Reflections on a Six-Year Tenure as UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography

Najat Maalla M’jid

As my term as UN Special Rapporteur on the sale of children, child prostitution, and child pornography comes to end, it is a good occasion to reflect on my six-year tenure, share lessons learned, and warn of challenges ahead in the prevention and elimination of the commercial sexual exploitation of children.

THE SALE AND SEXUAL EXPLOITATION OF CHILDREN: A SCOURGE ON THE RISE

The sale and sexual exploitation of children can take various forms, which are often combined: the sale of children for the purposes of sexual exploitation, transfer of organs, forced labor, or adoption; child prostitution and sexual exploitation of children in travel and tourism, sexual

Najat Maalla M’jid was appointed Special Rapporteur on the sale of children, child prostitution, and child pornography in May 2008. She is a pediatrician and member of the Commission on the Rights of the Child of the Moroccan National Consultative Council on Human Rights and the founder of the non-governmental organization BAYTI, the first program to address the situation of children living on the street in Morocco. To learn more about the mandate, log on to: http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx.
slavery, sexual exploitation of child domestic workers; child pornography, and sexual exploitation of children online.

Whatever form it takes, the sexual exploitation of children is a growing worldwide phenomenon that operates across borders. The increase in the sale and trafficking of children for sexual purposes is due, among others considerations, to a constant shift in destinations for sex-tourism to countries with weak legislation and controls. There is also a growing availability of child pornography, including hard images of very young children, and grooming/sexting (sexual solicitations) through social networks, internet, mobile phones, and other evolving technologies.

These crimes gravely compromise children’s dignity, health, and development, as well as the full enjoyment of their rights. The destructive effects of these crimes have long-lasting impacts on the victims. Various studies have highlighted short-, mid-, and long-term consequences for the development of children, such as increased likelihood of contracting sexually transmitted diseases, including HIV/AIDS; early pregnancy; disorders related to sexuality; behavioral disorders; anxiety; suicide attempts; drug and alcohol addiction; and last but not least, stigmatization and marginalization. Yet all the physical, mental, and social consequences on children remain insufficiently understood or taken into account, for instance, for recovery and rehabilitation purposes.

The root causes and risk factors of the growing phenomenon of commercial sexual exploitation of children are complex, multidimensional, and constantly evolving. On one hand, there is an increased vulnerability of children to sexual exploitation, linked to poverty, humanitarian crisis (i.e. conflicts, natural disasters, and displacement), underdevelopment, inequality, social norms, and broken or dysfunctional families. On the other hand, there is an increase in the demand for sex with children, which is coupled with the transnational dimension of the phenomenon. The so-called push factors are various and interlinked at the local, national, regional, and international levels.

For instance, the upsurge in child sexual exploitation online and in tourism is a response to increasing global interconnectivity, an expanding travel and tourism industry, a higher demand for sex with children (under-
pinned by an environment of social tolerance, complicity, and impunity), a greater transnational criminality (because child sexual exploitation is a very lucrative industry), and the lack of a global legal framework (which facilitates the conduct of the crimes). All these factors make detection of instances of sexual exploitation of children, and the prosecution of offenders, increasingly difficult.

**Child Sex Tourism in Madagascar**

For many Malagasy families, engaging with a *vazaha* (foreigner) is highly regarded as conducive to upward social mobility. Ministry of Tourism statistics show that Madagascar hosted 225,005 tourists in 2011, 15 percent more than the previous year. At the same time, sexual exploitation of children in tourism is becoming more and more difficult to control. Sexual predators try to obtain accommodation in private homes, where they can escape controls. Bars, discotheques, and karaoke venues are also favorite spots. In addition, there is a new and growing trend of massage parlors set up as a cover for child sexual exploitation.

