

Changing Dynamics of Gender Equity, Inclusivity and Diversity

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Edited by

Yogesh Pratap Singh, Debasree Debnath
and Dipikanta Chakraborty

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CHAPTER ONE

EVOLVING LEGAL REGIME ON
CHILD SEXUAL ABUSE:
AN INTERNATIONAL, REGIONAL
AND NATIONAL PERSPECTIVE

YOGESH PRATAP SINGH¹

Abstract

Child sexual abuse (CSA) remains a grave violation of human rights, demanding urgent legal, social, and institutional responses at multiple levels. Over the past decades, international frameworks, including United Nations conventions and protocols, have laid the foundation for recognizing CSA as a global concern, mandating state accountability for prevention, protection, and prosecution. Regional legal regimes have further contributed by developing context-specific standards, strengthening cross-border cooperation, and harmonizing laws to address transnational aspects of child exploitation. At the national level, jurisdictions worldwide have progressively enacted specialized legislation, established child-friendly procedures, and enhanced victim support mechanisms. In India, Prevention of Children from Sexual Offences (POCSO) Act 2012 was enacted to give effect to India's obligations under the UNCRC and designed taking into account the heightened vulnerability of children due to their specific developmental needs, so as to ensure that their best interests are protected. This chapter critically examines the evolution of the legal regime on CSA from an international, regional, and national perspective, tracing key milestones, emerging challenges, and best practices. It argues that while significant progress has been made, persistent gaps in

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implementation, enforcement, and victim rehabilitation call for stronger and innovative rights-based approach to protect children from sexual abuse in all forms.

Introduction

Childhood is a precious time in a person's life, filled with wonder, innocence, and the joy of discovery. Children are the future of our society, and as such, it is the responsibility of humanity as a whole to ensure that they grow up in a safe, supportive, and nurturing environment. However, one of the most devastating threats to children is sexual abuse. Child sexual abuse is a pervasive and serious issue that affects millions of children around the world. It is a violation of their rights, dignity, and well-being, and has long-lasting effects on their physical, mental and emotional health that can last a lifetime. The effects of sexual abuse can be devastating and long-lasting. Children who have been sexually abused are more likely to experience anxiety, depression, post-traumatic stress disorder, and other mental health problems. They may also engage in risky behaviours, such as substance abuse, self-harm, and promiscuity. In addition, sexually abused children are more likely to experience physical health problems, such as sexually transmitted infections and reproductive health problems. To address this issue, the international community must continue to work together to prevent and respond to child sexual abuse. This includes strengthening international and national laws and policies, providing adequate resources and support for victims, and ensuring that those who commit these crimes are held accountable. It also requires addressing the root causes of child sexual abuse, such as poverty, inequality, and discrimination, and promoting a culture of respect for children and their rights.

The 1959 UN Declaration of the Rights of the Child detailed the five principles of the 1924 League of Nations, which when expanded to ten, saw India as an enthusiastic subscriber to the Declaration. But the key input for a child's survival in India, nutrition of the mother and the child, did not materialise till October 2, 1975 when the Union Government launched the Integrated Child Development Scheme, after the 1974 National Policy for Children. From 1959 to 1975 independent India was silently building up a huge bank of mother and infant malnutrition with known consequences of stunting and physical and/or intellectual disability. This kind of management of India was done by the elected political managers of the country and their highly educated administrators, despite the fact that the

Constitution of India declared that nutrition and public health shall be fundamental in the governance of the country as a “primary duty”. The UN Convention on the Rights of the Child, 1989, further expanded the Declaration of the Rights of the Child into 54 Articles.²

Tardy but nevertheless desired progress has been made by the enacting a distinctive law namely Protection of Children against Sexual Offences (POCSO) 2012,³ which criminalised a range of acts viz. child harassment, child rape and exploitation for pornography despite the Convention's specific Articles on protecting children against sexual abuse and their use in sexual activity. Worse, nowhere mentioned in the Act's opening recitals before Chapter I, was the Article 23 of the Constitution--the fundamental right against exploitation, even while referring in the Preambular statement to the portions of the UN Convention to “exploitative use” of children in unlawful sexual practices, pornographic performances or materials and to the enticement or intimidation of children to engage in illegal sexual activities. Once again Parliament tried to hide the truth of what we have done to our children since independence despite the Constitution of India, by referring to the Article 15(3)⁴ concerning the enactment of special provisions for children, instead of the directly specific Article 23. The Act did not contextualise the problem it was dealing with by referring to the unconstitutional governance of children since 1950 in terms of their education, health and equality of opportunity. It is therefore not surprising that India has not signed the third optional Protocol of the Convention which allows children to complain of rights violations to the United Nations, if remedies at the national level fail.

This chapter will take stock of international, regional and national legal regime to combat child sexual abuse. Author proposes to explore the development and application of international and regional human rights standards; development of national legal frameworks in conformity with international human rights obligations to protect children from all forms of sexual exploitation, to act as a foundation towards elimination of child sexual exploitation; implementation and enforcement of existing laws and identification of the need for additional legislation to challenge newly

² India acceded to this Convention in 1992.

