

**Submission of Oxfam Hong Kong on Prevention of Child Pornography Bill**

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Dear

12 April 2001

**Combating child sex tourism,**  
**Proposed legislation for the prevention of child pornography**

We learn that you are a member of the Bills Committee to study the Prevention of Child Pornography Bill, and the first meeting of the Committee has been scheduled on 17 April 2002. Oxfam Hong Kong has been advocating since 1998 on the Hong Kong SAR Government to put into place appropriate legislation to protect children against any sexual exploitation committed by Hong Kong people in any community - at home or abroad. It is encouraging to see progress in legislation as you and other Bills Committee members are going to give due concern to the bill.

Thus far, around twenty countries have made provision for extraterritorial effect of certain sexual offences towards children outside their countries. Internationally, a network of NGOs has been active in advocating for similar changes in other countries. Legislation is one positive step to provide protection to children against commercial sexual exploitation, which happens in the form of child sex tourism in many developing countries, with poverty and inequality being root causes of the problem.

We have summarised legislation and prosecution experiences of other countries by taking reference from research done by NGOs that have expertise on the issue. We enclose with this letter a briefing paper on this subject for your perusal. Please also find an Oxfam's statement in response to the bill first introduced in December 1998, and a booklet that we published to raise awareness on detrimental effects of child sex tourism for your information.

Shall you have any questions regarding Oxfam Hong Kong's End Child Sex Trade Campaign, please do not hesitate to contact myself at 3120 5203 (e-mail [reda@oxfam.org.hk](mailto:reda@oxfam.org.hk)), or Miss Kitty Wan, Assistant Campaigns Officer, at 3120 5222, (e-mail [kitty@oxfam.org.hk](mailto:kitty@oxfam.org.hk)). Thanks for your kind attention.

Yours faithfully,  
Ng Mei Ling, Freda  
Senior Campaigns Officer, Oxfam Hong Kong

