ABA 2nd INTERNATIONAL SUMMIT ON
THE LEGAL RIGHTS OF STREET-CONNECTED YOUTH

Draft Implementing Principles for
Session on Trafficking (Sex and Labour)¹

Darlene C. Lynch
ECPAT International
Relevant Language from General Comment No. 21:

Articles 34-36 on sexual abuse, sexual exploitation, trafficking and other exploitation

58. Children in street situations are particularly vulnerable to sexual violence and exploitation, and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography is particularly relevant for them. Gender-sensitive responses should be made by professionals who are trained in understanding the specific circumstances of children in street situations. Children may have ended up in street situations through trafficking for sexual or labour exploitation, and/or may be vulnerable to such trafficking, as well as trafficking for body parts, and other forms of exploitation, once they are on the streets.

Article 32 on child labour

59. The Committee urges States to implement the provisions of article 32 (2) of the Convention, and the International Labour Organization Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182), to protect children in street situations from economic exploitation and the worst forms of child labour. Action against child labour should comprise comprehensive measures, including the provision of support enabling children to transition into education and guaranteeing an adequate standard of living for them and their families. Such measures should be developed in collaboration with children in street situations and other key stakeholders to reflect children’s best interests and to ensure they do not have any inadvertent negative impact on children’s survival or development. The criminalization of begging or unlicensed trading can result in worse forms of survival behaviours, such as commercial sexual exploitation. Savings schemes to develop budgeting skills and safeguard earnings for children in street situations are beneficial.

Draft Implementing Principles

Legal framework

States should:

1. **Ratify and implement international instruments** that seek to protect children and youth from human trafficking, including:
   c. ILO Minimum Age Convention, No. 139, 1973
   d. ILO Convention on the Worst Forms of Child Labour, No. 182, 1999
2. Ensure that national laws criminalize the offenses of child trafficking and child exploitation, including attempts to procure children for forced sex or labour, and that penalties are commensurate with the gravity of the crimes.6

3. Implement safe harbour protections that protect child victims from being prosecuted for crimes resulting from or related to their trafficking or exploitation,7 including:
   a. Prostitution and other crimes against “morality”
   b. Immigration violations
   c. Use of false documentation
   d. Illegal drug or alcohol use8
   e. Public nuisance crimes, such as trespassing, loitering, begging, or vagrancy

4. Repeal criminal laws penalizing status offenses, which are acts that would not be criminal if committed by adults, such as violation of curfew or running away from home.

5. Eliminate statutes of limitations for prosecution of child trafficking and exploitation offenses,9 or ensure that the limitations periods are equal in length to those of other serious crimes and begin to run when the child turns age 18.10

6. Ensure that the legal age of sexual consent does not leave street-connected youth vulnerable to sexual abuse, exploitation and trafficking of children on the street, by establishing the age of sexual consent at 18 years old or criminalizing offences committed against children aged 15 to 18 years old when the sexual acts are exploitative (such as prostitution or pornography) or where there has been abuse of a relationship of trust, authority or dependency, and by abolishing sexual consent as a defence to charges of exploiting or trafficking a child under age 18

7. Enact legislation banning12 or strictly limiting informal or mediated settlement of cases involving the exploitation or trafficking of children to only those instances when settlement (a) is determined to be in the best interests of the child, (b) does not involve harmful practices, such as forced marriage,13 (c) does not endanger the future safety of the child or other children, and (d) takes into account any power imbalance and the vulnerability of the child or his or her family in consenting to a settlement.14 Judicial training should be provided on the issue of settlement and child victims’ best interests.

Prevention and Education

8. Raise awareness about the risks of trafficking and exploitation among street-connected youth, delivering outreach programs and advertising services at locations where youth are being approached by exploiters: on social media and online job sites, at bus stops and transportation stations, at industrial and fishing sites, and at government assistance offices.15
9. **Ensure appropriate use of terminology by government stakeholders**, eliminating references to “child prostitute” or “child prostitution” in all administrative and legislative materials and substituting terms that make clear that children do not choose to engage in exploitation, such as “sexually exploited child” or “sexual exploitation of a child.”

10. **Establish drop-in or community service centers** in areas accessible to street-connected youth. These centers should provide a place of refuge for youth still on the streets in order to build trust with youth who have been, or are being, mistreated by adults. In addition to providing basic necessities, the centers should offer anti-trafficking orientation, alternative education classes, employment assistance, life skills and harm reduction training.

11. **Empower street-connected youth to engage in non-harmful employment**, by providing job training and financial literacy programs and supporting the creation of specialized savings accounts, such as Independent Development Accounts (matched savings accounts), to help them build income.

12. To the extent possible, **involve youth who have left the streets to participate in outreach programs** with youth still living/working on the streets.

13. Ensure that children without family are **given the option to stay in state care until age 21** and provide comprehensive programs to help them to transition to independent living.

