



The Mandate of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography: An Assessment of 25 Years

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1. Introduction

At the request of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography Ms. Maud de Boer-Buquicchio (hereinafter: Special Rapporteur), the Department of Child Law of the Leiden University undertook a summary assessment of the work of the Special Mandate over the 25 years since its establishment in 1990. The purpose of this assessment is to present an overview of achievements, developments and remaining challenges.

The assessment is based on the reports of the Special mandate holders² submitted to the UN Commission on Human Rights, the Human Rights Council³ and the UN General Assembly. The assessment is not a presentation of a detailed analysis of all the activities of the work of the Special Mandate holders. It is limited to an identification of general trends, both in terms of achievements and problems faced, and remaining challenges as they emerge from the reports.

Our report is structured as follows: first, we present the development of the Mandate since 1990 followed by a paragraph on the achievements and problems faced by the Mandate holders. Finally, we will tentatively identify remaining challenges and conclude with some general observations and recommendations.

¹ With thanks to Ms. Jacintha van Dorp and Ms. Tunske de Vries for their research assistance.

² The Mandate holders since 1990 were: Mr. Vitit Muntarbhorn (1991-1994), Ms. Ofelia Calcetas-Santos (1994-2001), Mr. Juan Miguel Petit (2001-2008), Ms. Najat Maalla M'jid (2008-2014) and Ms. Maud de Boer-Buquicchio, since 2014.

³ The Council replaced the UN Commission in 2006.

2. Mandate and Working Methods

- the Mandate

It is not clear whether there was a particular event that triggered the establishment of the Special Mandate on the sale of children, child prostitution and child pornography. In its Resolution of March 1990 establishing the Mandate, the UN Commission on Human Rights expressed its deep concern ‘about the existence in many parts of the world of cases of the rights of children, particularly cases of the sale of children, child prostitution and child pornography’.⁴ Interestingly, it was not the UN Convention on the Rights of the Child (CRC) that triggered the establishment of the Special Mandate, since the Commission on Human Rights merely referred to Principle 2 and 9 of the 1959 Declaration on the Rights of the Child, despite the adoption of the CRC less than four months earlier.

The Mandate was very modest with a peculiar addition: ‘consider all matters relating to the sale of children, child prostitution and child pornography, including the problem of the adoption of children for commercial purposes’ (Resolution 1990/68, para. 1). There was no further indication of the activities expected from the Special Rapporteur. He was invited to take account of the need to be in a position to use credible and reliable information made available to him, to request the Governments concerned to state their views and comment on any information he intends to include in his report and to carry out his task with discretion and independence (Resolution 1990/68, para. 3). The text of the resolution clearly reflects the sensitivity of the matters the Special Rapporteur should deal with and the reluctance of the Commission to provide him with an active advocacy role. The appointment for just one year confirms that.

In the course of the following years, the Mandate became more concrete and specific expectations were expressed. The results of these changes can be found in Resolution 7/13 of the Human Rights Council of 27 March 2008 (hereinafter: Resolution 7/13). Considering matters relating to the sale of children, child prostitution and child pornography (see Resolution 1990/68) now included *inter alia*:

- the analysis of the root causes of the sale of children, child prostitution and child pornography, addressing all the contributing factors, especially the demand factor;

⁴ Resolution E/CN.4/RES.1990/68.E , 7 March 1990 (hereinafter: Resolution 1990/68).

- the identification and making of concrete recommendations on preventing and combating new patterns of sale of children, child prostitution and child pornography; an activity which includes efforts to promote comprehensive strategies and measures on prevention in consultation with Governments, intergovernmental organizations and civil society including NGO's and the identification, exchange and promotion of the best combating practices;
- the drafting of recommendations on the promotion and protection of the human rights of children actual or potential victims of sexual exploitation and on the aspects related to their rehabilitation;
- the integration of a gender perspective throughout the work of her/his mandate;
- close coordination with all other relevant bodies and mechanisms of the United Nations such as the UN Committee on the Rights of the Child (hereinafter: the CRC Committee), other Special Rapporteurs of the Human Rights Council and the Special Representative of the Secretary General on Violence Against Children.

It should be noted that the Special Rapporteur *de facto*, already since 1999, considered child trafficking as part of the mandate because it is in practice closely linked with the sale of children.⁵

- Working methods

In order to carry out the activities mentioned above, the Special Rapporteurs have developed different working methods. The previous and the current rapporteurs both elaborated on the scope of their mandate and on their working methods.⁶ The following working methods emerge from these reports with the note that most of them were also used by the previous Special rapporteurs.

