

**UCA CENTRAL AMERICAN
UNIVERSITY
Faculty of Legal Sciences**



Law Degree Candidacy Paper

**Comparative Analysis of the Commercial Sexual
Exploitation of Children and Adolescents from the
Nicaraguan Legislation with the Penal Code of Costa Rica.**

Author

Sandra Gilsai Arana Bermúdez

Tutor

Dr. Norberto Álvarez

December, 2010

**Managua,
Nicaragua**

INTRODUCTION

The general purpose of my research work is to provide a source of reference on Commercial Sexual Exploitation of Children and Adolescents, based on the provisions of the Penal Code in force in Nicaragua and with an analysis that will facilitate the understanding of the provisions of our legislators on this problem.

Commercial sexual exploitation is a phenomenon in which the adult views a person under eighteen years of age as a marketable object or product to satisfy his or her own desires, fantasies or economic needs.

Commercial Sexual Exploitation of Children and Adolescents should be considered as a lucrative and illegal activity that obeys a set of social practices typical of a culture of exercise of power and violence against those who, due to their historical condition of subordination, or due to their life circumstances, are usually weaker and more vulnerable. Due to this, the concern that stands out in this issue is based on the lack of knowledge of the population about the criminal regulations applicable in cases of Commercial Sexual Exploitation of Children and Adolescents.

For this reason, this research work is based on the current criminal legislation on Commercial Sexual Exploitation of Children and Adolescents, since the new Penal Code, Law 641, published in the Official Gazette numbers 83, 84, 85, 86 and 87 of May 5, 6, 7, 8 and 9, 2008. Two years after its entry into force, it is still important to address the issue and for this reason I have visualized the realization of this Comparative Analysis on Commercial Sexual Exploitation of Children and Adolescents from the Nicaraguan Legislation with the Penal Code of Costa Rica as a direct source of information.

Regarding the Commercial Sexual Exploitation of Children and Adolescents, the doctrine that will be used will be those projects and international regulations ratified and still in force by Nicaragua and our neighboring country Costa Rica.

GENERAL OBJECTIVE

To analyze the Nicaraguan Substantive Criminal Legislation in the light of Costa Rican Comparative Law on Commercial Sexual Exploitation of Children and Adolescents.

SPECIFIC OBJECTIVES

- I. To know the Background and General Concepts of Commercial Sexual Exploitation of Children and Adolescents.
- II. To carry out a comparative analysis of the Nicaraguan Substantive Criminal Legislation with Costa Rica regarding Commercial Sexual Exploitation of Children and Adolescents.
- III. Explain the Commercial Sexual Exploitation of Children and Adolescents from the Doctrine.

CHAPTER I

BACKGROUND AND GENERAL CONCEPTS OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS

1.1 Background

The crime of human trafficking has existed since ancient times, but globalization, increased trade and the impoverishment of large sectors of the world's population have led to an alarming increase in the number of victims, particularly children and adolescents. This has prompted the community of nations and international cooperation organizations to recognize the need to face with belligerence this scourge that affronts humanity¹ .

Human trafficking is an unquestionable violation of human rights. In the case of children and adolescents, it violates the principle of the best interest of the child; the right to life; the right to live and develop; the right not to be separated from his or her family; the right not to be transferred to another country; the right to express an opinion and be heard; the right not to be subjected to unlawful attacks on his or her honor and reputation; and the right to be protected from all forms of exploitation² .

The fight against the commercial sexual exploitation of minors has gone through several stages, both at the global level and in each of the countries of the Central American region³ .

Commercial sexual exploitation, as a form of sexual violence, had existed for centuries without having been analyzed as such, and when the eyes of the international community were finally opened to this undesirable social phenomenon, attention was focused particularly on children and adolescents, since it is a form of sexual violence.

-
- ¹ An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.
² An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.
³ Commercial sexual exploitation and masculinity / ILO / IPEC.

that they required urgent care programs and because they were the visible and shameful face of a society that had failed to protect them⁴ .

Commercial sexual exploitation is mainly carried out by men, with diverse socio-demographic characteristics, so it is worth asking what happens to them so that, under certain circumstances, they can become involved in paid sexual relations with minors.

Why is it that it is mostly men who are involved in this activity? In the context of patriarchy, men exercise unequal power relations with respect to other social sectors (women, boys and girls, adolescents, adults and older adults), and these power relations are also expressed in the area of sexuality, which may even include links through money.

Commercial sexual exploitation does not exist as an isolated practice, but is part of a whole system of discrimination and violence to satisfy patriarchal privileges.

The buying and selling of human bodies and subjectivities for sexual purposes is a form of violence and, within it, that carried out with minors (under eighteen years of age) is the extreme example of how the "acquisition or purchase" of whatever is valid in the mercantilist patriarchy.

Commercial sexual exploitation is considered one of the most grotesque and extreme forms of violation of the human rights of minors, threatening optimal conditions for the psychosocial development of the person⁵ .

⁴ Commercial sexual exploitation and masculinity / ILO / IPEC.

⁵ Commercial sexual exploitation and masculinity / ILO / IPEC.

Commercial sexual exploitation takes on two main forms of expression, child prostitution and pornography; and two particular ways of its realization, trafficking and sex tourism⁶ .

Violence is neither "normal" nor "natural". It damages people's physical, psychological and social integrity and harms their human rights. It is a cultural construct learned as we grow up. Society uses many reasons to justify it as a common way to resolve conflicts and a method to educate new generations, but it has no justification. The fact of living it as something "natural" means that people who are violated do not become aware of their situation, which can lead them to blame themselves or reproduce it in those who have less power, turning it into a vicious circle⁷ . Violence does not discriminate; it affects people of any race, age, sex, social class, academic level, religion, etc. Its different types cause physical and psychological harm. Generally, one type of physical violence and other types⁸ .