## 5. Inventory of Legal Arsenal

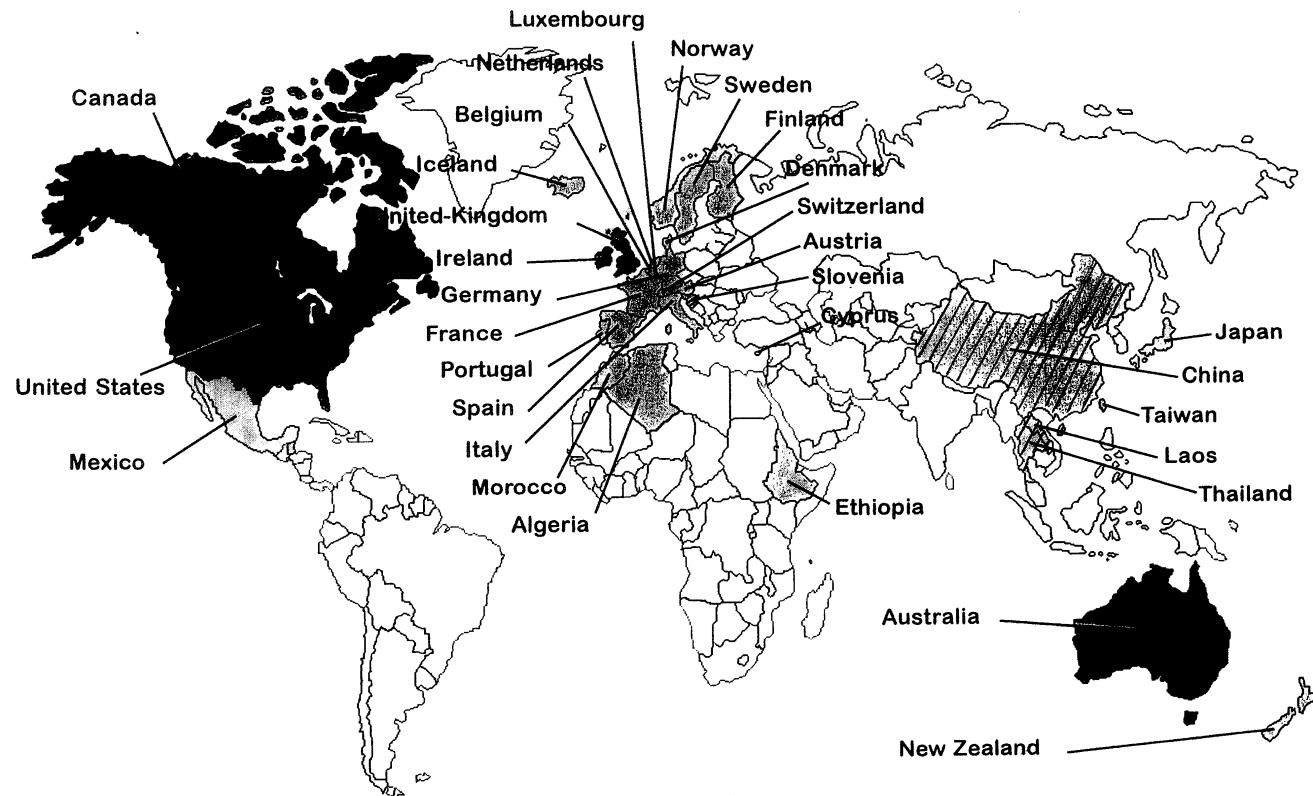
### 5.1. National CST Initiatives

This table presents a description of some laws. For extraterritorial legislation see also map. The extra-territorial legislation allows to prosecute a child sex offender locally or in his native country.

TABLE 14. LEGAL ARSENAL

Country*	Extraterritorial Law	Other National CST Laws/Initiatives
<b>Africa</b>		
Algeria	Yes (1982)	Ban on organizing or advertising sex tours Extraterritorial legislation applies specifically to child abuse laws
Ethiopia	Yes	Extraterritorial legislation applies specifically to child abuse laws
Kenya	No	The law punishes anyone involved in procuring, directly and indirectly, in Kenya or elsewhere, a female under 21 years for paid or unpaid ‘unlawful carnal connection’ or recruits her into a brothel..
Morocco	Yes	Extraterritorial legislation applies specifically to child abuse laws
South Africa	Under discussion	Revocation of tour operator’s license if found to plan/organize sex tours within South Africa or abroad; deportation on release from jail & loss of passport of any citizen convicted of a sexual offense abroad
<b>Americas</b>		
Argentina	Bill now before legislature’s tourism commission	Legal requirement to include notice of extraterritorial CST law & penalties in international tour catalogues
Brazil	No	Ban on hotel use for CSEC purposes (1996) Recife Bylaw No. 82 bans minors from hotel rooms without parental consent. A bill aims to punish taxi driver who carry minors without said consent too.
Canada	Yes <sup>25</sup>	
Colombia	No	Direct or indirect involvement in the prostitution of minors ‘will be considered an infraction’ exposing the tourist service provider to ‘administrative sanctions....without prejudice to penal sanctions’ under Art. 72, Law 300 of 1996
Mexico	Yes	Extraterritorial legislation applies specifically to child abuse laws
USA	Yes (1994) <sup>26</sup>	
<b>Asia &amp; Pacific</b>		
Australia	Yes <sup>27</sup>	‘Sexual activity with child under 16...overseas...by an Australian citizen or resident is a criminal offense in Australia; to encourage, benefit or profit from any activity that promotes sexual activity with children is an offense.’
Cambodia	No	Women’s minister Mu Sochua wants a database of suspected alien child sex offenders for embassies & border points to deny entry or visa extensions.
China	Yes	General extraterritorial jurisdiction applies to all serious offenses, including those against children.
Japan	Yes	
Lao PDR	Yes	General extraterritorial jurisdiction applies to all serious offenses, including those against children.
Nepal		Bill to streamline deportation of alien sex offenders
New Zealand	Yes	
Philippines	No	Child sex abuser-deported with ‘deported for sexual perversion’ marked in passport; Tourism Department administrative order banning ‘accommodation establishments’ from even permitting ‘to enter the premises’, anyone whom they have at least ‘have reason to believe’ is a prostitute, child sex offender or of questionable character.

