2. The United Nations legislative framework for the protection of children from sexual violence, including sexual abuse and exploitation

Marta Santos País  
*United Nations Secretary-General’s Special Representative on Violence against Children*

The protection of children from sexual exploitation has long been an area of particular concern for the international community. As a result, significant standards have been established over recent years to ensure children’s protection from sexual abuse and from slavery-like practices, including sale, prostitution and pornography. These concerns have also figured prominently on the agenda of human rights bodies and mechanisms.

Building upon important treaties drawn up by the League of Nations, including the 1926 Slavery Convention, the General Assembly of the United Nations adopted in 1949 the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.4

The protection of human rights violations that fall within the broad notion of slavery as given special attention by the Universal Declaration of Human Rights, as well as by core human rights treaties, including the international covenants on human rights, the Convention on the Elimination of All Forms of Discrimination against

---

Women, and most importantly, the Convention on the Rights of the Child. The protection of children from all forms of violence, including sexual exploitation and abuse, is a core dimension of these treaties and of the agenda of the treaty bodies\(^5\) established to supervise their implementation.


As an expression of its deep commitment to fight any form of sexual exploitation of children, the commission (UN, 1990a) also appointed in 1990 a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to:

- raise awareness of these child rights violations;
- conduct national and regional workshops;
- undertake fact-finding missions to assess trends;
- help prevent and tackle the root causes of the sexual exploitation of children.

In 1993, the World Conference on Human Rights (Vienna Declaration, 1993) echoed these concerns, calling for the strengthening of national and international mechanisms and programmes to combat children’s rights violations and to ensure the protection of children economically and sexually exploited, including through child pornography, child prostitution or sale of organs, and other forms of sexual abuse.

---

5. This includes the Committee on the Rights of the Child foreseen by Article 43 of the Convention on the Rights of the Child.
6. The commission was created in 1946 as the main UN human rights body; in 2006 it was replaced by the current Human Rights Council.
These important developments and the growing attention paid by the Committee on the Rights of the Child (CRC) to these serious human rights violations laid the foundation for the 1995 UN General Assembly resolution calling for the drafting of an optional protocol to the Convention on the Rights of the Child, in co-operation with the committee and the special rapporteur. The protocol was adopted by the assembly in 2000 and entered into force in 2002 (UN, 2000).

In 1996, the Government of Sweden hosted the First World Congress against Commercial Sexual Exploitation of Children, jointly organised with Unicef and ECPAT International, and in which 122 governments participated. The congress adopted a strategic agenda for action which was framed by the legal obligations undertaken upon the ratification of the Convention on the Rights of the Child and other legal commitments to protect children. The agenda for action became a critical reference for the work of the CRC and for states parties’ actions.

Two subsequent world congresses were later held, in Yokohama in 2001 and in Rio de Janeiro in 2008. They have helped to further refine the implementation process of international standards in this area, while promoting steady attention to the prevention of these child rights violations, to the protection, recovery and reintegration of child victims, and to the participation of children and adolescents in actions designed to address these phenomena. The most recent world congress, hosted by the Government of Brazil in Rio de Janeiro, identified in addition crucial time bound targets to leverage progress in strategic areas where change remains urgent. This includes putting in place by 2013:

- concrete mechanisms and processes to facilitate co-ordination at national, regional and international levels for enhanced co-operation amongst stakeholders;
- an effective and accessible system for reporting;
- follow-up and support for child victims of sexual exploitation;
• independent child rights institutions to monitor actions taken for the prevention of the sexual exploitation of children and the protection of victims.

This brief overview illustrates the significant and intense policy and standard-setting developments targeting the protection of children from sexual violence, exploitation and abuse, and which have gained a particularly high profile on the international policy agenda since the late 1980s.

