrested in October 2004. They pleaded guilty to all charges, which included knowingly participating in the provision of prostitution of a minor and procuring a minor to engage in prostitution. In January, 2008 the mother was sentenced to 13 years imprisonment for 62 offences and the father was sentenced to ten years for 41 counts of the same offences.³⁵

Comment

The example shows a clear enforcement of Articles 1 and 3 in prosecuting circumstances where a minor was exploited sexually for profit. There was also a strong indication that the proceeds and materials used to commit these offences were confiscated, upholding the provisions of Article 7.

There was, however, no reference to the treatment of the child during the proceedings. As the matter was heard before the Courts, it is hoped that the girl was satisfactorily treated, and that the authorities protected her rights and interests according to the procedures stipulated under Article 8. It is concerning also that such an exploitation managed to occur and for such a lengthy period. The conduct was only prevented from a tip-off about the website, months after the prostitution business had begun. Police authorities will need to improve their detection methods, to ensure that such advertisements involving child prostitution are alerted to them immediately, and swiftly acted upon to prevent the occurrence of a crime.

Consequences

This example reflects a positive judicial outcome for clear breaches of the Optional Protocol. The offenders were punished in accordance with the law and police authorities managed to prevent the continued sexual exploitation of a minor by her parents. The abuse from the parents will undoubtedly have damaging consequences on the teenager, who evidently already suffered from an intellectual disability.

International sexual trafficking

Facts

"Ning" (not her real name) was trafficked to Australia in 1995 at the age of 13 with the consent of her father who thought she would be working as a nanny. When she arrived in Australia, she was put to work in a brothel, and told that she would have to pay off a 'debt' of \$35,000. Ning was found in the brothel ten days after her arrival, following a routine compliance inspection by immigration officials. No police investigations were ever carried out against the traffickers, and at the time, no federal laws existed regarding anti-sexual trafficking and servitude. However, media coverage of her case in Australia in a 2005 documentary entitled *Trafficked* led Thai police to investigate her suspected traffickers, ultimately leading to the conviction of three Thai nationals who were sentenced for up to 19 years in gaol.

In April 2007, Ning received compensation from the New South Wales Victims Compensation Tribunal for post-traumatic stress and depression associated with the ordeal she suffered at the age of 13.

Comment

This situation highlighted the urgent need for federal laws coordinating the prevention of child pornography under Articles 1 and 3, which have since been enacted. The ordeal also demonstrates the need for national authorities to co-ordinate in connection with investigations into the exploitation of children through sex trafficking. Article 6 recognises the need for international authorities to co-operate within their investigations, as this will greatly enhance the global eradication of child exploitation.

Article 10 further recognises the need for State parties to strengthen international cooperation through ‘arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.’ The Australian Government needs to ensure continued cooperation and consultation with countries throughout South-East Asia in order to further prevent these scenarios.

Consequences

It is commendable that compensation was awarded to Ning as a victim of these atrocities. This is in line with Article 9 of the Optional Protocol. However, no amount of money can eliminate the emotional and physical abuse that Ning suffered during her ordeal. The unfortunate situation that occurred has resulted in the implementation of a federal legislative scheme, which prohibits and criminalises child exploitation from occurring in Australia.