The first working method concerns the *engagement with all stakeholders*, such as governments, intergovernmental organizations, other special rapporteurs, human rights treaty bodies and civil society, including NGO's. The purpose of this engagement are among others awareness raising, advocacy and the coordination of activities in particular within the UN system through gathering of information. In the course of 25 years, the scope of this engagement became more complex and time consuming due to the increasing number of other

⁵ See the thematic report on sale and trafficking of children, UN Doc. E/CN.4/1999/71.

⁶ The report of Najat Maalla M'jid submitted to the UN General Assembly in 2008, UN Doc. A/HRC/9/21, 31 July 2008 and the report of Maud de Boer-Buquicchio submitted to the UN General Assembly in 2014, UN Doc. A/69/262, 5 August 2014.

relevant Special Rapporteurs and Special Representatives of the UN Secretary General, the ever growing numbers of NGO's actively involved in preventing and combating sale of children, child prostitution and child pornography and the growing involvement of the business sector in particular regarding sexual exploitation of children in travel and tourism.

The second working method developed by the Special Rapporteurs concerns *participation* in and presentation at all kinds of international and regional meetings (conferences, seminars, workshops etc.) to contribute to the awareness of the problems of sexually exploited children and to the understanding and visibility of the work of the Special rapporteur.

A third important working method is the *communication with governments and others*. Right from the beginning the mandate holders develop a practice of communication with governments. First, they did send questionnaires to governments in order to obtain updated realistic and practical information on the problems related to preventing and combating sale of children, child prostitution and child pornography. Second, they communicate to governments their concerns about concrete cases and situations of sexual exploitation of children in their countries requesting information on the actions taken to address these incidents of sexual exploitation.⁷ In this regard, the web page of the Special Rapporteur⁸ is a key tool for dissemination of information about her/his work, including information *inter alia* on the scope of her/his mandate and the type of allegations he/she can address and will be targeted to children (potential or actual victims), organizations and institutions and other partners. This communication is not only meant to raise awareness but also to receive information about the problems they are facing and to bring violations of children's rights to the attention of governments.

Country visits is one of the traditional working methods of the Special Rapporteurs. The main purpose of these visits is to propose concrete programmes and/or amendments to existing programmes to the government concerned. Countries will be selected on the basis of a series of criteria developed by the special procedures system. The criteria include indicators such as: a visit has already been requested by the predecessors, follow-up to a previous visit,

⁷ See the reports published in 2005, 2006, 2007, 2008 on communications sent to governments and replies received UN Doc. E/CN.4/2005/78/Add.3; E/CN.4/2006/67/Add.1; A/HRC/4/31/Add.1 (2007) and A/HRC/7/8/Add.1 (2008).

⁸ See for the current one (May 2015)

<http://www.ohchr.org/EN/Issues/Children/Pages/MaudBoerBuquicchio.aspx>

implementation of effective programmes for preventing and combating the sale and sexual exploitation of children.⁹

A fifth working method concerns *thematic reports*. This is an important tool for raising awareness on specific aspects of the sale and sexual exploitation of children and for presenting governments concrete recommendations for action to address the issues raised in the thematic reports. Some examples of these reports include:

- 1998: The media and education (UN doc. E/CN.4/1998/101);
- 2001: The business sector and child exploitation (UN Doc. E/CN.4/2001/78);
- 2005 and 2009: Child pornography on the internet (UN Doc. E/CN.4/2005/78 and A/HRC/12/23);
- 2012: Child participation (UN Doc. A/67/291);
- 2013: Sexual exploitation of children in travel and tourism (UN Doc. A/HRC/22/54).

All these working methods reflect the impressive range of activities the Special Rapporteurs have undertaken in order to contribute to the prevention and elimination of sale and sexual exploitation of children. The obvious question: what has been the impact of all these activities will be discussed in the next paragraph.

3. Achievements

To the best of our knowledge there has not been a systematical evaluation of the work of the Special Rapporteurs on the sale of children, child prostitution and child pornography. The impact of, for example, the many recommendations they have made in their reports for legislative, social or other measures has not been measured.

