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**RIGHTS OF THE CHILD**

**Report submitted by Mr. Juan Miguel Petit, Special Rapporteur on the sale  
of children, child prostitution and child pornography in accordance with  
Commission on Human Rights resolution 2002/92**

### **Executive summary**

This report is submitted in accordance with Commission on Human Rights resolution 2002/92.

The report focuses on the legal consequences of the sale of children, child prostitution and child pornography, and particularly on the criminalization of child victims and recent national policy and legislative developments to address these concerns. In July 2001, the Special Rapporteur wrote to all Governments, relevant international organizations and non-governmental organizations to solicit information for this report. He received 97 responses. Short summaries of the responses which contained relevant details and were received by 15 November 2001 have been included.

The report outlines a number of conclusions and recommendations.

The Special Rapporteur sent seven communications in 2002. The report outlines the details of the situations, the action taken and the response received.

Finally, the report briefly focuses on two issues. The first relates to information received by the Special Rapporteur that illegal or coercive adoptive practices which have the effect of selling a child are alarmingly prevalent, both internationally and within domestic jurisdictions. The second issue concerns HIV/AIDS which the Special Rapporteur will continue to address in his methods of work.

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## **Introduction**

1. At its fifty-eighth session, in its resolution 2002/92, the Commission on Human Rights requested the Special Rapporteur to submit a report to the Commission on Human Rights at its fifty-ninth session. The present report is submitted in accordance with that request.

### **I. WORKING METHODS AND ACTIVITIES**

#### **Working methods**

2. The Special Rapporteur will document progress made by States as well as continuing problems of concern to his mandate. In particular, he has chosen to focus on legal and policy developments including the ratification and implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereafter OP/SOC). Particular focus is upon the legal consequences for child victims under his mandate.

3. In July 2002, the Special Rapporteur wrote to Governments, non-governmental organizations and United Nations agencies to request information. The Special Rapporteur would like to thank all those who did respond, and would particularly like to acknowledge the extremely good response and the very high quality of input which he received. During the final days before the deadline for receipt of information (1 November 2002) and in the weeks following the deadline, the Special Rapporteur received over two thirds of the responses. Regrettably, the new rules concerning the length of reports to the Commission on Human Rights, which now have the effect of limiting his report to its current length of 10,700 words, has meant that much of the detail in the information received could not be reflected in this report.

4. Accordingly, he has decided to use the reduced page limit allocated this year to reflect pertinent elements of the more detailed responses he had received by mid-November 2002, particularly reflecting legislative and policy developments and continuing concerns. The Special Rapporteur will continue to analyse developments relating to the legal consequences and criminalization of child victims of concern to his mandate, with a view to reporting regularly on developments in this area. Where he received data and statistics concerning his mandate, these have been reflected.

5. The Special Rapporteur would like to assure all those who provided information that it will be of use to the ongoing work of his mandate despite the limitations on his reports. He is currently considering possible ways to make a more detailed summary of the information received available publicly, and will contact those who responded to his request in this regard.

#### **Activities**

6. During 2002, the Special Rapporteur carried out two country visits, to South Africa (E/CN.4/2003/79/Add.1) and to France (preliminary report contained in document E/CN.4/2003/79/Add.2). The Special Rapporteur has been invited to visit Bolivia and Paraguay, and intends to visit these countries during 2003.

7. The Special Rapporteur participated in the Hemispheric Conference on International Migration (Santiago, 20-22 November 2002).

## **II. FOCUS: THE CRIMINALIZATION OF CHILD VICTIMS**

8. In the last decade in many parts of the world there has been a huge growth in awareness of child sexual abuse and exploitation, and although much still remains to be achieved, there is now a plethora of research into the causes and consequences of such abuses, how they can be prevented, and how the child can be assisted in his or her recovery. However, the Special Rapporteur is concerned that many children who are sold, trafficked or exploited through prostitution or pornography are still not being treated as victims.

9. The principle that children who are commercially sexually exploited should always be treated as victims was acknowledged in 1996, when 122 States unanimously adopted this principle in the Declaration and Agenda for Action of the Stockholm World Congress against Commercial Sexual Exploitation of Children. The principle was restated in 2001, when States gathered for the Second World Congress in Yokohama, Japan. The outcome document stated that action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments should not criminalize or penalize the child victims.

10. The Special Rapporteur regrets that the OP/SOC does not expressly call for the non-criminalization of child victims, but considers that an important function of his mandate is to continually strive for the highest standards possible concerning the protection of the rights of children. Accordingly, he urges all States to implement measures recognizing that children who are sold, trafficked, or exploited through prostitution or pornography should be treated as victims of these offences.

11. Apart from the injustice of treating exploited children as criminals, there are other serious consequences for children. Being part of a legal process is traumatic for any child, but when the child in question is considered to be in conflict with the law and possibly subject to penal sanctions, this trauma is compounded. The chances that the child's family and friends will find out about the prostitution increases, which in turn will add to the child's stigma and shame. In countries where the child's status as a victim is recognized, a lack of training and specialization amongst police, prosecutors and judges and an insensitive attitude towards the child may have a punitive effect or even cause the child to withdraw the complaint.

12. Where children fear being arrested, they are unlikely to seek medical attention, and given the high risk amongst prostitutes of contracting sexually transmitted diseases, being raped, or suffering other forms of violence, this can have very serious consequences. The same fear often also prevents such children from reaching out for assistance from relevant organizations or individuals who may be able to help them. When the child is considered to be a criminal, the chances of the real perpetrator of the offence - namely the child's client or trafficker - being apprehended are minimal. In receiving countries for victims of trafficking, children are regularly rounded up from brothels and from the streets, locked in detention cells which may also hold adults, and then deported back to the very place from which they were sold. The whole process involving the same child often repeats itself.

13. The situation can become very convoluted when children are trafficked for commercial sex and also forced to carry out illegal activities such as selling drugs or pimping other children. Those who run away from home will invariably get involved in petty crime and drug abuse as well as prostitution.

14. During the Yokohama Congress, States that protested against the inclusion of the provision on the non-criminalization of child victims referred to a need to have recourse to criminal procedures in order ultimately to help a child leave a life of prostitution. Other States might not actively plan to criminalize children but sometimes consider that the best interests of the child are served by placing them in “protective custody”, which again may have a punitive effect. This is particularly problematic for States which are transit or receiving countries for victims of trafficking who want to remove them from the influence of the trafficker or pimp, or to ensure that the child has shelter whilst arrangements for his/her future are worked out. Even where NGOs can offer shelter, a problematic relationship between the NGO and the State bodies may mean that either the NGO does not know about the child’s detention, or the child will not be released into their custody.

