

# **"Commercial Sexual Exploitation of Minors".**

Thesis for the degree of Licentiate in Law

María del Mar González Villar

2008

## **Dedication**

*I dedicate my final graduation work to my parents, Hugo and Ma. Lorena, who gave me the gift of life and taught me that the most important thing is to strive to excel every day, and never let our dreams be tarnished by adversity...the most important thing is to move forward.*

*To my daughter Sofía, for being the sun that lights up my mornings, and to my husband Allan, for teaching me that with love everything is possible.*

## Acknowledgments

*I thank my parents for all the support they have given me in each of my dreams and projects, especially for the support they have given me throughout my college career.*

*To my husband who with his constant support has always motivated me to move forward and accomplish all my goals.*

*To my daughter, who is the greatest blessing in my life and has inspired me to be a better person every day.*

*To the Paniamor Foundation, for all the help they have given me and especially for the trust they placed in me... Thank you for bringing me closer to the reality experienced by many children and adolescents, and for allowing me to actively participate in the Code of Conduct Project against Commercial Sexual Exploitation of Children and Adolescents, fostering in me the desire to create awareness in people in order to prevent social tolerance from continuing to punish these minors.*



## General Index

Topic	Page
<b>Summary</b>	VII
<b>Introduction</b>	IX
<b>Hypothesis and Objectives</b>	1
<b>Topic I Concepts</b>	5
<b>1. Concepts</b>	5
Child	6
Best Interests of the Child CSEC	7
Sex Tourism with minors Organized Sex Tourism	9
Organized Sex Tourism	12
Local Prostitution	13
Trafficking in minors	15
Factors Associated with the Commercial Sexual Exploitation of Minors	16
1.8.1 Factors influencing the development of Sex Tourism	19
Who is involved in the Commercial Sexual Exploitation of Minors?	33
Operators	37
Intermediaries	41
Tourism Industry	42
Las Víctimas	44
Sustainable Tourism	45
<b>Topic II</b>	47
<b>Legal Framework</b>	47
<b>2. Legal Framework</b>	47
<b>International Legislation</b>	53
United Nations Convention on the Rights of the Child	62
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.	

Convention 182 on the Worst Forms of Child Labor	
International Convention against Transnational Organized Crime. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.	68
Inter-American Convention on International Traffic in Minors	70
Stockholm Declaration and Program of Action, 1996	71
Extraterritorial Legislation	73
<b>National Legislation</b>	75
2.2.1. Political Constitution of the Republic of Costa Rica	80
2.2.2. Childhood and Adolescence Code	80
2.2.3. Law 7899, against the Commercial Sexual Exploitation of Minors.	83
2.2.4. Law 8590, Strengthening the fight against commercial sexual exploitation of minors.	92
2.2.4.1. Comparative analysis of Law No. 7899 and Law No. 8590.	103
2.2.5. Code of Criminal Procedure	
2.2.6. Executive Orders	105
	134
<b>Topic III</b>	143
<b>Commercial Sexual Exploitation of Minors in Costa Rica</b>	
3.1 Costa Rican Context	
3.2 Tourism Development in Costa Rica	144
3.3 Commercial Sexual Exploitation in Costa Rica	
3.4. Studies on the situation in Costa Rica	144
3.4.1 Maps of Commercial Sexual Exploitation occurrence in Costa Rica	157
	162
	166
	178
<b>Item IV</b>	
<b>Action Programs against CSEC in Costa Rica</b>	
4.1. Commission Against Commercial Sexual Exploitation (CONACOES)	
4.2. Main lines of action to eradicate commercial sexual exploitation of minors	183
4.2.1 Prevention Axis	184
	189

4.2.2Legal Reforms and Repression	Axis	
4.2.3Victim Care	Axis	190
<b>Code of Conduct</b>		191
4.3.1What is the Code of Conduct?		191
4.3.2Basic regulations for the project		194
4.3.3Project Objectives		196
4.3.4How does it work in Costa Rica?		197
4.3.4.1Who participates?		200
4.3.4.2Actions to be taken by the company in order to		202
subscribe to the Code of Conduct		202
4.3.4.3Implementation Methodology		
4.3.5Project Achievements		203
<b>4.3.6Current Project Status</b>		205
<b>State Policies</b>		206
4.4.1Reviewof Current National Legislation		218
4.4.2 National Plan for the Eradication of CSEC,		218
2008 - 2010		220
<b>4.4.2.1International and national legal framework</b>		
4.4.2.2Content of the National Plan		230
4.4.2.2.1Operating Principles		249
4.4.2.2.2Strategic Axes		249
4.4.2.2.3 National Plan Components		251
		253
<b>Topic V</b>		
<b>What remains to be done?</b>		
<b>5.1 Legislative and Judicial Level</b>		258
<b>5.2 Level Care for victims</b>		266
<b>5.3 Challenges</b>		281
		283
<b>Conclusions</b>		
		288
<b>Bibliographic References</b>		
		294
<b>Annexes</b>		
<b>Law No. 7899</b>		306
<b>Law No. 8590</b>		307
		312

--	--

## Index of Tables and Illustrations

Subject	Page
Factors Influencing the Supply and Demand for the Commercial Sexual Exploitation of Children and Adolescents age.	32
Rights of Minors.	91
Evolution of the Gini Coefficient.	148
Structure of employment by region. As of 2006.	149
Households in social exclusion / inclusion, by region. 2002 - 2006.	151
Population between 18 and 64 years old with completed secondary school or higher more.	152
Costa Rica's situation in light of indicators International.	155
Perception of interviewees as to whether they have improved the family's economic income due to the development tourist. July 2007	161
Tourist Income and Foreign Exchange Generation.	165
Zones at Risk of Commercial Sexual Exploitation of Children and Adolescents	179



Children and Adolescents.	
Areas of Highest Incidence of Sex Tourism and	180

Local Demand.	
Cases accused of Commercial Sexual Exploitation of Children and Adolescents minors. 1993 - 2007	267
Cases solved for Commercial Sexual Exploitation of Children and Adolescents Persons Under Age. 1993 - 2007	268
Cases of Human Trafficking. 2003 - 2007	268

## Summary

This research paper aims to analyze from a critical perspective the issue of Commercial Sexual Exploitation of minors in Costa Rica, and the approach taken by the Costa Rican government and society.

In order to achieve this objective, the study was divided into five chapters, which were organized as follows. In the first section, a theoretical framework was elaborated to provide the reader with greater clarity regarding the main concepts directly related to the issue of sexual commerce with the use of minors. The second chapter studies the legal framework that regulates the issue of commercial sexual exploitation of children and adolescents, addressing both national and international legislation, while analyzing the importance of implementing extraterritorial legislation in order to prosecute crimes related to sex tourism.

As a second stage, the third and fourth chapters include an analysis of the real situation in Costa Rica in relation to the commercial sexual exploitation of minors within the national territory; therefore, in chapter three we proceed to elaborate a descriptive framework of the Costa Rican situation, while in the fourth section we analyze two of the key proposals for the prevention and eradication of the phenomenon, one of them implemented by a non-governmental organization and the other the government's proposal for the year 2008.

Finally, in the last chapter, we proceed to reflect on what remains to be done by the Costa Rican government and civil society in general, raising challenges at the legislative, judicial and victim care levels; likewise, we seek to formulate concrete solutions aimed at the prevention and eradication of Commercial Sexual Exploitation of Children and Adolescents.

The purpose of this research is to convey the reality lived by all those minors who for various reasons have fallen victims of commercial sexual exploitation, with the final purpose of creating awareness in the reader, in order to prevent social tolerance from continuing to take its toll on hundreds of girls, boys and adolescents who did not choose the sex trade as a way of life, but who are there every day as victims of it.

## **Commercial Sexual Exploitation of Minors.**

### **Hypothesis:**

Commercial Sexual Exploitation of Minors is an undeniable reality in Costa Rica, and the Costa Rican State has assumed a series of international commitments, which have not yet been satisfactorily fulfilled.

### **Objectives:**

#### **General Objective:**

To investigate the phenomenon of Commercial Sexual Exploitation of Minors in Costa Rica, both from a factual and legal perspective.

**Specific Objectives:**

1. To elaborate a theoretical framework on the subject of Commercial Sexual Exploitation of Minors, with the purpose of achieving the most adequate and complete understanding of the subject.
2. To analyze the main international instruments that regulate the Commercial Sexual Exploitation of Minors, and which in turn have been ratified by the Costa Rican government.
3. To study the real situation experienced by Costa Rican children regarding the problem of Commercial Sexual Exploitation.
4. Analysis of the Draft Code of Conduct against Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism, which is being implemented by the Paniamor Foundation, as well as the National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents 2008-2010, which represents the Costa Rican government's proposal on the issue.
5. Create proposals related to pending tasks based on the commitments acquired by the Costa Rican government in relation to the fight against Commercial Sexual Exploitation of Minors.

**Introduction**

The concept of Commercial Sexual Exploitation of Children and Adolescents is complex, since it involves a series of activities that have as a primary consequence the violation of the fundamental human rights of children and adolescents. Sex trade with the use of minors can also be seen as a form of abuse, which involves the sexual victimization of a minor by an adult, and in turn, involves remuneration either in money or in kind, which can be given both to the victim of this fact, as well as to a third party. Finally, Commercial Sexual Exploitation can be visualized as a contemporary form of slavery, since in this type of activities there is no degree of consent on the part of the person being exploited.

Commercial Sexual Exploitation can then be defined as the use of children or adolescents for the sexual satisfaction of adults, in exchange for remuneration in money or in kind, either for the minor or for third parties.

Certainly, the sex trade in which minors are used is a problem that has manifested itself in Costa Rica for a long time, however it is an issue of recent public recognition. The seriousness of child exploitation should be interpreted not only by the physical and emotional consequences that victims of this scourge suffer practically for life, but also by the impact of tolerance to the violation of the rights of children and adolescents in the society in which they develop.

Having clarified the concept of Commercial Sexual Exploitation of Minors, it is important to look at one of the main economic activities developed in the country, tourism. It cannot be denied the fact that for Costa Rica, Tourism constitutes one of the main engines for the country's economy, for example, for the year 2004, tourism produced more than one thousand four hundred and fifty million dollars as income for the country; due to the fact that the number of visitors in the mentioned year was more than one million four hundred thousand people, which meant a relevant increase in comparison with the year 2003, going from 16% to 20%. According to data from the Ministry of Tourism and based on Central Bank projections, income from this activity represented 8.7% of the country's Gross Domestic Product.

In view of this situation, it should be taken into account that this phenomenon brings with it a series of positive and negative consequences in various sectors of the country's life, both from an economic and social point of view. Therefore, it is essential to be aware that the increase in the tourism sector should be considered as one of the agents that increase the risk factors and vulnerability of children and adolescents to activities aimed at commercial sexual exploitation.

Analyzing this context, it is pertinent to ask a series of questions: Are policies and programs aimed at combating the Commercial Sexual Exploitation of Minors being implemented in Costa Rica? What has been done so far? Have the actions taken to date yielded positive results? What other actions or programs can be implemented to combat the Commercial Sexual Exploitation of Children?

The main purpose of these questions is to confirm the hypothesis put forward for this research work:

*"Commercial Sexual Exploitation of Minors is an irrefutable reality in Costa Rica, and the Costa Rican State has assumed a series of international commitments, which have not yet been satisfactorily fulfilled".*

In order to answer these and other questions, this research is structured in five chapters, which address the following topics: the first chapter is dedicated to elucidate a series of concepts related to the issue of Commercial Sexual Exploitation of Children and Adolescents; the second chapter analyzes the Legal Framework, both at the international and national level. The third chapter deals specifically with the issue of Commercial Sexual Exploitation of Minors in Costa Rica, complemented by the fourth chapter, which studies various programs of action against the sex trade with the use of minors in the country. Finally, the last chapter tries to elucidate the question: What remains to be done in Costa Rica on the issue of Commercial Sexual Exploitation of Children and Adolescents? For a correct development of the research, the following methodology was used: analysis of bibliographical references, interviews with key people in the prevention and fight against the Commercial Sexual Exploitation of Minors and field work carried out with the Paniamor Foundation, specifically in the Code of Conduct Project.



Certainly the phenomenon of Commercial Sexual Exploitation of minors is an unfortunate reality that afflicts Costa Rican children, before which, the government of Costa Rica has assumed a series of commitments of international nature, from the moment it has ratified the different international conventions that focus on the human rights of minors, however, the most important commitment it has acquired and that undoubtedly must be fulfilled, is with every child or adolescent who is or has been a victim of this scourge, because every minor has the right to the protection of the human rights of children and adolescents, However, the most important commitment that has been acquired and that without a doubt must be fulfilled, is the one acquired with every child or adolescent who is or has been a victim of this scourge, because every minor has the right to a dignified life, to a healthy and balanced environment, within which he/she can develop in an integral manner and in the full enjoyment of all the rights that have been recognized by a series of national and international instruments. For this reason, each individual has the obligation to use all the mechanisms within their reach to protect Costa Rican children and adolescents, so that they can fully develop.

Taking refuge in silence and indifference does not diminish personal problems, but rather makes the person an accomplice and therefore responsible.

## TOPIC I

### Concepts

**Objective 1.**

*To elaborate a theoretical framework on the topic of Commercial Sexual Exploitation of Minors, in order to understand it in the most adequate and complete way.*

### 1. CONCEPTS

The issue of Commercial Sexual Exploitation of Minors is really complex, because it involves a series of activities and at the same time involves a large number of people who act within it from two points of view: those who take advantage of this activity and those who are victims of it, meaning minors. Taking into account how complicated it is to deal with the topic of Commercial Sexual Exploitation of Children and Adolescents, there is no doubt of the vital importance of having a clear understanding of the main concepts of this topic; that is why this chapter has been dedicated to the definition of the main terms related to the topic of Commercial Sexual Exploitation of Minors, which will be constantly used throughout this research work.

## 1.1. Child.

***CHILD:*** every human being under eighteen years of age, unless under the law applicable to him/her, he/she has previously reached the age of eighteen years.

In the specific case of Costa Rica, a child is considered to be any person under eighteen years of age, since, according to the regulations of our country's legal system, a person who has not yet reached that age is protected by all national and international instruments that ensure the safety and integrity of minors.

*"Article 2 - **Definition.** For the purposes of this Code, a child shall be considered a person from conception to twelve years of age, and an adolescent shall be considered a person over the age of twelve and under the age of eighteen. In case of doubt, the condition of adolescent shall prevail over that of adult and that of child over that of adolescent. "*<sup>1</sup>

---

<sup>1</sup> Code of Childhood and Adolescence. Article 2.

## 1.2. Best Interest of the Child.

*Principle that states the need to implement a series of actions and processes aimed at **guaranteeing comprehensive development and a dignified life for minors**, as well as the security of enjoying the material and emotional conditions that allow them to live as fully as possible.*

*Its primary purpose is to **consider the minor as a person of legal age.***

***a human being, who has the right to be taken into account in all decisions that affect him or her.***

The concept of the Best Interest of the Child is conceived as a fundamental principle that outlines the need to implement a series of actions and processes aimed at guaranteeing comprehensive development and a dignified life for minors. Through this principle, it is intended to provide children and adolescents with the security of enjoying the material and emotional conditions that allow them to live as fully as possible.

The primary purpose of the concept of the Best Interest of the Child is to consider the minor as a human being, subject of rights, within which the right to be taken into account in all those decisions that affect him/her in any way occupies a preponderant place. It can then be said that the notion of the Best Interest of the Child seeks to implement the idea that children and adolescents have the right to be taken into account before any measure is taken with respect to them, which in turn means that measures are adopted that in some way promote and protect their rights, leaving aside the abuse of power, presented in the past by the State, when the following were adopted

decisions referring to children and adolescents and which in no way took as a point of reference their specific situation or what was most convenient for them.

This principle of the Best Interest of the Child is regulated in Costa Rican legislation as follows:

**ARTICLE 5: Best interest**

*Any public or private action concerning a person under eighteen years of age must consider his or her best interests, which guarantees respect for his or her rights in a healthy physical and mental environment, in order to ensure his or her full personal development.*

*The best interest determination shall consider:*

- a) *Its status as a subject of rights and responsibilities.*
- b) *Their age, degree of maturity, capacity for discernment and other personal conditions.*
- c) *The social and economic conditions in which it operates.*
- d) *The correspondence between individual and social interest.* <sup>2</sup>

---

<sup>2</sup> Code of Childhood and Adolescence. Article 5.

### 1.3. Commercial Sexual Exploitation of Children and Adolescents.

**Commercial Sexual Exploitation of Children and Adolescents:** *use of children and adolescents for the sexual satisfaction of adults, in exchange for remuneration in money or in kind, either for the child or for third parties.*

Commercial Sexual Exploitation of Minors constitutes a form of coercion and violence against minors, and is therefore considered a form of forced labor and a contemporary form of slavery.

The term Commercial Sexual Exploitation of Minors can be conceptualized as follows:

*"The sexual use of minors, where there is an economic benefit for the child or adolescent or the intermediary. The sex trade involving children and adolescents can take different forms, such as sale and trafficking, pornography or the offering of economic benefits or in kind for the performance of sexual activities "3.*

*"Commercial sexual exploitation of children is a fundamental violation of children's rights. It encompasses sexual abuse by adults, and*

---

<sup>3</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. San José, Costa Rica. 2002, page 27.

*remuneration in money or in kind for the child or for a third person or persons. The child is treated as a sexual object and as a commodity. Commercial sexual exploitation of children constitutes a form of coercion and violence against children, is equivalent to forced labor and constitutes a contemporary form of slavery.*

"4

Returning to the highlighted concept, it is important to clarify some of the notions used in it:

- **"Remuneration in money or in kind": the fact** that the underage person is not always paid monetarily at the time when the figure of commercial sexual exploitation operates must be handled, because in many occasions other types of retribution are used, among which we can mention: food, clothes and even drugs.
- **Remuneration in kind** means all those things that the sexual exploiter gives for the use of a minor for his personal satisfaction, so it should be emphasized that not only money, but also a great variety of objects given by the exploiter can operate as payment.
- The payment is not made exclusively to the underage person who is being commercially sexually exploited, because sometimes the remuneration, whether in cash or in kind, is given to a

---

<sup>4</sup> United Nations. Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation of Children. 1996.

In these cases, the payment is given either to the person who has recruited the child or adolescent to be exploited, or to a person who functions as an intermediary between the exploiter and the underage person to be exploited.

It can be said that Commercial Sexual Exploitation of Minors can be manifested through activities aimed at Child Prostitution<sup>5</sup> (this term is not used in Costa Rica), Child Pornography<sup>6</sup> and Trafficking of Minors.<sup>7</sup>

It is important to note that since 1989, with the Convention on the Rights of the Child, a worldwide trend of defense and promotion of the rights of children and adolescents began to manifest itself, which has made the issue of Commercial Sexual Exploitation of Children and Adolescents an important issue on the public agenda of the States Parties to this international legal instrument.

The First World Congress against Commercial Sexual Exploitation, held in 1996, recognized three manifestations of child sexual exploitation: trafficking and sale of children for commercial sexual purposes, prostitution of minors and child pornography. In 2000, the United Nations reaffirmed these principles with the elaboration of the Optional Protocol, Annex 2 of the Convention on the Rights of the Child;

---

<sup>5</sup> The Optional Protocol to the Convention on the Rights of the Child defines the term Child Prostitution as *"...the use of a child (a) in sexual activities for remuneration or any other form of consideration."*

<sup>6</sup> The Optional Protocol to the Convention on the Rights of the Child defines the term Child Pornography as *"...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."*

<sup>7</sup> United Nations, Declaration of the World Congress Against Commercial Sexual Exploitation of Children, June 1996.



This is an optional document, which is intended to commit the States Parties to implement actions defined in the Declaration and Agenda for Action approved by the World Congress against Commercial Sexual Exploitation, which should be aimed at eradicating the Commercial Sexual Exploitation of Children.

The problem of Commercial Sexual Exploitation of minors, being of an illicit nature, is often considered to be of smaller dimensions than it really is, however, there are thousands of children and adolescents who are victims of this scourge.

"180 million children are victims of the worst forms of child labor: in situations of sexual exploitation, in invisible domestic chores, in deep mine shafts, as laborers on agricultural plantations and in rocket factories, used in armed conflicts, or risking their lives in construction activities. "<sup>8</sup>

#### **1.4. Sex Tourism with Minors.**

*Sex Tourism consists of the Commercial Sexual Exploitation of Persons Minors by persons in a country other than the country in which they ordinarily reside.*

Sex Tourism can be defined as the Sexual Exploitation of a child or adolescent by a person or persons traveling outside their own country or region, in which they engage in sexual activities with a person.

---

<sup>8</sup> International Labor Organization. International Programme on the Elimination of Child Labor (IPEC) A look at child labor. October 2004, page 1.

minor. It usually involves some form of payment - either in cash or in kind.<sup>9</sup>

*"It is the commercial sexual exploitation of children by people who travel from their country of origin to a country that is generally less developed to engage in sexual acts with children. "<sup>10</sup>*

For this type of tourism to operate, it implies the promotion of the destination country as an accessible point for the exercise of this activity with impunity, through means of communication such as the Internet, which are accessible to the masses.

*"This problem has become more acute and widespread due to the use of new technologies, including the Internet, through which international criminal networks and individuals from anywhere in the world promote sex tourism or the distribution of child pornography. "<sup>11</sup>*

### **1.5. Organized Sex Tourism.**

Based on the Declaration on the Prevention of Organized Sex Tourism of the World Trade Organization (Resolution AIRESI338 (XI) 1995), Organized Sex Tourism is conceived as a series of trips, which are organized from within the tourism sector or from outside it but using its structures and networks with the objective that the tourist has

---

<sup>9</sup> United Nations. Declaration of the World Congress against Commercial Sexual Exploitation of Children. June 1996.

<sup>10</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 6.

<sup>11</sup> International Labor Organization. International Programme on the Elimination of Child Labor (IPEC) A look at child labor. October 2004, page 18.

paid sexual relations with residents of the destination country. More specifically, it can be visualized as package tours in which the company of a minor is included.

Organized Sex Tourism is considered to be "travel organized within the tourism sector, or outside of it, but using its structures and networks, with the primary purpose of facilitating tourists to engage in commercial sex with local residents. "<sup>12</sup> In the context of this concept, the term tourist describes both tourists and day visitors, categories that are also referred to as visitors, referring to both international and domestic visitors.

It is important to point out that the World Tourism Organization has made several statements on Organized Sex Tourism, including the subject as part of its 1999 Code of Ethics for Tourism, as follows:

*"The exploitation of human beings in any form, especially sexual exploitation, and in particular when it affects children, violates the fundamental objectives of tourism and constitutes a negation of its essence; therefore, in accordance with international law, it must be combated unreservedly with the cooperation of all States concerned, and punished with rigour in the national legislation of the countries visited and of the countries of the perpetrators of the tourism activities.*

---

<sup>12</sup> World Tourism Organization. Declaration on the prevention of organized sex tourism. 1995.

*such acts, even when they have been committed  
abroad. "<sup>13</sup>*

With respect to the position expressed by the Global Code of Ethics for Tourism, it should be noted that it has been endorsed by the main organizations representing the sector, as shown in their declarations of principles and codes of conduct, including the IH&RA<sup>14</sup> , IFTO<sup>15</sup> , ECTAA<sup>16</sup> , IATA<sup>17</sup> , FIYTO<sup>18</sup> , IFWTO<sup>19</sup> , IFWTO<sup>19</sup> and the IUF/IUITA/IUL<sup>20</sup> , adopted after the 1995 World Tourism Organization Declaration, or earlier ones, such as the Chile and Travel Agents' Charter of the FUA<sup>21</sup> , which dates back to 1994.<sup>22</sup>

#### **1.6. Local Prostitution.**

*Local prostitution is the commercialization, organized or not, by nationals or foreign residents, of a minor as a sexual commodity, i.e. in exchange for remuneration in cash or in kind, and generally, but not always, with the intervention of an intermediary.*

---

<sup>13</sup> World Tourism Organization. Code of Ethics for Tourism. Article 2.

<sup>14</sup> International Hotel & Restaurant Association

<sup>15</sup> International Federation of Tour Operators

<sup>16</sup> Grouping of National Associations of Travel Agencies and Tour Operators of the European Union

<sup>17</sup> International Air Transport Association

<sup>18</sup> International Federation of Youth Travel Bureaus

<sup>19</sup> International Federation of Women Travel Agents

<sup>20</sup> International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations.

<sup>21</sup> Universal Federation of Travel Agencies Associations.

<sup>22</sup> World Tourism Organization. Guidelines for National Tourism Administrations Liaisons. For the Protection of Children from Sexual Exploitation in Tourism. Page 4.

Child Prostitution is conceived as *"...the use of a child in sexual activities in exchange for remuneration or any other form of remuneration."*<sup>23</sup>

Although this term is used, it is important to highlight the fact that *in Costa Rica we do not speak of child prostitution as such, since*, due to the cultural connotation that surrounds the term prostitution, certain nuances would be given to it that would relate it as if it were a kind of work carried out by minors, and it is clearly understood that this situation does not mean in any way a form of labor activity.

Having made this clarification, it is preferred to use the term Commercial Sexual Exploitation of Children and Adolescents when talking about paid sexual relations between an adult and a minor, since in reality this type of activity leads to the violation of the fundamental rights of children and adolescents, which is why it has even been considered a modern form of slavery.

### **1.7. Trafficking in Minors.**

*It consists of the recruitment and transfer for illicit purposes of children and adolescents, from one country to another (international) and from one region to another in the same country (national), with or without their consent or that of their family, with the possibility of deception or coercion, to be used as exotic or low-cost sexual merchandise in other countries or regions, in prostitution or pornography.*

---

<sup>23</sup> United Nations. Optional Protocol to the Convention on the Rights of the Child.

Trafficking in Minors consists of the recruitment and transfer for illicit purposes of children and adolescents from one country to another (international trafficking) or from one region to another within the same country (national trafficking). It should be noted that this figure operates independently of the consent of the minor being transferred or that of his or her family. This type of activity may involve deception or coercion, since the primary objective of this activity is to use the underage person as an exotic or low-cost sexual commodity.

Child trafficking is defined as *"all acts involving the recruitment or transportation of persons within or across borders, involving deception, coercion or force, debt bondage or fraud, for the purpose of placing persons in abusive or exploitative situations, such as forced prostitution, slave-like practices, beatings or extreme cruelty, exploitative labor or exploitative domestic services"*<sup>24</sup>.

The main reason for the existence of this figure is simple and can be summarized in the search for anonymity of the victim of commercial sexual exploitation in the new place where he/she will be sexually violated, achieving impunity to a certain extent, and avoiding, in turn, the recrimination of the social circle, acquiring some degree of permissiveness or social indifference.

*"...it must be remembered that it benefits traffickers to keep their victims in a strange environment where they are not only vulnerable because they have entered a*

---

<sup>24</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 14.

*country illegally, but are disadvantaged by their ignorance of the law, culture and language in that country. "*<sup>25</sup>

Regarding the legislation on trafficking in Costa Rica, it should be noted that this activity is considered a crime, and is punished even in the Penal Code, when it involves the transfer of minors for the purpose of sexual exploitation from one country to another, i.e., when it is carried out internationally. However, trafficking in minors can also occur within a country. *"Trafficking within a country is less common than cross-border trafficking, but the harm suffered by children is no less than that suffered by victims of cross-border trafficking. It generally occurs from rural to urban areas; however, children can also be taken to tourist areas or to areas dominated by workers who are far from their places of origin (oil fields, construction areas, truck stations, ports or military bases). "*<sup>26</sup> It is important that Costa Rican legislation be updated in terms of criminalizing the crime of trafficking in persons, since trafficking within the country has not been criminalized and, taking into account the real existence of the practice of sex tourism in the national territory, penalties should be provided for it.

With respect to international trafficking of minors for sexual purposes, it is important to note that *"documents on cross-border trafficking generally refer to countries of origin (i.e., children who are taken illegally); countries of destination (those receiving trafficked children); and countries of transit (not the final destination, but a point of entry into another country or region). Some countries may fall under all three categories. Guatemala, for example, can be considered a country of origin, since children are trafficked to Mexico - its neighboring country - and*

---

<sup>25</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 15.

<sup>26</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 16

*to the United States. It is a destination country for some children from El Salvador, Honduras, and Nicaragua and is a transit country for other children from neighboring Central American countries who are transported to the United States.* "<sup>27</sup>

Against this backdrop, there is an imminent need to apply inflexible migration laws and policies with respect to traffickers of minors, and more humane ones with respect to trafficked children and adolescents, especially with regard to their repatriation processes, as well as international and regional cooperation agreements.

### **1.8. Factors Associated with the Commercial Sexual Exploitation of Minors.**

When talking about Commercial Sexual Exploitation of Children and Adolescents, it is important to keep in mind that these minors are not in this situation because they chose to be, but because of a series of agents that in one way or another influenced the fact that they are involved in commercial sexual exploitation.

Among these factors, the following can be mentioned as having the greatest incidence:

- A. Patriarchal roles and predominant power relations. The patriarchal ideology feeds the belief that validates, justifies and perpetuates male power and, therefore, the satisfaction of their needs and interests. In this way, women's lives are appropriated, to the point of being considered as property.

---

<sup>27</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 16



This is why many women are expropriated of their bodies and subjected to the control of their sexuality. Based on this patriarchal logic, the sexual exploitation of girls and boys is not condemned; on the contrary, objectification is legitimized, since girls' bodies and their sexuality are within the domain of men.

*"The patriarchal roles and predominant power relations that make women and children invisible and objectify them, and from which violent dynamics within the family groups - physical, sexual and emotional abuse - as well as the patterns of coercion towards the street exercised by the authority figures of these primary groups over children and adolescents are derived "*<sup>28</sup>.

*"Being female is a vulnerability factor. Although it is now recognized that there are male adolescent victims.*  
*"*<sup>29</sup>

*"The power relations between men and women make the problem invisible, since they promote women, girls, boys and adolescents as a commodity, thus reproducing the chains of violence. "*<sup>30</sup>

---

<sup>28</sup> National Commission against Commercial Sexual Exploitation, National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents, 2008-2010. Page 3.

<sup>29</sup> Paniamor Foundation. Commercial Sexual Exploitation of Children and Adolescents.

<sup>30</sup> Paniamor Foundation. Commercial Sexual Exploitation of Children and Adolescents.

*"The social system that gives space to these practices has received the name of patriarchy, due to the right of ownership exercised by men over women, girls and boys. This right is intertwined with another series of beliefs and practices that legitimize male superiority in the social order. "*<sup>31</sup>

#### B. Domestic Abuse and Child Neglect.

*"Approximately 80% of children exploited in the commercial sex industry are believed to suffer psychological or physical abuse within their families, and the vast majority have experienced some form of sexual assault by a family member or friend.*

*Some of the children who attended the International Conference of Sexually Exploited Youth in 1998 reported that they had entered the sex trade when one or both parents told them that they were unwanted mistakes. Some explained their entry into prostitution as a cry for help and a desire for love. "*<sup>32</sup>

<sup>31</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. Page 29. UNICEF / University of Costa Rica. 1998.

<sup>32</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 22

---

*"...the background of experiencing situations of intrafamilial sexual abuse prior to the commercial sex trade, of children and adolescents in commercial sexual exploitation, so that it is possible to conceptualize commercial sexual exploitation as a continuum of abuse."*<sup>33</sup>

### C. Disintegration and Domestic Violence.

*"...the family context and situations of abuse in which commercially sexually exploited children grow up and live. Of those who participated in Claramunt's study (1998), 64% indicated that in their home there was conjugal violence against the mother, 61% reported physical violence against brothers and sisters by the father, and 28% indicated the existence of sexual violence against any member of the family group.*

*Based on these conditions of domestic violence, runaways are reconceptualized as a survival strategy for children and adolescents in the face of domestic violence against them or their family members, as well as a mechanism for expulsion from the family group. In addition, a connection is identified between sexual aggression and running away, and between running away and commercial sexual exploitation."*<sup>34</sup>

---

<sup>33</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 37.

<sup>34</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 38.

D. The influence of the media, particularly television, in projecting the image of women as sexual objects. Likewise, the media contributes enormously to the publicity of countries as destinations for sexual tourism, as is the case of the Internet, where thousands of pages are published offering destinations such as Costa Rica as an Exotic Paradise.

E. Patterns of consumerism and consumerism.

*"In many developed countries youth are prostituting themselves but not because they are members of the lower class trying to escape crippling poverty, but as members of the middle class who want to increase their income. They become part of the sex industry because they are attracted to the idea of earning a lot of money in a short time. They are tempted by peer pressure or enticing advertising, and also by the value society places on brand-name products or luxurious goods and services. "*<sup>35</sup>

F. The immediate deprivation associated with poverty and its corresponding process of social marginalization.

*"Street children can be found in most Central and South American countries. Often they prostitute themselves in order to survive, and in*

---

<sup>35</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 23

*compared to other forms of prostitution, their income is very low. "*<sup>36</sup>

*"Costa Rica, like most Latin American countries, was affected by the crisis of the early 1980s and late 1990s, which had a major impact on the national economy and the living conditions of the population; as in other Latin American countries, poverty affects rural residents the most. Data indicate that the incidence of poverty is higher in families whose heads of household work in agriculture or domestic service, are self-employed or have micro-enterprises, are unemployed or underemployed. It is estimated that women head 48% of families in extreme poverty compared to 33% of families living in near poverty. Poor families are younger and have higher dependency ratios than non-poor families, most have a single breadwinner.*

*...The analysis of critical deprivations, which considers four variables (access to decent shelter, healthy life, knowledge and access to others) and is based on the 2000 Census, indicates that the incidence of families with critical deprivations is 36% and their intensity is 7.1% ... The Survey*

---

<sup>36</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 23

*The 2002 Household Survey found that 24% of the population was living in poverty.*

*It is also important to note that young people between 15 and 17 years of age are the ones who suffer the most from critical deprivation. In 1995, the Instituto Mixto de Ayuda Social, IMAS, reported that at least 450,000 minors were trapped in poverty and did not enjoy access to basic services provided by the State. Eight percent of this group, 45,000 girls and boys, have fallen into the networks of drug addiction, prostitution, delinquency, begging or labor exploitation. "<sup>37</sup>*

G. The absence of alternatives for labor and social insertion.

*"The Survey of Child and Adolescent Labor estimates that of the total population of children between the ages of 5 and*

*17 years (1,113,987) 10.2% work, ie,*

*Of the total working children and adolescents, 11.5% are between 5 and 9 years old, 31.8% between 10 and 14 years old, and 56.6% between 15 and 17 years old. 68.5% live in rural areas and 31.5% in urban areas. Of these, 68.5% live in rural areas and 31.5% in urban areas.*

*74.5% of minors who work, do so in unskilled occupations...*

---

<sup>37</sup> Pan American Health Organization. La violencia social en Costa Rica, Ministerio de Salud, Costa Rica. 2004. page 36.

*... 43.7% are unpaid workers and it is more common among children from 5 to 14 years of age than among adolescents. Wage earners account for 40.2%. "*<sup>38</sup>

H. An educational system inadequate to serve as a mechanism for absorption, containment and upward social mobility.

*"Access to education is one of the greatest commitments of the State to give the population the opportunity to improve their quality of life. Despite the Costa Rican educational system's coverage efforts, there are problems that are reflected in school dropout and grade repetition, either due to school dropout or exclusion from the system, especially at the secondary level.*

*Education levels are lowest among the population in the bottom 25% of the income distribution. Only 62% of those in the poorest 25% of the income distribution had completed primary school in 1999, similar to the 1990 rate.*

*The State of the Nation Project, in its ninth report of 2003, points out that school dropout in the adolescent population, especially in the 13 to 16 age group, is caused by several factors: the student's own, economic, family, social and environmental factors.*

---

<sup>38</sup> Pan American Health Organization. La violencia social en Costa Rica, Ministerio de Salud, Costa Rica. 2004. page 36.

*educational system. Studies conducted by the Department of Educational Research of the MEP with students expelled from the system indicate that about 43% of this population works in low-paying jobs with little stability and belongs to homes with low levels of schooling of the parents.*

*...According to the Centro de Estudios para América Latina, ECLAC, it is necessary for people to have at least completed secondary school in order to avoid falling into poverty. Access to education determines the possibilities of insertion in the educational process, which in turn has an impact on breaking the cycle of poverty.* <sup>39</sup>

- I. The ineffectiveness of legal mechanisms, coupled with the incompetence and/or complicity of the authorities in charge of social order.

*"...the common police practice of arresting and harassing victims rather than clients and the absence of state control over the different forms of sexual exploitation..."* <sup>40</sup>

- J. The lack of awareness and sensitization of the population to the problem, which translates into a critical and stigmatizing attitude towards underage prostituted persons.

---

<sup>39</sup> Pan American Health Organization. La violencia social en Costa Rica, Ministerio de Salud, Costa Rica. 2004. page 38

<sup>40</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 29.



*"The legitimacy to prostitute girls and boys is granted when the reasons for its occurrence are distorted, the abuser is excused, the victims are blamed and stigmatized, and the consequences are minimized. "*<sup>41</sup>

- K. Risk behaviors that are subsumed in social problems such as drug addiction.
- L. The consequences of migratory movements from the countryside to the city, and from the south to the north, between countries.
- M. Anonymity, tourists being away from their homes, may feel a sense of freedom from the social, moral and cultural responsibility and constraints they have in their home country; this anonymity leads them to behave as they would not in their country among fellow citizens.
- N. Rationalization, this term refers to the attitude of some tourists who argue that the sexual exploitation of minors helps the poor, because sometimes they consider that the minor is helping to support his family and therefore, by paying him for sex, he is helping them economically. <sup>42</sup>
- O. Feeling of superiority, this is the particular case of tourists traveling from a developed country, in which a feeling of superiority over the people of the host country is often produced; leading them to exploit the local population.

---

<sup>41</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 29.

<sup>42</sup> Paniamor Foundation. Commercial Sexual Exploitation of Children and Adolescents.

- P. Fear of AIDS. This fear has led to an increased demand for virgin or younger sexual partners, believing that they do not have diseases, without considering that a minor with an immature reproductive system has a higher risk of contracting an infection.

*"Many men value the experience of taking a girl's virginity, whether through the social mechanism of marriage or not. In addition, there are several popular misconceptions or myths surrounding sex with a virgin or girl child. In many Asian countries, for example, many men believe that having sex with girls (who are supposedly virgins or have had few partners) will protect them from contracting HIV/AIDS. Some believe it will cure them of AIDS:*

*"<sup>43</sup>*

It should be noted that this is not an exhaustive list of factors, since the reality of this phenomenon differs from one country to another and from one region to another. The important thing is to be able to recognize the various agents that influence the realization of acts of exploitation of minors, since understanding the causes is of vital importance to be able to identify measures to stop and prevent the sexual exploitation of children and adolescents.

It is also important to be clear that within the factors that influence the Commercial Sexual Exploitation of Minors, a classification can be made between those that can be called Causal Factors and those that can be called Causal Factors.

---

<sup>43</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 24

which can be referred to as  
Factors.

Maintaining  
By way of

example, the following are managed:

**Causal Factors:**

- Economic injustice. Disparity between rich and poor.
- Discrimination against minority groups, which forces migration.
- Family disintegration.
- Deterioration of family support structures.
- Existence of unscrupulous operators.

**Maintaining factors:**

- The absence of effective mechanisms to ensure the protection and restitution of the rights of sexually exploited minors, as well as the effective criminalization of the beneficiaries of the sex trade, since without the existence of their abusers there would be no sexually exploited children and adolescents.

