

Commercial Sexual Exploitation of Minors: Repression or Attention and Prevention.

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I. Overview of the problem

i. What is commercial sexual exploitation?

Commercial sexual exploitation of children and adolescents is a lucrative and illicit activity that is the result of a set of social practices typical of a culture of abusive exercise of power and violence against those who, due to their historical condition of subordination, or because of their life circumstances, are usually weaker and more vulnerable. It is a phenomenon in which the adult views the minor as a marketable object or product (susceptible to being bought or sold) for the satisfaction of his or her own desires and fantasies.

Various studies agree in identifying at least four forms or expressions of commercial sexual exploitation, namely: child prostitution, sex tourism, trafficking of minors for sexual purposes and child pornography, all of which are the product of a social demand that favors the "objectification" and use of the body, sexuality and personality of the child or adolescent.

It is not a problem exclusive to developing countries or minority groups, nor is it an unequal transfer activity in which poorer countries provide richer ones with a free market of children for their use and consumption, although it is well known that close links are established between developing and industrialized countries.

Commercial sexual exploitation knows no borders or classes; it exists in practically every country in the world and is present in all social strata and, contrary to what is commonly believed, it is also -and mainly- installed and rooted at the national level, since to give continuity to the activity it is necessary to generate in each country a local market with national consumers, as is clear from a recent research conducted by the Institute of Ethical Studies for Development (INEED), from

The study by the Catholic University of Costa Rica concludes that most of the clients or exploiters in our country are Costa Rican adults.

In this context, conditions of misery or poverty - although it would be unwise to dismiss this aspect or place it in a secondary place - are insufficient to explain the causes of this scourge on their own. It has been shown that not all victims of sexual exploitation come from poor families. They may also be minors who, for various reasons, run away from their middle-class homes and see prostitution as the only means to survive on their own, or simply to be able to acquire more consumer goods.

Although pimps and clients can be identified as the main link in this complex chain, different investigations carried out in the country conclude that it is an activity carried out under the cover of highly specialized criminal networks or organizations with advanced technological support, involving a variety of actors. Middlemen, recruiters (including family), cab drivers and hotel owners are just part of the wide range of people involved in the various underlying illicit transactions, such as bribery, document forgery, illegal immigration, to name but a few.

The reasons why minors become involved in this activity are varied and complex. They range from family disintegration and domestic violence, as well as the terrible economic situation and social disadvantage in which they find themselves -in the face of the mirage of a better life offered by pimps-, to the erosion or distortion of values, where the most sublime values have succumbed to materialism and the incessant bombardment of advertisements, broadcast in the media, which invite excessive consumption. To all of the above must be added cultural patterns and deep-rooted historical attitudes, typical of a society with a patriarchal structure, which places children and women on a level of inferiority with respect to adult men,

In any case, what is really important is to understand the phenomenon within the social context in which it develops, in order to guide the required actions in the right direction and avoid falling into the temptation - as commonly happens - of involving prejudices in decision making and judging the underage person as someone who seeks easy solutions to his or her reality. It is necessary to be aware that, regardless of the causes that motivated or forced a child or adolescent to participate in this shameful business, which damages and degrades his or her body, abilities and self-esteem, the child, far from being an accomplice, is a victim of unscrupulous people who take advantage of his or her circumstances, vulnerability and needs.

II. The situation of Commercial Sexual Exploitation of Minors in Costa Rica.

i. General context (background)

In September 1997, the Office of the Ombudsman of the Republic called the attention of government authorities and public opinion in general to the deprivation of the rights of children and adolescents who are victims of sexual exploitation.¹ On that occasion, the need to adopt a national policy to address the problem was discussed and the participating institutions made commitments in this regard. Also in the Annual Report of the Ombudsman's Office for that period 1997-98, a chapter was devoted to the analysis of the phenomenon, and it has been systematically taken up in subsequent reports². In this regard, the Ombudsman's Office has pointed out the need to allocate the necessary resources, as well as to adopt all administrative, regulatory and other measures to combat the phenomenon.

According to the results of qualitative research conducted in the country, it is known that 85% of the victims of sexual exploitation are female, while 15% are male. It is also known that 50% of the minors begin their activity between 8 and 12 years of age and the other half between 14 and 16 years of age. All sexually exploited children and adolescents have a history of domestic violence and 80% have been sexually abused before the age of 12. It has also been found that 63% have dropped out of school and 72% are drug addicts or have lost control over the consumption of these substances.

The existence of children and adolescents in these conditions and the generalized ignorance or indifference regarding this reality undoubtedly demands priority attention from public institutions, families, civil organizations and all citizens.

ii. The National Commission against Commercial Sexual Exploitation of Children and Adolescents in Costa Rica.

Since 1996, a group of public institutions and non-governmental organizations agreed to join efforts towards action, prevention and elimination of Commercial Sexual Exploitation of Minors. In 1997 this initiative was formally endorsed by an agreement of the Board of Directors of the Patronato Nacional de la Infancia, which approved the constitution of the Permanent National Labor Commission against the Commercial Sexual Exploitation of Minors, originally coordinated by that institution.

Among the most important actions of the Commission are: the elaboration of a National Action Framework Plan, the elaboration of a joint action plan for the attention of the population in the metropolitan area with the participation of ILPES, PANI, ILO and the Ministry of Health and, finally, the elaboration of the draft Law against Commercial Sexual Exploitation of Minors and the subsequent support and promotion required for its approval in the Legislative Assembly.

