Beyond Borders
Au-delà des frontières
ECPAT CANADA

FACT SHEET

CHILD SEX TOURISM — LAW

There are both international and domestic laws against child sex tourism. However, even though laws exist there is often a gap in law enforcement.

International Law:

The UN Convention on the Rights of the Child states that children and young people have a right to protection from all kinds of abuse, including commercial sexual exploitation, in which child sex tourism is included. Additionally, an Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography entered into force in January 2002. There has also been three World Congresses against Sexual Exploitation of Children and Adolescents where the international community highlighted the issue of child sex tourism (Stockholm, 1996; Yokohama, 2001; and Rio de Janeiro, 2008).

In general, international law says it is wrong to sexually exploit anyone who is under the age of 18 years. This means that child-sex tourists are committing a crime.

Canadian Domestic Law:

In 1997, Bill C-27 amended the *Criminal Code* to prohibit child sex tourism.

The "Prober Amendment" meant that s. 7(4.1) applies to all forms of sexual exploitation, whether or not they are commercial in nature. Under s. 7(4.1) of the *Criminal Code*, Canadian citizens and permanent residents can be prosecuted in Canada for certain sexual offences committed against children in other countries, including Sexual Interference, Invitation to Sexual Touching, Sexual Exploitation, Child Pornography, and Obtaining the Sexual Services of a Child under 18.

Donald Bakker was the first Canadian convicted under s. 7(4.1). In May 2005 he pleaded guilty to, among other domestic crimes, seven counts of sexual interference involving children younger than 14 in Cambodia. He was sentenced to seven years in prison. Since then only five convictions have been made under Canada's child sex tourism laws. However, since 1997, 136 Canadian men have sought consular help overseas after having been arrested or imprisoned for child sex offences. One of the only studies on the effectiveness of s. 7(4.1) shows how "all too often Canada's commitment to hold its citizens accountable for child sex crimes abroad rings hollow."

Extraterritoriality

The legislation is *extraterritorial,* meaning that Canada assumes jurisdiction to prosecute these offences. They are considered as if they took place in Canada. In 2002, s. 7(4.1) was amended to remove the stipulation that the government of the country where the offense occurred must request prosecution.

The constitutionality of s. 7(4.1) was initially questioned. In *R v Klassen* (2010), BC Supreme Court Justice Austin Cullen found that the law against child sex tourism is valid because many countries have similar legislation and because of the existence of international children's rights treaties.

Beyond Borders ECPAT Canada further maintains that the extraterritoriality of s. 7(4.1) is grounded in the nationality principle, by which a person's nationality provides a sufficient connection between a state and a person. The nationality principle is recognized by the Supreme Court of Canada as a valid basis for extending prescriptive jurisdiction.

Sources:

- International Bureau for Children's Rights, online: <www.ibcr.org/eng/tourism Child Sex Tourism 2011>.
- *Criminal Code*, R.S.C. 1985, c. C-46, s. 7(4.1).
- Benjamin Perrin, "Taking a Vacation from the Law? Extraterritorial Criminal Jurisdiction and Section 7 (4.1) of the *Criminal Code,*" *Can Crim Law Rev,* 13(175) page 176.
- Melissa Ferens, "An Evaluation of Canada's Child Sex Tourism Legislation under International Law," University of Manitoba, 2004.
- End Modern Day Slavery, "Child Sex Tourism in Cambodia: Part 1 of a Six Part Series" (23 March 2012), online: <www.endmoderndayslavery.ca/2012/03/24/child-sex-tourism-in-cambodia-part-one-of-six-part-series>.