³ Act was passed to protect children from offences of sexual assault, sexual harassment and pornography. The preamble also provided that special courts will be constituted to try cases under this Act.

⁴ Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

identified forms of exploitation. The paper after reviewing all the existing international, regional and national legal instruments will lastly make recommendations on two broad parameters; first urgent action needed to consolidate legislation and implement it effectively and second; need to create a support structure beyond legal framework where awareness can be raised amongst children, parents, teachers towards this menace.

International Legal Regime for Combatting Child Sexual Abuse

The international legal regime for combatting child sexual abuse is multifaceted and includes both hard and soft law instruments. The primary legal instruments are the United Nations Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. These instruments establish a framework for the protection of children and criminalise certain acts, such as child sexual exploitation and abuse. It also has created a mechanism to monitor and enforce the implementation of these international obligations. For example, the Committee on the Rights of the Child, which is responsible for monitoring state compliance with the CRC, has issued several general comments and recommendations on child sexual abuse. The Office of the High Commissioner for Human Rights has also established a specialised unit to address the issue of violence against children, including sexual abuse. The soft legal instruments include guidelines, recommendations, and codes of conduct developed by international organisations to prevent and respond to child sexual abuse. The international legal regime in nutshell aims to protect children from sexual exploitation and abuse and hold perpetrators accountable for their actions.

The United Nations Convention on the Rights of the Child (UNCRC)

The United Nations Convention on the Rights of the Child, often referred to as the UNCRC, is a legally binding international agreement that outlines the basic human rights that should be afforded to every child, regardless of their background or circumstances. It was adopted by the United Nations General Assembly in 1989 and has since been ratified by every country in the world, with the exception of the United States. The Convention was built

on the foundation of the International Bill of Rights.⁵ The UNCRC affirms the status of all children as equal holders of human rights and empowered actors in the realisation of their rights.

The CRC is based upon “three p’s”: children’s needs for a balance of “provision,” “protection,” and “participation.” The first “p” refers to the provision of an adequate standard of living, healthcare, and education to all children. The second refers to protection from abuse, neglect, and discrimination. Finally, the third “p” denotes the right for children to participate in the decision-making processes that may affect their lives.⁶ The UNCRC consists of 54 articles that cover a wide range of issues related to children’s rights, including their right to life, survival, and development, their right to education and healthcare, their right to participate in decisions that affect their lives, and their right to protection from abuse, neglect, and exploitation. The convention recognises the importance of family and community support for children’s well-being, and calls on governments to provide social and economic support to families to help them meet their children’s basic needs.

One of the key principles of the UNCRC is that every child has the right to be treated with dignity and respect. This means that children should not be discriminated against on the basis of their race, gender, religion, or any other characteristic, and that they should be protected from all forms of violence, abuse, neglect, and exploitation. The convention also recognises the importance of children’s participation in decision-making processes that affect their lives, and calls on governments to ensure that children have the opportunity to express their views and have their voices heard.

Another important aspect of the UNCRC is its emphasis on the right to education. The convention recognises that education is essential for the development of children’s full potential, and calls on governments to provide free and compulsory primary education to all children, as well as access to secondary and higher education. The convention also recognises the importance of early childhood education and care, and calls on

⁵ It consists of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.

⁶ Robert W. Aspinall, *Children’s Rights in Japan’s Schools, Education About Asia*, Volume 24, Number 1, Spring 2019.

governments to provide support to parents and caregivers to ensure that young children have access to quality care and education.

The UNCRC also recognises the importance of protecting children in conflict situations. It calls on governments to take all necessary measures to protect children from the effects of armed conflict, including recruitment into armed groups, sexual violence, and attacks on schools and hospitals. The convention also calls on governments to ensure that children who have been displaced by conflict have access to basic needs, such as food, shelter, and healthcare.

It is pertinent here to highlight that UNCRC recognises the importance of protecting children from all forms of violence, abuse and exploitation. This includes physical and emotional abuse, sexual exploitation and abuse, trafficking, and child labour. The convention calls on governments to take all necessary measures to prevent and respond to these forms of violence, and to provide support and care to children who have been victims of abuse and exploitation. The first and second World Congresses reiterated that the UNCRC is the core instrument to combat sexual exploitation of children.

The Committee on the Rights of the Child is a body of independent experts responsible for monitoring the implementation of the United Nations Convention on the Rights of the Child (UNCRC) by states parties. One of the key areas of focus for the committee is combating sexual exploitation of children, which is a major violation of children's rights and a significant challenge for countries around the world.

The Committee plays a critical role in combating sexual exploitation of children by holding states parties accountable for their obligations under the UNCRC. This includes reviewing country reports and making recommendations for improving national policies and laws related to protecting children from sexual exploitation, as well as monitoring the implementation of these recommendations. The committee also engages in dialogue with states parties on specific cases of sexual exploitation of children, and may issue urgent appeals or adopt other measures to address immediate concerns. In addition, the committee provides guidance to states parties on best practices for preventing and responding to sexual exploitation of children, and shares information and resources with other relevant organisations and actors.

