

## Universal Periodic Review Canada – Session 16 May/June 2013

### Contribution prepared by:



**ECPAT International** (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography, child trafficking and child sex tourism). It represents 82 member organisations from 75 countries. ECPAT International holds Consultative status with ECOSOC.

Website: [www.ecpat.net](http://www.ecpat.net)

### In collaboration with:



#### **Beyond Borders /ECPAT Canada**

is a volunteer driven grassroots movement, comprising of lawyers, members of the public and students. It is a national group within the ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) network. Some objectives of Beyond Borders include: promoting the Code of Conduct in Canada to the travel and tourism industry; monitoring the sentencing of offenders, found guilty of cross-jurisdictional crimes against children; educating the public on the issue of child sex tourism and the dangers of the Internet and proposing practical ways in which child safety can be ensured; advocating for law reform and for sexually abused children in the justice system; raising awareness on the plight of children who are exploited in the sex trade and supporting initiatives ensure these children are regarded, not as criminals, but as victims.

Website: [www.beyondborders.org](http://www.beyondborders.org)

## **Executive Summary**

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Canada.

Internationally and regionally, the country has ratified most legal instruments concerning CSEC, with the exception of the *ILO Minimum Age Convention (No. 138)* and the *Optional Protocol on a Communications Procedure*. ECPAT strongly encourages the Canadian government to ratify these two international instruments as soon as possible. Canada has a comprehensive national legal framework covering most manifestations of commercial sexual exploitation of children and related activities. Canadian legislation addressing child pornography and child trafficking is in line with international standards (the CRC and OPSC and the *UN Trafficking Protocol* respectively). However, the enforcement of this trafficking legislation is often lax. The Canadian government should ensure that the provisions addressing human trafficking are effectively enforced, inter alia, by enhancing the coordination efforts between federal and provincial governments with respect to anti-trafficking law enforcement. Although Canadian legislation addressing child prostitution is consistent with the CRC and the OPSC, it does not explicitly protect a child from prosecution or punishment for prostitution offenses, leaving children vulnerable to being treated as criminals instead of victims. The *Criminal Code* contains a provision that addresses child sex tourism by prohibiting Canadian citizens from engaging in sexual activities with children when travelling to a foreign country.

While the existing National Plans of Action do contain limited references to the commercial sexual exploitation of children, there is no National Plan of Action in place that specifically addresses the commercial sexual exploitation of children and trafficking. The Canadian government should develop a comprehensive National Plan of Action addressing all forms and manifestations of the commercial sexual exploitation of children. Moreover, at a federal level, a coordinated system of assistance and support services for child victims of commercial sexual exploitation and trafficking needs to be established. In order to support child victims of trafficking, a nationwide strategy should be developed to identify these victims among vulnerable populations.

## **Current normative and institutional framework for the promotion and protection of human rights**

### **1.1 Legal Framework**

#### **1.1.1 International Legal Standards**

Canada ratified the *Convention on the Rights of the Child* (CRC 1989) in 1991, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2005, the *UN Convention against Transnational organized Crime* in 2002, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) in 2002 and the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2000. Canada has not yet ratified the *ILO Minimum Age Convention* (No. 138, 1973).

Canada has neither signed nor ratified the *Optional Protocol on a Communications Procedure* (OPCRC, 2011).

#### **Recommendations:**

- **Ratify ILO Minimum Age Convention (No. 138, 1973)**
- **Sign and ratify the *Optional Protocol on a Communications Procedure*.**

### **1.1.2 Regional Legal Standards**

Canada signed the Council of Europe's (CoE) *Convention on Cybercrime* (CETS 185, 2004) in 2001. Canada has issued and agreed with the *Central and North America Regional Guidelines for Special Protection in Cases of Repatriation of Child Victims of Trafficking* in 2007.