The Ombudsman's Office -which has participated in this Commission in compliance with its role as comptroller of the effective application of the rights of children and adolescents, as well as in the accompaniment and monitoring of the processes developed within it-, has been able to confirm the scarce political and financial support given to this Commission. This, together with the difficulties that have existed in the conduct of the processes, has not allowed many of the plans and projects proposed to crystallize.

As a mechanism to solve the problem of leadership and political support, in the first quarter of 2000 a process of restructuring of the Commission was initiated, after which it became an organ of the National Council for Children and Adolescents, under the coordination of an Executive Unit. At present, it is also made up of a component or Political Dimension, made up of high-level officials and hierarchies; and a Technical Dimension.

It is undoubtedly a positive step, from a strategic point of view, as it is part of the body in charge of articulating all public policies for children and adolescents. However, it is worrying that the political priority, which seems to have been given to the subject at present, still lacks equivalent financial support. This aspect, precisely in this area, is fundamental due to the complex and intricate nature of the phenomenon to be combated.

A clear example of the above is the approval of an Immediate Action Plan, with very short-term objectives and goals, projected to be executed in a period of three months, with the ordinary resources of the different institutions involved. This is for the sole purpose - as the Council itself has pointed out - of alleviating international pressures on the matter, since there is still no National Plan with medium and long-term goals that also includes the budgetary aspect.

Of particular concern is the financial situation of the Patronato Nacional de la Infancia, an institution that, by constitutional mandate, is responsible for the special and comprehensive protection of minors and their families.

As a result of an investigation carried out by this Ombudsman's Office in 1999, in relation to PANI's financial situation, it is known that at that date the Institution in question had not received any amount of the 7% that, according to its Organic Law, corresponded to it, of the total amount collected from the Income Tax. For this reason, the Board of Trustees did not receive ¢ 3,875.8 million in 1998 and ¢ 5,425.4 million in 1999.

With respect to the 4% of FODESAF's budget (another source of financing according to the Organic Law of the Board of Trustees), it was learned that in 1998 ¢ 1,952 million were transferred to PANI, which represents 3.71% of the Fund's real income and not the 4% stipulated by law.

Based on the data provided by the Institution itself, it can be inferred that the Patronato Nacional de la Infancia has stopped receiving during 1998 and 1999 the totality of its source of financing corresponding to 7% of the Income Tax and has not received it in its entirety. corresponding to 4% of FODESAF, thus contravening what is clearly established by law and, to the detriment of the possibility of designing and executing programs in favor of children and adolescents in the country.

iii. The importance of the Costa Rican problem in the international arena.

The growing phenomenon of commercial sexual exploitation in Costa Rica has even become the focus of attention of United Nations organizations, such as the Human Rights Committee of the United Nations International Covenant on Civil and Political Rights, as well as the Committee on the Rights of the Child, which, while recognizing some achievements in the matter, have called attention to the situation in the country.

The Human Rights Committee of the United Nations International Covenant on Civil and Political Rights notes in its fourth report on Costa Rica, submitted in April 1999, that it *"... is deeply concerned at the high incidence of commercial sexual exploitation of children in Costa Rica, apparently often related to sex tourism. It notes the creation of the Council for Children and Adolescents and the amendments to the Penal Code to penalize the sexual exploitation of children. attention to the State party to take measures to eradicate this problem in cooperation with other States, by investigating and prosecuting the crime in question. "*

On the other hand, the opinions of the Committee on the Rights of the Child are oriented in the same direction, and in the review of the second periodic report submitted by Costa Rica, sexual exploitation is included as one of the Committee's main areas of concern. In this regard, it states: *The Committee recommends "... that the State party undertake studies with a view to strengthening current measures and policies, including care and rehabilitation, to prevent and combat this phenomenon . "The Committee also recommends that the State party take into account the recommendations contained in the Agenda for Action adopted in Stockholm, Sweden, in 1996 at the Congress against Commercial Sexual Exploitation of Children.*

It is also worth mentioning the complaint that a non-governmental organization filed in early 2000, before the Inter-American Commission on Human Rights, based in Washington, USA, requesting the application of precautionary measures by the Costa Rican State, "in order to protect sexually exploited children..." in the country. The Commission's resolution is still pending.

With respect to this issue, there is concern about the over-dimensioning of the problem to the extent that it may further harm the population it is intended to protect. But even more worrying are those approaches and approaches that have been seen in government officials at the highest level, which tend to minimize the phenomenon, based on data that in reality are not known with accuracy, as in the case of the quantification of victims.

Therefore, even though it is important to promote social research to determine the quantitative dimension (since it allows the issuance of successful public policies, as well as the efficient allocation of the necessary resources to combat it), what is really urgent is to know its causes and above all the painful experience imposed on its victims, in order to immediately attend to and protect these children and adolescents and above all to prevent new situations of sexual exploitation.

For the Ombudsman's Office, child prostitution is a brutal violation of the rights and dignity of children and adolescents in our country and the existence of a single case demands every effort and the greatest of our commitments.

III. The World Congress against Commercial Sexual Exploitation of Children (Stockholm Congress): a global effort to find solutions.

i. The Stockholm Congress and the Convention on the Rights of the Child.