One of the key ways in which the committee addresses sexual exploitation of children is by promoting the full implementation of article 34 of the UNCRC, which states that "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse." This includes taking measures to prevent the sale and trafficking of children, as well as providing support and services to children who have been victims of sexual exploitation or abuse.

The Committee during drafting of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography highlighted that the CRC does not only provide specific provisions against sexual exploitation of children but also set up:

"a holistic approach for the consideration of the human rights of children... all rights are recognised as inherent to the human dignity of the child and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. In a word, the Convention reaffirms the indivisibility and interdependence of human rights. The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore be seen not simply in isolation, but in the broader context of the realisation of children's rights and taking into consideration the international obligations arising from the Convention."⁷

The Committee after General Discussion on violence against children in 2001 submitted proposals on eliminating sexual exploitation and recommended to the UN General Assembly that the Secretary-General be requested to initiate a comprehensive global study on violence against children, which was accepted.⁸ Another key focus of the committee's work on sexual exploitation of children is addressing the root causes of this issue. This includes addressing poverty, inequality, and discrimination, which can increase children's vulnerability to sexual exploitation. It urged member states to develop a national plan of action, covering legislative and other matters, to prevent and combat sexual exploitation. The Committee, in order to ensure independent monitoring of the state's responses, consistently encouraged the establishment of independent national children's rights

⁷ Committee on the Rights of the Child, Report on the 11th Session, January 1996, CRC/C/50, p. 45.

⁸ The Secretary-General appointed Paulo Sérgio Pinheiro as an independent expert to lead the study, reporting to the General Assembly in 2006.

institutions like children's ombudspersons or commissioners, or focal points within national human rights commissions or general ombudsperson offices which would comply with Paris Principles.⁹

The committee has also called for greater attention to the role of the internet and social media in facilitating the sexual exploitation of children, and has emphasised the need for measures to prevent and respond to online abuse and exploitation.

The Committee on the Rights of the Child has issued very pertinent General Comments¹⁰ for combating sexual exploitation of children. For instance, in General Comment No. 5 entitled general measures of implementation for the CRC, the Committee recommended various important legislative and administrative measures which States must take to ensure respect for children's rights guaranteed by the CRC including their right to protection from all forms of violence, abuse and exploitation. In General Comment No. 6 entitled "Treatment of unaccompanied and separated children" the Committee underlined that "Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation."¹¹ The Committee while reiterating the commitment of states to shield children from trafficking, sexual exploitation, abuse and violence recommended that states must take necessary steps such as identification of unaccompanied and separated children; appointing guardians for them; regularly inquiring as to their whereabouts; and conducting information campaigns keeping in mind the age, gender and language of victim.

The Committee's General Comment on HIV/AIDS also reiterates that *"States parties must take bold action to protect children from sexual and economic exploitation, trafficking and sale and, consistent with the rights under Article 39, create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non-governmental entities engaged in these issues."*¹²

⁹ The Paris Principles provide guidelines on the disarmament, demobilization and reintegration of children associated with armed groups.

¹⁰ Authoritative Interpretations of the CRC.

¹¹ Treatment of unaccompanied and separated children outside their country-of-origin 2005 No. 6, CRC/GC/2005/6

¹² HIV/AIDS and the rights of the child 2003 No. 3, CRC/GC/2003/3, para. 36.

The Committee has also highlighted in its General Comment the special vulnerability of children with disabilities. The Committee has noted that children with disabilities are more prone to child prostitution and child pornography and therefore member states must ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) and pay specific attention to children with disabilities.

The Committee on the Rights of the Child therefore plays a critical role in combatting sexual exploitation of children by holding states parties accountable for their obligations under the UNCRC, providing guidance and resources to support prevention and response efforts, and addressing the root causes of this issue. While much work remains to be done, the committee's efforts have contributed to significant progress in protecting children from sexual exploitation and abuse, and will continue to be essential in the years to come.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) is a legally binding international instrument under the Convention on the Rights of the Child. The OPSC was adopted by the United Nations General Assembly in 2000 and came into force in 2002. The purpose of the OPSC is to protect children from commercial sexual exploitation, including the sale of children, child prostitution, and child pornography. The OPSC requires States to criminalise “offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child..., offering, obtaining, procuring or providing a child for child prostitution ... [and] producing, distributing, disseminating, importing, exporting, offering, selling or possessing ...child pornography.”¹³

One of the key provisions of the OPSC is the requirement for states parties to establish jurisdiction over these crimes, even when they are committed outside of their territory.¹⁴ This means that state parties have a duty to investigate and prosecute individuals who engage in these crimes, even if they do so outside of their borders.¹⁵ This is an important step in addressing the cross-border nature of commercial sexual exploitation and ensuring that

¹³ See Article 3.

¹⁴ See Article 4.