### 5.2. Extraterritorial Map



#### COUNTRIES WITH EXTRATERRITORIAL LEGISLATION

■ Special CST Law : « Travelling abroad with the intent of abusing a child is punishable »

▨ E.T. Jurisdiction applies specifically to child abuse laws

▨▨ E.T. Jurisdiction applies to all serious offenses including offenses against children

**Combating Child Sex Tourism**  
**Proposed Legislation for the Prevention of Child Pornography (2001)**  
**A Briefing Paper Prepared By Oxfam Hong Kong**

## **A. Introduction**

Hong Kong plays an important role as part of the international effort in preventing sexual exploitation of children. According to the End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT international), an International NGO, the number of children forced into the sex industry in Asia alone is more than 1 million.<sup>i</sup> While the majority of the abusers come from the west, in some countries such as Vietnam, main source countries are from Taiwan and Hong Kong.<sup>ii</sup> Furthermore, as Hong Kong is a party to the United Nations Convention on the Rights of the Child (UNCRC), it is obligated to protect children from all forms sexual exploitation.<sup>iii</sup> Thus far, twenty countries<sup>iv</sup> have changed their laws in order to prosecute their nationals for offences committed abroad against children for better child protection.

Poverty and inequitable socio-economic structures are the major causes of forced child labour and the sale of children. This makes children easily fall into prey of commercial sexual exploitation. As an agency working with poor communities overseas and locally to overcome poverty and social injustices, Oxfam Hong Kong has been advocating since 1998 on the Hong Kong SAR Government to put into place appropriate legislation to protect children against any sexual exploitation committed by Hong Kong people in any community - at home or abroad. Legislation that makes provision for extraterritorial effect of certain sexual offences towards children outside is one positive step that the Hong Kong Administration can take. We call upon the administration to draw on the experiences of other countries and to consult various sectors of the community as it drafts the law. The administration should demonstrate their determination not only with legal words, but also with adequate and appropriate mechanisms and resources, human and material, for effective enforcement.

## **B. Enforcement issues of the proposed legislation**

### **1. How does a case come into light?**

Very often, it was the civil organisations and third parties who initiate the process of investigation. From the experience of other countries, some incidents were discovered and reported by hotel owners where the abusers stayed,<sup>v</sup> families of the victims, local Non Governmental Organizations (NGOs)<sup>vi</sup> as well as photo development shops who developed photos with children pornographic content.<sup>vii</sup>

### **2. How does investigation take place?**

#### ***a. Use of official channels.***

High level of cooperation between countries is essential for an efficient investigation. In order to facilitate cooperation, formal bilateral mutual legal assistance agreements are often employed in obtaining evidence for the purposes of investigation and prosecution. In Hong Kong, the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) provides for such purpose.

However, difficulties might occur in cases when there is no agreement between the two countries. For instance, in the case against *Alexander Langenscheidt*,<sup>ix</sup> cooperation between the Swiss authorities and the Philippines was poor as there was no bilateral agreement on legal assistance to facilitate cooperation. As a result, this caused delay in gathering necessary information in that case.

#### ***b. Use of unofficial channels.***

Sometimes, NGOs and third parties may assist the investigation in obtaining necessary information when authorities in the providing countries fail to act. In the case against *Vinzenz Berger*, it was difficult to procure action at the official level in Sri Lanka since the offender enjoyed a high social status locally. Parents and ecclesiastical official were even threatened when they sought an official investigation. The evidence was gathered as a result of NGOs efforts and the offender was finally convicted for having sexual acts with children in Sri Lanka.

**c. Most efficient investigations take place when a combination of both official and unofficial channels is used.**

From the experience of countries studied by the ECPAT International, the most efficient investigation took place when the police used both the formal and the informal channels. For instance, necessary information may be obtained through NGOs and at the same time through official channels via the embassies.<sup>x</sup>

**3. What possible hurdles do we have to overcome in order to prosecute?**

**a. Double Jeopardy (*Plea of Autrefois Acquit and Autre Convict*).**

It is a principle that a person may not be retried for the same offence. In Hong Kong, this principle is provided for in the Criminal Procedure Ordinance (Cap 221), s 31. It is basic rule of fairness. However, we should ensure that the legislation does not enable offenders to escape prosecution by short-term detention or partial service of a sentence abroad.