*"... this is the immediate environment of a large number of children and adolescents, in which, undoubtedly, even the possibilities of income generation are biased and determined by their gender condition. It can be stated that being a woman and being poor are contributing factors in the occurrence of Commercial Sexual Exploitation of Children and Adolescents, in which sexual models and stereotypes are mixed, with differentiated risks due to gender conditioning, and in which the following factors are*

*present*

*which patriarchy and social stratification are articulated.*

*In the same sense, it is added that one of the risk factors for being co-opted by and for the sexual market is the progressive deterioration of family ties. However, the role of the family in the involvement of a child or adolescent in Commercial Sexual Exploitation cannot be absolutized, as this would mean privatizing the problem, assigning it to an individual responsibility, which omits the political dimension of a distorted, dehumanized and alienating economic, social and cultural system "*<sup>44</sup>.

It is also important to be aware that there are factors that influence what can be called the SUPPLY (factors that contribute to the presentation of minors as a market product to be sexually exploited) and others that influence what is known as the DEMAND (factors that favor the solicitation of minors to be exploited as sexual objects).

---

<sup>44</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents, 2008-2010. Page 4.

**Table of Factors Influencing the Supply and Demand of CSEC45.**

OFFER	DEMAND
<ul style="list-style-type: none"> <li>- Poverty.</li> <li>- Economic Disparity.</li> <li>- Lack of education.</li> <li>- Emigration from the countryside to the city or from one country to another in search of better labor and economic conditions.</li> <li>- Gender Discrimination.</li> <li>- Family breakdown or dysfunction.</li> <li>- Consumerism.</li> <li>- Corruption.</li> </ul>	<ul style="list-style-type: none"> <li>-Anonymity .</li> <li>- Rationalization ("to help the poor").</li> <li>- Sense of superiority.</li> <li>- Fear of AIDS.</li> <li>- Advertising or promotion.</li> </ul>

It can be concluded that dealing with the issue of commercial sex with the use of minors is actually studying a problem of a structural nature, in which *"the indifference of a society that favors exclusion, inequality, the commercialization of the body and sexuality, and the repeated violation of the rights of persons and their dignity"*<sup>46</sup> is evident.

<sup>45</sup> CSEC: abbreviation for Commercial Sexual Exploitation of Children and Adolescents.

<sup>46</sup> Treguear, Tatiana and Carro, Carmen. Prostituted girls: violation of rights and social silence. Fundación PROCAL. Costa Rica, 1998.

### **1.8.1. Factors affecting the development of Sex Tourism.**

A series of agents have been identified that cause a greater degree of vulnerability of minors and which directly or indirectly cause children and adolescents to become victims of this type of sexual activity.

These factors include the following:

- Status as a developing or extremely underdeveloped country.

*"Sex tourism is favored when residents of countries with strong criminal penalties for child sexual exploitation are attracted by the low cost and young age of children, as well as by the impunity of prostitution in Latin America, Asia and other third world countries "47.*

- A marketing of the country as a tourist mecca, insufficiently differentiated, producing an influx of all kinds of tourists, among which sexual exploiters can be found.

*"...in recent years, Costa Rica has been promoted in foreign countries, especially in those where its members have a high purchasing power as a tourist destination. Thus, our country offers, through travel agencies, magazines or INTERNET, a series of advantages related to tourism.*

---

<sup>47</sup>Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 39.

*climate, ecological beauty, social and political stability, security, cordiality; this type of publicity has made our country a sought-after place by people from different parts of the world.*

*However, together with this type of advantages of our territory, there is a covert and illicit publicity, which promotes our country as a place of pleasure and fun in the sexual sphere. This type of publicity is carried out by individual entities and organized networks of pimps at the national level, which establish contact with similar groups at the international level offering services for tourists who desire pleasure and fun when they arrive in the country. "*<sup>48</sup>

- Perception of International Tourism as an important source of foreign exchange, this together with its associated investment in infrastructure, primarily by foreigners, which creates a kind of colonies that are difficult for nationals to control.

*"...the centers of concentration of prostituted girls are concentrated around tourist infrastructure (bars, casinos, hotels, restaurants), which suggests a link between tourism and sexual entertainment. "*<sup>49</sup>

---

<sup>48</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 40.

<sup>49</sup> Treguear y Carro. 1997. Page 7.



- High impunity rates in cases of Commercial Sexual Exploitation of Minors. This is due to the lack of specific legislation or failures in the application of existing legislation. It should be noted that, in the specific case of Costa Rica, there have been important advances in terms of legislation on this activity, as well as in its enforcement, both for nationals and foreigners.

*"According to Milena Grillo (1998), the sexual exploitation of children and adolescents in Costa Rica is a problem related to the international promotion of our country as a place of access for the unpunished practice of prostitution by Costa Ricans or foreigners. In this way, it has become evident that among the places of greatest demand for girls and boys are the Pacific and Atlantic ports, due to the influx of boats and yachts and where there are no controls or sanctions for these crimes "<sup>50</sup>.*

- Implicit acquiescence or social permissiveness, as a result of denial, ignorance or existing stereotypes in the country.
- Lack of extraterritorial legislation that criminalizes and in turn makes it possible to punish these behaviors beyond national borders. It is important to mention that currently this type of legislation has been implemented in order to reduce impunity rates, as is the case of existing legislation in the United States and France, among other countries.

<sup>50</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 42.

- Significant presence of drug trafficking and consumption.
- Image promoted abroad, that both age and sex have a different significance for that country than in the countries of origin of sex tourism, to the point of thinking that the "rules of the social game" that apply are not the same.

*"From the sex tourist's perspective and for the purposes of social mobilization, it is important to highlight as a variable that stimulates the choice of Costa Rica for their activity, an anticipated impunity that stems from the same denial or ignorance that exists in the country about the fact; the lack of specific international legislation that criminalizes and punishes their behavior; The lack of specific international legislation criminalizing and sanctioning their behavior; the lack of social acceptance; poverty; drugs; and their perception as foreigners that both age and sex have a different significance in the "Third World" than in the "First World", so that "the rules of the social game" are not the same."<sup>51</sup>*

*"Since tourists or business travelers may offer better pay, local residents not only accept the sexual activity of girls and boys with foreigners, but also may develop a*

---

<sup>51</sup> Grillo, Milena. 1998. Page 22.

*promotion through catalogs, travel agencies and tourism advertising "*<sup>52</sup>.

### **1.9. Who is involved in the Commercial Sexual Exploitation of Minors?**

Regarding Commercial Sexual Exploitation of Minors and the people involved in it, the following groups can be mentioned:

- Exploiters.
- Intermediaries.
- Victims .
- Tourism Sector.

#### **1.9.1. Exploiters.**

*"Those who sexually exploit children, therefore, come from all cities and countries, are traders, workers, businessmen and bureaucrats who are unaware or unconcerned about the impact of their actions. Most of them are local residents, however, it is worth mentioning, in relation to sex tourism, that the database of*

---

<sup>52</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 39.

*ECPAT showed, in mid-1996, of 240 sexual exploiters who had been arrested, deported, convicted or punished for any offence related to sex crimes against children in Asia, that they were mainly Americans, followed by Germans, British and Australians. "*<sup>53</sup>

Exploiters can be conceived from two different points of view within the phenomenon of Commercial Sexual Exploitation of Children and Adolescents. In the first place, an exploiter is a person who has access to minors in any of the forms in which commercial sexual exploitation is expressed, either through paid sexual relations with minors or through access to child pornography.

However, an exploiter is not only the person who satisfies his or her sexual desires with a minor, but also the individual who influences the permanence of the minor in sexual activities, either by recruiting him or her to have sexual relations with adults, or by producing child pornography, or in any other modality in which sexual exploitation may occur.

From the point of view of the exploiter as the person who satisfies his or her sexual needs with minors, three types or classes of exploiters are known: occasional, preferential and pedophiles. For the topic we are dealing with, sex tourism, we are interested in the first two types of sexual exploiters.

---

<sup>53</sup> \_United Nations. World Congress against Sexual Exploitation of Children, 1996.

- Occasional Exploiter: a person who leaves his country of residence to go on vacation to another country, and once he is in the country of tourist destination, he is presented, so to speak, with the opportunity to have sexual relations with a minor or to engage in any of the other forms of commercial sexual exploitation and decides to accept the offer.

*"The situational child sex offender has no real sexual preference for children, but engages in sexual relationships with children because they are morally or sexually indiscriminate and wish to "experiment" with young sexual partners.*

*Such offenders may also exploit children because they are involved in situations in which minors are easily accessible, and/or certain disinhibition factors exist which allow them to deceive themselves about the age of the children or their consent to a sexual relationship. The sexual exploitation of children may be "occasional" during a trip, or it may become a long-term pattern of abuse. "*<sup>54</sup>

- Preferential Exploiter: a person who decides to travel to another country or region with the specific purpose of sexually exploiting minors, without prejudice to the fact that he/she decides to travel to another country or region with the specific purpose of sexually exploiting minors, without prejudice to the fact that he/she decides to travel to another country or region with the specific purpose of sexually exploiting minors.

---

<sup>54</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 33.

also other types of activities, but the important thing here is that from the moment you plan your trip you have that idea in mind.

*"The preferential child sex offender has a definite preference for children. Psychiatry considers their preference for powerless and immature sexual partners as a manifestation of personality disorders (hebephilia). They constitute a smaller number than situational offenders, but can potentially abuse a larger number of children. "55*

These two types of sexual exploiters are of interest because they are the ones who can be discouraged in their intentions, with concrete actions that communicate the policies of the country and the tourism industry as a whole.

*"In a paper prepared for the World Congress against Sexual Exploitation of Children, the author argues that it is possible that most people who exploit children were first "consumers of prostitution" who then become abusers of children through the consumption of prostitution, not pedophiles who use prostitution in order to have children as sexual partners. To be able to understand the cause of the*

---

<sup>55</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 33.

*which people pay for sex, makes it possible to understand child sexual abuse in a commercial framework. "*<sup>56</sup>

### **1.9.2. Intermediaries.**

*"Another group of exploiters are intermediaries and agents, such as bar, hotel and brothel owners, and all those who profit from the sex trade with children, cab drivers and tourist workers, among many others. However, regardless of the group to which they belong, they are all committing criminal acts. "*<sup>57</sup>

The intermediary is the person who puts the sexual exploiter in contact with the victim; or the person who puts the sexual exploiter (conceived as the one who wishes to satisfy his or her sexual desires) in contact with the person who recruits minors to be exploited.

As far as intermediaries are concerned, it is important to identify the fact that any person can become an intermediary in the commercial sexual exploitation of minors, especially in the tourism sector, simply by giving the name of a person who recruits people to be sexually exploited.

---

<sup>56</sup> ECPAT International. Some Questions on Commercial Sexual Exploitation of Children and Answers. Page 34.

<sup>57</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. UNICEF / University of Costa Rica. 1998, page 47.

It is important to be clear that being an intermediary is also reproachable from the legal point of view in Costa Rica, and based on Law No. 7899 (Law Against the Commercial Sexual Exploitation of Minors).

### **1.9.3 Tourism Industry.**

The Tourism Industry is not responsible for the incidence of sexual exploitation of minors in the tourism sector, however, it can be said that the degree of responsibility of the Tourism Industry can be seen from two levels:

1. **Direct Responsibility:** those in the tourism sector who voluntarily advertise, organize or host sex tours, as well as the operators of establishments and facilities where travelers may actually encounter and sexually exploit underage persons. It should be emphasized that tolerating this type of activities implies being an accomplice.
2. **Indirect or Potential Liability:** corresponds to tour operators, travel agents, carriers, airlines, among others, who are aware of being used as vehicles to transport sex offenders or potential offenders to destinations.



*"The tourism sector, made up of both related companies and administrations and their beneficiaries and customers, more or less directly encounters children sexually exploited by others, who take advantage of existing tourism structures and networks and all types of travel.*

*In general, three types of responsibilities and corresponding objectives can be identified for a tourism sector eager to prevent, disclose and eradicate the sexual exploitation of children in its environment:*

*a) Do not allow "organized sex tourism", some of which inevitably involves children, to take place in the context of the industry, either at the departure points of visitors or at their destinations. This means that commercial tourism organizations and their staff should not organize "sex tours" or promote sexual services at tourist destinations or more specifically within tourist facilities, especially if they involve the exploitation of children in various forms such as, for example, promoting sexual relations with customers or using them for pornographic productions or performances to advertise sexual services. In addition, refusing to participate in child trafficking by allowing the use of the sector's networks and means of transport.*

*b) Do not allow other bodies or persons (natural or legal) outside the tourism sector to*

*take advantage of tourism networks and facilities for the exercise of sexual exploitation of children in the various possible forms described above.*

*c) Actively collaborate with civil society and law enforcement to prevent, disclose, isolate and eradicate the sexual exploitation of children in tourism.*

*The third voluntary objective goes beyond the exercise of legal responsibilities, but may soon find a foundation in the sector's ethics, quality and sustainable development policies, which are always guided by the imperative to reduce the present suffering of children and the scale of their sexual exploitation in the future. "*<sup>58</sup>

#### **1.9.4 The Victims.**

Minors do not participate in Commercial Sexual Exploitation voluntarily; and that is something that must be made very clear. Children are sold, coerced or recruited by adults and even by family members. *The minor should never be seen as the cause of activities that lead to commercial sexual exploitation,* since he/she is always a victim, he/she is always the person harmed by the situation of exploitation.

---

<sup>58</sup> World Tourism Organization. Guidelines for National Tourism Administrations Liaisons. For the Protection of Children from Sexual Exploitation in Tourism. Page 7.

### 1.10 Sustainable Tourism.

#### ***SUSTAINABLE TOURISM:***

*"Sustainable tourism development meets the needs of current tourists and host regions while protecting and enhancing opportunities for the future. It is intended to achieve the management of all resources in such a way that all economic, social and aesthetic needs can be met while maintaining cultural integrity, fundamental ecological processes, biological biodiversity and life support systems" UNWTO.*

It is of utmost importance, with respect to the topic of Sustainable Tourism, to highlight that the World Tourism Organization (WTO) has made serious pronouncements in this regard, stating that it is not possible for Sex Tourism and Sustainable Tourism to coexist within a country, since both are substantially different and it can even be said that they are mutually exclusive; therefore, it should be understood that at a given moment, one of the two (sex tourism or sustainable tourism), ends up displacing the other.

With the above in mind, it should be noted that, along with the concept of Sustainable Tourism, a whole policy of Responsible Tourism has been developed, which has been embodied in a "Global Code of Ethics for Tourism", which was developed with the collaboration of governments, private sector, non-governmental organizations, following the recommendation of the United Nations Commission on Sustainable Development, and with the recognition of the Economic and Social Council of the United Nations, whose purpose is to call governments and participants in the sector

The tourism industry is encouraged to introduce in the content of its laws, regulations and professional practices, so that they go hand in hand with sustainable tourism.

Article 1 of said Code establishes, among other things, that "tourist activities shall be organized in harmony with the peculiarities and traditions of the receiving regions and countries, and with respect for their laws and customs", in addition, and following this same line of thought, the same numeral states that "in their travels, tourists and visitors shall avoid any criminal act or act considered criminal by the laws of the country they are visiting, and any behavior that may be shocking or hurtful to the local population, or damage the environment of the place...". It is evident that this article includes the commercial sexual exploitation of minors as one of the activities that tourists should refrain from when visiting Costa Rica, since it is considered a criminal activity and therefore a crime under Costa Rican law.

In addition, in order to establish responsible and sustainable tourism in Costa Rica, not only the natural resources of fauna and flora must be protected, but also all the people living in the country, especially minors, since they are in a state of greater defenselessness and vulnerability.

**ITEM II**  
**LEGAL**  
**FRAMEWORK**

**Objective 2.**

*To analyze the main international instruments that regulate the Commercial Sexual Exploitation of Minors, and which in turn have been ratified by the Costa Rican government.*

**2. LEGAL FRAMEWORK**

**2.1. International Legislation.**

With respect to this point, it is of utmost importance to clarify that the Costa Rican normative hierarchy grants international treaties ratified by Costa Rica a higher rank than national laws, and even of equal or higher rank than the Political Constitution itself, in those cases in which the international agreement grants greater protection to individuals. This mechanism can be activated through Amparo and Habeas Corpus and Unconstitutionality Actions, which are filed before the Constitutional Chamber of the Supreme Court of Justice.

As a starting point, it should be noted that there are three international instruments that are part of the Costa Rican legal system, namely: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and the American Convention on Human Rights.

These legal mechanisms constitute the normative antecedents of the Convention on the Rights of the Child, which is undoubtedly the Magna Carta of the rights of Minors and which arose precisely due to the insufficiency of international norms in this area.

In the aforementioned international instruments, children and adolescents were included in specific provisions; however, they were not direct bearers of the human rights declared in these conventions, since these rights were recognized for persons of legal age, which is why specific norms on childhood were created.<sup>59</sup>

The following is a brief summary of the International Instruments mentioned above, which serve as antecedents to the Convention on the Rights of the Child.

### **International Covenant on Economic, Social and Cultural Rights**

It was adopted by the United Nations in 1966 and became effective in 1976.

Article 10, paragraph 3, establishes the duty of States Parties to adopt special measures of protection and assistance for all children and adolescents, without any discrimination on the basis of parentage or any other condition. This covenant also establishes that states must protect children against economic and social exploitation. However, it makes no express reference to sexual exploitation.

---

<sup>59</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 45.

**"Article 10**

*The States Parties to the present Covenant recognize that:*

*1. The family, which is the natural and fundamental element of society, should be accorded the widest possible protection and assistance, especially for its establishment and as long as it is responsible for the care and education of its dependent children. Marriage should be contracted with the free consent of the intending spouses.*

*2. Mothers should be granted special protection for a reasonable period of time before and after childbirth. During this period, working mothers should be granted paid leave or leave with adequate social security benefits.*

*3. Special protection and assistance measures should be adopted for all children and adolescents, without discrimination on the basis of parentage or any other condition. Children and adolescents must be protected against economic and social exploitation. Their employment in work harmful to their morals and health, or in which their lives are endangered or their normal development is at risk, shall be punishable by law. States should also establish age limits below which the paid employment of child labor is prohibited and punishable by law. "<sup>60</sup>*

---

<sup>60</sup>United Nations (UN) International Covenant on Economic, Social and Cultural Rights. Article 10. 1966.

## **International Covenant on Civil and Political Rights.**

Adopted in 1966 and in force since 1976.

Article 2 establishes the principle of non-discrimination in similar terms to the previous covenant. Article 24 expressly mentions the rights of children.

### ***"Article 2***

*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

*2. Each State Party undertakes to take appropriate steps, in accordance with its constitutional processes and the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant which are not already guaranteed by legislative or other measures.*

*3. Each State Party to the present Covenant undertakes to ensure that:*



- a) *Everyone whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- b) *The competent judicial, administrative or legislative authority, or any other competent authority provided for by the legal system of the State, shall decide on the rights of any person seeking such recourse, and shall develop the possibilities of judicial recourse;*
- c) *The competent authorities shall comply with any decision in which the appeal has been upheld "*<sup>61</sup>*.*

***"Article 24***

- 1. *Every child has the right, without discrimination of any kind as to race, color, sex, language, religion, national or social origin, economic status or birth, to the measures of protection required by his or her status as a minor, on the part of his or her family, society and the State.*
- 2. *Every child shall be registered immediately after birth and shall have a name.*
- 3. *Every child has the right to acquire a nationality*  
<sup>62</sup>*.*

---

<sup>61</sup> United Nations (UN) International Covenant on Civil and Political Rights. Article 2. 1966.

## **American Convention on Human Rights**

Known as the "Pact of San José", it was adopted in 1969.

This Convention goes a step further in terms of the equalization of the subjects of rights, in relation to the previous Covenants, since it expressly establishes in Article 1, paragraph 2 that:

*"...2. For the purposes of this Convention, a person is every human being."*

*"                      **Article 1**                      .                      **Obligation to Respect                      Rights***

*1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*

*2. For the purposes of this Convention, a person is every human being. "<sup>63</sup>*

---

<sup>62</sup> United Nations (UN) International Covenant on Civil and Political Rights. Article 24. 1966.

<sup>63</sup> Organization of American States. American Convention on Human Rights. Article 1. 1969.

Thus, it can be interpreted that the rights contemplated in this regulation are also the rights of children and adolescents, with the exception of political rights.

This Convention establishes some provisions on children and adolescents, which are still in force today in the Costa Rican legal system, such as the right of children to the protection they need from the family, the State and society in general (Article 9), In terms of prior censorship (article 13), it contemplates an important provision that is of interest for the regulation of child pornography, even though at that time it was not legislated with this manifestation of sexual exploitation against children and adolescents in mind.

### **Convention on the Rights of the Child of the United Nations.**

This Convention, issued by the United Nations, was ratified by Costa Rica on July 18, 1990, by means of law number 7184. This international legal instrument establishes the fundamental rights of all minors, which must be protected by the States parties to the organization. Among these basic rights are the right to a name, identity, education and health, among others; In turn, it establishes the responsibility of parents, guardians or caregivers to protect them and provide them with the most appropriate environment for their proper development as human beings, but at the same time, and fundamentally, it emphasizes the obligation of the government of each country to establish and implement all administrative, legal and other measures to give effect to the rights recognized in the Convention, based on the assumption that "the child, by reason of his physical and mental immaturity, needs protection and care".

special, including due legal protection, both before and after birth " <sup>64</sup>

*"Because of its specificity, the **Convention on the Rights of the Child** is the main international instrument that reflects the consensus - at the end of the last century - of the countries that make up the United Nations system on the human rights of children and adolescents " <sup>65</sup>.*

This important instrument sets forth the main human rights of minors, who are referred to under the single category of "child". One of the most important principles enshrined in this legal instrument is the principle of the "Best Interest of the Child", thanks to which the protection and guarantee of the rights of this sector of the population is given priority.

The principle is enshrined in Article 3 as follows:

*"1. In all actions concerning children by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, a primary consideration to be taken shall be the*

---

<sup>64</sup> United Nations, Convention on the Rights of the Child, Preamble.

<sup>65</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 46.

*best interests of the child. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other persons legally responsible for him or her, and to this end shall take all appropriate legislative and administrative measures. States Parties shall ensure that institutions, services and facilities responsible for the care and protection of children shall conform with the standards established by competent authorities, particularly with regard to the safety, health, number and suitability of their staff, as well as the existence of adequate supervision*

It is important to highlight the fact that through this convention, progress is made in the recognition of the status of minors as subjects of rights, and their human rights are expressly enunciated, without detriment to those contemplated in other international conventions and more clearly in the Pact of San José.

As part of this Convention, a list of General Principles is established, among which the following can be highlighted:

1. States must ensure that every child enjoys full rights, without discrimination or distinction of any kind.

---

<sup>66</sup> United Nations (UN) Convention on the Rights of the Child. Article 3. 1989.

2. The best interests of the child must be the primary consideration in all actions concerning children, whether taken by public or private social institutions, courts, administrative authorities or legislative bodies.

3. All children have an inherent right to life and States must ensure, to the maximum extent possible, the survival and development of children.

4. Children have the right to be heard.

In addition to these basic principles, the States Parties, upon signing the Convention, made a series of commitments, including the following:

- Adopt all administrative, legislative and other measures to give effect to the rights recognized by the Convention.
- Implement all necessary measures to combat the illicit transfer of children abroad and the illicit retention of children abroad.

**"Article 11.**

*1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*

*2. To this end, the States Parties shall promote the conclusion of bilateral or multilateral agreements or the accession to existing agreements.*

- To take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

**"Article 9.**

*1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when, subject to judicial review, competent authorities determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case, for example, in a case where the child is abused or neglected by his or her parents or where the parents live apart and a decision must be made as to the child's place of residence.*

---

<sup>67</sup> United Nations (UN) Convention on the Rights of the Child, Article 11. 1989.

2. *In any proceedings instituted pursuant to paragraph 1, all interested parties shall be given the opportunity to participate therein and to make their views known.*

3. *States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

4. *Where such separation is the result of a measure taken by a State Party, such as the arrest, detention, exile, deportation or death (including death from any cause while the person is in the custody of the State) of one or both of the child's parents or of the child, the State Party shall, upon request, provide the parents, the child or, if appropriate, another relative with basic information about the whereabouts of the absent relative or relatives, unless this would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request does not in itself entail any adverse consequences for the person or persons concerned.* "<sup>68</sup>

---

<sup>68</sup> United Nations (UN) Convention on the Rights of the Child. Article 9. 1989.



- Protect the child from all forms of sexual exploitation and sexual abuse. States Parties shall take all appropriate national, bilateral and multilateral measures to prevent:

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;

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

- c) the exploitation of children in pornographic shows or materials.

*"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, combat and eliminate all forms of sexual exploitation and sexual abuse of children:*

- a) Inciting or coercing a child to engage in any unlawful sexual activity.*

- b) Exploitation of children in prostitution or other illegal sexual practices.*

*c) Exploitation of children in pornographic performances or materials. "69*

- Take such national, bilateral and multilateral measures as may be necessary to prevent the abduction, sale or trafficking of children for any purpose or in any form.

*"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of or the sale of or traffic in children for any purpose or in any form*

- To protect the child from all forms of exploitation that are detrimental to any aspect of his or her well-being.

*"States Parties shall protect the child from all other forms of exploitation prejudicial to any aspects of the child's welfare. "71*

---

<sup>69</sup>United Nations (UN) Convention on the Rights of the Child. Article 34. 1989. United Nations <sup>70</sup>(UN) Convention on the Rights of the Child. Article 35. 1989. <sup>71</sup>United Nations (UN) Convention on the Rights of the Child. Article 36. 1989.

- Take all necessary measures to promote the physical and psychological recovery and social reintegration of any child victim of: any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflict.

*"Article 37. States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. In particular, neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons under eighteen years of age. "*<sup>72</sup>

It is valid to point out that, in order to correctly adapt to the contents of the Convention on the Rights of the Child, the Code for Children and Adolescents was enacted as Law Number 7739 on February 6, 1998.

---

<sup>72</sup>United Nations (UN) Convention on the Rights of the Child. Article 37.a. 1989.

**2.1.2 Optional Protocol to the Convention on the Rights of the Child**  
**(a) Concerning the Sale of Children, Child Prostitution and Child Pornography.**

The purpose of this Protocol is focused on the procedural part of the procedure to be followed to combat the violation of children's rights, compared to the aims pursued by the Convention on the Rights of the Child, since it attempts to establish some basic principles or steps to be followed by the States Parties when dealing with illegal activities that are part of the Commercial Sexual Exploitation of Minors.

This is clearly stated in the preamble of this Protocol, which starts from the fact that in order to ensure the best achievement of the purposes of the Convention on the Rights of the Child and its implementation, the measures to be adopted by the States Parties must be broadened to guarantee the protection of minors against the sale of children, child prostitution and child pornography.

The context in which this protocol is being developed must also be observed, since it takes place in a sad reality with regard to the situation of minors, especially in issues such as the international trafficking of minors for the purposes of sale, prostitution and pornography, as well as the growing development of sex tourism involving children and adolescents, and the increasing availability of child pornography on the Internet. In view of this panorama, it is concluded that a global approach must be adopted to address all the factors that

contribute to the realization of all illicit activities involving minors in sexual exploitation.

*"As far as it is relevant, this Protocol establishes that States Parties shall take all measures to ensure that, at a minimum, the acts or activities listed are fully covered by their criminal legislation, whether committed within or outside their borders, or whether perpetrated individually or collectively "*<sup>73</sup>.

As part of the measures adopted by this Protocol and to be carried out by the States Parties, the following may be listed:

1. Prohibition of the sale of children, child prostitution and child pornography.
2. Include as criminal offenses the following actions, whether they are committed within its borders or whether they have been perpetrated individually or collectively:
  - a. offer, deliver or accept by any means, a child for the purpose of:
    - i. Sexual exploitation of children.
    - ii. Transfer of the child's organs for profit.
    - iii. Forced child labor.

---

<sup>73</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 49.

- b. The offer, possession, acquisition or delivery of a child for the purpose of prostitution.
  - c. 

The

production,distribution,dissemination,import, export, offer, sale or possession of child pornography.
- 3. To prosecute both the attempt to commit these acts and the complicity or participation in any of them.
- 4. Punish these crimes with penalties in accordance with their seriousness.
- 5. Analyze the position of legal entities in this type of illegal acts. Imposing their liability as criminal, civil or administrative.
- 6. Apply Flag Jurisdiction: when the illicit activities referred to are committed in its territory, or on board a vessel or aircraft flying its flag.
- 7. To give effect to its jurisdiction when the alleged offender is a national of that State or has his habitual residence in its territory, when the victim is a national of that State, or when the alleged offender is found in its territory and is not extradited.
- 8. These offenses shall be considered extraditable offenses in any present or future extradition treaty between States Parties.

9. States Parties shall afford one another all possible assistance in connection with any investigation, prosecution or extradition proceedings, as well as particular assistance in obtaining all evidence necessary for such proceedings.
10. They shall take all appropriate measures to protect the rights and interests of child victims of these illicit activities at all stages of the criminal proceedings.
11. The vulnerability of child victims must be recognized, adapting procedures to recognize their special needs.
12. Child victims should be informed of all their rights, their role in the process, the scope of the process, the dates and progress of the proceedings and the resolution of the case. Giving them the opportunity to have an active presence in the process.
13. Provide appropriate assistance to child victims throughout the process.

This is expressly contemplated in Article 3 of this international legal instrument.

***"Article 3°-***

*1. Each State Party shall take measures to ensure that, as a minimum, the following acts and activities are fully covered by its criminal law, whether or not they have been committed*

*committed both within and outside its borders, or whether they have been perpetrated individually or collectively:*

*a) In relation to the sale of children, as defined in article 2:*

*i) Offering, delivering or accepting, by any means, a child for the purpose of:*

*a) Sexual exploitation of children;*

*b) Transfer of the child's organs for profit;*

*c) Forced child labor;*

*ii) Improperly inducing, as an Intermediary, someone to consent to the adoption of a child in violation of applicable international legal instruments on adoption;*

*b) The offer, possession, acquisition or delivery of a child for the purpose of prostitution, as defined in Article 2;*

*c) The production, distribution, dissemination, importation, exportation, offer, sale or possession, for the aforementioned purposes, of child pornography, as defined in article 2.*

*2.- Subject to the provisions of the legislation of the States Parties, these provisions shall be applied*



*also in cases of attempt to commit any of these acts  
and of complicity or participation in any of these acts.*

*Each State Party shall punish these offenses with  
penalties appropriate to their gravity.*

*Subject to the provisions of their laws, States Parties  
shall, where appropriate, adopt provisions to establish  
the liability of legal persons for the offences set forth  
in paragraph 1 of this article. Subject to the legal  
principles applicable in the State Party, the liability of  
legal persons may be criminal, civil or administrative.*

*States Parties shall take all appropriate legal and  
administrative measures to ensure that all persons  
involved in the adoption of a child "*<sup>74</sup>*.*

This Protocol was ratified by Costa Rica on April 9, 2002. From that ratification, the Costa Rican State committed itself to adapt its legislation to be able to punish all those conducts that put at risk Costa Rican children, and at the same time, to take all necessary measures to help and support the victims of commercial sexual exploitation, so that they can overcome the psycho-social damages received.

---

<sup>74</sup>United Nations. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Article 3.

In order to fully comply with the commitments acquired, the Law Against the Commercial Sexual Exploitation of Children and Adolescents was enacted in 1999, as well as the Executive Decrees (29964-G and 29967-G) which emanate from the Executive Power, and by means of which the General Directorate of Migration and Alien Affairs is empowered to prevent the entry of foreign persons with a history of sexual crimes against minors, as well as to cancel the residence or stay permit of those persons who are in the country and present this type of illicit acts.

### **2.1.3. Convention 182 on the Worst Forms of Child Labor.**

This Convention was issued by the International Labor Organization (ILO) in 1999. Its primary purpose is the protection of all persons under 18 years of age and is based on the need to adopt new instruments for the prohibition and elimination of the worst forms of child labor; for which immediate action is required, which takes into account the importance of free education as well as the importance of freeing children who have already been affected by these forms of labor from all of them and ensuring their rehabilitation and social reintegration.

Within this international legal instrument, the following are considered the worst forms of child labor:

- a) All forms of slavery or slavery-like practices.
- b) The use, recruitment or offering of children for prostitution, production of pornography or pornographic performances.

- c) The use, recruitment or offering of children for illicit activities.
- d) Work which by its nature or the conditions under which it is carried out is likely to harm the health, safety or morals of children.

Based on this conceptual framework regarding the worst forms of child labor, it is established that each member state must establish appropriate mechanisms to monitor the application of this Convention; in addition, it must develop programs of action to eliminate the worst forms of child labor in its country; In addition, States Parties should identify those children who are particularly exposed to risks and therefore likely to come into direct contact with any of the activities that are understood to be part of the worst forms of child labor. It is important to emphasize the fact that this Convention establishes that all these actions must be carried out jointly with the consultation of employers' and workers' organizations, as well as with the participation of all those entities that in one way or another are involved in the issue of child protection.

#### **2.1.4. International Convention against Transnational Organized Crime.**

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.** (Supplements the Convention against Transnational Organized Crime).

The International Convention against Transnational Organized Crime was ratified by Costa Rica through Law 8302 of August 2002, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was ratified by the Costa Rican government on October 26, 2002, through Law 8315.

The Convention's main purpose is to promote cooperation to effectively prevent and combat transnational organized crime. The Protocol, on the other hand, is intended to prevent and combat trafficking in persons, especially women and minors.

Due to the topic of interest at this time, namely the Commercial Sexual Exploitation of Children and Adolescents, it is of greater importance to analyze the Protocol mentioned in this section; The Protocol defines trafficking of a minor as the recruitment, transportation, transfer, harboring or receipt of a child or adolescent by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having authority over another person, for the purpose of exploitation. In addition, it is established that the consent given by the victim of trafficking in persons, particularly

in the case of a minor, it will not be taken into account and will even be considered as non-existent.

States that ratify this protocol undertake to take all legislative or other measures to criminalize the conduct by which trafficking in persons is manifested, in addition to which they must also regulate the attempt to commit a trafficking crime, participation as an accomplice in this type of illicit activities and the organization or direction of persons for the commission of such activities.

Likewise, this Protocol takes into account the victim of trafficking in persons, which is why Member States are obliged to take all appropriate measures for the assistance and protection of victims, as well as regulating the actions of the receiving State of a trafficked person, repatriation, as well as some measures for prevention and cooperation between States.

#### **2.1.5. Inter-American Convention on International Traffic in Minors.**

With respect to this Convention, it is important to clarify that it arises from the need to regulate both civil and criminal aspects related to the international trafficking of minors. For this reason, it is valid to state that the main purpose of this legal instrument is to prevent and penalize the abduction and illicit transfer of minors from one country to another.

For the purposes of this international legislation, "International Traffic in Minors" means the abduction, transfer or retention, or the attempted abduction, transfer or retention, of a minor for illicit purposes or by illicit means. Illicit purposes" is defined as prostitution, sexual exploitation, servitude or any other illegal purpose, whether in the State of habitual residence of the minor or in the State Party where the minor is located. Finally, "Illicit Means" includes abduction, fraudulent or forced consent, the giving or receiving of illicit payments or benefits in order to obtain the consent of the parents, persons or institution in whose care the minor is placed, or any other form, whether in the State of habitual residence or in the State Party where the minor is located.

The obligations assumed by the States Parties in relation to this topic are specified as follows:

- To ensure the protection of minors in their best interest.
- Establish a system of legal cooperation among the States Parties.
- Ensure the prompt return of a minor who has been a victim of international trafficking to the State of his or her habitual residence.

This Convention seeks to establish a system of legal cooperation between States, as well as legal and administrative provisions to ensure that minors are not turned into objects of trafficking and to provide care and protection to victims already affected by this crime.

The legal provisions to be promoted include both criminal measures to punish those guilty of international trafficking in minors, as well as civil legislation to compensate the victim of international trafficking and to charge the perpetrator of this criminal activity for the cost of the procedures necessary for the repatriation of the person who has been the object of international trafficking.

#### **2.1.6. Stockholm Declaration and Program of Action, 1996.**

This Declaration arose on the occasion of the World Congress against Commercial Sexual Exploitation of Children, which brought together representatives from 122 countries, as well as non-governmental organizations, the End Child Prostitution in Asian Tourism (ECPAT) campaign, UNICEF, among others.

Through this Congress and with the aim of putting an end to the phenomenon of child sexual exploitation, all the nations gathered in this forum assumed a series of commitments that can be listed as follows:

1. Give high priority to action against commercial sexual exploitation of children and allocate adequate resources for this purpose.
2. Promote strong cooperation between States and social sectors in order to prevent the involvement of children in the so-called sex trade.

3. Enact the criminal nature of commercial sexual exploitation of children, in all its forms. Convicting and punishing the criminals involved, whether local or foreign. Guarantee the total innocence of the child victims of these practices.
4. Review and revise existing legislation, policies, programs or practices to eliminate commercial sexual exploitation of children.
5. Promote the adoption and implementation of laws, policies and programs with the support of local, national and regional mechanisms against commercial sexual exploitation of minors.
6. 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 sexual and commercial exploitation.
7. Highlight the role of grassroots participation, including that of children themselves, in the prevention and elimination of sexual exploitation of children.

Undoubtedly, the International Legislation that deals with the issue of Commercial Sexual Exploitation of Children and Adolescents is of singular importance, since it is through it that it is made manifest the



The existence of this phenomenon and the effects it has on the people who are victims of this activity. In addition, it is of great value, since it shows the Commercial Sexual Exploitation of Minors as a Global Problem, which concerns all countries in the world, without distinction of economic or political power.

It can be stated that one of the things that imbue international legislation on this issue with greater value is that it has led a large number of countries to include legislation in their legal system with the aim of combating the Commercial Sexual Exploitation of Minors within their borders, even punishing with imprisonment, persons who carry out activities focused on the sexual exploitation of children or adolescents in any of its forms (prostitution, trafficking of minors or child pornography, among others).

#### **2.1.7. Extraterritorial Legislation.**

The Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography continue to be the main instruments used as a reference to define internationally accepted standards when creating legislation to protect minors; However, it is important to highlight the fact that this type of problem, which involves children and adolescents in activities related to commercial sexual exploitation, is not something that respects the borders of a country, which is why extraterritorial legislation and agreements between nations are vital to achieve an effective fight against the Commercial Sexual Exploitation of Minors.

Extraterritorial legislation is that which has been created by a State so that certain actions, which are reprobated and sanctioned by its legislation, can be prosecuted even when they are not committed within its territory. This is the case of crimes related to the commercial sexual exploitation of children and adolescents, for which a series of legislation has been created that goes beyond the limits imposed by the border lines of each country.

To date, there are at least 32 countries that have adopted this type of legislation, including the following: Spain, United States, Japan, Austria, among others.

It is important not to overlook the fact that local demand has always been and continues to be a major factor in the existence of the problem of commercial sex trade involving the use of minors, while foreign demand is certainly less important. Despite this, most of the efforts to combat commercial sexual exploitation of children and adolescents focus on abuses committed by foreign exploiters.

*"There are two main reasons for this approach to the problem. The first is that the economic and social power of the foreign exploiter is much greater than that of the child and thus the abuse of power is accentuated. The second reason is that the foreign abuser can easily leave the country in which he has committed his crime and thus escape justice. For this last reason, in many countries*

*the use of extraterritorial legislation is being promoted*

"<sup>75</sup>.

It can be said that there are several reasons for the incidence of commercial sexual exploitation of minors by people who have moved to a country that is not their place of residence, among these is the fact that the exploiter usually has greater economic and social power than the minor, However, there is another more powerful reason, which is that it is easier for the foreign exploiter to leave the country once he has been involved in some type of commercial sexual exploitation activity, thus escaping from justice. It is for this reason that extraterritorial legislation has been implemented in several countries.

*"Extraterritorial legislation allows a country to prosecute its citizens for crimes against children committed anywhere outside the home country. Many States do not require that the act for which a citizen is charged also be considered a crime in the country where it was committed (double criminalization). To date, at least 32 countries (including Spain) have adopted extraterritorial legislation to combat crimes against children. "*<sup>76</sup>

---

<sup>75</sup> Catalan Association for Abused Children. Child Prostitution and Tourism. Year 2006.

<sup>76</sup> Catalan Association for Abused Children. Child Prostitution and Tourism. Year 2006.