### **1.1.3 Domestic Legal Framework**

Canadian legislation covers most forms of commercial sexual exploitation of children (CSEC) in a comprehensive manner. In 2008, the Canadian government enacted the federal *Tackling Violent Crime Act*, which introduced reforms to Canada's *Criminal Code*. These amendments provide increased protection for children from sexual exploitation. An important change included raising the age at which youth can consent to non-exploitative sexual activity from 14 to 16 years, while maintaining the existing age of protection of 18 years old for exploitative sexual activity (e.g. child prostitution, child pornography, etc).<sup>1</sup>

### **1.1.4. Laws regarding Child Pornography**

National legislation addressing child pornography is completely consistent with the relevant international and regional standards. The *Criminal Code* contains comprehensive provisions addressing child pornography and related behaviours. Section 163.1 (3)(a) of the *Criminal Code* defines child pornography as an image, audio, recording, video, drawing or story about the sexual assault of a person under 18, regardless of whether the child is real or virtual. The *Criminal Code* prohibits all forms of making, distributing or transmitting, making available, accessing, selling, advertising, exporting/importing, as well as the mere possession of child pornography. In addition, it is an offence to transmit and make child pornography available by posting it on a website or offering information on where to find child pornography online.

In 2002, Section 172.1 was added to the *Criminal Code* in order to expand the law from prohibiting any person from communicating directly with a child for the purpose of sexual exploitation, to also prohibiting the use of a computer system, such as the internet or a social networking site, to make arrangements with another person for the purpose of sexually exploiting a child (also called "luring/grooming of children").<sup>2</sup>

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<sup>1</sup> ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Canada.

<sup>2</sup> ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Canada.

While some Canadian states have taken action to make reporting child pornography mandatory, currently, there is no federal legislation requiring Canadian citizens to report child pornography. In the states where reporting child pornography is mandatory, failure to report is punishable by significant fines. The federal *Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons who Provide an Internet Service* compels an individual to report ISPs or others providing Internet services that host or contain child pornography.

#### **1.1.5. Laws regarding Child Trafficking for sexual purposes**

According to the US Department of State, the Canadian Government fully complies with the minimum standards for the elimination of trafficking as set out in the *UN Trafficking Protocol*.<sup>3</sup> Section 279.01 of Canada's *Criminal Code* defines trafficking in persons as 'the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of control, direction or influence over the movements of a person, for the purpose of exploitation'. Although Canadian law makes no distinction with respect to the age of the victim when establishing criminal liability, if the victim is under the age of 18, this is considered an aggravating factor with regard to sentencing.

While Canada has enacted relatively strong laws to combat trafficking, it has been criticized for lack of enforcement. Canada should strengthen its efforts to investigate and prosecute trafficking offenses and convict offenders. One potential explanation for the lack of enforcement of trafficking legislation is the limited coordination between the federal and provincial governments with respect to anti-trafficking law enforcement.<sup>4</sup>

#### **Recommendation:**

- **Ensure effective enforcement of legislation to combat human trafficking, inter alia, by enhancing coordination efforts between federal and provincial governments with respect to anti-trafficking law enforcement.**

#### **1.1.6. Laws regarding Child Prostitution**

Canadian legislation addressing child prostitution is in line with international and regional standards. Sections 212 (2) and (4) of the *Criminal Code* define crimes related to child prostitution. Section 212(2) prohibits living wholly or in part on the avails of prostitution of another person who is under 18 years of age. The same section also prohibits, for the purposes of profit, aiding, abetting, counselling or compelling a minor into prostitution. Section 212 (4) prohibits exchanging consideration for sexual activity with any minor under 18 years of age or even communicating with anyone in order to arrange sexual activity with a minor in exchange for consideration.

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<sup>3</sup> U.S. Department of State (2012). Trafficking in Persons Report 2012: Canada.

<sup>4</sup> U.S. Department of State (2012). Trafficking in Persons Report 2012: Canada.

Although Canadian legislation is in line with the CRC and the OPSC, an significant shortcoming of the *Criminal Code* is that children are not explicitly protected from prosecution or punishment for prostitution offenses, leaving children vulnerable to be treated as criminals instead of victims.