**b. Double Criminality requirement.**

Some countries require the acts committed abroad to constitute an offence in both countries in order to apply extraterritorial jurisdiction.<sup>xi</sup>

**c. Some countries need at least a victim to come forward to file a formal complaint before extraterritorial jurisdiction can be applied.**

This requirement poses problems in some countries, as the children who were sexually abused are difficult to locate. For Hong Kong, it is usually the police officers who initiate the criminal investigation and the Department of Justice who conducts the prosecutions.<sup>xii</sup>

**d. It is difficult to procure witnesses to testify.**

In one German case,<sup>xiii</sup> the witnesses were required to testify in court and were applied strictly. Since the victims in that case were without domicile, this caused considerable difficulties since they would have to be summoned to Germany to testify in the hearings.

**4. What evidence could be used in a trial to secure conviction?**

**a. Evidence given by witnesses.**

In some cases, direct evidence was given by the victims.<sup>xiv</sup> Besides direct evidence given by the victims, testimonies given by social workers were also accepted. In one case, a court psychologist was used as an expert for the credibility of the victim as a witness.<sup>xv</sup>

**b. Physical evidence.**

In cases where the victims did not give any testimony, the offenders could be convicted on physical evidence alone.<sup>xvi</sup>

Physical evidence usually includes witness statements, videos, photo materials as well as airline tickets of the accused.<sup>xvii</sup> In one case,<sup>xviii</sup> evidence included records and interviews taped by a Swiss NGO in Sri Lanka, Sri Lanka police reports, reports and videotape from the interviews taken by the Swiss investigation authorities with the children in Sri Lanka.

**5. What should be taken into consideration with respect to cases involving foreign child victims?**

**a. Use of medical examination to establish age of children should be accepted.**

In some cases it was required to prove the age of the children as the accused would raise the issue of the age of the victims as a defence. Nonetheless, birth certificates are not reliable in some countries.<sup>xix</sup> As a result, some courts accepted medical examinations to establish the age of the children.

**b. Video link should be provided for giving testimony.**

Foreign children should not be required to appear at trial. They should be given protection with special regard to their culture, age and education. In some cases, children were allowed to give their evidence through video link with the presence of prosecuting authorities and legal representatives of

the accused person. Sometimes, testimonies were recorded on tapes without removing them from their own countries.<sup>xx</sup>

In Hong Kong, children can give evidence in proceedings with respect to offence of sexual abuse through live television link<sup>xxi</sup> as well as recorded video.<sup>xxii</sup>

### **C. Lessons learned from countries with extraterritorial legislation for better protection of child**

#### **1. Establish Mutual Legal Assistance Agreements with countries that are major sources of child sex labor.**

As mentioned above, lack of formal mutual assistance agreement may lead to delay in investigations. Hong Kong has agreements with Australia, France, New Zealand, Republic of Korea and the USA under the Mutual Legal Assistance Agreements.<sup>xxiii</sup> However, Hong Kong has no agreement with countries where most child prostitutes are found, such as Thailand, Vietnam, Cambodia and India. It is desirable to extend the agreements to these countries in order to improve cooperation in gathering evidence from these countries for the purpose of more efficient investigation.

#### **2. Adjust court procedures in order to adapt to cultural and languages differences.**

It is necessary to adopt child friendly procedures and children should be treated with due regard for their culture, age and education. In the case against *Jonathan Hamilton* in Australia, the Cambodian children went to Australia to be witnesses for the trial only two days after they arrived. They were obviously shocked by the culture and adversarial system of Australia. As a result, their testimonies were inconsistent and this undermined their credibility.

#### **3. Inform and train all the relevant actors involved in extraterritorial cases, including lawyers, prosecutors and police officers.**

The need for information is crucial. Efforts should be made to train professionals in understanding what extraterritorial jurisdiction means and how it is applied in their jurisdiction. There should be conferences and seminars on the responsibilities of states towards the children of other countries under the Convention on the Rights of the Child.

