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مجلس حقوق الإنسان  
الدورة الثانية عشرة  
البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما فيها الحق في التنمية

تقرير المقرر الخاصة المعنية بمسألة بيع الأطفال وبغاء الأطفال واستغلال الأطفال في المواد الإباحية، نجات إجميد المعلا\*

إضافة

البعثة إلى إستونيا\*\*

\* تأخر تقديم هذه الوثيقة.

\*\* يُعمَّم موجز التقرير بجميع اللغات الرسمية، أما التقرير نفسه المرفق بالموجز فيُعمَّم باللغة التي قُدِّم

بها فقط.

## موجز

قامت المقررة الخاصة المعنية بمسألة بيع الأطفال وبغاء الأطفال واستغلال الأطفال في المواد الإباحية بزيارة إستونيا في الفترة من ٢٠ إلى ٢٤ تشرين الأول/أكتوبر ٢٠٠٨. ويتناول هذا التقرير ما يحدث من حالات تتعلق ببيع الأطفال وبغاء الأطفال واستغلال الأطفال في المواد الإباحية، ويُسلط الضوء على الإطار القانوني الدولي والوطني المتصل بهذه القضايا وكذلك، بصورة أعم، بنظام حماية الأطفال في إستونيا، بما في ذلك مدى توافر تدابير محدّدة تهدف إلى حماية الأطفال ضحايا البيع أو الاستغلال الجنسي، مثل تدابير إعادة التأهيل والإدماج الاجتماعي.

وتلاحظ المقررة الخاصة وجود التزام سياسي قوي في إستونيا بإيلاء الأولوية لحقوق الطفل. وفي حين أن عدد الحالات المبلّغ عنها فيما يتصل ببغاء الأطفال واستغلال الأطفال في المواد الإباحية منخفض، فإن المقررة الخاصة ترى أنه ينبغي توخّي اليقظة وبذل جهود توجّه نحو الوقاية. وتشمل الإجراءات الملموسة التي يتعين تنفيذها إجراء تعديلات تشريعية، وتوفير تدريب فعال للشرطة، ولا سيما فيما يتعلق بكشف حالات الاستغلال الجنسي للأطفال واستغلالهم في المواد الإباحية على شبكة الإنترنت، وضمان اعتماد برامج وسياسات تكون مستدامة ويسهل الوصول إليها في شتى أنحاء البلد، وتعزيز قطاع المنظمات غير الحكومية ومنظمات المجتمع المدني.

وتذكّر المقررة الخاصة بأهمية الأخذ بنهج شامل لإزاء الحقوق الأساسية للطفل، مما يُمهّد الطريق نحو تنفيذ سياسات اجتماعية مواتية للأطفال والشباب والأسرة.

## Annex

**REPORT OF THE SPECIAL RAPPOREUR ON THE SALE OF CHILDREN, CHILD  
PROSTITUTION AND CHILD PORNOGRAPHY, NAJAT M'JID MAALLA,  
ON HER MISSION TO ESTONIA (20 - 24 OCTOBER 2008)**

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## I. INTRODUCTION

1. The Special Rapporteur on the sale of children, child prostitution and child pornography, Najat M'jid Maalla, undertook a visit to Estonia from 20 to 24 October 2008 at the invitation of the Government of Estonia. The Special Rapporteur had meetings in Tallinn, Narva and Jõhvi.

2. The Special Rapporteur warmly thanks the Government of Estonia for its hospitality and collaboration in facilitating meetings with officials from various branches of the Government. She particularly welcomes the openness and frankness with which the authorities discussed issues concerning the sale of children, child prostitution, child pornography and the child protection system more generally. She also thanks the Government for its cooperation prior to, during and following the visit.

3. In Tallinn, the Special Rapporteur met with the First Lady of Estonia, as well as representatives of the Ministries of Foreign Affairs, of the Interior, of Justice, of Education and Research, Population and Ethnic Affairs, of Social Affairs (Social Welfare Department and Gender Equality Department), as well as with the Chancellor of Justice. The Special Rapporteur also met with the Child Protection Division of the Põhja Police Prefecture. She also met with representatives from the United Nations Children's Fund and the International Organization for Migration.

4. In the three cities, the Special Rapporteur visited with various non-governmental organizations, childcare centres and crisis centres.

5. In her report to the ninth session of the Human Rights Council in September 2008 (A/HRC/9/21), the Special Rapporteur identified the following objectives of her mandate:

(a) A better understanding of the situation of the sale of children, child prostitution and child pornography and of contributory factors (socioeconomic, cultural and environmental);

(b) Implementation of a comprehensive child protection system that ensures the best interest of the child and encompasses prevention and care as well as medical, psychological, social and legal support for child victims, rehabilitation, social reintegration of children and promotion of the rights of the child;

(c) Effective and concerted local, national, regional and international coordination and cooperation.

6. With this in mind, the objective of the visit was to explore the incidence of the sale of children, child prostitution and child pornography in Estonia, as well as to examine and assess the system of child protection more generally. More specifically, she sought information on the incidence of commercial sexual exploitation of children, of child pornography, particularly over the Internet, of the sale of children, such as illegal adoptions, and of transfer of children's organs. To this end, the Special Rapporteur met with a range of Government authorities and non-governmental organizations, which enabled her to obtain information and share her thoughts and ideas with representatives from various segments of the child protection system. At the close of the visit, the Special Rapporteur shared her preliminary thoughts with the Government.