The adoption of the Convention on the Rights of the Child by the UN General Assembly in November 1989 was a key step in this direction. The provisions of the convention:

• provide crucial references for legislative, policy and other measures to prevent and address the sexual abuse and exploitation of children in its different forms;

• promote respect for the dignity of the child at all times;

• fight inequity and discrimination and the marginalisation of the most vulnerable;

• envisage children as agents of change rather than passive recipients of care and assistance.

Breaking new ground, the convention also recognises the critical importance of building a culture of respect for children’s rights, within which children need to play a central role. With this in mind, states are required to make the principles and provisions of the convention widely known to children, as well as to adults (Article 42).

In the area of the sexual exploitation of children, the convention highlights the importance of combating child rights violations, together with the need to invest in prevention and to ensure the physical and psychological recovery and social reintegration of child victims in an environment that fosters the health, self respect and dignity of the child.
This normative foundation provides a sound basis for states’ detailed actions aiming at children's effective protection, including from:

- inducement or coercion to engage in any unlawful sexual activity;
- exploitative use in prostitution or other unlawful sexual practices and in pornographic performances and materials;
- exploitation through the sale and traffic in children for any purpose or in any form;
- any other form of exploitation that may be prejudicial to any aspects of a child's welfare.

While recognising the critical importance of national action, the convention equally acknowledges the transnational nature of these phenomena, and the need for bilateral and multilateral co-operation to fight impunity and secure children’s development in a safe and protective environment.

The overall importance of the standards set forth by the convention led to its entry into force in September 1990 in an unprecedented manner, that is only nine months after its formal adoption. Coinciding with its entry into force, heads of state and government participating in the 1990 World Summit for Children (UN, 1990b) expressed a strong commitment to work towards the earliest possible ratification and implementation of the Convention on the Rights of the Child.

The first years of the CRC’s work confirmed the critical relevance of protecting children from all forms of sexual exploitation, which were perceived as hidden and clandestine in nature and associated with public apathy and indifference. To overcome this situation, the committee decided to devote a thematic debate to the topic in 1993. The discussion was critical to reiterate the indivisibility and interrelationship of children’s rights, all of them inherent to the human dignity of the child, as well as to call for a holistic and multidisciplinary approach to child protection from exploitation. The debate also led to the adoption of important recommendations, which called for steady efforts in the promotion of public information, education
and capacity-building on the rights of the child, breaking the silence surrounding these issues, and for urgent legislative, policy and other measures to ensure children's effective protection.

On this occasion, the committee emphasised key principles which still maintain their crucial relevance today (CRC, 1994). These include:

- the need to protect the child as a victim, while ensuring the special protection of those at risk; and
- the absolute prohibition of activities that are contrary to human values and dignity; that expose children to discrimination and jeopardise child development and education; that involve cruel, inhuman or degrading treatment; or involve the sale of children or situations of servitude.

These principles influenced the development of new standards, including the International Labour Organization Convention 182 on the Worst Forms of Child Labour, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. A few years later these principles were given renewed attention with the development of the United Nations Study on Violence against Children which addressed all forms of violence in all settings, including sexual exploitation and abuse.

The Convention on the Rights of the Child was clear in its strong condemnation as well as in its call for the protection of children against all forms of violence, abuse and exploitation, in time of peace and in time of war.

The convention established a new threshold for the realisation of children's rights. It established states' overall accountability for the protection of all children below the age of 18 and it bridged human rights and humanitarian law to emphasise the responsibility to safeguard the human rights of children at all times. It also encouraged states to apply the most conducive norms for the realisation of children's rights, so that the minimum standards of the conven-
tion could be systematically enhanced and the best interests of the child upheld in all circumstances.

The convention’s strong normative framework was further complemented and reinforced with the adoption of the Optional Protocol on the sale of children, child prostitution and child pornography.

The provisions of the protocol are critical to the safeguard of children’s rights. They provide states with strategic guidance for implementation and they help to narrow the gap between the standards adopted by the international community and the reality on the ground. They establish states’ responsibility to realise children’s rights and protect them from violence and exploitation, while also acknowledging the role of non-state actors, including the private sector, in pursuing these aims. The provisions also identify protection measures, but further stress the critical role of prevention, and in an increasing globalising world, the imperative of promoting cross-border co-operation.