Endnotes

- ¹ UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 40th session, CRC/C/15/Add.268 (20 October 2005).
- ² UN Committee on the Rights of the Child, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, UN Document A/RES/54/263 (25 May 2000).
- ³ Attorney-General's Department, Australian Government, *Initial Report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (December 2008) 3-5, 17-38.
- ⁴ New and amended legislation includes (and is not limited to) the following: *Criminal Code 1900 NSW ss 91FA - 91HA*; *Criminal Code Act 2008 (NT) ss 125B-125E*; *Criminal Law Consolidation Act 1935 (SA) ss 63, 63A, 63B, 63C*; *Criminal Code Act 1924 (Tas) ss 130A-130G*; *Criminal Code Act Compilation Act 1913 (WA) ss 217A-221A*; *Criminal Code Act 1995 (Cth) ss 273-273.15*
- ⁵ Working Group of the National Roundtable on People Trafficking, *Guidelines for NGOs working with trafficked people* (Guidelines, Australian Human Rights Commission, 2009)
- ⁶ Jacqueline Larsen, 'The Trafficking of Children in the Asia-Pacific' (2011) 415 *Trends & Issues in Crime and Criminal Justice*.
- ⁷ Fiona David, 'Trafficking of women for sexual purposes' (2008) 95 *Research and Public Policy* 5.
- ⁸ Fiona David, 'Law enforcement responses to trafficking in persons: challenges and emerging good practice', (2007) 347 *Trends & Issues in Crime and Criminal Justice*; Fiona David, 'Prosecuting trafficking in persons: known issues, emerging responses' (2008) 358 *Trends & Issues in Crime and Criminal Justice*.
- ⁹ Fiona David, above n 8.
- ¹⁰ Anti-Slavery Project, 'Fact Sheet 8: Victim support services for Trafficked People' (Fact sheet, 2010).
- ¹¹ To date, Red Cross Australia has supported four minors through the *Support for Victims of People Trafficking Program* since March 2009.
- ¹² Estimation of cost was provided by Anti-Slavery Australia in their communications to the National Children's and Youth Law Centre on 24 June 2011.
- ¹³ Anti-Slavery Project only provides services in the form of legal advice.
- ¹⁴ Anti-Slavery Project, above n 11.
- ¹⁵ Andrea Rossi et al, 'UNICEF Guidelines on the Protection for Child Victims of Trafficking' (Technical Notes, United Nations Children's Fund, September 2006).
- ¹⁶ Working Group of the National Roundtable on People Trafficking, above n 5.
- ¹⁷ Attorney-General's Department, Australian Government, 'The Criminal Justice Response to Slavery and People Trafficking, Reparation and Vulnerable Witness Protections' (Discussion Paper, 2011).
- ¹⁸ Joy Ngozi Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children', Human Rights Council, 17th sess, agenda item 3, UN Doc A/HRC/17/35 (15 April 2011) [53]-[59].
- ¹⁹ *Ibid* 5.
- ²⁰ Anti-people Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response* (2009) 9. We note, however, that child victims may be able to meet the refugee criteria for a protection visa.
- ²¹ Attorney-General's Department, above n 4, [11]
- ²² Senate Legal and Constitutional Affairs Legislation Committee, *Commonwealth Commissioner for Children and Young People Bill* (2010).
- ²³ *Australia Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime* (signed on 11 December 2002), (entered into force 14 September 2005).
- ²⁴ *Ibid*.
- ²⁵ *Convention Against Transnational Organized Crime* signed on 13 December 2000, (entered into force 27 May 2004).
- ²⁶ *Convention on the Rights of the Child, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention – Concluding Observations: Australia*, Committee on the Rights of the Child, 40th session, 180th mtg, UN Doc CRC/C/15/Add.268 (20 October 2005) [67]
- ²⁷ Staff of the Office to Monitor and Combat Trafficking in Persons, 'Trafficking in Person's Report' (Research Report, Department of State, United States of America, 27 June 2011).
- ²⁸ *Ibid* [45]-[46].
- ²⁹ Project Respect, 'Recommendations to the Australian Government for Reform of Support for Victims of Trafficking in Australia', 24 March 2009 [2.6].
- ³⁰ *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, UN Office on Drugs and Crime (17 June 2010) <<http://www.unhcr.org/refworld/docid/4cad7f892.html>>.
- ³¹ Arnie Trinidad, 'Child Pornography in the Philippines' (Report, Psychosocial Trauma and Human Rights Program UP Centre for Integrative and Development Studies and UNICEF Manila, 2005) 58, 90.
- ³² Jared Owens, 'An Australian-led Operation has Rescued 21 Exploited Children in one of the World's Largest Busts', *The Australian* (online) 20 May 2011
- ³³ Australian Government, *Working to combat human trafficking and labour exploitation* (18 February 2011) AusAID <<http://www.ausaid.gov.au/country/peopletraffick.cfm>>.
- ³⁴ Attorney-General's Department, above n 4, [67]-[71].
- ³⁵ *R v TR & FV; Ex parte A-G (QLD)* (2008) QCA 221