The primary objective of this type of legislation is to allow a country to prosecute one of its citizens, in this case, for having committed a sexual offense against a minor. It should be noted that in many of the States that have implemented this type of regulation, it is not required that the act of which one of its citizens is accused be considered as such in the country in which it was carried out.

*"However, authorities face obstacles in conducting an investigation and prosecuting crimes committed abroad. Gathering reliable evidence and testimony depends on the cooperation of local police. Differences in language, culture and attitudes towards CSEC can further complicate the issue. "*<sup>77</sup>

During the Workshop on Good Practices in the Fight against Commercial Sexual Exploitation of Children: "Weaving the Future", promoted by the International Labor Organization (ILO), in which representatives of governments, employers' organizations, trade unions and Non-Governmental Organizations participated, it was concluded that it is necessary to promote more severe criminal legislation for the perpetrators of commercial sexual exploitation of children; for which *".... it is necessary to undertake an effective fight against those who use children in commercial sexual exploitation through cooperation and the articulation of institutions at regional, national and local levels... in accordance with international commitments, states should promote horizontal cooperation, homogeneous national criminal and procedural legislation, as well as*

---

<sup>77</sup> Paniamor Foundation. Commercial Sexual Exploitation of Children and Adolescents: A View from Central America. 2006.

*than extraterritorial legislation that allows for the prosecution of citizens who commit crimes in other countries. The special importance of cooperation in border areas where the problems are shared was highlighted "*<sup>78</sup>.

As part of this extraterritorial legislation, to protect the rights of children, is the law enacted by the United States, called Protect Act, which was approved by the Government of this country in April 2003. This provision allows the application of U.S. legislation in cases in which sexual crimes are committed by U.S. citizens or residents in other countries.

This type of regulation has had positive results, together with the cooperation provided by the various nations that have been seen as a destination for commercial sexual exploitation by foreigners. In the specific case of Costa Rica, it has benefited from the implementation of the Protect Act, since there have already been cases in which the U.S. government has managed to arrest sexual exploiters who intended to travel to the country to abuse Costa Rican minors.

---

<sup>78</sup> International Labor Organization. Latin American experts share experiences to combat child sexual exploitation in Cartagena.

[www.oit.org.pe](http://www.oit.org.pe)

## **2.2. National Legislation.**

### **2.2.1. Political Constitution of the Republic of Costa Rica.**

The Political Constitution is the highest legal instrument in the legal hierarchy of the Costa Rican State, which means that it is invested with a higher importance than the other laws of the Republic, since it is where the basic principles by which the government and society of Costa Rica will be governed are embodied.

Undoubtedly, this legal instrument establishes the protection that must be provided to the country's inhabitants by the entire governmental structure, imposing an obligation on the part of the State to ensure the safety and integral development of minors.

Article 24 of this law establishes one of the fundamental principles governing the life of Costa Rican society, "*Human life is inviolable*". This is a national value, which in turn incorporates a series of firsts, which, if affected, would undoubtedly violate this fundamental premise of safeguarding the life of all human beings residing in the country. It is for this reason that allowing a child or adolescent to be a victim of situations of commercial sexual exploitation violates the right to life that every person possesses and which is constitutionally established.

More specifically, it establishes the duty of the Costa Rican State to ensure a high level of well-being for all inhabitants of the country, expressly stating the following:

*"Article 50.- The State shall procure the greatest welfare for all the inhabitants of the country, organizing and stimulating production and the most adequate distribution of wealth.*

*Everyone has the right to a healthy and ecologically balanced environment. Therefore, he or she is entitled to denounce acts that infringe this right and to claim compensation for the damage caused.*

*The State shall guarantee, defend and preserve this right. The law shall determine the corresponding responsibilities and sanctions. "*<sup>79</sup>

With respect to the specific protection instituted for minors in the Constitution, it is of great interest to analyze the following articles of the aforementioned body of law:

As a first point of interest, Article 51 of the Costa Rican Constitution provides special protection by the State for the family, and specifically for children, mothers, the elderly and the sick and infirm.

---

<sup>79</sup> Political Constitution of the Republic of Costa Rica. Article 50

*"The family, as a natural element and foundation of society, is entitled to the protection of the State.*

*Likewise, the mother, the child, the elderly and the helpless sick person shall have the right to this protection "80.*

Article 55 designates the Patronato Nacional de la Infancia as the institution in charge of the special protection of mothers and children.

*"The special protection of mothers and minors shall be the responsibility of an autonomous institution called Patronato Nacional de la Infancia, with the collaboration of other State institutions. "81*

With regard to fundamental rights and freedoms, the Political Constitution recognizes in general the right to life and within this, the right to personal integrity, the right to dignity, to prompt and complete justice, to reparation of damages, the right to equality and non-discrimination, personal liberty and the abolition of all forms of slavery, the right not to be subjected to inhuman and degrading treatment and the abolition of torture, all of them rights, freedoms and guarantees that allow legitimizing the intervention of the State in the face of commercial sexual exploitation of minors.

---

<sup>80</sup> Political Constitution of the Republic of Costa Rica. Article 51.

<sup>81</sup> Political Constitution of the Republic of Costa Rica. Article 55.



*"Article 74.- The rights and benefits referred to in this Chapter cannot be waived..."<sup>82</sup>*

It can be observed that these articles of the Constitution establish the duty of the State to ensure the safety of all Costa Ricans, however, it is of great interest to highlight the fact that this body of law establishes an express obligation to protect minors in a special way, even instituting a body responsible for ensuring compliance with these charges.

Taking into account this legal context, other specific legal mechanisms have been developed to achieve a more adequate protection of minors and thus develop the special protection regime instituted by the Political Constitution in reference to this issue, since it is necessary to move from formal principles to something concrete, which is expressly aimed at safeguarding the interests and rights of children and adolescents. As part of these instruments are the Code of Childhood and Adolescence, and Law No. 7899 Against Commercial Sexual Exploitation of Minors, which will be analyzed below.

### **2.2.2. Childhood and Adolescence Code.**

With the ratification of the Convention on the Rights of the Child by Costa Rica in 1990, the need arose to adapt national legislation relating to children and adolescents; for this reason, in 1998, the Code for Children and Adolescents was approved, which in turn led to the creation of the National System for Children and Adolescents (CNNA), the National Councils for Children and Adolescents (Juntas de la Niñez y la Adolescencia), the National Council for Children and Adolescents (CNNA) and the National Council for Children and Adolescents (Juntas de la Niñez y la Adolescencia).

---

<sup>82</sup> Political Constitution of the Republic of Costa Rica. Article 74.

and the Community Guardianship Committees.

The Childhood and Adolescence Code is a legal instrument of utmost importance regarding the protection of the child population living in Costa Rica, since it stipulates the rights enjoyed by minors, as well as a series of procedures and mechanisms to safeguard these rights and what they mean for children and adolescents, which is why it is considered the main law that operationalizes the postulates of the Convention on the Rights of the Child.

As a first point of interest, it should be noted that within this regulatory framework this Code is established as a minimum legal framework for the protection of the rights of minors, which means that all those legal mechanisms that grant better and greater guarantees to children and adolescents will be seen as instruments of reference of special application, which will prevail even over the provisions of this law. It is also of utmost importance to mention that this law establishes a basic principle regarding problems with minors:

*"When in doubt, the status of the adolescent or child prevails over that of the adult."*

It also establishes a hierarchy of specific norms for children and adolescents, which includes both national and international legislation, in the following order:

1. Political Constitution.
2. Convention on the Rights of the Child.
3. International Treaties and Conventions on the subject.
4. Principles of the Code of Childhood and Adolescence.
5. Family Code and other related laws.
6. Uses and customs of the social environment.
7. General Principles of Law.

Specifically, on the subject of Commercial Sexual Exploitation, the following norms of the Code for Children and Adolescents may be cited:

1. Right to integrity, Article 24

*"Article 24 - **Right to integrity**. Minors shall have the right to respect for their physical, psychological and moral integrity. This right includes the protection of their image, identity, autonomy, thought, dignity and values. "<sup>83</sup>*

2. Right to Honor, Article 26

*"Article 26°- **Right to honor**. Minors shall have the right to be protected in their honor and reputation.  
The Patronato Nacional de la*

---

<sup>83</sup> Code of Childhood and Adolescence. Article 24.

*Childhood will give the necessary advice to defend it*  
"84.

### 3. Right to image, article 27

*"Article 27°- **Right to image.** It is forbidden to publish, reproduce, exhibit, sell or use, in any form, images or photographs of minors to illustrate information regarding actions or omissions attributed to them that are criminal in nature or contravene or violate morals or good customs; likewise, when in any way they have participated or have been witnesses or victims of such events, if their dignity is affected.*

*The publication of the name or any personal data that allows the identification of a minor perpetrator or victim of a criminal act is prohibited, except with judicial authorization based on reasons of public safety* "85.

### 4. Right to free transit, article 15

*"Article 15°- **Right to free transit.** All minors shall have the right to remain in the country, transit through public places and community spaces and recreate without any restrictions other than those provided for in this Code and*

---

<sup>84</sup> Code of Childhood and Adolescence. Article 26.

<sup>85</sup> Code of Childhood and Adolescence. Article 27.

*any other legal provision, such as those derived from the exercise of parental authority and the students' school obligations. "*<sup>86</sup>

*"This code is characterized by the fact that it does not contemplate norms of a criminal nature, it does not create crimes, but only fines for non-compliance with the obligations established in its articles, nor does it make a normative development of substance on violence against children and adolescents, and lacks express provisions on sexual exploitation. It only imposes the obligation to report criminally any reasonable suspicion of mistreatment or abuse committed against a child or adolescent, an obligation of the directors and personnel in charge of health centers, public or private, and the authorities and personnel of educational centers or any other where minors are attended and stay "*<sup>87</sup>.

*"Article 49°- **Reporting of mistreatment or abuse.** The directors and personnel in charge of health centers, public or private, where minors are taken for care, shall be obliged to report to the Public Prosecutor's Office any*

---

<sup>86</sup> Code of Childhood and Adolescence. Article 15.

<sup>87</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 50.

*reasonable suspicion of mistreatment or abuse committed against them.*

*The authorities and personnel of educational centers, day care centers or any other place where these persons stay, are cared for or where any service is rendered to these persons shall have the same obligation "*<sup>88</sup>.

On the other hand, Article 19 of the Childhood and Adolescence Code establishes the State's responsibility to provide protection in situations of grave danger, determining the right of this population to receive adequate, timely and effective state attention from state institutions when there is a threat of violation of their rights.

*"Article 19°- **Right to protection in the face of serious danger.** Minors shall have the right to seek refuge, assistance and guidance when the threat to their rights entails 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. "*<sup>89</sup>

---

<sup>88</sup> Code of Childhood and Adolescence. Article 49.

<sup>89</sup> Code of Childhood and Adolescence. Article 19.

Continuing with the State obligation imposed by this Code for the protection of minors, Article 4 of the same legal body establishes the impediment for the State to allege budgetary limitations in order to fail to comply with its obligations.

*"Article 4 - **State policies.** It shall be a general obligation of the State to adopt administrative, legislative, budgetary and any other type of measures to guarantee the full effectiveness 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 kept in mind. Any action or omission contrary to this principle constitutes a discriminatory act that violates the fundamental rights of this population.*

*In accordance with the special protection regime that the Political Constitution, the Convention on the Rights of the Child, this Code and related laws guarantee to minors, the State may not allege budgetary limitations to disregard the obligations established herein "<sup>90</sup>.*

---

<sup>90</sup> Code of Childhood and Adolescence. Article 4.

This article empowers citizens of legal age to demand that the State effectively comply with the mandates established in the Code, so that they become a reality for all children and adolescents, without any type of discrimination or exclusion based on gender, ethnicity or nationality.

Title IV of the Childhood and Adolescence Code establishes the creation of a National System of Integral Protection, through which it is intended to guarantee the integral protection of the rights of minors, with respect to the design of public policies as well as the execution of programs aimed at their care.

*"Article 169°- System for the Integral Protection of the Rights of Children. The System for the Integral Protection of the Rights of Children and Adolescents shall be made up of the following organizations:*

- a) The National Council for Children and Adolescents.*
- b) Government institutions and civil society organizations represented in the Children's Council.*
- c) Child Protection Boards.*
- d) The Committees for the protection of the rights of children and adolescents <sup>91</sup>.*

---

<sup>91</sup> Childhood and Adolescence Code. Article 169



It cannot be denied that the rights enshrined in this law are violated when a Child or Adolescent is a victim of Commercial Sexual Exploitation, which is why this Code stipulates, although intrinsically, the obligation of every citizen to ensure that minors are not victims of this type of situation, and on the contrary, to implement systems that help them achieve an integral development of their person.

***RIGHTS OF MINORS:***

- *Right to Life*
- *Right to State Protection*
- *Right to Freedom*
- *Right to protect one's own interests*
- *Right to Protection from Serious Danger*
- *Right to Information*
- *Right to Identity*
- *Right to Integrity*
- *Right to Privacy*
- *Right to Honor*
- *Right to Image*
- *Right to Family Life*
- *Right to Education*
- *Right to Social Security*
- *Right of Access to Justice*

*These are some of the rights embodied in this body of law; it should be clarified that this is not an exhaustive or closed list.*

### **2.2.3. Law 7899, Against Commercial Sexual Exploitation of Minors.**

This law, enacted in Costa Rica in 1999, is in itself a reform to the Penal Code which has existed since 1970, which is based on the recognition of minors as human beings, as subjects of special rights, such as the protection of the State, due to their condition as growing individuals and therefore with a greater degree of vulnerability in certain situations. In view of this recognition, it can be said that this law protects the Personal Integrity of minors as a legal good, that is to say, as if it were a good that belongs to the State and that therefore the State has the obligation and even the interest to watch over or protect.

*"... this law is actually a reform to several articles of the Penal Code, and was inspired by the need to review such legislation in light of the characteristics of commercial sexual exploitation of minors in our country "<sup>92</sup>.*

There is no doubt of the importance of having the correct knowledge of the content of the crimes contemplated in Law 7899, Law Against the Commercial Sexual Exploitation of Minors, for which reason a brief explanation of each of them is included in this section:

---

<sup>92</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 51.

- **Sexual relations with minors:** within which are considered both those who have an economic investiture, as well as those who do not. This is currently regulated in articles 159° and 160° of the Penal Code.

*"Article 159.- Whoever, taking advantage of his age, gains access or has carnal access orally, anally or vaginally, with a person of either sex, older than twelve years of age and younger than fifteen, even with his consent, shall be punished with imprisonment of two to six years. The same penalty shall be imposed if the action consists of introducing, vaginally or anally, one or more fingers or objects. The penalty shall be four to ten years of imprisonment when the victim is older than twelve and younger than eighteen, and the agent is an ascendant, uncle, aunt, brother or sister by blood or blood relatives, guardian or guardian. "<sup>93</sup>*

*"Article 160.- Whoever pays a minor of any sex or promises to pay or give him/her in exchange an economic advantage or of any other nature, so that he/she performs sexual or erotic acts, shall be punished:*

1. *With a prison sentence of four to ten years if the offended person is under twelve years of age.*

---

<sup>93</sup> Penal Code. Article 159.

2. *With a prison sentence of three to eight years, if the offended person is older than twelve years old, but younger than fifteen years old.*
3. *With a prison sentence of two to six years, if the offended person is older than fifteen but younger than eighteen years of age* <sup>94</sup>.

Regarding the criminalization of Paid Sexual Intercourse with a minor, it is worth mentioning that this type of criminal offense allows for the punishment of the "exploiter" or person who promises to pay or give some type of economic advantage to the minor or to a third party who facilitates the action. In addition, it should be noted that this law contemplates acts beyond carnal access, since it penalizes everything that can be qualified as a sexual or erotic act. Finally, it is important to note that differentiated penalties are assigned based on the moment of the victim's life cycle, establishing ranges of persons under 12 years of age (making it equivalent to rape), over 12 and under 15 years of age, and over 15 but under 18 years of age (age considered in the country for the age of majority).

- **Corruption of Minors:** Corruption is considered as any act aimed at deviating the normal development or the natural conception of sexuality of minors. Currently, it is regulated in Articles 167 and 168 of the Penal Code.

*"Article 167.- Whoever promotes the corruption of a minor or incompetent person or maintains a minor or incompetent person*

---

<sup>94</sup> Penal Code. Article 160.

*in it, shall be punished with imprisonment for a term of three to eight years. The same penalty shall be imposed on anyone who uses minors or incapable persons for erotic, pornographic or obscene purposes, in exhibitions or shows, public or private, of such nature.*

*For the purposes of this article, corruption is understood to mean:*

- 1. Performing sexual or erotic acts in front of minors or incapable persons.*
- 2. Causing others to perform sexual or erotic acts in the presence of minors or incapacitated persons.*
- 3. Engaging, in sexual or erotic acts, minors or incapable persons in the presence of others. "<sup>95</sup>*

*"In the cases of the preceding article, the penalty shall be four to ten years of imprisonment:*

- 1. If the victim is under twelve years of age.*
- 2. If the act is executed for profit.*
- 3. If the act is executed with deceit, violence, abuse of authority or any other means of intimidation or coercion.*

---

<sup>95</sup> Penal Code. Article 160.

4. *If the perpetrator is an ascendant, descendant or sibling by consanguinity or affinity, stepfather, stepmother, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the victim's education, guardianship or custody.*

5. *If the perpetrator takes advantage of his relationship of trust with the victim or his family, whether or not there is a family relationship* <sup>96</sup>.

It should be noted that a very important contribution was made with respect to the criminal offense of corruption, since it was possible to open it to observe as unlawful the use of minors for erotic, pornographic or obscene purposes, whether in public or private exhibitions.

- **Pimping:** a pimp is a person who recruits people to promote, facilitate or maintain them in Commercial Sexual Exploitation. In the case that the person who is recruited has not reached the age of majority (eighteen years of age) it is considered as Aggravated Pimping; which is established in Article 170 of the Penal Code.

*"Article 169.- Whoever promotes prostitution of persons of any sex or induces them to engage in it or keeps them therein or recruits them for that purpose, shall be punished with imprisonment of two to five years.*

---

<sup>96</sup> Penal Code. Article 160.

*years. The same penalty shall be imposed on anyone who holds another person in sexual servitude. "*<sup>97</sup>

*"The penalty shall be from four to ten years of imprisonment when one of the actions provided for in the preceding article is carried out and any of the following circumstances also concur:*

- 1. If the victim is under eighteen years of age.*
- 2. If there is deception, violence, abuse of authority, situation of need of the victim or any means of intimidation or coercion.*
- 3. If the person who performs the action is an ascendant, descendant, brother or sister by blood or affinity, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the education, guardianship or custody of the victim.*
- 4. If the person who carries out the action takes advantage of his relationship of trust with the victim or his family, whether or not there is a family relationship "*<sup>98</sup>.

- **Ruffianism:** A ruffian is a person who, in a coercive manner, makes a living from the fruits of the commercial sexual exploitation of a person. It is regulated in article 171° of the Penal Code.

---

<sup>97</sup> Penal Code. Article 169.

<sup>98</sup> Penal Code. Article 170.

*"Article 171: Whoever coercively makes himself be maintained, even partially, by a person who exercises prostitution, exploiting the profits from such activity, shall be punished with imprisonment from two to eight years.*

*The penalty will be:*

- 1. Imprisonment from four to ten years, if the offended person is under twelve years of age.*
- 2. Imprisonment from three to nine years, if the offended person is older than twelve, but younger than eighteen "*<sup>99</sup>*.*

- Trafficking **in Persons:** consists of the transfer of a person from one country to another, for purposes of sexual or labor exploitation. Regulated in Article 172 of the Penal Code.

*"Article 172.- Whoever promotes, facilitates or favors the entry or exit of persons of any sex into or out of the country to engage in prostitution or to keep them in sexual or labor servitude, shall be punished with imprisonment of three to six years. The penalty shall be imprisonment of four to ten years, if any of the circumstances enumerated in aggravated pimping apply. "*<sup>100</sup>

---

<sup>99</sup> Penal Code. Article 171.

<sup>100</sup> Penal Code. Article 172.



- **Manufacture, Production or Dissemination of Pornography**<sup>101</sup>: in case minors or their image is used. It is regulated in article 173° of the Penal Code.

*"Whoever manufactures or produces pornographic material using minors or their image, shall be punished with imprisonment from three to eight years.*

*Whoever trades, transports or brings into the country this type of material for commercial purposes shall be sanctioned with a prison sentence of one to four years*  
*"<sup>102</sup>.*

Regarding this crime, it should be noted that until today, the possession of this type of pornographic material is not a crime, however, a bill has been presented in the Legislative Assembly, which aims to achieve a legal reform in which the possession of child pornography is included as a crime punishable with imprisonment.

It can be said that Law 7890 imprints within the national legislation related to the protection of the rights of minors, and specifically in the area of Commercial Sexual Exploitation of Children and Adolescents, a series of advances, which can be listed as follows:

---

<sup>101</sup> This offense refers to all pornographic material involving minors.

<sup>102</sup> Penal Code. Article 173.

1. The crime of Sexual Rape is conceptualized. By means of this reform, this type of crime is formulated in a way that broadens the factual assumptions of the punitive action. For greater clarity, before the reform, the crime of rape did not include the introduction of fingers in the anus or vagina, nor carnal access via oral or the introduction of objects in these places; with the reform, these conducts are punished as rape. In addition, with this new vision, there is an increase in the penalties, since before these conducts were punished with the penalty of "indecent" abuse.
2. The expression "dishonest abuse" is eradicated and it is now called "sexual abuse". This achieves a greater congruence with the protected legal right, in which honesty does not intervene.
3. The concepts of "Statutory rape" and "Sodomy" are eliminated, and both are grouped into a single crime called "Sexual relations with minors". With this, it is possible to equalize the passive subjects, and at the same time, sexist and unequal protectionist concepts which were ruled by reasons of sex are eradicated.
4. One of the most important advances is the creation of the crime of "Paid sexual relations with minors", which seeks to punish the "client-abuser", since the conduct of paying or promising to pay or giving in exchange an economic advantage to a person under 18 years of age to perform sexual or erotic acts is clearly criminalized.

5. The crime of Corruption is modified, eliminating undefined concepts such as "perverse, premature or excessive sexual acts", as well as "corrupt minor".
6. The crime of pimping is reformed. Subjective elements of the criminal offense such as "profit motive" or "to satisfy the desires of others" are eliminated, as well as the reference to the facilitation of prostitution. Keeping a person in "sexual servitude" is added as part of the criminal offense.
7. The crime of "Rufianería" is modified. An increased prison sentence is given, depending on the age of the victim.
8. The name of the crime of "Trafficking in women and minors" is changed to "Trafficking in Persons" and the reference to sexual or labor servitude is added.
9. The crime of "Manufacture or production of pornography" using underage persons is created.
10. The crime of "Dissemination of pornography" to minors or incapable persons is created.

Although this reform is the only one of its kind in Latin America with such dimensions and scope, its entry into force has revealed a series of gaps and some inconveniences identified by the sectors involved in the application of the law. For this reason, it is important to leave aside the achievements of Law 7899 and analyze something of greater importance, the points that were left out of it.

As part of this analysis, the following weaknesses of Law 7899 can be detailed:

1. The crime of rape did not include sexual acts with the use of animals, which some call zoophilia, but in the case of sexual violence this is not the appropriate term, since what is involved is the punishment of sexual aggression carried out on a person by means of the use of animals.
2. Omission in the crimes of "Sexual Abuse against minors", "Sexual Abuse against adults", "Aggravated Corruption" and "Aggravated Pimping" of the reference "uncle/uncle" as a significant link between perpetrator and victim for a higher criminal sanction.
3. It is considered an error of Law 7899 to include a specific conceptualization of the crime of Corruption, since it leaves aside acts of corruption that are carried out with the victim without the victim being in the presence of third parties.
4. In the crime of pimping, the verb "to facilitate" should be included in order to punish those who perform acts that do not promote but encourage prostitution.
5. The crime of "Manufacture or Production of Pornography" omits reference to erotic material and not only pornographic material. In addition, in accordance with international standards, this crime should include the possession or possession of this material even if it is not for commercial purposes.

6. The crime of "Dissemination of pornography", which makes it possible to punish anyone who sells, disseminates or exhibits pornographic material to minors, revealed a gap in the reform: the need to also punish the dissemination or exhibition of child pornography among persons of legal age. Additionally, for this conduct to be sanctioned it must be done for commercial purposes; if it is done for free, it could not be sanctioned as a crime. This gap is regulated in a legislative reform in November 2001, where the following is added to article 174°:

*"The same penalty shall be imposed on anyone who exhibits, disseminates, distributes or trades, by any means or in any capacity, pornographic material in which minors appear or in which their image is used, or possesses it for these purposes. "<sup>103</sup>*

#### **2.2.4. Law No. 8590.**

**Strengthening the Fight against Sexual Exploitation of Minors by amending and adding several articles to the Penal Code, Law No. 4573, and amending several articles of the Code of Criminal Procedure, Law No. 7594.**

In order to fill the legal gaps that had been left in the Costa Rican legislation regarding Sexual Exploitation of Minors, despite the existence of Law 7899, Law 8590 was created, which is effective as of August 30, 2007.

---

<sup>103</sup> Penal Code. Article 174.

In order to have more clarity on the progress made by Law 8590 in relation to the previous law (Law 7899), a comparative analysis of both laws is made and, specifically, each of the articles that are reformed with them.

First, Law 7899, Law against Sexual Exploitation of Minors, published in the official gazette La Gaceta No. 159 of August 17, 1999, has a single article that amends articles 156, 159, 160, 161, 162, 162, 167, 168, 169, 169, 170, 171, 171, 172, 173 and 174 of the Code.

The Criminal Code of the Republic of Costa Rica, Law No. 4573 of May 4, 1970. On the other hand, Law 8590, has three articles by means of which reforms are made to the Penal Code and the Code of Criminal Procedure; as follows: the first article of said law reforms articles 156, 157, 159, 160, 161, 162, 167, 168, 170, 171 and 173, and at the same time adds an article 173 bis of the Penal Code previously mentioned. By means of the second article of Law 8590, articles 18, paragraph a of article 31 and article 33 of the Code of Criminal Procedure, Law 7594, of April 10, 1996, were amended. Finally, the third article of the aforementioned law repeals articles 92, clauses 7) and 8) of article 93 and article 158 of the Penal Code.

#### 2.2.4.1 Comparative analysis of Law 7899 and Law 8590104

##### **ART. 156 Penal Code. VIOLATION**

##### **LAW 7899**

*"Article 156.-Shall be punished with imprisonment from ten to sixteen years, whoever gains access or has carnal access, orally, anally or vaginally, with a person of either sex. in the following cases:*

- 1) When the victim is under twelve years of age.*
  - 2) When the victim is unable or incapacitated to resist.*
  - 3) When corporal violence or intimidation is used.*
- The same penalty shall be imposed if the action consists of introducing, vaginally or anally, one or more fingers or objects. (...)"*

##### **LAW 8590**

*"Article 156.\_ Shall be punished with imprisonment from ten to sixteen years, whoever gains access or has carnal access orally, anally or vaginally, with a person of either sex, in the following cases:*

- 1. When the victim is under thirteen years of age.*

---

<sup>104</sup> This section includes the following articles of the Penal Code: 156, 157, 159, 160, 161, 162, 167, 168, 170, 171, 171, 173, 173 bis; as well as the following articles of the Code of Criminal Procedure: 18, 31 and 33. At the same time, the repeal made by law 8590 on articles 92, 93 paragraphs 7 and 8; and 158 of the Criminal Code is analyzed.

2. *When it takes advantage of the victim's vulnerability or the victim is unable to resist.*

3. *When violence is used, it is used as a form of intimidation.*

*The same penalty shall be imposed if the action consists of introducing to the victim one or more fingers, objects or animals, vaginally or anally, or forcing her to introduce them herself."*

## **COMMENT**

By means of Law 7899, an important reform was achieved regarding the typicity of the crime of rape, since this fact was conceived not as the simple carnal access of one person to another, but it was typified as a crime to be accessed by the agent. Likewise, this law broadens the concept of carnal access, since it leaves aside the limitations that implied considering it only in a vaginal way and opens the way to oral or anal carnal access.

Equally important is the fact that by means of the reform proposed by law 7899, the action of introducing one or more fingers or objects either anally or vaginally is qualified as rape; an action that goes beyond what until then was considered the crime of rape.

On the other hand, Law 8590 proposes several amendments to the article in question. In the first place, the first paragraph of this article is modified, raising the age range as of which the following age may be considered as the age at which



considers that this action may be classified as rape, since the age of the victim is set at thirteen years old and not twelve years old as it had been. This is due to the fact that previously minors up to twelve years of age and adolescents from thirteen years of age were considered as children, with this change the margin of protection for minors with respect to this crime is broadened.

Subsection 2 of article 156 is also modified, criminalizing the fact that the perpetrator takes advantage of the victim's vulnerability and not only when the victim is incapable or incapacitated to resist.

Another important change added by the law under study is that it considers as a crime of rape the introduction of fingers, objects or animals (including the introduction of animals), as well as forcing the victim to introduce them herself.

#### **Penal Code. QUALIFIED VIOLATION.**

##### **LAW 7899**

It does not include any amendment to this article.

##### **LAW 8590**

**"Article 157.-** *Imprisonment shall be from twelve to eighteen years, when:*

1. *The perpetrator is the victim's spouse or a person linked to the victim in an analogous relationship of cohabitation.*

2. *The perpetrator is an ascendant, descendant, sister or brother of the victim, up to the third degree by consanguinity or affinity.*
3. *The perpetrator is an uncle, aunt, niece, nephew, cousin or cousin of the victim, up to the third degree by consanguinity or affinity.*
4. *The perpetrator is a guardian or the person in charge of the victim's education, guardianship or custody.*
5. *Serious damage is caused to the victim's health.*
6. *Pregnancy occurs.*
7. *The conduct is committed with the concurrence of one or more persons.*
8. *The perpetrator carries out the conduct by taking advantage of a relationship of power resulting from the exercise of his position, and this is carried out by religious ministers, spiritual guides, members of the Public Force or members of the Supreme Powers".*

## **COMMENT**

By means of Law 8590, important reforms were made to article 157 of the Penal Code, which typifies the crime of Qualified Rape; since it includes a series of situations that aggravate the crime of rape and place it as qualified rape, which are mentioned below:

- The perpetrator is the victim's spouse or a person linked to the victim by an analogous cohabitation relationship, such as common-law or common-law marriage.

- The perpetrator is an uncle, aunt, nephew, niece, cousin or cousin of the victim, up to the third degree of consanguinity or affinity.
- The perpetrator is the guardian or person in charge of the victim's education, guardianship or custody.
- Serious damage to the victim's health (not only death as previously stipulated in article 157).
- Pregnancy occurs (previously this situation was not considered an aggravating circumstance).
- The conduct is committed with the concurrence of one or more persons.
- The perpetrator carries out the conduct by taking advantage of a relationship of power resulting from the exercise of his position and this is carried out by religious ministers, spiritual guides, members of the Public Force or members of the Supreme Powers.

For the sake of clarity, Article 157, without the reform under analysis, read as follows:

*"Imprisonment shall be from twelve to eighteen years when the perpetrator is an ascendant, descendant or sibling by consanguinity or affinity or the death of the victim occurs."*

**Art. 159                      Penal Code                      . SEXUAL      RELATIONS**  
**WITH MINORS**

**Law 7899**

*"**Article 159**.-Whoever, taking advantage of his age, gains access or has oral, anal or vaginal access to a person of either sex, over twelve years of age and under fifteen years of age, even with his consent, shall be punished with imprisonment of two to six years. The same penalty shall be imposed if the action consists of introducing, vaginally or anally, one or more fingers or objects. The penalty shall be four to ten years' imprisonment when the victim is older than twelve and younger than eighteen, and the agent has with respect to her the condition of ascendant, uncle, aunt, brother or sister by blood or affinity, guardian or guardian. "*

**Law 8590**

*"**Article 159.-** Shall be punished with imprisonment from two to six years, whoever, taking advantage of age, gains access or has carnal access to a person of either sex, older than thirteen and younger than fifteen, by oral, anal or vaginal means, with his/her consent.*

*The same penalty shall be imposed if the action consists of the introduction of one or more fingers, objects or animals through the vaginal or anal canal.*

*The penalty shall be four to ten years of imprisonment when the victim is older than thirteen and younger than eighteen, and the agent is an ascendant, uncle, aunt, brother or sister by blood or blood relatives, guardian or guardian".*

## **COMMENT**

Law 8590 includes two amendments to Article 159.

1. the age range of the victim is again extended to thirteen years,
2. includes the possibility of introducing animals, and not only fingers or objects.

## **Art. 160                                      Penal Code                      . Paid sexual acts with minors.**

### **Law 7899**

***"Article 160.**-Whoever pays a minor person of either sex or promises to pay or give him/her in exchange an economic advantage or of any other nature, so that he/she performs sexual or erotic acts, shall be punished:*

1. *With a prison sentence of four to ten years if the offended person is under twelve years of age.*

2. *With imprisonment from three to eight years, if the offended person is older than twelve years old but younger than fifteen years old.*
3. *With imprisonment from two to six years, if the offended person is older than fifteen, but younger than eighteen."*

## **Law 8590**

***"Article 160.-** Whoever pays, promises to pay or give in exchange an economic advantage or of another nature to a minor person or to a third party, so that the minor person executes sexual or erotic acts, shall be punished with the following penalties:*

1. *Imprisonment from four to ten years, if the offended person is under thirteen years of age.*
2. *Imprisonment from three to eight years, if the offended person is older than thirteen but younger than fifteen.*
3. *Imprisonment from two to six years, if the offended person is older than fifteen years but younger than eighteen years."*

## **COMMENT**

Law 8590 criminalizes the action performed by the "customer-abuser", that is, the action of paying or promising to pay or give in exchange an economic advantage or a financial benefit.

of another nature for a minor to perform sexual or erotic acts, whether the payment or promise of payment is made directly to the minor or to a third person. In addition, it is important to note that this article also amends the age of the victim from twelve years old to thirteen years old.

**Article 161 Penal Code. SEXUAL ABUSE AGAINST MINORS AND INCAPABLE PERSONS.**

**Law 7899**

*"Article 161.-Whoever abusively performs acts for sexual purposes against a minor or incapacitated person or forces him to perform them to the agent, to himself or to another person, provided that it does not constitute the crime of rape, shall be punished with imprisonment for a term of three to eight years.*

*The penalty shall be four to ten years in the following cases:*

- 1. When the offended person is under twelve years of age.*
- 2. When the perpetrator takes advantage of the vulnerability of the offended person or when the offended person is unable to resist or when corporal violence or intimidation is used.*
- 3. When the perpetrator is an ascendant, descendant, sibling by consanguinity or affinity, step-parent, spouse or person related by blood or marriage, or a person who has*

*analogous relationship of cohabitation, guardian or person in charge of the education, guardianship or custody of the victim.*

*4. When the perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

## **Law 8590**

***"Article 161.-** Shall be punished with imprisonment from three to eight years, whoever, in an abusive manner, performs acts for sexual purposes against a minor or incapable person or forces him to perform them to the agent, to himself or to another person, provided that it does not constitute the crime of rape.*

*The penalty shall be four to ten years imprisonment when:*

- 1. The offended person is under thirteen years of age.*
- 2. The perpetrator takes advantage of the vulnerability of the offended person, or the offended person is unable to resist, or physical violence or intimidation is used.*
- 3. The perpetrator is an ascendant, descendant, sister or brother of the victim.*
- 4. The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.*
- 5. The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.*



6. *The perpetrator is the guardian or person in charge of the victim's education, guardianship or custody.*

7. *The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.*

*The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

#### **COMMENT**

The age of the victim is modified from twelve to thirteen years old.

The fact that the perpetrator is an uncle, aunt, nephew, niece, cousin, stepsister or stepbrother of the victim is added as an aggravating circumstance, as well as the fact that the perpetrator carries out the conduct against any of the relatives of the victim's spouse or cohabitant.

#### **Art. 162. Penal Code. SEXUAL ABUSE AGAINST PERSONS OF LEGAL AGE.**

##### **Law 7899**

***"Article 162--If** the abuses described in the preceding article, are committed against a person of legal age, the penalty shall be from two to four years.*

*The penalty shall be three to six years in the following cases:*

1. *When the perpetrator takes advantage of the vulnerability of the offended person or when the offended person is unable to resist or when corporal violence or intimidation is used.*
2. *When the perpetrator is an ascendant, descendant, sibling by consanguinity or affinity, stepfather or stepmother, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the victim's education, guardianship or custody.*
3. *When the perpetrator takes advantage of a relationship of trust with the victim or the victim's family, whether or not there is a family relationship....".*

#### **Law 8590**

*"If the abuses described in the preceding article are committed against a person of legal age, the penalty shall be two to four years of imprisonment.*

*The penalty shall be three to six years imprisonment when:*

1. *The perpetrator takes advantage of the vulnerability of the offended person, or the offended person is unable to resist, or physical violence or intimidation is used.*
2. *The perpetrator is an ascendant, descendant, sister or brother of the victim.*
3. *The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.*

4. *The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.*
5. *The perpetrator is the guardian or the person in charge of the victim's education, guardianship or custody.*
6. *The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.*
7. *The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

#### **COMMENT**

The fact that the perpetrator is an uncle, aunt, nephew, niece, cousin, stepsister or stepbrother of the victim is added as an aggravating circumstance, as well as the fact that the perpetrator carries out the conduct against any of the relatives of the victim's spouse or cohabitant.

#### **Art.- 167 Penal Code. CORRUPTION**

##### **Law 7899**

***"Article 167.**-Whoever promotes the corruption of a minor or incapable person or keeps them therein, shall be punished with imprisonment from three to eight years. The same penalty shall be imposed on whoever uses minors or incapable persons for erotic, pornographic or obscene purposes, in exhibitions or shows, public or private, of such nature.*

*For the purposes of this article, corruption is understood to mean:*

- 1. Performing sexual or erotic acts in front of minors or incapable persons.*
- 2. Causing others to perform sexual or erotic acts in the presence of minors or incapacitated persons.*
- 3. Engaging, in sexual or erotic acts, minors or incapable persons in the presence of others."*

#### **Law 8590**

*"Article 167.- Whoever promotes or maintains the corruption of a minor or incapable person, executing or causing another or others to execute perverse, premature or excessive sexual acts, even if the victim consents to participate in them or to see them executed, shall be punished with imprisonment of three to eight years, provided that it does not constitute a more serious crime.*

*The same penalty shall be imposed on anyone who uses underage or incapable persons for erotic, pornographic or obscene purposes, in exhibitions or shows, public or private, of such nature, even if the underage persons consent to it."*

## COMMENT

By means of Law 8590, a series of important reforms related to the crime of corruption were achieved:

1. It is provided that a penalty of three to eight years of imprisonment shall be imposed provided that the actions carried out do not constitute a more serious crime.
2. The action is broadened, typifying as corruption the execution or causing the execution of perverse, premature or excessive sexual acts to another or others.
3. It visualizes the action as criminal and equally reprehensible despite the victim's consent to participate in it.

### **Art. 168 Penal Code. AGGRAVATED CORRUPTION.**

#### **Law 7899**

***"Article 168.-In** the cases of the preceding article, the penalty shall be four to ten years of imprisonment:*

1. *If the victim is under twelve years of age.*
2. *If the act is executed for profit.*
3. *If the act is executed with deceit, violence, abuse of authority or any other means of intimidation or coercion.*
4. *If the perpetrator is an ascendant, descendant or sibling by consanguinity or affinity, stepfather, stepmother, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the victim's education, guardianship or custody.*

5. *If the perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

## **Law 8590**

**"Article 168.-** *In the case of the preceding article, the penalty shall be four to ten years of imprisonment, provided that:*

1. *The victim is under thirteen years of age.*
2. *The fact is executed for profit.*
3. *The act is executed with deceit, violence, abuse of authority or any other means of intimidation or coercion.*
4. *The perpetrator is an ascendant, descendant, sister or brother of the victim.*
5. *The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.*
6. *The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.*
7. *The perpetrator is the guardian or person in charge of the victim's education, guardianship or custody.*
8. *The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 4), 5) and 6) above.*
9. *The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

## COMMENT

The age of the victim is modified from twelve to thirteen years old.