#### **4. Give due respect to victims' rights and human rights in the process of investigation, prosecution and jurisdiction.**

## Reference Cases

**Experience of a successful case**  
**– Vinzenz Bleicher (Switzerland – Sri Lanka)<sup>xxiv</sup>**

This was a test case in Switzerland to show that extraterritorial legislation could be implemented.

Vinzenz Bleicher (VB) was convicted in the District court of Zurich in 1998 of having had unlawful sexual contact with numerous boys in Sri Lanka. He was sentenced to four and a half years imprisonment.

The case started when it was tipped off by a local NGO in Sri Lanka. They found that VB regularly invited boys aged 11 to 15 to visit him in his villa and let them play the garden and swimming pool. He also offered them food. Gradually, he encouraged the boys to come inside the house to the television room and the bedroom. The boys had to watch pornographic films and tolerated different sexual acts. Eventually, VB's conduct became known and the local population turned against him.

However, the Sri Lankan authorities took no action against VB because he was highly respected in Sri Lanka and had good contacts with members of the upper class, the authorities, the police and political parties. Due to lack of action from Sri Lankan authorities, Sri Lanka and Swiss NGOs assisted in the investigation initially. In 1996, representatives from other NGOs traveled to Sri Lanka to carry out detail research in the VB case. Their report was handed over to the Swiss police who started official investigations in Switzerland. The Sri Lankan authorities arrested VB in the same year. In 1997, the Sri Lankan authorities deported VB to Switzerland where he was arrested upon his arrival. After VB's arrest in Switzerland, a request for legal assistance was made to Sri Lanka so that evidence could be located in Sri Lanka by Swiss investigation teams. The Zurich authorities also went to Sri Lanka to question witnesses and victims.

In 1998, VB was formally charged and was convicted. Evidence accepted in the court included the records and interviews taped by the Swiss NGO in Sri Lanka. Sri Lankan police reports, reports from the interviews and videotapes of the interviews. More importantly, VB acknowledged his guilt.

This case exemplified an effective investigation using both official and unofficial channels. Moreover, the Swiss conducted the investigations with much care for the children. For example, the victims were not confronted with the offender and their testimonies were recorded on tapes. As the evidence of the victims was taken in Sri Lanka, it appears that the trauma to the children was minimal.

**Lessons to be learned from a case of failure**  
**— Jonathan Hamilton (Australia – Cambodia)<sup>xxv</sup>**

This is an important case because it raised issues relating to the practical workings of the Child Sex Tourism legislation in Australia. It highlighted deficiencies in that legislation with regard to the treatment of child witnesses.

Jonathan Hamilton (JH), a senior diplomat from Australia was charged under the Crimes (Child Sex Tourism) Amendment Act 1994, Australia's extraterritorial legislation to combat child sex tourism. He was charged in April 1996 and appeared before the Magistrates court for a committal hearing the same year. However, the Magistrate ruled that the evidence against him was unreliable and he did not have to stand trial.

The case started when a young boy came forward and spoke to an Australian NGO worker at a Street Children Center about sexual encounters with foreigners in 1994. He claimed that JH, a former Australian Ambassador at that time employed by the Australian government as a consultant to the Cambodian foreign ministry was involved. The case was referred to the Child Welfare Group in Cambodia to monitor the situation. The Child Welfare Group collected information on JH and passed it on to the Australian police.

The Australian police began investigation in mid 1995 in Australia and continued in both Cambodia and Australia. The police had difficulties collecting evidence in Cambodia because Australia and Cambodia do not have a Mutual Assistance Treaty. Moreover, the Cambodian police were not actively involved in it because of insufficient resource and poor training. As a consequence, the Australian police had to make contacts there through Australian Department of Foreign affairs and Trade and received unofficial help from one officer who was already in Cambodia reviewing the justice system. They also traveled to Cambodia to interview the parties involved.

In April 1996, police charged JH with unlawful sexual contact with two 14-year-old Khmer boys living on the streets in Phnom Penh.