15. In some cases, the detention is motivated by the requirement to keep the victim available for the process of the prosecution of the traffickers. The Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, drew the attention of the Special Rapporteur to the report of her visit to India, Nepal and Bangladesh (E/CN.4/2001/73/Add.2) where she was confronted with the issue of “protective custody” of victims of trafficking. Ms. Coomaraswamy reported that in India, when women victims of trafficking are rescued they are often sent to a government home until their cases are heard or until they are sent back home. In many cases they languish for many years, confined in conditions which are only marginally better than those in prison, whilst very little action is taken against the traffickers and others initially responsible for the violation of the rights of these women.

16. Increasingly, the care and support for trafficking victims is being made dependent on whether they cooperate with investigations into and prosecution of suspects. In the Netherlands, for example, regulation B9 provides that trafficking victims are given temporary resident permits, care and support, medical and psychological care, and sometimes legal support if they cooperate with investigations.

#### **A. Summary of information received**

17. Replies were received from the Governments of the following countries: Albania, Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, Chile, Colombia, Comores, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Eritrea, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guyana, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Kazakhstan, Lebanon, Lithuania, Luxembourg, Monaco, Mongolia, Morocco, Myanmar, Netherlands, Papua New Guinea, Paraguay, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria Arab Republic, Tajikistan, Thailand, Turkmenistan, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

18. From NGOs, UNICEF, the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, and other international organizations information was received concerning the following countries: Albania, Belarus, Benin, Burkina Faso, Cambodia, Cameroon, Comores, Croatia, Dominican Republic, Gambia, Guatemala, Guinea, India, Italy, Kyrgyzstan, Latvia, Netherlands, Nicaragua, Peru, Philippines, Spain, Sri Lanka, Sweden, Romania, Russian Federation, the former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia and on the following territories and regions: Taiwan Province of China, South-East Asia, South America, Mekong Subregion.

19. The Special Rapporteur also received information from the Special Rapporteurs on violence against women and on the human rights of migrants, and the Division for the Advancement of Women of the Secretariat.

### **Status of ratification of the OP/SOC**

20. As of 4 November 2002, 42 States were parties to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and several Governments are in the process of ratifying or acceding to it.

21. Slovakia, Benin and Georgia are expected to ratify the OP/SOC by the end of 2002 and Indonesia during 2003. Paraguay, the Dominican Republic and Eritrea reported that they were proceeding with ratification and Germany, Switzerland and the United States were intending to ratify as soon as possible.

22. In Chile, the OP/SOC was approved by the Chamber of Deputies on 21 August 2002 and has now been put before the Senate and in Argentina, the OP/SOC was recently put before the National Congress for its approval.

23. In the Netherlands, legislation to implement the OP/SOC is in its final stage. In Denmark, legislative reforms will be proposed to Parliament in 2003 and in Sweden, a report on necessary legislative amendments is currently being drafted. Finland is intending to ratify when certain amendments to the Finnish Penal Code have been made. In Ireland, an examination of existing legislation is currently under way to identify necessary legislative changes prior to ratification and in Monaco, a study concerning ratification is being carried out by the juridical services of the country. In Slovenia a bill to ratify the OP/SOC will be submitted to the Government and amendments to the Penal Code have been drawn up.

24. The Attorney-General's Chamber in the Gambia was to introduce the OP/SOC to the National Assembly for debate soon and ratification was expected to follow.

### **1. Information received**

#### **Albania**

25. In January 2002 the Government of Albania approved a Country Strategy Against the Trafficking of Human Beings and more recently a National Strategy for Children. Both

strategies are strengthening the partnership and networking between the Government and NGOs. The Criminal Code has been revised, resulting in stiffer penalties for those found guilty of organizing human trafficking, particularly that involving women and children. During 2001, 266 people were arrested for the organization of human trafficking and during the first half of 2002, more than 187 cases were reported and 283 people charged. Children aged between 14 and 18 can be prosecuted if they are involved in the trafficking of others and can receive a custodial sentence, which would normally be half the length of time that an adult committing a similar offence would receive. Concerning rehabilitation of child victims, several programmes, mainly dealing with female prostitution, are being implemented by the Government in partnership with NGOs, including the establishment of several centres for young girls of Albanian and other nationalities.

### **Andorra**

26. Sale and trafficking of children are currently not specified in the Penal Code, but following the ratification of the OP/SOC in 2001, a new project to replace the existing Code with legislation which will fulfil Andorra's international commitments will be presented to Parliament, possibly during 2003. The promotion or facilitation of child prostitution and the creation, distribution, exhibition or sale of child pornography are criminal offences. Criminal responsibility begins when a child reaches 12. Children aged between 12 and 16 who commit offences are placed under minors' jurisdiction. Full criminal responsibility is reached at the age of 16. In the majority of cases of sale, prostitution or pornography, children are treated as victims and will not incur criminal responsibility.

### **Argentina**

27. Sale of children, child prostitution and child pornography are criminalized under a number of pieces of legislation which give effect to relevant international obligations. The National Counsel for Children, Adolescents and the Family implements a number of programmes to assist children, including programmes aimed at the prevention of domestic violence, maltreatment and sexual abuse of children; for the rehabilitation of victims; for the provision of legal assistance to child victims and to those in conflict with the law; to assist children to return home or to return to school, and programmes to assist parents to learn about their responsibilities.

### **Benin**

28. Action to combat trafficking has been mobilized since the well-publicized case in April 2001 of the *Etireno*, a Nigerian-registered ship thought to be carrying some 200 children from Benin being trafficked to be sold as slaves. Although the ship was found to contain only adults with accompanying children seeking work in Gabon, the incident raised awareness of an existing trade in children which often uses ships to transport them. The trafficking of children in Benin is attributed to the permeable nature of the borders, poverty and ignorance on the part of parents and the Government; UNICEF and NGOs are organizing national awareness-raising campaigns.

**Belarus**

29. Belarus acceded to the OP/SOC in January 2002, and the sale of children and their use in prostitution and pornography are criminal offences. The child does not incur criminal liability for his/her involvement. In November 2001, a State Programme of Action against Traffic and Spreading Prostitution (2002-2007) was adopted.

