

Virtual Global Taskforce / 5th Biennial Conference

Abu Dhabi, 11 - 13 December 2012

Session on

Legislative engagement

– Laws, benchmarks, issues –

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The plan

▶ About the legislative engagement strategy	Alexander
▶ ICMEC Model Law and issues of implementation	Guillermo
▶ The criminal law benchmarks of the Budapest and Lanzarote Conventions	Cristina
▶ Engaging governments: what does this mean?	Anjan
▶ Legislative engagement: further steps	Alexander

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1 About the legislative engagement strategy

- ▶ **INTERPOL GA Resolution on legislative engagement (November 2011)**
- ▶ **VGT/COE Letter of intent (November 2011)**
- ▶ **Assumption: Legislation based on Budapest and Lanzarote Conventions will allow for more efficient law enforcement cooperation to protect children against online sexual violence**
- ▶ **Aim: to engage States to strengthen their legislation in line with the benchmarks of these two treaties**

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The Budapest Convention on Cybercrime

<ol style="list-style-type: none"> 1. Substantive law: criminalising offences against and by means of computer systems and data 2. Procedural law: LEA powers to secure electronic evidence in relation to any crime 3. International cooperation: efficient means to secure electronic evidence across borders 	<ul style="list-style-type: none"> ▪ Open to any country: European countries, Australia, Japan, USA (ratified), Canada, South Africa (signed), Argentina, Philippines, Senegal and others invited to accede ▪ Follow up / assessment by Cybercrime Convention Committee (T-CY) ▪ Guidance Notes/Protocol under discussion ▪ Technical cooperation
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See: www.coe.int/cybercrime

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The Lanzarote Convention on the Sexual Exploitation and Sexual Abuse of Children (CETS 201)

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| <ul style="list-style-type: none"> ▶ Preventive and protective measures ▶ Substantive criminal law <ul style="list-style-type: none"> – Art 18 Sexual abuse – Art 19 Child prostitution – Art 20 Child pornography – Art 21 Child participation in pornographic performances – Art 22 Corruption of children – Art 23 Solicitation of children for sexual purposes ▶ Investigation, prosecution and procedural law ▶ International cooperation | <ul style="list-style-type: none"> ▶ Open for accession by any country (Morocco invited to accede November 2012) ▶ Follow up (monitoring) by Lanzarote Committee |
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See: www.coe.int/children

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Budapest + Lanzarote = Benchmarks

Lanzarote Convention

- ▶ Substantive criminal law
 - Art 18 Sexual abuse
 - Art 19 Child prostitution
 - Art 20 Child pornography
 - Art 21 Child participation in pornographic performances
 - Art 22 Corruption of children
 - Art 23 Solicitation of children for sexual purposes



Budapest Convention

- ▶ Substantive criminal law
 - Article 9 Child pornography
- ▶ Procedural law (scope and specific provisions)
 - Expedited preservation
 - Search and seizure
 - Interception
 - etc
- ▶ International cooperation (general and specific provisions)

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Progress/actions re Budapest Convention in 2012

- ▶ **Enlarging membership in Budapest Convention in 2012:**
 - new accessions/ratifications/invitations (now 56)
 - Japan (June) and Australia (on 30 Nov 12) joined
 - additional requests in process
- ▶ **Transborder LEA access to data and jurisdiction: Guidance and work on Protocol (adopted 6 Dec 12)**
- ▶ **Guidance Notes**
- ▶ **Assessment of implementation:**
 - In 2012 – expedited preservation provisions (procedural law) (adopted prov. 6 Dec 12)
 - In 2013 – efficiency of mutual legal assistance
- ▶ **Technical cooperation (ca. 100 activities in 2012)**

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Progress/actions re Budapest Convention

Technical cooperation (ca. 100 activities in 2012):

- ▶ **Cybercrime policies/strategies**
- ▶ **Legislation (**substantive**, procedural, safeguards, data protection)**
- ▶ **Specialised cybercrime units**
- ▶ **Law enforcement training**
- ▶ **Judicial training**
- ▶ **LEA/ISP cooperation and private/public info sharing**
- ▶ **Financial investigations**
- ▶ **Protection of children against online sexual violence**
- ▶ **International cooperation**

www.coe.int/cybercrime

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Progress/actions re Lanzarote Convention

- ▶ **Lanzarote Convention: 23 ratified, 22 signed**
- ▶ **Lanzarote Committee: monitoring to be launched**
- ▶ **In at least 33 countries recent or on-going legislative reform and engagement with CoE**
 - Armenia, Azerbaijan, Bulgaria, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Estonia, Finland, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Portugal, Romania, Serbia, Slovenia, Spain, Sri Lanka, Ukraine, United Kingdom, Turkey
- ▶ **Budapest and Lanzarote Conventions: [Legislative benchmark study](#)**

www.coe.int/children

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2 ICMEC Model law and issues of implementation