1.2 Concepts

CLIENT-EXPLORER⁹ : is the person who pays or promises to pay a minor or a third party for that minor to perform sexual acts directly with him/her. This act implies the commodification and objectification of a person's body for the performance of a sexual activity in exchange for an economic value, and is therefore considered an activity of exploitation, use and sexual exploitation to the detriment of the human rights of minors.

⁶ Paper rights and the role of rights / Carlos Emilio López Hurtado.

⁷ Violence against children and adolescents / Juan de Dios Bonilla.

⁸ Violence against children and adolescents / Juan de Dios Bonilla.

⁹ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

SEX EXPLORER / SEX TRADER¹⁰ : is the person who uses others, who are minors, to perform sexual activities in exchange for financial remuneration or economic advantage. It can be a sporadic activity or sustained over time.

SEXUAL EXPLOITATION¹¹ : is the participation of a person in prostitution, sexual servitude and/or production of pornographic materials, as a result of being subjected to threats, coercion, abduction, force, abuse of authority, debt bondage or fraud.

COMMERCIAL SEXUAL EXPLOITATION¹² : commercial sexual exploitation consists of the use of persons under eighteen years of age for paid sexual relations, child and adolescent pornography, use of children and adolescents in sexual performances, where there is also an economic exchange or other payment for the minor or for a third party intermediary in the sexual exploitation.

Commercial sexual exploitation is a serious violation of the fundamental human rights of persons under eighteen years of age, as well as a form of sexual violence and economic exploitation comparable to slavery and forced labor. According to international conventions and the Nicaraguan Penal Code it is conceived as a crime.

This behavior is considered by the International Labor Organization (ILO) as a severe violation of the human rights of minors, as a form of economic exploitation comparable to slavery and forced labor, which also implies a crime by those who use children and adolescents in the sex trade.

¹⁰ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

¹¹ An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.

¹² Commercial sexual exploitation and masculinity (summary of results) / ILO / IPEC.

INTERMEDIARY¹³ : is the person who performs activities to contact "clients-exploiters" with the sex trader or with the victim, or who, knowing this activity, provides a service that allows this activity to take place without receiving additional remuneration in return. The difference with the sex trader and the sexual exploiter is that the intermediary may be occasional or not, and performs an activity of cooperation for the sex trader and the sexual exploiter to carry out the criminal activity, collaboration that also becomes criminal because it is considered a form of complicity.

PERSON UNDER AGE¹⁴ : before the entry into force of the Doctrine of Integral Protection, the expression "minor" or "minors" was used, which referred to the conceptualization of the Doctrine of the Irregular Situation that distinguished between "boys and girls" and "minors". The latter were objects of control and discipline for their correction. This classification was clearly discriminatory and denied human rights to part of the child population. For this reason, the category "minor person" is of great importance, and not only a matter of language, which takes up again the condition of person, of human being, of subject of rights of those who are legally distinguished by age.

CHILD PORNOGRAPHY¹⁵ : any representation, by whatever means, of children engaged in real or simulated explicit sexual activities; any representation of their genitalia for primarily sexual purposes.

Article 34 of the International Convention on the Rights of the Child states: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. To this end, they shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent: the inducement or coercion of a child to engage in any form of sexual exploitation and sexual abuse.

¹³ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

¹⁴ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

¹⁵ An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.

unlawful sexual activity; the exploitation of children in prostitution or other unlawful sexual practices; the exploitation of children in pornographic performances or materials".

As an industry, it involves the production, distribution, trend and use of pornographic materials. This form of commercial sexual exploitation fosters the massive confiscation of children and the dehumanization of human relations, entrenches myths and stereotypes that distort consciousness and conditions violent responses to erotic stimuli¹⁶ .

CHILD PROSTITUTION¹⁷ : form of violence, exploitation and victimization of minors, in which their bodies and sexuality are objectified and treated as merchandise for commercialization, organized or not, by prostitute clients, nationals or foreigners, residents or tourists. It includes the possible participation of third parties, pimps or ruffians. - The act of hiring or offering the services of a child to perform sexual acts in exchange for money or other consideration with the same or another person. - visual representation of a person under eighteen years of age in an explicit sexual act, real or simulated, or the obscene exhibition of their genital organs for the sexual pleasure of users, for the profit of the provider or intermediary.

SEX TOURISM¹⁸ : is the commercial sexual exploitation of minors by foreigners visiting a country as tourists. It includes the promotion of the country as an accessible point for the unpunished exercise of this activity by nationals and foreigners.

FORCED LABOR¹⁹ : any work or service exacted from a person under threat of any punishment and for which the person has not offered himself voluntarily.

¹⁶ Paper rights and the role of rights / Carlos Emilio López Hurtado.

¹⁷ Paper rights and the role of rights / Carlos Emilio López Hurtado.

¹⁸ Paper rights and the role of rights / Carlos Emilio López Hurtado.

¹⁹ An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.

TRAFFICKING²⁰ : trafficking for sexual purposes is the recruitment and transfer for illicit purposes, from one country to another (international) and from one region to another within the same country (national), with or without the consent of the child or the child's family, to be used as sexual merchandise at their final destination, for prostitution or pornography.

SEXUAL VIOLENCE²¹ : not only involves physically violent behaviors, but all those that imply a violation of human rights (sexual integrity and dignity).

Violence, in a broad sense, includes, in addition to corporal force or intimidation, those conducts that imply an exploitation, manipulation or use, in the case of minors, regardless of the existence of "consent" of the victim. The conduct is considered violent because of the inequality of power that results in an impairment of the exercise of human rights to the detriment of the recipient.