¹⁵ Article 5 deals with extradition.

those responsible are held accountable. States under this Protocol are required to provide other member states “the greatest measure of assistance” with respect to investigations, trial and extradition proceedings through mutual agreements.¹⁶

Other significant features of the Protocol include measures to protect and support child victims and witnesses and provide them access to procedures and claim compensation and rehabilitation.¹⁷ States parties are also required to provide training for law enforcement, judicial and other relevant personnel, and to cooperate with other states in investigations and proceedings related to these crimes. A monitoring mechanism has also been created under the Protocol that mandates States to submit an initial comprehensive report detailing measures taken by it to effectively implement the Protocol.¹⁸ Afterwards, this information will be periodically submitted to the Committee on Child Rights.¹⁹

The World Congress against Commercial Sexual Exploitation of Children (CSEC)

The World Congress against Commercial Sexual Exploitation of Children (CSEC) is a global platform that aims to bring together a diverse range of actors to address the issue of child sexual exploitation and trafficking. The first World Congress was held in Stockholm in 1996, followed by the second congress in Yokohama in 2001. These two congresses were pivotal in raising awareness and rallying action to address the issue of child sexual exploitation on a global scale.

The first World Congress in Stockholm marked a turning point in the global fight against CSEC. It was the first time that the issue was brought to the forefront of the international community’s attention and a call to action was made. The congress was attended by over 1,500 participants from 122 countries, including government officials, NGOs, experts, and children and young people who had been affected by CSEC.²⁰

¹⁶ See Article 6.

¹⁷ See Articles 8 and 9.

¹⁸ See Article 12.

¹⁹ See article 44 of the CRC.

²⁰ Karen Mahler, Global Concern for Children's Rights: The World Congress Against Sexual Exploitation, *International Family Planning Perspectives*, Vol. 23, No. 2 (Jun., 1997), p. 79. <https://www.jstor.org/stable/2950828>.

The Stockholm congress resulted in the adoption of the Stockholm Declaration and Agenda for Action, which was a landmark document that set out a comprehensive strategy to combat CSEC. The Declaration recognised the severity of the problem and called for the protection of children from all forms of sexual exploitation, including prostitution, pornography, and trafficking. The Agenda for Action outlined a series of practical steps that governments, civil society, and the international community could take to address the issue, including the strengthening of laws, improving access to justice, and providing support to victims.

The second World Congress in Yokohama in 2001 built upon the progress made in Stockholm and continued to raise awareness and mobilise action against CSEC. The Congress was attended by over 3,000 participants from over 160 countries and was an opportunity for the international community to review the progress made in implementing the Stockholm Declaration and Agenda for Action. The Yokohama Congress adopted the Yokohama Global Commitment, which further strengthened the commitment to ending CSEC and reaffirmed the commitment to the Stockholm Declaration and Agenda for Action.²¹

One of the key outcomes of the Yokohama congress was the recognition of the need for a more coordinated and effective response to CSEC, including the creation of a network of NGOs and other organisations working on the issue. The Congress also called for the establishment of a global monitoring mechanism to track progress in addressing CSEC, which led to the creation of the Global Monitoring Report on the Status of Action against Commercial Sexual Exploitation of Children.

In conclusion, the first and second World Congresses against Commercial Sexual Exploitation of Children were crucial in raising awareness of the issue and rallying action to address it. The congresses provided a platform for the international community to come together and make a collective commitment to ending child sexual exploitation. The Stockholm Declaration and Agenda for Action and the Yokohama Global Commitment continue to serve as important guiding documents for the global effort to address CSEC. While much progress has been made since the congresses,

²¹ UN High Commissioner for Refugees (UNHCR), *Yokohama Global Commitment 2001*, 20 December 2001, available at: <https://www.refworld.org/docid/3f9fe2bd4.html> [accessed 13 February 2023].

the fight against CSEC remains ongoing and the need for continued action and commitment is as pressing as ever.

Palermo Protocol

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is an international agreement aimed at preventing and combatting human trafficking. It was adopted by the United Nations General Assembly in 2000 and implemented in 2003.²² It aims to prevent and combat this crime by providing a comprehensive framework for international cooperation, including the investigation and prosecution of traffickers, protection and assistance for victims, and prevention measures. It is the first global legally binding instrument with an agreed definition on trafficking in persons.

The Palermo Protocol defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, for the purpose of exploitation. The Protocol also lists the forms of exploitation viz. “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs etc. Under this Protocol consent of the victim cannot be a justification for any kind of child exploitation, which means a person below the age of 18 years cannot consent to being trafficked.”²³

It also recognises the need for a gender and child-sensitive approach to trafficking, as well as the importance of protecting the rights and dignity of victims. The Palermo Protocol represents a major step forward in the global fight against human trafficking. However, much work remains to be done to fully implement its provisions and to ensure that all victims of trafficking are identified, protected, and supported in their efforts to rebuild their lives.

²² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. The Protocol was adopted in Palermo, Italy in November 2000. It is one of three protocols supplementing the UN Convention against Transnational Organized Crime. See https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/palermo-protocol_en [Accessed on 13 February 2023].