One exception may be the rather limited follow-up country visits in which the Special Rapporteur identified progress since her/his previous visits. For example during her follow-up visit to Honduras, Special Rapporteur Maalla M'jid welcomed the establishment of the Inter-Agency Commission to Combat Commercial Sexual Exploitation of Children and Adolescents.¹⁰ The Rapporteur noted more and other positive measures taken by governments during her visits, but there is no specific information indicating that these measures were the direct result of her/his activities.

⁹ See for more information on these criteria the reports mentioned in footnote 6.

¹⁰ See para. 81 of the (last) report of Njat Maalla M'jid in 2013 (UN Doc. A/HRC/25/48).

We therefore have to conclude that the information available does not allow to make firm statements on the direct impact of the work of the Special Rapporteurs in, for example, the development at the national level of legislation and/or policies in compliance with the CRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), the engagement of the private sector in preventing and combating sale and sexual exploitation of children and the participation of children. Similar conclusions can be drawn for other special rapporteurs and human rights treaty bodies, such as the CRC Committee. That is not only the result of a lack of systematic follow-up of recommendations made at various occasions but also, and perhaps even more so, of the fact that progress made at the national, regional and international levels depend on many factors such as the determined commitment of a government, the available human and financial resources, the advocacy and other actions of NGO's and the work of National Human Rights Institutions (NHRI's) etc. Despite the lack of a clear picture, the work of the Special Rapporteurs over the last 25 years has undoubtedly been a contributing factor. This can be illustrated by what they have achieved in various areas of their activities. An overview in general terms:

Awareness raising on the different aspects of preventing and combating sale and sexual exploitation of children

The Special Rapporteurs have significantly contributed to this awareness through a range of activities such as participation to numerous national, regional and international meetings on the sale of children, child prostitution and child pornography, the many country visits conducted every year, their thematic reports and the communications with government on incidents of sale or sexual exploitation of children.

The adoption of legislation and policies

The Special Rapporteurs have contributed to legislation and policy development not only in terms of preventing sale and sexual exploitation but also in terms of the protection of victims, in particular through the concrete recommendations made to governments after country visits and in the thematic reports for instance on child pornography on the internet. Already in 2004, for example, the Special Rapporteur recommended to introduce legislation creating the offence of 'internet grooming or luring' and legislation on Internet Service Providers envisaging not only their obligation to remove or prevent accessibility to illegal material of which they have knowledge, but also establishing a minimum monitoring obligation to

prevent online child pornography.¹¹ Many more and other recommendations could be cited to illustrate the concrete actions governments should take, among others, regarding the protection of victims of sale, trafficking and sexual exploitation.

The engagement of the private sector

In her report Ms. Ofelia Calcetas-Santos drew the attention of States and others to the role and responsibilities of the private sector under international law. She referred to various international instruments to show the recognition of the responsibility of the private sector for the protection of human rights, including the human rights of children. She further elaborated on this responsibility in areas where children are at risk of sexual abuse and exploitation, such as child labour, travel and tourism, media, advertising and internet. It concerned (a kind of) an assessment of the then existing *status quo*, illustrated with examples from her country visits. However, she did not make recommendations to States e.g. on the measures they should take to promote and support the responsibility of the private sector regarding the prevention and elimination of sale and sexual exploitation of children.

In 2013, the CRC Committee issued General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights.¹² The Committee did not explicitly pay attention to the issues under the mandate of the Special Rapporteur. However, the observations on the obligations of States Parties and the related recommendations could provide a good basis for the Special Rapporteur for the further development of guidance to governments in their efforts to specify and support the responsibilities of the private sector in preventing and combating sale and sexual exploitation of children.

Child participation

In the field of children's rights, child participation became a much discussed issue and according to the prevailing view it is a necessary element of the implementation of article 12 CRC. In 2009, the CRC Committee adopted General Comment No. 12 on The right of the child to be heard in which the Committee presents participation as an important element in the process of implementing the right to be heard in different settings (family, alternative care, health care, education and the workplace).¹³

¹¹ Report of Mr. Juan Miguel Petit, UN Doc. E/CN.4/2005/78, 23 December 2004, para 122.

¹² UN Doc. CRC/C/GC/16, 17 April 2013.

¹³ UN Doc. CRC/C/GC/12, 1 July 2009, see in particular para. 89-134.

