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Equitable Tourism Options (EQUATIONS) is a research, advocacy, campaigning organisation charged with the vision of democratizing tourism in India. We are alarmed at the growing links between tourism and the abuse of children-in the forms of child labour, sexual exploitation and trafficking. We actively work with local communities, concerned groups, government, the tourism industry and other players to devise strategies so as to ensure that tourism is not based on the exploitation of children.

Equitable Tourism Options (EQUATIONS) is an affiliate group in India of ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes), a global network of 82 member organization based in 75 countries around the world aiming at preventing and combating all forms of commercial sexual exploitation of children

Executive summary

This contribution aims to provide a review of India's status on implementing its international commitments and obligations concerning the issue of commercial sexual exploitation of children since the last Universal Periodic Review in 2008. In November 2008, the Government of India participated in the Third World Congress against Sexual Exploitation of Children and Adolescents during which it committed to undertake more initiatives to protect children from commercial sexual exploitation. Since the World Congress, the Government of India has made progress to implement more comprehensive legal and policy framework regarding the commercial sexual exploitation of children. However, India still has not yet ratified the ILO Convention on the Worst Forms of Child Labor 1999 (no. 182) nor the ILO Minimum Convention (No.138), and the domestic legal framework needs to be brought in line with international standards to better provide legal protection for children throughout the country, as current laws fail to provide

adequate definitions of child prostitution, child pornography and child trafficking and do not appropriately criminalise activities committed by offenders in relation to those crimes. With regard to the policy framework, the government has developed an *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women 2008*. However, its implementation has yet not reached its objectives due to a lack of initiatives in terms of awareness raising and education on the issue of human trafficking. Regarding the implementation of the legal and policy framework on the ground, it has to be highlighted that adequate assistance and support services for child victims of commercial sexual exploitation are not systematically available for child victims at national level. The government should urgently expand the number of shelters available and equip all of them with adequate resources, including trained staff, in order to ensure a greater availability of such services and the consistency of quality standard care nationwide. In addition, the existing nationwide toll-free 24/7 emergency helpline for vulnerable children should be adequately equipped and staffed to meet the needs of child victims of trafficking and commercial sexual exploitation. Furthermore, special police units should be established to identify child victims and provide them with adequate assistance and support.

The following findings are drawn from relevant literature, including the ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children – India, 2011*.

I. Current normative and institutional framework for the promotion and protection of human rights

1. Legal framework

1.1. International legal standards

Since the last Universal Periodic Review, India has ratified in May 2011 the United Nations Convention against Transnational Organized Crime.

However, India has not yet ratified the ILO Convention on the Worst Forms of Child Labour 1999 (No. 182), and the Minimum Age Convention (No.138) which are core international legal standards aiming at combating commercial sexual exploitation of children.

Key recommendation: The Indian government should urgently ratify the ILO Convention on the Worst Forms of Child Labor 1999 (No. 182) and The Minimum Age Convention (No.138).

1.2 Domestic legal framework

a. Laws addressing child prostitution

In India, the Federal laws that can be used to address child prostitution related issues (the Immoral Traffic Prevention Act 1956 and the Indian Penal Code 1860), fail to provide a definition of child prostitution, which constitutes a major legal loophole.

The Immoral Traffic Prevention Act's Section 5 defines prostitution as "the sexual exploitation or abuse of persons for commercial purposes", with no specific definition of the term "sexual exploitation". Similarly, the Penal Code does not provide for a definition of child prostitution, even though selling or buying minors for the purpose of prostitution is prohibited. Therefore, without a clear definition of child prostitution, the legal protection of children against this crime remains very weak.

Key recommendation: The provisions on prostitution should also be amended to ensure that they contain a clear definition of child prostitution and criminalize all acts of obtaining, procuring or providing a child for prostitution, as required under the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC). Both the prostitution of girls and the prostitution of boys should be addressed in the amended provisions.

b. Laws addressing child pornography

Even though the *Information Technology (Amendment) Act 2008* came into force and prohibits and punishes the offender from publishing or transmitting material depicting children in a sexually explicit manner online or in

electronic content. This amendment takes into consideration the requirements of child protection standards set forth in the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography with regard to the activities related to child pornography that must be criminalised. However, this law refers to “obscene or indecent representations of children”, which weakens the scope of this law as it fails to specifically define and prohibit child pornography.¹

Furthermore, domestic laws do not impose any reporting obligations upon Internet service providers, mobile phone companies or search engines. Neither are reporting obligations imposed on financial companies on transactions related to child pornography.