1.3 Modes of exploitation and protected legal interest

1.3.1 Paid Sexual Activities with Minors²² The legal assets protected by this crime are:

- The right to sexual integrity (which is part of personal integrity) of minors.
- The personal liberty (including sexual liberty) of persons over twelve and under eighteen years of age.
- The dignity of minors.

²⁰ Paper rights and the role of rights / Carlos Emilio López Hurtado.

²¹ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

²² Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

- The right to the full development of the personality of minors.

1.3.2 Pornography with Use of Images of Minors²³ Protected legal property:

- Integrity protection.
- Dignity of the minor
- Freedom of the minor

1.3.3 International Trafficking of Minors for the Purpose of Commercial Sexual Exploitation²⁴

The legal assets of this crime are:

- Right to personal integrity (physical, psychological, emotional, sexual)
- Right to personal freedom.
- Right to dignity.
- Right to live free from violence (physical, sexual and psychological).
- Right to personality development.

1.3.4 Trafficking in Minors for the purpose of commercial sexual exploitation²⁵

The legal assets protected by this crime are:

- Right to personal integrity (physical, psychological, emotional, sexual)
- Personal liberty of minors.
- Right to dignity.
- Right to personality
- Right to live free from violence (physical, psychological and sexual).

²³ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

²⁴ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

²⁵ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

1.3.5 Sale of Children and Adolescents²⁶ The legal assets protected by this crime are:

- Right to dignity of minors.
- Right to sexual integrity.
- Right to personal freedom.
- Right to personality.

1.3.6 Worst Forms of Child Labor²⁷

All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom; forced and compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

The use, recruitment²⁸ or offer²⁹ of children for prostitution, production of pornography or pornographic performances. The use, procuring or offering of children for illicit activities, in particular the production and trafficking of narcotic drugs, as defined in the relevant international treaties.

²⁶ Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards / Fernando Cruz and Ivannia Monge / ILO, IPEC.

²⁷ An approach to the crime of human trafficking in Nicaragua. Friendly version / Save the Children-Canada.

²⁸ García-Pelayo and Gross. Pequeño Larousse Ilustrado defines reclutamiento as the action of recruiting. Consequently, to recruit is to enlist recruits or soldiers. Recluta is the one who voluntarily sits as a soldier and reclutador is the one who recruits.

²⁹ According to Cabanellas de Torres, Guillermo, in the Diccionario Jurídico Elemental. Enlarged and corrected by Cabanellas de las Cuevas, offer is defined as that proposal or promise to give, to do, to fulfill, to execute. | Contractual initiative. | Object or thing that is given as a gift. | Merchandise that is proposed for sale.

CHAPTER II

COMPARATIVE ANALYSIS OF THE SUBSTANTIVE CRIMINAL LEGISLATION OF NICARAGUA AND COSTA RICA REGARDING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS

The principles of the Nicaraguan nation are: freedom; justice; respect for the dignity of the human person³⁰ ...

Commercial sexual exploitation of children and adolescents constitutes not only one of the most serious forms of human rights violations, but also a crime, according to Nicaraguan legislation and international conventions governing the matter³¹ .

The State of Nicaragua, with the participation of many social actors, ratified the Convention on the Rights of the Child and Adolescents in 1998 and defined the National Policy for the Comprehensive Care of Children and Adolescents, which establishes social policies, assistance, special protection and guarantees.

2.1 National Legal Framework

2.1.1 Political Constitution of the Republic of Nicaragua.

The Political Constitution contains four articles that in their relevant parts are directly related to the issue of Commercial Sexual Exploitation of Children and Adolescents, which literally state:

- Article 40: No one shall be subjected to servitude. Slavery and trafficking of any kind are prohibited in all its forms.

³⁰Article number 5 of the Political Constitution of the Republic of Nicaragua.

³¹ Commercial sexual exploitation and masculinity / ILO / IPEC.

- Article 46: In the national territory every person enjoys the protection and recognition of the rights inherent to the human person, the unrestricted respect, promotion and protection of human rights and the full validity of the rights set forth in the Universal Declaration of Human Rights; in the American Declaration of the Rights and Duties of Man; in the International Covenant on Civil and Political Rights of the United Nations Organization; and in the American Convention on Human Rights of the Organization of American States.

Article 71: It is the right of Nicaraguans to constitute a family. The family patrimony is guaranteed, which is unseizable and exempt from any public charge. The law shall regulate and protect these rights.

Children enjoy special protection and all the rights required by their condition, which is why the International Convention on the Rights of the Child is fully in force.

Article 84: It is forbidden for minors to work in jobs that may affect their normal development or their compulsory education cycle. Children and adolescents shall be protected against any kind of economic and social exploitation.

Among all the articles of the Constitution that ensure protection to its nationals. The four aforementioned articles are directly related to the subject under study, because although it is considered a right to form a family, minors are also protected within or outside the family bond against any type of work. With the aforementioned article, minors are protected against work that undermines their development; it strictly abolishes any form of slavery and one of the modalities of commercial sexual exploitation of children and adolescents, such as trafficking in any of its expressions.

2.1.2 Code of Childhood and Adolescence of the Republic of Nicaragua³² .

In recent years, the Nicaraguan State has developed a set of legislative and institutional actions aimed at guaranteeing respect for the rights of children and adolescents as set forth in the Code for Children and Adolescents, an instrument that constitutes the adaptation of the Convention on the Rights of the Child in the country.

Article 2: The present Code considers as child those who have not reached thirteen years of age and adolescent those who are between thirteen and eighteen years of age, not yet completed.

Article 5: No child or adolescent shall be subjected to discrimination, exploitation, illicit transfer within or outside the country, violence, abuse or physical, psychological or sexual mistreatment, inhuman, terrifying, humiliating, oppressive, cruel treatment, attack or negligence, by action or omission to their rights and freedoms.