Beginning in the first half of the 1990s, the international community began to become aware of the growing problem of commercial sexual exploitation of children and a worldwide movement began to repudiate and seek solutions to the situation. In 1996, numerous national and international leaders, government representatives, professionals and activists, as well as governmental and non-governmental organizations and media from all over the world, gathered in Stockholm (Sweden) for the World Congress against the Sexual Exploitation of Children. The World Congress, where this phenomenon was wisely conceived as a contemporary form of slavery that is expanding and whose eradication requires concerted action from all sectors and levels, local, national and international.

The work of the Congress was based on the Convention on the Rights of the Child, using as a guide for the analysis and discussions, the principles that sustain it: the conception of the minor as an active subject, full of rights and responsibilities; and that of the Best Interest.

With regard to the best interest principle, Article 3 of the Convention establishes that

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(...)

3. States Parties shall ensure that institutions, services and facilities responsible for the care or protection of children comply with the standards established by competent authorities, particularly with regard to the safety, health, number and competence of their staff, as well as with regard to the existence of adequate supervision. "

It is important to emphasize that the Convention, as a comprehensive standard, reaffirms the application of the basic human rights recognized for all persons in other international treaties, but takes into account the specific needs of children and adolescents, thus emphasizing their status as subjects of rights. It also seeks to give content and real meaning to this condition, by establishing the obligation of the States to allocate the necessary resources for the full compliance and enjoyment of the recognized rights.

In this regard, paragraph 4 of the aforementioned instrument establishes:

"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation."

Regarding the issue of sexual exploitation of children, which was discussed at the Stockholm Congress, Article 34 of the Convention states

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"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. To this end, States Parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent:

a) Inciting or coercing the child to engage in any unlawful sexual activity;

b) Exploitation of children in prostitution or other illegal sexual practices;

c) Exploitation of the child in pornographic performances or materials. "

ii. The Stockholm Declaration and the Action Agenda

Following the guidelines of the Convention, and information derived from various investigations, the work of the Congress focused on three elements of commercial sexual exploitation of children and adolescents, namely: child prostitution, trafficking and sale of children for sexual purposes, and child pornography.

The fundamental objective was defined to create greater awareness in the international community about the phenomenon, but work was also done on the formulation of strategies to combat this brutal violation of the rights and dignity of children and adolescents. To this end, a Declaration was signed and a Framework Plan or Agenda for Action was drawn up, with the clear objective of eradicating the commercial sexual exploitation of minors. In the Declaration, which was unanimously accepted by the various delegates, the Congress calls on all States, in cooperation with national and international organizations and civil society to

- *"Give high priority to action against commercial sexual exploitation of children and allocate adequate resources to this end;*
- *Promote greater cooperation between States and all social sectors to prevent the involvement of children in the sex trade and strengthen the role of the family in protecting children from commercial sexual exploitation;*
- *To criminalize the commercial sexual exploitation of minors, as well as other forms of sexual exploitation, and to convict and punish all offenders involved, whether local or foreign.*

foreigners, while ensuring that the children who are victims of these practices are exonerated from any blame;

- *Review and revise, as appropriate, current legislation, policies, programs and practices to eliminate commercial sexual exploitation of children,*
- *Implement legislation, policies and programs to protect children from commercial sexual exploitation and strengthen communication and cooperation among law enforcement authorities;*
- *Promote the adoption, implementation and dissemination of laws, policies and programs with the support of relevant mechanisms at local, national and regional levels against commercial sexual exploitation of children;*
- *Develop and implement comprehensive, gender-sensitive plans and programs to prevent commercial sexual exploitation of children, and protect and assist child victims to facilitate their recovery and reintegration into society;*
- *Create an appropriate climate through education, social mobilization and development activities to ensure that parents and other legally responsible persons can fulfill their rights, obligations and responsibilities to protect children from commercial sexual exploitation;*
- *Mobilize policy makers and other relevant partners, national and international communities, including intergovernmental and non-governmental organizations, to help countries eliminate commercial sexual exploitation of children;*
- *Emphasize the role of grassroots participation, including that of children themselves, in the prevention and elimination of CSEC. "*

On the other hand, the Action Agenda proposes to address the problem from four fundamental axes, which will be briefly analyzed below:

- **Coordination and cooperation, at the national and international levels:** In this aspect, and at the national level, it is proposed to establish action programs aimed at reducing as much as possible the number of minors vulnerable to commercial sexual exploitation in each country. It is also proposed to establish progress indicators for the year 2000. It also points out the need to have, by the same year, a database with information on children and adolescents vulnerable to commercial sexual exploitation, on the exploitation networks and, in general, on the circumstances related to the phenomenon.

At the international level, it is proposed to improve cooperation between the different countries and international organizations directly or indirectly related to the issue and to guarantee the availability of resources for the protection of victims.

- **Prevention:** This point places special emphasis on access to formal education as a means to improve the living conditions of minors vulnerable to commercial sexual exploitation. It is also proposed to carry out outreach, information and communication campaigns on the rights of minors and legislation against commercial sexual exploitation, with gender content, aimed at the family, public officials, and society.

The aim is to increase public understanding and promote responsible sexual attitudes and behaviors.

It also points to the urgency of reformulating or strengthening public policies (economic and social) to promote and support minors vulnerable to commercial sexual exploitation, their families and communities, with special attention to poverty reduction.

- **Protection:** It is proposed to reform or approve and enforce criminal legislation to establish the responsibility of the different subjects involved in trafficking, pornography, prostitution and sex tourism of minors, including those of an extraterritorial nature.