7. Throughout the visit, the Special Rapporteur consistently sought the views of the representatives she met with and solicited their thoughts on what could be improved in the system, so that she could prepare conclusions and recommendations that were targeted and useful and that would be ultimately "owned" by the main stakeholders themselves.

8. In preparation of her mission and this report, the Special Rapporteur consulted material from United Nations sources, particularly Estonia's first report to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/EST/1); the latest concluding observations of the Committee on Estonia (CRC/C/15/Add.196); the latest (2007) concluding observations of the Committee on the Elimination of Discrimination against Women on Estonia (CEDAW/C/EST/CO/4); Estonia's response to the questionnaire on the United Nations Study on Violence against Children; as well as various reports prepared by non-governmental organizations. The Special Rapporteur also thanks the Government of Estonia for its cooperation in providing information prior to, during and following the mission at the request of the Special Rapporteur.

9. The Special Rapporteur would like to stress at the outset, echoing the frequent statements of the Committee on the Rights of the Child, the importance of adopting a holistic approach to addressing the root causes, such as poverty and underdevelopment, which contribute to the vulnerability of children to sale, prostitution and pornography, and to the development of the sex industry. This includes paying particular attention to the protection of children who are especially vulnerable to these practices, such as children living on the street, children from families in difficulty, children belonging to minorities, migrant children, children living in remote areas and those living in poverty.

## **II. GENERAL BACKGROUND/CONTEXT**

### **A. History**

10. Estonia regained its independence in 1991. In January 2008, its population was estimated at 1,340,000, 31.4 per cent of whom are ethnic minorities. About one quarter of the population is of Russian-speaking origin. Estonia is a parliamentary democracy, with a unicameral legislature (Riigikogu), and is composed of 15 counties. It joined the European Union (EU) on 1 May 2004. Since joining the EU, Estonia has been one of the countries advocating for a more liberal approach to economic policy in the Union.

11. Estonia is a member of the Council of Baltic Sea States (CBSS), within which it holds the Presidency of the Task Force on Organized Crime and is a member of the Working Group for Cooperation on Children at Risk. It is also a member of the CBSS Task Force against Trafficking in Human Beings.

12. The majority of interlocutors indicated that the global financial crisis was having an impact on governmental programmes and policies, including those relating to human rights and to the rights of the child.

### **B. International and regional framework**

13. Estonia is a party to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the Optional Protocol).

14. It has signed but not ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the International Convention for the Protection of All Persons from Enforced Disappearance.

15. Estonia ratified the Optional Protocol in 2004, ILO Convention No. 182 concerning the Prohibition and Immediate Action on the Elimination of the Worst Forms of Child Labour, ILO Convention No. 132 concerning the Minimum Age for Admission to Employment, and the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Estonia is party to the United Nations Convention on Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention (Palermo Protocol).

16. At the regional level, Estonia ratified the European Convention on Human Rights and signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. It has not signed the Council of Europe Convention on Action against Trafficking in Human Beings, but the Special Rapporteur was informed that it was planning to do so in the near future. In 2003, Estonia ratified the Council of Europe Convention on Cybercrime and its Additional Protocol in 2003.

17. Estonia adopted the Stockholm Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children in 1996 and reaffirmed its commitment at the Yokohama conference in 2001.

### **III. SITUATION ANALYSIS**

18. During the visit, the Special Rapporteur observed and was informed of a confluence of various issues that have an impact on the situation of children and their protection. She received information of high unemployment rates, increasing poverty and regional disparities, which affect the welfare and living standards of vulnerable families with children.

19. NGOs and government authorities alike noted that the issues affecting children the most are drug and alcohol abuse, increasing incidence of HIV/AIDS, and abuse and violence in the home and in schools. Almost all interlocutors were of the view that drug use among children has risen in recent years and that the types of drugs used have also changed. The incidence of HIV/AIDS as a result of sexual contact among children has also increased. Interlocutors stated that the causes underlying these issues are, on the one hand, struggling families who are unable to protect their children and, on the other hand, increasing consumerism among the youth. The Special Rapporteur was informed that in Estonia children without parental care or with insufficient parental care constitute the main risk group. As will be detailed further on in this report, the Special Rapporteur noted a significant number of children placed in alternative care institutions, and observed the need for Estonia to adopt norms and standards for follow-up of children placed in, and later released from, such institutions. In this regard, the Special Rapporteur welcomes information received from the Government about the participation of representatives in a training course organised in 2009 by the CBSS Working Group for Cooperation on Children at Risk. In this context, guidelines are being prepared concerning the levels of supervision of alternative care institutions. The Government also reported that most alternative care institutions have rearranged their work and organized children to live in small family-like groups. The Special Rapporteur encourages the Government to continue to monitor this issue.

20. The Special Rapporteur also received reports of parents leaving Estonia for other countries with the hope of better wages in jobs abroad. This often results in children under 18 being left alone, and while the Government does not have official data on this phenomenon, it would seem that while children in such cases are often left in the care of older siblings or other close relatives, many parents are not aware of the need to officially appoint a custodian or legal representative for their children.

21. The global financial crisis was also cited as having an impact on funding available for programmes and policies, including those related to child protection.