The fact that the perpetrator is an uncle, aunt, nephew, niece, cousin, stepsister or stepbrother of the victim is added as an aggravating circumstance, as well as the fact that the perpetrator carries out the conduct against any of the relatives of the victim's spouse or cohabitant.

### **Article 170. Penal Code. AGGRAVATED PIMPING.**

#### **Law 7899**

***"Article 170.-The** penalty shall be from four to ten years of imprisonment when one of the actions provided for in the preceding article is carried out and any of the following circumstances also concur:*

- 1. If the victim is under eighteen years of age.*
- 2. If there is deception, violence, abuse of authority, situation of need of the victim or any means of intimidation or coercion.*
- 3. If the person who performs the action is an ascendant, descendant, brother or sister by blood or affinity, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the education, guardianship or custody of the victim.*

4. *If the person who performs the action takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*

## **Law 8590**

**"Article 170.-** *The penalty shall be four to ten years of imprisonment, when one of the actions provided for in the preceding article is carried out and any of the following circumstances also concur:*

1. *The victim is under eighteen years of age.*
2. *There is deception, violence, abuse of authority, a situation of need of the victim or any means of intimidation or coercion.*
3. *The perpetrator is an ascendant, descendant, sister or brother of the victim.*
4. *The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.*
5. *The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.*
6. *The perpetrator is a guardian, or in charge of the victim's education, guardianship or custody.*
7. *The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.*
8. *The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".*



## COMMENT

The fact that the perpetrator is an uncle, aunt, nephew, niece, cousin, stepsister or stepbrother of the victim is added as an aggravating circumstance, as well as the fact that the perpetrator carries out the conduct against any of the relatives of the victim's spouse or cohabitant.

### **Art. 171 Penal Code. RUFIANIA**

#### **Law 7899**

***"Article 171.-Whoever** coercively makes himself be maintained, even partially, by a person who exercises prostitution, exploiting the profits from such activity, shall be punished with imprisonment from two to eight years. The penalty shall be:*

- 1. Imprisonment from four to ten years, if the offended person is under twelve years of age.*
- 2. Imprisonment from three to nine years, if the offended person is older than twelve, but younger than eighteen."*

#### **Law 8590**

***"Article 171.-** It shall be punishable with imprisonment from two to eight years, whoever, coercively, makes himself be maintained, even partially, by a*

*person who engages in prostitution, exploiting the earnings from such activity.*

*The penalty will be:*

- 1. Imprisonment from four to ten years, if the offended person is under thirteen years of age.*
- 2. Imprisonment from three to nine years, if the offended person is older than thirteen, but younger than eighteen."*

#### **COMMENT**

The age of the victim is modified from twelve to thirteen years old.

---

#### **Art.173 Penal Code.MANUFACTURE,PRODUCTION OR REPRODUCTION OF PORNOGRAPHY.**

#### **Law 7899**

*"Article 173.-Whoever manufactures or produces pornographic material, using minors or their image, shall be punished with imprisonment from three to eight years.*

*Whoever trades, transports or brings into the country this type of material for commercial purposes shall be punished with imprisonment from one to four years."*

## **Law 8590**

***"Article 173.-** Whoever manufactures, produces or reproduces pornographic material, using minors, their image and/or voice, shall be punished with imprisonment from three to eight years.*

*Whoever transports or brings into the country this type of material for commercial purposes shall be sanctioned with a prison sentence of one to four years."*

## **COMMENT**

It is included as a criminal act to use the voice of a minor in the manufacture or production of pornographic material.

## **Art. 173 bis Penal Code. POSSESSION OF PORNOGRAPHIC MATERIAL**

## **Law 8590**

***"Article 173 bis.-** Whoever possesses pornographic material in which minors appear, either by using their image and/or voice, shall be punished with imprisonment from six months to two years."*

## COMMENT

This law includes for the first time in Costa Rica, the possession of child pornography as a crime punishable with imprisonment.

---

### **Art.18 Criminal**

---

#### **Procedural Code.CRIMES OF PUBLIC ACTION      PROSECUTABLE ONLY** **AT PRIVATE REQUEST.**

***"ART. 18.-** They are crimes of public action that can be prosecuted at private instance:*

- a) Consensual sexual intercourse with a person over twelve years of age and under fifteen years of age, contagion of disease and rape; in the latter case, when the offended person is over fifteen years of age and is not deprived of reason or incapable of resisting.*
- b) Sexual assaults, provided they are not aggravated or qualified.*
- c) Minor and negligent injuries, abandonment of persons, concealment of impediments to marriage, simulation of marriage, threats, violation of domicile and usurpation.*
- d) Non-compliance with the duty to provide food, the duty to provide assistance and the non-compliance or abuse of parental authority.*

- e) *Any other offense that the law qualifies as such."*

## **Law 8590**

### **"Article 18.-Crimes of public action prosecutable only by private prosecution**

*They shall be crimes of public action prosecutable at private instance:*

- a. *Contagion of disease and rape of a person of full legal age.*
- b. *Sexual assaults, neither aggravated nor qualified, against persons of legal age.*
- c. *Minor and negligent injuries, abandonment of persons, concealment of impediments to marriage, simulation of marriage, threats, violation of domicile and usurpation.*
- d. *Failure to comply with the duty of support or the duty of assistance and failure to comply with or abuse of parental authority.*
- e. *Any other offense that the law typifies as such."*

## COMMENT

By means of the amendment to this article, sexual relations with a person over twelve years of age and under fifteen years of age are reformed as a crime of public action prosecutable only at private request; This is due to the fact that Law 8590 categorically states that a minor does not have the legal capacity to consent or not with respect to acts of a sexual nature, inasmuch as for legal purposes this consent has no value and therefore, the perpetrator of the criminal action cannot justify his act or diminish the reproachability of the same by using the alleged consent of the victim if the victim is a minor. Based on the foregoing, this crime is not prosecutable only at private request, but it is a crime of public action.

### **Art. 31. Code of Criminal Procedure. STATUTE OF LIMITATIONS FOR CRIMINAL ACTION.**

#### **"Art. 31 Code of Criminal Procedure**

*If criminal prosecution has not been initiated, the action will be barred by the statute of limitations:*

*a) After a term equal to the maximum sentence has elapsed, in crimes punishable by imprisonment; but in no case may it exceed ten years or be less than three years.*

*b) ...."*

## **Law 8590**

### ***"Article 31.- Statute of limitations for criminal prosecution***

*If criminal prosecution has not been initiated, the action will be barred by the statute of limitations:*

*a. After a period equal to the maximum sentence has elapsed, in crimes punishable by imprisonment; it may not exceed ten years nor be less than three, except in sexual crimes committed against minors, in which the statute of limitations shall begin to run from the time the victim has reached the age of majority.(...)"*

## **COMMENT**

The statute of limitations for criminal action is modified with respect to sexual crimes committed against minors, since in order to protect minors and their right to justice, the statute of limitations runs from the moment the victim reaches the age of majority.

**Interruption of the statute of limitations.**

**"Article 33.- Interruption of the statute of limitations.**

*Once the proceeding has been initiated, the time periods established in the preceding article shall be reduced by half and shall start running again as of the following moments:*

- a. The first formal imputation of the facts to the defendant, in the crimes of public action.*
- b. The filing of the complaint, in crimes of private action.*
- c. When the conduct of the debate is suspended for causes attributable to the defense, with the purpose of hindering the normal development of the debate, according to the declaration made by the court in a well-founded resolution.*
- d. The issuance of the judgment, even if it is final."*

**Law 8590**

**"Article 33.- Interruption of statute of limitations periods**

*Once the procedure has been initiated, the time limits established in the preceding article shall be reduced by one half for*



*compute them for the purpose of suspending or interrupting the statute of limitations. The statute of limitations shall be interrupted by the following:*

- a. Appearance to render an indagatory statement, in crimes of public action.*
- b. The filing of the complaint in private action crimes.*
- c. When the conduct of the debate is suspended for causes attributable to the defense, with the purpose of hindering the normal development of the debate, according to the declaration made by the court in a well-founded resolution.*
- d. The issuance of the sentence, even if it is final.*
- e. The preliminary hearing is scheduled.*
- f. The appointment of the date for the debate.*

*The interruption of the statute of limitations operates even in the event that the resolutions referred to in the preceding paragraphs are subsequently declared ineffective or null and void.*

*The judicial authority may not use as grounds for interruption of the statute of limitations other than those set forth in the preceding paragraphs."*

## COMMENT

The amendment to this article establishes an exhaustive list of circumstances by means of which the statute of limitations is interrupted.

It also states that the declaration of nullity or ineffectiveness of one of the resolutions referred to in the article is not valid for the interruption of the statute of limitations not to operate.

### **Abrogation of Art. 92 of the Penal Code**

***"Art. 92.-** The marriage of the accused or convicted person with the offended party shall also extinguish the criminal action or the penalty, when this is legally possible in crimes against honesty and there is no opposition from the legal representatives of the minor and the National Child Welfare Agency."*

### **Repeal of paragraphs 7) and 8) of Article 93 of the Penal Code.**

***"Art. 93.-** The sentence is also extinguished by the pardon that the judges may grant to the convicted person in the following cases, subject to a report from the Institute of Criminology on his personality:*

1. *To the perpetrator of a crime of abduction, statutory rape or indecent assault if the offended person or his legal representatives jointly with the offender so request.*
2. *To the perpetrators of crimes included in the preceding subsection who express their intention to marry the offended woman over fifteen years of age, she consents, the National Child Welfare Agency also expressly does so and all the circumstances of the case indicate that the opposition to the marriage, on the part of whoever exercises parental authority, is unfounded and unjust."*

#### **Repeal of Article 158 of the Penal Code.**

***"Article 158.- Aggravated Rape.** The penalty shall be twelve to eighteen years of imprisonment when the rape results in serious damage to the health of the victim or when the crime is committed by the person in charge of the education, guardianship or custody of the victim or when the act is committed with the concurrence of one or more persons, or when it is committed by religious ministers, professionals or any member of the Public Force, taking advantage of the exercise of their position."*

## 2.2.5. Code of Criminal Procedure

As a starting point, it is important to note that procedural aspects refer to the way in which crimes are heard and processed in the Courts of Justice. The judicial procedure must be based on a series of principles and procedural guarantees, which ensure that it is carried out within a framework of fairness and impartiality on the part of those who operate the system. In this regard, it is important to observe the basic provisions contained in the Code of Criminal Procedure, Law Number 7594 of the Costa Rican legal system.

With respect to the procedure as such and the competence of the Courts of Justice to hear a criminal act, the following articles may be cited:

*"Article 1.- Principle of Legality. No one may be sentenced to a penalty or subjected to a security measure, except by virtue of a process conducted in accordance with this Code and with strict observance of the guarantees, powers and rights provided for individuals.*

*The non-observance of a rule of guarantee established in favor of the accused may not be asserted to his detriment "*<sup>105</sup>.

---

<sup>105</sup> Code of Criminal Procedure. Article 1. Costa Rica.

*"The competence of the courts of justice extends to the knowledge of criminal acts committed in the territory of the Republic, as well as those executed in places where the Costa Rican State exercises special jurisdiction. In addition, in the cases provided by law, they shall hear crimes committed outside the national territory. "*<sup>106</sup>

With respect to the procedural subjects, reference can be made to the Victim and the Defendant, as follows:

**"Article 70°.-** *The following shall be considered victims:*

- a) To the person directly offended by the crime*
- b) To the spouse, cohabitant with more than two years of life in common, child or adoptive parent, relatives within the third degree of consanguinity or second degree of affinity and the judicially declared heir, in crimes whose result is the death of the offended party.*
- c) To partners, associates or members, with respect to crimes affecting a legal person, committed by those who direct, manage or control it.*
- d) To associations, foundations and other entities, in crimes that affect collective or diffuse interests, provided that the purpose of the group is directly related to such interests "*<sup>107</sup>.

---

<sup>106</sup> Code of Criminal Procedure. Article 45. Costa Rica.

<sup>107</sup> Code of Criminal Procedure. Article 70.

**"Article 71.- Rights of the victim.** *Even if the victim has not been constituted as a plaintiff, he/she shall have the following rights:*

- a) Intervene in the proceedings, as established in this Code.*
- b) To be informed of the resolutions that finalize the procedure, provided that he/she has requested it and is of known address.*
- c) Appeal the dismissal and the definitive dismissal.*
- d) The victim will be informed of his or her rights when filing the complaint or in his or her first intervention in the procedure "*<sup>108</sup>.

**"Article 81.-** *A person who, through any act of investigation or procedure, is indicated as a possible perpetrator of a punishable act or participant in it, shall be called the accused "*<sup>109</sup>.

**"Article 82.- Rights of the accused.** *The judicial police, the Public Prosecutor's Office and the judges, as appropriate, shall inform the accused, in an immediate and understandable manner, that he/she has the following rights:*

- a) To know the cause or reason for his deprivation of liberty and the official who ordered it, showing him, as appropriate, the order issued against him.*

---

<sup>108</sup> Code of Criminal Procedure. Article 71. Costa Rica.

<sup>109</sup> Code of Criminal Procedure. Article 81. Costa Rica.

- b) To have an immediate and effective communication with the person, association, group or entity to which you wish to communicate your capture.*
- c) To be assisted, from the first act of the proceeding, by the defender appointed by him, his relatives or the group to which his capture was communicated and, failing this, by a public defender.*
- d) To appear or be presented to the Public Prosecutor's Office or to the court, to be informed and to learn of the facts with which he is charged.*
- e) To refrain from testifying and, if he/she agrees to do so, to have his/her defense counsel present at the time of giving his/her statement and in other proceedings in which his/her presence is required.*
- f) Not to be subjected to techniques or methods that induce or alter their free will or violate their dignity.*
- g) No means may be used against them that prevent their free movement in the place and during the performance of a procedural act, without prejudice to the surveillance measures that, in special cases, the court or the Public Prosecutor's Office may order "<sup>110</sup>.*

With respect to the activities carried out in the process and the means of proof, it is important to cite the following articles:

**"Article 175.-The following may not be**  
*considered as grounds for a judicial decision or be*  


---

*used as*

<sup>110</sup> Code of Criminal Procedure. Article 82. Costa Rica.

*The Court may also consider, in the event of a violation of the provisions of the Constitution, of international or community law in force in Costa Rica and of this Code, the acts carried out in disregard of the forms and conditions provided for in the Constitution, in international or community law in force in Costa Rica and in this Code, unless the defect has been cured, in accordance with the rules that regulate the correction of judicial actions "*<sup>111</sup>.

*"The Public Prosecutor's Office and the courts have the duty to seek to ascertain the truth through the means of evidence permitted, in strict compliance with the purposes of the criminal prosecution and the objectives of the investigation "*<sup>112</sup>.

*"The elements of evidence shall only have value if they have been obtained by a lawful means and incorporated into the proceeding in accordance with the provisions of this Code.*

*Unless it favors the defendant, information obtained by torture, ill-treatment, coercion, threat, deception, improper intrusion into the privacy of the home, correspondence, communications, private papers and files, or information obtained by other means, may not be used.*

---

<sup>111</sup> Code of Criminal Procedure. Article 175. Costa Rica.

<sup>112</sup> Code of Criminal Procedure. Article 180. Costa Rica.



*means that undermine the will or violate the fundamental rights of individuals* "<sup>113</sup>.

Having analyzed some of the aspects of interest regarding the criminal process and specifically on the issue of Commercial Sexual Exploitation of Children and Adolescents, which should be interpreted as a manifestation of sexual violence against minors, it is important to remember that on many occasions the victims of this scourge are placed in a position of greater vulnerability, since they are involved in processes in which they are re-victimized and in many cases become insensitive and non-specialized procedures. Coupled with the lack of training of judicial system operators on the issue of Commercial Sexual Exploitation, there are victims who, for various reasons, do not see themselves as such and for whom the criminal process is most of the time adverse to their most immediate interests. That is why, in this type of cases, it is important to reinforce prevention and care policies, aimed at creating real opportunities for victims of sexual exploitation, as well as to reinforce the accompaniment of these in criminal proceedings, so that they do not see themselves as the accused or the accused, but as what they really are, the victims.

*"Sexual exploitation - as a manifestation of sexual violence against minors - places its victims in a position of greater vulnerability, since they generally face trials in which they are re-victimized (judged from a patriarchal and adult-centric morality), and subjected to an insensitive and non-specialized procedure.*

---

<sup>113</sup> Code of Criminal Procedure. Article 181. Costa Rica.

*But in addition, in crimes of sexual exploitation, there are victims who, for various reasons, do not see themselves as such, and for whom the criminal process is adverse to their most immediate interests "*<sup>114</sup>.

Specifically, with regard to procedural legislation, two important aspects related to the rights of children and adolescents should be highlighted.

First, with the Criminal Procedure Code, Law No. 7594, the institute of conciliation was introduced in the Costa Rican criminal procedure system, which is one of the causes of extinction of the criminal action. Initially, with this regulation, conciliation was allowed in the case of sexual crimes, crimes against minors and domestic aggression, as long as the victim or his representative expressly requested the judge to convene a conciliation hearing. However, later the Constitutional Chamber came to modify this legal criterion and established that conciliation is not applicable when the victim is a minor even if he/she requests it, because if this were allowed, it would create an incompatibility with the obligation of the State to protect the best interest of the child and to punish all those conducts that imply a violation of his/her human rights.

Continuing with this idea, the Third Chamber of the Supreme Court of Justice ruled on the inadmissibility of the revocation of the private instance in crimes committed against minors, stating:

---

<sup>114</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 54.

*"The revocation of the instance is not viable in processes in which it is a matter of safeguarding the rights of a minor or to establish facts that may have been committed to his detriment....While the dismissal in crimes of public action does not prevent the subsequent prosecution of the act, the revocation of the instance leads to a dismissal that terminates the case, which may result in a greater defenselessness of the minor who has been the victim of pressure or violence (most likely originating from a member of his family) because once the revocation has been revoked, the case cannot be reopened "*<sup>115</sup>.

By means of these resolutions, *"an interpretation of the criminal procedural norm inspired by the doctrine of integral protection is carried out, based on which the rights of minors are recognized as human rights, they are considered as far as possible and in their condition as victims (and also as perpetrators under the Juvenile Criminal Justice Act of 1996) as parties in the process with the particularity that the State must provide special protection to their interests (Best Interest of the Child) "*<sup>116</sup>.

Currently, Law No. 8590 regulates this situation, since it introduces an amendment to Article 18 of the Code of Criminal Procedure, which regulates crimes of public action that can only be prosecuted at private request, which do not include those related to the

---

<sup>115</sup> Third Chamber of the Supreme Court of Justice.

<sup>116</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 56.

Commercial Sexual Exploitation of Minors, thus, by exclusion, it can be concluded that this type of crime is a Public Action and therefore is not susceptible to Conciliation or Revocation by the victim.

**"Article 18.-Crimes of public action prosecutable only by private prosecution**

*They shall be crimes of public action prosecutable at private instance:*

- a) Contagion of disease and rape of a person of full legal age.*
- b) Sexual assaults, neither aggravated nor qualified, against persons of legal age.*
- c) Minor and negligent injuries, abandonment of persons, concealment of impediments to marriage, simulation of marriage, threats, violation of domicile and usurpation.*
- d) Failure to comply with the duty of support or the duty of assistance and failure to comply with or abuse of parental authority.*

e) *Any other crime defined as such by law.* "<sup>117</sup>

#### **2.2.6. Executive Orders**

At the end of 2001, two important reforms took place in the area of Commercial Sexual Exploitation of Minors and the fight against it in Costa Rica.

The first of these reforms is directly related to the fight against Sexual Tourism. Thus, by means of Executive Decree No. 29967-G, of November 15, 2001, the entry of foreigners who are linked to the commission of crimes contemplated in the Law against the commercial sexual exploitation of minors (among other crimes) is prevented and the request for residence or entry visa is rejected. Likewise, procedures may be initiated to cancel the stay in the country (either ex officio or at the request of a party) of foreigners who "distort the reasons taken into account for their entry, by carrying out activities not permitted in our legislation, violating in various ways our legal order and the rule of law.

The second reform acts on Law No. 7425 "Search, seizure and examination of private documents, interception of communications", authorizing such procedures for the police or jurisdictional investigation of the crimes of aggravated corruption, aggravated procuring, manufacture or production of pornography and trafficking of minors.

---

<sup>117</sup> Code of Criminal Procedure. Article 18. Costa Rica.

**THEME III**  
**Commercial Sexual Exploitation**  
**of Minors**  
**In Costa Rica.**

**Objective 3.**

*To study the real situation experienced by Costa Rican children regarding the problem of Commercial Sexual Exploitation of Minors.*

**3.1. Costa Rican Context**

Costa Rica is a country located in the Central American Isthmus, bordered by the Caribbean Sea on its east coast and the Pacific Ocean on its west coast; to the south by the Republic of Panama and to the north by the Republic of Nicaragua. Its territory comprises 51 100 square kilometers and has a population of approximately four and a half million inhabitants.

The country is based on a threshold of high human development, which has been enshrined in an increase of rights for the population. As a basis for these rights, we can glimpse the universalization of primary education, the extension of health coverage, as well as the expansion of political rights and the protection of the natural heritage. In today's Costa Rica, ensuring the existence of accumulated achievements in human development is imperative; not doing so is inexcusable, but always maintaining a vision of the future.

Looking to the future, the country needs to increase its productivity, improve social equity, make sustainable use of its natural resources and, above all, improve the well-being and quality of life of its population.

In economic terms, and specifically in terms of wealth distribution, the data provided by the State of the Nation indicate that Costa Rican society is significantly more unequal than it was two decades ago. There is an undeniable need for changes in the country's political and economic system; there is an imminent urgency to reach political agreements aimed at promoting rapid social progress. In order to make progress in terms of sustainable human development, it will be necessary to achieve a social transaction that distributes income among the country's inhabitants, particularly among those sectors that have gained little or nothing so far.

Based on the Thirteenth State of the Nation Report, released on November 15, 2007, in terms of Costa Rica's economic, political and social development, 2006 was a year of marked contrasts. From the macroeconomic point of view, there were many positive aspects, the gross domestic product and national disposable income showed a margin of growth, reaching historic highs in terms of exports and attracting foreign direct investment; on the other hand, inflation decreased and tax collection increased vigorously. From the social point of view, there was a growth in the real average income of the employed, unemployment decreased and social investment rebounded slightly. From the political point of view, the government regained initiative in its relations with the legislature and succeeded in creating a majority and relatively stable multi-party coalition.

However, despite so many positive results, 2006 unfortunately saw the continuation of some negative aspects that have been affecting the development of Costa Rican citizens. In the first place, the current account deficit deteriorated, which is evidence of a structural weakness of the development style, such as the lack of productive linkages. Secondly, and of vital importance, there was an increase in the inequity of income distribution in general, increasing absolute inequality: the poorest saw their income decrease, while the richest were the ones who benefited.

*"...not only did inequality in income distribution in general increase, but there was also an increase in absolute inequality: the poorest became poorer, while the richest benefited. In the opinion of this report, this result is unacceptable. At the same time, the level of poverty remained unchanged for the twelfth consecutive year and invisible underemployment increased, which denotes the low quality of many of the jobs that are being generated. "<sup>118</sup>*

It is evident that there is a disconnection between the economic and social results of the 2006 Costa Rica study, this situation may be the result of the weak productive, fiscal and social linkages existing in the new economy that is being applied in the country. *"Due to this disconnection, an increasingly booming economy is failing to expand opportunities for*

---

<sup>118</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter I. Costa Rica, 2007.



*the majorities and improve their living conditions. As a result, wealth increases, but is distributed in an increasingly unequal manner* <sup>119</sup>.

There is a clear contradiction between the country's social and economic performance, since on the one hand, production registered an accelerated growth of 8.2%, the real average household income increased by 2.4%, as did the labor income of the employed by 3.8%, however, the incidence of poverty remained stagnant at 20% and inequality grew from 0.406 to 0.420, as well as the closing of the main gender and territorial labor gaps did not improve. In light of these results, it is possible to explain the reason for the growing income gap between skilled and unskilled workers, the widespread prevalence of poor quality jobs outside the Central Area, and the existence of a hard core of poverty, which is constituted by households in a situation of social exclusion.

120

During the years 1990 and 1997, income concentration indicators were relatively stable; however, starting in 1998, a process of increasing inequality began, which, as measured by the Gini coefficient<sup>121</sup>, reached its maximum level in 2001; a gradual reduction occurred between 2002 and 2005, and was reversed in 2006, with an increase in the Gini coefficient from 0.406 to 0.420.

---

<sup>119</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter I. Costa Rica, 2007.

<sup>120</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter II. Costa Rica, 2007.

<sup>121</sup> The Gini Coefficient is an aggregate numerical measure of inequality in the distribution of household income, ranging from 0 (perfect equality) to 1 (perfect inequality). The higher the coefficient the greater the inequality of the distribution.



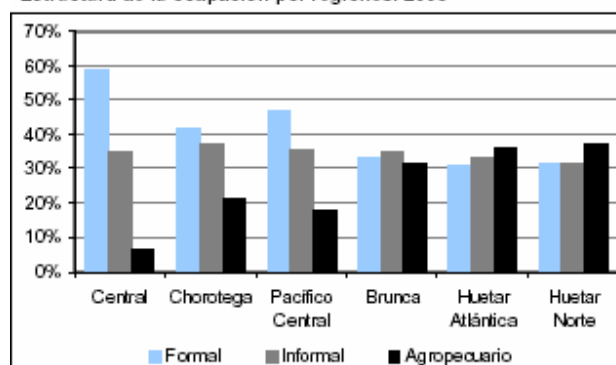
Fuente: *Decimotercer Informe Estado de la Nación*, con base en Sauma, 2007, y datos de las encuestas de hogares del INEC.

122

It is important to point out that social gaps are not only in income, but also in access to employment opportunities. The issue of the quality of employment generated in the various regions of the country must be addressed; namely, 67.4% of the total number of employed people are concentrated in the Central Valley, Huetar Atlántica is the second most important region with 9.5% of the total number of employed people, followed by Chorotega and Brunca, with 6.7% and 6.5% respectively, ending with Huetar Norte with 5.1% and Pacífico Central with 4.8%. Regarding the generation of higher quality jobs, known as formal employment, only in the Central Valley does the percentage of people employed in this modality exceed 50%, 58.9%, which confirms the fact that informality is a factor closely linked to poverty, since the country is certainly generating a poor quality of employment, basically in the peripheral regions.<sup>123</sup>

<sup>122</sup> Graph 2.10, page 107 of the Thirteenth State of the Nation Report, November 2007. <sup>123</sup>State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter II. Costa Rica, 2007.

Estructura de la ocupación por regiones. 2006



Fuente: Decimotercer Informe Estado de la Nación, con base en Sauma, 2007, y datos de las encuestas de hogares del INEC.

124

In addition to the issue of employment in Costa Rica, it is important to mention the issue of invisible underemployment, understood as the proportion of people who receive less than the legal wage. This is a very important issue, since if we refer to the figures, invisible underemployment increased in relation to that existing in 2005, that is, it went from 201,133 people employed under this modality in 2005 to 266,218 in 2006, evidencing an increase of 32.4%; in addition, it is important to analyze the fact that if this type of results are maintained, there could be a significant deterioration in the quality of employment in general, with the consequences that this would generate for the Costa Rican population.

During 2006, the incidence of poverty measured by income line showed a stagnation of around 20%, registering a value of 20.2% of households. A similar situation is found in extreme poverty, whose 2006 level, 5.3% of households, reflects a stagnation of around 6% since 1994. The absolute numbers of households affected by poverty are still very high. Our own estimate, in which ignored income is imputed, shows that in 2006 about 235 000 households

<sup>124</sup> Graph 2.11, page 113 of the Thirteenth State of the Nation Report, November 2007.

had a per capita income below the total poverty line, a figure that, although slightly lower than that of the previous year, together represent the highest since 1990. For the same year, almost 68,000 households were estimated to be living in extreme poverty, a figure similar to that of the two previous years, which together represent the highest levels of the period. As in previous years, the incidence of poverty was considerably higher among rural households than among urban households. Given the spatial distribution of the population, in 2006 53.8% of poor households resided in urban areas and the remaining 46.2% in rural areas.

Another interesting data from the Thirteenth State of the Nation Report is the "vulnerability to poverty of the non-poor", which in 2006 reached 12.6% of the total number of households in the country. If we add to this percentage the poor households, that is, 20.2%, the result is that in 2006, 32.9% of the total number of households in the country were in a situation of poverty or vulnerability.

Certainly, since 1994 the percentage of poor households has remained stagnant at around 20%, although in some years it falls and in others it rises by about one percentage point, this average is maintained year after year. In addition, consideration should be given to the fact that there is a group of "excluded households" in the country, whose social situation cannot be adequately understood using the traditional concept of poverty. *"Excluded households are a specific social group within the population that generically qualifies as poor. Unlike other poor households, the "excluded" are characterized by not having access, systematically and for long periods of time, to the benefits of social policies, such as education, health, and their insertion in the labor market has features of chronic precariousness, since their members are part of the labor surplus."*<sup>125</sup>

---

<sup>125</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter II. Costa Rica, 2007.

A measurement of excluded households carried out between 2002 and 2006 determined that nearly 14% of the total number of households in the country are in this condition, which is reflected in 150,089 excluded households for 2006, and constitutes a specific social group within the population that generically qualifies as poor. These households are located mainly in the Brunca and Chorotega regions and are generally made up of highly precarious salaried workers.

Hogares en exclusión/inclusión social, según regiones.  
2002 y 2006  
(porcentajes)

Región	Exclusión extrema <sup>a</sup>		Exclusión relativa <sup>b</sup>		Inclusión	
	2002	2006	2002	2006	2002	2006
Chorotega	28,7	27,1	21,3	23,3	50,1	49,6
Brunca	26,3	24,6	20,5	26,0	53,2	49,4
Pacífico Central	20,7	18,2	22,5	26,2	56,8	55,6
Huetar Norte	17,2	16,8	30,4	33,6	52,4	49,7
Huetar Atlántica	15,9	14,8	23,6	29,9	60,5	55,2
Central	9,5	10,8	14,7	19,8	75,7	69,4
Total	14,0	14,2	18,0	22,6	68,0	63,2

a/ La exclusión extrema se refiere a los hogares "bloqueados" que, debido a su condición de exclusión social, no logran superar la pobreza.

b/ La exclusión relativa son hogares que, aunque no están bloqueados, tienen niveles de exclusión alta, media y exclusión/inclusión baja.

Fuente: *Decimotercer Informe Estado de la Nación*, con base en Pérez et al., 2007, y datos de las encuestas de hogares del INEC.

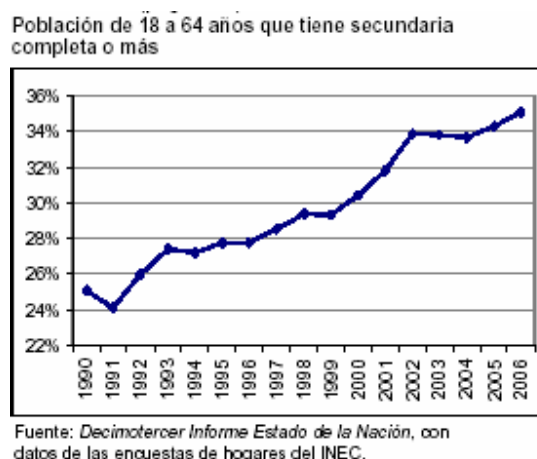
126

Another important point when analyzing Costa Rica's development during 2006 is the growth in the percentage of the population with completed secondary education. During the 2006 period, the average schooling of people between 18 and 64 years of age was 8.6 years, which is equivalent to an increase of only 1.4 years with respect to 1990. However, the group within this same range of people who have completed high school or even more studies increased from 25.1% in 1990 to 35.1% in 2006, adding to the increase in the coverage rates of regular education, especially in the third cycle. In addition, in the last seventeen years, the percentage of

<sup>126</sup> Graph 2.17, page 127 of the Thirteenth State of the Nation Report, November 2007.

young people between the ages of 12 and 24 who neither study nor work, from 20.9% in 1990 to 12.2% in 2006.

Despite these very positive data on educational coverage, there is still a serious problem: the dropout of young people from secondary education for reasons related to economic problems and the quality of the system, which increased from 12.5% in 2005 to 13.2% in 2006.



127

On the subject of education, it is important to remember that in 2000 the Costa Rican government participated in the World Education Forum, and therefore committed itself to meeting six goals whose fundamental purpose is to improve the education of the world's population by the year 2015. These goals, in turn, are part of the "Millennium Development Goals", which were set by the United Nations, and seek to reduce poverty and inequalities in the world; these goals include increasing the rate of schooling since *"it is known that an increase in the number of children enrolled in school is the result of a lack of education."*

<sup>127</sup> Graph 1.1, page 53 of the Thirteenth State of the Nation Report, November 2007.

*a person with good schooling has more opportunities to break the cycle of poverty and to have better health care* "<sup>128</sup>.

Specifically, the goals set for education are six: 1. to expand and improve early childhood education; 2. to ensure that all children receive free and compulsory primary education of good quality; 3. to eliminate gender disparities in the classroom; 4. to ensure the education of youth and adults; 5. to increase adult literacy levels by 50%; and 6. to improve the quality of education. The United Nations Educational and Scientific Organization (UNESCO), which has prepared a report entitled "Education for All by 2015: Will we achieve the goal? which expressly states that *"Costa Rica will not meet the goal of gender parity by the year 2015."*<sup>129</sup> This should be of great concern to the Costa Rican authorities in charge of education, since, as rightly stated in the "Millennium Development Goals", improving a nation's schooling is part of the progress necessary to eradicate poverty and inequality.

The situation of inequality during the 2006 period gives rise to a series of questions, since although there was a particularly positive economic performance, it did not have a significant impact on equity and poverty, which begs the question: What can be expected in times of less economic slack, what can the most vulnerable groups expect in the future, under what conditions can the country ensure that economic growth translates into significant reductions in poverty and inequality?

---

<sup>128</sup> Cantero, Marcela. Evaluation of the Millennium Development Goals. Males drop out and fail in secondary school more than females. La Nación Newspaper. November 30, 2007.

<sup>129</sup> United Nations Educational and Scientific Organization (UNESCO) Education for All by 2015: Will we reach the goal? Chile. 2007.

in poverty and inequality? As answers to all these questions, two basic conclusions can be drawn: in the short term, if some policies are consistently applied, such as increasing real minimum wages or the income of especially vulnerable groups, an impact of two or more percentage points in reducing poverty could be expected: increasing real minimum wages or the incomes of especially vulnerable groups; an impact of two or more percentage points in the reduction of poverty could be expected; however, this would be insufficient to resolve the situation of excluded households for whom a medium and long-term perspective is necessary, since their situation requires substantive changes in the design and resources mobilized by social and economic policies; This could include measures such as extending social security to unprotected households, strengthening the generation of formal jobs, reducing precarious labor conditions and improving the distribution, access and yields of productive assets such as credit, technology and land.

This situation calls for reflection on the type of progress that is desired for the country. Some argue that high economic growth inevitably brings with it greater inequalities and that this is also desirable, as long as this increase is in relative inequality: everyone improves, but the most enterprising individuals and groups make more progress and receive an additional reward. But the truth is that in Costa Rica, economic growth is translating into increases in absolute inequality, which means that not only is not everyone improving, but the most vulnerable are trapped in exclusion, while few sectors are registering accelerated progress.

Continuing with the topic of human development in Costa Rican society, an analysis has been developed focusing on the international perspective, making a comparative study of it with other countries in the region, based on a set of indicators with which the situation of each country is examined from different aspects:



social, economic, environmental and political. These are indices that examine countries, their strengths and weaknesses, identifying progress and setbacks that serve as benchmarks for decision-making by governments, multinational companies, international organizations, potential investors and development cooperation agencies.

### **Costa Rica's situation in light of International Indicators<sup>130</sup>**

<b>Indicator</b>	<b>Source</b>	<b>Position</b>	<b>Nearby countries in Latin America</b>
<b>Human Development Index (HDI)</b>	UNDP	47 of 177	Argentina, 34 Chile, 37 Uruguay, 46 Cuba, 52 Panama, 56
<b>Human Poverty Index</b>	UNDP	3 of 103	Uruguay, 1 Chile, 2 Cuba, 5 Colombia, 8 Paraguay, 13
<b>Gender-related Human Development Index (GDI)</b>	UNDP	44 of 140	Argentina, 34 Chile, 38 Uruguay, 42 Brazil, 52 Colombia, 55
<b>Gender Empowerment Measure (GEM)</b>	UNDP	19 of 80	Argentina, 20 Mexico, 38 Panama, 40
<b>Women's Empowerment</b>	World Economic Forum	18 of 58	Colombia, 30 Uruguay, 32 Argentina, 35
<b>Education development index.</b>	UNESCO	44 of 127	Argentina, 23 Chile, 38 Mexico, 48

<sup>130</sup> Information provided by the United Nations, Costa Rica.

**Human Development Index (HDI):** measures a country's progress in three basic aspects of human development: long and healthy life, education and decent standard of living.

**Human Poverty Index:** takes into account the probability of not surviving to age 40, the illiteracy rate, the percentage of the population without access to improved water sources and the percentage of underweight children.

**Gender-related Human Development Index (GDI):** measures the average inequality between men and women in the three basic dimensions that make up human development: long and healthy life, education and decent standard of living.

**Gender Empowerment Measure (GEM):** measures gender inequality in three basic dimensions of empowerment: economic participation and decision-making power; political participation and decision-making power; and control over economic resources.

**Women's Empowerment:** analyzes gender gaps in five areas: economic participation, economic opportunities, political participation, educational attainment, and health and well-being.

**Education for All Development Index:** measures the educational progress of countries based on indicators on access to primary education, diversified education, gender equity and adult literacy.

From a general reading of the results, it can be concluded that from an international perspective, Costa Rica has an advantageous position in the social indicators, in which it is among the best qualified countries worldwide and among the first places in the Latin American context; however, it is also one of the best in

the world.

However, there is a relative lag in development and education indexes. In addition, in economic terms, Costa Rica is positioned in intermediate places, which may explain the reasons for a high percentage of school dropouts, especially in the transition levels.

### **3.2. Tourism Development in Costa Rica**

Tourism has become one of the main sources of foreign exchange for the country in recent years. This is due to the fact that tourism in Costa Rica is presented as a multifaceted activity, which does not have a homogeneous development throughout the national territory, since it can be developed in very different ways in different areas of the country; in which there are populations with their own social and demographic profiles, different physical and geographic access conditions, as well as diverse scenic landscapes, which define the type of tourism activity that can be carried out.

In conjunction with the different types of tourism that have been developed in the country, it is important to note that *"the diversity of human development modalities is important from a normative and conceptual perspective: it is reasonable to think that not all forms of tourism have the same implications and potential from the point of view of human development. Not all tourism activity generates the same opportunities for the wellbeing of the population and the rational use of natural resources"*<sup>131</sup>, so not all tourism activity is positive and beneficial for Costa Rica.

---

<sup>131</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter III. Costa Rica, 2007.

Tourism has experienced an accelerated growth in the last twenty years, becoming one of the main economic activities of the country. Parallel to this development, it has managed to position a "country brand" in the international market. *"By "country brand" is understood the image that public authorities and private operators have projected in the rest of the world in order to promote Costa Rica as a distinct tourist destination "*<sup>132</sup>, associating it with values and practices such as democracy, peace, security, conservation and sustainable management of natural resources.