It is pointed out that national programs should be designed in such a way that sexually exploited minors are considered as victims of the scourge and thus avoid being punished as criminals. On the contrary, the necessary measures should be taken to ensure their full access to support services, in the legal, social and health fields, and in particular to safe havens where children and adolescents who escape can be protected from intimidation and harassment by exploiters.

- **Recovery and Reintegration:** In order to achieve the successful recovery and reintegration of the underage victim of sexual exploitation in their family, community and society, it is recommended to provide them and their family members with psychosocial, legal, medical and any other support they may require, especially during judicial proceedings to avoid situations of re-victimization of these persons. It is also proposed to promote viable life alternatives for both the victim and her family.

It also points out the need to adopt measures to avoid the social stigmatization of victims of commercial sexual exploitation and to use the measure of institutionalization of the minor as a last resort and for the shortest possible time.

- **Participation of children and adolescents:** In accordance with the principles underlying the Convention, the participation of minors, including victims of commercial sexual exploitation, is proposed in the search for solutions and alternatives to the problem, favoring the constitution of networks of children and adolescents that defend their rights.

IV. National Regulations on Commercial Sexual Exploitation.

The approval of the Convention on the Rights of the Child by the Costa Rican State in 1990 brought with it a series of formal commitments and obligations to the international community, but especially to children and adolescents. Among them, it is worth mentioning the obligation to analyze, review and adapt the entire legal system to reconcile it with the new prevailing conceptions and, if necessary, to approve new legislation.

As a result of this process, the Code for Children and Adolescents was approved and entered into force on February 6, 1998. The Code operationalizes or contextualizes the principles, precepts and rights recognized in the Convention, clearly defining the responsibilities and those in charge of complying with them.

Likewise, the aforementioned Code adopts as one of its guiding provisions, the principle of "Best Interest". Thus, Article 4 provides as follows:

"It shall be a general obligation of the State to adopt administrative, legislative, budgetary and any other measures to ensure the full realization of the fundamental rights of minors.

*In the formulation and implementation of policies, access to public services and their provision, the **best interests** of these people shall always be taken into account. Any action or omission contrary to this principle constitutes a discriminatory act that violates the fundamental rights of this population. "* (Emphasis added).

On the other hand, articles 13 and 19 of the same body of law, develop and delimit the constitutional precept that guarantees the special protection of children by the State (see articles 51 and 55 of the Political Constitution of the Republic of Costa Rica), by stating:

*"Article 13. Right to the protection of the State.
The minor shall have the right to be protected by the State against any form of intentional or negligent abandonment or abuse of a cruel, inhuman, degrading or humiliating nature that affects his or her integral development. (...)"*

*"Right to protection against serious danger
Minors shall have the right to seek refuge, help and guidance when the threat to their rights implies a serious danger to their physical or spiritual health; likewise, to obtain, in accordance with the law, adequate and timely assistance and protection from the competent institutions. "*

Finally, Article 24 states

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*"Article 24. Right to integrity.
Minors have the right to respect for their physical, mental and moral integrity. This right includes the protection of their image, identity, autonomy, thought, dignity and values. "*

Also noteworthy is the approval, in July 1999, of the Law against Sexual Exploitation of Minors, Law 7899, published in Gazette No. 159 of August 17 of the same year, which reformed articles 156, 159, 160, 161, 162, 162, 167, 168, 169, 170, 171, 172, 173, 174 of the Penal Code. This new law represents an important step forward in the fight against sexual exploitation and sexual assault, by reformulating some sexual assault crimes, reconceptualizing others and, finally, typifying new conducts previously not considered as crimes at all.

By way of example, the consulted project maintains some criminal offenses, which were currently replaced by others with different characteristics, such as Rape and Sodomy -in the case of the victim being a man or a woman, respectively-, which were displaced by the

of Sexual Relations with Minors and Paid Sexual Relations with Minors, with the novelty that these crimes can occur regardless of whether the victim is of one or the other sex.

As for rape, a new conceptualization of the crime is incorporated, with transcendental variables and variants such as the fact that it can be configured, not only by the action of carnal access to the victim, but also by the access, so that here too gender stereotypes are broken and now this crime can also be perpetrated by a woman.

From the above, it can be inferred that Costa Rica has an adequate regulatory framework to address the fight against commercial sexual exploitation and the protection of children and adolescents; however, there are serious difficulties at the operational and practical level to implement concrete actions, some of which we will point out below.

V. Public Investigation initiated by the Ombudsman's Office.

In the first months of the year 2000, it was learned that, by agreement of the National Council for Children and Adolescents, daily operations have been carried out at night and in the early morning hours in the city of San José, supposedly under the coordination of the National Children's Trust and with the assistance of the Ministry of Public Security and other institutions, as a mechanism to detect and intervene in situations of commercial sexual exploitation of minors.

As a result, the Ombudsman's Office of the Republic proceeded ex officio to open this investigation, related to the phenomenon in question and the state responses to the problem. In particular, it was interested in knowing the details of the operations, in order to verify possible violations of the rights of minors. Thus, the institutions involved were asked to refer to the following aspects:

- Indicate in detail what the aforementioned operations consist of and the participation of each of these entities.
- Indicate whether the protection measures applied by the National Child Welfare Agency involve a restriction of freedom of movement. Also indicate whether there is any differentiation according to age (childhood and adolescence).
- Indicate whether the Ministry of Public Security is responsible for the arrests and indicate the legal basis for such actions.
- Indicate how many arrests of minors (specifying personal data and ages) and adults have been carried out, respectively, since the beginning of the operations.
- Indicate how many cases of sexual exploitation against minors have been detected and reported to the Public Prosecutor's Office.