#### **A. Scope of the sale of children, child prostitution and child pornography**

22. The Special Rapporteur notes that the number of cases of sale of children, child prostitution and child pornography, as reported by Government authorities and NGOs, is low.

23. The following chart from the Register of Criminal Proceedings, Ministry of Justice provides statistics on certain offences from 2006 to 2008:

<b>Type of criminal offence</b>	<b>Section Penal Code</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Child stealing	172	0	6	3
Sale or purchase of children	173	0	0	0
Compelling minors to engage in prostitution	175	0	1	9
Aiding prostitution involving minors	176	2	4	6
Using minors in the manufacture of pornographic works	177	10	4	4
Manufacture of works involving child pornography or making child pornography available	178	29	22	52

<b>Convicted offenders</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Child stealing	2	3	2
Sale or purchase of children	0	0	0
Compelling minors to engage in prostitution	0	2	0
Aiding prostitution involving minors	1	13	0
Using minors in the manufacture of pornographic works	4	1	2
Manufacture of works involving child pornography or making child pornography available	10	4	16

24. Nevertheless, all interlocutors were of the view that the true incidence of such phenomena is difficult to record. The Special Rapporteur is troubled by reports of children (girls and boys) providing sexual services in return for some form of consideration, such as money, shoes or mobile telephones. The Child Protection Division of the Põhja Police Prefecture, which deals with cases of child abuse and child pornography, informed the Special Rapporteur of cases of boys as young as 7 or 8 who have traded sexual acts for consumer goods.

25. The Child Protection Division described such cases as sporadic events rather than regular activities, and thus they are not categorized as cases of “child prostitution”. The Special Rapporteur is therefore of the view that increased training of police officers in relevant child protection legislation and policies is required to enable them to properly identify and, as a consequence, adequately address cases of sexual exploitation of children.

26. In its report to the Committee on the Rights of the Child on the Optional Protocol, Estonia reported that child prostitution in the country has two outlets:

First, it is possible that minors see providing sexual services (temporarily) as an opportunity to earn money. The LICHR [Legal Information Centre for Human Rights] is of the opinion that ... the only solution would be educational means, including activities of school psychologists and social workers, and measures related to the social insurance system. On the other hand, the LICHR points out the provision of sexual services by minors with the help of intermediaries, which is prohibited by Estonian legislation. The LICHR recognizes the activities of the police in fighting mediation of prostitution but believes that the problem is persistent and particularly relevant among non-Estonians.<sup>1</sup>

27. A representative from a non-governmental organization was of the view that there is a need to “study the face” of prostitution in Estonia. The Special Rapporteur regrets that she did not have the opportunity to meet with the Superintendent of the Division of Offences against the Person, which deals with cases of prostitution and trafficking, as his schedule did not permit him to meet with the Special Rapporteur.

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<sup>1</sup> Initial report of the Republic of Estonia to the Committee on the Rights of the Child under the Optional Protocol, 13 May 2008. As of the time of writing, this report is awaiting consideration by the Committee on the Rights of the Child.



28. The Special Rapporteur insists that, while the scale of these issues in Estonia is not large, the risks are real and apparent and vigorous and targeted prevention mechanisms should be implemented. Children are increasingly exposed to the risk of commercial sexual exploitation due to the increase in tourism, easier access by children to new information technologies, increasing demand in the sex industry and the proliferation of more structured trafficking networks.

29. The Government reported that by 2006 there were no children in Estonia who could be categorized as street children, as children belonging to that risk group quickly came to the notice of the police or child protection services.

30. The Special Rapporteur was informed of a troubling trend in the eastern part of Estonia of cases of children not being registered at birth. The Government reported that the Ministry of Social Affairs had received information from an NGO that the parents of 10 children in Narva had not registered either their births or their names. Further to its inquiry, the Ministry discovered from the Narva Social Welfare Board that all 10 children in question were registered, had been issued identification documents, and their parents or custodians were receiving social welfare support and other support as provided by legislation. The Special Rapporteur recommends that birth registration be guaranteed for all children.

## **B. Legislation, institutional framework, policies and programmes**

### **1. Legislation**

31. The Special Rapporteur notes that the Government has undertaken a process of harmonizing its national legislation with its international obligations. A variety of laws deal with various aspects of child protection, including the Child Protection Act, the Juvenile Sanctions Act, the Family Law Act, the Social Welfare Act, the Act to Regulate Dissemination of Works containing Pornography or Promoting Violence and Cruelty, and the Victim Support Act. Reform, including adoption, of legislation dealing with the rights of the child is often undertaken by the Ministry of Social Affairs, in close cooperation with the Ministry of Justice, as is the case with reforms to the Child Protection Act. The Ministry of Social Affairs is also preparing the Law on Social Protection, which should be sent to the Government by mid-2009.

32. Article 16 of the Child Protection Act requires that a child's opinion be sought when making decisions concerning the child. Children may participate in preparing child protection programmes directly or through representatives chosen by the children themselves.

33. While significant efforts have been made to harmonize national legislation with international obligations, current legislation could still benefit from further revision in order to bring provisions into full conformity, as discussed below.

34. The Child Protection Act defines a "child" as a human being below the age of 18 years. The age of sexual consent is 14 years of age. An adult who engages in sexual intercourse with a person of less than 14 years of age shall be punished by up to five years' imprisonment.