**Recommendation:**

- **Include a provision in the *Criminal Code* that explicitly protects a child from prosecution or punishment for prostitution offenses.**

### **1.1.7. Laws regarding Child Sex Tourism**

Although Canada has strong laws that prohibit Canadian citizens and permanent residents from engaging in sexual activities involving children when abroad, it remains a significant source country for child sex tourists. Section 7 (4.1) of the *Criminal Code* prohibits Canadians from engaging in sexual activity when travelling abroad.

Extraterritorial legislation can be used as a tool to combat child sex tourism, in both the sending and receiving countries. In line with Article 4 of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, Canadian criminal legislation establishes national jurisdiction over crimes related to the commercial sexual exploitation of children. Moreover, Canadian citizens and permanent residents who sexually exploit children in a foreign country and who escape prosecution in the country where the alleged acts were committed can be prosecuted under Canadian law. Provisions regarding extraterritorial jurisdiction in Canada are exemplified in section 7 (4.1) and Bill C 310 (regarding human trafficking) of the *Criminal Code*.

## **2. Promotion and protection of Human Rights on the ground: implementation of international human rights standards**

### **2.1. Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground**

#### **2.1.1. Lack of a National Plan of Action specifically addressing CSEC**

Canada has no National Plan of Action specifically designed to combat the commercial sexual exploitation of children and young people. The national plan 'A Canada Fit for Children' (2004) contains only limited references to commercial sexual exploitation of children, including, the importance of strong legal mechanisms that prohibit CSEC, undertaking research on underlying risk factors and the promotion of prevention strategies and awareness raising about the issues. In 2004 the Canadian government launched their 'National Strategy for the Protection of Children from Sexual Exploitation on the Internet'. The main objective of this plan is to increase the capacity to investigate and apprehend online predators; enhance public education and awareness on the issue of online sexual exploitation; and support further research on CSEC

and the internet.<sup>5</sup> However, a more comprehensive plan is needed in order to specifically identify key activities to be undertaken to address CSEC designate particular organisations to lead the implementation of each activity, ensure timeframes are enforced and create indicators to monitor its success.

**Recommendation:**

- **Develop a specific National Plan of Action against the commercial sexual exploitation of children and trafficking.**

**2.1.2. Lack of adequate assistance and support services for child victims of CSEC**

There are limited services available to assist sexually exploited children in Canada. Most victim services provided by the government are general services offered to victims of crimes, and are not specifically designed for child victims of trafficking or commercial sexual exploitation.<sup>6</sup> Victims support services are generally administered at the state level, as opposed to a coordinated approach at the federal level. Therefore, the range and quality of the assistance and support services for child victims of commercial sexual exploitation vary widely between different states. This lack of coordinated services means child victims can be funnelled through various channels and lost in the welfare system or incorrectly characterized as delinquent youth and end up in the juvenile justice system. Organisations wishing to provide shelter and services to sexually exploited children often have difficulty securing funding to provide the full array of services needed.<sup>7</sup>

**Recommendation:**

- **Establish, at a federal level, a coordinated system of assistance and support services for child victims of commercial sexual exploitation and trafficking.**

**2.1.3. Lack of a nationwide strategy for identifying child victims of trafficking**

Canada lacks a nationwide strategy for identifying trafficking victims among vulnerable populations. There are currently no nationwide procedures in place to assist government officials to proactively identify and assist trafficking victims among vulnerable populations.<sup>8</sup>

**Recommendation:**

- **Develop a nationwide strategy for identifying child victims of trafficking among vulnerable populations.**

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<sup>5</sup> ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Canada.

<sup>6</sup> U.S. Department of State (2012). Trafficking in Persons Report 2012: Canada.

<sup>7</sup> ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Canada.

<sup>8</sup> ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Canada.

U.S. Department of State (2012). Trafficking in Persons Report 2012: Canada.