Unfortunately, the reality of tourism development differs, on many occasions, from this "country brand", because, as previously mentioned, within the national territory there coexist tourist destinations aimed at different markets and that make an equally diverse use of natural, territorial, economic and social resources. Certainly, some of these tourism development modalities have been carried out in a way that is contrary to the purpose of the "country brand", such as the promotion of sex tourism in Costa Rica, which has not only damaged the country's image at the international level, but also promotes the violation of the human rights of the people who are victims of it.

*"Under the name of "tourist activity" today, very different tourist destinations and developments are sheltered, with respect to which there is little clarity about their specificities, their carrying capacity, how close the limits of their expansion are, the services that*

---

<sup>132</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter III. Costa Rica, 2007.

*The current policy in this area is generic in nature, and tends to homogenize the treatment of problems, when what seems to be needed are micro-regional strategies that address the particularities and requirements of each destination and tourism development "*<sup>133</sup>.

Certainly tourism has established itself as the second largest foreign exchange earner in Costa Rica, surpassed only by exports of goods. It is one of the poles of greatest investment attraction. However, the strategy of opening the tourism market in such a wide way as the one that has been carried out in the country, brings with it serious consequences, since neither controls nor discrimination strategies have been put into practice to let people interested in coming to the country or those who develop the tourism activity in the country know what type of tourism they want to undertake in the country, and which things are allowed and which are not, so that in many occasions the economy of the country is favored but not the human development of its inhabitants.

This is precisely what has favored the development of so-called sex tourism in the country, since government policies regarding tourism development did not foresee how dangerous it was not to delimit the quality of tourism that was wanted in the country and therefore the kind of tourists who wanted to receive within the Costa Rican territory, giving way then to the development of a series of activities, even illegal, and with which the following are harmed

---

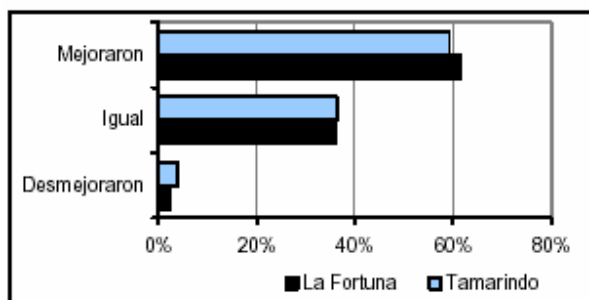
<sup>133</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter III. Costa Rica, 2007.

The main problem is that of minors who, for various reasons, fall victim to commercial sexual exploitation in this sector.

As an example of this, we can analyze what has happened with the development of tourism in various communities in the country. On the one hand we can mention the case of Tamarindo and on the other La Fortuna de San Carlos, since both are tourist destinations in the national territory, but in each of them activities are carried out very different from each other, and therefore the consequences that this tourism development has had have been contradictory to each other.

Tamarindo is presented as a sun and beach tourist destination, whose development is now managed by large international operators and by a marked growth of the real estate market. On the other hand, the area of La Fortuna has been characterized by offering a more ecological destination, marketing a differentiated product with high added value and quality. However, the benefits that result from tourism development in these areas are widely different, the inhabitants of La Fortuna recognize great benefits, while in the community of Tamarindo problems such as crime, drugs, prostitution, sale and concentration of land and serious problems of land management are more easily identified. Similar situations can be found in regions of the country such as Monteverde, an ecological tourism destination, and some beaches such as Jacó and Herradura, where the incidence of problems, including the sex trade with the use of minors, is much higher.

Percepción de los entrevistados en cuanto a si han mejorado los ingresos económicos en la familia debido el desarrollo turístico. Julio de 2007



134

Undoubtedly, in order for Costa Rica to protect its "country brand" as well as the development of positive tourism, it is necessary to take measures at the national policy level so that tourism developers are obliged to adhere to it, thus achieving sustainable human development.

*"The design and implementation of a national system of indicators is still pending, to systematically evaluate how compatible or not the different destinations are with the "country brand" and with sustainable human development. It is necessary to build a research agenda that delves into how the various tourism developments are benefiting the country in terms of redistributive impacts.*

*Sustainable tourism of value to the community can be achieved by orienting its development in accordance with the characteristics and needs of the community.*

<sup>134</sup> Source Thirteenth State of the Nation Report, November 2007.



*demands work, vision and planning, tasks that must undoubtedly involve the local population "*<sup>135</sup>.

### **3.3 Commercial Sexual Exploitation in Costa Rica**

The issue of commercial sexual exploitation of minors is not new in Costa Rica; there is even historical research that studies the problem and documents it in the form of prostitution, which already existed in the previous century, as can be seen in the following quote:

*"Age is another basic factor to characterize prostitutes, since it conditioned, among other aspects, whether they could be official or clandestine, the type of sexual relationship they could accept from their clients, the amount of money they would receive and the type of surveillance by the authorities. The official prostitutes were concentrated between 15 and 24 years of age (75.6%) ... Undercover prostitutes were among the girls and young women under 15 years of age (authorized age for prostitution) who practiced prostitution. The clandestinity of many underage prostitutes was ironically reinforced by the State itself, given that if they were arrested, they could be sentenced to work for free in a reformatory or in a "respectable" house; these girls and young women evaded State controls and were therefore not registered on police lists.*

---

<sup>135</sup> State of the Nation. Thirteenth State of the Nation Report on Sustainable Human Development. Chapter III. Costa Rica, 2007.

*...Although it was not a new problem, organized gangs of spoiled and insolent boys were found in the decade of 1939-1949, who gathered every night to stone the light bulbs and disturb the women of the neighborhood. Underage prostitution was a problem which, along with the above and begging, was mainly attributed to the absence of the father. "*<sup>136</sup>

It is possible to affirm that the lack of attention to the problem of commercial sexual exploitation of minors is not only explained by variables that condition the current situation of Costa Rican society, but also has its deepest origins in ideological and structural factors recorded in the history of the country.

In Costa Rica today, as in the past, children and adolescents from different socioeconomic strata are sexually exploited by people from different backgrounds, who exercise over them abusive relationships of dominance and power, in which there is an economic benefit or retribution in kind for one of the parties, or even for a third person.

Although, as mentioned above, commercial sexual exploitation of minors is not a recent phenomenon in Costa Rica, it is a social problem of recent public recognition, which has become a topic of national agenda and of strong controversy about its magnitude as well as about the most appropriate ways to combat it.

---

<sup>136</sup> Marín, J. (1975): "Las causas de la prostitución josefina: 1939-1949. In: Revista de Historia No 27. UNA. Costa Rica.

Although there is evidence of the presence of the sex trade with girls and adolescents since colonial times, it is not until recent years that the problem has really begun to be recognized as a manifestation of sexual exploitation and slavery, and therefore as a severe violation of the human rights of minors. This change was generated thanks to the work of civil society organizations dedicated in the country to prevent, study and combat child sexual abuse.

It was in fact 10 years ago that Costa Rican society was confronted with the scourge of Commercial Sexual Exploitation of children and adolescents, which until then had remained hidden, lacking conceptual clarity, as well as collective awareness, institutional approach and a specific legal framework. Thus, with the entry into force of the Convention on the Rights of the Child in 1990, this reality was brought to light, raising the need to see it from a new perspective, as a series of acts violating the rights of children and adolescents, which remained invisible or even sometimes considered as natural.

In addition to this awareness, during that same period, Costa Rica experienced an accelerated growth of the tourism sector, which was intended to develop under a policy of responsible and sustainable tourism, becoming the first source of income for the country. However, all this tourism development was not only carried out under the aforementioned precepts, but at the same time, the country was promoted as an exotic destination and with a tolerant policy regarding the so-called "Sex Tourism", reason for which there was also an increase of the same, to the detriment of children and adolescents in the country.

vulnerable to a system of supply and demand that assumes them as a sexual commodity.

### **Tourist Income and Foreign Exchange Generation<sup>137</sup>**

<b>Year</b>	<b>Tourist Income (thousands of people)</b>	<b>Annual growth based on previous year (%)</b>	<b>Foreign exchange income (US\$ millions)</b>
1996	781.10	- 0.40	688.60
1997	811.50	3.90	719.20
1998	942.80	16.10	883.40
1999	1031.60	9.40	1.036.1
2000	1088.07	5.47	1229.2
2001	1131.41	3.98	1277.6
2002	1113.36	- 1.60	1078
2003	1238.69	11.26	1199.4
2004	1452.93	17.30	1357.4
2005	1679.10	15.57	1569.9
2006	1716.28	2.21	1620.8

<sup>137</sup> Information provided by the Ministry of National Planning and Economic Policy (MIDEPLAN).

Undoubtedly, the trend in Costa Rica with regard to the tourism sector has been one of growth, which means that we must reinforce our vigilance with regard to preventing and combating the Commercial Sexual Exploitation of Minors, since, as mentioned above, this type of criminal activity is closely related to the development of tourism in the country.

### **3.4 Studies on the situation in Costa Rica.**

When approaching the issue of Commercial Sexual Exploitation of children and adolescents, it is necessary to go beyond a simplistic reading of the issue, it is necessary to acquire the determination to break with moralistic stereotypes, which have become the way to assume the problem by the vast majority of social sectors.

It is necessary to overcome the theory that minors who are immersed in the phenomenon of Commercial Sexual Exploitation are people lacking morals, to whom it is much easier to use this type of activities as a way of earning a living; since visualizing the problem in this way leads to simplistic solutions both at the preventive and attentional and repressive levels, and in the worst cases, to permissiveness and disinterest on the part of the social group.

*"The fact is that approaching the commercial sexual exploitation of minors necessarily requires a determination to break with the stereotyped and moralistic visions that have been used in the past.*

*assuming the problem in still majority sectors of Costa Rican society. Visions that underlie their causal explanations centered on economic factors (poverty) and behaviors (the loss of values), inducing the social imaginary towards a distorted reading of reality... "138*

Continuing under this moralistic scheme, it joins the tolerance and inertia of society, an action, or on the contrary an omission at the State level and therefore Institutional, leaving aside the effective response that should be activated before the Commercial Sexual Exploitation of underage persons, being the same a manifestation of structural violence, in which the use of the body of girls, boys and adolescents for the sexual satisfaction of adults, pornographic consumption and trafficking for sexual purposes; confirming once again the existence of a system conformed by the following factors: sex, gender and patriarchal culture, centered only on the needs of adults, which results in the legitimization of the use of minors as instruments to exercise and obtain power.

It can be affirmed that the Costa Rican State and society are still in debt in terms of effective protection of the fundamental human rights of a number, which is still unknown, of minors who live in its territory and who every day are exposed to various situations of defenselessness in the face of the phenomenon of Commercial Sexual Exploitation.

---

<sup>138</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. Costa Rica, 2007.

However, at the research level, great progress has been made, since there are currently several studies that specifically analyze the issue of Commercial Sexual Exploitation in Costa Rica, with the aim of providing real and effective solutions in which the main objective is the eradication of this manifestation of violence against minors.

It is important to point out that the main driving force behind the interest that has arisen in the problem of Commercial Sexual Exploitation is the unceasing work of civil society, basically that deployed by non-governmental organizations, which have had the economic and technical support of international organizations such as the United Nations and the International Labor Organization, specifically with the IPEC project.

It can be said that the main theoretical contributions obtained from these studies are the following. They are presented at two levels of analysis, the first refers to the situation of minors and the second to the actions taken by the Costa Rican government and society in response to this situation.

I. At the level of the study of the situation experienced by minors who are victims of Commercial Sexual Exploitation in Costa Rica:

1. The vast majority of victims are caught by exploiters at an age of around twelve years old.

*"... most of the interviewees were between the ages of 14 and 16; however, as will be seen below, the onset of prostitution was located in about half of the girls and about 70% of the boys, at or before the age of 12. "<sup>139</sup>*

2. The child victims of Commercial Sexual Exploitation whose cases have been studied come from low-income families in which some of the following factors converge: poverty, unemployment or informal employment, violence against mothers, abandonment, child abuse, incest, among others.

*"The daily variability of income and the type of occupations as a source of income suggest a population that lives in conditions of day-to-day survival. A precarious situation is also interpreted based on the occupation of the figures*

---

<sup>139</sup> UNICEF. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. San José, Costa Rica. 1998, page 58.



*and, in general, by all members of the family group. For example, around 70% of the members of this group are dependent on those who generate income in the informal sectors of the economy, i.e., with low and inconsistent incomes, without labor protection and without social guarantees associated with employment*<sup>140</sup>.

3. Faced with an overwhelming family situation, many of these minors choose to run away from home, leaving their homes to look for ways to subsist, such as selling objects or begging for alms. The stay of these children and adolescents on the streets makes them vulnerable to exploiters and intermediaries.

*"Based on these conditions of domestic violence, it is possible to reconceptualize runaways as a survival strategy for children and adolescents in the face of domestic violence against them or their family members, as well as a mechanism for expulsion from the family group. In addition, a connection is identified between sexual aggression and running away, and between running away and commercial sexual exploitation."*<sup>141</sup>

---

<sup>140</sup> UNICEF. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. San José, Costa Rica. 1998, page 68.

<sup>141</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. San José, Costa Rica. UNICEF. 1998, page 68.

*"...research detects among the risk factors for commercial sexual exploitation the expulsion from the family nucleus, based on conditions of poverty and therefore basic material deficiencies that include housing, food, education and health needs. These factors are included in the macro-structural causes of the country's social and economic order. "*<sup>142</sup>

4. On some occasions, Commercial Sexual Exploitation victimizes a minor through neighborhood networks of sexual abusers who use children and adolescents from the community for themselves and then trade them in paid sex or pornography.
5. Some minors are trapped in commercial sexual exploitation through their partners.

*"...especially in the case of girls, it is made up of adolescents aged 12, 13 or 14, who are trapped in the sex trade through their partner, generally an adult male twice their age, who then incites or forces them to sell their bodies for money or drugs. "*<sup>143</sup>

---

<sup>142</sup> Treguear, Tatiana; Carro, Carmen. Prostituted girls: Case of Costa Rica. UNICEF, Costa Rica. 1994  
UNICEF.<sup>143</sup> Estado de los Derechos de la Niñez y la Adolescencia en Costa Rica. San José, Costa Rica. 2001.

6. Minors who are victims of Commercial Sexual Exploitation can be found in the streets of San José and the main cities of the provinces, especially in tourist areas and ports. Sometimes they are found in small groups, but in general they are organized by pimps, which is why today, although the street world is the most visible, in reality it is not the most common, since these children and adolescents are exploited in closed places such as bars, massage parlors, hotels and specialized houses for the private sex trade.

*"In relation to the 22 girls without experiences considered abusive before the age of twelve, five (22.7%) revealed prolonged incest by stepfather and grandfather. In them, rape occurred when they were 12 years old and life in prostitution began between the ages of 14 and 15. All of them ran away from home as a consequence of sexual abuse, started living together around the age of thirteen and then moved into prostitution.*

*Of these same girls, ten (45.4%) reported having abusive sexual experiences between the ages of twelve and thirteen, especially rape by neighbors. Two of them were raped by their boyfriends and both became pregnant. "*<sup>144</sup>

---

<sup>144</sup> Claramunt, Cecilia. Sexual Exploitation in Costa Rica: Analysis of the critical route of children and adolescents into prostitution. San José, Costa Rica. UNICEF. 1998, page 77.

II. At the level of the response of the State and society to the scourge of Commercial Sexual Exploitation of minors:

1. Costa Rica recognizes the existence of commercial sexual exploitation of minors.
2. The Costa Rican State has ratified the main international instruments that address the issue of Commercial Sexual Exploitation.
3. Commercial Sexual Exploitation of minors has been classified as a crime punishable by imprisonment.
4. There is a unit specialized in the issue of commercial sexual exploitation of minors, which belongs to the Public Prosecutor's Office of the Costa Rican Judicial Branch.
5. Costa Rican society now has more information on the characteristics of these crimes, and can place them within what is known as organized crime with national and foreign alliances, often linked to drug trafficking and other types of crime.
6. There is greater awareness to recognize minors as victims rather than offenders. However, there is

actions are still needed in this field.

7. Social and governmental responses to effectively and comprehensively address the problem are disconnected. Work is currently underway to implement a National Action Plan in 2008 to interconnect the various actions deployed by both the state sector and civil society.

As indicated at the beginning of this section, many of the investigations that have been carried out in Costa Rica on the issue of Commercial Sexual Exploitation of minors have had the technical and financial support of International Organizations, an example of this is the International Program for the Eradication of Child Labor (IPEC), which is an initiative promoted by the International Labor Organization (ILO); Through this program, a series of activities are carried out to support the countries of Central America, Panama and the Dominican Republic in their efforts to eradicate the Commercial Sexual Exploitation of Children and Adolescents.

Within the framework of this program, the "Regional Workshop for the Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents in Central America, Panama and the Dominican Republic: Support for the Design of Strategies and Action Plans" was held in Costa Rica in 2001. As part of this workshop, the results of the various studies that have been carried out in the different participating countries were presented.

can be summarized as follows:

1. In order to achieve a proper understanding of the phenomenon of Commercial Sexual Exploitation of Minors, it is necessary to start from the fact that these people have often experienced all kinds of violations of their human rights, such as extreme poverty, school expulsion, early pregnancies, psychological, physical and sexual violence, drug addiction, neglect or abandonment by family members, ineffective intervention by various institutions, among others, even in their early childhood.
2. There is a high level of tolerance on the part of adults, since many times they are aware of the existence of the problem even in their own community, but do nothing about it and do not report it to the corresponding authorities.
3. Despite the State's responsibility to punish offenders and provide protection to victims, very few government institutions have addressed the problem with the urgency and seriousness required.
4. Most of the countries in the region have made significant progress in bringing their legislation into line with international legal instruments on the rights of persons with disabilities.

The country has taken important steps towards the establishment of child protection systems; however, they need to be strengthened, specified and extended to the national territory.

5. When working specifically on the issue of eliminating commercial sexual exploitation, we have been able to identify a deficient application of the necessary measures to stop the problem.
6. Some countries have a National Plan for the elimination of commercial sexual exploitation of children and adolescents, as is the case in Costa Rica; however, greater coordination between actions is needed, and sufficient resources, both human and financial, are essential. <sup>145</sup>

Similarly, as part of the studies that have been carried out in Costa Rica on the issue of commercial sexual exploitation of minors, it is important to mention that in 1996, a clear and evident connection between tourism and this criminal activity was documented, especially in the most attractive tourist areas such as the Dry Pacific and the Atlantic Zone. <sup>146</sup>

---

<sup>145</sup> Regional Workshop for the Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents in Central America, Panama and the Dominican Republic: Support for the Design of Strategies and Action Plans.

<sup>146</sup> O'Connell and Sanchez. 1996.

With the aforementioned background, we cannot overlook the fact that in Costa Rica this problem has been aggravated with the implementation of the so-called Sex Tourism in the country. Unfortunately, Costa Rica has been promoted as a tourist destination that has become part of the sex tourism business, and this, together with the coercive measures implemented against exploiters by some Asian countries, which were known for their tolerance towards these activities, have turned Costa Rica into an attractive tourist destination for the so-called "Sex Tourists".

*"The promotion of Costa Rica as a tourist destination together with the globalization of the sex tourism business and the coercive measures implemented against exploiters by some Asian countries, traditionally known for their tolerance towards this business, turned Costa Rica into a new destination for the so-called "sex tourists".* <sup>147</sup>

These "Sex Tourists" are divided into preferential and occasional tourists. Preferential Sex Tourists are those who come to the country with the purpose of carrying out any of the activities related to the Commercial Sexual Exploitation of minors, which have been previously offered to them through channels such as the Internet; on the other hand, Occasional Tourists are those who have come to the country for various reasons and once there, seek or accept the offer of sexual contact with children or adolescents, which has generally been proposed to them by an intermediary.

---

<sup>147</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica. Page 17



In a study carried out by the non-governmental organization Casa Alianza in 2000, approximately 8.5% of the total number of tourists coming to Costa Rica are preferential tourists, that is, they come for sexual purposes, which means that at least five thousand foreigners visit the country with the clear objective of sexually exploiting children or adolescents.<sup>148</sup>

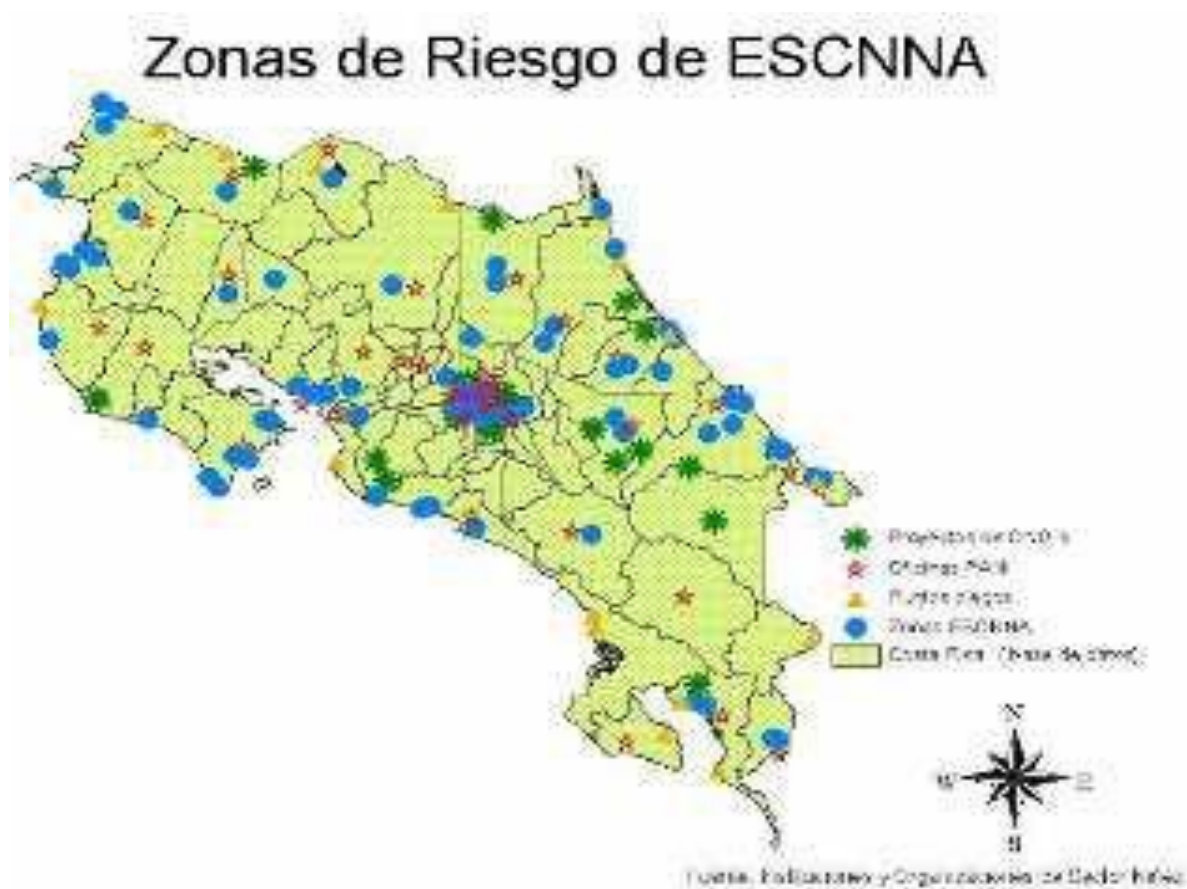
For all that has been explained so far, it can be said that the Costa Rican State and society face two problems regarding the Commercial Sexual Exploitation of minors, namely, the so-called "internal demand", meaning people who reside permanently in the country and who sexually exploit children and adolescents, as well as Sex Tourism and all the legal, administrative and budgetary difficulties that this entails when dealing with the exploiting client, as well as with the group of pimps and intermediaries. The same applies to Sex Tourism and all the legal, administrative and budgetary difficulties that it entails when dealing with the exploiting client, as well as with the group of pimps and intermediaries who use media such as the Internet to promote Commercial Sexual Exploitation at an international level.

### **3.4.1 Maps of Commercial Sexual Exploitation Occurrence**

This section presents two maps of the Costa Rican territory, which are intended to illustrate the reality of the Commercial Sexual Exploitation of Minors, analyzing factors such as local demand and demand at the level of sex tourism, as well as the existing risk areas in the country that influence the existence of the sex trade with the use of children and adolescents.

---

<sup>148</sup> Casa Alianza. Peace has not come to them: street children in Central America. San José, Costa Rica. 2000.



### *Symbology*

\***Projects** carried out by Non-Governmental Organizations.

\***Offices** of the Patronato Nacional de la Infancia.

\* **Blind Spots:** Irregular Migratory Situation (where you enter the country).

\* **Commercial Sexual Exploitation Zones.**

<sup>149</sup> Information provided by the Paniamor Foundation.

# Zonas de Mayor Incidencia de Turismo Sexual y Demanda Local



## Symbology

- \* **Local Demand.**
- \* **Sex Tourism.**

<sup>150</sup> Information provided by Fundación Paniamor.

If we proceed to the analysis of the maps presented, we can conclude:

**Map No. 1**

- 1 The areas of occurrence of Commercial Sexual Exploitation of minors are mainly concentrated in the Central Valley and in tourist areas, which is why these regions are called risk areas.
- 2 The areas of highest vulnerability are: San José Metropolitan Area and geographic zones of tourism development such as North Guanacaste, Northern Plains, North and South Caribbean, Central Pacific, among others.
- 3 People who live in Costa Rican territory with an irregular migratory situation remain mainly in these risk areas, which is why their stay in these places increases their vulnerability to situations related to the sex trade.
- 4 There are offices of the Patronato Nacional de la Infancia, as well as of Non-Governmental Organizations practically throughout the country, but they are located mainly in these at-risk areas.

**Map No. 2**

1. The demand for activities related to the underage sex trade can be divided into two types: local demand and sex tourism.
2. Local demand is geographically located within the country's Central Valley.
3. So-called sex tourism takes place in tourist areas, mainly on the country's Pacific coast.

## TOPIC IV

### Action programs against CSEC in Costa Rica

#### **Objective 4.**

*Analysis of the Code of Conduct Project against Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism, which is being implemented by the Paniamor Foundation. Likewise, the various action programs on the subject that are being implemented in Costa Rica will be analyzed.*

The purpose of this chapter is to address some of the actions implemented in Costa Rica to prevent and eradicate the commercial sex trade of minors. To this end, it is divided into four sections; The first section will mention the National Commission against Commercial Sexual Exploitation (CONACOES) and the work that it has done in the country, The third section will analyze the Code of Conduct Project against Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism, which is developed by the Paniamor Foundation, with the objective of analyzing one of the actions that are deployed in the country by non-governmental organizations; The fourth is a study of the actions carried out by the Costa Rican government, through the study of the National Plan against Commercial Sexual Exploitation, which will be put into practice during the years 2008 to 2010.

#### **4.1 National Commission against Commercial Sexual Exploitation - CONACOES -**

In 1996, under the leadership of the Patronato Nacional de la Infancia (PANI), a National Commission was created, with the inter-institutional participation of non-governmental and international organizations, called the National Commission against Commercial Sexual Exploitation of Children and Adolescents (CONACOES). This was born mainly as an initiative of the non-governmental organizations that attended the First World Congress against Commercial Sexual Exploitation and later saw their efforts supported by public institutions and within them, specifically by the Patronato Nacional de la Infancia (National Children's Trust).

Subsequently, in 1998, with the entry into force of the Code for Children and Adolescents, the obligation to comply with the human rights of minors was imposed, thus consolidating the National Commission against Commercial Sexual Exploitation as the highest public policy coordination body at the national level, which has allowed the issue to become a permanent public policy of the Costa Rican State to date.

From that moment on, the National Commission against Commercial Sexual Exploitation of Children and Adolescents decided to carry out a diagnosis of the situation in order to elaborate and execute a National Plan for Prevention, Attention and Repression of the problem, in which the actions carried out to fight against these crimes were grouped together. In the same way, the programmatic axes of this commission, are embodied in 1998, in a Framework Plan of Action, where the need for strong political transformations is visualized,

legal and attentional.

CONACOES has undergone several restructurings since its creation. It was initially coordinated by the Patronato Nacional de la Infancia, then by the Ministry of Labor, and later as a body attached to the Consejo Nacional de la Niñez. Representatives of ministries, institutes and state agencies, non-governmental organizations and observer organizations such as ILO/IPEC and the Ombudsman's Office participate in it. This body was established in 2000 as a Special Commission of the National Council for Children and Adolescents, which coordinates policies aimed at minors in Costa Rica.

It is important to highlight the fact that the work of CONACOES is guided by a series of principles that are intended to be achieved through its operation. These objectives<sup>151</sup> may be cited as follows:

1. Promote the elaboration, operationalization and sustainable execution of a public policy with a gender, generational and rights-based approach, aimed at the prevention of risk factors, attention to victims, investigation of the problem and repression of those who promote the commercial sexual exploitation of minors.
2. Guarantee the coherence and comprehensiveness of actions at the interinstitutional, intersectoral and interdisciplinary levels of the organizations that work with the problem of drug addiction.

---

<sup>151</sup> National Commission against Commercial Sexual Exploitation of Children and Adolescents. La Explotación Sexual Comercial: Una lucha sin fronteras. San José, Costa Rica.



commercial sexual exploitation of minors, with a national, regional and local projection.

3. Promote a national culture of denunciation of the forms of commercial sexual exploitation that affect minors.
4. To contribute to the permanent promotion of respect for the human rights of minors in order to transform the conditions that induce, legitimize and perpetuate the commercial sexual exploitation of children and adolescents in the country.

Likewise, the work carried out by this commission is based on the premise that the occurrence of situations of commercial sexual exploitation of minors is a matter of public interest, since it entails a great personal and collective cost; in addition, it is an extremely serious crime because it violates all the human rights of children and adolescents, which is why it is the responsibility of all the inhabitants of the country. Under this postulate, CONACOES defines its work under the following work areas<sup>152</sup>:

1. Promotion and Prevention.
2. Attention to victims in their family context.
3. Legal Reforms and Repression.
4. International Projection.
5. Monitoring and Evaluation.

---

<sup>152</sup> National Commission against Commercial Sexual Exploitation of Children and Adolescents. La Explotación Sexual Comercial: Una lucha sin fronteras. San José, Costa Rica.

This Commission is made up of representatives of the following organizations<sup>153</sup>:

1. Specialized Unit on Sexual Crimes and Domestic Violence of the Judiciary.
2. Department of Social Work of the Judicial Branch.
3. National Children's Trust.
4. Costa Rican Social Security Fund.
5. Instituto Mixto de Ayuda Social.
6. National Learning Institute.
7. Costa Rican Tourism Institute.
8. National Institute of Women.
9. Municipality of San José.
10. Ministry of Public Security.
11. Ministry of Interior and Police.
12. Ministry of Education.
13. Ministry of Health.
14. Ministry of Labor.
15. Ministry of Justice.
16. Ministry of Culture, Youth and Sports.
17. Ministry of Foreign Affairs and Worship.
18. Paniamor Foundation.
19. Child Advocacy International.
20. Foundation for the Fight against AIDS.
21. Rahab Foundation.
22. Costa Rican Association of Tourism Professionals.

---

<sup>153</sup> National Commission against Commercial Sexual Exploitation of Children and Adolescents. La Explotación Sexual Comercial: Una lucha sin fronteras. San José, Costa Rica.

23. American Association of Jurists.

---

<sup>153</sup> National Commission against Commercial Sexual Exploitation of Children and Adolescents. La Explotación Sexual Comercial: Una lucha sin fronteras. San José, Costa Rica.

24. Alliance for your Rights.
25. Asociación Construyendo Esperanzas.
26. CEPIA Association.
27. ILO/IPEC.
28. UNICEF.
29. National University.
30. School of Psychology, University of Costa Rica.

Since its creation, CONACOES has built a conceptual, legal and strategic framework, through the execution of joint, articulated and sustained actions within the framework of a National Plan for the defense and guarantee of the human rights of minors. Based on this, the following may be cited as the main achievements of this Commission:

- the formulation of a framework plan of action,
- the drafting and promotion of the legal reform, leading to the creation of the Law against the commercial sexual exploitation of minors, Law 7899,
- the creation of a permanent space for discussion and reflection on the problem,
- the development and dissemination of information materials on the problem,
- the approval of Law 8590.

Despite the work carried out by the National Commission against Commercial Sexual Exploitation, it faces a series of problems, such as a lack of budget for the promotion and implementation of comprehensive action programs, as well as a disjointed state response.

#### **4.2 Action Axes to eradicate the Commercial Sexual Exploitation of Minors.**

The efforts that have been made in the country to eradicate Commercial Sexual Exploitation cannot be disregarded, as they have even been recognized by the United Nations Committee on the Rights of the Child<sup>154</sup> , which has recommended them as good practices to be followed in other countries.

It can be said that these actions have been grouped into three main areas<sup>155</sup> , which are mentioned below:

1. Prevention
2. Legal Reforms and Repression.
3. Attention to Victims.

---

<sup>154</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

<sup>155</sup> National Commission Against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007.

#### **4.2.1 Prevention Axis**

Specifically, in the **Prevention Axis**, four national campaigns have been carried out in all mass media, with regional and local replicas, as well as billboards throughout the country, together with written material to inform about these crimes and their criminal consequences.

In this same area, more than 10,000 people have been trained and informed and sensitized on the subject through workshops, which have been held since 2003. It is important to note that around 60,000 children and adolescents have participated in workshops on rights.

One of the most important aspects that has been carried out within the prevention axis is the development of the project "Code of Conduct for the protection of children and adolescents against Commercial Sexual Exploitation in Tourism", in which at least 10 tourism operating companies, Rent-a-Car companies, the airport cab company Taxis Unidos, as well as various cab companies and some hotels located in the Pacific and Caribbean areas have participated; all of which are committed to defining and making public an ethical policy regarding the protection of children and adolescents.

#### **4.2.2. Legal Reforms and Repression Axis**

On the other hand, within the **Legal Reforms and Repression** Axis, the approval of the Law against Commercial Sexual Exploitation in 1999 (Law number 7899) is fundamental, as well as two executive decrees: Executive Decree No. 31763-MP-SP-S-MNA for the Control and Regulation of Premises that offer Public Internet Service and Executive Decree No. 31764 for the Regulation of Video Game Rooms or Cyber Games and the classification of games according to the level of violence, in 2004.

Finally, the last great achievement in this field has been the "*Law for the Strengthening of the Fight against Commercial Sexual Exploitation*" (Law 8590), through the reform and addition of several articles to the Penal Code, among which Article 173 Bis stands out, which punishes the possession of pornographic material involving minors.

#### **4.2.3 Victim Attention Axis**

Important advances have been made, such as the development of institutional guidelines in the National Child Welfare Agency (PANI), the Ministry of Public Education (MEP), the Ministry of Health (MS) and the Ministry of Public Security (MSP).

According to data from the Patronato Nacional de la Infancia, approximately 350 victims of commercial sexual exploitation have been assisted each year. In conjunction with the University of Costa Rica, we have developed an innovative

The model, called "Cyclical Model of Articulated Responses", which reports a 70% success rate, and, at the same time, a permanent training process is being carried out to train employees in the implementation of this model.

Other achievements in this field include administrative protection measures for detected persons, the opening of the Comprehensive Care Program for children and adolescents at imminent risk and in a more vulnerable condition, which operates 22 hours a day, Monday through Sunday, with a permanent service of 9.1.1, with 78 employees, two shelters and an investment of approximately one billion colones, as well as the promotion of the creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons at the Patronato Nacional de la Infancia.

Within the observations made by the Committee on the Rights of the Child in 2007, the issue of care for victims is specifically addressed, indicating, textually:

*"The Committee is pleased that one of the main areas of the National Plan against Commercial Sexual Exploitation is the attention to victims, and that the Code for Children and Adolescents provides psychological assistance to victims, as well as training for police officers on interviews and special guarantees for hearings in criminal proceedings. However, the Committee notes the lack of a system for the care of victims with a rights-based approach that takes into consideration gender and age, and that the area of*



*protection and care does not have sufficient resources*

*"156.*

Along with this statement about the focus of attention to victims and the way in which it is put into practice in Costa Rica, the Committee on the Rights of the Child made a series of recommendations, among which the following stand out:

1. It is necessary to ensure the existence of adequate services for the psychological care, recovery and social reintegration of minors who are victims of the sex trade.
2. The impact of the "Cyclical Model of Articulated Responses" being implemented in the country should be evaluated.
3. Properly train people who work with victims of commercial sexual exploitation.
4. Ensure the protection of victims and witnesses during all stages of the judicial process.

---

<sup>156</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session, 2007.

### **4.3 Code of Conduct for the Protection of Children and Adolescents against Commercial Sexual Exploitation.**

#### **4.3.1 What is the Code of Conduct Project?**

*The Code of Conduct Project is an initiative of the World Tourism Organization (UNWTO) and ECPAT International, developed in both tourism source and destination countries. It seeks the participation and commitment of the Tourism Industry to discourage and sanction the Commercial Sexual Exploitation of Children and Adolescents associated with travel and tourism.*

To achieve a better understanding of what is intended with the implementation of the Code of Conduct in Costa Rica, we can take the example of countries such as: United States, Italy, Germany, Australia, Norway, Holland, Finland, Sweden, Australia, Brazil, Dominican Republic and Thailand, in which, the tourism industry has taken an energetic stance, of zero tolerance, to protect children and adolescents against commercial sexual exploitation. In this way, they have joined forces to promote the incorporation of a Code of Conduct in tourism companies to address this problem.

In addition to all these countries, which have already incorporated the Code of Conduct within their tourism industry, Costa Rica was identified as a country that required the implementation of such a project, since it is a country in which the tourism industry is one of the main sources of foreign exchange, so there is an eminent risk for the population of minors,

The country's position on the commercial sexual exploitation of children and adolescents was not made clear at the time, and this facilitated the entry of sexual exploiters into the country, since the lack of adequate information on the subject did not discourage these tourists and their sexual intentions.

It is important to emphasize the fact that the situation of Commercial Sexual Exploitation in Costa Rican society has gone through a series of stages regarding the recognition of this problem. It can be stated that in the first instance, there was a moment of denial of the problem, since socially and politically, commercial sexual exploitation was seen as something non-existent within Costa Rican society, and those who accepted it, affirmed that it was actually a tiny minority that was in this situation. As a second step, we have the stage of acceptance of the problem, visualizing it as something real and latent in Costa Rica; and finally, we have reached a last stage, which is the one we are living now, which consists of making decisions aimed at combating commercial sexual exploitation of minors, together with the implementation of concrete actions by all sectors of the population, such as the implementation of the Code of Conduct against Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism; It is from this moment on that Costa Rica goes from being a country that was singled out for being part of situations of commercial sexual exploitation of minors, by denying the situation, to being an example for the Central American region, by taking concrete actions as of August 2003.

The Committee on the Rights of the Child, in its 2007 report on the actions taken by Costa Rica, mentions the Code of Conduct Project, highlighting it as a good practice in the eradication of Commercial Sexual Exploitation of Minors.

*"The Committee is satisfied that strong measures have been taken in the tourism sector and that alliances have been created with hoteliers, cab drivers, in addition to the adoption of the Code of Conduct. "<sup>157</sup>*

#### **4.3.2 Project's basic regulations<sup>158</sup>**

The Code of Conduct is an ethical document based on international instruments such as:

- the Convention on the Rights of the Child, ratified by Costa Rica in 1990;
- Convention 182 on the Prohibition of the Worst Forms of Child Labor of the International Labor Organization, ratified by Costa Rica in 2001;
- the 1996 Stockholm Declaration against Commercial Sexual Exploitation of Children;

---

<sup>157</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

<sup>158</sup> Paniamor Foundation. Code of Conduct Process in Costa Rica. San José, Costa Rica. 2007, page 12.

- the World Tourism Organization's 2001 Global Code of Ethics for Tourism;
- the 2001 Yokohama Declaration.