➤ Guillermo

3 **Legislative benchmark study: work in progress**

- ▶ **Objective: to demonstrate how the Budapest and Lanzarote Conventions can be used by any State as benchmarks for developing substantive criminal law**

- ▶ **Provisions covered (almost all covering multiple acts):**
 - **Article 18 LC: sexual abuse**
 - **Article 9 BC and Article 20 LC: child pornography**
 - **Article 21 LC: participation of a child in pornographic performances**
 - **Article 19 LC: child prostitution**
 - **Article 22 LC: corruption of children**
 - **Article 23 LC: grooming**
 - **Aggravating circumstances**
 - **Who is a child/minor**

- ▶ **45 countries covered in the present version**

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Legislative benchmark study: definitions

Child pornography

(Article 9 Budapest / Article 20 Lanzarote Conventions)

The term “child pornography” = pornographic material that visually depicts:

- **a minor engaged in sexually explicit conduct**
- **a person appearing to be a minor engaged in sexually explicit conduct**
- **realistic images representing a minor engaged in sexually explicit conduct**
- **any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes**

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Legislative benchmark study

Example: Child pornography (Article 9 BC and 20 LC)

Conduct	Covered	Partially	Not / unclear
Producing child pornography/for the purpose of distribution through a computer system	40	5	
Offering child pornography	37	7	1
Making available child pornography	37	6	2
Distributing child pornography	42	2	1
Transmitting child pornography	36	3	6
Procuring child pornography for oneself or for another person	31	1	13
Possessing child pornography	38	4	3
Knowingly obtaining access	18	7	20

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Legislative benchmark study: definitions

Solicitation of children for sexual purposes/ grooming (Article 23 Lanzarote Convention)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting:

- engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities
- producing child pornography

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Legislative benchmark study

Example: Grooming (Article 23 LC)

Conduct	Covered	Partially	Not / unclear
Grooming for the purpose of			
• engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities	18	3	24
• producing child pornography	17	3	25

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Legislative benchmark study: some issues identified

- **Age limit in relation to child pornography or other forms of exploitation and abuse: Protect all children up to the age of 18, irrespective of the age of sexual consent**
- **Knowingly obtaining access (through information technologies to child pornography - lower implementation**
- **Virtual child pornography or images that depict a person appearing to be a minor engaged in sexually explicit conduct**
- **Child pornography vs. adult pornography: the protected legal interest**

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Legislative benchmark study

Follow up and use of the study:

- ▶ **Complete and verify information**
- ▶ **Feed into technical assistance**
- ▶ **Provide advice and support to States**
- ▶ **Encourage States to close gaps**
- ▶ **Follow progress made**

= **Engage Governments**

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4 ▶ Engaging governments: what does this mean?

➤ Anjan

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Working with Governments/ legislative engagement strategy of
VGT/Interpol in cooperation with Council of Europe

ECPAT International

Anjan Bose
Program officer, ICT and child protection

Conference of the Virtual Global Taskforce

Abu Dhabi, UAE

December 11-13, 2012

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Building grounds

International

Convention on the Rights of the Child (art. 34 and 35)
Optional Protocol to the Convention on the Rights of the Child
on the sale of children, child prostitution and child pornography

Regional

Council of Europe Convention on Cybercrime
Council of Europe Council of Europe Convention on the
Protection of Children against Sexual Exploitation and Sexual
Abuse (entered into force July 1 2010)
legal instruments and conventions

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World Congresses against Commercial Sexual Exploitation of children
organised by ECPAT, UNICEF, NGO group on CRC with

1996- Stockholm (hosted by the government of Sweden)
-participation of 122 states

2001- Yokohama (hosted by the government of Japan)
-participation of 134 states

2008 – Rio de Janeiro (hosted by the government of Brazil)
-participation of 140 states



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Global committments and timelines

Rio de Janeiro Call for action- 2013

World Fit for Children-

Millenium development goals- 2015



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Country report published by ECPAT International in 75 countries