The prosecution relied heavily on the testimonies of the two boys about their sexual encounters with JH. The boys were brought to Australia to give evidence to the court by close circuit television with interpreters in a separate room. It appeared to have believed that if the language was provided through interpreters that were enough for the case to proceed. However, this was not the case.

The Court system failed to take into account the fact that the boys were coming into a very foreign environment. In fact, the boys arrived two days before the court case began and were arguably still in shock facing foreign food, languages, people and environment. They were not able to leave their hotel room except for court appearances and were denied visits from a Khmer speaking Australian NGO worker who had cared for them in Phnom Penh.

In addition, the Court made no allowances for cultural differences which increased the impression that the boys were confused. Australian has an adversarial court system, which expects precision answers. The boys could not always provide such answers. For instance, they do not know their birth dates as it is not as important in their culture as in other western countries. They were also confused about dates and times as they do not have watches.

Due to the above factors, the case failed because the Magistrate considered the testimonies of the boys unreliable.

## **Related Conventions Adopted since 1996**

### **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182)**

ON 17 June 1999, the International labour Organisation (ILO) adopted this convention at the 87<sup>th</sup> International Labour Conference, which stipulates that the use of children for the purposes of prostitution and pornography is one of the "worst forms of child labour," and the Parties are required to take immediate and effective measures toward the elimination of such acts.

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

Article 34 and 35 of the Convention on the Rights of the Child stipulate that State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse, and that States Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of or traffic in children. The Optional Protocol to this Convention, which was adopted at the 54th session of the UN General Assembly on 25 May 2000, criminalises acts related to sale of children, child prostitution and child pornography, and prescribes the protection of the rights of child victims during the criminal justice process, prevention of such acts, and the promotion of international cooperation in order to protect children from such acts.

### **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime**

This Protocol, adopted on 15 November 2000 at the 55th UN General Assembly, prescribes measures to be taken by State Parties to prevent the trafficking of persons including children, to penalise offenders and protect the child victims, and to promote international cooperation and cooperation between governments and NGOs.

Source: Second World Congress against Commercial Sexual Exploitation of Children and Japan's Efforts: toward the World Free from Child Prostitution and Child Pornography. Yokohama, 17-20 December 2001. Ministry of Foreign Affairs of Japan.

## **APPENDIX**

### Schedule 2

<b>Section</b>	<b>Description of offence</b>
118	Rape
118 A	Non-consensual buggery
118 B	Assault with intent to commit buggery
118 C	Homosexual buggery with or by man under 21
118 D	Buggery with girl under 21
118 F	Homosexual buggery committed otherwise than in private
118 G	Procuring other to commit homosexual buggery
118 H	Gross indecency with or by man under 21
118 J	Gross indecency by man with man otherwise than in private
118 K	Procuring gross indecency by man with man
119	Procurement by threats
120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16
126	Abduction of unmarried girl under 16
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
132	Procurement of girl under 21
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
146	Indecent conduct towards child under 16