By means of official letter PE-1075-2000, CNNA / 158-200 dated July 7, 2000, the Vice President of the National Council for Children and Adolescents refers to the matter as follows:

*"A) That on April 5, 2000, the National Council for Children and Adolescents considered the proposal of the Council's Technical Advisory Committee on an Immediate Care Plan (...).
B) That the situation of the violation of the rights of children and adolescents through Commercial Sexual Exploitation has been of great concern and interest to resolve (sic) and that the Council is seriously committed to resolve and act efficiently to address this problem. Therefore, since the first sessions of the current year, the issue has been treated seriously and measures have been taken in this regard:*

b.1 It was agreed to prepare an Immediate Action Plan for the intervention.

b.2 The former Working Commission against Commercial Sexual Exploitation created by PANI was restructured and within the framework of the attributions of the Council established in the Childhood and Adolescence Code in art. 176, a new National Commission against Commercial Sexual Exploitation of Children and Adolescents was created, in which also participate representatives of the Judicial and Legislative Power, as well as Local Governments, in order to provide greater support to actions aimed at the eradication of this violation of the rights of children and adolescents in the country.

It is worth mentioning that the Ombudsman's Office, represented by Mr. Mauricio Medrano of the Childhood and Adolescence Area, participates in this instance.

b.3 An Executing Unit was created to ensure the follow-up of the actions generated by the aforementioned Commission; it is currently located in the central offices of the Patronato Nacional de la Infancia (National Children's Trust).

c. That in none of the Council meetings have agreements been reached on "the detection, detention and internment of minors, victims of commercial sexual exploitation, in internment centers for minors." (...). "

Subsequently, the National Children's Trust sent a report with official letter GT 540-2000, in which it states the following

"Indicate in detail what the operations to which you have referred consist of and what the participation of each of the entities is.

The operations have been organized by the Ministry of Public Security, with the collaboration of the NATIONAL CHILDREN'S JUNTA and have been carried out since February of this year, without interruption, practically every night. On some occasions, the Ministry of Health, the Municipality of San José (the Municipal Police) and the Immigration and Foreigners Office have participated.

When PANI was summoned to these operations, it stated that the emphasis of these actions should be the fight against the adults in the sexual exploitation network, specifically against pimps, clients, hotels and other commercial establishments. PANI's participation was centered on two main axes: 1. As guarantor that all actions were carried out without violating the rights of minors. 2. As the institution in charge of the technical approach to initiate the process to ensure that minors, victims of sexual exploitation, are incorporated into the specialized care alternatives offered by the institution.

However, the operations have been expanding their coverage, taking charge of controlling a series of irregular situations related not only to minors, but above all to adults.

However, since the main task of the operations has been to remove minors from the streets and hand them over to PANI, the institution's work has begun to be seen as eminently repressive. This has severely damaged the necessary work of building a relationship of trust and dialogue with the population at social risk, an indispensable condition for achieving an effective psychosocial approach to reverse the long history of mistreatment and relief to which these people have fallen victim. This damage is especially significant when the victims of sexual exploitation are adolescents, since due to the characteristics of their life history and age, this modality of intervention tends to generate more resistance and rejection than favorable effects towards the reception of institutional intervention. Proof of this is that of the approximately two hundred and twenty girls and adolescents approached in the FUNDESIDA / PANI program, about fifteen have dropped out of the support groups without their whereabouts having been ascertained to date, and that in the remaining group the motivation to accept the proposals in the existing protection alternatives has diminished. This circumstance could be interpreted as an indicator that the phenomenon that the increase of repression in the streets is directly proportional to its transfer to places with greater difficulties of access and police intervention is beginning to appear. Another important consequence of the increased tension between the population served and the PANI work team is that it has interfered with the indispensable collaboration that victims of sexual exploitation must provide in terms of providing key information for the denunciation (name of those involved, whether parents, clients, pimps or in the organized crime network around sexual exploitation), since part of the resistance that the population has in the face of these actions is to withdraw support and remain silent. This attitude has made it difficult for PANI to dictate protection measures, which cannot be implemented without following the due process established by law (which must begin with notice to the parents or adults in charge). This, in turn,

The sexually exploited population requires a highly specialized intervention model, especially in the case of adolescents. Reversing a history of abuse, mistreatment and abandonment by the family (and in general by the adults in charge) requires constant and sustained work of dialogue and convincing them to join the necessary processes to achieve a way out of the street and sexual exploitation. The sexual exploitation network maintains a strong relationship of power with the victims that operates with different forms of physical and psychological violence that subject them to their perpetrators. Therefore, the technical work must be carried out by specialized teams on the street, together with the victims, to achieve the transition to the existing protection alternatives.