35. The Penal Code provides that the sale or purchase of children is punishable by one to five years' imprisonment (sect. 173). Regarding the definition of "sale" or "purchase" of children, the Government reported that the acts of selling and purchasing are defined in accordance with general legal principles of Estonian law. For example, the definition of "sale of a child" is specified in the commentary to the Penal Code as an act of giving away a child to another person in exchange for a fee (such as money, item of value, service, etc.).

36. The Child Protection Act provides that the child will be protected from economic, physical and psychological exploitation (art. 14). The child shall be protected from all forms of sexual exploitation, and an adult is prohibited from inducing a child to engage in sexual activity and exploitatively using children in prostitution or for pornographic purposes (art. 33).

37. The Penal Code provides that a person who by inducement, threat or any other act influences a child in order to cause him or her to commence or continue prostitution shall be punished by a pecuniary punishment or up to five years' imprisonment (sect. 175). The court may also apply an additional property-related measure or confiscation of the proceeds of crime. The Optional Protocol provides that each State party shall make the offences punishable by appropriate penalties that take into account their grave nature. While the Optional Protocol does not define "appropriate penalties", the Special Rapporteur is of the view that providing for the possibility of a pecuniary punishment in the case of inducing, threatening or influencing a child to engage in prostitution is an insufficient and thus inappropriate penalty. In this regard, the Special Rapporteur recommends that the law be amended accordingly. The Special Rapporteur welcomes information received from the Government that the legal commission of the Parliament has initiated new legislation to strengthen the punishment for sexual crimes against children, foreseeing, for example, longer imprisonment for sexual violence against children and sexually soliciting children.

38. Aiding prostitution involving a minor (mediation, providing of premises, or in any other manner) is criminalized and punishable by three to 12 years' imprisonment (sect. 268<sup>1</sup> Penal Code). Section 176 of the Penal Code specifically addresses aiding prostitution involving minors.<sup>2</sup>

39. While certain provisions in the Penal Code can be linked to human trafficking (e.g. enslavement, abduction, provision of opportunity to engage in unlawful activities, pimping, illegal donation of organs), Estonia does not have legislation that specifically defines and criminalizes trafficking of children for sexual purposes and the Special Rapporteur recommends that the law be amended accordingly.

40. Section 133 of the Penal Code prohibits "enslaving", stating that placing a human being in a situation where he/she is forced to work or perform other duties against his/her will for the benefit of another person, or keeping a person in such situation, if such act is performed through violence or deceit or by taking advantage of the helpless situation of the person, is punishable by three to 12 years' imprisonment if committed against a child.

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<sup>2</sup> Section 176. Aiding prostitution involving minors

(1) Aiding prostitution involving a person of less than 18 years of age by mediation, provision of premises or in any other manner is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if committed:

1) by a group or a criminal organization;

2) by a person who has previously committed a criminal offence provided in this section or aiding prostitution, - is punishable by 3 up to 15 years' imprisonment.

(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) An act provided for in clause (2) 2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(5) For a criminal offence provided in this section:

1) the court may impose, as supplementary punishment, a pecuniary punishment pursuant to the provisions of section 53 of this Code, or

2) the court imposes, pursuant to the provisions of section 83<sup>2</sup> of this Code, extended confiscation of the property obtained by the criminal offence.

41. Section 177 of the Penal Code criminalizes the use of a person younger than 18 years of age as a model or actor in the manufacture of a pornographic work and the use of a person under 14 years of age in pornographic or erotic work or erotic picture, film, writings or other works or reproductions. This is punishable by a fine or up to five years of imprisonment.

42. A person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or a person of less than 14 years of age in a pornographic or erotic situation shall be punished by a pecuniary punishment or up to three years' imprisonment. (sect. 178 Penal Code<sup>3</sup>).

43. However, the Special Rapporteur regrets that Estonian law does not provide a complete definition of “child pornography”, as it refers to works “depicting a person of less than 18 years in a pornographic situation” or “a person of less than 14 years in an erotic situation” without further defining “pornographic situation” or “erotic situation”. The Special Rapporteur recommends that the definition be amended in accordance with the Optional Protocol, and that there be no distinction between pornographic or erotic works; the age referred to should be 18 years in either case. The Special Rapporteur recalls that the Optional Protocol in its article 2 (c) states: “Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

44. The Special Rapporteur strongly insists that child victims of the offences covered by the Optional Protocol should not, as such, be either criminalized or penalized. The consent of a person under 18 years of age to such activities (pornography or prostitution) is irrelevant. As the age of sexual consent is 14 years of age, the Special Rapporteur recommends that Estonian law clearly stipulate that a child under 18 years of age is unable to consent to any form of sexual exploitation, including child pornography and child prostitution. Furthermore, all possible measures should be taken to avoid the stigmatization and social marginalization of such children. The Committee on the Rights of the Child has clearly and consistently maintained this position.

45. The Special Rapporteur also received reports that penal sanctions, while sometimes imposed upon persons convicted of pimping, are rarely strong enough.