**Illegal Adoptions in Haiti Following the Earthquake**

In Haiti, more than 5,000 children were separated or unaccompanied following the earthquake in 2010. At border crossings and the international airport, more than 2,500 irregular voyages of children were recorded, nearly 460 of which proved to be cases of trafficking, while close to fifty were found to be instances of forced labor. In the aftermath of the earthquake, many receiving countries bowed to internal pressure and “expedited” the displacement of children (between the ages of three months and eighteen years) for adoption in their own countries, based on ad hoc criteria. It was also noted that the rapid removal of Haitian children without a court order was unwarranted; some of the children were in the process of being adopted before the earthquake hit. The number of children who are orphaned in a natural disaster is usually overestimated, and the ability of the community to care for its children is often underestimated.

**Child Pornography Online**

Data from the Internet Watch Foundation suggest that the number of domains hosting child sexual abuse content halved between 2006 and 2012 and that the 9,550 web pages reported were hosted
on 1,561 domains from thirty-eight countries in 2012. However, this does not mean that there has been a decrease in the circulation of child sexual abuse images. In 2011, the International Association of Internet Hotlines received 29,908 reports of child abuse material, 71 percent involving prepubescent children and 6 percent involving very young children. By 2012, that number had jumped to 37,404 reports, 76 percent involving prepubescent children and 9 percent involving very young children. By the beginning of 2013, the International Child Sexual Exploitation image database managed by The International Criminal Police Organization (INTERPOL) had enabled identification of 3,000 victims and 1,500 offenders from more than forty countries, as well as data related to numerous unidentified victims whose cases are yet to be investigated.

THE MANDATE

UN Special Rapporteurs are independent human rights experts who report and advise on human rights from a thematic or country-specific perspective. The work is mainly articulated around country assessment visits, communications on individual violations sent to states, thematic studies, and awareness-raising activities.

Ten years after its creation in 1990, the mandate on the sale and sexual exploitation of children was reinforced in May 2000 with the adoption of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (First Optional Protocol). In addition, at the time of my appointment, the UN Human Rights Council expanded the scope of the mandate to analyze the root causes of the sale and sexual exploitation of children, identify new patterns, promote best practices on measures to combat it and comprehensive strategies to prevent it, and make recommendations on the protection of child victims, including their rehabilitation and recovery.

Thus, one of my main objectives during my tenure as UN Special Rapporteur on the sale and sexual exploitation of children has been to increase knowledge, understanding, and awareness of the phenomenon, including its true scope, forms, underlying factors, new trends, and impact on children.
Sale of children is defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration” (Article 2 of the Optional Protocol on the sale of children). Hence the sale of children includes an element of payment (in cash or in kind) and the transfer of a child from one person to another.

However, sale of children is not limited to sale for the purposes of sexual exploitation, but it also covers other purposes, such as organ transfer, child labor, and adoption (Article 3 of the Optional Protocol on the sale of children).

Child sexual exploitation includes child prostitution, child pornography, and child sex tourism. Early and/or forced child marriage is also considered as a form of child sexual exploitation. Nonetheless, all these forms are often interlinked with other crimes, such as trafficking, forced labor, and slavery.

My research has tackled issues such as child pornography on the Internet, child sex-tourism, child-sensitive counselling, complaint and reporting mechanisms, child participation as a key element in preventing and combating the sale and sexual exploitation of children, the establishment of rights-based and comprehensive national child protection systems, the effective and sustainable prevention of the sale and sexual exploitation of children, and the protection of children from sale and sexual exploitation following humanitarian crisis due to natural disasters and climate-related catastrophes. Other topics covered in my reporting to the UN human rights fora include an assessment of the implementation of the First Optional Protocol after ten years of its adoption, and an overview of the main issues relating to my mandate upon completion of my six-year tenure as Special Rapporteur.

As part of the mandate, I have conducted visits to thirteen countries. Through these visits, I have tried to create positive dynamics by gathering all concerned stakeholders around the same table and encouraging a common reflection to recognize achievements and good practices, identify challenges, provide technical expertise and assistance, and advocate for children’s rights. During these visits, I have met with children and have taken into account their opinions in my reporting to the UN, with the aim of ensuring that their voices are heard and considered. I followed the country visits with close contact with key actors, such as governments, UN
agencies, NGOs, and national human rights institutions, to support the implementation of the recommendations and make concrete changes in children’s lives.