**Access to Justice & Remedies**

14. Allocate funds for **specialized human trafficking training for law enforcement** in every state or province and/or create specialized trafficking units. Including training on child-sensitive interview techniques and effective methods for engaging with street-connected youth.

15. Support **outreach programs that partner specially-trained police officers with youth service organizations** and help restore trust between street-connected youth and law enforcement.

16. Develop **child-specialized victim identification protocols or screening tools** that are database, inclusive, and non-judgemental, so as to increase the likelihood that youth will disclose a situation of trafficking and gain access to specialized services and care. Including men, LGBTQ, and foster care-related vulnerabilities in screening protocols should be standard practice.
17. Create a **legal presumption of age applicable to all trafficking cases** that ensures children engaged in forced sex or labour are treated as victims rather than adult law-breakers. Whenever age of a potential victim is uncertain, the presumption requires that the individual be treated as a child and connected with child protective services until age can be verified. First-contact professionals should be trained to properly apply the protocol.  

18. Ensure that child victims of trafficking or exploitation are **provided an opportunity for a recovery and reflection period** of 30 days or more to help them heal and understand their exploitation before deciding whether to participate in a criminal case against the exploiter. During this time, victims should receive needed services, including food, shelter, physical and mental health care, education and, where appropriate, immigration relief.

19. Require that every child who agrees to participate in a criminal case against a trafficker or exploiter be **assigned a specially trained advocate, such as a victim-witness advocate, or guardian ad litem**, and free legal aid and translation services.

20. ** Expedite child trafficking and exploitation cases** through priority tracking, continuous hearings or other methods and allow courts to approve delays only after considering the child’s views and best interests.

21. Create a **state victim compensation program, or a specialized fund for trafficking victims**, if such funds do not already exist, and ensure that child victims of trafficking and are not denied benefits due to their involvement in crimes arising from their exploitation.

**Access to Care & Services**

22. **Develop a multi-disciplinary approach, including the establishment of child advocacy centres**, to respond to cases of child exploitation or trafficking in a holistic way. A case manager should be assigned to each child, who can coordinate medical, psychological, social, legal, immigration, translation, family tracing/reunification, and other services.

23. Respond to the housing needs of street-connected youth by allocating **dedicated funding for shelters, beds and services**, and ensure that **mandatory, long-term shelter care is a last resort** for young victims of trafficking or exploitation and that children are not subject to criminal arrest for leaving shelter care.

24. Address **gaps in quality and safety at government-run residential facilities** that house youth, including providing separate and specialized programmes for sexually exploited children and offering age-appropriate opportunities for older children to participate in
decision-making and more independent living, earn income, and access childcare for any children they may have.

25. Expand housing, medical and mental health services for male SEC victims and those identifying as transgender. 31
Draft Implementing Principles, Trafficking
D. Lynch, ECPAT International


2 CRC, Art. 34 (States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials; Art. 35 (States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.); Art. 36 (States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.)

3 CRC, Art. 32 (2) (States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.)

4 ILO No. 139, Art. 2 (minimum age of employment is 15, or 14 under exceptional circumstances); Art. 3 (minimum age of employment in work “which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons” is 18.); Art. 7 (minimum age for “light work” is 13 to 15, or 12-14 under exceptional circumstances)

5 ILO No. 182, Art. 3 (For the purposes of this Convention, the term the worst forms of child labour comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.)

6 See, e.g., Art. 3, OPSC (“1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis: (a) In the context of sale of children as defined in article 2: (i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour; (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption; (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2; (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2. 2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts. 3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.”); See also, Art. 3, Palermo Protocol (requiring States to enact criminal laws providing that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article [e.g., force, fraud, abduction, coercion]”)

7 See, e.g., Sec. 17, Philippine Government (2012), “Expanded Anti-Trafficking in Persons Act”, R.A. No. 10364 (Legal Protection to Trafficked Persons – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto.”)
Draft Implementing Principles, Trafficking
D. Lynch, ECPAT International