46. Article 9, paragraph 3, of the Optional Protocol deals with the obligation incumbent on States parties to take measures to ensure appropriate assistance to child victims, including their full social reintegration and their full physical and psychological recovery. The provisions of section IX of the Child Protection Act and Part III of the Family Law Act deal with child assistance, and set out the conditions for guardianship and curatorship. More specifically, article 59 of the Child Protection Act provides that every person is required to immediately notify the social services department, police or some other body providing assistance if the person knows of a child who is in need of protection or assistance. The social services departments have the right and are required to act immediately, regardless of the region or group to which the child belongs. The Child Protection Act also provides that temporary assistance, support and protection shall be provided to the child by shelters (safe houses), the activities of which are regulated by corresponding statute (art. 62). Finally, the Act states that after termination of guardianship, the social services departments shall provide the child with continued care to assist and provide advice to the child in organizing his or her life. Continued care shall be provided to all children who are released from detention or special care (art. 65).

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<sup>3</sup> Section 178. (2). The same act, if committed by a legal person, is punishable by a pecuniary punishment.

47. Article 3, paragraph 5, of the Optional Protocol imposes the obligation on States parties to take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments. The Special Rapporteur did not receive any reports of illegal adoptions. In Estonia, international adoption is arranged and coordinated by the Ministry of Social Affairs. National adoptions fall within the competence of the county governors and local authorities... The Government informed the Special Rapporteur that coordination of national adoptions will be passed over to the Ministry of Social Affairs under the new Family Law Act, which is currently being discussed in Parliament and which provides the legal framework governing adoption. The draft law is expected to enter into force in 2010. The Special Rapporteur invites the Government to keep her informed on the progress of this draft law. Certain provisions of the Code of Civil Procedure and of the Law on Social Welfare also govern adoption.

48. The following chart tracks the number of adopted children in Estonia between 2003 and 2008:

	2003	2004	2005	2006	2007	2008
Adopted children	130	165	152	158	142	181

49. International adoptions of Estonian children are permitted only to the United States, Finland and Sweden. The Special Rapporteur was informed that approximately 20 children a year are adopted from Estonia by people in foreign countries. The consent of the Ministry of Social Affairs is required for international adoptions.

50. The Special Rapporteur notes the efforts made by the Government to regulate national and international adoptions, but reiterates the need to ensure the prevention of illegal adoptions as well as to guarantee the best interests of the child. In this regard, the Special Rapporteur encourages the Government of Estonia to have in place adequate review procedures of all adoption decisions, as well as follow-up procedures once a child has been placed with an adoptive family. The Special Rapporteur is encouraged by information provided that the Ministry of Social Affairs, in cooperation with child protection officers, NGO representatives and a court, have presented proposals for inclusion in the draft Family Law Act with regard to adoptions.

51. Estonian law also prohibits inducing a person to donate organs or tissue for the purposes of transplantation or genetic research by offering material remuneration or causing or threatening to cause damage to the person. This offence is punishable by a monetary penalty or up to one year of imprisonment.

52. The Special Rapporteur observes that the Child Protection Act is currently being revised. One proposed amendment by the Ministry of Social Welfare is the inclusion of an article explicitly prohibiting corporal punishment at school and in the home.

## **2. Institutional framework**

53. During the visit the Special Rapporteur inquired about the institutional structure regarding the rights of the child and child protection in Estonia.

54. The Child Protection Act states that child protection is provided through State and local government bodies and non-governmental organizations. The Special Rapporteur was informed that the Ministry of Social Affairs elaborates State policies on the issue, taking into account the views and observations of the various local authorities and citizens' groups. There are 162 child protection

officers who operate in the 227 local authorities in Estonia; 129 of those officers have higher education in the field of social work.

55. The Law on Social Welfare provides that services are distributed among the Ministry of Social Affairs, regional authorities and the local authorities. The Special Rapporteur was informed of discrepancies between local authorities, as their revenue base varies from one to another. The Government reported that in several areas there are minimum standards of social services established by the Government, and the discrepancies do not extend below those minimum requirements. Funds that are to be allocated by the State to the local authorities are negotiated annually between the State and the local authorities. Local authorities exercise a great deal of independence regarding the use of their funds, but in this regard, the Special Rapporteur observed the lack of a mechanism to ensure that local authorities adequately carry out their obligations. She was informed that the draft Law on Social Protection provides that in the event a local authority cannot fulfil its obligations, it has the duty to cooperate with other local authorities. The aim of this law is thus to bridge the disparities between local authorities.

56. Implementing the Optional Protocol falls within the area of competence and responsibility of the Ministries of Justice, of the Interior and of Social Affairs. The Ministry of Justice and the Ministry of Internal Affairs are responsible for implementing aspects relating to criminal law and criminal procedure.

57. The Ministry of Education and Research coordinates regularly with the Ministry of Social Affairs on issues related to the protection of the rights of the child, including initiating the periodic reports of Estonia to the Committee on the Rights of the Child. The Ministry provides statistics on education, including dropout levels, and prepares relevant studies. Child rights are also integrated into the school curriculum. The Special Rapporteur was informed that one of the objectives of the new curriculum is the prevention of HIV/AIDS, and awareness-raising on this issue is often provided by youth for other youth. There is also a special counsellor dedicated to the north-eastern part of Estonia who addresses particular questions raised in the region, such as access to social security and general issues related to the family.