## END NOTES

- <sup>i</sup> Second World Congress against Commercial Sexual Exploitation of Children and Japan's Efforts: toward the world free from child prostitution and child pornography. Yokohama, 17-20 December 2001. Ministry of Foreign Affairs of Japan.
- <sup>ii</sup> Jacqueline Danam, "Sex tourism and the travel industry", TTG Asia Oct 25 - Oct 31 1996, cited in <http://www.ttg.com.sg/current/archive/1996/1025-31/brcenter.html> accessed on 16 July 2001.
- <sup>iii</sup> Art. 34 of the UNCRC.
- <sup>iv</sup> Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, Thailand, the United Kingdom and the United States, cited in Jeremy Seabrook, *No Hiding Place: Child Sex Tourism and the Role of Extraterritorial Legislation*, Zed Books in association with ECPAT Europe Law Enforcement Group (2000).
- <sup>v</sup> In the case against *Leo van Engstraat (Netherlands - Philippines); Tristam Belicher (Germany - Philippines)*, cited in ECPAT Europe Law Enforcement Group, *Extraterritorial Legislation as a tool to combat sexual exploitation of children*, (1999), p 35, 61.
- <sup>vi</sup> *Vinzenz Bleicher (Switzerland - Sri Lanka)*, cited in *ibid*, p 75.
- <sup>vii</sup> In the case *Jonathan Hamilton (Australia - Cambodia)*, a child came forward to The Child Welfare Group, an NGO in Cambodia, which collected information and passed them to the Australian police; In *Marcel Thierry (France - Thailand)*, the case was tipped off by the Children's foundation whom had been told by one of the victims; cited in *op cit supra* note v, p 221, 143.
- <sup>viii</sup> *Jan van Schelling (Netherlands - Philippines)* cited in *supra* note v, p 19.
- <sup>ix</sup> ECPAT Europe Law Enforcement Group, *Extraterritorial Legislation as a tool to combat sexual exploitation of children*, (1999), p 93.
- <sup>x</sup> *Paul Maurer (Switzerland - Philippines)*, cited in *ibid*, p 127.
- <sup>xi</sup> This requirement applies for the purpose of surrendering persons to places outside Hong Kong ( Fugitive Offenders Ordinance (Cap 503), s 2(2)). Hong Kong may also refuse assistance in investigation if the request for assistance relates to an act that would not have constituted an offence had it occurred in Hong Kong (Mutual Legal Assistance in Criminal Matters (Cap 525), s 5(1)(g)).
- <sup>xii</sup> Section 12 (a) of the Magistrates Ordinance (Cap 227).
- <sup>xiii</sup> *Alexander Langenschei (Germany & Switzerland - Philippines & Czech Republic)* cited in *supra* note ix, p 93.
- <sup>xiv</sup> *Leo van Engstraat (Netherlands - Philippines); Jonathan Hamilton (Australia - Cambodia)* cited in *supra* note ix,p35,221.
- <sup>xv</sup> *Tristan Bleicher (Germany - The Philippines)* cited in *supra* note ix, p 61.
- <sup>xvi</sup> *Jan van Schelling (Netherlands - Philippines)*, the victim did not give testimony since it was considered that there was enough evidence in the photographic and video material, *op cit supra* note viii.
- <sup>xvii</sup> *Cees Brijthuis (Netherlands - Sri Lanka); Tristan Bleicher (Germany - The Philippines)* cited in *supra* note ix, p 49,p61.
- <sup>xviii</sup> *Op cit supra* note vi.
- <sup>xxi</sup> *Draguigan* cited in *supra* note ix.
- <sup>xx</sup> *Op cit supra* note xviii.
- <sup>xxi</sup> Section 79B, Criminal Procedure Ordinance (Cap 221).
- <sup>xxii</sup> Section 79C, Criminal Procedure Ordinance (Cap 221); *Chim Hon Man v HKSAR [1999] 1 HKC 428*.
- <sup>xxiii</sup> <http://wwwjustice.gov.hk/table 5.htm>, accessed on 16 July 2001.
- <sup>xxiv</sup> ECPAT Europe Law Enforcement Group, *Extraterritorial Legislation as a tool to combat sexual exploitation of children*, (1999), p 75.
- <sup>xxv</sup> *ibid*, p 221.

**Oxfam Hong Kong**  
**Comments on**  
**Consultation Paper on the Proposed Legislation on Child Pornography and Child Sex**  
**Tourism**  
**(Revised as Consultation Paper on Proposed Legislation for the Prevention of Child**  
**Pornography in November 2001)**

**Submitted to the Secretary for Security in December 1998**

Oxfam Hong Kong believes that it is the responsibility of the Hong Kong Government to ensure that appropriate legislation be put into place to protect children against any sexual exploitation committed by Hong Kong people in any community -- at home or abroad.

Oxfam Hong Kong feels it is best placed to concentrate its submission on the proposals regarding child sex tourism and not the section on child pornography.

**YES to Legislation with Extra-territorial Effect**

Oxfam Hong Kong welcomes the Government's efforts to draft a law with extra-territorial effect to punish internationally condemned sex offences on children. These activities are intrinsically wrong and should be made punishable regardless of the place of origin or where the offenders and victims are.