At the national level, it is based on compliance with the legal provisions that support the obligation of the Costa Rican State and all its citizens to guarantee the protection and fulfillment of the rights of minors living in its territory, such as:

- Political Constitution of the Republic of 1949.
- Childhood and Adolescence Code of 1998.
- Law "Strengthening the fight against commercial sexual exploitation of minors", which amends and adds several articles to the Penal Code, Law No. 4573, and amends some articles of the Code of Criminal Procedure, Law No. 7594, approved on June 7, 2007.

#### **4.3.3 Project Objectives**

Specifically with regard to the implementation of this Code of Conduct in Costa Rica, the following are the actors or institutions involved:

- Paniamor Foundation: Occupies the Role of Principal Administrator and Executor of the Project.
- Costa Rican Association of Tour Operators (ACOT): serves as co-executor of the project.
- Costa Rican Association of Tourism Professionals (ACOPROT): also serves as co-executor of the project.

In order to develop the Code of Conduct in the Costa Rican Tourism Industry Project, the following was taken as the Development Objective:

*"To strengthen the capacity of key actors in the tourism industry, civil society and public institutions competent in this area to discourage and punish the commercial sexual exploitation of children and adolescents associated with travel and tourism from a responsible and sustainable tourism approach".*

In addition to this objective, which can be designated as a general objective, three specific objectives were established, namely:

1. Promote the incorporation of the Code of Conduct, promoted by the World Tourism Organization and ECPAT International, by key players in the tourism industry in the four regions of the world.

country's  
main tourist regions-GranÁrea Metropolitana, Guanacaste,  
Puntarenas and Limón.

2. Promote coherent and sustained action on the part of the competent public authorities in the area of tourism and international promotion of the country as a responsible and sustainable tourism destination.
3. Produce and distribute communication material that alerts, motivates or orients the effective participation of international tourism as an ally in the prevention of commercial sexual exploitation of minors in Costa Rica, from a responsible and sustainable tourism approach.

Hand in hand with these specific objectives, the following specific Work Approaches were designated<sup>159</sup>:

- *Human Rights Approach to Victims:* minors are beings in the process of development and as such are entitled to special protection in situations that affect this process.
- *Responsible and Sustainable Tourism Approach:* in which the protection of the rights and optimal development of new generations is conceived as a basic element of all responsible and sustainable tourism management. It presupposes the Commercial Sexual Exploitation of Children and Adolescents as a real threat to the

---

<sup>159</sup> Paniamor Foundation. Code of Conduct Project for the Protection of Children and Adolescents against Commercial Sexual Exploitation. Costa Rican Experience. San José, Costa Rica. 2006.

international positioning of the country in this area and as a generator of tourism, which in the long term would generate problems and losses.

- Country Focus: since it assumes the position of zero tolerance towards Commercial Sexual Exploitation of Minors, as a national policy and not only of a few.
- Criminal Liability Approach: sex tourism is harmful to victims and is also a criminal offense.

#### **4.3.4 How does it work in Costa Rica?**

As part of the tourism sector's responsibilities to contribute to improving the quality of life of the population in general and the protection of the fundamental rights of children and adolescents in particular, the Code of Conduct Project for the Protection of Children and Adolescents against Commercial Sexual Exploitation in Travel and Tourism was launched in August 2003, This project is sponsored by the Paniamor Foundation in conjunction with the Costa Rican Association of Tourism Operators (ACOT), the Costa Rican Association of Tourism Professionals (ACOPROT), and World Vision Costa Rica.

As noted above, the project is national in scope, with an emphasis on the four regions with the greatest tourist influx: Limón, Puntarenas, Guanacaste and the Greater Metropolitan Area. It has the endorsement of the competent political authorities, the active commitment of the main Chambers



National and industry and the sustained participation of hotels, tour operators, car rentals and major cab service companies in the country.

To implement this project in Costa Rica, a strategy has been used to promote the incorporation of the Code of Conduct of the Tourism Industry for the protection of children against sexual exploitation, which is an effective mechanism to mobilize organized and sustained action by the tourism industry to combat commercial sexual exploitation associated with its activity.

It should be noted that the implementation of this project has been carried out from two points of view, one Global, which seeks to have the support of the private sector, through the Chambers of Tourism of the various regions of the country, getting them actively involved in the process, being part of an Advisory Council, which is made up of representatives of the National Chamber of Tourism (CANATUR), the Costa Rican Chamber of Hotels (CCH), the Costa Rican Association of Tourism Professionals (ACOPROT), the Costa Rican Association of Tour Operators (ACOT) and the Costa Rican Institute of Tourism (ICCTUR), the Costa Rican Chamber of Hotels (CCH), the Costa Rican Association of Tourism Professionals (ACOPROT), the Costa Rican Association of Tourism Operators (ACOT) and the Costa Rican Tourism Institute (ICT), before this Advisory Council, the various policies to be taken around the Code of Conduct project are submitted, this in order to achieve a true validation of the same by the entire sector to which they are addressed. On the other hand, this project is developed from an individual point of view, in which each of the companies involved in the country's tourism sector is included, so that they can be incorporated into the project and become truly committed to the Code of Conduct<sup>160</sup>.

---

<sup>160</sup> The procedure for incorporation into the Code of Conduct Project explained in this document is the one that corresponds to the individual perspective, as far as the implementation of the Project is concerned.

#### 4.3.4.1 Who participates?

The Code of Conduct incorporates coordinated actions by hotels, tour operators, travel agencies, car rental agencies, cabs that serve both at the airport (Taxis Unidos del Aeropuerto) and in other areas of the country (Sindicato Costarricense de Taxi Drivers), cruise ship personnel, and other key actors such as competent public agencies, to modify the factors that encourage the commercial sexual exploitation of minors in travel and tourism.

#### 4.3.4.2 Actions to be taken by the company to subscribe to the Code of Conduct.

161

The Code is a set of five criteria to be implemented by companies. The steps to be followed set out in the Code of Conduct are as follows:

1. **Subscription:** the subscription is made at a public event to which personnel and service providers are invited in order to disseminate the initiative and make visible the company's commitment to prevent and denounce acts that threaten this vulnerable population.

2. **Training:** personnel should be aware of the company's policies for the protection of minors so that they can act as preventive agents of this social problem.  
Training

---

<sup>161</sup> Paniamor Foundation. Code of Conduct Process in Costa Rica. San José, Costa Rica. 2007, page 4.

must be taught at all levels of the company and during working hours.

3. **Place and produce external symbols:** they should be placed in visible places so that customers, suppliers and employees are aware of the company's position on CSEC.

4. **Clause in contracts with suppliers and affiliates:** this should state the company's rejection of commercial sexual exploitation of children and adolescents.

5. **Submit a public annual report:** this must contain the actions taken by the company in compliance with the commitments assumed when signing the Code of Conduct.

#### **4.3.4.3 Implementation methodology<sup>162</sup>**

Among the methodological aspects that have allowed the establishment and appropriation of the Code of Conduct are the following:

- Before starting the project, a feasibility study was conducted to determine whether tourism companies were willing to subscribe to the Code of Conduct. In this study, the companies were also consulted on the number of hours they had available for staff training, what topics they needed to learn more about, and what external symbols they were willing to place in the companies.

---

<sup>162</sup> Paniamor Foundation. Code of Conduct Process in Costa Rica. San José, Costa Rica. 2007, page 4.

- Key alliances were established with the leaders of the tourism sector: with the Costa Rican Association of Tourism Professionals (ACOPROT) and the Costa Rican Association of Tour Operators (ACOT), and later with national and regional associations and chambers such as the National Chamber of Tourism (CANATUR), the Costa Rican Chamber of Hotels (CCH), ACAR, ALA, CANAMET, CANAECO, CATURGUA, SICOTA, Taxis Unidos Aeropuerto, among others.
- Identity of the initiative as private with state support to generate ownership instead of imposition. This has given it sustainability in the face of governmental changes to achieve its consolidation.
- Careful design and implementation of training: content, methodology and facilitator profile
- Active participation of industry leaders in decision making
- Flexibility to integrate process findings into project strategies and product development.

#### 4.3.5 Achievements of the Code of Conduct Project<sup>163</sup>

To date, the following can be mentioned as achievements obtained through the implementation of the Code of Conduct Project:

- The Code has been subscribed by 100% of the Chambers and National Associations of the Sector, among them: National Chamber of Tourism (CANATUR), Costa Rican Chamber of Hotels (CCH), National Chamber of Ecotourism (CANAECO), Costa Rican Association of Car Renters (ACAR), United Airport Taxis Association (Asociación Taxis Unidos del Aeropuerto). In addition, the Code has been signed by more than 207 tourism companies in the hotel industry, tour operators, car rental companies, and cab drivers, and more than 5,000 people from these companies have been trained.
- Interest on the part of tourism stakeholders from other countries in the region -Ecuador, Colombia, Argentina, Brazil, Guatemala, Honduras and Belize- as well as international organizations such as UNICEF and the UNWTO in learning about the methodological proposal implemented in Costa Rica as a good practice.
- Participation in the International Steering Committee of the Code of Conduct.
- 25 complaints of sexual exploitation made by companies that have subscribed to the Code, which have been channeled by Paniamor to the Public Prosecutor's Office.

---

<sup>163</sup> Paniamor Foundation. Code of Conduct Process in Costa Rica. San José, Costa Rica. 2007, page 4.  
Paniamor Foundation. Code of Conduct Project for the Protection of Children and Adolescents against Commercial Sexual Exploitation. Costa Rican Experience. San José, Costa Rica. 2006.

- Invitation by hotels to their service providers (tour operators, carriers) to participate in awareness-training activities and subsequently join the Code of Conduct process.

#### **4.3.6 Current Project Status**

Today, the Code of Conduct Project faces a new challenge, which is to ensure that it is institutionalized without losing its effectiveness and without being subject to the coming and going of proposals from the different governments that come into force in Costa Rica.

As a starting point for the process of institutionalizing the Code of Conduct, it was necessary to find the ideal government agency to lead this project. Based on Costa Rican regulations, it was determined that the Costa Rican Tourism Institute would be the entity called upon to lead this project, since it is an initiative that is carried out directly in the country's tourism sector. which is precisely the subject matter regulated by the Costa Rican Tourism Institute.

It is also worth noting that the Costa Rican Tourism Institute has taken the following actions to prevent the commercial sexual exploitation of minors in travel and tourism:

- a) Communication campaign: the purpose of this campaign was to motivate domestic and foreign tourists to report situations related to commercial sexual exploitation; the campaign was scheduled for the 2004-2005 period.

- b) Modification to the Regulations of Tourist Lodging Companies. With this modification, two paragraphs are added to the current wording of articles 12 and 21 of said text, article 12 is directed to businessmen and article 21 is a title on the abusive use of the lodging center facilities by clients/guests. The modification was made by the Board of Directors of the ICT in its session 5398 held on January 24, 2006. Thus, the text is as follows:

*"VII.- Regarding the possibility of establishing some regulations against the commercial sexual exploitation of children and adolescents in the Regulation of Tourist Lodging Companies, it is agreed to amend said Regulation in the following terms:*

*To add two clauses to the current wording of articles 12 and 21 of said text. This is, in the sense of establishing within the obligations of the owners and administrators of the lodging establishments, to prevent the development of activities of Commercial Sexual Exploitation of Children and Adolescents within their facilities.*

*Consequently, it is hereby agreed to amend Executive Decree No. 11217- MEIC of February 25, 1980, published in Gazette No. 48 of March 7, 1980 and its amendments, to read as follows:*

*Article 12.- All tourist lodging establishments shall be subject to compliance with the laws of the following areas*

*and regulations governing their activity, and shall also have the following general obligations: (...)*

*h) Prevent the development of activities of Commercial Sexual Exploitation of Children and Adolescents within its facilities,*

*Article 21.- Abusive enjoyment shall be understood as the non-compliance with the following prohibitions:(...)*

*c) Promote and/or engage in commercial sexual exploitation of children and adolescents within its facilities".<sup>164</sup>*

In addition to the actions that this entity has already deployed in order to prevent the Commercial Sexual Exploitation of Minors specifically in the Tourism Sector, it is important to refer to the regulations that govern the Costa Rican Tourism Institute.

1. The Organic Law of the Costa Rican Tourism Institute, No. 1917, in its Chapter I, establishes that the ICT is an autonomous institution, destined to comply with the purposes indicated in this law (Article 1), guided by the decisions of its Board of Directors, which will act according to its criteria, within the Constitution, laws and pertinent regulations (Article 2) that imply a greater convenience for the promotion of tourism.



---

<sup>164</sup> Regulations for Tourist Lodging Companies. Articles 12 and 21. Costa Rica.

*"Article 1.- The Costa Rican Tourism Institute is hereby created to fulfill the purposes set forth in this law. "<sup>165</sup>*

*"As an Autonomous Institution of the State, the Institute shall have its own legal personality and patrimony: it shall exercise its administrative and commercial management with absolute independence, guided exclusively by the decisions of its Board of Directors, which shall act according to its criteria, within the Constitution, pertinent laws and regulations, and the commercial norms of greater convenience for the promotion of tourism to Costa Rica. The Board of Directors shall be fully and unavoidably responsible for its management. "<sup>166</sup>*

2. In CHAPTER II, among the purposes established in Article 4, it is stated that the ICT will increase tourism by promoting and monitoring private tourism activities (paragraph d).

*"The main purpose of the Institute shall be to increase tourism in the country:*

- a) Encouraging the entry and pleasant stay in the country of foreign visitors seeking rest, amusement or entertainment;*
- b) Promoting the construction and maintenance of places of habitation and recreation for the use of tourists;*

---

<sup>165</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 1. Costa Rica.

<sup>166</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 2. Costa Rica.

- c) *Carrying out the necessary propaganda abroad to publicize the country, in order to attract tourism; and*
- d) *Promoting and overseeing private tourism services*

<sup>167</sup>

3. The Board of Directors, on the other hand, has as one of its legal powers - according to Article 26, paragraph n) - *"To exercise all other functions, powers and duties that correspond to it, in accordance with the law, and, in general, the superior supervision of the services and functions entrusted by this law to the Institute, and to adopt all other resolutions that may be necessary for the fulfillment of its purposes"*.

*"The Board of Directors shall have the following powers:*

- a) *To propose to the Legislative Assembly the bills it deems necessary to solve tourism problems;*
- b) *To issue, promulgate, reform and interpret the internal regulations necessary for the best development of the purposes of the Institute; and to submit to the Executive Branch the regulations that require its approval. In order for the regulations and reforms issued by the Board of Directors to be valid, they must be published in the Official Gazette;*
- c) *To organize the Institution's dependencies and services;*
- d) *Agree and revoke the establishment of agencies and representations;*

---

<sup>167</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 4. Costa Rica.

- e) To request the expropriation of the real estate deemed necessary to carry out the purposes of the Institute, by means of the corresponding legal procedures;*
- f) To direct the policy of the Institute and agree on the investment of the Institute's resources;*
- g) To authorize the acquisition, mortgage, encumbrance and disposal of property, as well as to contract loans in accordance with the provisions of Article 5 a);*
- h) To agree on the annual budget of the Institution and the Extraordinary Budgets, and submit them to the approval of the Office of the Comptroller General of the Republic;*
- i) Approve the Annual Report and balance sheets of the Institute;*
- j) Appoint and remove the Manager and the Auditor, and assign their functions and duties, within the prescriptions of the present law;*
- k) To hear appeals filed against resolutions issued by the Audit Office or by Management, and to declare that administrative remedies have been exhausted;*
- l) To submit in or out of court, the rights of the Institute, to settle or submit pending matters to arbitration and to grant such powers of attorney as it deems necessary for this purpose;*
- m) To ensure strict compliance with the laws and regulations related to tourism. To this effect, it is understood that all activities related to tourism will be subject to either control or surveillance.*

*of the Institute; and n) Exercise all other functions, powers and duties that correspond to it, in accordance with the laws, and, in general, the superior supervision of the services and functions entrusted by this law to the Institute, and adopt all other resolutions that may be necessary for the fulfillment of its functions.*  
*purposes. "*<sup>168</sup>

4. The Organic Law of the Ministry of Economy and Commerce, Law No. 6054 of June 14, 1977 and its reforms, establishes that this Ministry is the governing body in the sectors of commerce, integration and tourism. Likewise, it is responsible for formulating, coordinating and supervising the execution of the internal and external tourism policy, which will be executed by the I.C.T. (according to articles 1, paragraph b). (according to articles 1 paragraph b) and 4 of law 6054).

*"Article 1: It corresponds to the Ministry of Economy,  
Industry and Commerce  
:*

*a) To participate in the formulation of the Government's economic policy and in national planning, in the fields of its competence.*

*b) To be the governing body of the State's public policies regarding the promotion of private initiative, business development and the promotion of entrepreneurial culture for the industry, commerce and services sectors, as well as for the small and medium-sized enterprise sector. "*<sup>169</sup>

---

<sup>168</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 26. Costa Rica.

<sup>169</sup> Law 6054. Organic Law of the Ministry of Economy, Industry and Commerce. Article 1. Costa Rica.

*"Article 4: The Ministry of Economy, Industry and Commerce shall have the following functions: a)-To promote internal commerce through the marketing system, to stimulate the consumption of national products. b)-To formulate, direct and coordinate the policy of prices, weights and measures, and market supply in internal commerce.*

*c)-Promote the use of standardization in the country and actively participate in its development. (Reformed by law N° 8279 National System for Quality published on May 21, 2002) d)-Administer commercial legislation.*

*e)-Lawyer by Law 8056 from 15-1-2001.*

*f)-Lawyer by Law 8056 from 15-1-2001.*

*g)-To promote the participation of the country in industrial, commercial and tourist exhibitions and h)-To represent the Government in national and international commercial meetings and negotiations in coordination with the Ministry of Foreign Affairs and Worship. "<sup>170</sup>*

5. By ratifying the Convention on the Rights of the Child in 1990, the Costa Rican State assumed international commitments with constitutional rank to adopt all administrative, legislative and other measures to give effect to the rights recognized in the Convention (Article 4).

---

<sup>170</sup> Law 6054. Organic Law of the Ministry of Economy, Industry and Commerce. Article 4. Costa Rica.

*"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present 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. "*<sup>171</sup>

6. Subsequently, Costa Rica approved the Code for Children and Adolescents, through Law No. 287 of March 24, 1998, published in Gazette No. 97 of May 27, 1998, with the understanding that *"it is the government's responsibility to promote and support policies, programs and projects in favor of children and adolescents, with the best interest of children and adolescents always prevailing as a fundamental principle of the Nation "*<sup>172</sup>.

7. The best interest of the child, which is central to article 7 of the Childhood and Adolescence Code, establishes the duty of the State to ensure with absolute priority the fulfillment of the rights of children and adolescents, and the guarantee of priority includes a) Priority in receiving protection and relief in any circumstance, b) Precedence in the attention of public and private services, c) Special preference in the formulation and execution of public policies aimed at creating living conditions that guarantee the comprehensive development of children and adolescents, d) Privileged allocation of public resources in areas related to the protection and promotion of children and adolescents.

---

<sup>171</sup> United Nations. Convention on the Rights of the Child. Article 4.

<sup>172</sup> Childhood and Adolescence Code. Considering IV. Costa Rica.

*"Article 7°- **Integral development.** The obligation to procure the integral development of the minor corresponds primarily to the parents or guardians.*

*The institutions comprising the National System for the Comprehensive Protection of Children and Adolescents, regulated in Title IV of this Code, shall guarantee respect for the best interests of these persons in all public or private decisions. The Office of the Ombudsman of the Inhabitants of the Republic shall ensure effective compliance with these obligations. "*<sup>173</sup>

9. The prevention and eradication of sex tourism involves a specialized approach from the tourism promotion policies of the Costa Rican Tourism Institute. Within the function of promotion and surveillance entrusted to it by Article 4, paragraph d) together with Article 5, paragraph h), the Costa Rican Tourism Institute has the legal basis to assume responsibilities and competencies in the institutionalization of the Code of Conduct, without this implying the usurpation of competencies that the National Children's Board has by constitutional mandate. Rather than representing a conflict of competencies, it represents a greater allocation of inter-institutional resources that contributes to the objective of comprehensive protection of the rights of children and adolescents in Costa Rica, which results in a greater commitment of the State in this matter.

---

<sup>173</sup> Childhood and Adolescence Code. Article 7. Costa Rica.



*"The main purpose of the Institute shall be to increase tourism in the country:*

- a) Encouraging the entry and pleasant stay in the country of foreign visitors seeking rest, amusement or entertainment;*
- b) Promoting the construction and maintenance of places of habitation and recreation for the use of tourists;*
- c) Carrying out the necessary propaganda abroad to publicize the country, in order to attract tourism; and*
- d) Promoting and monitoring the private activity of tourism services. "*<sup>174</sup>

*"Article 5.- The Institute shall have the following functions:*

- a) Construct, lease and manage hotels and other buildings, sports and entertainment fields suitable for the rest and recreation of visitors, as well as access roads to them, provided that private initiative does not act satisfactorily. In order to comply with the above, it may, if necessary, arrange public or private, municipal or national loans, and manage loans.*

*foreigners in accordance with the Constitution and the laws;*

- b) To direct and carry out abroad, by all appropriate means, the necessary propaganda to publicize the country, with the purpose of increasing the influx of visitors; it will count on the collaboration of*

---

<sup>174</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 4. Costa Rica.

*all governmental agencies, especially those of the Ministry of Foreign Affairs, to achieve this purpose;*

*c) To promote and stimulate any commercial, industrial, transportation, sports, artistic or cultural activities that try to attract tourism, providing it with facilities and distractions or that make the country known in its diverse aspects, especially folklore;*

*d) Operate the necessary means of transportation when it becomes indispensable to assume such activity;*

*e) To protect and make known constructions or sites of historical interest, as well as places of natural beauty or scientific importance, conserving them intact and preserving in their own environment the native flora and fauna. The Institute will be able to acquire or administer the constructions or extensions of territory necessary for the fulfillment of the above;*

*f) The maintenance of National Parks, in such places as it may deem convenient. The resolution issued by the Institute with respect to the declaration of areas as National Parks will be considered of public utility or social interest for the purposes of the corresponding expropriation;*

*( TERMLY REPEALED by Articles 75 and 109 of Law No. 4465 of November 25, 1969 ).*

*g) To protect by all means at its disposal the interests of visitors by ensuring them a pleasant stay in the country; and*

*h) Assume any other functions entrusted to it by law. The Institute must comply with all relevant provisions issued by the Municipalities of the country or the National Institute of Housing and Urbanism, unless expressly exempted in this law or in other subsequent laws "*<sup>175</sup>.

It is important to mention that the country has a National Plan Against Commercial Sexual Exploitation (2008-2010), which assigns specific functions to the Costa Rican Tourism Institute in its Promotion-Prevention component, to position zero tolerance to commercial sexual exploitation of minors at the political and social level, nationally and locally, together with the Costa Rican Tourism Institute, the National Tourism Chambers and associations of the tourism sector are designated as responsible for this objective.

#### **4.4. State Policies**

##### **4.4.1 Review of the National Legislation in force.**

In order to correctly address the issue of Commercial Sexual Exploitation of Minors by the Costa Rican State, it is essential to carry out a critical review of the national legislation that regulates this topic. Thanks to this analysis, it was possible to reform the legislation, since it was considered that on many occasions the legislation was a major obstacle to address the problem from the parameters of the

---

<sup>175</sup> Law Number 1917. Organic Law of the Costa Rican Tourism Institute. Article 5. Costa Rica.

doctrine of integral protection and to criminally punish sexual exploiters.

In this process, private organizations and public institutions participated and have worked in the defense of the rights of children and adolescents; a task that began in 1996 and culminated with the entry into force in 1999 of the Law Against the Sexual Exploitation of Minors - the only one of its kind in Latin America - which is only the beginning of a long road. With this law, an important leap has been made in the legal conceptualization of the problem of sexual exploitation, opening the door for all public institutions involved to promote actions aimed at effectively fulfilling the constitutional mandate of comprehensive protection of the rights of children and adolescents who are sexually exploited and to adapt the remaining legislation to this principle.

However, the task was not completed with the entry into force of Law 7899, since a series of reforms were still required to penalize some conducts with greater force, while at the same time typifying actions that at that time had not been considered crimes. That is why Law 8590 was created, called "Law for the Strengthening of the Fight against Commercial Sexual Exploitation of Minors through the reform and addition of several articles of the Penal Code, Law No. 4573, and reform of several articles of the Code of Criminal Procedure, Law No. 7594".

Undoubtedly, this new law is one of the most important advances made by the State on the issue of Commercial Sexual Exploitation of minors, however, only time will tell how effective it is and what other gaps exist in the law.

The national legislation with respect to the reality experienced every day by a large number of children and adolescents who are victims of this type of activities. <sup>176</sup>

#### **4.4.2 National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents 2008 - 2010**

The Costa Rican State together with those institutions of the civil society, have been working to build a National Plan to prevent and combat the Commercial Sexual Exploitation of Minors, which will govern for the years 2008 -2010. The main objective of this strategy is the following:

*"to establish the necessary guidelines to increase the effectiveness of State action in the area of prevention, care and control of the Commercial Sexual Exploitation of Children and Adolescents, and the defense and protection of the rights of its victims" <sup>177</sup>.*

It is important to point out that in order for this National Plan to be satisfactorily executed, it is necessary for it to have the endorsement of the Government Council, within the framework of an Execution Agreement, which is subscribed by the entities that make up the National Council for Childhood and Adolescence. Likewise, the monitoring and evaluation of the fulfillment of said Execution Agreement will be the responsibility of the National Children's Trust, in its double condition of governing body in matters of childhood and adolescence and as the entity that holds the presidency of the National Commission Against Sexual Exploitation.

---

<sup>176</sup> Conclusions drawn from the interview with Eugenia Salazar Elizondo, director of the Specialized Unit for Sexual Crimes and Domestic Violence.

<sup>177</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page X.

It should be noted that this National Plan was created in response to a series of pending tasks, which are identified thanks to a series of lessons learned in the implementation of actions for the eradication of Commercial Sexual Exploitation during the last ten years, together with the recommendations made to the Costa Rican State by national and international reports. In referring to the specific issue of Commercial Sexual Exploitation of Minors in the specific case of Costa Rica, it pointed out the need to develop a specific and comprehensive public policy aimed at eradicating the sale of children, child prostitution and pornography; It also recommended the implementation of a system that would define the competencies and obligations of the different institutions that make up the National Commission Against Sexual Exploitation, with the objective of improving cooperation and coordination of their activities. It also recommended the implementation of a complete information system through which accurate socio-demographic data could be obtained in order to estimate the impact of the policy.

*"The Committee notes that CONACOES is responsible for the implementation of the optional protocol and the follow-up of the national plan of action against commercial sexual exploitation. However, the Committee is concerned about the issue of coordination and cooperation between the different institutions that make up CONACOES, as it seems insufficient and there is a lack of clarity about the competencies of the member institutions. The Committee is concerned about the*

*The lack of a public policy to eradicate the sale of children, prostitution and child pornography may in some way contribute to the lack of coordination and cooperation of the different institutions.*

*The Committee recommends that the State party develop a specific and comprehensive public policy aimed at eradicating the sale of children, child prostitution and pornography, defining the competencies and obligations of the different institutions that make up CONACOES with the objective of improving cooperation and coordination of their activities."* <sup>178</sup>

*"The Committee regrets the lack of available information disaggregated by age, sex and minority group, as well as research on the extent of the phenomenon of sale, trafficking, prostitution and child pornography.*

*The Committee recommends that data be disaggregated by sex, age and minority group and systematically collected and analyzed, as it provides the basic tools for assessing the impact of policy implementation. It mainly recommends that research on the causes and extent of Commercial Sexual Exploitation be strengthened in order to identify the causes of commercial sexual exploitation.*

---

<sup>178</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

*causes and scope of these situations and develop effective policies to address them* <sup>179</sup>.

As part of the recommendations made by the Committee on the Rights of the Child, the following requirements are noted:

- The governmental budget allocation aimed at preventing and combating Commercial Sexual Exploitation of minors.

*"The Committee appreciates the information provided on the increase in the budget of the Patronato Nacional de la Infancia for 2007, but is concerned about the lack of adequate resources necessary to implement the optional protocol. In this regard and as an example - the National Plan for the Prevention of Commercial Sexual Exploitation of the Ministry of Education has not been able to be implemented due to lack of funding.*

*It is recommended that the State provide adequate resources, including budget distribution, for all activities aimed at implementing the protocol, such as the National Action Plan. Particularly on issues such as prevention, duration of the investigation and effective*

---

<sup>179</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party in compliance with article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child, concerning the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.



*prosecution of the crimes covered by the protocol and on issues of protection and social reintegration of underage victims. "180*

- Real support from the heads of the public institutions that belong to CONACOES.
- The planning within the Institutional Operational Plans of defined goals related to commercial sexual exploitation.
- The active participation of CONACOES representatives in the activities for the construction of the new Plan.
- A real commitment to the establishment and execution of real inter-institutional coordination mechanisms for the prevention, care and restoration of the full exercise of rights of underage victims of commercial sexual exploitation and their families.

Thanks to the analysis of these and other recommendations, the National Plan against Commercial Sexual Exploitation 2008 - 2010 is built as a proposal aimed at increasing the effectiveness of the State's actions for the promotion, prevention, care, protection and defense of the rights of minors. It consists, then, in a deployment of actions that will

---

<sup>180</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party in compliance with article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child, concerning the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

These should be carried out jointly, and basically concentrated in six cantons of the country, in which the aim is to attack the problem of Commercial Sexual Exploitation in an inter-institutional and intersectoral manner.

The cantons in which the development of this new National Plan will be primarily carried out are the following<sup>181</sup>:

- Central Region: Central Canton of San José - Rincón Grande.
- Central Pacific Region: Canton of Aguirre.
- Chorotega Region: Canton of Santa Cruz.
- Brunca Region: Canton of Corredores.
- Huetar Atlántica Region: Canton of Limón Centro.
- Northern Huetar Region: Canton of Los Chiles. <sup>182</sup>

As an important part of the development of this National Plan, four guiding approaches were formulated, which are derived from the position established in the Convention on the Rights of the Child.

*"...the minor as the holder of general rights proper to every human being, of special rights of protection in the face of any demand of the*

---

<sup>181</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. Page 26. San José, Costa Rica. 2007.

<sup>182</sup> The Plan's intervention zones were defined on the basis of information provided by the Ministry of Economic Planning.

*adult world or the environment, which threatens such development* <sup>183</sup>.

These approaches can be cited as follows:

- **Rights Approach:**

This approach was based on the theoretical conception provided by the Paniamor Foundation:

*"The rights approach is an ideological positioning that implies the execution, in some cases simultaneously and in others successively, of individual and collective processes that allow the progressive redefinition of:*

- *institutional practices aimed at the fulfillment of the rights to the provision, protection and participation of children and adolescents and their scope;*
- *the private, omnipotent and largely discretionary nature of traditional family and/or custodial relationships; and children's and individuals' own ways of interacting with each other*

---

<sup>183</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 8.

*adolescents with each other, with the adult world,  
and with the institutional framework "*<sup>184</sup>

Following this approach, both institutional and social intervention on the issue of Commercial Sexual Exploitation of Children and Adolescents should be directed primarily to the satisfaction of the rights of minors at risk or directly affected by the problem, so that these actions are consistent with the principles of Universality (Non-Discrimination), Indivisibility and Best Interest of the Child.

- **Power Approach:**

Power is considered to be multidirectional, that is, it can be exercised from different places in the relationship; as well as multidimensional, that is, its exercise can be liberating, emancipating, creative, affirmative or it can be oppressive, destructive and negative.

*"...with regard to relationships between adults and minors, it is understood that these are based on a power based on the difference in strength, maturity, knowledge and authority, which are inherent to each party involved. In the field of intergenerational relationships, the difference in power is supposed to create the conditions that promote growth and optimal development of its members,*

---

<sup>184</sup> Paniamor Foundation. Institutional Framework. San José, Costa Rica. 2000.

*guaranteeing the exercise, at the highest possible level, of the rights and responsibilities that are proper to them* "<sup>185</sup>.

The correct fulfillment of this approach assumes that the adult uses his or her state of greater maturity in an obligation of accompaniment and guidance in the initial state of dependence and immaturity of minors, but without this implying an abusive use of the same, by means of which the process of growth and development of children and adolescents is harmed, thus violating their rights.

- **Gender focus:**

The Gender Approach aims at recognizing all those social conditioning factors that establish differentiated ways of being, thinking and doing for men and women, which have historically made possible and perpetuated relations of domination and control. But it should not stop at merely recognizing these conditions, if it is not intended to transform them; therefore, it becomes a transforming approach.

*"working from a Gender Approach with children and adolescents to address the problems discussed here involves highlighting to them, to the State and to society the implications of social constructs around sex, age, masculinities, femininities and social stratification, as well as the way in which this legitimizes the*

---

<sup>185</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 9.

*occurrence and perpetuation of such exploitation. The above in order to empower their capabilities and opportunities and thus become agents for building a society based on relations of respect and equity between men and women, within the framework of a culture of zero tolerance towards Commercial Sexual Exploitation of Children and Adolescents. "*<sup>186</sup>

- **Generational - Contextual Approach:**

Once again, the position adopted by the Paniamor Foundation<sup>187</sup> is taken, so that the generational-contextual approach takes into consideration the following points:

- the moment of development of the person in his or her life cycle, in order to adjust the ways in which institutions and the adult world must relate to children and adolescents, according to their possibilities, expectations, needs and priorities.
- that the characteristics of children and adolescents, as well as their potential and needs, vary according to the historical, socio-cultural and economic conditions of a particular society and that, even within this society, the heterogeneity of realities and living conditions create demands of the groups to be addressed from their specificities.

---

<sup>186</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 11.

<sup>187</sup> Paniamor Foundation. Institutional Framework. San José, Costa Rica. 2000.

Through this approach, the need arises to identify the dynamics of the family, community, institutional, economic-political and socio-cultural context in which minors may be immersed in order to ensure that interventions within the framework of a National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents are adjusted in all their scope to the identity and characteristics of the environment in which the affected persons and the group to which they belong live.

#### **4.4.2.1 International and national legal framework <sup>188</sup>**

This national plan is framed within the current legislation on Children and Adolescents in Costa Rica.

In terms of international legislation, it is based on the ratification and promulgation in the country of the following international instruments:

- Convention for the Suppression of the Circulation of and Traffic in Obscene Publications.

***"Article 1.***

*The High Contracting Parties agree to take all measures to detect, prosecute and punish any person guilty of any of the following acts*

---

<sup>188</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 14.

*listed below, and, accordingly, decides that it will be a punishable offense.*

*1) To make, produce or possess obscene writings, drawings, engravings, pictures, printed matter, images, advertisements, emblems, photographs, cinematographic tapes or other obscene objects, for the purpose of trade, distribution or public exhibition.*

*2) Importing, transporting, exporting or causing to be imported, transported or exported, for the purposes indicated any such obscene objects or otherwise putting them into circulation*

*3) Maintain or engage in the public or private trade of the aforementioned obscene objects, deal in them in any way, distribute or exhibit them in public or engage in renting them;*

*4) Announcing or making known by any means with the object of furthering such circulation or punishable traffic, that a person engages in the aforesaid criminal acts, or announcing or making known how and by whom such obscene objects may be procured directly or indirectly. "<sup>189</sup>*

## ***"Article 2.***

*Individuals who have committed any of the acts referred to in Article 1 shall be subject to the jurisdiction of the courts of the Contracting Party in whose territory the offense or any of the acts constituting the offense was committed. They shall fall under*

---

<sup>189</sup>United Nations. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications. Article 1. Geneva, 1923.



*also under the jurisdiction of the Courts of the State of which they are subjects if authorized by law and they are found therein, even when the acts constituting the offense have been carried out outside this State.*

*It is, however, up to each Contracting State to apply the maxim Anon bis in idem, according to the rules admitted by its legislation "*<sup>190</sup>.

**"Article 3.**

*The transmission of letters rogatory relating to the offenses provided for in this Convention shall take place:*

*1) Already by direct communication between the judicial authorities.*

*2) either through the diplomatic or consular agent of the issuing country in the country to which the letter rogatory is addressed; this agent may be*

*The Agent shall send a letter rogatory directly to the competent judicial authority, or to the one designated by the Convention of the exhorted country, and shall receive directly from this authority the testimonies attesting the execution of the letter rogatory.*

*In both cases, a copy of the letter rogatory shall be sent at the same time to the higher authority of the requested State.*

*3) Each Contracting Party shall notify each of the other Contracting Parties, through diplomatic channels, of the method(s) by which it will*

---

<sup>190</sup> United Nations. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications.  
Article 2. Geneva, 1923.

*transmission indicated above that it admits for the letters rogatory of that Party.*

*Any difficulties that may arise in connection with the transmissions that take place in cases 1) and 2) of this article shall be settled through diplomatic channels.*

*Unless otherwise agreed, the letter rogatory shall be drawn up in the language of the Authority to which it is addressed, or in the language agreed between the two States concerned, or shall be accompanied by a translation in one of these two languages, certified by a diplomatic or consular agent of the issuing State, or by a sworn translator of the State to which the letter rogatory is addressed.*

*The execution of letters rogatory may not give rise to reimbursement of fees or expenses of any kind.*

*Nothing in this article shall be construed to require the Contracting Parties to adopt in their courts forms or methods of proof contrary to their laws "<sup>191</sup>.*

#### **"Article 4.**

*The Contracting Parties whose legislation is not at present sufficient to give effect to this Convention undertake to adopt or propose to their respective legislatures such measures as may be necessary for this purpose. "<sup>192</sup>*

---

<sup>191</sup> United Nations. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications. Article 3. Geneva, 1923.

<sup>192</sup> United Nations. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications. Article 4. Geneva, 1923.

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

**"Article 1.**

*The Parties to this Convention undertake to punish any person who, in order to gratify the passions of another:*

- 1) Arranges the prostitution of another person, even with the consent of such person;*
- 2) Exploit the prostitution of another person, even with the consent of such person. "*<sup>193</sup>

**"Article 2.**

*The Parties to this Convention also undertake to punish any person who:*

- 1) Maintains a house of prostitution, manages it or knowingly supports it or participates in its financing;*
- 2) Knowingly gives or rents a building or other premises, or any part thereof, to exploit the prostitution of others "*<sup>194</sup>.

---

<sup>193</sup> United Nations. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Article 1. Geneva, 1949.

<sup>194</sup> United Nations. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Article 2. Geneva, 1949.

- American Convention on Human Rights

***"Article 6. Prohibition of Slavery and Bondage***

*1. No one may be held in slavery or servitude, and slavery, the slave trade and the traffic in women are prohibited in all their forms.*

*2. No one shall be required to perform forced or compulsory labor. In countries where certain offenses are punishable by deprivation of liberty accompanied by forced labor, this provision may not be interpreted as prohibiting the enforcement of such a penalty imposed by a competent court or tribunal. Forced labor shall not affect the dignity or the physical and intellectual capacity of the prisoner.*

*3. They do not constitute forced or compulsory labor for the purposes of this article:*

*a. work or services normally required of a person detained in compliance with a sentence or formal resolution issued by the competent judicial authority. Such work or services shall be performed under the supervision and control of the public authorities, and the individuals performing such work or services shall not be placed at the disposal of private individuals, companies or legal persons of a private nature;*

*b. military service and, in countries where exemption for reasons of conscience is allowed, such national service as may be prescribed by law in lieu thereof;*

*c. service imposed in cases of danger or calamity threatening the existence or welfare of the community, and*

*d. work or service that is part of normal civic duties.*

"<sup>195</sup>

**"Article 19. Rights of the Child**

*Every child has the right to the measures of protection that his or her condition as a minor requires on the part of his or her family, society and the State "*<sup>196</sup>.

- Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

**"Article 1.**

*Each State Party to the Convention shall adopt all such legislative or other measures as may be feasible and necessary to achieve progressively and as soon as possible*

---

<sup>195</sup> Organization of American States. American Convention on Human Rights. Article 6. Costa Rica, 1969.

<sup>196</sup> Organization of American States. American Convention on Human Rights. Article 19. Costa Rica, 1969.