Key recommendation: The legislation addressing child pornography should be strengthened by containing a clear and specific definition of child pornography which would include simulated representations of children or persons that appear to be children. The law should also criminalise the following activities in relation to child pornography: producing, distributing, disseminating, importing, exporting, offering, selling or possessing (Article 2 of the Optional protocol on the sale of children, child prostitution and child pornography). The domestic legal framework should also prohibit the following activities: access and viewing child pornography, soliciting children online for sexual purposes (grooming) and should impose reporting obligations upon Internet service providers, mobile phone companies, search engines and financial companies as requested by the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*², an outcome document of the Third World Congress against Sexual Exploitation of Children and Adolescents, held in Brazil in November 2008.

c. Laws addressing child trafficking

The existing legislation (the Immoral Traffic (Prevention) Act 1986 and the Indian Penal Code 1860) addressing the issue of trafficking in human beings does not provide a comprehensive legal framework protecting children from trafficking, as they do not provide for a definition of child trafficking and they do not prohibit activities committed by child trafficking offenders in compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation)³. The current provisions of the penal Code used to address trafficking cases are Section 372 and 373 which cover the selling and buying of children for the purpose of prostitution and Section 366 B which prohibits the importation of girls under the age of twenty-one for illicit intercourse.

Furthermore it has to be highlighted that the domestic legal framework addressing trafficking in human beings does not contain provisions in relation to the assistance that should be provided to child victims in order to support their recovery and reintegration.

Such legislation contains many loopholes that should be urgently addressed through an effective harmonization process with of the penal Code with the provisions of the Trafficking Protocol.

Key recommendation: Laws addressing trafficking in human beings should be urgently amended so that they contain a comprehensive definition of trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and to include the specific offence of trafficking in children within the Indian Penal Code (IPC). Moreover, the legislation should criminalize trafficking in children for any purpose and not only for the purpose of prostitution. In addition, the law should contain measures in relation to the assistance and support services that should be systematically provided to child victims aiming at enabling their recovery and reintegration.

d. Laws addressing child sex tourism related offences and extraterritorial legislation

In line with Article 4 of the Optional Protocol on the sale of children, child prostitution and child pornography, the Indian criminal legislation establishes national jurisdiction over crimes related to the commercial sexual exploitation of children.

Indian citizens who sexually exploit children in a foreign country and who escape prosecution in the country where the alleged acts were committed can be prosecuted under Indian laws for such crimes as Section 188 of the *Code of Criminal Procedures*, which stipulates that those offenses should be treated as if they been “committed at any place within India at which he may be found”. However, Section 188 stipulates that Indian citizens can be prosecuted only

when the facts alleged are considered as an offence in the country where they were committed (legal principle of double criminality). Such legal requirement hampers the effective prosecution of travelling child sex offenders from India and encourages travelling sexual offenders to go to countries where they can exploit children without facing legal proceedings once their return in their home country.

Key recommendation: The requirement of double criminality in relation to sexual exploitation of children in travel and tourism related crimes should be removed from Indian extraterritorial legislation addressing sexual crimes committed against children in order to strengthen the capacities of law enforcement officials to prosecute Indian travelling child sex offenders who have escaped prosecution in foreign countries for sexual crimes against children. Immediate steps should be taken to initiate appropriate action to ensure that no travelling child sex offenders (foreign and domestic) escapes prosecution.

2. Policy framework

The ongoing *National Plan of Action for Children 2005* prepared by the Ministry of Women and Child Development focuses on child survival, child development, child protection and child participation and provides for measures to combat the criminal use of information technologies. It also includes strategies to fight child sexual exploitation, trafficking and pornography and is implemented through state-level plans of action for children. The 2005 Plan is also the first major piece of policy that involved child consultations. However, most of the indicators listed in the *National Plan of Action 2005* have not been assigned particular methods and concrete time lines for implementation. Moreover, there is a need for more efficient inter-sectoral and multi-level (district – state – national) coordination mechanism to provide effective implementation of this National Plan of Action.⁴

In 2008, the Government launched an *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women*. It addresses all forms of human trafficking and contains community-based initiatives to prevent trafficking. However, the campaigns to prevent trafficking in human beings contained in the Plan of Action have not been conducted, and the dissemination of information on the issue of child trafficking in schools has not been effective.⁵

Key recommendation: Indicators for the follow up and monitoring of the *National Plan of Action for Children* should be urgently identified, and the National Commission for Protection of Child Rights should strengthen its coordinating capacities in order to implement the National Plan of Action with more efficiency. In addition, the Central Advisory Committee on Child Prostitution (CACCP), which is in charge of the implementation of the *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women*, should make progress with regard to the development of awareness-raising and education initiatives in relation to trafficking in human beings and child trafficking.