**Brazil**

30. The Statute of the Child and Adolescent criminalizes the sale of children, child prostitution and child pornography, and the child involved does not incur criminal liability. UNICEF is involved in a number of initiatives to combat sexual abuse and exploitation of girls, particularly in the north and north-east regions, and is studying the phenomenon of commercial sexual exploitation and domestic sexual abuse of girls, including the situation of street children, many of whom who resort to prostitution for survival. However, commercial sexual exploitation affects a far wider number of girls who may live at home or in guest-houses, apartments and brothels. Sexual exploitation of boys on the street also occurs, but there is very little research or information published about it. Children are exploited through sex tourism, and government efforts against this include circulars sent by the National Tourist Board to hotels warning of the consequences of involvement in sexual exploitation. "Sexual Exploitation of Children is a Crime" has been stamped on tourist literature and airline ticket covers.

**Burkina Faso**

31. Sale of children is not specifically criminalized, but is repressed through other legal means including the criminalization of child labour and the removal or illegal transport of children. Males or females in prostitution may receive prison sentences of 15 days to 2 months and a fine. As a preventive measure, legislation prohibits the presence of minors in certain places, such as bars, nightclubs and cinemas. In 2001, investigations were carried out into 90 cases of sexual abuse and 23 cases of commercial sexual exploitation of children.

**Cambodia**

32. NGOs reported particular problems, including bribery and corruption in the legal system, lack of understanding of the law, court delays, lack of police cooperation, insufficient budget for investigation of cases in the provinces and limited resources. An absence of laws prohibiting child prostitution and unclear laws concerning trafficking means that there is no special protection for the increasing number of child victims of prostitution.

33. Varying responses from within the Government to these problems were reported. The Ministries of the Interior and Women's Affairs and NGOs are discussing how to improve the treatment of victims of trafficking between Cambodia and Viet Nam and Thailand, and a new Department of Trafficked Persons has been set up by the Government with a hotline to assist in

rescue efforts for victims. The Ministry of Justice intervened in a sex trafficking case, in which the judge forced the victim to take compensation and drop charges against the four alleged perpetrators. Following the Ministry's intervention, the court continued with the prosecution. The Minister of Women's Affairs lent her support to intervention in a trafficking case in which the judge, police and prosecutor involved were reportedly corrupt.

34. It is reported that some of the brothels where children work are frequented by government officials, and until this is addressed, genuine progress to tackle commercial sexual exploitation and trafficking of children will not be made.

### **Chile**

35. The National Service for Children has launched a sensibilization campaign over the last two years and has developed a pilot project of intervention and rehabilitation for victims of commercial sexual exploitation. The Penal Code criminalizes the trafficking of children for prostitution or adoption. The use of children under the age of 12 in pornography is illegal. If the child is aged between 12 and 18 it is not illegal unless violence is used. Parliament is currently considering modifying the Penal Code to protect all minors under the age of 18 and to penalize the distribution, acquisition or storing of materials of child pornography. Children do not incur any criminal liability for their involvement in these offences.

### **Comores**

36. The Government reported that the country has not experienced the phenomena of sale of children, child prostitution and child pornography, but has been working with UNICEF and the National Committee on the Rights of the Child to harmonize domestic legislation with the international obligations. There is no specific legislation concerning child prostitution and child pornography, but certain articles of the Penal Code criminalize prostitution and pornography in all its forms.

### **Czech Republic**

37. In July 2002, amendments were made to the Penal Code to bring Czech law concerning trafficking of children and child pornography into line with European law and the OP/SOC, which is expected to be ratified soon. The procurement of children for prostitution, or the profit from child prostitution is punishable under the Penal Code, and the phenomenon is particularly problematic in large urban areas and in the regions bordering Germany and Austria. Children do not incur liability for their involvement in these offences, except where a child, from the age of 15, procures another child for prostitution, or disseminates child pornography.

### **Dominican Republic**

38. The sale, trafficking and use of children in prostitution and pornography are criminal offences for which the child victim bears no criminal liability, but may be subject to detention for his or her protection. Particular problems in the country include the situation of street

children, commercial sexual exploitation, domestic abuse and children in conflict with the law. The National Plan to Guarantee the Rights of the Child and Adolescent has placed particular emphasis on tackling these concerns.

### **Denmark**

39. In June 2002, Parliament adopted a bill on new legislation concerning trafficking in human beings, including children for sexual purposes, in accordance with the EU Framework Decision on combating trafficking in human beings. The clients of prostitutes under the age of 18 are criminalized under the Criminal Code with a maximum term of two years' imprisonment. Sexual relations with any child (a) under 15; or (b) under 12, or if coercion or intimidation has been used, is punishable with imprisonment for a maximum of 6 years or 10 years, respectively. Legislation concerning child pornography has been amended several times and the bill planned to be put before Parliament in 2003 is expected to suggest raising the maximum penalty for distribution and possession of child pornography and broadening the definition to include material portraying "representations" of child pornography.

### **Estonia**

40. The sale of children, child prostitution and child pornography constitute criminal offences. Children from the age of 14 can be criminally liable but if they are victims of sale, trafficking or involvement in prostitution and pornography, they will not be criminally liable. In 2001, there were 58 prosecutions under the Criminal Code for inducing minors to engage in crime or prostitution. For criminal proceedings involving minors, there are currently four specially furnished and equipped rooms for interviewing child victims in Estonia, but there is no special training for prosecutors, judges and social workers to handle such cases. Rehabilitation programmes, including counselling, therapy and support services, are available for children in the bigger cities only.

### **Ethiopia**

41. Criminal liability is incurred by a person selling or trafficking children under the Penal Code, and the right of children not to be subjected to exploitative practices is enshrined in the Constitution. Child pornography is addressed through the criminalization of a number of offences, excluding possession, relating to writings, images, posters or films which are obscene or grossly indecent. Children under the age of 9 incur no criminal responsibility. Criminal liability may be incurred by a young person between the ages of 9 and 15 if they use others for the purpose of prostitution, or if they use child pornography against others for the purpose of gain. If such an offence is committed, the court follows a special procedure for juvenile delinquents. Children over 15 are tried under the ordinary provisions of the Penal Code for adults. Sanctions for those between the ages of 9 and 15 include measures to ensure the best possible treatment of a young person and may include supervised education, reprimand, school or home arrest, or admission to a corrective institution. Efforts are being made to give on-the-job training in dealing with juvenile offenders to most judges and prosecutors.