**Recurring Demands of Children Gathered During my Country Visits:**

- Access to child-sensitive justice, which ensures the right to be listened to;
- Improved living conditions;
- Access to education (a predominant demand particularly among girls);
- Safety (a specific demand of child victims of sexual exploitation);
- End violence against children; and
- Not to be detained (a specific demand of child victims of sexual exploitation aged between sixteen and eighteen).

**WHAT HAS BEEN ACHIEVED SO FAR?**

Individual states and the international community have unanimously condemned all forms of sale and sexual exploitation of children, considering them to be crimes that gravely compromise children’s health and development, and the full enjoyment of their rights. Consequently, states and the international community have worked to combat this phenomenon through the adoption of international and regional instruments, including, for instance, the Convention on the Rights of the Child and its Optional Protocols; the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; International Labor Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the African Charter on the Rights and Welfare of the Child; and the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.

In addition, three key World Congresses have been organized against the sexual exploitation of children. In the last one, held in Rio de Janeiro in November 2008, the participating countries undertook global commitments to prevent, prohibit, and stop the sexual exploitation of children and adolescents, and to provide the necessary support to child victims. The number of initiatives from the private and public sector at the local,
regional, and international levels to prevent and combat the sexual exploitation of children has increased considerably. These include the adoption of legislative reforms and action plans, the organization of awareness-raising activities and campaigns, the establishment of child participation, the provision of assistance and protection services, the involvement of the private sector through corporate social responsibility, and the dismantling of transnational criminal networks.

Thanks to these efforts, significant progress has been made. However, does this mean that all child victims are identified and receive appropriate care, assistance and compensation until their full recovery, or that their rights are fully respected? Does this mean that all offenders are identified and duly prosecuted? Does this mean that children at risk are fully informed and protected against all forms of sexual exploitation? Unfortunately, the answer is no. There are still gaps and disparities between and within countries, and key challenges remain.

THE CHALLENGES AHEAD

The challenges in the fight to eliminate and prevent the sale and sexual exploitation of children are numerous. However, for the purposes of this article, I will focus on five challenges, which, if addressed properly, can bring about a major breakthrough in combatting the sexual exploitation of children:

- **Lack of knowledge on the true scope of the phenomenon:** the data collected is scarce and often unreliable due to various factors, such as the absence of a standardized system of data collection and treatment, insufficient transnational information sharing, and under-reporting. The latter is linked to taboos, fear of reprisals, stigmatization, out-of-court settlement, lack of knowledge of laws by victims, lack of child-sensitive complaint and reporting mechanisms, and a lack of trust in the justice system due to corruption and impunity. One of the major challenges in ensuring the identification of victims is children’s difficulty in accessing the police and justice system, due to inadequate material and human resources and the lack of effective child-sensitive counselling mechanisms to ensure the safety, privacy, protection, and non-re-victimization of child victims and witnesses.

- **Persisting gaps in legal frameworks:** we still have not reached universal ratification of the Optional Protocols to the Convention on the Rights of the Child.\footnote{To date, 193 states have ratified or acceded}
to the Convention on the Rights of the Child. Somalia, South Sudan, and the United States are among the few countries that have not ratified the Convention. The First Optional Protocol has 166 state parties, and the Optional Protocol on the involvement of children in armed conflict has 154 state parties. The Third Optional Protocol, which allows children to bring complaints to the UN Committee on the Rights of the Child on the violation of their rights, will enter into force in April 2014. More importantly, many national laws are not in compliance with the ratified international instruments.

For instance, in various countries child victims of sexual exploitation are not given the legal status of victims and are criminalized or punished instead. Likewise, the extraterritorial jurisdiction with respect to all crimes involving the sexual exploitation of children is not established in many countries. Free medical and legal assistance, protection and compensation for child victims are not sufficiently provided for. Lastly, the mandatory reporting for professionals and institutions working with children is not systematized.