There are currently two protection alternatives for the sexually exploited population: the first is the El Cambio Shelter, part of the PANI Project in agreement with the Salvation Army, aimed at the sexually exploited population under the age of fifteen. For this age group, a drastic type of intervention has been defined, which consists of immediate admission with subsequent psychosocial intervention within the shelter. This is due to the special situation of vulnerability they live in because of their age. The second is the Casa Hogar de la Tía Tere, in Roxana de Guápiles, for those over fifteen years of age, with whom it is essential to initiate a highly specialized intervention from the street. The main limitations in both cases are related to the transportation of the girls to that place,

An additional difficulty is that in addition to this population of victims of sexual exploitation, during the same operations we have generally intervened with the population of minors at social risk in the streets, but with other characteristics. First, there are minors in conflict with the law (Juvenile Criminal Justice Law) who, despite being offenders, there is no specialized place for their intervention and rehabilitation treatment, as established by law. On the other hand, there is the underage population with addictive substance use, which also does not have a specialized center for their detoxification. Both groups often have members in common. In fact, it is the population that offers the most problems to PANI's specialized programs aimed at the population at social risk on the road.

The public, since they are the ones who constantly demand the use of the resources offered, but who present a very tenuous or null response to the psychosocial intervention and, therefore, constantly interfere in the work carried out with other groups that do not yet present such drastic characteristics. For them it is necessary to initiate new protection alternatives according to their characteristics and in accordance with the Juvenile Criminal Justice Law. but who present a very tenuous or null response to psychosocial intervention and therefore constantly interfere with the work done with other collectives that do not yet present such drastic characteristics. For them, it is necessary to initiate new protection alternatives according to their characteristics and in accordance with the Juvenile Criminal Justice Law. but they present a very weak or null response to psychosocial intervention and therefore constantly interfere with the work done with other groups that do not yet present such drastic characteristics. For them, it is necessary to initiate new protection alternatives according to their characteristics and in accordance with the Juvenile Criminal Justice Law.

PANI's recommendations, in the specific case of operations, are:

- Operations should focus primarily on the strict control of adults involved in the sexual exploitation network, starting with potential clients who go to places frequented by the population at social risk, in a campaign to remove potential clients through police control. Likewise, premises, hotels and other establishments that contribute to sexual exploitation should be monitored, in order to collect evidence and direct the denunciation.*
- The population approached on the street must be transferred to the PANI building where a professional in charge of the technical approach will remain and will make specific decisions in each case on the procedure to be followed.*
- These actions should be seen and considered as part of the Plan to Combat the Commercial Sexual Exploitation of Minors, approved by the Council for Children and Adolescents, and under the responsibility of the Executing Unit (sic) coordinated by PANI and supported by IMAS.*
- Promote the Detoxification Center that allows to put in adequate physical conditions for the approach because they do not receive it in the hospital.*
- Given that the work with sexually exploited girls is contaminated by the perpetrator population that cannot be assumed by PANI, the high containment centers should be promoted by the Ministry of Justice in accordance with the provisions of the Juvenile Criminal Law.*

Indicate whether the protection measures applied by the National Child Welfare Agency involve a restriction of freedom of movement. Also indicate whether there is any differentiation according to age (childhood and adolescence).

Regarding the specific measures adopted by PANI, there are differences according to age, since, as already mentioned, an immediate intervention is carried out with the population under fifteen years of age, due to their particular condition of vulnerability. In the case of the population over fifteen years of age, an immediate intervention is carried out, which consists of the transfer to a protection alternative and the initiation of comprehensive care procedures (including the corresponding protection measure). With the population over fifteen years of age, in consideration of their age and particular characteristics, a process of approach and induction towards the alternatives available in the institution is initiated, particularly the adapted school and the

protection alternatives for victims of sexual exploitation to whom they have already been exposed.

The protection measures issued by the Patronato Nacional de la Infancia do not imply a restriction on the freedom of movement of minors. A protection measure has been conceived that seeks to achieve the entry of a minor person at social risk in the public street to the protection alternatives available to the institution, due to the existence of serious risk factors for his life and his physical and emotional integrity. In addition, in many cases, the characteristics derived from survival in adversity, particularly the consumption of addictive substances, make the protective measure of compulsory internment necessary to achieve the beginning of an effective therapeutic process. The protection measure is dictated with the purpose of protecting their lives above any other circumstance and due to the special vulnerability in which they find themselves and that prevents them from discerning clearly about the convenience of entering into the existing protection alternatives. . It is important to emphasize that the protection measures (in administrative headquarters) of compulsory entry into a protection alternative are in no case measures of internment in detention centers in the sense in which they are understood for cases of infringement of the law. In the case of the protection alternatives of the JUNTA NACIONAL DE INFANCIA, these are, specifically, the shelters of the joint project between PANI and the Salvation Army for the attention of the population at social risk in the Metropolitan Area, located in Tres Ríos (for women) and in Parasito de Moravia (for men). These protection alternatives are, in turn, part of a comprehensive care model designed by PANI and implemented by the Salvation Army. We also work in collaboration with the Casa Hogar de la Tía Tere in Guápiles.

However, it is important to point out that the protection measure that has been designed for this purpose has contemplated a variety of situations derived from the experience gathered by the street teams and seeks to consider the particularities of the living conditions in which minors at social risk find themselves on the public streets. The protection measure in these cases is only issued after a psychosocial analysis of the specific situation of each child or adolescent. For further clarity and clarification on this issue, please find attached the guideline issued to the PANI Local Offices.

GUIDE
PATRONATO Nacional Niños
EXECUTIVE PRESIDENCY

AREA OF DEFENSE AND GUARANTEE OF THE RIGHTS OF CHILDREN AND
ADOLESCENTS

ADMISSION TO PROTECTION ALTERNATIVES FOR CHILDREN AND ADOLESCENTS WITH
DRUG ADDICTION PROBLEMS AND/OR VICTIMS OF SEXUAL EXPLOITATION AND AT CLEAR
SOCIAL RISK.