### **Gambia**

42. The age of criminal liability is 7. A child under 12 may be criminally liable for involvement in prostitution or pornography if it can be proven that he or she had knowledge to understand the act of commission or omission. Research on sexual exploitation of children is under way and preparations are being made to harmonize domestic laws with the Convention on the Rights of the Child, to enact a Children's Code and to establish a National Commission on Children. The necessary laws will be in place in 2003. Childcare units have been established at the Departments of Social Welfare and the Police, and a Child Protection Alliance, which includes government departments, United Nations agencies, local and international NGOs and other organizations, has developed a National Plan of Action on Child Protection. A Child Rights Unit has been established at the Attorney-General's Chambers.

### **Georgia**

43. Under the Criminal Code, any individual who buys, sells, or makes any other kind of illegal deal involving children is subject to criminal liability. Prostitution as such does not constitute a crime, except for those who "inveigle a minor into prostitution or other sexual lechery". Any kind of pornography is illegal in Georgia, but the Government reported that recently some Georgian pornographic sites have appeared on the Internet, and concerns were expressed that Georgian children have been involved. Children involved in any of these offences are treated as victims.

### **Greece**

44. The provisions of the OP/SOC, which has been signed but not yet ratified, are included in recent Law No. 3064/2002. Perpetrators of the sale of children, child prostitution and child pornography will be criminalized, not the child victim; the Juvenile Court has jurisdiction over such children and will deal with them through educative measures. Such children are entitled to medical, legal and psychological assistance, asylum and temporary housing facilities.

### **Guyana**

45. Sale and trafficking of children are considered criminal offences in the context of the Adoption of Children Act which states that it is not lawful to give to a person any payment in consideration of the adoption process. Prostitution and pornography involving children are criminal offences but there were no reported prosecutions during 2001 and 2002. Concerning protective intervention, the Probation and Family Welfare Service is mandated to offer protective care for children in especially difficult circumstances, such as those children at risk of being sexually abused or exploited by adults. Children from the age of 10 are criminally liable and can be tried in a juvenile court, but there are no specialized prosecutors and there is a need for suitable juvenile detention centres.

**Indonesia**

46. In September 2002, Parliament passed a bill on child protection which will oblige the State to provide special protection for child victims of neglect, trafficking, exploitation or abuse and torture, and for children in conflict situations. The bill also provides for stiff penalties for those involved in the sale and trafficking of children. The Law on Child Protection criminalizes any individual, organization or body that engages in child prostitution or child pornography. The Law also states that the Government and the community are responsible for providing special protection for children whether they are victims or perpetrators.

**Iran (Islamic Republic of)**

47. The Government is currently considering ratifying the OP/SOC. The sale and trafficking of children is a criminal offence in Iran under the Civil Code, but there have been no known cases during 2001 and 2002. Child prostitution and child pornography are criminal offences in Iran and children involved who are under 18 years of age and who are mature according to Islamic jurisprudence will be tried in the Juvenile Court according to the criminal procedure. For other children, article 49 of the Islamic Criminal Code stipulates that if a child commits a crime he/she will not be held criminally liable. Such children are sent to correction and rehabilitation centres affiliated to the judiciary, which will study and consider their cases and provide appropriate assistance. According to data and information received from Judiciary Complex for Children, 1,339 cases of child prostitution were reported during 2000 and 2001.

**Ireland**

48. Sale and trafficking of children for purposes connected to slavery are criminalized under the Slave Trade Act of 1824 and under the Child Trafficking and Pornography Act of 1998 it is an offence to traffic in or abduct children for the purpose of sexual exploitation. Prostitution itself is not an offence, but soliciting in the streets, or living off the earnings of another's prostitution constitutes an offence. Criminal liability is incurred regardless of the age of the prostitute or client. The Children's Act of 2001 provides a framework of safeguards stipulating how children must be treated in police custody and the operation and special proceedings of the Children's Court.

**Kazakhstan**

49. The sale of children and enticing children into prostitution are criminal offences. In the first nine months of 2002, one man and four women were prosecuted under article 133 of the Criminal Code for trafficking in minors. In the same period, 71 persons were prosecuted under article 132 for enticing minors into prostitution, vagrancy or begging. In one reported case, a woman ran a coordinated criminal organization procuring and enticing minors into prostitution. On 27 April 2001 the Taraz city court sentenced her to four years' imprisonment. In all such cases the minor is not held criminally liable, and the Supreme Court of Kazakhstan has standard rules on judicial practice in cases involving offences by minors to ensure the safeguarding of their rights. Minors may be taken into custody as a preventive measure or detained where they have committed a serious offence.

### **Kyrgyzstan**

50. Sale of children, child prostitution and child pornography are criminal offences, and anyone over the age of 16 who involves children in these crimes incurs liability. The Commission on Juveniles' Affairs is responsible for young offenders in some cases, including where children are below the age of criminal responsibility, but they do not have a special mandate for cases of child prostitution, and judges, prosecutors and social workers who deal with children's concerns do not receive specialized training.

51. In 2001, the Kyrgyz Government launched "New Generation", a National Plan of Action for Children's Rights, and in April 2002 launched a National Programme on the Elimination of Human Trafficking and Sale of People, aiming at the prevention of these violations, improvement of law-enforcement bodies and migration structures, and assistance and rehabilitation for victims to return to their countries. The Plan for Children's Rights does not include provisions related to sale of children, child prostitution or child pornography, and the National Programme launched in 2002 does not include special provisions for children. There is a lack of data as to the number of children involved in sale, trafficking, prostitution and pornography, and data about relevant prosecutions is not made available to civil society on the grounds of State secrecy.

### **Lebanon**

52. Children involved in prostitution are taken into custody by the internal security forces and referred through the Department of Public Prosecutions directly to a juvenile misdemeanours court. Children are normally given custodial sentences of between three and six months. Females serve their sentences in Ba'abda women's prison but have little access to rehabilitation facilities apart from a few activities carried out in association with external organizations. Male children are imprisoned in a juvenile facility at Rumiyyah prison where they are separated from the men. Rehabilitation programmes including vocational training are run in the juvenile facility.

### **Lithuania**

53. The sale and trafficking, and the use of children in prostitution and pornography are criminal offences under the Criminal Code. A new Criminal Code also penalizing these offences will enter into force on 1 May 2003. In the first nine months of 2002, two criminal offences involving the trafficking of children were registered, five criminal cases involving children in prostitution and one criminal case of using a child for the purpose of developing and distributing pornography were registered. Children do not incur any criminal liability as a result of their involvement; however, earning one's living from prostitution is an administrative offence and liability is incurred by children over 16. During the first nine months of 2002, 18 such cases were reported. A National Programme against Commercial Sexual Exploitation and Sexual Abuse of Children was approved by the Government in 2000, which provides for in-service training of police officers and preparation of methodological materials concerning the interviewing of sexually abused children.