8 See, e.g., Sec. 58, Philippines Juvenile Justice and Welfare Act (prohibiting arrest of children for sniffing glue).
9 In many common law countries, such as the UK, Canada, Ireland, New Zealand and Australia, there are no statute of limitations for serious sexual crimes, including child sexual exploitation or abuse. The US has no statute of limitations for serious federal crimes, including trafficking a child for sexual purposes, 18 U.S.C. s. 1591.
10 Other countries provide a lengthy period of limitation and delay the running of the limitation period until the child reaches adulthood. See, e.g., Sec. 12, Philippines Expanded Anti-Trafficking Act (2012) ("Trafficking cases . . . against a child, shall prescribe in twenty (20) years . . . The prescriptive period shall commence to run . . . in the case of a child victim, from the day the child reaches the age of majority."; compare Nepal General Code, Part 4, Chkpt. 14, No. 11 (statute of limitations is 35 days for rape and sodomy).
11 Examples of unreasonably short statutes of limitations that block children’s ability to access justice include Nepal: Amend Part 4 of the General Code to repeal the 35-day statute of limitations for rape and other SEC-related crimes, such as illegal detention, hurt/battery, intention of sexual intercourse, and the 90-day statute of limitations for battery with grievous injury.
Thailand: Amend Section 96 of the Penal Code to eliminate the three-month statute of limitation on compoundable offenses, such as rape, sexual assault, false imprisonment when they take place in private without bodily injury.
12 While some countries prohibit any private mediation of criminal cases, others permit it in certain situations. The Philippines allows some private mediation, but bans these settlements in trafficking cases. See, Sec. 11(c), Philippines Expanded Anti-Trafficking Act ("Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal. ")
13 Thailand is an example of a country that permits private settlement of sex crimes against children, including through forced marriage. See, e.g., Secs. 281, 321, Thailand, Criminal Procedure Code (rape, sexual abuse and false imprisonment of children are compoundable offenses subject to private negotiations) and Section 277 (adults who engage in sex with children between age 13 and 15 may settle criminal charges through marriage).
14 This language is based upon model language in Article 20(h) of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)(States should “[e]nsure that an informal or mediated settlement of cases involving violence against children takes place only when it is in the best interests of the child, and does not involve harmful practices, such as forced marriage, taking into account any power imbalance and the vulnerability of the child or his or her family in consenting to a settlement, with due regard for any future risk to the safety of the child or other children.”)
17 Id.
19 See, e.g., ECPAT’s Youth Partnership Project (YPP) for Child Survivors of Commercial Sexual Exploitation in South Asia, a unique initiative that endeavors to bring about positive psychosocial change in the lives of affected children in Bangladesh, India and Nepal. Young CSEC survivors and at-risk youth living in red-light districts, on the streets or in other unsafe places, such as railway platforms, are the key participants in the project. Through peer support programs, community awareness campaigns and public advocacy, CSEC survivors and vulnerable youth have used their knowledge and expertise to advocate for their rights. http://www.ecpat.org/what-we-do/child-survivor-participation/.

20 U.S. Fostering Connections to Success Act of 2008 (FCA)(provides funding to states who extend foster care to children up to age 21); U.S. Foster Care Independence Act of 1999 (Pub.L. 106–169, 113 Stat. 1882, enacted December 14, 1999)(aims to assist youth aging out of foster care in the United States in obtaining and maintaining independent living skills, including job skills and financial literacy.)
Draft Implementing Principles, Trafficking
D. Lynch, ECPAT International


22 A promising model is the Big Brother Project in Chiang Mai, Thailand, a joint initiative between the Royal Thai Police, the Chiang Mai Office of the Ministry of Social Development and Human Security, and the non-governmental agency, the HUG Project. The project’s intent is to reach out to sexually exploited children and children at risk of exploitation and rebuild their trust in adults, including the police. Officers act like “big brothers” to the children, taking part in daily activities, such as guitar and football lessons, school work, and outings. The goal is to help children understand their exploitation, to show them that the police are there to support them, and to encourage them to seek help when they are ready. The program has a secondary benefit of helping children become stronger witnesses in the criminal case against their exploiters, and prosecutions involving children in the program are reported by one officer to have a 100% conviction rate.


25 Model language for a Recovery and Reflection Period is contained in Arts. 12 and 13 in the Council of Europe “Convention on Action Against Trafficking in Human Beings” (2008) (Art. 13: “Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. . . . During this period, [victims] . . . shall be entitled to the measures contained in Article 12 . . . [including] a. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance; b. access to emergency medical treatment; c. translation and interpretation services, when appropriate; d. counselling and information, in particular, in regards to their legal rights and the services available to them, in a language that they can understand; e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; f. access to education for children.”)

26 See, Paras. 24 and 25, United Nations Economic and Social Council’s Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (“Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.”); See also, e.g., Philippines (2000), “Supreme Court Rule on the Examination of a Child Witness” (authorizing courts to appoint guardians ad litem (GAL) to support child victims, including child victims of trafficking and exploitation, throughout all stages of criminal proceedings.)

27 Nepal has made significant strides in reducing the length of child sexual exploitation and trafficking cases through the use of continuous hearings and fast-track courts for cases of child rape and trafficking. While continuous hearings are still new, a number of recent SEC cases have been resolved in just a few months, and it is reported that the length of cases is declining generally. See, Forum for Women, Law and Development (2014), “Nepal Human Trafficking and Transportation (Control) Act 2007: Its Implementation (2014),” 34, http://fwld.org/wp-content/uploads/2016/07/Human-Trafficking-and-Transportation-Control-Act-2007-ITS-IMPLEMENTATION.pdf.

28 Many state-managed victim compensation programs deny funds to anyone who is deemed to have been involved in the crimes for which they are seeking compensation. See, e.g., Thailand, Compensation and Expenses
for Injured Persons and the Accused Act, § 3 (an “injured person” eligible for compensation is a person who has been injured by a criminal offense and was “not involved in committing such offense”).