58. The Social Welfare Department of the Ministry of Social Affairs organizes and prepares training courses, orientation programmes and manuals on the rights of the child. It also acts as the Estonian focal point for the CBSS Working Group on Cooperation for Children at Risk. In elaborating child rights policies, the Ministry cooperates with regions, local authorities and citizens' groups.

59. A central task of the Social Welfare Department is the coordination of the alternative childcare system of Estonia. The Special Rapporteur was informed that there is a preference for placing children in adoptive or foster families rather than in alternative care centres. Once children are placed in such centres, responsibility for their care is conferred on the local authorities.

60. Article 8 of the Optional Protocol deals with the protection of child victims of the practices prohibited under the Protocol throughout the entire criminal justice process. In particular, it requires that States parties, taking into account the principles of child participation and best interests, take measures which recognize both the special vulnerability of children who have been exposed to these crimes and their special needs as victims/witnesses. These measures may include the use of child-sensitive procedures, including interview rooms designed for children. The Special Rapporteur observed that there are child-friendly spaces in police stations and courtrooms in Estonia.

61. The Ministry of Justice informed the Special Rapporteur that since 2008, there is a deadline for pre-trial prosecution of adolescents of four months from the first interrogation until the case is brought to court. Twice a year, the Ministry of Justice monitors whether this criterion has been followed.

62. According to the Constitution, the Chancellor of Justice is independent in his/her activities and reviews the legislation of general application of the State's legislative and executive branches and of local Governments to verify its conformity with the Constitution and the laws. The Chancellor also assumes the function of ombudsman and monitors whether State agencies comply with people's fundamental rights and freedoms and with the principles of good governance. An amendment to the Act that entered into force on 1 January 2004 further expanded the functions of the Chancellor as an ombudsman: now the Chancellor of Justice also supervises local Governments, legal persons in public law and private persons who exercise public functions.

63. The Special Rapporteur was informed that children have access to the Chancellor, even if the law establishing the office does not explicitly provide for this. The Chancellor has received very few complaints from children, so he has taken the initiative to visit, sometimes without notice, various establishments dealing with children such as schools, alternative care institutions and crisis centres. Each such visit results in a report containing recommendations to all stakeholders, including the institution itself and the municipal and State authorities. The Chancellor admitted that while he has received some complaints from children, his Office is still not a very visible institution to children.

64. The Chancellor informed the Special Rapporteur that he is considering the possibility that the mandate of his Office could be extended to function officially as a monitoring and follow-up mechanism for the rights of the child, and has given consent in principle to take over the functions of an Ombudsman for Children. The Special Rapporteur welcomes this initiative, and urges that any such institution be in conformity with the Paris Principles, with all guarantees of independence and impartiality in carrying out its functions. The Office, together with the NGO Estonian Union for Child Welfare, has initiated an open discussion in this regard. The Union has set as one of its priorities for 2009 the coordination of the discussion, in order to call decision makers' attention to the need to create a more efficient system to supervise the rights of children. So far informative newsletters have been sent out to institutions, politicians and interest groups.

65. The Special Rapporteur was also informed that as a second step the Estonian Union for Child Welfare organized a round table in March 2009. The objective was to present the content of the functions attached to supervising children's rights and to provide an overview of the current situation.

66. The availability to victims of complaints procedure mechanisms that are accessible and child friendly is one of the main ways of protecting child victims and, in some instances, to prevent violations. In this regard, the Special Rapporteur welcomes the Children's Helpline that is available 24 hours a day, seven days a week, financed by the Ministry of Social Affairs (the number is 116111, which is uniform throughout Europe). Representatives of the Child Protection Division of the Põhja Police Prefecture informed the Special Rapporteur that they follow a file from the beginning to the end. The Tallinn Family Centre (Tallinna Perekeskus), a city institution administered by the Social Welfare Department, provides counselling and daily activities to children and their families. This organization also provides a children's helpline (6556 088), which reportedly receives about 600 calls a day. The main issues raised by adolescents are questions about the changes occurring to their bodies, their sexual life, relationships between girls and boys, violence in schools and depression.

67. While welcoming such programmes, the Special Rapporteur encourages the Government of Estonia to ensure that complaints procedure mechanisms are available to all children throughout the whole territory of Estonia.

### 3. Policies and programmes

68. Estonia has a range of policies and programmes that address issues related to child protection. The Strategy to Guarantee the Rights of the Child (2004-2008) was designed to implement the principles of the Convention on the Rights of the Child “in such a manner that the basic and special needs of all children living in Estonia would be ensured with the help of their family, the community and the environment”. The Strategy is coordinated by the Ministry of Social Affairs. An inter-ministerial working group, composed of the Ministries of Social Affairs, Education and Research, Culture, Justice, Internal Affairs and Finance, and the Office of the Minister for Ethnic Affairs and Population, as well as the Estonian Union for Child Welfare, was set up to implement the Strategy. The Ministry of Social Affairs drafts the plans of action designed to implement the Strategy and reports annually on progress.