## **Luxembourg**

54. The Penal Code punishes the trafficking and sexual exploitation of children, and circumstances are considered further aggravated where the minor is (a) less than 14 years old; and (b) less than 11 years old. There have been no prosecutions of these offences involving Luxembourg children over the last two years, but there have been two cases concerning child pornography over the Internet involving children from elsewhere. Where children are involved in prostitution, the Juvenile Court can order protective measures if it considers that the child's moral or social development is threatened.

## **Mongolia**

55. The new Criminal Code approved in January 2002 makes the sale and trafficking of children a criminal offence and provides for 5-10 years' imprisonment where the crime is committed for remuneration for sexual exploitation involving minors. The General Police Department reported 11 cases of arrests for using children in prostitution in 2001, and 5 cases in 2002. Concerning the use of children in pornography, the police reported 14 cases in 2001 and 8 cases in 2002.

## **Morocco**

56. Awareness about sexual exploitation is increasing. In May 2002, King Mohammed VI requested the Children's Parliament to pay particular attention to the question of child victims of violence, and a committee of experts has now been appointed to develop a national programme against the maltreatment and exploitation of children. A recent revision of article 446 of the Penal Code provides that certain professionals, notably doctors, must report suspicions of violations having been committed against children. Other developments include the creation by the Ministry of Human Rights of a network of centres to provide judicial and psychological assistance to children in difficult circumstances and child victims of violence. However, sex outside marriage is illegal and those over 12 are criminally liable; accordingly, children in prostitution between 12 and 18 would bear criminal responsibility.

## **Myanmar**

57. Following ratification of the Convention on the Rights of the Child, the Child Law was promulgated in 1993 and a National Committee on the Rights of the Child was formed the same year. Under the Child Law, a "child" means a person up to the age of 16, and a "youth" is aged between 16 and 18. Prostitution involving children comes under section 66 of the Child Law which criminalizes those who allow girls under 16 and under guardianship to earn a livelihood by prostitution, or who permit a child under their guardianship to live with or consort with a person who earns a livelihood by prostitution. There have been no prosecutions in Myanmar related to child prostitution.

## **Netherlands**

58. Legislation is currently being prepared which will implement the provisions of the OP/SOC as well as deal with the issue of slavery and trafficking in people. Sale, prostitution and pornography involving children are illegal, and children are not criminalized where they are the victims. Since 1 October 2002, the law on child pornography has changed in that the age at which children are protected has increased to 18, and virtual child pornography is illegal. Particularly problematic are “loverboys” - young perpetrators in their late teens and early twenties who seduce young women into prostitution. Trafficking involving unaccompanied minors seeking asylum is increasing. Victims of trafficking are mainly women from non-EU countries, but Dutch women and men are also among the victims. Very little attention is paid to boy victims of trafficking, and there is a lack of data as to the extent of all these problems. Although legislation is reportedly good, there is a lack of technical and human capacity within the law enforcement sector to deal with increased number of reported cases.

## **Paraguay**

59. The Penal Code criminalizes the use of children in prostitution, but does not directly penalize the sale, traffic or use of children in pornography. In legal proceedings concerning child pornography, cases have been referred under article 135 of the Penal Code which addresses sexual abuse of children. Children will only incur criminal responsibility for their involvement in these offences where they are the author, and not as the victim. Children under the age of 14 do not incur legal responsibility. Following the commitments made during the Yokohama Congress, a National Plan of Action for the Elimination of Sexual Exploitation is being elaborated.

## **Peru**

60. Sale and trafficking of persons generally is addressed in terms of criminalizing, forcing or seducing someone in order to deliver him/her to another for the purposes of sexual exploitation, and the Penal Code criminalizes the exploitation of a child through prostitution. If the child is under 14, the penalty is between 4 and 12 years' imprisonment. The crime of producing and selling child pornography was incorporated into the Penal Code in 2001. Child victims of these offences are not criminally responsible, but the family judge may order protective measures in respect of the child.

## **Philippines**

61. Awareness about sexual exploitation of children is high and the Government has introduced a series of policy and legislative measures since the early 1990s to address the issues. The legislative framework to protect children is comprehensive and certain acts have been revised with the protection of children in mind. In particular, the Anti-Trafficking in Children Act is currently in its fifth draft and includes provisions such as the protection of the trafficked child from criminal liability, appropriate training for persons who work with child

victims/survivors and the penalization of those facilitating the trafficking. However, certain realities remain to be addressed, including that children can still find themselves imprisoned following their “rescue” from brothels and other exploitative environments, and prosecutions against often wealthy exploiters continue to fail through inadequate legal procedures.

### **Romania**

62. A National Plan of Action against sexual abuse and exploitation of children is awaiting approval before Government and legislation covering sexual abuse of children is being reconsidered. Some stipulations of the Penal Code have been modified and the punishments for involving children in sexual acts or producing pornographic materials have been substantially increased. These changes have resulted from an increase in the number of reported cases, as well as pressure from NGOs which have developed various prevention and intervention programmes for eliminating sexual abuse and exploitation but which, without an adequate legislative framework, were not efficient.

### **Russian Federation**

63. Steps are currently being taken to strengthen criminal liability for crimes committed against juveniles. There is no criminal liability for engaging in prostitution; accordingly, juveniles are not held liable. Individuals who have reached 18 shall be criminally liable for committing sexual intercourse, sodomy or a lesbian act (without the use of force) with a person known not to have attained the age of 14. Concerning child pornography, the possession of materials not intended for dissemination is not illegal, but criminal liability is incurred for the illegal manufacture of materials for the purpose of dissemination or advertising, and for trade in pornographic materials.

### **Slovakia**

64. The sale and trafficking of children is a criminal offence under the Criminal Code. Prostitution is not a criminal offence, but the Criminal Code penalizes anyone who procures prostitutes and if the offence involves children under the ages of 18 and 15, respectively, the Criminal Code assigns two stricter penalties accordingly. In 2001, six offenders were sentenced for the crime of procurement. Article 205 criminalizes the production, distribution and storing of child pornography, and in 2001, two offenders were sentenced under this article. There are currently no specialized prosecutors and judges assigned to cases involving young offenders and juveniles, but this specialization will be provided for in the framework of the recodification of the criminal law, which will establish a juvenile criminal judiciary system which will be based at specialized chambers of general courts.