In 2012, Ms. Najat Maalla N’jid submitted a report to the UN General Assembly on child participation as a key element in preventing and combating the sale and sexual exploitation of children.¹⁴ In this report she presented various examples of child participation practices. For example, in 2010 a Youth Forum on Human Trafficking and Migration was organized in Thailand; children from various countries in the Mekong region participated to this forum and among them survivors of commercial sexual exploitation. In 2009, the International Catholic Child Bureau (ICCB, Geneva) brought together a group of NGO’s which produced a manual on combating child sexual exploitation drawing on the testimonies and experiences of children and adult survivors of sexual abuse. However, most examples were not focused on the active involvement of child victims/survivors of sexual exploitation in for example the development of programmes for their recovery and social reintegration. The recommendations of the Special Rapporteur were of a rather general nature and applicable to all children, except the one recommending the establishment of a justice system that is sensitive to the specific needs of child victims and witnesses of sexual exploitation.

In conclusion: we may assume that the activities summarized above have contributed to at least awareness of the problems of children at risk or victims of sale, trafficking, child prostitution and child pornography, but also to legislative and social and other improvements in preventing and combating sale and sexual exploitation of children at the national levels. In carrying out these and other activities the Special Rapporteur cooperated as much as possible with other relevant Special Rapporteurs and UN agencies as well as with NGO’s. In 2001, the Special Rapporteur noted that cooperation mainly occurred on an *ad hoc* basis and that substantial overlap exists between the mandates of various agencies and those of human rights experts and that arrangements for coordination are seriously underused and underdeveloped.¹⁵ It thus is fair to conclude that significant steps forward have been mandate by the different mandate holders. Although, we did not find a systematic and well structured cooperation in conducting actions for the prevention and elimination of sexual exploitation of children, acknowledging that it would require a lot of time and energy to achieve and maintain such cooperation. It is also fair to assume that the activities of the Special Rapporteur contributed to her/his visibility at the national, regional and international level. Another step forward, since Special Rapporteur Calcetas-Santos noted in 2001 that in some countries, and even

¹⁴ UN Doc. A/67/291, 10 August 2012.

¹⁵ Report of Ms. Ofelia Calcetas-Santos, UN Doc. E/CN.4/2001/78, para 7.

within the United Nations agencies, she experienced a complete lack of awareness of the existence of the mandate of the Special Rapporteur.¹⁶

The Special Rapporteur receives some secretarial support and a limited budget via the Office of the High Commissioner on Human Rights and is in fact a ‘general without an army’. In light of this reality, the achievements of the Special Rapporteur are impressive. However, she is facing many challenges in the years to come, also in light of rather recent global developments. A summary of the most important challenges will be provided in the next paragraph.

4 Remaining challenges

The following challenges are not exhaustive and not presented in any order of priority. They can be found, implicitly or explicitly, in the reports of the Special Rapporteurs. In particular, the December 2013 report of Special Rapporteur Najat Maalla M’jid¹⁷ provides good insight in today’s most significant challenges.

Challenges related to the core issues

If we look at the different core issues falling within the mandate of the Special Rapporteur, there still are significant challenges related to all issues. Regarding the *sale and trafficking of children*, there are serious concerns regarding the rise of child trafficking (i.e. the rise in proportion of the total amount of human trafficking), including forms of sexual exploitation and sale of children. Special Rapporteur Najat Maalla M’jid expresses her concerns about the ‘hidden phenomenon’ of illegal adoption, the expansion of transfer of organs, which also affects children, and child marriages, as an issue of ongoing concern despite the legal reforms that have taken place in many countries.¹⁸

As far as *child prostitution* is concerned, Special Rapporteur Najat Maalla M’jid observes that the root causes of this issue have become worse and more complex. There are not only concerns about the effects of the economic crisis as well as of violence, changing social norms and level of social acceptance of violence (and related issues such as ‘early sexualization’, the dissemination of sexualized images, among others, via internet), but there

¹⁶ Ibid., para. 8.

¹⁷ UN Doc. A/HRC/25/48, 23 December 2013.