*the complete abolition or abandonment of the following institutions and practices, wherever they may subsist, whether or not the definition of slavery contained in Article 1 of the Slavery Convention, signed at Geneva in 1949, is applicable to them.*

*September 1926:*

*a) Debt bondage, i.e., the status or condition resulting from the fact that a debtor has undertaken to render his personal services, or those of someone over whom he exercises authority, as security for a debt, if the services rendered, fairly valued, are not applied to the payment of the debt, or if their duration is not limited and the nature of such services is not defined;*

*b) The servitude of the glebe, that is, the condition of a person who is obliged by law, by custom or by agreement to live and work on land belonging to another person and to render to the latter, for remuneration or free of charge, certain services, without freedom to change his condition;*

*c) Any institution or practice by virtue of which:*

*i) A woman, without the right to object, is promised or given in marriage in exchange for a consideration in money or in kind given to her parents, her guardian, her family or any other person or group of persons;*

ii) *The husband of a woman, the husband's family or clan has the right to assign her to a third party for valuable consideration or otherwise;*

iii) *The wife, upon the death of her husband, may be transmitted by inheritance to another person;*

d) *Any institution or practice whereby a child or young person under the age of eighteen years is delivered by his or her parents, or by one of them, or by his or her guardian, to another person, whether for reward or not, for the purpose of exploitation of the person or labor of the child or young person.* <sup>197</sup>

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

***"Article 2.***

*Violence against women shall be understood to include physical, sexual and psychological violence:*

- a. *that takes place within the family or domestic unit or in any interpersonal relationship, whether the aggressor shares or has shared the same domicile as the woman, and that includes, among others, rape, mistreatment and sexual abuse;*
- b. *that takes place in the community and is perpetrated by any person and includes,*

---

<sup>197</sup> United Nations. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Article 1. Geneva, 1956.

*among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place, and*

*c. that is perpetrated or tolerated by the State or its agents, wherever it occurs. "*<sup>198</sup>

- Convention on the Elimination of All Forms of Discrimination against Women.

***"Article 6 .***

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. "*<sup>199</sup>

- Convention on the Rights of the Child.

***"Article 19.***

*1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and neglect.*

---

<sup>198</sup> Organization of American States. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Article 2.

<sup>199</sup> United Nations. Convention on the Elimination of All Forms of Discrimination against Women. Article 6. Geneva, 1981.



*sexual abuse, while the child is in the custody of the parents, a legal representative or any other person who has the care of the child.*

*2. Such protective measures should include, as appropriate, effective procedures for the establishment of social programs to provide necessary assistance to the child and those caring for the child, as well as for other forms of prevention and for the identification, reporting, referral, investigation, treatment and follow-up of the above-described cases of child maltreatment and, as appropriate, judicial intervention.* "<sup>200</sup>

**"Article 34.**

*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, combat and eliminate all forms of sexual exploitation and sexual abuse of children:*

- a) Inciting or coercing a child to engage in any unlawful sexual activity.*
- b) Exploitation of children in prostitution or other illegal sexual practices.*

---

<sup>200</sup> United Nations. Convention on the Rights of the Child. Article 19. 1990.

*c) Exploitation of children in pornographic performances or materials. "*<sup>201</sup>

**"Article 35.**

*States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. "*<sup>202</sup>

**"Article 36.**

*States Parties shall protect the child from all other forms of exploitation prejudicial to any aspects of his or her welfare. "*<sup>203</sup>

- Inter-American Convention on the International Return of Children.
- Inter-American Convention on International Traffic in Minors.

**"Article 1:**

*The object of this Convention, with a view to the protection of the fundamental rights and interests of the peoples of the world, shall be to protect the fundamental rights and interests of the peoples of the world.*

---

<sup>201</sup> United Nations. Convention on the Rights of the Child. Article 34. 1990. <sup>202</sup> United Nations. Convention on the Rights of the Child. Article 35. 1990. <sup>203</sup>United Nations. Convention on the Rights of

the Child. Article 36. 1990.

*The Convention is aimed at the prevention and punishment of international trafficking in minors, as well as the regulation of the civil and criminal aspects of such trafficking. In this sense, the States Parties to this Convention are obliged to:*

- a) ensure the protection of the minor in consideration of his or her best interests;*
- b) to establish a system of legal cooperation among the States Parties that enshrines the prevention and punishment of international trafficking in minors, as well as to adopt legal and administrative provisions in this area for that purpose; and*
- c) ensure the prompt return of the child victim of international trafficking to the State of his or her habitual residence, taking into account the best interests of the child. "<sup>204</sup>*

**"Article 7:**

*The States Parties undertake to adopt effective measures, in accordance with their domestic law, to prevent and severely punish international trafficking in children as defined in this Convention".*

---

<sup>204</sup> Organization of American States. Inter-American Convention on International Traffic in Minors. Article 1. 1994.

<sup>205</sup> Organization of American States. Inter-American Convention on International Traffic in Minors. Article 7. 1994.

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

**"Article 2.**

*The purposes of this Protocol are:*

- a) Prevent and combat human trafficking, with special attention to women and children;*
- b) Protect and assist the victims of such trafficking, with full respect for their human rights; and*
- c) Promote cooperation among States Parties to achieve these ends. "*<sup>206</sup>

**"Article 3.**

*Definitions*

*For the purposes of this Protocol:*

- a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Such exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, labor or services*

---

<sup>206</sup> United Nations. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. Article 2. 2000.

*forced labor, slavery or practices similar to slavery, servitude or the removal of organs;*

*b) The consent given by the victim of trafficking in persons to any form of intentional exploitation described in subparagraph (a) of this article shall not be taken into account when any of the means set forth in that subparagraph have been used;*

*c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if none of the means set forth in subparagraph (a) of this article are used;*

*d) Child" shall mean any person under the age of 18 years. "*<sup>207</sup>

#### **"Article 5.**

##### **Penalty**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in article 3 of this Protocol, when committed intentionally.*

*2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offenses:*

---

<sup>207</sup> United Nations. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. Article 3. 2000.

- a) *Subject to the basic concepts of its legal system, an attempt to commit an offence established in accordance with paragraph 1 of this article;*
- b) *Participation as an accomplice in the commission of an offence established in accordance with paragraph 1 of this article; and*
- c) *The organization or direction of other persons for the commission of an offence established in accordance with paragraph 1 of this article.* <sup>208</sup>

- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

**"Article 3.**

*For the purposes of this Convention, the term "worst forms of child labor" includes:*

- a) *all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;*

---

<sup>208</sup> United Nations. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. Article 5. 2000.

*b) the use, recruitment or offering of children for prostitution, production of pornography or pornographic performances;*

*c) the use, procuring or offering of children for illicit activities, in particular for the production and trafficking of drugs, as defined in the relevant international treaties; and*

*d) work which, by its nature or the conditions under which it is carried out, is likely to harm the health, safety or morals of children. "<sup>209</sup>*

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

*"Article 2-For the purposes of this Protocol:*

*a) Sale of children means any act or transaction whereby a child is transferred by one person or group of persons to another for remuneration or any other consideration;*

---

<sup>209</sup> International Labor Organization. Convention 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. Article 3. 1999.



*b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of payment;*

*c) Child pornography means any depiction, by whatever means, of a child engaged in real or simulated explicit sexual activity, or any depiction of the genital parts of a child for primarily sexual purposes. "<sup>210</sup>*

With regard to national regulations, the following is taken as the legal basis:

- Political Constitution of the Republic of Costa Rica.
- Family Code (Law 5456 and its amendments).
- Penal Code (Law 4573 and its amendments).
- Law for the Promotion of Women's Social Equality.
- Law against Sexual Harassment in Employment and Teaching (Law 7476 of 1995).
- Law against Domestic Violence (Law 7586).

---

<sup>210</sup> United Nations. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Article 2. 2000.

- Organic Law of the National Child Welfare Agency (Law 7648).
- Childhood and Adolescence Code (Law 7739 and its amendments).
- Code of Criminal Procedure (Law 7594 and its amendments).
- General Law for the Protection of Adolescent Mothers (Law 7735).
- Law against Commercial Sexual Exploitation of Minors (Law 7899).
- Responsible Parenthood Act .
- General Law of the Young Person (Law 8261).
- HIV/AIDS Law (Law 7771).
- Law on Registration, Seizure and Examination of Private Documents and Intervention of Communications (Law 8200).
- Law for Strengthening the Fight against Sexual Exploitation (Law 8590).
- Presidential Decree No. 29967-G211.

---

<sup>211</sup> This presidential decree establishes the impediment for the entry into the country of foreigners linked to the commission of sexual crimes against children and adolescents.

#### 4.4.2.2 Content of the National Plan

##### 4.4.2.2.1 Operating Principles<sup>212</sup>

As a fundamental part of the execution of this National Plan, four Operating Principles were defined, namely:

###### 1. Interinstitutional and Intersectoral Coordination

By means of this principle, it is intended to achieve an effective articulation of the actions carried out among the institutions and sectors with competence within the Plan; proposing direct responsible for the achievement of each one of the established goals, to which have been assigned functions of Coordination of actions among the entities and sectors proposed for its implementation. This in order to comply with the recommendation made by the Committee on the Rights of the Child in its 2007 report.

*"In order to move forward in this direction, the 2008-2010 Plan Matrix proposes bodies primarily responsible for the achievement of the goals established by Component, with the functions of Coordination of the*

---

<sup>212</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents, 2008-2010. San José, Costa Rica. 2007, page 25.

*actions among the entities and sectors proposed for its implementation.* "<sup>213</sup>

2. Public-Private Articulation:

This principle is achieved through the establishment of responsibilities by public entities but jointly with the participation of private organizations and cooperation agencies, as strategic collaborators for the achievement of the goals established for each Component.

3. Participation of Children and Adolescents:

In the design, planning and execution of the actions of this plan, the duty of informing minors, opening spaces for their participation, as well as seeking mechanisms through which to obtain the opinion of minors on the relevance and effectiveness of the actions developed is contemplated.

4. Geographic - Social Approach:

It consists of a targeting of actions at the cantonal and regional level, based on criteria of poverty index, population density and level of risk of Commercial Sexual Exploitation of Children and Adolescents.

---

<sup>213</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 25.

#### 4.4.2.2.2 Strategic Axes<sup>214</sup>

Once the operating principles of this national plan had been set out in concrete terms, five strategic axes were defined.

##### 1. Awareness - Communication:

This axis consists of the execution of systematic actions of massive and selective dissemination of information that will contribute to generate a significant social mobilization around the creation of spaces of zero tolerance to the Commercial Sexual Exploitation of minors. Congruently with what is intended, within this axis the need to prioritize awareness-raising actions towards the specific populations considered in this National Plan arises, without prejudice to the implementation of actions of this nature with complementary populations either inside or outside the country.

##### 2. Training:

This Axis includes systematic training and self-training actions to achieve the construction of theoretical, conceptual and methodological knowledge that will enhance effective action at the institutional, community, family and personal levels, aimed at the prevention and care of sexual exploitation.

---

<sup>214</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 27.

Commercial Sexual Exploitation of Children and Adolescents, as well as the control and repression of its manifestations.

3. Direct Attention:

This Axis contemplates care actions aimed primarily at minors who have been victims of Commercial Sexual Exploitation, as well as direct mediation between those families that are most vulnerable to this scourge and the institutions with social assistance services or programs.

4. Research:

This Axis proposes the design and execution of research work that will allow for a better understanding of the problem. This includes promoting the development of studies that delve deeper into aspects of the Commercial Sexual Exploitation of Children and Adolescents.

5. Monitoring and Evaluation:

This Axis involves the design and operation of an Information System that allows for the collection of reliable information regarding the fulfillment of the goals established in the Plan, at the national, cantonal and regional levels. This system is intended to provide the National Commission Against Sexual Exploitation with information on the effectiveness of the services/care alternatives developed in light of the National Plan.

#### 4.4.2.2.3 Components of the National Plan<sup>215</sup>

Specifically, the 2008-2010 National Plan is organized into four components: Promotion-Prevention; Care; Defense and Protection of Rights; and Organizational Strengthening. Each of these components has been operationalized in such a way as to delimit the nature and scope of the actions that correspond to each one. Likewise, each component is assigned a specific Target Population, as well as one or more Instances responsible for its implementation, with functions of coordination of the actions proposed therein, as well as mobilization of the resources required for the achievement of the established goals.

##### 1. Promotion and Prevention:

**Promotion** is understood as the set of actions developed with the purpose of promoting, facilitating and articulating an effective political and social participation in the construction of national and local scenarios of zero tolerance to Commercial Sexual Exploitation of Children and Adolescents.

##### Target Population:

National Dimension: the general population living in the 6 Cantons of priority intervention of the proposed Plan; the public institutions with presence in these Cantons; the tourism development agents of the 3 Regions identified in national studies as having a high incidence of CSEC associated with travel and tourism (Child Tourism) and trafficking of children and adolescents for the purpose of

---

<sup>215</sup> National Commission against Commercial Sexual Exploitation. National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents. 2008-2010. San José, Costa Rica. 2007, page 29.

The main objectives of the project are: to promote the development of sexual and reproductive health; to the tourism development agents operating in the country; and to the mass and alternative media.

International Dimension: the tourism industry of the main countries of origin of tourism to Costa Rica.

Main entities responsible: the National Children's Trust, the Ministry of Culture, Youth and Sports, the Ministry of Justice and the Costa Rican Tourism Institute.

***Prevention*** is understood as the sustained and articulated development of a set of actions with a sense of process, based on inter-institutional and social participation, aimed at identifying, reducing and eradicating personal, family, community, institutional, social and structural risk factors that condition, promote and perpetuate the Commercial Sexual Exploitation of minors in the country.

Target Population: Children and Adolescents at particular risk of Commercial Sexual Exploitation and their families, residents of the 6 Cantons of priority intervention of the Plan, the public agencies that operate training or assistance programs for families in these Cantons and the Children and Adolescents, participants in the Educational Informatics Program MEP-FOD, at national level.

Main bodies responsible: National Child Welfare Agency (Patronato Nacional de la Infancia), acting in coordination with the Ministry of Labor and Social Security, the Joint Institute for Social Assistance, the Ministry of Public Education, the Ministry of Justice and the local governments of the cantons covered by the Plan.



## 2. Attention:

**Care** is understood as the provision of integrated and comprehensive services (physical, psychological, social and legal) in a timely and quality manner, whose orientation guarantees the intervention of the damage and its sequels, as well as the strengthening of the minor affected by Commercial Sexual Exploitation and his or her family group, when appropriate.

Target Population: minors who are victims or at risk of Commercial Sexual Exploitation. Specifically those residents in the 6 Cantons of priority intervention of the Plan; as well as officials of institutions and organizations with services or alternatives of care for underage victims of Commercial Sexual Exploitation.

Main responsible entities: National Children's Trust, in the framework of its role as executor of special protection and working closely with the Costa Rican Social Security Fund and the National Women's Institute - PLANOVI, with specific efforts by the CONACOES Care Subcomponent.

## 3. Defense and Protection of Rights:

**Defense and Protection of Rights** is understood as the set of actions developed by the competent Institution, in order to manage on behalf of minors who are victims or at risk of Commercial Sexual Exploitation, in an informed, diligent and continuous manner, the optimal defense of their rights and interests, taking as a starting point the consideration of their particular condition and as a goal, the most favorable definition of their legal situation.

Target Population: underage persons who are victims or at risk of Commercial Sexual Exploitation, as well as the following instances:

- Legislative Assembly.
- Judiciary.
- Ministry of the Presidency.
- Ministry of Justice.
- Ministry of Public Security.

Main responsible entities: National Children's Trust, within the framework of its guiding role in the area of children and adolescents, acting in close coordination with CONACOES, through its Sub Commission for the Defense and Protection of Rights.

#### 4. Organizational Strengthening:

*Organizational Strengthening* is understood as the implementation of a set of strategic actions, of a programmatic and administrative nature, designed to mobilize political will and social legitimacy resulting in the strengthening of CONACOES' capacity to fulfill its Mission.

Target Population: Council for Children and Adolescents, competent international technical and financial cooperation agencies, national and local mass media, and Costa Rican society in general.

Main bodies responsible: Patronato Nacional de la Infancia, as the entity that holds the presidency of CONACOES and serves as the headquarters for its Technical Secretariat.

Undoubtedly, this National Plan is a project that aims to address the problem of Commercial Sexual Exploitation of minors in an effective manner and with inter-institutional and intersectoral actions, i.e. not only of a state nature; It also intends to fully comply with the recommendations made to Costa Rica by the Committee on the Rights of the Child in the report issued by this body in 2007, which expressly stated the need for the actions carried out in the country to prevent and eradicate commercial sexual exploitation of minors to be reformulated and therefore to be applied in an interrelated manner among the various institutions and public and private organizations working on this issue.

However, for the implementation of this plan to achieve the desired results, a series of minimum conditions must be met, such as the fact that the Patronato Nacional de la Infancia enjoys the necessary legitimacy, since it is the entity called upon to lead this process; it also requires the allocation of sufficient economic and human resources to achieve the development of each of the objectives proposed within the different components of the plan.

Finally, it is necessary to formalize an Implementation Agreement between the National Children's Trust, as the governing body of the National Plan and CONACOES, and the various institutions called upon to provide the necessary resources to carry out the proposed objectives, in order to achieve the National Plan from the proposal to the specific actions.

## TOPIC V

### What remains to be done?

**Objective 5.**

*Create proposals related to pending tasks based on the commitments acquired by the Costa Rican government in relation to the fight against Commercial Sexual Exploitation of Minors.*

When analyzing the issue of Sexual Exploitation of Minors, it is of utmost importance to set aside all those socio-cultural prejudices through which the minor is seen as the only person responsible for the life situation in which he/she is involved, since this only manages to re-victimize once again human beings who, due to circumstances beyond their control, have become victims of one of the greatest scourges of violation of their human rights. And it is perhaps precisely because of this type of social conditioning that both the Costa Rican State and society in general have taken concrete actions to prevent and combat this phenomenon, often belatedly, and the worst thing is that in most cases these proposals, when put into practice, are largely ineffective in solving the problem.

It is for this reason that it is of great importance to analyze in this chapter the way in which this issue has been addressed, how effective it has been, and the importance that still needs to be done in the coming years to ensure that children and adolescents in Costa Rica do not suffer from the same problems as children and adolescents in other countries.

remain as victims of this type of situation, and on the contrary, see a real restoration of their fundamental rights as citizens and human beings.

As a first point, it is necessary to analyze how effective are the actions that have been applied in the country in recent years, namely, since 1996, when the government awakened to the existence of Commercial Sexual Exploitation of Children and Adolescents in Costa Rican territory, and subsequently, to the intrinsic and inevitable relationship of this type of activities with the development of tourism in the country.

This study, unfortunately, must conclude with the fact that in spite of a very important legislative reform in 1999 and the existence of the National Commission against Sexual Exploitation, the reality is that in general the social response, and in particular the action of the Costa Rican government, has been insufficient; This is reflected in the Observations to the Report presented by the Costa Rican State in compliance with Article 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, issued by the Committee on the Rights of the Child in 2007.

First of all, the Committee on the Rights of the Child highlights the following positive aspects of the work carried out in the country to eradicate the sex trade involving the use of minors<sup>216</sup>:

---

<sup>216</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

1. The establishment in 1999 of a unit to combat the commercial sexual exploitation of minors, attached to the Public Prosecutor's Office, as well as the creation of a specialized unit within the Judicial Investigation Agency.

2. The creation of the National Commission against Sexual Exploitation, as a special thematic commission of the National Council for Children and Adolescents.

3. The participation of Non-Governmental Organizations within the National Commission against Sexual Exploitation.

4. The adoption in September 2006 of the Comprehensive Care Project for Children and Adolescents at Imminent Risk and Increased Vulnerability.

5. The ratification in 2003 of the protocol to the Convention against Transnational Organized Crime and its two optional protocols to prevent, suppress and punish trafficking in persons, especially women and children, and against the smuggling of migrants.

Unfortunately, if one looks closely at the positive aspects enunciated by this Committee, one must accept that they are mainly merely formal achievements, i.e., the ratification of conventions or the creation of entities, but none of them really refers to the implementation of concrete actions aimed at eradicating the Commercial Sexual Exploitation of Minors.

For this reason, in the observations made by the Committee on the Rights of the Child, after highlighting the positive aspects of the work carried out in the country, it proceeds to point out a series of areas in which it finds aspects that need to be worked on in greater depth, and therefore expressly indicates what these aspects are and makes a series of recommendations for each one of them.

1. *Coordination within the National Plan of Action*, in this regard, indicates that although it is true that the National Commission against Sexual Exploitation is the entity in charge of implementing the optional protocol as well as following up on the National Plan of Action, there is a clear lack of coordination and cooperation among the various entities that make up this commission, since there is a lack of clarity regarding the competencies of each of these institutions. It also points out the lack of a public policy to eradicate the sale of minors, as well as prostitution and the use of minors in pornography; therefore, it proceeds to recommend that the State *"develop a specific and comprehensive public policy aimed at eradicating the sale of children, child prostitution and pornography, defining the competencies and obligations of the different institutions that make up CONACOES with the objective of improving cooperation and coordination of their activities."*<sup>217</sup>

2. **Training and awareness-raising:** in this regard, the Committee notes that while it is true that campaigns have been carried out to raise awareness and alert the population to the causes of the sex trade involving the use of minors, the truth is that despite these efforts, there is still a persistent tolerance of the use of minors in the sex trade.

---

<sup>217</sup> Committee on the Rights of the Child, Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Forty-fourth Session, 2007.

The Committee therefore proceeds to make the following recommendations<sup>218</sup>:

- a) strengthen the training and education of all groups of professionals,
- b) to make minors and their families aware of the provisions of the protocol, through schools as well as permanent mass campaigns,
- c) conducting communication campaigns that address preventive measures and the harmful effects of commercial sexual exploitation.

3. **Statistics and Information Collection:** The Committee affirms that in Costa Rica there is a lack of information disaggregated by age, sex and minority group, as well as research on the extent of the phenomenon of commercial sexual exploitation of minors and all its manifestations. For this reason, it is recommended that the data be systematized, beginning with the reinforcement of research to identify the causes and scope of the sex trade with the use of minors, in order to distinguish the effectiveness of policies aimed at eradicating this scourge.

4. **Distribution of resources:** the Committee notes with great concern the lack of adequate and necessary resources to implement the optional protocol, which results in weak and inadequate implementation of plans to eradicate the scourge of sexual exploitation.

---

<sup>218</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.



of minors. Therefore, it is urgently recommended that the Costa Rican State provide adequate resources, including of course the distribution of a specific budget, for the development of all activities aimed at the implementation of the optional protocol, especially in areas such as prevention, investigation and effective prosecution of crimes related to the sex trade, as well as the protection and social reintegration of minors who are victims of these situations.

5. **Criminal Procedure:** it is necessary to approve Bill No. 14204, which seeks to extend jurisdiction over crimes committed outside the national territory, since to date it is not possible to criminally prosecute a national who commits a crime abroad and the victim is not Costa Rican.

6. **Protection of the rights of underage victims:** the Committee notes the lack of a system of care for victims in Costa Rica with a rights-based approach that takes into consideration factors such as gender and age, as well as the lack of the necessary economic and human resources in the area of protection and care. For this reason it proceeds to make the following recommendations:

a) ensure the existence of adequate services for psychological care, as well as recovery and social reintegration,

b) training in legal issues and psychology for those who work with underage victims,

c) ensure that victims have access to legal proceedings to collect damages from the offender,

d) protect both victims and witnesses at all stages of the judicial process.

**7. Smuggling and Trafficking for Commercial Sexual Exploitation:** the creation in 2005 of the National Coalition against Trafficking and Smuggling of Migrants was noted as a positive aspect of this specific issue; however, the reality is that the issue of smuggling and trafficking for commercial sexual exploitation continues to be a serious problem in Costa Rica. The following recommendations are proposed:

a) increase efforts to combat these crimes, including the implementation of the trafficking project between the Paniamor Foundation and the judiciary,

b) provide financial and human resources to the Coalition against Trafficking and Smuggling,

c) consider becoming a party to the Convention to protect the rights of migrant workers and their families.

**8. Sex Tourism:** *"The Committee is satisfied that strong measures have been taken in the tourism sector and that alliances have been created with hoteliers and cab drivers, in addition to the adoption of the Code of Conduct. However, it considers that sex tourism is socially accepted, especially among men, and is increasing."*

*Recommends that it continue to take measures to address the problem, such as increasing campaigns on the rights and penalties for abusers. "*<sup>219</sup>

**9. Pornography on the Internet and other technologies:** as positive aspects, the efforts made in the area of cyberspace and the creation of the Cybernetic Unit of the Ministry of Public Security are noted, but despite this, there is a growing amount of pornography which is accessible on the Internet, as well as a certain degree of impunity for those who commit these crimes. It recommends implementing a policy of monitoring and regulating those who offer Internet services, as well as the urgency of adopting specific legislation to force Internet providers to prevent access to pornography through these means.

**10. Risk factors in the areas of sale, pornography and child prostitution:** the State is encouraged to offer its support to all projects aimed at reducing poverty, as well as the need to promote the strengthening of international cooperation to address the causes of poverty and underdevelopment, which are factors of vulnerability for the commercial sexual exploitation of minors.

Based on the recommendations made by the Committee on the Rights of the Child, which we have been analyzing, we continue with a study of the various areas that should actively participate in the prevention and eradication of the sex trade involving the use of children and adolescents.

---

<sup>219</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

## **5.1 Legislative and Judicial Level.**

We proceed to analyze the legislative and judicial levels jointly since there is an undeniable relationship between both sectors, due to the fact that what is regulated in national legislation is what can be prosecuted at the judicial level, and in fact on many occasions the lack of appropriate legislation has been blamed as an obstacle to the criminal prosecution of crimes related to the commercial sexual exploitation of minors.

At the legislative level, Law No. 7899 against Sexual Exploitation was approved in 1999, however, despite the fact that the creation of this law was a significant advance in the regulation of sexual commerce with the use of children and adolescents, it left some gaps in the criminal classification of Commercial Sexual Exploitation and the different activities through which it manifests itself, as well as in the articles that specifically refer to the criminal process. With these loopholes, what is produced is a favoring of impunity for those who sexually trade with children and adolescents. This reasoning can be clearly seen if one analyzes the statistics kept by the Specialized Unit for Sexual Crimes and Domestic Violence, a body attached to the Public Prosecutor's Office of the Judiciary.

**Table N. 1220**  
**Cases Accused of Commercial Sexual Exploitation**  
**of Minors**  
**1993 - 2007**

<b>State</b>	<b>Number</b>	<b>Percentage</b>
Condemned	46	52.87%
Acquitted	9	10.34%
Suspension of the Process to Test	13	14.94%
al PendingSign Court	10	11.49 %
Declared Rebel	3	3.44%
al PendingSign Criminal Court	6	6.89%

<sup>220</sup> Information provided by the Specialized Unit for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office of San José.

**Table N. <sup>221</sup>**  
**Cases of Commercial Sexual Exploitation of**  
**Minors Resolved**  
**1993 - 2007**

<b>Statement</b>	<b>Number</b>	<b>Percentage</b>
Condemnatory	46	64.8%
Absolute	9	12.67%
Suspension of the Process a Test	13	18.30%
Rebellion	3	4.22%
Total	71	100%

**Table N <sup>3222</sup>**  
**Trafficking in Persons**  
**Cases**  
**2003 - 2007**

<b>Year</b>	<b>Active</b>	<b>Incompetence</b>	<b>Rejected</b>	<b>Definitive Dismissal</b>	<b>Accumulation</b>
<b>2003</b>		2	3		
<b>2004</b>		2	1		1
<b>2005</b>			2	1	
<b>2006</b>	3				
<b>2007</b>	1	1			

<sup>221</sup> Information provided by the Specialized Unit for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office of San José.

<sup>222</sup> Information provided by the Specialized Unit for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office of San José.

Based on Table 1, which shows the total number of cases accused of crimes of Commercial Sexual Exploitation of Minors between 1993 and 2007, it can be concluded, firstly, that the number of complaints filed cannot reflect what is happening in Costa Rican society; It can be concluded, in the first place, that the number of denunciations made cannot serve as a reflection of what is happening in Costa Rican society, so it would not be appropriate to conclude from this statistical example, that in Costa Rica the incidence of Commercial Sexual Exploitation of Minors is very low, this if we take as a reference that in the course of fourteen years only 87 crimes related to this illicit activity have been accused. On the contrary, with the numbers reflected in this table, instead of lowering our guard by thinking that if the number of accused cases is small, it means that the number of children and adolescents victims of this scourge is small, we should rather reflect on how effective have been the actions taken by the government and the rest of civil society to raise awareness in society regarding the issue of commercial sex with the use of children and adolescents.

First of all, it is of interest to highlight the provisions of national legislation on the subject of whistleblowing.

The Costa Rican Code of Criminal Procedure stipulates the following with respect to the complaint:

*"Article 278. Power to Report: Those who have notice of a crime of public action may report it to the Public Prosecutor's Office, to a court with criminal jurisdiction or to the Judicial Police, unless the action depends on a private instance. In the latter case*



*In such cases, only those who have the power to file a complaint, in accordance with this Code, may file a complaint.*

*The court that receives a complaint shall immediately bring it to the attention of the Public Prosecutor's Office*<sup>"223.</sup>

**"Article 279. Form:** *The complaint may be filed in written or oral form, personally or by special agent. In the latter case it must be accompanied by a power of attorney.*

*When it is verbal, a record shall be drawn up in accordance with the formalities established in this Code.*

*In both cases, the officer shall verify the identity of the complainant.*<sup>"224</sup>

**"Contents:** *The report shall contain, as far as possible, a detailed account of the act, indicating the perpetrators and participants, victims, witnesses and other elements that may lead to its verification and legal qualification*<sup>"225.</sup>

**"Obligation to report:** *There shall be an obligation to report offenses that may be prosecuted ex officio:*

a) *Public officials or employees who become aware of them in the performance of their duties.*

---

<sup>223</sup> Code of Criminal Procedure. Article 278. <sup>224</sup> Code of Criminal Procedure. Article 279. Costa Rica.

<sup>225</sup> Code of Criminal Procedure. Article 280.

*b) Physicians, midwives, pharmacists and other persons practicing any branch of the art of healing, who become aware of such facts when rendering the aid of their profession, unless the knowledge acquired by them is protected by law under the protection of professional secrecy.*

*c) Persons who by provision of the law, of the authority or by a legal act are in charge of the management, administration, care or control of assets or interests of an institution, entity or person, with respect to crimes committed to their detriment or to the detriment of the assets placed under their charge or control and provided that they become aware of the fact in the exercise of their functions.*

*In all these cases, the denunciation will not be obligatory if it reasonably risks the criminal prosecution of oneself, one's spouse, or relatives up to the third degree of consanguinity or affinity, or of a person who lives with the denouncer linked to him/her by special ties of affection*<sup>226</sup>.

For its part, the Childhood and Adolescence Code refers to the obligation to report, which falls on the personnel in charge of health centers, as well as educational centers, within which they may acquire a suspicion about some type of mistreatment or abuse committed against a minor under their care.

---

<sup>226</sup> Code of Criminal Procedure. Article 281. Costa Rica.

*"Article 49- Reporting of mistreatment or abuse. The directors and personnel in charge of health centers, public or private, where minors are taken for care, shall be obliged to report to the Public Prosecutor's Office any reasonable suspicion of mistreatment or abuse committed against them.*

*The authorities and personnel of educational centers, day care centers or any other place where these persons stay, are cared for or where any service is rendered to them shall have the same obligation "*<sup>227</sup>.

It is important to indicate that on the issue of Commercial Sexual Exploitation of minors and related crimes, it has been implemented as a judicial practice that the complaint is made anonymously, This is based on the fact that people who have knowledge of this type of crime often fear being victims of threats or reprisals by the actors of these criminal acts, this practice has been taken to the point that the complaint can be channeled through the 911 emergency line, encouraging this type of complaint even through advertising campaigns by mass media. It is precisely for this reason that a bill is currently before the Legislative Assembly whose main purpose is to provide adequate protection to both victims and witnesses of criminal acts, through the creation of a Protection Unit, which would be an entity attached to the Office of Attention to the Victim, which in turn belongs to the Public Ministry; this law is currently seen as indispensable, since, as stated by the words of the President of the Supreme Court of Justice himself, it would be necessary to create a Protection Unit, which would be an entity attached to the Office of Attention to the Victim, which in turn belongs to the Public Ministry; this law is currently seen as indispensable, since, as stated in the words of the President of the Supreme Court of Justice himself, it would be necessary to create a Protection Unit.

---

<sup>227</sup> Childhood and Adolescence Code. Article 49.

Justice, Luis Paulino Mora, *"The underworld is coercing people to seek impunity."*<sup>228</sup> This clearly illustrates the need that the Public Prosecutor's Office has had to apply the practice of receiving complaints related to commercial sexual exploitation of minors anonymously, since if this were not done, there would be many times in which, due to fear, the complaint would not be carried out, thus increasing the rate of impunity.

In addition, it should be recalled that since the enactment of Law 8590, crimes related to the sex trade with the use of minors are considered crimes of public action, so that the provisions of Article 278 of the Code of Criminal Procedure may be applied, which means that any person who has knowledge of the criminal act may file a complaint.<sup>229</sup>

*"Articles 18, 31 (a) and 33 of the Code of Criminal Procedure, Law No. 7594 of April 10, 1996, are hereby amended. The texts shall read:*

***"Article 18.- Crimes of public action that can only be prosecuted at private request***

*They shall be crimes of public action that may be prosecuted at private instance:*

*a) Contagion of disease and rape of a person of full legal age.*

---

<sup>228</sup> Arguedas, Carlos. Court claims protection. Hampa attacks witnesses. La Nación newspaper. December 14, 2007.

<sup>229</sup> Information extracted from an interview with Eugenia Salazar Elizondo, director of the Specialized Unit for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office of San José.

- b) *Sexual assaults, neither aggravated nor qualified, against persons of legal age.*
- c) *Minor and negligent injuries, abandonment of persons, concealment of impediments to marriage, simulation of marriage, threats, violation of domicile and usurpation.*
- d) *Failure to comply with the duty of support or the duty of assistance and failure to comply with or abuse of parental authority.*
- e) *Any other crime defined as such by law.* <sup>230</sup>

It is therefore clear that if there is a relatively low number of complaints in a period of fourteen years, this is a true reflection of the ineffectiveness of the decisions that have dealt with the issue, and of the social tolerance that prevails in this regard. This is because there is a clear lack of concern for reporting this type of crime, which may be justified by several circumstances; In the first place, it may be that the communication campaigns aimed at the general population have not had the expected effects, and therefore there is a lack of knowledge about the issue of Commercial Sexual Exploitation of Minors in general, the ways in which it is materialized, as well as the fact that these actions constitute crimes punishable by law, and specifically, a lack of information about who is called to denounce and how to proceed with the denunciation. All this indicates the need for more concrete actions, by means of which the population

---

<sup>230</sup> Law 8590. This article amends Article 18 of the Code of Criminal Procedure, stipulating that crimes of commercial sexual exploitation are crimes of public action.

The victim may feel called and committed to denounce, but above all to handle the fact that the denunciations in this type of case can be made anonymously and even through the 911 emergency line, since another excuse for not making a denunciation in these cases is the fear of the people, Often neighbors of the place where the criminal activity takes place, fear of being involved in a judicial process, with all the consequences that this implies, and even more so when they are aware that Commercial Sexual Exploitation is often an organized crime related to drug trafficking.

However, it should not be overlooked the fact that in many cases the reason for not filing a complaint is simply the high degree of social tolerance that exists regarding this issue. For this reason, the proposals that are formulated around this form of violation of the human rights of children and adolescents, should cause as one of its main guidelines to eliminate this tolerance and therefore create real awareness about the issue and very specifically about the factors that lead a minor to be a victim of these situations, managing to eradicate all those social stereotypes that what they do is to revictimize these children and adolescents.

It is extremely important to analyze the results shown in Table 2, which only takes into account the cases that have been taken to court. Of the 87 cases accused in the period 1993 - 2007, 81 of them have been brought to court. Of this total number, 56.79% have been convicted, which means that in 46 of these 81 cases it was possible to prove the commission of the criminal conduct, which led to a conviction; however, in 35 of these cases it was not possible to obtain a conviction for various reasons. In three of these cases, the status of Reo rebelde was declared, and for this reason, a conviction was issued.

On the other hand, in 13 of these cases the judicial benefit of Suspension of Trial on Probation was applied, which means that although a conviction was reached, the judges considered that due to the amount of the sentence and because it was the first criminal activity of the accused, it was appropriate to apply another sanction other than prison, applying Costa Rican criminal legislation.

It is important to highlight the fact that 9 of the 81 cases resulted in acquittals, which indicates that the participation of the accused in the criminal activity was not satisfactorily proven. This is not to say that it is not satisfactory in the issue of Commercial Sexual Exploitation, that there are acquittals and that on the contrary, the only positive thing is that there are only convictions; but what is important is to understand what happens with the cases that do not really resolve the merits of the case, such as when there is a declaration of default, and whether the national legislation allows the work of the Judiciary to be hindered. Some of the studies that have been carried out in Costa Rica on the issue of Commercial Sexual Exploitation of Minors express the fact that although this country is at the forefront of this issue, compared to other countries in the Region, there is a lack of legislative reforms that better regulate this type of criminal actions, considering that there are still gaps in the legislation regarding the crime and in the laws referring to the criminal process that often favor impunity for those who commercialize with children and adolescents<sup>231</sup>.

---

<sup>231</sup> International Labor Organization. Commercial Sexual Exploitation of Minors in Costa Rica / ILO San José, Costa Rica. 2002.

With respect to this issue, the Thirteenth State of the Nation Report states that only 7.7% of the cases reported and that reach the judicial process are brought to trial.

However, with the approval in August 2007 of Law No. 8590, *"Law for the Strengthening of the Fight against the Commercial Sexual Exploitation of Minors through the reform and addition of several articles to the Penal Code, Law No. 4573, and the reform of several articles of the Code of Criminal Procedure, Law No. 7594"*, the expectations regarding this issue become positive, since this law intends to fill many legal gaps that had been discovered with the application of the previous law, Law No. 7899. Expectations on this issue are positive, since this law intends to fill many of the legal gaps that had been uncovered with the application of the previous law, 7899, both from the penal level, meaning in the classification and qualification of criminal activities, as well as in what refers to the procedural, since with this new legislative instrument, those activities by means of which children and adolescents are sexually traded are considered as a crime of public action; The possibility of reaching an agreement with the party is denounced beforehand. Continuing with the procedural issue, it was legislated so that the statute of limitations for this type of crime begins to run from the moment the victim reaches the age of majority; this is so that when the victim reaches the age of eighteen, he/she can decide whether or not to file a criminal proceeding against the person who abused him/her, and not that when he/she becomes an adult the doors have been closed because the statute of limitations has already expired.



***"Article 31. Statute of limitations for criminal prosecution***

*If criminal prosecution has not been initiated, the action will be barred by the statute of limitations:*

*a) After a term equal to the maximum sentence has elapsed, in crimes punishable by imprisonment; it may not exceed ten years nor be less than three, except in sexual crimes committed against minors, in which the statute of limitations shall begin to run from the time the victim has reached the age of majority. (...) "*<sup>232</sup>

In view of this reform, it is necessary to wait for time to pass and for the reform to begin to be applied, in order to determine whether it is effective or whether it is still necessary to carry out more regulations at the legislative level, which is why a vigilant posture must be maintained.

On the other hand, at the judicial level, one of the most transcendental points and the need for an immediate solution is the fact that criminal investigation lacks financial and human resources to confront organized networks.

This is reflected in the words of Eugenia Salazar Elizondo, Prosecutor in charge of the Specialized Unit for Sex Crimes and Domestic Violence of the Public Prosecutor's Office of San José, who explains that in the

---

<sup>232</sup> Code of Criminal Procedure. Article 31. Includes the amendment made by Law 8590, regarding the statute of limitations of criminal action in sexual crimes committed against minors.