69. The Ministry of Justice stated that combating human trafficking has been a priority for Estonia since 2006. The Development Plan for Combating Trafficking in Human Beings (2006-2009) sets out the strategic objectives for combating trafficking in human beings and determines the main measures and activities for achieving those goals. This plan is guided by the definition of human trafficking as determined by the Palermo Protocol and Council of Europe Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings. In preparing the Development Plan, the EU Action Plan for Combating Trafficking in Human Beings of the European Commission was also taken into consideration. The Ministry of Justice coordinated the preparation of the Development Plan, taking into consideration the proposals of the Ministry of Education and Research, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, non-profit associations and the International Organization for Migration. This plan targets the issue of trafficking in human beings, and thus includes, but does not focus, on children. In evaluating the Plan, the Ministry of Justice reported that one benefit has been the creation of a real network of stakeholders working on the issue, including NGOs, prosecutors, police, migration officials and the Ministry of Education and Research. The plan also foresees several other activities related to trafficking in children, including awareness studies, a CBSS mapping project, lectures, seminars, training of specialists, promotion of international cooperation, paying special attention to minors who cross the EU external borders, and studies to improve control over the border crossings of minors. The Special Rapporteur encourages the Government to ensure effective follow-up to these envisaged activities at the end of 2009 and keep her informed of all progress.

70. One activity entailed the organization of a seminar by the Ministry of Social Affairs in the field of trafficking, prostitution and pornography involving children in March 2007. A training course was conducted in Russian by the Tartu Child Support Centre for 12 employees of children’s homes of Ida-Virumaa on the topic of assisting trafficked children; it took place in Toila in October 2007.

71. The Special Rapporteur observed several drop-in services and shelters for children in need. There are youth day centres which provide activities for children who drop in at different times of the day. The children who attend these centres do so for a variety of reasons, including difficulties faced by family members, such as health problems, alcoholism, drug addiction, or unemployment. One centre in Tallinn visited by the Special Rapporteur offers services for the whole family. In Narva, she received information about a municipal shelter that is available for children if violence at home becomes too serious, but one NGO representative in the city stated that they try to avoid sending children there as violence can easily break out in the shelter as well. Some NGOs provide information, orientation and ambulatory services, as well as, in some instances, free legal, medical, social and psychological advice, along with rehabilitation services.

72. While some NGOs reported efficient cooperation between organizations, others were of the view that there is insufficient adequate cooperation between the various NGOs and organizations

working on child protection. A main concern that was raised by virtually all NGO representatives was limited funding and the need for an increase in the number of qualified personnel. The Special Rapporteur recommends that funding continue to be ensured for programmes and services implemented by NGOs, including through exploring opportunities for obtaining funding from the private sector, and that securing qualified personnel be made a priority.

73. Most interlocutors were of the view that the main weakness in the system in Estonia lies with the limited capacities and resources at the level of the local authorities. The Special Rapporteur was informed that the police often fulfil their duties effectively when it comes to child protection, but that discrepancies in the resources (both qualitatively and quantitatively) available to the local authorities render certain activities difficult, such as adequate rehabilitation and follow-up of children in need.

74. The Special Rapporteur notes a variety of programmes and projects designed to prevent the sexual exploitation of children and other violations of the rights of the child. For instance, the Special Rapporteur welcomes awareness-raising programmes on the rights of the child, drug abuse, HIV/AIDS, trafficking, reproductive health and violence that have been disseminated in schools and to the public more generally. However, she urges that such programmes be continued over the longer term in order to promote attitudes and behaviour based on respect for dignity and physical and moral integrity. The Special Rapporteur also urges that sexual education programmes be strengthened.

75. The Special Rapporteur also received reports that parental education programmes were being initiated and would be strengthened, with a view to preserving the unity of the family and family values.

76. More particularly, a major concern that was brought to the attention of the Special Rapporteur is the limited funds available for technical training of human resources in detecting cases of cybercrime (particularly online pornography) and of trafficking victims. Such human resources range from police officers working with children to social, legal and psychological workers who work in schools and in crisis centres, as well as lawyers, prosecutors and judges. The Ministry of the Interior reported that in 2007, there were 128 training sessions for police as well as NGOs, and that there are special investigators for issues relating to human trafficking and prostitution. The Special Rapporteur recommends that such training be strengthened and be specialized in the rights of the child in particular.

77. The Special Rapporteur welcomes the information provided by the Ministry of Justice about an ongoing initiative to establish an electronic database to store information related to all cases that have been referred to the justice system, including the type of crime, the age of the accused and of the victim(s), gender and other elements.

### **C. International assistance and cooperation**

78. The Special Rapporteur observes that Estonia's initiatives in the areas of the sale of children, child prostitution and child pornography exist within a regional and transnational dimension. For instance, as already mentioned, Estonia is a member of the CBSS Working Group for Children at Risk and of the CBSS Task Force against Trafficking in Human Beings. Since 2004, the contact point for unaccompanied and trafficked children is the Ministry of Social Affairs. The Ministry should be notified of unaccompanied or trafficked children by phone (+372 626 9220) or by e-mail ([kontaktpunkt@sm.ee](mailto:kontaktpunkt@sm.ee)) to coordinate the activities to help the child concerned. The Ministry also coordinates the exchange of information with other contact points in the Baltic Sea States (see also [www.childcentre.info](http://www.childcentre.info)). Guidelines for identifying and helping a victim of trafficking, including guidelines for helping child victims, have been prepared in 2009 and distributed to partners in Estonia.



79. The Ministry of the Interior reported that its police cooperate regularly with Europol, Interpol, as well as with neighbouring countries such as Finland, Sweden and Latvia. Estonia also exchanges good practices with the other members of the Nordic Council of Ministers.