Moreover, the protocol calls on legislative reforms to prohibit and criminalise the sale of children, child prostitution and child pornography and to safeguard the rights of child victims and to promote their recovery and reintegration. It requires child-sensitive services and well-trained staff for children to seek counselling and advice and report on violations of their rights without fear of reprisal.

To overcome the clandestine and transnational nature of these crimes and fight impunity within and across borders, the protocol promotes international co-operation and mutual assistance between judicial bodies and law enforcement agencies. And to break the cycle of child marginalisation and exploitation, it underlines the role of prevention, and promotes the association of civil society and the involvement of children and adolescents in awareness raising, information and education initiatives, in order to leverage support for the protection of children from sale and sexual exploitation.
The year 2010 marks the 20th anniversary of the entry into force of the Convention on the Rights of the Child and the 10th anniversary of the adoption of its Optional Protocol on the sale of children, child prostitution and child pornography. The convention remains the most widely ratified human rights treaty, and by July 2010 the optional protocol had been ratified by 137 countries. The ratification and implementation of these treaties remain critical for the safeguard of children’s rights and their effective protection from violence, abuse and exploitation.

A commemoration is always a time of celebration. But it is also a moment of reflection – reflection on the important steps promoted and progress achieved in the protection of children’s rights. But it is also a reflection on the critical areas where, in spite of a widely shared commitment, challenges have persisted and opportunities for change can no longer be missed.

Over the past few years, the international community has reaffirmed commitments to promote the ratification of the optional protocol and to protect children from all forms of sexual exploitation. Worldwide advocacy, awareness raising and social mobilisation initiatives have been promoted by civil society organisations, by children and young people, and also by the private sector to break the silence around these child rights violations and press for policy action to prevent children’s abuse and exploitation. These commitments need to be translated into action. And it is important to be reminded of the many challenges that persist and of the urgency to act.

Every year, millions of children continue to be sold into marriage, illegal adoption, forced labour, prostitution or other forms of sexual exploitation. Largely invisible, stigmatised by society, marginalised by their families, still too often criminalised and deprived of liberty, they are not only victims of exploitation, but also of silence and indifference. They remain a low priority on the policy agenda, are by-

---

7. The optional protocols were adopted and opened for signature, ratification and accession by the United Nations General Assembly resolution (A/RES/54/263) on 25 May 2000.
passed by social investment, ignored by statistical information and excluded from the public debate. For these millions of children, the time for celebration has not yet arrived. We feel pressured by the urgency of their cause and the opportunity to make a difference.

With universal ratification of the convention and its Optional Protocol on the sale of children, child prostitution and child pornography, the protection of children from sexual abuse and exploitation can become a global priority, not only as a moral concern but as a legal imperative. With universal ratification there will be a shared normative foundation to guide concerted efforts, to prevent any loophole in child protection systems and to fight impunity within and across borders. With universal ratification, there will be no safe haven for perpetrators.

Today, no one would question the dramatic and unacceptable nature of the sale of children, child prostitution, child pornography and child abuse as serious child rights violations. These realities have gained visibility within and across nations, and they have generated increasing policy action to prevent and address them. At the same time, what has been achieved so far still has limited capacity to ensure the effective protection of children. Stronger efforts are required to move forward in our endeavours.

With the sound normative foundation provided by the Convention on the Rights of the Child and its optional protocol and with the important lessons we have learnt from the implementation of these children’s rights standards, there is a critical foundation to accelerate progress in the steps ahead. Strong child protection systems can be built and children given a true opportunity to develop to their potential without the risk of violence, abuse and exploitation in any of its forms.

The agenda may seem demanding and daunting, but with strong political will, change is clearly within reach.

**References**


UN (1990b). World Declaration on the Survival, Protection and Development of Children paragraph 20 i)