It is the duty of every person to ensure the dignity of children and adolescents, protecting them from any of the aforementioned situations.

Children and adolescents have the right to the protection of the law against such interference or attacks, and those who carry them out shall incur criminal and civil liability.

Article 10: The best interests of the child and adolescent are understood to be everything that favors their full physical, psychological, moral, cultural and social development, in accordance with the evolution of their faculties that will benefit them to the maximum extent possible.

³² Law 287 of March 24, 1998, published in Official Gazette number 97 of May 27, 1998.

The significance of these articles for society is of great dimensions, first of all because of the conceptualization of both children and adolescents, which allows the division of these concepts that before were the same as saying minors in general without age division.

In a second context, reference is made to the criminal offenses from which the State protects our children and adolescents, and even those who directly or indirectly, by action or omission, give such treatment to our children and adolescents, are considered as criminals.

It is worth mentioning that the best interest of the child and adolescent will be any action that allows the development and benefits the minor in every sense, but always emphasizing what is mentioned in article ten of the Code.

The link of the above mentioned with the topic is that without these guidelines, the differentiation between what is good or bad, what is acceptable or unacceptable in the eyes of our national regulations could not have been made from the beginning. The Children's Code brings with it changes in the internal legislation, changes that although it is true that they did not happen immediately, since it was a process of national discussion to initiate the reform of those normative bodies in criminal matters that needed to be specific, our Code of Children and Adolescents has meant a process of recognition of the problem.

Book Two, Title Three of the Childhood and Adolescence Code contemplates Prevention and Special Protection, detailing in its articles the prohibitions and requirements to the different socio-economic sectors. Likewise, it expresses the total gratuity of protection and attention as part of the integral protection that is the duty of the State to guarantee. It is not less important to mention that it also mentions the protection of minors with different capacities.

Article 32 of the Childhood and Adolescence Code states: "children and adolescents have the right to freedom, security, respect and dignity as human persons in the process of development and with particular characteristics as subjects of the rights established in the Political Constitution and the laws".

Article 64: Preventive measures are aimed at governmental and non-governmental institutions, public and private establishments, the media, the family, schools and all those instances or persons directly or indirectly related to children and adolescents.

Preventive measures, as their name indicates, have as their main objective the provision of something or someone, as the case may be, to avoid some danger. In the same way, it can be understood that what we are trying to prevent is an imminent harm or danger to our children and adolescents. It is therefore the action or effect of preventing or preparing something in advance.

Article 76: The State, public or private institutions, with the participation of the family, community and school, shall provide special attention and protection to children and adolescents in the following situations:

- a) When the guardians abuse the authority conferred by the guardianship and tutelage of minors or act with negligence in the obligations imposed by law.
- b) When they have no family.
- c) When they are refugees in our country or are victims of armed conflicts.
- d) When they are in protection or shelter centers.
- e) When they work and are economically exploited.

- f) When they are addicted to any type of psychotropic substances, tobacco, alcohol, inhalants or are used for drug trafficking.
- g) When they are sexually abused or exploited.
- h) When they are in total helplessness and wander the streets without family protection.
- i) When they suffer any type of physical or psychological mistreatment.
- j) When they suffer from any type of disability.
- k) In the case of pregnant girls and adolescents.
- l) Any other condition or circumstance requiring special protection.

Article 82 of the Childhood and Adolescence Code guarantees special protection for child and adolescent victims of trafficking who are repatriated: "Once the administrative authority has verified the existence of a violation of the rights of children and adolescents, it may apply protection measures according to the case" within the following options:

- a) Inclusion of a governmental, non-governmental or community program to support families, children and adolescents.
- b) Inclusion in a medical, psychological or psychiatric treatment program.
- c) Reintegration to the home with or without specialized psychosocial and/or legal supervision.
- d) Family friendly location.
- e) Location in substituted home.
- f) Inclusion in a governmental or non-governmental program for the rehabilitation and counseling of children and adolescents who are alcoholics and drug addicts.
- g) Placement in a shelter or refuge center.
- h) Adoption.

2.2. International Legal Framework

Different legal instruments have been created to protect the rights of individuals in general, and of children and adolescents in particular.

Nicaragua has ratified. Being that the Commercial Sexual Exploitation of minors is contemplated in:

2.2.1. Convention on the Rights of the Child (1989). This is the instrument on the human rights of children and adolescents, which inaugurates the new paradigm of the doctrine of integral protection. Article 35 refers specifically to trafficking in minors: "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.

2.2.2. Convention 182 of the International Labor Organization on the Worst Forms of Child Labor and its recommendation 190 (1999). This Convention defines the worst forms of child labor as activities related to the exploitation of minors. Article 3, paragraphs a, b and c, refers to aspects related to human trafficking.

2.2.3. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000). The Optional Protocol attaches particular importance to the criminalization of serious violations of children's rights, especially child trafficking, illegal adoption, child prostitution and child pornography. The text also emphasizes the value of international cooperation as an effective means of combating these activities beyond national borders, as well as the organization of public awareness, information and education campaigns to promote child protection.

2.2.4. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000). This is the

The most comprehensive, recent and universal instrument that addresses all aspects of human trafficking. It adopts the international approach to this crime, which includes countries of origin, transit and destination, which must take measures to prevent trafficking in persons, punish traffickers and protect victims.

2.3 Commercial Sexual Exploitation of Children and Adolescents from the Penal Code of Nicaragua and the Penal Code of Costa Rica

The Penal Code of the Republic of Nicaragua, (Law six hundred and forty one - 641-, entered into force gradually between the months of June and July of the year two thousand and eight).