80. The Special Rapporteur notes, however, that the vast majority of cases identified through such cooperation relate to adult victims of trafficking, and not children.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

81. **The Special Rapporteur notes a significant political commitment in Estonia to prioritize the rights of the child. While the number of reported cases of child prostitution and child pornography is low, the Special Rapporteur is of the view that vigilance is required and efforts should be directed towards prevention. In this regard, concrete actions must be implemented, including the adoption of amended legislation on the rights of the child, efficient training of police, particularly in detecting cases of sexual exploitation of children and online child pornography, training of judges in the rights of the child, and strengthening of the non-governmental and civil society sector.**

82. **The Special Rapporteur recalls that preventing and combating these phenomena are directly linked to the capacity of a society to adopt a holistic approach to the fundamental rights of children, paving the way for the implementation of social policies which favour children, youth and the family and the elaboration of creative and innovative responses from the public and the private sectors.**

83. **In this regard, the Special Rapporteur makes the following recommendations to the Government of Estonia.**

84. **Regarding legislation, the Special Rapporteur recommends:**

**(a) That the definition of “child pornography” be amended in accordance with the Optional Protocol;**

**(b) That there be no distinction based on the age of the person depicted in either pornographic or erotic works; the age should be 18 years in either case;**

**(c) That child victims of the offences covered by the Optional Protocol should not, as such, be either criminalized or penalized and that all possible measures should be taken to avoid their stigmatization and social marginalization, consistent with various recommendations of the Committee on the Rights of the Child. Such action may decrease the level of shame/fear in children reporting cases;**

**(d) That Estonian law clearly stipulate that a child under 18 years of age, irrespective of the legal age of consent to sexual activity, is unable to consent to any form of sexual exploitation, including child pornography and child prostitution;**

**(e) That the law be amended to specifically define and criminalize trafficking in children for sexual purposes in accordance with the Palermo Protocol;**

**(f) That pending amendments to the Child Protection Act and the Social Welfare Act be adopted, and that the process of adoption of the Law on Social Protection and the Family Law Act be prioritized;**

(g) That Estonia ensure effective awareness-raising about legislation on the rights of the child, including training;

(h) That there be prompt investigations and judicial procedures in all matters related to children.

85. The Special Rapporteur also recommends that the participation of children be strengthened on all issues concerning them, and that their views be given due weight.

86. Adequate training should be provided for combating cybercrime, particularly online child pornography, to the relevant authorities, in order to effectively detect violations.

87. The Special Rapporteur recommends that Internet service providers and telecommunications companies be encouraged to become involved in initiatives to combat and prevent online child pornography.

88. All programmes and policies related to child protection should be available throughout the territory of Estonia in an equitable manner. Human and financial resources available to such programmes should also be strengthened. Birth registration should also be guaranteed for all children.

89. The Special Rapporteur recommends the strengthening of complaints mechanisms for children, including the establishment of an ombudsman for children in accordance with the Paris Principles, and that such mechanisms be available to children throughout the territory of Estonia.

90. Non-governmental organizations should be strengthened with qualified human resources as well as sufficient funding, including through exploring opportunities for obtaining funding from the private sector.

91. In cases where the Government tasks non-governmental organizations with implementing child protection programmes at the local level, detailed partnership agreements should be undertaken between the Government and non-governmental organizations which recall the respective undertakings of the parties, detailed actions, expected outcomes, follow-up and evaluation modalities, as well as the allocated budget.

92. The Special Rapporteur encourages the Government of Estonia to consider engaging the private sector for fundraising and programmatic support on issues related to the protection of the rights of the child.

93. The Special Rapporteur welcomes awareness-raising and prevention programmes already in place. She urges that they be continued over the longer term, and that they be targeted not only at children, but also at parents and the general public in order to promote attitudes and behaviour based on respect for dignity and physical and moral integrity. The Special Rapporteur also urges that sexual education programmes be strengthened.

94. Control and supervision of structures and programmes should be strengthened so that the quality of services provided as well as the sustainability of these projects are ensured. Proper follow-up of the results of such structures and programmes must also be provided for and ensured. A child-rights approach must be integral to all implemented programmes.

95. **Standardized and centralized information-gathering should be strengthened, including by increasing efforts in terms of disaggregating data by sex, age, type of violation and measures taken, as well as by harmonizing methods of gathering and processing data.**

96. **The Special Rapporteur also encourages the Government of Estonia to undertake analyses and studies on the forms, factors and trends in abuse, violence against and exploitation of children.**

97. **Estonia should continue to strengthen and increase the efficiency of and cooperation between the various institutional mechanisms and entities in monitoring implementation of the Convention on the Rights of the Child and the Optional Protocol, including between the national and local levels.**

98. **The Special Rapporteur recommends that relevant Government departments, in cooperation with the non-governmental sector, prepare annual reports on the situation of children for distribution and discussion.**

99. **The media should be trained in the ethical treatment of cases of the sale of children, child prostitution and child pornography, and in their role in awareness-raising on the issue.**

100. **International and regional cooperation should be continued and strengthened where necessary in order to effectively combat and prevent child sex tourism and online child pornography.**

101. **In the light of the current financial crisis, the Government of Estonia should make all possible efforts to ensure that financing of child protection policies and programmes is prioritized.**

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