### **Slovenia**

65. A child is a person under 14, between 14 and 16 one is a “junior juvenile” and between 16 and 18, a “senior juvenile”. The sale and trafficking of persons is addressed in article 387 of the Penal Code on “Enslavement”, and the pimping and presenting of children or juvenile for prostitution, the abuse of a child or juvenile for the production of pornography, and providing a child under 14 with pornography are criminal offences. Proposals to strengthen the

Penal Code with sanctions against the possession and distribution of child pornography are being considered. Children below 14 are not criminally liable but juveniles from the age of 14 will be criminally liable for the offence of prostituting themselves. Only exceptionally will a juvenile judge order the detention of a juvenile. If it is considered to be of benefit to the juvenile, he or she may be detained with adults. A juvenile who was sold or trafficked will not incur any liability.

### **Spain**

66. The Penal Code criminalizes the authors and the accomplices of those who sell and traffic children, and who induce or facilitate the involvement of children in prostitution and pornography. Law 5/2000 regulates the legal responsibility of children aged between 14 and 18 who are involved in the commission of offences covered by the Penal Code, as well as describing the special measures in the judicial process to which juvenile delinquents are entitled. Concerning aggression and sexual abuse, the Penal Code provides for harsher penalties when the victim is under 13.

### **Sri Lanka**

67. The National Child Protection Authority has formulated a National Policy to deal with the commercial sexual exploitation and trafficking of children. Legislation criminalizes those who hire, employ, persuade, use, induce, or coerce any child for illicit sexual intercourse or to appear or perform in any obscene or indecent exhibition, indecent photograph or film, or who have possession of any such photo or film. Concerning trafficking for the purposes of adoption, Sri Lankan legislation criminalizes a comprehensive range of activities designed to procure a child for this purpose. Prosecutions relating to the sale of children, child prostitution and child pornography were made in 2001 and 2002; unfortunately, no details were available.

### **Sweden**

68. Concerning trafficking, new legislation came into force on 1 July 2002, which criminalizes those involved in trafficking. It is illegal to purchase sexual services from anyone (regardless of age or sex), but if the victim is between 15 and 18, a sentence for sexual molestation is imposed on the client or person who induces the child to participate in such an act, or if the act is an element in the production of pornographic pictures. One recent case was reported concerning the procurement of a child for prostitution, and another in which a 62-year-old man was convicted of buying sexual favours from girls between 14 and 15 years of age, and of sexual exploitation of his foster daughter. He was sentenced to three years' imprisonment. Concerning child pornography, there have reportedly been many convictions in the last two years, mostly regarding possession of materials. Police are given guidelines on how to treat the children involved as victims, but there is a reported lack of specialized prosecutors and judges to deal with children's issues.

### **Switzerland**

69. The Penal Code criminalizes the trafficking of human beings for the purpose of sexual exploitation. One case involving a minor was reported in 1997 and two in 1998. A

parliamentary commission is currently examining proposed legislation to improve the situation of foreign victims of trafficking. The encouragement of a minor to prostitute him-/herself, the use of children in the production of pornography, and, since April 2002, the possession of child pornography are criminal offences. However, children who have reached the age of sexual consent (16) may legally prostitute themselves.

### **Syrian Arab Republic**

70. The Government reported that there are no laws pertaining to the issue of sale of children, child prostitution and child pornography as it does not constitute a social or religious problem and is a rare phenomenon.

### **Tajikistan**

71. The sale and trafficking of children are criminal offences, and criminal proceedings were instituted against three individuals in 2002. Criminal liability is incurred by individuals over the age of 18 for the involvement of juveniles in the performance of anti-social actions, particularly prostitution or other acts of a sexual nature, or acts relating to the preparation of pornographic materials. Criminal charges were brought against two individuals for their involvement in prostitution in 2002. The children involved do not incur criminal liability, and a number of regulations cover the procedure for pre-trial investigations in cases involving children, including the mandatory presence of an educational specialist when witnesses under 14 are being questioned, and discretionary presence when the children are between 14 and 16.

### **Thailand**

72. The Department of Public Welfare has designated four protection homes to provide temporary shelter and a recovery programme for women and children who are victims of trafficking. A special reception centre in Nonthaburi Province has been designated to accommodate boy victims of trafficking. The Criminal Procedure Amendment Act 1999 provides that the rights of the child victim, witness or offender will be protected by creating a friendly atmosphere in the investigation, inquiry and trial process, thereby protecting children from repeated trauma when giving evidence to the authorities. Children are protected from facing the accused person during the identification process, and give their evidence over a video link with the courtroom.

### **Turkmenistan**

73. Child prostitution is not considered to be a serious problem in the country and no information is available about the existence of sale and trafficking of children and child pornography. UNICEF reported a good working relationship with the Inspectorates for Juvenile Affairs, the main actors in the child system in Turkmenistan, and is currently completing a study on children in childcare institutions, including street children who are brought to the children's remand centre. The Special Rapporteur invites UNICEF to furnish him with a copy of this report when it becomes available.

**Uganda**

74. Since the 1996 World Congress against Commercial Sexual Exploitation of Children, the Government has announced its intention to criminalize the sale of children, child prostitution and child pornography. Uganda ratified the OP/SOC, but the sale and trafficking of children are not defined as criminal offences in national legislation and prostitution is handled under the laws governing defilement. There are no specific laws as yet against child pornography, however, in 2001, the editor of a newspaper was arrested for publishing pictures of teenage children involved in a sexual act.

**United Kingdom of Great Britain and Northern Ireland**

75. The United Kingdom is carrying out a review of legislation concerning sexual offences with specific proposals to tackle the involvement of children in prostitution and pornography. There is currently no specific law criminalizing the trafficking of human beings, but the Nationality, Immigration and Asylum Bill introduces a new offence of trafficking for the purposes of controlling someone in prostitution. Concerning prostitution, the pimp, client, or person benefiting from the prostitution is criminally liable, and it is a criminal offence to solicit for the purpose of prostitution. Since May 2000, the Government has instructed that although children soliciting for prostitution are criminally liable, in practice they are to be treated as victims of exploitation and abuse. All steps are taken to divert them away from prostitution without recourse to the criminal justice system. However, where diversion has failed, the police may, after consultation with other agencies such as Social Services, take criminal action against a person under the age of 18 for loitering, soliciting or importuning. In 2001 the NGO ECPAT conducted a study on the trafficking of children into the United Kingdom, concluding that this does occur for sexual purposes and that the United Kingdom is used as a transit point for traffickers. The victims are predominantly West African and Eastern European.