The penultimate Penal Code that our country had was approved on April 1, 1994, and was reformed countless times over many years to try to adapt it to the realities experienced in recent times in a highly dynamic society such as ours.

The current Penal Code completes a process of updating and renovation of the codification of penal norms that began in the 1990s, and which has had among its fruits its immediate predecessors: The Code for Children and Adolescents³³ , and one of its greatest achievements: The Code of Criminal Procedure³⁴ .

The entry into force of the Penal Code comes to fulfill many expectations of both the Nicaraguan society and the international community, just at this time when all countries are trying to unify efforts to face the transnationalization of crimes, from which our country is not exempt³⁵ .

³³ Law 287 of March 24, 1998, published in Official Gazette number 97 of May 27, 1998.

³⁴ Law 406, published in the Official Gazette, number 243 and 244 of December 21 and 24, 2001.

³⁵Manuel Martínez Sevilla (at the time Chief Justice of the Supreme Court of Justice)

On the other hand, we have the Penal Code of the Republic of Costa Rica, which is condensed in Law number 4573, published in the Gazette number 257 of November 15, 1970³⁶ .

Costa Rica has a Law Against the Commercial Sexual Exploitation of Minors. Law 78 99 of August 17, 1999. This law reforms the articles of the Penal Code.

Below we will see the comparison between both bodies of Law and we will appreciate the contributions that can be provided between them; and since the main objective is that the readers interested in the problem do not have to resort to other sources for their full understanding, the development of this comparative analysis will be carried out by breaking down the articles related to the subject and giving the comments that each of them deserve.

The Penal Code of Nicaragua in Title Two of the Persons Criminally Responsible for Crimes and Misdemeanors, Single Chapter mentions the Persons Criminally Responsible for Crimes and Misdemeanors, providing in Article 41 that those criminally responsible for crimes and misdemeanors are the perpetrators and participants.

Perpetrators may be direct, intellectual, mediate or co-perpetrators. Inducers, necessary cooperators and accomplices are participants.

The liability of the participant shall in any case be accessory to the act executed by the perpetrator. In crimes that require a specific quality in the perpetrator that implies a special duty, the participant, in whom such quality does not concur, will respond with an attenuated penalty whose maximum limit will be the lower limit of the penalty corresponding to the perpetrator and whose minimum limit will be half of the latter.

³⁶ Over the years, this code has undergone partial reforms, but not total reforms. Department of Parliamentary Services Regulatory Update Unit.

In order to assimilate this article, it is necessary to mention the basic concepts contained therein. Thus, we define the perpetrator as the active subject of the crime; and the one who cooperates in its realization as an accomplice³⁷. Similarly, we find the concepts of intellectual and material perpetrator; the former evidencing a hierarchy between the one who induces and the one who performs the action, and the latter the one who effectively perpetrates a crime, with the execution of the extreme acts that concretize the attack on a person or property or other punishable legal injury³⁸.

Article 42 of the Nicaraguan Penal Code³⁹ defines direct perpetrators, masterminds, co-perpetrators or perpetrators-by-means as those who carry out the typical act on their own; masterminds, those who, without intervening directly in the execution of the act, plan, organize and direct its execution; co-perpetrators, those who jointly carry out the crime; and perpetrators-by-means, those who carry out the crime through another who acts as an instrument⁴⁰.

This topic is covered by the Costa Rican Penal Code⁴¹ in its article 45 defines it as the one who carries out the punishable act by himself or by making use of another or others, and co-perpetrators are those who carry it out jointly with the perpetrator.

Article 43 of our legal system distinguishes between those who directly induce another or others to carry out the act and those who cooperate in its execution with an act without which it would not have been carried out. This term is covered by the CPCr in article 46 when it defines it as those who

³⁷ An accomplice is a person who, without being the perpetrator, cooperates in the commission of a criminal act through prior or simultaneous acts. It is worth mentioning the necessary accomplice, which arises from codelinquency, when the material executor of the punishable act receives the indispensable or useful cooperation of another for the perpetration of the crime. CABANELLAS DE TORRES, GUILLERMO. Elementary Legal Dictionary. Enlarged and corrected by Cabanellas de las Cuevas.

³⁸ CABANELLAS DE TORRES, GUILLERMO. Elementary Legal Dictionary. Enlarged and corrected by Cabanellas de las Cuevas.

³⁹ Hereinafter CPN

⁴⁰ The relationship of these articles with the commercial sexual exploitation of children and adolescents under study is as follows

If we do not know how each of the participations in this crime is punished, as citizens we always fall into disregard of what is happening around us. The person who carries out a plan, the one who selects the children, the one who carries out the transaction or exchange and the one who, knowing what is happening, serves as a transport or motive for the execution, are all criminally responsible.

⁴¹ Hereinafter CPCr

Instigators are those who intentionally determine another to commit the punishable act.

The quality of accomplice covered in Article 44 CPN defines them as those who fraudulently provide any previous or simultaneous assistance in the execution of the act, provided they are not included in the two previous articles. The CPCr includes the concept in Article 47: "Accomplices are those who provide the perpetrator or perpetrators with any assistance or cooperation for the commission of the punishable act".

The CPCr complements the previous article by defining in the same way the beginning and scope of participants in its article 48, "The participants shall be liable from the moment the act has been initiated, as established in article 19⁴². If the act is more serious than they intended, those who have accepted it as a probable consequence of the action undertaken shall be liable for agile".

Regarding the application of penalties, the second paragraph of Article 72 of the Criminal Code establishes that the inductors and necessary cooperators shall be imposed the same penalty as the perpetrators of the consummated crime or, as the case may be, the penalty established for the perpetrators of a frustrated or attempted crime. And according to article 74 of the CPCr, the authors and instigators will be punished with the penalty established by law for the crime. The accomplice will be imposed the penalty foreseen for the crime, but this may be reduced at the discretion of the judge, in accordance with the provisions of article 71 and the degree of participation.