Regarding the budgetary issue, what exists is a basic budget assigned to the Judicial Branch, which in turn proceeds to determine an amount directed to the Public Prosecutor's Office, which uses it basically for the payment of salaries, without taking into account an item for the investigation as such, This is carried out jointly with an investigating prosecutor and the Judicial Investigation Organism, the Administrative Police and Immigration, entities that must provide both human and economic resources, often with money from the own pockets of those who carry out the investigation, as for example when an investigative process is carried out with undercover police.

In addition to the budgetary issue, another of the things that have been left behind in this matter is the training of the Administrative Police, which is in the end the one that carries out the investigation as such, or so to speak, the field work. This is due to the fact that although it is true that the Public Prosecutor's Office coordinates the investigative strategy, at the end of the day it is the Judicial Investigation Agency that decides how to carry out this strategy. It is at this point where it is necessary that there is a real training for the personnel who carry out the actions, since it is necessarily required that they are given within the framework of legality and there is not a bad approach to the matter with which the evidence that arises cannot be used, it is pitiful to say that there are many cases in which due to lack of knowledge the evidence collected in an investigation cannot be used, because it has not been done with the necessary expertise.

In the specific case of San José, the Public Prosecutor's Office has a Specialized Unit for Sexual Crimes and Domestic Violence, which has only 6 prosecutors and 6 assistants; of these prosecutors, 4 work on a daily basis.

The first two work specifically on Sexual Crimes and Domestic Violence and the second on Commercial Sexual Exploitation of Minors, but they also deal with Domestic Violence, which means that in the Public Prosecutor's Office of San José there are only two prosecutors assigned to deal with cases of Commercial Sexual Exploitation, which reflects the lack of specialized personnel to deal with this type of cases.

Continuing with the budgetary issue, it is important to emphasize how difficult it is in many cases to address this type of crime, especially when it comes to sex tourism, due to the fact that a lot of publicity and reservations are handled through the Internet, which requires a budget that contemplates a series of technical conditions, which to this day the Public Prosecutor's Office does not have.

On the other hand, much of what is happening at the judicial level suggests that the legal reform has not had an impact on the punishment of "client-exploiters", firstly because of the lack of complaints, but also because of the difficulties that arise in the processing of evidence. In this regard, it is said that although accusations have been made against persons who appear as "client-exploiters", the problem is that in some cases their actions are intermingled with those of pimps. In addition to this type of problem, at the time of the trial, it becomes complicated the approach made by the victim, who for various reasons change their version, or make cover-up stories, in order to protect themselves, or even the accused.

In addition, it is extremely important to highlight the need to train the officials who run the Costa Rican Judiciary, because it is necessary to create awareness among the judges of the Republic that these children and adolescents are people who have fallen victims of this type of crime and are not being treated as victims of this type of crime.

have sought, as is sometimes thought. It is important that the Judiciary invests in the training of these officials, so that they are not guided only by the personality, if it can be called that, of the minors who come as victims to the trial, it is necessary that they are educated to be able to identify when they are facing a case of Commercial Sexual Exploitation of Minors, as well as to be able to understand the victims<sup>233</sup>.

There are still many things to be done at the judicial level, however, we must wait for the implementation of law number 8590, to see if it will facilitate a little the operation of the Public Prosecutor's Office, but without leaving aside the need for a specific budget, as well as the urgency of training the people who directly operate the judicial system.

### **5.3 Level of Care for Victims**

In the area of victim assistance, and despite the efforts made, to date there is still a lack of a comprehensive model, based on compliance with the Code of the Rights of the Child, that effectively achieves, through detection, attention and follow-up, true protection against organized crime, both for current and potential victims according to their level of social, economic and family risk.

*"...the Committee notes the lack of a system for the care of victims with a rights-based approach that takes into consideration gender and age, as well as the area of*

---

<sup>233</sup> The statements made in this section are the conclusions drawn from the interview with Eugenia Salazar Elizondo, director of the Specialized Unit for Sexual Crimes and Domestic Violence of the Public Prosecutor's Office of San José.

*protection and care*

*does not have sufficient  
resources* .<sup>234</sup>

It is undeniable that in an issue as complicated as the Commercial Sexual Exploitation of Minors, to raise and carry out a strategy of Attention to the Victim is something that is extremely difficult, this because from the beginning, in many occasions not even the victim visualizes herself as such, It is necessary to talk with the person who is being used in the sex trade, as well as with his or her family, but the most important thing is that for this conversation to bear positive fruits, it is necessary that the person who is carrying it out has something positive to offer to this minor<sup>235</sup>. It is precisely here where a true functionality of the 2008-2010 National Plan is expected, with which it is intended to apply a Cyclical Model of Articulated Attention, through which all the institutions related to the issue act to provide the victim and her family with better living conditions.

Another important point regarding the care of victims is that since Commercial Sexual Exploitation and the activities by which it is manifested, a crime that has often been related to organized crime, it is necessary to create institutional shelters in which the victim is provided with greater security and therefore are not within the reach of all people. This is an issue that really needs to be worked on, since it is a crime that has often been linked to organized crime.

---

<sup>234</sup> Committee on the Rights of the Child. Comments to the report submitted by the State party under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Forty-fourth Session. 2007.

<sup>235</sup> Conclusions presented by Ms. Elizabeth Ballesterio. Head of the Secretariat of the National Commission against Sexual Exploitation.

that to date, the Patronato Nacional de la Infancia does not have this type of security.

#### **5.4 Challenges**

There is no doubt that in order to effectively prevent and combat the issue of Commercial Sexual Exploitation of Minors, Costa Rica needs to move towards a more equitable social and economic model, which remains a basic strategy to deal with the vulnerability of children and adolescents from the poorest sectors of the population to the child sex trade.

It is essential for the Costa Rican government and society to take a break from the patriarchal culture and power roles and propose different forms of relationships between men and women, adults and minors, in order to satisfactorily guarantee the fulfillment of human rights without distinction of gender and age.

It is necessary, in addition to legislative reforms, to maximize judicial resources for the true enforcement of laws, as well as for a prosperous performance of criminal investigations, without neglecting the need to develop and implement a model of comprehensive care for victims that guarantees their right to protection.

Based on the reasoning up to this point, the main challenges faced by the Costa Rican State to successfully combat the Commercial Sexual Exploitation of Girls are set out below,

Children and Adolescents, and to vindicate the human rights of those minors who have been and are victims of this scourge.

As a first point, it is necessary to implement both in programs and specific actions all those commitments acquired by the State of Costa Rica with the ratification of the Convention on the Rights of the Child, as well as other international instruments that ensure the welfare of children and adolescents, such as Protocol 187 of the International Labor Organization for the Eradication of the Worst Forms of Child Labor, in which specific reference is made to commercial sexual exploitation. It is essential that concrete actions be taken to turn all these commitments into something more than just good intentions, and within which the vindication of minors as subjects of rights is of paramount importance.

Continuing with this same theme, it is transcendental that the impulse and effective development of universal policies be given to directly attack all those social, economic and ideological factors that promote both the vulnerability of the underage population to commercial sexual exploitation and the proclivity to commit this crime. It is very important to directly combat the factors of vulnerability, but at the same time to implement a policy of zero tolerance towards any action that seeks to turn a minor into a victim of the sex trade, which is why it should be adopted as a judicial policy to prosecute all these actions and the people who carry them out in order to discourage the development of such criminal activities, both those deployed by pimps and intermediaries, as well as by clients - exploiters, including of course those who are foreigners.

The promotion and implementation of intersectoral and institutional programs aimed at early prevention and care of minors at risk of commercial sexual exploitation or who are already involved in it is of utmost importance. At this point it should be pointed out that this is precisely what the new National Plan against Commercial Sexual Exploitation aims to achieve, through which a series of components to work on were proposed and different governmental and non-governmental bodies were appointed as the entities responsible for the development of the goals set.

Within this national plan, another of the challenges to be faced is to develop comprehensive care programs for victims with a focus on rights and a generational approach, aimed at the protection and restitution of all the rights that are taken away from them at the time they become victims of commercial sexual exploitation and often even before it occurs. The plan foresees it through the application of a Cyclical Model of Articulated Attention, through which it is proposed that all institutions act to provide the victim and her family with better living conditions, applying precisely these approaches.

Likewise, it is necessary to carry out constant revisions at the legislative level, so that national legislation is in line with the international instruments ratified by the Costa Rican State. It is also important to be alert with regard to the application of Law Number 8590, *"Law to Strengthen the Fight against the Commercial Sexual Exploitation of Minors through the reform and addition of several articles to the Penal Code, Law No. 4573, and the reform of several articles of the Code of Criminal Procedure, Law No. 7594"*, in order to identify how effective the judicial process becomes with



implementation of the same, as well as if it becomes necessary to carry out some type of reform in this regard.

Another major challenge is the allocation of a specific budget to combat crimes of Commercial Sexual Exploitation, based on the fact that these are often organized groups and networks whose investigation requires high-tech resources, as well as specialized training on the subject.

Finally, one of the greatest challenges for Costa Rican society is the implementation of a zero tolerance policy, which involves strategic actions that are coordinated and, above all, sustainable, meaning that they are not susceptible to changes in government administration, otherwise they would become weak and limited to a time frame of only four years, which would make them ineffective.

In addition to all this, it is necessary that the highest governmental authority in the area of Children and Adolescents, such as the National Children's Trust, enjoys the necessary legitimacy, since it is the entity called to lead all protection processes related to minors, such as the National Plan against Commercial Sexual Exploitation of Children and Adolescents.

However, the most important thing is to create a social policy in which all people living in Costa Rica feel responsible and, above all, called to act in situations of Commercial Sexual Exploitation of Minors.

zero tolerance for this type of violation of the rights of children and adolescents.

## **Conclusions**

Commercial Sexual Exploitation of Children and Adolescents consists of the use of children and adolescents, with or without their consent, for the sexual satisfaction of adults in exchange for remuneration in money or in kind to the minor or third parties. It is a violation of the fundamental human rights of children and adolescents, a form of sexual abuse, which is transformed into a forced and harmful income-generating activity, which is why it is compared to a modern form of slavery.

According to UNICEF data, there are at least two million minors in the world who are victims of the sex industry; for its part, the World Trade Organization has stated that sex tourism, especially that associated with minors in Latin American and Asian countries, mobilizes more than sixteen million dollars a year, making it the third most profitable illicit business in the world after drug and arms trafficking.

Given this situation, Costa Rica has not escaped from seeing minors being victims of Commercial Sexual Exploitation, which is why it has seen the need to update its legislation on the protection of children and adolescents, as well as to improve programs to combat this form of child abuse.

However, despite the efforts and achievements that have been made, much remains to be done; thus confirming the hypothesis put forward at the beginning of this research, namely:

*"Commercial Sexual Exploitation of Minors is an irrefutable reality in Costa Rica, and the Costa Rican State has assumed a series of international commitments, which have not yet been satisfactorily fulfilled".*

First of all, Costa Rica needs to move towards a more equitable social and economic model, because although it is true that in 2006 the country achieved greater economic development, this benefit for the nation did not translate into a better distribution of wealth; on the contrary, the rich became richer and the poor continued to be poorer.

Likewise, it is necessary to implement in specific programs and actions the commitments acquired by the Costa Rican State with the ratification of the various international instruments that ensure the welfare of children and adolescents; it is essential that concrete actions be taken so that these commitments become tangible achievements and do not remain only on paper.

It is transcendental to directly attack all those social, economic and ideological factors that promote both the vulnerability of the underage population to commercial sexual exploitation and the proclivity to commit this crime. It is extremely important to directly combat the factors of vulnerability, but at the same time to implement a policy of zero tolerance towards any action that seeks to turn a minor into a victim of the sex trade, which is why it should be adopted as a judicial policy to prosecute all these actions and the people who carry them out in order to discourage the development of these criminal activities, both those carried out by pimps and pimps, as well as those who commit these crimes.

intermediaries, as well as by client-exploiters, including, of course, those who are foreign.

In order to reach these conclusions, it was necessary to previously fulfill the objectives set as the basis of the research, which were reflected one by one in the chapters that make up this research work.

The first objective was *"To elaborate a theoretical framework on the topic of Commercial Sexual Exploitation of Minors, in order to understand it in the most adequate and complete way"*. This objective is faithfully reflected in the development of the first chapter of the research, which is precisely titled "Concepts", and within which the main topics related to the phenomenon of Sexual Commerce with the use of Children and Adolescents are addressed, such as Commercial Sexual Exploitation of Minors, the ways in which it is materialized, such as human trafficking, child prostitution<sup>236</sup> and child pornography; Factors associated with the development of the commercial sex trade of children and adolescents, as well as those related to the promotion of so-called sex tourism, among other relevant terms.

The second objective that was established was to *"Analyze the main international instruments that regulate the Commercial Sexual Exploitation of Minors, and which in turn have been ratified by the Costa Rican government"*. This objective is addressed in the second chapter of this research work, entitled "Legal Framework", which includes both international and national legislation. The international legislation includes international treaties and conventions that have been

---

<sup>236</sup> It should be remembered that in Costa Rica the term child prostitution is not used, but rather the generic form of Commercial Sexual Exploitation of Minors.

The Costa Rican State has ratified a number of international treaties that aim to protect the human rights of children and adolescents, such as the Convention on the Rights of the Child, Convention 182 on the worst forms of child labor, the Inter-American Convention on International Trafficking in Minors, among others. It also includes a section on extraterritorial legislation, which is transcendental in the issue of sex tourism, since it allows the prosecution of this criminal act even when the exploiter has already left the territory in which the commercial sexual exploitation of a minor was carried out. With respect to national legislation, it includes the most transcendental in the protection of the rights of minors, as well as that related to crimes related to sexual commerce with the use of children and adolescents, such as the Political Constitution of Costa Rica, the Code of Children and Adolescents, Law Number 7899 and Law Number 8590, among others.

The third chapter, "Commercial Sexual Exploitation of Minors in Costa Rica", addresses the third objective stipulated for the research, *"To study the real situation experienced by Costa Rican children in terms of the problem of Commercial Sexual Exploitation"*, by means of an analysis of the economic and social situation of the country in general, in order to visualize how vulnerable the situation of Costa Rican children and adolescents is; This is due to the fact that in spite of the studies carried out in the country on the subject of the sexual commerce of minors, it has not been possible to locate the number of children and adolescents who are victims of it.

The fourth objective of this study consists of an *"Analysis of the Draft Code of Conduct against Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism, which is being implemented by the Paniamor Foundation, as well as the National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents, which is being implemented by the Paniamor Foundation, as well as the National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents related to travel and tourism."*

It is precisely in function of this objective that the fourth chapter is developed, in which we proceed to analyze the Action Programs against the *Commercial Sexual Exploitation of Children and Adolescents 2008-2010*, which represents the proposal of the Costa Rican government with respect to the topic". The chapter is divided into four sections in which the following topics were investigated: the National Commission against Sexual Exploitation (CONACOES), the Axes of Action to eradicate the commercial sexual exploitation of minors, the draft Code of Conduct of the Paniamor Foundation, and the State Policies, specifically the National Plan for the eradication of Commercial Sexual Exploitation of Children and Adolescents.

Finally, a fifth chapter is developed, called "What remains to be done?", by means of which the fifth objective of this research, *"To create proposals related to the pending tasks based on the commitments acquired by the Costa Rican government in relation to the fight against the Commercial Sexual Exploitation of Minors"*, was developed. This was achieved through the analysis of the pending tasks at the legislative and judicial level, as well as in the care of victims, to finally raise the pending challenges for society and the Costa Rican State; as well as the most suitable ways to address each of them.

Costa Rica today faces two new challenges, the application of Law Number 8590, Law to strengthen the fight against the commercial sexual exploitation of minors, as well as the implementation of the National Plan for the eradication of commercial sexual exploitation of children and adolescents.

rights to all those children and adolescents who are or have been victims of Commercial Sexual Exploitation.



## **Bibliographic References**

- Arguedas, Carlos.

Court claims protection. Hampa attacks witnesses. La Nación newspaper, December 14, 2007.

- Catalan Association for Abused Children.

Child Prostitution and Tourism. 2006.

- Bruna Vásquez, Nora.

Approach and conceptualization of sexual violence against minors: training manual. Defence for Children International, Costa Rica Section. 2003.

- Alliance House.

Peace has not come to them: street children in Central America. San José, Costa Rica. 2000.

Regional Research on trafficking, prostitution, child pornography and sex tourism in Mexico and Central America. San José, Costa Rica. 2002.

Comprehensive care program for child and adolescent victims of trafficking and commercial sexual exploitation. San José, Costa Rica. 2004

- Cantero, Marcela.

Evaluation of the Millennium Development Goals. Males drop out and fail in secondary school more than females. La Nación Newspaper. November 30, 2007.

- Claramunt, Cecilia

Commercial Sexual Exploitation. The critical route to child prostitution. San José, Costa Rica. UNICEF / University of Costa Rica. 1998.

Costa Rica. Commercial Sexual Exploitation of Minors: a rapid assessment. ILO / IPEC. Geneva, 2002.

What can I do to combat Commercial Sexual Exploitation?  
O.I.T / IPEC. San José, Costa Rica. 2005.

- Host Committee of the World Congress against Commercial Sexual Exploitation of Children.

Report of the World Congress against Commercial Sexual Exploitation of Children. Sweden, 1996.

- Committee on the Rights of the Child.

Comments to the report submitted by the State party under article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Forty-fourth Session. 2007.

- National Commission against Commercial Sexual Exploitation of Children and Adolescents in Costa Rica. (CONACOES).

Commercial Sexual Exploitation: A struggle without borders. San José, Costa Rica.

National Plan for the Eradication of Commercial Sexual Exploitation of Children and Adolescents in Costa Rica. 2008 - 2010.

- National Commission for the Improvement of the Administration of Justice. (CONAMAJ).

Workshop on police training, prevention, investigation and comprehensive treatment of commercial sexual exploitation. San José, Costa Rica. 2003.

- ECPAT International.

Some questions about Commercial Sexual Exploitation of Children and their answers.

Basic Manual for police intervention with children and adolescent victims or at risk of Commercial Sexual Exploitation. San José, Costa Rica. 2004. (together with Fundación Paniamor)

- State of the Nation.

Thirteenth State of the Nation Report. San José, Costa Rica, November 2007.

- Paniamor Foundation.

Commercial Sexual Exploitation of Children and Adolescents.

Commercial Sexual Exploitation of Children and Adolescents: A View from Central America. 2006.

Institutional Framework. 2000.

Code of Conduct Process in Costa Rica. 2007.

Draft Code of Conduct against Commercial Sexual Exploitation of Children and Adolescents. 2003.

Draft Code of Conduct against Commercial Sexual Exploitation of Children and Adolescents. Costa Rican Experience. 2006.

- Grillo, Milena.

Commentary to the Law against Commercial Sexual Exploitation of Minors in Costa Rica.

- Guevara Paniagua, Adriana.

Commercial Sexual Exploitation of Minors. Casa Alianza. San José, Costa Rica. 2004.

- National Women's Institute. (INAMU).

Law against Commercial Sexual Exploitation of Minors. San José, Costa Rica. 2000.

- Lemineur, Marie-laure.

The fight against child pornography on the Internet: the case of Costa Rica. San José, Costa Rica. 2006.

- Marín, J.

The causes of Josephine Prostitution: 1939-1949. Revista de Historia No. 27. Universidad Nacional, Costa Rica.

- International Labor Organization. (ILO).

Commercial Sexual Exploitation of Minors in Costa Rica. O.I.T. San José, Costa Rica. 2002

A look at child labor. 2004

Commercial Sexual Exploitation and Masculinity. A regional qualitative study with men from the general population. San José, Costa Rica. 2004.

Latin American experts share experiences in combating child sexual exploitation in Cartagena. [www.oit.org.pe](http://www.oit.org.pe)

Project: "Contribution to the prevention and elimination of commercial sexual exploitation of minors in Central America, Panama and the Dominican Republic".

- World Tourism Organization. (UNWTO).

Global Code of Ethics.

Declaration on the Prevention of Organized Sex Tourism. 1995.

Guidelines for National Tourism Administration Liaisons. For the Protection of Children from Sexual Exploitation in Tourism.

- United Nations. (UN).

Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation of Children. 1996

- United Nations Educational and Scientific Organization. (UNESCO).

Education for All by 2015: Will we achieve the goal? Chile, 2007.

- Pan American Health Organization.

Social violence in Costa Rica. Ministry of Health, Costa Rica. 2004.

- National Children's Trust. (PANI). Ministry of Public Security. Ministry of the Presidency. Legislative Assembly.

Commitment and Actions against the exploitation of children and adolescents. San José, Costa Rica. 2004.

- Regional Workshop for the Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents in Central America, Panama and the Dominican Republic: Support for the Design of Strategies and Action Plans.
- Treguear, Tatiana. Carro, Carmen.

Prostituted Girls: Costa Rica case. UNICEF, Costa Rica, 1994.

Prostituted Girls and  
Adolescents : social silence and  
violation of rights. San José, Costa Rica. 1997.

Prostituted  
girls:violation of rights and social silence . PROCAL  
Foundation, Costa Rica. 1998.

- United Nations Children's Fund. (UNICEF).

States of the Rights of Children and Adolescents in Costa Rica. San  
José, Costa Rica. 2001.

- Unit specialized in Sexual Crimes and Domestic Violence.

Statistics on cases of commercial sexual exploitation of minors.

Statistics on human trafficking cases.

#### International Conventions

- American Convention on Human Rights.
- United Nations Convention on the Rights of the Child
- Convention against Torture and Other Forms of Cruel, Inhuman or  
Degrading Treatment.
- Convention 182 on the Worst Forms of Child Labor.



- International Convention against Transnational Organized Crime. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- Inter-American Convention on the International Return of Children.
- Inter-American Convention on International Traffic in Minors.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.
- Convention on the Elimination of All Forms of Discrimination against Women.
- Convention for the Suppression of the Circulation of and Traffic in Obscene Publications.
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
- Stockholm Declaration and Program of Action, 1996.
- International Covenant on Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

### National Legislation

- Political Constitution of the Republic of Costa Rica
- Family Code (Law 5456 and its reforms)
- Childhood and Adolescence Code
- Penal Code
- Code of Criminal Procedure
- Executive Orders
- Law for the Promotion of Women's Social Equality
- Law No. 1917. Organic Law of the Costa Rican Tourism Institute.
- Law No. 6054. Organic Law of the Ministry of Economy, Industry and Commerce.

- Law against Sexual Harassment in the Workplace and in Teaching (Law 7476 of 1995)
- Law against Domestic Violence (Law 7586)
- Organic Law of the National Children's Trust (Law 7648)
- General Law for the Protection of Adolescent Mothers (Law 7735)
- Law No. 7899
- Responsible Parenthood Act
- General Law of the Young Person (Law 8261)
- HIV/AIDS Law (Law 7771)
- Law for the Registration, Seizure and Examination of Private Documents and Intervention of Communications (Law 8200)
- Law No. 8590
- Regulations for Tourist Lodging Companies.

### Interviews

- Ballesteros, Elizabeth. CONACOES Technical Secretariat
- Guillén, María Teresa. Paniamor Foundation
- Salazar Elizondo, Eugenia. Specialized Unit against sexual crimes and domestic violence.

# ANNEXES

---

***Law against the sexual exploitation of minors***

**No. 7899 of August 3, 1999**

**Published in La Gaceta No. 159 of August 17, 1999.**

---

N° 7899

**LAW AGAINST THE SEXUAL  
EXPLOITATION OF MINORS**

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA

Decree:

Sole Article: Articles 156, 159, 160, 161, 161, 162, 167, 168, 169, 170, 171, 172, 173 and 174 of the Penal Code of the Republic of Costa Rica, Law No. 4573 of May 4, 1970, are hereby amended. The texts shall read:

**"Violation**

Article 156.-It shall be punished with imprisonment from ten to sixteen years, whoever gains access or has carnal access, orally, anally or vaginally, with a person of either sex. in the following cases:

- 1) When the victim is under twelve years of age.
  - 2) When the victim is unable or incapacitated to resist.
  - 3) When corporal violence or intimidation is used. The same penalty shall be imposed if the action consists of introducing, vaginally or anally, one or more fingers or objects.
- (...)"

**"Sexual relations with underage persons**

Article 159.-Whoever, taking advantage of his age, gains access or has oral, anal or vaginal access to a person of either sex, older than twelve years of age and younger than fifteen, even with his consent, shall be punished with imprisonment from two to six years. The same penalty shall be imposed if the action consists of introducing, vaginally or anally, one or more fingers or objects. The penalty shall be four to ten years' imprisonment when the victim is over twelve years of age and under fifteen years of age.

eighteen years of age, and the agent is an ascendant, uncle, aunt, brother or sister by blood or affinity, guardian or custodian.

### **Paid sexual relations with minors**

Article 160.-Whoever pays a minor of either sex or promises to pay or give him/her in exchange an economic advantage or of any other nature, so that he/she performs sexual or erotic acts, shall be punished:

1. With a prison sentence of four to ten years if the offended person is under twelve years of age.
2. With imprisonment from three to eight years, if the offended person is older than twelve years old but younger than fifteen years old.
3. With imprisonment from two to six years, if the offended person is older than fifteen years of age, but younger than eighteen.

### **Sexual abuse of minors and incapacitated persons**

Article 161.-Whoever abusively performs acts for sexual purposes against a minor or incapacitated person or forces him to perform them to the agent, to himself or to another person, provided that it does not constitute the crime of rape, shall be punished with imprisonment for a term of three to eight years.

The penalty shall be four to ten years in the following cases:

- 1) When the offended person is under twelve years of age.
- 2) When the perpetrator takes advantage of the vulnerability of the offended person or when the offended person is unable to resist or when corporal violence or intimidation is used.
- 3) When the perpetrator is an ascendant, descendant, sibling by consanguinity or affinity, stepfather or stepmother, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the victim's education, guardianship or custody.
- 4) When the perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship.

### **Sexual abuse against persons of legal age**

Article 162.--If the abuses described in the preceding article are committed against a person of legal age, the penalty shall be from two to four years.

The penalty shall be three to six years in the following cases:

- 1) When the perpetrator takes advantage of the vulnerability of the offended person or when the offended person is unable to resist or when corporal violence or intimidation is used.
  - 2) When the perpetrator is an ascendant, descendant, sibling by consanguinity or **affinity**, stepfather or stepmother, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the victim's education, guardianship or custody.
  - 3) When the perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, **whether** or not there is a family relationship.
- (...)"

### **"Corruption"**

Article 167.-Whoever promotes the corruption of a minor or incapable person or keeps them in it, shall be punished with imprisonment from three to eight years. The same penalty shall be imposed on whoever uses minors or incapable persons for erotic, pornographic or obscene purposes, in exhibitions or shows, public or private, of such nature.

For the purposes of this article, corruption is understood to mean:

- 1) Performing sexual or erotic acts in front of minors or incapable persons.
- 2) Causing others to perform sexual or erotic acts in the presence of minors or incapacitated persons.
- 3) Engaging, in sexual or erotic acts, minors or incapable persons in the presence of others.

### **Aggravated corruption**

Article 168.-In the cases of the preceding article, the penalty shall be four to ten years of imprisonment:

- 1) If the victim is under twelve years of age.
- 2) If **the** act is executed for profit.
- 3) If the act is executed with deceit, violence, abuse of authority or any other means of intimidation or coercion.
- 4) If the perpetrator is an ascendant, descendant or sibling by consanguinity or **affinity**, stepfather, stepmother, spouse or person in an analogous relationship of **cohabitation**, guardian or person in charge of the victim's education, guardianship or custody.
- 5) If the perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, **whether** or not there is a family relationship.



### **Pimping**

Article 169.-Whoever promotes prostitution of persons of any sex or induces them to engage in it or keeps them in it or recruits them for that purpose, shall be punished with imprisonment for a term of two to five years. The same penalty shall be imposed on whoever keeps another person in sexual servitude.

### **Aggravated pimping**

Article 170.-The penalty shall be from four to ten years of imprisonment when one of the actions provided for in the preceding article is carried out and any of the following circumstances also concur:

- 1) If the victim is under eighteen years of age.
- 2) If there is deception, violence, abuse of authority, situation of need of the victim or any means of intimidation or coercion.
- 3) If the person who performs the action is an ascendant, descendant, brother or sister by blood or affinity, spouse or person in an analogous relationship of cohabitation, guardian or person in charge of the education, guardianship or custody of the victim.
- 4) If the person who performs the action takes advantage of his or her relationship of trust with the victim or his or her family, **whether** or not there is a family relationship.

### **Rufianería**

Article 171.-Whoever coercively makes himself be maintained, even partially, by a person who exercises prostitution, exploiting the profits from such activity, shall be punished with imprisonment from two to eight years. The penalty shall be:

- 1) Imprisonment from four to ten years, if the offended person is under twelve years of age.
- 2) Imprisonment from three to nine years, if the offended person is older than twelve but younger than eighteen.

### **Trafficking in persons**

Article 172.-Whoever promotes, facilitates or favors the entry or exit of persons of any sex into or out of the country to engage in prostitution or to keep them in sexual or labor servitude, shall be punished with imprisonment of three to six years. The penalty shall be imprisonment of four to ten years, if any of the circumstances enumerated in aggravated pimping are present.

### **Manufacture or production of pornography**

Article 173.-Whoever manufactures or produces pornographic material, using minors or their image, shall be punished with imprisonment from three to eight years.

Any person who trades, transports or brings into the country this type of material for commercial purposes shall be punished with imprisonment from one to four years.

### **Dissemination of pornography**

Article 174.-Whoever trades, disseminates or exhibits pornographic material to minors or incapable persons, shall be punished with imprisonment from one to four years."

Effective as of its publication.

Presidency of the Republic, San José, on the third day of August, nineteen hundred and ninety-nine.

*Execute and publish*

MIGUEL ÁNGEL RODRÍGUEZ ECHEVERRÍA -The Minister of Justice and Grace,  
Mónica Nagel Berger.

*Strengthening the Fight against Sexual Exploitation of Minors by amending and adding several articles to the Penal Code, Law No. 4573, and amending several articles of the Code of Criminal Procedure, Law No. 7594.*

NO. 8590

THE LEGISLATIVE ASSEMBLY  
OF THE REPUBLIC OF COSTA RICA

DECREES:

**STRENGTHENING THE FIGHT AGAINST SEXUAL  
EXPLOITATION OF MINORS THROUGH THE AMENDMENT  
AND ADDITION OF SEVERAL ARTICLES  
TO THE PENAL CODE, LAW NO. 4573, AND  
AMENDMENT OF SEVERAL ARTICLES OF  
THE CODE OF CRIMINAL PROCEDURE, LAW  
NO. 7594.**

**ARTICLE 1.** Articles 156, 157, 159, 160, 161, 162, 167, 168 are hereby amended, 170, 171 and 173, and addition of 173 bis of the Penal Code, Law No. 4573 of May 4, 1970, as amended. The texts shall read:

## **"Violation**

### **Article 156.**

Shall be punished with imprisonment for a term of ten to sixteen years, whoever makes or has carnal access orally, anally or vaginally, with a person of either sex, in the following cases:

- 1) When the victim is under thirteen years of age.
- 2) When it takes advantage of the victim's vulnerability or the victim is unable to resist.
- 3) When corporal violence or intimidation is used.

The same penalty shall be imposed if the action consists of introducing one or more fingers, objects or animals into the victim's vagina or anus, or forcing the victim to introduce them herself.

## **Qualified rape**

### **Article 157.**

Imprisonment shall be from twelve to eighteen years, when:

- 1) The perpetrator is the victim's spouse or a person linked to the victim in an analogous relationship of cohabitation.
- 2) The perpetrator is an ascendant, descendant, sister or brother of the victim, up to the third degree by consanguinity or affinity.

- 3) The perpetrator is an uncle, aunt, niece, nephew, cousin or cousin of the victim, up to the third degree by consanguinity or affinity.
- 4) The perpetrator is a guardian or the person in charge of the victim's education, guardianship or custody.
- 5) Serious damage is caused to the victim's health.
- 6) Pregnancy occurs.
- 7) The conduct is committed with the concurrence of one or more persons.
- 8) The perpetrator carries out the conduct by taking advantage of a relationship of power resulting from the exercise of his position, and this is carried out by religious ministers, spiritual guides, members of the Public Force or members of the Supreme Powers".

**"Sexual relations with underage persons.**

**Article 159.**

Shall be punished with imprisonment from two to six years, whoever, taking advantage of the age, gains access or has carnal access to a person of either sex, older than thirteen and younger than fifteen years of age, by oral, anal or vaginal means, with his/her consent.

The same penalty shall be imposed if the action consists of the introduction of one or more fingers, objects or animals through the vaginal or anal canal.

The penalty shall be four to ten years of imprisonment when the victim is older than thirteen and younger than eighteen, and the agent is an ascendant, uncle, aunt, brother or sister by blood or blood relatives, guardian or guardian.

## **Paid sexual acts with underage persons**

### **Article 160.**

Whoever pays, promises to pay or give in exchange an economic or other advantage to a minor person or to a third party, so that the minor person performs sexual or erotic acts, shall be punished with the following penalties:

- 1) Imprisonment from four to ten years, if the offended person is under thirteen years of age.
- 2) Imprisonment from three to eight years, if the offended person is older than thirteen but younger than fifteen.
- 3) Imprisonment from two to six years, if the offended person is older than fifteen years but younger than eighteen years.

## **Sexual abuse of minors and incapacitated persons**

### **Article 161.**

Whoever, in an abusive manner, performs acts for sexual purposes against a minor or incapacitated person or forces him to perform them on the agent, himself or another person, provided that it does not constitute the crime of rape, shall be punished with imprisonment for a term of three to eight years.

The penalty shall be four to ten years imprisonment when:

- 1) The offended person is under thirteen years of age.

- 2) The perpetrator takes advantage of the vulnerability of the offended person, or the offended person is unable to resist, or physical violence or intimidation is used.
- 3) The perpetrator is an ascendant, descendant, sister or brother of the victim.
- 4) The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.
- 5) The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.
- 6) The perpetrator is the guardian or person in charge of the victim's education, guardianship or custody.
- 7) The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.
- 8) The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship.

### **Sexual abuse against persons of legal age**

#### **Article 162.**

If the abuses described in the preceding article are committed against a person of legal age, the penalty shall be two to four years' imprisonment.

The penalty shall be three to six years imprisonment when:

- 1) The perpetrator takes advantage of the vulnerability of the offended person, or the offended person is unable to resist, or physical violence or intimidation is used.
- 2) The perpetrator is an ascendant, descendant, sister or brother of the victim.
- 3) The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.

- 4) The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.
- 5) The perpetrator is the guardian or the person in charge of the victim's education, guardianship or custody.
- 6) The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.
- 7) The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".

## **"Corruption**

### **Article 167.**

Whoever promotes or maintains the corruption of a minor or incapable person, executing or causing another or others to execute perverse, premature or excessive sexual acts, even if the victim consents to participate in them or to see them executed, shall be punished with imprisonment of three to eight years, provided that it does not constitute a more serious crime.

The same penalty shall be imposed on anyone who uses minors or incapable persons for erotic, pornographic or obscene purposes, in exhibitions or shows, public or private, of such nature, even if the minors consent to it.

## **Aggravated**

### **corruption Article**

### **168.**

In the case of the preceding article, the penalty shall be four to ten years imprisonment, provided that:

- 1) The victim is under thirteen years of age.



2) The fact is executed for profit.

- 3) The act is executed with deceit, violence, abuse of authority or any other means of intimidation or coercion.
- 4) The perpetrator is an ascendant, descendant, sister or brother of the victim.
- 5) The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.
- 6) The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.
- 7) The perpetrator is the guardian or person in charge of the victim's education, guardianship or custody.
- 8) The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 4), 5) and 6) above.
- 9) The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship".

### **"Aggravated pimping**

#### **Article 170.**

The penalty shall be four to ten years of imprisonment, when one of the actions provided for in the preceding article is carried out and any of the following circumstances also concur:

- 1) The victim is under eighteen years of age.
- 2) There is deception, violence, abuse of authority, a situation of need of the victim or any means of intimidation or coercion.
- 3) The perpetrator is an ascendant, descendant, sister or brother of the victim.
- 4) The perpetrator is the victim's uncle, aunt, niece, nephew, cousin or cousin.
- 5) The perpetrator is the victim's stepmother, stepfather, stepsister or stepbrother.

- 6) The perpetrator is a guardian, or in charge of the victim's education, guardianship or custody.
- 7) The perpetrator carries out the conduct against any of the relatives of his spouse or cohabitant, as indicated in paragraphs 3) and 4) above.
- 8) The perpetrator takes advantage of his or her relationship of trust with the victim or his or her family, whether or not there is a family relationship.

### **Rufianería**

#### **Article 171.**

It shall be punished with imprisonment from two to eight years, whoever, coercively, makes himself be maintained, even partially, by a person engaged in prostitution, exploiting the profits from such activity.

The penalty will be:

- 1) Imprisonment from four to ten years, if the offended person is under thirteen years of age.
- 2) Imprisonment from three to nine years, if the offended person is older than thirteen, but younger than eighteen."

#### **"Manufacture, production or reproduction of pornography Article 173.**

Whoever manufactures, produces or reproduces pornographic material, using minors, their image and/or voice, shall be punished with imprisonment from three to eight years.

Any person who transports or brings into the country this type of material for commercial purposes shall be punished with imprisonment for a term of one to four years.

### **Possession of pornographic material**

#### **Article 173 bis.**

Whoever possesses pornographic material in which minors appear, either by using their image and/or voice, shall be punished with imprisonment from six months to two years."

**ARTICLE 2.-** Article 18, subsection a) of Article 31 and Article 33 of the Code of Criminal Procedure, Law No. 7594 of April 10, 1996, are hereby amended. The texts shall read as follows:

#### **"Article 18.- Crimes of public action that can only be prosecuted at private request**

They shall be crimes of public action that may be prosecuted at private instance:

- a) Contagion of disease and rape of a person of full legal age.
- b) Sexual assaults, neither aggravated nor qualified, against persons of legal age.
- c) Minor and negligent injuries, abandonment of persons, concealment of impediments to marriage, simulation of marriage, threats, violation of domicile and usurpation.
- d) Failure to comply with the duty of support or the duty of assistance and failure to comply with or abuse of parental authority.

- e) Any other offense that the law typifies as such."

**"Article 31.- Statute of limitations for criminal prosecution**

If criminal prosecution has not been initiated, the action will be barred by the statute of limitations:

- a) After a term equal to the maximum sentence has elapsed, in crimes punishable by imprisonment; it may not exceed ten years nor be less than three, except in sexual crimes committed against minors, in which the statute of limitations shall begin to run from the time the victim has reached the age of majority.

[...]"

**"Article 33.- Interruption of statute of limitations periods**

Once the proceeding has been initiated, the time periods established in the preceding article shall be reduced by half in order to compute them for the purpose of suspending or interrupting the statute of limitations. The statute of limitations periods shall be interrupted by the following:

- a) Appearance to render an indagatory statement, in crimes of public action.
- b) The filing of the complaint in private action crimes.
- c) When the conduct of the debate is suspended for causes attributable to the defense, with the purpose of hindering the normal development of the debate, according to the declaration made by the court in a well-founded resolution.
- d) The issuance of the sentence, even if it is final.

e) The preliminary hearing is scheduled.

f) The appointment of the date for the debate.

The interruption of the statute of limitations operates even in the event that the resolutions referred to in the preceding paragraphs are subsequently declared ineffective or null and void.

The judicial authority may not use as grounds for interruption of the statute of limitations other than those set forth in the preceding paragraphs."

### **ARTICLE 3.**

Section 92, subsections 7) and 8) of Section 93 and Section 158 of the Penal Code are hereby repealed.

Effective as of its publication.

Given at the Presidency of the Republic, San José, on the eighteenth day of July, two thousand seven.