²³ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

Other Human Rights Instruments and Mechanisms

There are various other human rights instruments viz. Convention on Elimination of Discrimination against Women (CEDAW), Convention against Torture, which play an important role in protection of children and monitoring the implementation of laws framed for the protection of children from sexual exploitation. The Committee on CEDAW and the Committee against Torture and the Human Rights Committee have persistently impressed the states to ratify Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. The CEDAW Committee has raised concerns on the criminal codes that criminalises prostitution of women and girls. The Committee on Migrant Workers has voiced its concerns on restrictive definitions of trafficking in legislation. For instance, there are legislations in which definitions only cover trafficking for prostitution and do not include forms of sexual exploitation and similarly definitions which cover girls but not boys. In addition to above mentioned committees, the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, have also endorsed the inclusion of prostitution, pornography, sex tourism and trafficking in national criminal codes of child exploitation. There are other treaty bodies which have made detailed recommendations on legal measures including extraterritorial application.²⁴

The Convention on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour²⁵ which came into force in November 2000, prohibits and eliminates the worst forms of child labour which also include various forms of sexual exploitation. It not only recognises the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” as worst form of child labour but also mandates for immediate prohibition and elimination. The Convention defines a child as any person under the age of 18 years without any exception. Thus, commercial sexual exploitation of child under the age of 18 years is recognised as a category of worst forms of child labour distinct from the slavery-like practices which includes trafficking and distinct from the category relating to the use of children in illicit activities. The Convention calls for international cooperation to combat all worst forms of child labour that are transnational, such as the trafficking of children for the purpose of sexual exploitation. ILO’s Committee of Experts on the

²⁴ Documents relating to all the UN human rights Treaty Bodies are at <http://www2.ohchr.org>.

²⁵ ILO Convention 182.

Application of Conventions and Recommendations has also urged that member States must make essential measures to prohibit and criminalise the use of a child up to the age of 18 for prostitution or pornography, irrespective of the age of consent in the State's law.²⁶

The second Optional Protocol to UNCRC on the involvement of children in armed conflict has further strengthened the international commitment to combat sexual exploitation of children. The risk of sexual exploitation for children recruited in armed forces and also children affected by armed conflict was outlined in the Graça Machel Report, 1996.²⁷ The report entitled "Impact of Armed Conflict on Children" was a study of twelve countries on sexual exploitation of children in situations of armed conflict and made specific recommendations for dealing with this problem. The UN Secretary-General time to time has appointed Special Representatives for Children and Armed Conflict which have raised their concerns on dreadful sexual exploitation of children recruited into armed forces or affected by armed conflict. The combined and repeated recommendation of various committees of these issues led the Security Council to take cognizance of this issue and pass various resolutions.²⁸

The Rome Statute of the International Criminal Court (ICC), adopted in 1998, came into force in July 2002, having jurisdiction over war crimes and crimes against humanity. The ICC has given a vital tool to towards combating grave violations against children, including widespread and systematic sexual abuse, as crimes against humanity and as war crimes.

²⁶ 9 ILO CEACR, 2007, 78th session.

²⁷ UN General Assembly, A/51/306.

²⁸ The first such Resolution No. 1261 was passed in 1999 admitted the protection of children as a peace and security issue and initiated the progressive consideration of children in armed conflict by the Council. Resolution 1379 (2001), recommended that the Secretary-General list parties recruiting and using children in armed conflict. The Security Council in the year 2003 called on parties to prepare and implement concrete, time-bound action plans for the cessation of all violations against children. Action plans now provide a mechanism to engage parties in practical steps to fulfil their obligations in regard to children as a result of Resolution 1460 (2003). The Security Council has established a monitoring and reporting mechanism and the Working Group on Children and Armed Conflict in resolution 1612 (2005). For all Security Council documents, see <http://www.un.org/Docs/sc/index.html>.

Ugandan and Congolese commanders have been charged with recruiting and using children in hostilities, including for sexual purposes.²⁹

The Hague Convention on Intercountry Adoption recognises risks of all forms of abuse and exploitation which are intensified for children involved in intercountry adoptions, in particular where financial gain is the goal of those involved. Therefore, convention is designed in such a way to ensure that intercountry adoption takes place only in the best interests of children as recognised in international law, including the UNCRC, thus combating exploitation in adoption.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families which was adopted in 1990 and came into force in 2003 establishes international standards for protection of the human rights of migrants. It also prohibits them from being held in slavery or servitude or subjected to forced labour, which includes forms of sexual exploitation of children. The Committee established under Convention to monitor the implementation of Convention has normally insisted States to step up their efforts to counter migrant smuggling and trafficking in persons, especially women and children.

The Convention on the Rights of Persons with Disabilities was adopted by the General Assembly in December 2006 and came into force in May 2008. The Convention imposes on states specific obligations to protect children with disabilities from all forms of violence and exploitation. It requires States parties to “take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.”³⁰ The States will also ensure the physical, cognitive, psychological recovery, rehabilitation and social reintegration of persons with disabilities who are victims of any form of exploitation, violence or abuse “in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.” States must frame their policies and to ensure that instances of exploitation, violence and abuse against

²⁹ For all documents relating to the International Criminal Court, see <http://www.icc-cpi.int/home.html&l=en>.