It is also important to mention that participation in Criminal Law is the fraudulent cooperation in another's fraudulent crime. From this definition, it is necessary to see the existence as an essential presupposition of an extraneous act to the realization of which the participant contributes. This presupposition leads to the supremacy of the theory

⁴² Article 19 CPCr.- The act is deemed to have been performed at the time of the action or omission, even if the time of the result is different.

of participation: the principle of accessory participation. It means that participation is accessory to the act of the perpetrator.

Participation requires that the participant must know and intend to participate in the commission of a typical and unlawful act of another person (the perpetrator). Participation is only punishable when there is malice aforethought, which does not mean that a reckless participation in a criminal act, whether malicious or reckless, of another person, cannot constitute authorship of a reckless crime.

The issue of Sexual Exploitation, especially when the victims are under eighteen years of age, led both laws to integrate in their regulatory bodies the strict protection of children and adolescents who are victims of any type of violence or exploitation that undermines their integrity. For this reason, Law 641 reforms the Penal Code and establishes new concepts and better structured crimes. In 1999, Costa Rica reformed its Penal Code by means of Law 7899 of August 17, 1999, Law against the Commercial Sexual Exploitation of Minors.

Article 175 of the CPN defines sexual exploitation, pornography and sexual intercourse with adolescents for payment as follows

"Whoever induces, facilitates, promotes or uses for sexual or erotic purposes persons under sixteen years of age or disabled, making them witness or participate in a public or private behavior or spectacle, even if the victim consents to witness such behavior or participate in it, shall be punished with five to seven years of imprisonment and shall be imposed four to six years of imprisonment, when the victim is older than sixteen and younger than eighteen years of age.

Whoever promotes, finances, manufactures, reproduces, reproduces, publishes, commercializes, imports, exports, disseminates, distributes material for the purpose of sexual exploitation, by any means whatsoever.

The use of a direct, mechanical, digital, audio-visual, computer, electronic or other means, the image or voice of a person under eighteen years of age in sexual or erotic activity, real or simulated, explicit or implicit, or the representation of their genitals for sexual purposes, shall be punished with five to seven years of imprisonment and a fine of one hundred fifty to five hundred days.

Whoever, for purposes of sexual exploitation, possesses pornographic or erotic material in the terms expressed in the preceding paragraph, shall be punished with one to two years of imprisonment.

Whoever performs a sexual or erotic act with a person over fourteen years of age and under eighteen years of age of either sex, paying or promising to pay or give in exchange an economic advantage or of any nature, shall be punished with imprisonment of five to seven years".

Article 160 of the CPCr mentions the crime of having paid sexual relations with minors.

"Whoever pays a minor person of either sex or promises to pay him or her or to give him or her in exchange an economic or other advantage, so that he or she performs sexual or erotic acts, shall be sanctioned:

- 1) With a prison sentence of four to ten years if the offended person is under twelve years of age.
- 2) With a prison sentence of three to eight years if the offended person is older than twelve years of age but younger than fifteen years of age.
- 3) With imprisonment from two to six years if the offended person is older than fifteen but younger than eighteen".

Unlike Costa Rica, our code has decided to condense sexual exploitation, pornography and sexual acts with adolescents into a single article.

The CPCr has articles 173, 174 to refer to pornography.

2.4 Typicality Structure⁴³

The doctrine defines typicality as the subsumption of the facts within the elements or requirements of the criminal type. But it is only after having analyzed the conduct, and having found that it is typical (because a criminal type perfectly absorbs it), that it is unlawful (because the perpetrator had no cause of justification to act in that way), and that it is guilty (because the agent performed the act knowing that he should not, or failing in his duty of care), that we can say that we are before a crime.

The most important elements of the criminal type are subdivided into: action, subjective type, objective type and protected legal interest. These can be developed as follows.

2.4.1 The Action

The action is the most important component of the construction of the criminal type, because criminal law defines the crime as a typical, antijuridical and guilty action, and therefore, the first thing that must be demonstrated is that there was an action.

The action is described in the governing verb of the offense. There is not even a criminal offense that does not have a governing verb. The governing verb should be understood as that element of the sentence that constitutes the core of the action that the offense requires of the agent.

⁴³PUBLIC PROSECUTOR'S OFFICE REPUBLIC OF NICARAGUA. Teoría del Caso y Técnicas de Debate en el Proceso Penal. Basic Prosecutor's Library. Institutional Strengthening Project. CHENNI AND COMPANY / USAID. Managua, Nicaragua, 2001.

Such is the importance of the governing verb that the action is recognized as the nucleus of the type, and to it are associated the other subjective and objective elements of the type.

2.4.2 The Subjective Type

The subjective type includes all the characteristics referring to the subjects involved in the criminal type, whether the one who performs the action or the passive subject on whom the action falls.

The subjective type is composed of two elements: the subjective element of the type (personal characteristics of the perpetrator or the passive subject); and the subjective element of the crime (motive for the action, whether by malice, guilt or premeditation).

2.4.2.1 Subjective element of the type

This element refers to the personal characteristics of the active and passive subjects of the criminal offense.

Sometimes the criminal type demands certain requirements that the subject described by the norm must meet, without which it is not possible to make an adequate subsumption. The subjective element of authorship is the same that can be said when the norm demands that the perpetrator be a Nicaraguan, a foreigner, a judge, a witness, an official, etc.

The subjective element is not only of authorship; it may refer to the quality of the victim. We speak of the passive subjective element, and it refers to the peculiarities that the offended party must have: being a minor, being a woman, being no older than fifteen years old, being pregnant, for example.