- **Insufficient corporate social responsibility:** corporate social responsibility is still limited to some businesses and countries. A large number of businesses have adopted codes of conduct or have supported awareness programs. Some states have adopted legislation on the accountability of Internet access providers, telecommunications companies and banks. However, it is essential to encourage and expand initiatives that incorporate child protection into the social responsibility policies of the private sector, including travel, tourism, and advertising. In this regard, two important initiatives are worth mentioning: the Virtual Global Task Force, an alliance of twelve law enforcement agencies that seek to build partnerships with the private sector and NGOs to help protect children from online child abuse, and the International Association of Internet Hotlines (INHOPE), which includes a network of forty-four hotlines in thirty-eight countries, where the public can report child sexual abuse.
Inadequate transnational cooperation: much remains to be done regarding transnational cooperation, including reliable transnational information systems, harmonization of practices, exchange of expertise, and support to developing countries. Numerous transnational initiatives have been undertaken, including cooperation between the police force and the judiciary. However, these are still insufficient due to the transnational dimension of the phenomena. It is imperative to enhance transnational cooperation to identify victims, prosecute offenders, and dismantle criminal networks involved in the sexual exploitation of children.

Addressing properly the demand factor: demand for sex with children is persistent and growing, facilitated by an environment of social tolerance, complicity, and impunity. Contrary to popular misconceptions, pedophiles are not the only individuals who demand sex with children. Other child exploiters belonging to all types of economic, social, and professional backgrounds are also part of this demand. The increasing expansion of social networks allows for easier contact with children in all parts of the world, and anonymity is easily preserved. Websites and criminal networks are also constantly evolving, making detection and prosecution more difficult.

THE WAY FORWARD

To effectively prevent and combat the sale and sexual exploitation of children, we need to scale up and strengthen good practices, overcome remaining challenges, and build comprehensive and sustainable child rights-centered protection systems, easily accessible to all children, based on three pillars: (i) early detection, support, and recovery, (ii) prosecution of offenders, and (iii) prevention. Comprehensive and concerted efforts will promote a child protective environment, and at the same time reduce risk factors and the vulnerability of children.

In addition, due to the transnational dimension of these crimes, there is an urgent need to build a comprehensive and child rights-centered transnational cooperation, by: (i) establishing a comprehensive and global legal framework to prevent, prohibit, and protect children from all forms of child sexual exploitation; (ii) sharing and updating information related to child victims and offenders; (iii) harmonizing practices and procedures; (iv) sharing expertise and scaling up good practices; and (v) providing
sustainable support to developing countries. The sale and sexual exploitation of children is a global phenomenon. To effectively prevent and combat this scourge, there is a need to establish global responses, through a global legal framework and sustainable transnational cooperation.

And more importantly, children and youth must be actively involved in the design and monitoring of child protection strategies to ensure that their views and needs are taken into account. Children can and should take part in finding solutions on a phenomenon which directly affects their rights.

In conclusion, the mandate of the UN Special Rapporteur on the sale of children, child prostitution, and child pornography offers a unique platform to raise awareness, knowledge, and understanding of the phenomenon; monitor respect for children’s rights; address allegations of violations; and, advocate for the implementation of specific measures and recommendations. These can lead to states’ ratification of the Convention on the Rights of the Child and its First Optional Protocol, as well as the reform of legislation, increased compliance with international standards, and strengthening of institutions and services. Yet, the road to a world free from the sale and sexual exploitation of children remains long and challenging. Meanwhile, with each day that passes, more children become victims of these crimes and have their childhood stolen.

ENDNOTES
1 Benin, El Salvador, Estonia, France, Guatemala, Honduras, Kyrgyzstan, Latvia, Madagascar, Mauritius, Senegal, United Arab Emirates and the United States.
2 The previous World Congresses on Sexual Exploitation of Children were held in 2001 (in Yokohama) and 1996 (in Stockholm).
3 To check the status of ratification, reservations and declarations of the aforementioned instruments, see: https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.