**United States of America**

76. There have been a number of prosecutions involving the trafficking and/or forced prostitution of children in 2001 and 2002, including two defendants in Maryland who brought a 14-year-old girl from Cameroon and, with threats and sexual and physical assaults, forced her to be their domestic servant. A businessman in California trafficked numerous young girls into the United States to work in prostitution, and a group of defendants recruited approximately 40 girls aged 12-17 from Georgia for prostitution, threatening them with violence if they tried to leave. These cases have resulted in jail sentences for the defendants and orders that restitution be paid to the victims. Concerning child pornography, there were 627 Federal prosecutions in 2001, resulting in the convictions of 505 persons.

77. Children in prostitution under 18 but over the age of sexual consent may incur criminal liability and be dealt with by a juvenile court. The age of consent ranges from 14 to 18 years throughout the 50 states. Information was received about the particular situation of children in prostitution in New York City, concluding that although the overwhelming majority of these children are runaways or castaways from dysfunctional homes where they have suffered physical, psychological and sexual abuse, the prevailing view of them is still that they are "bad kids". They are arrested more often than their pimps and customers and can face police

brutality, particularly those working on the streets and those addicted to drugs. In order for a case to be prosecuted against a pimp, at least one of the pimp's girls must testify. Most refuse, as they rely on the pimp for food and shelter and often remain very loyal to the pimp despite the level of abuse. Any statements they make against the pimp will be self-incriminating. As a result of the increased police presence and likelihood of being arrested in Manhattan over the last year, both adults and children have moved to more dangerous and secluded industrial areas of town.

### **Venezuela**

78. The sale, trafficking and use of children in prostitution and pornography are punishable under the Statutory Law for the Protection of Children and Adolescents. Those who promote, benefit from or assist in the exploitation of children are criminally liable and may receive prison sentences of 2 to 8 years. Child victims do not incur criminal liability. This Law also establishes that adolescents over 14 have the right to sexual and reproductive health services.

### **Yugoslavia**

79. Sale and trafficking are criminalized in the context of slavery and trade in people, and prostitution and pornography are addressed in the Criminal Law. Concerning prostitution, criminal liability is incurred by any person involved in procuring females for prostitution. If the female is a minor, the perpetrator is liable to imprisonment for between 1 and 10 years. Concerning pornography, currently the only offence is showing pornographic material to minors. Draft amendments to the Criminal Law will modify this to also criminalize the act of involving persons under the age of 14 in the producing of pornography.

### **Zambia**

80. In Zambia, concerns are being expressed that the dramatic declines in school attendance in areas affected by household food and water insecurity are the result of parents putting young girls into prostitution in order to cope financially with the crisis. UNICEF Zambia and government experts from the Gender and Development Office were carrying out investigations into these reports.

## **2. Information received concerning territories or regions**

### **Taiwan Province of China**

81. The penalty for buying and selling children for sexual purposes or benefiting from trafficking children for sexual purposes is a minimum 10-year sentence and a fine. One hundred and forty-nine such cases were prosecuted in 2001, resulting in 89 convictions, and 149 cases were prosecuted in 2002, with 95 convictions. Concerning child prostitution, 1,069 cases were prosecuted in 2001, resulting in 582 convictions, and of 1,221 prosecutions in 2002, 925 persons were found guilty. The penalty for engaging in remunerated sexual relations with a child is a minimum of five years' imprisonment and a fine. Possession of child pornography is not a

crime, but those who produce it, or force or tempt children into being filmed or photographed may be sentenced to a minimum of seven years' imprisonment. In 2001, there were 881 prosecutions with 458 convictions, and in 2002, 1,061 prosecutions resulted in 930 convictions.

82. Criminal responsibility begins at the age of 7, and those aged between 7 and 12 cannot be imprisoned. If children over 12 force other children into pornography, they can become criminally liable, and will be dealt with by juvenile courts in accordance with juvenile criminal law, which emphasizes protection and re-education rather than punishment. Particular problems involve the trafficking of women and girls for prostitution from mainland China, who are sent to a detention centre before being returned to their home province. Because they have entered Taiwan illegally they often have to wait in detention for at least six months, and sometimes over a year. Local NGOs have great difficulties in accessing the centres in order to provide services to these women and girls whilst they face an uncertain period of detention.

## **B. Conclusions and recommendations**

### **1. Conclusions**

83. There remains a great lack of data concerning the nature and extent of the sale of children, child prostitution and child pornography. In many countries these offences are not criminalized, including in States that have ratified the OP/SOC. UNICEF is assisting many Governments with the harmonization of their domestic legislation with international obligations and has reported many good working relationships.

84. Awareness about trafficking is increasing in many regions and many States have recently introduced new strategies and legislative amendments to tackle it. Penalties for those trafficking others are becoming stiffer and criminal liability for crimes against children generally is being strengthened, but the treatment of child victims of trafficking, especially when they are placed in "protective custody", is continuing to have a punitive effect.

85. In some countries where NGOs are in a position to assist victims of trafficking, they often may not have knowledge about, or access to these victims if they have been detained.

86. Concerning situations of detention, the separation of adults and children is generally improving, but there are still cases where a lack of juvenile facilities means that adults and children are incarcerated together.

87. In some cases, sex offence legislation is discriminatory, and laws only recognize the rape, sexual exploitation or prostitution of females, leaving boys with no legal protection. Some legislations criminalize underage sex "with members of the opposite sex", which means that where the act is performed with children of the same sex, the child is not protected. Where legislation specifically criminalizes the act of "defilement", this might reduce the penalty if the child was not a virgin at the time of the attack, and brings the child's sexual past into the issue.

88. Of particular concern is that children involved in prostitution or pornography are still being considered delinquents in certain countries and subject to judicial procedures.

89. Even in the more developed countries, there is an alarming lack of child rights training available for law enforcement officials, judges and other members of the judiciary.

## **2. Recommendations**

90. Protective custody as a means of dealing with victims of trafficking must be reconsidered, and States should work closely with organizations that are in a position to provide shelter and assistance to such victims.

91. The Special Rapporteur recognizes the importance of the collaboration of victims in investigating and prosecuting traffickers and abusers. However, State care for victims of trafficking should not depend solely on their willingness to cooperate with investigations.

92. A greater level of support and more resources should be allocated to organizations running shelters as well as those who send street educators out to reach street children and children in prostitution.