The subjective element, both the perpetrator and the passive subject, can be of

two types:

The first, generic, is when the subject does not need any requirement to be the author or victim of the action⁴⁴ .

The second, specific, will be the author or the offended party, when these require some condition. Being that the accuser must prove, and the defender must demand that they prove, the specific quality of the person charged or the accused.

2.4.2.2 Subjective element of the crime

This element of the subjective type seeks the mode of commission of the action, and tries to determine whether the perpetrator committed it with malice, guilt or premeditation.

A distinction must be made between the subjective element of the crime and the subjective element of the crime. The former being the personal characteristic of the active or passive subject; and the latter refers to the animus or motivation of the perpetrator to commit the crime.

The subjective element of the crime assesses the action to determine the existence of:

a) Dolo:

In order to determine malice, it is examined whether there was intent to perform the action. Malice is known as intention, will, animus, purpose of the perpetrator. Malice has two components; if both are not present at the same time, there is no malice.

Cognitive component: the subject must know that the action he/she performs will affect the legal good protected by the norm. "Cognitive" comes from the Latin *noscere*, which means to know, understand or know. If he does not understand that his action is likely to harm another by affecting the right protected by the criminal type, there is no cognitive component and therefore there will be no intent.

⁴⁴ For the active subject, the penal type normally uses the phrase "the one who", "who"; for the passive subject, the expression "to another" is used.

Volitional component: the subject must want the action or, at least, represent it as possible (8dolo eventual). "Volitional" comes from the Latin "volo", which means to will, to desire a thing; from that same root comes the Spanish term voluntad.

b) Blame

Fault is the failure to comply with the generic duty of care. It is subdivided into three spheres of analysis, any one of which may occur in the absence of the others, and there will always be fault. In other words, it is not necessary for all three spheres to be present at the same time; one of them is sufficient for the action to be culpable. For the purpose of determining whether there is a crime, it does not matter if the behavior is negligent, reckless or impermissible, it is enough if it is one of them, because sometimes it is difficult to determine what type of fault there is.

The most important observation that can be made about guilt is that if the crime does not provide for it, the perpetrator cannot be punished⁴⁵.

- Recklessness: a behavior is reckless when the author disregards common knowledge, common sense or good sense, the experience of the cultural group in which he lives.
- Negligence: consists of the disregard of rules, laws, regulations, or technical, professional or social knowledge that the perpetrator has, which he does not observe or abide by. Negligence and recklessness are borderline (neighboring or adjacent), and sometimes it is difficult to distinguish one from the other, but such distinction is not absolutely relevant, since it does not matter whether the person is guilty of negligence or recklessness, since in both cases he failed to comply with the generic duty of care.
- Impertinence: consists of performing an action for which specific training, knowledge or practice is required, without having the requisite requirements or knowledge.

⁴⁵ The principle that governs is that in the criminal offense, malice is punished, but in order to punish guilt, the criminal offense must expressly indicate in the same rule or in another rule, that this action will also be punished when committed by guilt.

c) Preterintention

The term comes from the Latin *praeter*, which means beyond, and intention (beyond intention). It consists of performing a punishable action with the intention of causing a lesser harm, but achieving, unintentionally, a greater illicit result than the one initially intended⁴⁶. The pre-intentionality represents the malice in a minor legal good, but the action achieves to injure a greater good, only that the latter result was not foreseen by the perpetrator, he did not want it nor did he present it to himself as probable.

2.4.3 Target Type

The objective type contains the characteristics of the objects or situations that do not refer to the individuality of the perpetrator or the passive subject of the action. It is composed of those nouns, concrete or abstract, used by the criminal type to describe the means or objects used by the perpetrator to achieve the result. Two types of elements are recognized:

2.4.3.1 Objective Elements of the Type: these are elements of the material or real world, which the criminal type needs in order to understand what the repression of the conduct consists of.

To determine whether we are dealing with an objective element of the crime we do not need to make an assessment of the action, conduct, purpose, aim, purpose, motive or intention of the agent; hence the doctrine places them as descriptive elements of the objective type.

2.4.3.2 Normative Elements of the Type: these are abstractions used by the criminal type to refer to other elements of reality that are not "objectively" definable, but which require appealing to technical or sociocultural knowledge in order to perform their meaning.

⁴⁶ The importance of pretermination is that it reduces the penalty (with the exception of homicide and crimes of great

magnitude). Preterintentionality should not be confused with eventual intent, according to which the agent wants the result or represents it as possible.

2.4.3.2.1 Technical normative elements: in the first place we have a legal definition, which will be the one that the law orders how they are to be understood and in which case they occur; there is no other way of knowing when a figure falls into a figure if it is not because it is foreseen in said norms, and for this reason we speak of normative elements. Secondly, we have the expert or technical definition, being that there are terms whose meaning is not provided by law, but can be specified by scientific, professional, technical or even union knowledge⁴⁷ .

2.4.3.2.2 Socio-cultural normative elements: are those whose meaning depends on the value that the social group or culture gives to a given word, event or knowledge, but there is no assistance such as that of a dictionary or specialized knowledge to help us pinpoint the concept.

The descriptive elements of the type are the subjective, objective and normative elements. The action is not strictly speaking a descriptive element of the type but the core or heart of the criminal norm. There is an element that is part of the type but is outside it, and it is the protected legal property or legal good protected by the criminal law.

2.4.4. The protected legal good⁴⁸

⁴⁷ Specialized dictionaries are usually consulted to clarify the meaning of the penal norm.