³⁰ See Article 16.

persons with disabilities are identified, investigated and, where appropriate, prosecuted.³¹

The International Convention for the Protection of All Persons from Enforced Disappearance 2006 is another international legal and institutional mechanism under which member States pledge to criminalise all forms of enforced disappearance including in illegal inter-country adoption. It requires States to take appropriate measures for preventing and punishing any kind of wrongful removal of children of disappeared persons or the tampering with documents giving their true identity.³² Where these children have been adopted, States must have legal provisions in place to review and to annul the child's adoption or placement if it originated in an enforced disappearance and if it is in the child's best interests to uphold their rights to identity; the child's views must be given due weight.

Soft Laws: Guidelines and Recommendations

There are various guidelines and codes of practice adopted by the United Nations or UN-related bodies which intend to promote the development of effective legal frameworks and enforcement to combat sexual exploitation of children.

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime³³ recognise that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused persons. Guidelines also reiterate that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process. Besides, it emphasises on the serious physical, psychological and emotional consequences of crime and victimisation for child victims and witnesses, in particular in cases involving sexual exploitation. A child-friendly version of the Guidelines has been produced by UNICEF³⁴ and the United Nations Office on Drugs and Crime with the

³¹ The Rights of Persons with Disabilities (RPwD) Act, 2016.

³² See Article 25.

³³ Economic and Social Council resolution 2005/20, building on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, annex.

³⁴ UNICEF was originally known as United Nations International Children's Emergency Fund, but officially now United Nations Children's Fund. It is an agency

support of UNICEF's Innocenti Research Centre and the International Bureau of Children's Rights (2007), as guidance for children and child professionals.³⁵

The UNICEF Guidelines on the Protection of Child Victims of Trafficking were established in 2006 to provide practical guidance on how to identify and assist children who have been trafficked. The guidelines are designed to help governments, non-governmental organisations, and other stakeholders to prevent child trafficking, protect victims, and promote their rehabilitation and reintegration. The guidelines provide a comprehensive framework for addressing the needs of child victims of trafficking, including guidance on identifying and assessing risk factors, ensuring access to legal assistance and protection, and providing appropriate and effective support services. They also emphasise the importance of placing the best interests of the child at the centre of all actions taken, and the need to involve children in decision-making processes. Overall, the UNICEF Guidelines on the Protection of Child Victims of Trafficking provide a valuable resource for those working to protect and support children who have been trafficked.

The Paris Commitments and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups were established in 2007 to address the issue of children being recruited or used by armed groups in conflict.³⁶ The Paris Commitments are a set of political commitments made by governments to end the recruitment and use of child soldiers, prevent the re-recruitment of released child soldiers, and promote the rehabilitation and reintegration of former child soldiers into their communities. The Principles and Guidelines provide detailed guidance to governments, international organisations, and non-state armed groups on how to prevent the recruitment and use of child soldiers, protect children from harm, and promote their release, rehabilitation, and reintegration into society.

The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism was issued in 2004 to address the issue of child sexual exploitation in the tourism industry. The code is a set of voluntary guidelines for the tourism industry that provide specific measures

of the United Nations responsible for providing humanitarian and developmental aid to children worldwide. See <https://www.unicef.org/>

³⁵ See www.unicef.org/voy/media/Document.doc; this is not an official UN document.

³⁶ See www.un.org/children/conflict/english/parisprinciples.html.

to prevent child exploitation and promote the protection of children. This industry driven initiative was in collaboration with ECPAT International, funded by UNICEF and supported by the UN World Tourism Organisation.³⁷ The code calls for the establishment of policies and procedures to prevent child exploitation, the training of staff on identifying and responding to child exploitation, the inclusion of a clause in contracts with suppliers prohibiting the sexual exploitation of children, and the reporting of suspected cases of child exploitation to the appropriate authorities. The code has been widely adopted by tourism companies and has contributed to increased awareness and action to prevent child sexual exploitation in the industry.³⁸

The Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking were established in 2002 to provide guidance on how to prevent and respond to human trafficking while upholding human rights standards. The principles and guidelines recognise that trafficking in persons constitutes a violation of human rights, and emphasise the importance of ensuring that all measures to combat trafficking are in compliance with international human rights law.³⁹ This includes Guideline 8, on special measures for the protection and support of child victims of trafficking. This emphasises that the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children.

The document provides detailed guidance on a range of issues, including prevention, protection of victims, prosecution of traffickers, and the promotion of cooperation and coordination among stakeholders. The principles and guidelines have played an important role in shaping international efforts to combat human trafficking, and have contributed to increased awareness of the need to address this issue in a manner that is consistent with human rights standards.

³⁷ See www.thecode.org.

³⁸ In 2001 the UN Economic and Social Council adopted a draft resolution on a Global Code of Ethics for Tourism. The Code was officially recognized by the UN General Assembly in December 2001 (A/RES/56/212).

³⁹ E/2002/68/Add.1 (2002).

The International Labour Organisation's International Programme on the Elimination of Child Labour (ILO-IPEC) Guidelines on the Design of Direct-Action Strategies to Combat Commercial Sexual Exploitation of Children were published in 2007 to provide guidance on how to develop effective strategies to combat the commercial sexual exploitation of children (CSEC). They include examples, 'dos and don'ts', and good practices from IPEC's field experience and that of its partners worldwide.