As the draft legislation concretely points out, at least 16 known pedophiles travel regularly to other Asian countries from Hong Kong. In addition, there are numerous tours- from the territory to some neighbouring Asian countries for purposes which include prostitution. It is difficult to accurately determine the extent to which Hong Kong is a source of travellers specifically seeking sex with children, as this activity is generally carried out clandestinely. However, Oxfam Hong Kong feels that one of the biggest obstacles to effective work on this problem could be the denial that the problem exists within our society, and the characterisation of the problem as one caused only by outsiders. It is the government's responsibility to make it clear in framing the law and in the attendant public education work<sup>1</sup> that the problem of pedophilia is not restricted to any single cultural or ethnic group.

## **Review of Current Hong Kong Crimes Ordinance**

To be consistent with the UN conventions and various international instruments, Oxfam proposes that relevant provisions in the Hong Kong Crimes Ordinance should be thoroughly reviewed before they are extended to criminalise all exploitative sexual activities with children under the age of 16 beyond the territory. We also propose that the review should examine whether existing provisions of the Ordinance are in step with the moral attitudes in today's Hong Kong society, which are characterised by increased openness to recognising the existence of social problems of a sexual nature and dealing effectively with these, as well as an increased respect for diversity. .

The new legislation should not be intended to criminalise the so-called "deviant" sexual activities such as homosexuality. Neither should it be used to prosecute the victims themselves. The law should emphasize prosecution and heavy penalties for people organising and advertising of child sex services and tours and of course those using these services to engage in sex with children.

## **Cultural Sensitivity**

Oxfam Hong Kong would contend that consideration be given to the cultural sensitivity of the proposed extra-territorial law which, by definition, must interface with many other cultures. In our twenty-two years of development work in Asia and Africa, we have recognized that different communities have different local practices and that these should be considered and respected. For example, some ethnic groups practice marriage at an age well below 16. Conditional application of the new law might be considered. But at the same time, **Oxfam would like to emphasise that such cultural differences should not be exploited by people from outside the cultural context as a justification for commercialisation and exploiting sexual activities with children.** It is therefore important that the new legislation take into consideration **prudently and in detail** the many possible implications in different cultures, and that they be very **careful and sensible** about criminalising activities which are culturally acceptable to some communities, while leaving NO loopholes whatsoever for exploitative child

sex activities in the name of cultural differences.

### **More Resources for Effective Enforcement**

The effective implementation and enforcement of the law is as important as the initial framing. Experience from overseas makes it clear that legislation alone cannot and will not automatically eliminate exploitative child sex. The administration should demonstrate its determination not only with legal words, but also with adequate and appropriate mechanisms and resources, human and material, for effective enforcement and related public education. Communities and community organizations have an important role to play in ensuring that the issue is recognised and that the laws are effectively enforced.

### **Broader Consultation**

Oxfam Hong Kong also calls upon the administration to draw on the experiences of other countries and to consult various sectors of the community, especially children groups and NGOs as it drafts the law. (A comparative study, for instance, by the international NGO, End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), on the effectiveness of the extra-territorial law in eleven countries will be finished by early 1999, a study which is sure to provide important and useful information for the Hong Kong law drafters.) These steps are necessary and important to ensure that the law is appropriate, effective and culturally sensitive.

### **More Community Education**

In support of the new legislation we would ask the Government to do more to strengthen people's moral awareness of children's rights, as laws alone cannot give children the genuine protection they need. The Government should conduct more community education on issues relating to the protection of children's rights, including the right to be free from sexual exploitation. One issue which could be targeted, for instance, is the practice among some Chinese men to seek sex with virgin girls, in the belief that this will help bring more wealth and better health.

## **Summary**

Oxfam Hong Kong supports the Government's efforts to draft a new law to protect children against sexual exploitation and abuses with extra-territorial effect. The new law should be solely for the purpose of protecting children from sexual exploitation. It should explicitly exclude prosecution of the following activities:

1. child victims;
2. adult homosexuals and people engaging in other so-called "deviant" sexual acts; and
3. sexual relationships between individuals from within communities where sexual activities of a younger age are widely accepted and practiced.

Prosecution should target those engaged in organizing, advertising and engaging in the sexual exploitation of children.

***END***