II. Promotion and protection of human rights on the ground: implementation of international human rights

3. Key areas of concern with regards to the implementation of children's rights laws and policies addressing commercial sexual exploitation on the ground

3.1 Lack of reporting mechanisms for child victims

In 1996 the government of India established the CHILDLINE 1098, a nationwide toll-free 24/7 emergency helpline dedicated to vulnerable children. This helpline is operated by non-governmental organisations, in collaboration with central and state police forces. Even though this reporting mechanism provides assistance, support and orientation to many children in need, it appears that it is not adequately equipped and staffed to respond to the specific needs of child victims of trafficking.

Key recommendation: The Indian government should strengthen the capacities of the nationwide toll-free 24/7 emergency helpline (CHILDLINE 1098), with appropriate funding and trained staff to ensure that this reporting mechanism is accessible by all child victims and responds adequately to their specific needs.

3.2 Lack of special police units to combat child trafficking and commercial sexual exploitation of children related crimes

The Juvenile Justice (Care and Protection of Children) Act 2000 requires that a Special Juvenile Police Units be established in every district and city to coordinate and improve the police treatment of juveniles and children and to have at least one officer with appropriate training designated as the “juvenile or the child welfare officer”.

The *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women* aims to establish a specialized police rescue team for victims of trafficking. In 2009, the Government of India established 38 Anti-Human Trafficking Units as task forces within local law enforcement agencies. However, in reality, these units have not yet been established everywhere and are not fully functional due to the fact that they are not adequately equipped and staffed with specifically trained agents to identify child victims of trafficking or children at risk of being trafficked and to respond to the specific needs of children⁶. Therefore the identification and protection of child victims of forms of commercial sexual exploitation remains highly challenging.⁷

In addition, though Indian police force in Andhra Pradesh, Kerala, Karnataka and Mumbai have been equipped with cyber cells to combat cybercrime including child pornography on the Internet, those cells are not yet effective, due to a lack of staff-specific training.⁸

Key recommendation: Special police units adequately staffed and equipped to identify and assist children victims/at risk of trafficking and/or all forms of commercial sexual exploitation or children at risk of being trafficked should be established. Police cyber cells should be expanded in all regions of India and should also be adequately equipped and staffed with trained officers.

3.3 Lack of/limited available assistance and support services for child victims

Even though the Indian government has made some efforts with regard to the development of support services for child victims of trafficking, specific support services for children, especially boys, victims of prostitution and/or child pornography have suffered from a lack of sufficient financial and technical support and a lack of consistency of care standards from one state to another.

The Ministry of Women and Child Development has established shelters to provide assistance for trafficking victims in all major cities. However, there is a lack of shelters to accommodate all child victims of trafficking and the care standards provided in these shelters do not always meet the specific needs of child victims of trafficking. Even though it appears that medical services are available in almost all shelters where children are referred, it remains unclear whether such medical assistance is adequate and systematically provided. In addition, it has been reported that child victims referred to shelter homes would lack access to comprehensive psychological counselling¹.

Key recommendation: More government shelters for child victims of trafficking and commercial sexual exploitation should be established and those shelters, including existing ones, should be adequately equipped and staffed to provide systematic assistance and support services, especially psychological counselling , specifically tailored to meet the needs of child victims.

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End Notes

¹ECPAT International, Global Monitoring report on the status of action against commercial sexual exploitation of children - India, 2011.

²The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents:

http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf

³Article 3 (c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

⁴ECPAT International, Global Monitoring status of action against commercial sexual exploitation of children - India, 2011.

⁵ECPAT International, The Body Shop Campaign, Country Progress Card – India, 2010,

http://www.ecpat.net/TBS/PDF/2010_India_Progress_Card.pdf

⁶ECPAT International, The Body Shop Campaign, Country Progress Card – India, 2010,

http://www.ecpat.net/TBS/PDF/2010_India_Progress_Card.pdf

⁷ECPAT International, Global Monitoring status of action against commercial sexual exploitation of children - India, 2011.

⁸ECPAT International, The Body Shop Campaign, Country Progress Card – India, 2010,

http://www.ecpat.net/TBS/PDF/2010_India_Progress_Card.pdf