When the minor voluntarily requests to enter one of these protection alternatives and is accompanied by one of his/her parents, the local office, through any of its officials, will immediately proceed to draw up the respective act where the free and express consent of the minor will be recorded, as well as the assent of the person or of those exercising parental authority or legal representation if they present a suitable document that proves it, in these cases it is not required to issue the protection measure, but only the act of reference.

When the admission must be done with direct institutional support due to negligence or disinterest of those exercising parental authority but in which case, the minor voluntarily wants to enter these protection alternatives, the corresponding local office will immediately proceed through any of its officials to draw up the record to form the consent and subsequently issue the protection measure duly motivated, as well as study the complaint for breach of duty of care or administrative measures of protection to rescue the link.

When the admission must be made even against the minor's will, objectively applying the best interest of the minor to protect a greater good (Life) over a lesser good (his will), a measure of protection absolutely motivated, where it is totally clear that the minor is not being deprived of his freedom, but through the constitutional, conventional and legal faculties conferred to the National Child Welfare Agency, he is being protected within the framework of legality and with defined terms for the minor, a measure that can be reviewed in the Courts of Justice at any time. In the event that those exercising parental authority agree with the institutional actions,

When the admission must be carried out both against the will of the minor and of those who hold parental authority, objectively applying the best interests of the minor to protect a greater good (Life) over a lesser good (his/her will), a fully reasoned protection measure must be issued; in addition to the above, the corresponding criminal complaint must be filed against those who hold the legal representation of the minor in accordance with article 188 of the Penal Code.

In situations of evident social risk, the specialized competence of the Local Directorate of San José for the Metropolitan Area and with the inter-institutional and institutional rounds of social audit, protection and restitution of the right to, when a protection measure is required against the minor's will, will proceed in accordance with the Legal Order and with the power of empire constitutionally granted to the Patronato Nacional de la Infancia to protect in a comprehensive and professional manner any minor who requires it and so it must be known and accepted by those responsible for the different protection alternatives creating the appropriate responses to give real content to these protection measures from the psychological and social point of view.

Of the protection measures imposed without the will of the minor, a closer control and audit will be carried out by the local office that dictated it and a copy of the same must be sent to the Area for the Defense and Guarantee of the Rights of Children and Adolescents in order to quickly provide information to the Legal Department in the event that an appeal is filed against the institutional action for feeling injured in any right, in order to advance in the defense of the same, while the administrative file arrives.

The protection measures issued in any of the aforementioned circumstances must be prioritized in the notification in order to effectively comply with due process and achieve respect and credibility before external entities with this function of rescue and real execution of the protection to which we are obliged.

(sic) Indicate how many cases of sexual exploitation against minors have been detected and reported to the Public Prosecutor's Office.

The complaints filed by PANI during 1999 and 2000, before the Sexual Crimes Prosecutor's Office, are as follows:

*May 1999: four complaints July
1999: one complaint August
1999: seven complaints
September 1999: one
complaint October 1999: five
complaints November 1999:
three complaints February
2000: eight complaints May
2000: eight complaints. "*

Finally, the Ministry of the Interior, Police and Public Security, sent official communication 2016-2000, dated July 24, 2000, in which it informs, if applicable:

"In this sense, the participation of this Ministry has been of support to PANI, since this institution develops its own plan of action in this matter and our police policy and action has been oriented to prevention work and the search for a comprehensive response to the problem of sexual exploitation. For this reason, our police forces have not made arrests of minors in the operations carried out, since when minors have been detected in activities and areas classified as suspicious, we have coordinated with PANI, in order to implement the corresponding actions.

In addition, an arduous work has been coordinated with the Prosecutor's Office for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office and with the OIJ, aimed at prosecuting national and foreign citizens who may be involved in activities such as corruption of minors, pimping, forgery, production and dissemination of pornographic material, etc. Said Prosecutor's Office has the detail of the number of subjects and complaints filed. "

SAW. Conclusions and recommendations.

The actions deployed so far by the authorities involved in the nighttime operations are part of the Immediate Action Plan, approved by the National Council for Children and Adolescents, as a strategy used to neutralize international impressions and improve the country's image.

They were originally conceived as a mechanism for detecting and intervening in situations of sexual exploitation. However, the fact that these actions are disjointed from a clear State policy, with medium and long term objectives, has meant that this first intention has been distorted over time, and has become a kind of operation aimed at picking up children and adolescents who are on the street and who are presumed to be at "social risk": sexual exploitation, drug addiction problems, vagrancy and begging, among others. This situation has led to the dispersion of efforts aimed at specialized attention to the commercial sexual exploitation population.

The lack of definition in the objective of the operations is even clearer in the reports of the Patronato Nacional de la Infancia and the Ministry of the Interior, Police and Public Security, since they contradict each other as to which institution is in charge of coordinating the actions. What is worrying is that such confusion is not a purely operational issue, but is essential to define the approach to be taken to the actions, whether repressive or, on the contrary, protective, preventive and psychosocial care. . In addition, during the on-site inspection carried out by this Ombudsman's Office, it was verified that no specific resources have been allocated for the operations and that they function almost 100% thanks to the efforts of the volunteer personnel of the National Child Welfare Agency (Patronato Nacional de la Infancia).