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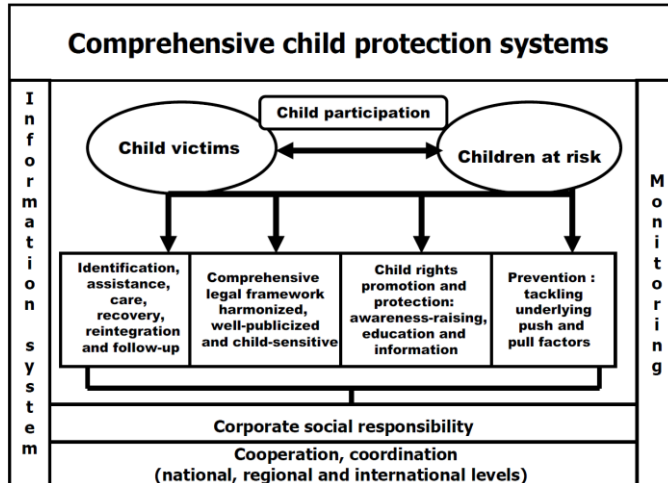
Country report published by ECPAT International in 75 countries

- Includes review of national legislation against child pornography
- Understanding gaps and differences with standard international legal instruments such as OPSC , CoE Convention on cybercrime and CoE convention against child sexual exploitation and sexual abuse
- Recommendations and observations
- Advocacy on legal reforms and harmonisation

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UN Child protection system

Building rights-based and comprehensive national child protection systems to prevent and combat the sale of children, child prostitution and child pornography



Courtesy : the special rapporteur on the sale of children , child prostitution and child pornography.

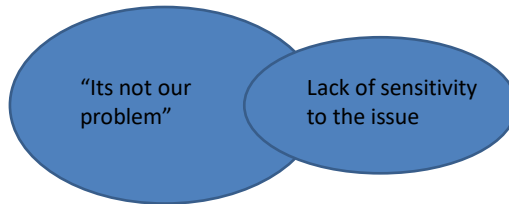
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Challenges

- Lack of resources
- Lack of understanding
- Lack of political will
- Cultural barriers in understanding the issue

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Challenges



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Strategies

- Universal Periodic Reporting mechanisms
- Human rights council reporting
- Pick your parliamentarian
- Urge nations to take up leading roles
- Involving media
- Campaign and lobbying
- Pressure from the civil society

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How to effectively involve governments in legal reform processes

- **Stimulate discussions at national level on CSEC related issues** (organizing national events starting with press conferences/media events to inform the public about the need for improving/developing specific laws (CRC Concluding Observations, Special Rapporteurs recommendations or UPR recommendations can be excellent starting points)
- **Organize workshops/forums/roundtables involving all relevant stakeholders, including key government agencies**, to concretely discuss the current status of the laws that need to be revised (gaps, loopholes, etc.) as well as challenges and concrete steps to be taken. **Mass media** should be heavily involved in those events. Scrutiny by the media and the public can help to ensure that the concerns raised figure on the national agenda.

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Engagement of civil society

Civil society organizations should put pressure on States to ratify.

Example: ratification of the OP3 CRC by the government of Thailand.

In 2012 several meetings involving CSOs, including ECPAT International (the only NGO member of the Steering Committee set up by the government on that issue) and relevant ministries were held in Bangkok and discussions led to the government's decision to ratify the OP3 CRC during the UN general Assembly (25 September 2012).

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Case example : TBS campaign

The TBS/ECPAT campaign started national dialogues and discussions on necessary changes to be brought in domestic legal frameworks on the issue of child trafficking for sexual purposes in 43 countries and the Campaigns petition containing clear calls to Action were handed over to several heads of state (Nepal, Thailand, Philippines) who committed to do more against child trafficking.

Countries like New Zealand & Pakistan had committed during the campaign to ratify the OPSC, which they did. Similarly Indonesia and Ireland ratified the UN Trafficking Protocol, which was one of the main national calls to action for both countries.



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Tools and resources

Capacity building and training of
judiciary and law enforcement



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New technologies and Impacts

- Current trend in real time distribution of videos through On-demand streaming
- Peer to peer file sharing
- TOR and other encrypted networks

Challenges

- Cybercrime laws do not address viewing of materials that are not downloaded/stored/possessed
- Cybercrime laws in some cases (ex. Thailand gives specificity such as defining data as bits stored in computer systems, but fails to define dynamic content that is not stored)
- Lack of drive (from civil society and states for legal harmonisation)



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Q&A



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Thank you !

ECPAT International

ECPAT, a global network fighting to end commercial sexual exploitation of children

www.ecpat.net

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5 Engaging governments: what next?

- ▶ **Continue to encourage governments to make use of concepts, guidance, principles of Budapest and Lanzarote Conventions**
- ▶ **Encourage accession to both treaties as legal framework for international cooperation**
- ▶ **Make use of policy dialogue and international fora to engage Governments in legislative reform**
- ▶ **Engage Parliaments (make them champions of child protection)**
- ▶ **Mobilise resources for technical assistance for capacity building**
- ▶ **Continue assessments and follow progress made**
- ▶ **Engage more stakeholders in industry**

Thank you!

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