93. States should take all appropriate measures to ensure that children under 18 years of age are not criminalized for their participation in consensual sexual relations.

94. Children should have access to appropriate education, information and services to enable them to make informed choices about their future sexual behaviour.

95. Child victims of all forms of sexual exploitation, including prostitution and pornography, should not be criminalized but should be entitled to special protection.

96. Those who sexually abuse or exploit children, or who profit from a child's abuse and exploitation in any manner should be penalized. Where the abusers or exploiters are under 18, judicial measures taken against them should be in line with the provisions for special treatment in accordance with international standards.

## **III. COMMUNICATIONS**

97. The Special Rapporteur has announced his intention to send communications to Governments on individual or country-specific complaints. Almost invariably, these have overlapped with other mandates and accordingly, joint communications have been sent. In some cases, depending on the particular nature of the information, or the number of cases received from any one country, he has forwarded these on to other human rights mechanisms for their intervention.

98. During 2002, the Special Rapporteur sent communications to the Governments of Australia, Cambodia, Canada, Guatemala and France.

99. Details of two of the joint communications, sent to Australia and Canada, can be found in the report of the Special Rapporteur on violence against women (E/CN.4/2003/75/Add.2).

### **Guatemala**

100. On 12 July 2002, the Special Rapporteur sent a joint urgent appeal with the Working Group on Arbitrary Detention concerning the situation of seven minors who had been trafficked from El Salvador to a brothel in Guatemala City. They were rescued by Guatemalan police but placed in a jail by the authorities to guarantee their protection. The Special Rapporteur welcomed the efforts made to rescue the children, but appealed to the authorities to release the children from detention and to employ other measures which would be in the best interests of the children.

101. At the time of submission of this report, no response had been received.

102. On 5 October 2001, the Special Rapporteur, along with the Special Representative of the Secretary-General on human rights defenders, sent an urgent appeal concerning the threat and intimidation affecting Hector Dionicio Godinez, staff member of Casa Alianza, an NGO working to assist street children. A summary of the appeal was reported in the report of the Special Rapporteur to the fifty-eighth session of the Commission on Human Rights (E/CN.4/2002/88, para. 26).

103. A response was received on 4 October 2002, indicating that the Guatemalan Human Rights Commission - COPREDEH - had requested the director of the National Civil Police to provide security to Mr. Godinez and that, on 5 November 2001, COPREDEH was informed that Mr. Godinez had been offered police security around the offices of Casa Alianza during working hours. In addition, according to the response received, a police investigation had ascertained that the number plate of the car whose driver had tried to force Mr. Godinez off the road was false. The Government of Guatemala reported that the case had been filed because of a lack of evidence and the victim's inability to produce a witness.

### **Cambodia**

104. On 13 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on violence against women and the Special Rapporteur on the human rights of migrants on behalf of 14 Vietnamese women serving sentences for illegally entering Cambodia; 10 of the women are reportedly victims of trafficking and exploitation.

105. According to information received, 14 Vietnamese women and girls, aged between 16 and 53, were reportedly removed from a brothel by police on 23 May 2002. On 17 June, they were charged with illegal entry into Cambodia and jailed. On 5 August, a Cambodian court reportedly found them guilty of the charges and sentenced them to 2 to 3 months' imprisonment. Ten of the women and girls had reportedly been trafficked from Viet Nam to local brothels, without any formal documents. Four others, also found guilty of illegally entering Cambodia, were allegedly complicit in the trafficking of the aforementioned individuals.

106. The Special Rapporteur called upon the Government of Cambodia to protect and promote the human rights of these trafficked persons while also combating trafficking, to focus on the abuses of the human rights and labour rights of the women involved, and to prevent victims of trafficking from being treated like criminals or illegal migrants.

107. The Special Rapporteur appealed to the Government to carry out a full and thorough investigation of the circumstances of the trafficking and, if it is confirmed: (a) to immediately release the victims; (b) to ensure that their return to Viet Nam is carried out with due regard for their safety and that it be voluntary; and (c) to provide medical and psychological treatment, rehabilitation, counselling and appropriate housing to the victims while they remain in Cambodia.

108. At the time of submission of this report, no response had been received from the Government of Cambodia.

## **France**

109. Three communications were sent to the Government of France in connection with the visit by the Special Rapporteur in November 2002; accordingly, they will be dealt with in the context of the mission report. The preliminary report of the visit is contained in document E/CN.4/2003/79/Add.2.

## **IV. OTHER ISSUES IN FOCUS**

### **A. Adoption**

110. During the course of 2002, the Special Rapporteur received many complaints relating to allegedly fraudulent adoption practices. Where such practices have the effect that the child becomes the object of a commercial transaction, the Special Rapporteur, like his predecessor, considers that such cases fall within the "sale" element of his mandate. The Special Rapporteur was shocked to learn of the plethora of human rights abuses which appear to permeate the adoption systems of many countries. The Special Rapporteur considers that the best environment for most children to grow up in is within a family, and the adoption by a parent or parents of a child who does not have a family able to look after him or her is a commendable and noble action. Regrettably, in many cases the emphasis has changed from the desire to provide a needy child with a home, to that of providing needy parents with a child. As a result, a whole industry has grown, generating millions of dollars of revenue each year, seeking babies for adoption and charging prospective parents enormous fees to process the paperwork. The problems surrounding many intercountry adoptions, in which children are taken from poor families in undeveloped countries and given to parents in developed countries, have become quite well known, but the Special Rapporteur was alarmed to hear of certain practices also allegedly occurring within developed countries, including the use of fraud and coercion to persuade single mothers to give up their children.

111. Given the particular nature of many of the cases received, the Special Rapporteur brought the information received to the attention of other appropriate United Nations mechanisms and intends to continue to address such abuses when they fall within the parameters of his mandate.

## **B. HIV/AIDS**

112. In its resolution 2001/51, the Commission on Human Rights requested all special representatives, special rapporteurs and working groups of the Commission, inter alia the Special Rapporteur on the sale of children, child prostitution and child pornography, to integrate the protection of HIV-related human rights within their respective mandates (para. 12).

113. In September 2002, the Special Rapporteur carried out a country visit to South Africa in the context of his mandate. Given the very high rate of HIV/AIDS in South Africa and the connections between the issues relating to HIV/AIDS and sexual exploitation, the Special Rapporteur was accompanied by the OHCHR focal point on HIV/AIDS and human rights. The report of his visit is contained in document E/CN.4/2003/79/Add.1.

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