All of the above suggests that the solution to the problem of Commercial Sexual Exploitation of Minors in the country has been based almost exclusively on removing the victims from public view: children and adolescents.

exploited adolescents. Which, in the opinion of this Ombudsman, consists of covering the sun with a finger.

It must be borne in mind that any approach to the problem must start from the conviction that the participation of the minor in this activity must be seen as that of a victim, both of his own circumstances and of unscrupulous subjects who take advantage of this situation, and it is precisely against these that the full weight of the law must be applied.

Thus, actions should be oriented, on the one hand, to the severe repression of the exploitative adult (pimp, cab driver, user, hotelier, etc.) and the criminal networks in which he operates, and on the other hand, to the support, care and protection of the minor victim, without neglecting the essential prevention programs.

It is of great concern that the use of force has increased in the operations to enter the victims in vehicles and protection alternatives -as this Ombudsman's Office was able to see in the aforementioned inspection-, while no equally firm action against the exploiters has been seen.

In this context, PANI's participation undermines the legitimacy and credibility of its actions vis-à-vis the victims, as it is seen more as a repressive figure than as an ally. Undoubtedly, this perception hinders its main function, which is that of protection, carrying out a technical approach -psychosocial and legal- with a view to reversing and improving the living conditions of these people,

Equally worrying are other counterproductive results pointed out by the Patronato, such as: the generation of feelings of mistrust "which prevents alleged victims from collaborating in providing information to file the corresponding complaints..."; as well as the fact that "repressive intervention has caused the displacement of this population to places with greater difficulties of access and police intervention".

Furthermore, the situation described above, together with the fact that the benefits for the exploited minors are uncertain, makes the actions arbitrary and revictimizing.

Given this scenario, it is necessary to avoid at all costs the indiscriminate use of the measure of forced internment of the minor, which, rather, should be applied as an exception and last resort. On the contrary, the application of more technical measures or intervention models that include awareness-raising and persuasion and that contemplate the active participation of the victim in the creation of new expectations should be favored.

Certainly, there will be cases in which, due to the circumstances, there is no choice but to apply the measure in question even against the minor's will -especially when he/she also presents substance abuse problems-. However, it is first necessary to have highly specialized shelters for comprehensive intervention, with clear and efficient rules for crisis intervention and containment. According to PANI, there is currently only one protection option for the adolescent population that could meet these characteristics, with the disadvantage that it is located outside the capital, where the operations are carried out, which results in uprooting adolescents. Secondly, it should never be seen as an end in itself, but as part of a comprehensive process that allows children and adolescents to develop a real alternative life project. Based on the above, it is urgent to design a National Plan that transcends politics to become a State policy, with short, medium and long term objectives and goals, that empowers all the forces of society and finally that has sufficient resources to put it into action.

But, above all, it is necessary to understand that the reality of the phenomenon of Sexual Exploitation is not only what is visible and what is eventually detected by the police authorities with the practice of "operations" to collect this population from the streets, but it is a scourge perpetrated by the police.

The most important thing is to avoid that in the future more minors become involved in the activity or that those who have already been rescued repeat the practice. What is really important is to avoid that in the future more minors become involved in the activity or that those who have already been rescued repeat the practice.

In this regard, the Ombudsman's Office recommends to the National Council for Children and Adolescents:

1. Promote the development of a National Action Plan for the eradication of commercial sexual exploitation of minors. This Plan should consider the guidelines indicated in the Stockholm Declaration and the parallel Action Plan, as well as the basic elements of social programming such as the definition of short-medium and long-term actions, responsible parties, evaluation mechanisms, among others. .

2. In order to make this plan operative and effective, the provision of financial resources for all the actions defined should be guaranteed.

3. That it be assumed as a general policy:

- That repressive actions be directed exclusively against adult exploiters and specialized networks.
- That protection and prevention actions in favor of victims be prioritized.
- That measures of compulsory internment be applied as an extraordinary remedy, once all avenues of dialogue and sentencing have been exhausted. In all cases, the measure should be applied for the shortest possible time and always accompanied by other actions aimed at offering real conditions for the construction of an alternative life project.

It also recommends the National Children's Trust:

1. That in relation to the operations, the recommendations issued by the Technical Directorate of that institution in the report issued in official letter GT-2000-A be applied, and that these recommendations be submitted to the Council for Children and Adolescents.

2. That additional efforts be made to provide resources to new or existing programs aimed at the protection and restitution of the rights of sexually exploited children and adolescents. Special mention should be made of the efforts made with the methodology of approaching the street or places where minors stay and the possibility of offering them a real and dignified proposal for the construction of an alternative life project that does not imply institutionalization.

Finally, it is recommended to the Ministry of Public Security:

1. That the creation of a specialized police force for minors that would assume specific functions in the area of sexual exploitation be considered. This body should emphasize the protection of minors in coordination with PANI and develop, in addition to the preventive actions of the administrative police, functions of "persecution" of adult prostitutes.

2. That police actions with minors are carried out by qualified agents trained in the specific subject.

1. This complaint is presented within the framework of the Forum on Sexual Exploitation of Children and Youth, organized by the Ombudsman's Office.

2. See Report of the Ombudsman's Office 1998-1999. Chapter II, Report on the work of the Directorate for Children and Adolescents. Accompaniment of social processes and Institutions aimed at the application and enforceability of the rights of children and adolescents; and Annual Report of the Ombudsman's Office 1999-2000. Chapter I, Priority Attention Issues. Public Policies on Childhood and Adolescence: Assistance or Prevention?