The United Nations High Commissioner for Refugees (UNHCR) has also developed several guidelines and handbooks to prevent and respond to sexual exploitation and abuse of children in refugee and displacement contexts. These guidelines⁴⁰ provide practical guidance to humanitarian workers on how to prevent and respond to incidents of sexual exploitation and abuse, and promote the protection and well-being of children.

Regional Instruments for Combating Child Sexual Abuse

In addition to above mentioned international conventions dealing with sexual exploitation of children there are various regional instruments and mechanisms to protect human rights and prevent sexual exploitation of children established in various parts of the world. These mechanisms are often based on regional treaties, agreements, or conventions that outline the obligations of states to promote and protect human rights, including the rights of children. Examples of such mechanisms include the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights. These mechanisms serve to monitor and enforce compliance with human rights standards and to provide redress to victims of human rights abuses, including sexual exploitation of children.

The African Union (AU)

The African Union (AU) is a regional continental organisation composed of 55 member states that work together to promote unity, peace, and sustainable development in Africa. One of the key commitments of the AU

⁴⁰ These Guidelines are 1. Sexual and gender-based violence against refugees, returnees and internally displaced persons: Guidelines for prevention and response (2003); 2. Handbook for the Protection of Women and Girls (2008); and 3. Guidelines on Determining the Best Interests of the Child (2008).

is the promotion and protection of human rights and dignity of people.⁴¹ The AU has adopted several instruments to advance human rights in Africa, including the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In addition, the AU has established a number of mechanisms to promote and monitor the implementation of these instruments, including the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, and the African Committee of Experts on the Rights and Welfare of the Child. The AU has also taken steps to address specific human rights issues, such as the abolition of the death penalty, the prevention of torture and cruel, inhuman, and degrading treatment or punishment, and the elimination of discrimination against vulnerable groups such as women, children, and persons with disabilities.

The African Charter of Human and Peoples' Rights⁴² is a general instrument which mandates State to "ensure the elimination of every discrimination against women and also to ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."⁴³ However, the African Charter on the Rights and Welfare of the Child is a more specific treaty adopted by the African Union in 1990 to promote and protect the rights of children in Africa. The Charter recognises the right of every child to be protected from all forms of exploitation, including sexual exploitation. The Charter defines sexual exploitation as the use of a child for sexual purposes in exchange for compensation, including money or other benefits. It prohibits all forms of sexual exploitation of children and requires states to take measures to prevent and punish such acts.⁴⁴ The charter also requires States to take appropriate measures to prevent "abduction, the sale of, or trafficking in children for any purpose or in any form, by any person including parents or legal guardians of the child."⁴⁵ There is an African Committee of Experts on the Rights and Welfare of Child which is the monitoring body under the Charter. The Committee has

⁴¹ See <https://au.int/>.

⁴² Adopted in 1981 and entered into force 1986.

⁴³ See Article 18.

⁴⁴ Article 27 requires States to undertake to protect the child from all forms of sexual exploitation and sexual abuse and in particular to take measures to prevent: "(a) the inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; (c) the use of children in pornographic activities, performances and materials."

⁴⁵ See Article 29.

prepared Rules of Procedure and Guidelines for the State parties to submit periodic reports. Additionally, the Charter recognises the importance of education and awareness-raising on the issue of sexual exploitation of children, and requires states to provide appropriate information and training to children, parents, and communities.

The African Youth Charter which defines ‘youth’ as anyone between the ages of 15 and 35 was adopted in 2006 also requires States to enact and enforce legislation to protect girls and young women from all forms of violence, including sexual exploitation.

The Council of Europe

The Council of Europe is a regional intergovernmental organisation composed of 46 member states, whose main objective is to promote human rights, democracy, and the rule of law in Europe. The Council of Europe is committed to the protection of children from sexual exploitation and abuse, and has developed various instruments to address this issue.⁴⁶

The Council of Europe in 2007 adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which requires member states to criminalise sexual offences against children, provide support to child victims of sexual abuse, and cooperate in the prevention of sexual exploitation of children.⁴⁷

The Council of Europe has also established the Group of Experts on Action against Trafficking in Human Beings, which works to prevent trafficking in human beings and protect victims, including child victims of sexual exploitation.⁴⁸

The Council of Europe has adopted three main conventions namely ‘Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,’ ‘Convention on Action against Trafficking in Human Beings’ and ‘Convention on Cybercrime’ which are relevant for the purpose of this paper.

⁴⁶ See <https://www.coe.int/en/web/portal>.

⁴⁷ *Ibid.*

⁴⁸ *Id.*

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

This is the most comprehensive instrument so far adopted by Council of Europe in 2007 to combat sexual abuse and exploitation. It is built on existing international instruments and takes account of new challenges. The Convention requires States Parties to criminalise all forms of sexual offences against children, and to provide appropriate support and assistance to child victims of sexual abuse. It also emphasises the importance of prevention, education and awareness-raising, and international cooperation in combating sexual exploitation and abuse of children. The Convention has been ratified by most of the Council of Europe member states and serves as a key legal instrument in the fight against sexual exploitation and abuse of children in Europe and beyond.

The Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings is a treaty adopted by the Council of Europe in 2005 to prevent and combat trafficking in human beings. The Convention aims to protect the human rights and dignity of trafficking victims, and to prosecute and punish traffickers. The Convention takes into account the Palermo Protocol and its definitions including of child trafficking as a starting point and takes account of other international legal instruments.

The Convention is built on a child-sensitive approach and requires States Parties to criminalise all forms of human trafficking, provide appropriate support and assistance to trafficking victims, and cooperate with each other to prevent and combat human trafficking. The Convention also emphasises the importance of prevention, education, and awareness-raising, and calls for the participation of civil society organisations in the fight against human trafficking.

The Convention creates an independent monitoring body i.e. the Group of Experts against trafficking in human beings (GRETA) consisted of independent experts. The major task of this body is to review and adopt a report and conclusions on each State party's implementation of the Convention. Another more political body, the Committee of the Parties, is composed of representatives of States parties to the Convention (both Member States and non-members of the Council of Europe). It may adopt recommendations addressed to a party on the basis of GRETA's report and conclusions concerning the follow-up measures to be taken.

Council of Europe Convention on Cybercrime

The Council of Europe Convention on Cybercrime, also known as the Budapest Convention, is an international treaty adopted in 2001 to address the growing threat of cybercrime. The Convention aims to establish a common legal framework for the criminalisation of cybercrime and to enhance international cooperation in the investigation and prosecution of cybercrime. The Convention covers a wide range of cybercrime offenses, including computer-related fraud, hacking, and the distribution of child pornography. The Convention prohibits various acts related to child pornography in the context of computers. This includes possession of child pornography in a computer system or on a computer data storage medium⁴⁹ and the procuring of child pornography through a computer system for oneself or for another person.⁵⁰ However, states parties may reserve their right not to criminalise these conducts.⁵¹

It requires states parties to criminalise these offenses, provide effective measures for the collection of electronic evidence, and establish procedures for international cooperation in the investigation and prosecution of cybercrime. The Convention has been ratified by 64 countries, including non-member states like the United States, Canada. It has played an important role in shaping international law and policy on cybercrime, and has contributed to the development of a common legal and institutional framework for the prevention and combating of cybercrime.

The European Convention on Human Rights (ECHR)

The European Convention on Human Rights (ECHR) is an international treaty signed in 1950, which provides the legal framework for the protection of human rights across Europe. Victims of sexual violence and abuse may invoke, among others, articles 3, article 4 and article 8 of the Convention. Article 4 of the ECHR prohibits slavery, servitude, forced labour, and human trafficking. This provision has been interpreted by the ECtHR to include the exploitation of children for sexual purposes. In addition to Article 4, the ECHR also contains provisions that protect the rights of children more generally. Article 8, for example, protects the right to respect for private and family life, while Article 3 prohibits inhuman or degrading

⁴⁹ See Article 9(1)(e).

⁵⁰ See Article 9(1)(d).

⁵¹ See Article 9(4).

treatment. These provisions have been used by the ECtHR to protect children from sexual abuse and exploitation.

The European Court of Human Rights (ECtHR) which controls the compliance with provisions of the Charter by States was established in 1959 to interpret and enforce the ECHR. One of the key areas in which the ECHR and the ECtHR have played an important role is in the protection of children from sexual exploitation. In *X and Y v. the Netherlands*,⁵² the European Court of Human Rights referred for the first time the State's positive obligations under Article 8 of the Convention to protect minors against sexual abuse in an effective manner.

In another landmark case of *M.C. v. Bulgaria*,⁵³ went a step ahead and declared Bulgarian criminal law which only protected victims of rape who had offered strong resistance as against the perpetrator violative of Article 3 and article 8 of the convention. The 14-year girl in this case had opposed but not physically resisted when rape was committed on her. The Court found violations both of article 3 and article 8, stating "the member states' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim."

The 'Court' rendered a significant verdict in *Rantsev v Cyprus and Russia*,⁵⁴ a case that will be lauded for revealing the human cost of sex tourism in Europe and the Court's willingness to take on the issue of trafficking of women. The Court declared that the failure of the Cypriot and Russian authorities to protect a young Russian woman from being forced into prostitution amounted to a violation of Article 4. The court noted that the trafficking of women for sexual exploitation was a serious and growing problem in Europe and that states had an obligation to take effective measures to prevent and combat such exploitation.

The Court in *P.M. v. Bulgaria*,⁵⁵ a case concerning an applicant raped at the age of thirteen found that the investigation conducted by Bulgarian authorities which took more than 15 years had been miserably ineffective,

⁵² 26 March 1985, Series A no. 91.

⁵³ No. 39272/98, ECHR 4 December 2003.

⁵⁴ *Rantsev v. Cyprus and Russia* Application No. 25965/04, Judgment of 7 January 2010.

⁵⁵ No. 49669/07) 24 January 2012.