¹⁸ Ibid., para. 23-25.

remains a strong link between child sex tourism and child prostitution, as a widespread phenomenon existing in all parts of the world and across societies and different socioeconomic levels.¹⁹

Regarding *sexual exploitation of children*, there remain two major issues of concern. First, the sexual exploitation of children through online media and internet. Different reports indicate that the internet is in many ways misused to sexually exploit many children across the world with significant negative impact on short- and long-term interests. Second, the growth of international tourism indicates that sexual exploitation in travel and tourism remains a significant challenge.²⁰

Special attention should be given to new challenges emerging from the fact that many children are on the move in the Middle East and North African region. They move with their families or are unaccompanied. Particularly the last group is very vulnerable and run the risk of becoming the victim of sale, illegal adoption and sexual exploitation. These children may live in refugee camps or are trying to enter countries in Europe. The challenge for the Special Rapporteur is how to address the risks these children are facing. The international community and the local authorities have to be made aware of risks of sexual exploitation of these children and provided with the recommendations for effective actions with a view to prevent or at least reduce these risks. Cooperation and coordination of these efforts with other international NGO's and UN agencies is crucial. The Special Rapporteur could play a leading role here.

Another very vulnerable group are the unaccompanied migrant children. They move inside their country or cross borders often for economic reasons.

Monitoring of implementation of OPSC

Reporting on the implementation of the OPSC becomes for an increasing number of countries part of the regular report on the implementation of the CRC. Recent Concluding Observations of the CRC Committee show that the attention for the implementation of the OPSC gets limited and rather general. There is reason for concern that the recommendations regarding the implementation of the OPSC are going to lack the necessary specificity. In order to prevent that the monitoring of the implementation of the OPSC is losing its impact, the

¹⁹ Ibid., para. 15-16 and para. 47-49.

²⁰ Ibid., para. 17-20.

Special Rapporteur may engage in a discussion with the CRC Committee on this matter, e.g. on the question what the role of the Special Rapporteur should/could be in the monitoring process as part of the overall monitoring of the CRC.

Lack of data

We have to keep in mind that the real scope of the problems addressed above remains difficult to assess. Special Rapporteur Maalla M'jid rightfully points at the various factors that contribute to the lack of insight in the issues, including inadequate and unclear (criminal) legislation, lack of reliable data and the lack of transnational information sharing, as well as lack of reporting, hidden nature of the (criminal) activities leading to abuse and exploitation of children, social tolerance and lack of awareness, resulting in underreporting.²¹ It remains key for governments to invest in adequate data collection and to foster transnational information sharing in order to better understand the different issues, not only in terms of their scope but also in terms of evidence based strategies towards combatting the sale of children, child prostitution and child pornography.

Risk factors and other aspects relevant to address

If we look at risk factors and other aspects that contribute to the existence of the challenges mentioned above, one could distinguish between factors that relate to the environments in which children grow up and/or environment that ought to offer protection to children on the one hand, and factors to pose new risks and challenges.²² It goes beyond the scope of this report to elaborate extensively on all these factors. In general, it can be concluded that there are serious concerns regarding the strength of families, communities and other social structures in which children grow up and develop due to emerging and expanding issues such as economic hardship and austerity, migration, conflicts and (sexual) violence and even climate change and natural disasters. Moreover, one could observe an increasing number of risk factors related to the ongoing globalization, which, among others, results in an increasing global demand of sexual exploitation of children, global abuse of children via internet (demand and offer) and transnational criminal networks benefiting from (financial and logistical) possibilities globalization has to offer.

²¹ Ibid., para. 11.

²² See *ibid.*, para. 29ff.

5 Some concluding remarks

This assessment confirms that the mandate of the Special Rapporteur covers a wide scope of complex issues and requires many various actions. It is also clear that the very limited resources of the Special Rapporteur make it impossible to undertake all the actions that are required not only to create and maintain a high level of awareness of the many and serious violations of the rights of children who become victim of sale and sexual exploitation, but also to present recommendations for specific actions necessary at the international, regional and national level. Therefore, it is necessary that the Special Rapporteur develops a set of priorities and/or time bound targets for her agenda for the next three to five years. One of the key challenges is to find States Parties to the OPSC willing to provide the necessary human and financial resources for the work of the Special Rapporteur.

Next year ECPAT will undertake all kind of activities to commemorate the fact that 20 years ago the first World Congress against Commercial Sexual Exploitation of Children was held in Stockholm resulting in the Stockholm Declaration and Agenda for Action. It is an opportunity for the Special Rapporteur to engage in these activities and to present her plans (priorities and/or time bound targets) and mobilize the necessary support for these plans. In that regard the Special Rapporteur could further explore the possibilities of involving the academic world as volunteers for conducting certain studies on her behalf.