⁴⁸ Jorge Buompadre in his article "Crimes against Sexual Integrity" has argued that the imprecision of legislators when it comes to giving content to the legal good created is patent. "All crimes (or, at least, most of them) involve an injury to the dignity of the human person, to his physical or psychological integrity, or to his personal freedom, so that identifying the concept of sexual integrity with these other values of the individual -which are already protected in the Penal Code- only manages to endow the concept with such a broad, vague and complex content that in the end it becomes indefinable". The aforementioned author, trying to find what the legal right is, affirms that it seems that the idea of sexual integrity is an aspect of personal freedom in its specific realization as the right of every individual to freely exercise his or her sexuality. Therefore, he believes that sexual integrity refers to sexual freedom understood as the right of every person to self-realization or self-determination in the area of sexuality.

In his opinion, the legal right "sexual integrity" is nothing more than the sexual freedom of the person over 18 years of age, and the free sexual development of minors of that age, taking into account that no one can enter into the sexual sphere of others, without the will of the other person, with the capacity to consent, and even less in those who cannot do so.

In other words, the legal right is sexual freedom, in its double positive-dynamic aspect, i.e. the capacity of the person to freely dispose of his body for sexual purposes, or the faculty to behave sexually according to his own desires and desires.

Many criminal codes do not even contemplate the existence of the legal good as an integral element of the typical analysis, because the theories of crime that inspired them did not use this element to evaluate the criminal type. Modernly, it has been admitted that the legal good is the spirit of the type, that is, its *raison d'être*. Thus, if the typical conduct and the descriptive elements of the criminal type are present, but the legal good is not affected, it is not recognized that we are dealing with a typical act.

The legal good is the social, collective or personal value that a legal system protects. The typical norm does not prohibit conduct, but describes the consequences of undesired conduct. The legal good is the value protected by these norms describing undesired conducts, and every time one of them is committed, the legal good protected by them may be violated.

It can be said that the set of protected legal assets determines the cultural legal vision of the social group, since it shows how much it wants to protect, how much it wants to pursue, how much it wants to control. The set of legal goods determines the worldview of the social collective. In some countries the legal good is only one: collective security; in these countries each norm protects the same good, and whoever incurs in the punishable action, no matter which one it is, violates the same principle. In Nicaragua, for example, the legal good "person and his or her physical, psychological, moral and social integrity" groups together crimes against life, physical integrity, sexual freedom and civil status⁴⁹.

own desires. On the negative side, it is the possibility of refusing to perform oneself or to tolerate the performance by others of acts of a sexual nature that one does not wish to endure.

Regarding minors under 13 years of age, or persons deprived of sense or abusing a mental disorder, the legal right is the intangibility or sexual indemnity of the person. At this point there is a legal interest in preventing third parties, outside the life of the minor, from interfering in his or her personality through his or her sexuality.

⁴⁹ Normally, the set of criminally protected legal assets is the development of constitutional programmatic norms that provide for rights, duties and guarantees. Let us put it this way, criminal codification is the necessary correlate of constitutional postulates. Between criminal law and constitutional law there is a relationship of means to end, respectively, that is to say, the criminal law is a means to fulfill the constitutional end, be it the enunciation of a right, a duty or a guarantee.

2.5. Structural Analysis of Criminal Offenses related to Commercial Sexual Exploitation of Children and Adolescents in Nicaragua.

2.5.1. Sexual Exploitation, Pornography and Paid Sexual Intercourse with Adolescents⁵⁰

2.5.1.1. First Modality

"Whoever induces, facilitates, promotes or uses for sexual or erotic purposes persons under sixteen years of age or disabled, making them witness or participate in a public or private behavior or spectacle, even if the victim consents to witness such behavior or participate in it. It shall be punishable by five to seven years' imprisonment and four to six years' imprisonment, when the victim is over sixteen and under eighteen years of age."

Legal Right: Sexual Indemnity of Persons under eighteen years of age and disabled persons. In the sense that the healthy development of sexuality and human dignity is preserved, that of not being subjected to abnormal sexual treatment, whose practice may in the future prevent them from making decisions of a sexual nature devoid of aberrations.

Elements of Objective Type: the active subject is established as undetermined; and the passive subject as persons of both sexes under eighteen years of age and the disabled.

Verbo Rector:

Induce: to instigate, persuade, move someone;

Facilitate: to make easy or possible the execution of something or the attainment of an end. To provide or deliver;

To promote: to initiate or push forward a thing or a process, seeking its achievement;

⁵⁰ Article 175, CRIMINAL CODE OF THE REPUBLIC OF NICARAGUA. Law number 641, published in the Official Gazette, numbers 83, 84, 85, 86 and 87 of May 5, 6, 7, 8 and 9, 2008 (entry into force: 60 days after publication).

Utilizar: to take advantage of something.

Normative Elements: public or private behavior or spectacle with a sexual or erotic purpose.

Accessory Elements of Mode: making her witness or participate in a private public behavior or spectacle, even though the victim consents to participate in it.

Subjective elements: sexual or erotic purposes. Purely intentional type, in which the consent of the passive subject is irrelevant.

2.5.1.2. Second Modality

"Whoever promotes, finances, manufactures, reproduces, reproduces, publishes, commercializes, imports, exports, disseminates, distributes material for purposes of sexual exploitation, by any means, whether direct, mechanical, digital, audio visual, or with computer support, electronic or otherwise, the image, or the voice of a person under eighteen years of age in sexual or erotic activity, real or simulated, explicit or implicit, or the representation of their genitals for sexual purposes, shall be punished with imprisonment of five to seven years and a fine of one hundred and fifty to five hundred days".

Legal Good: image and privacy, as components of a broader right to dignity and integral development of persons under 18 years of age, these arise as autonomous legal goods in relation to the protection of the personal integrity of the passive subjects of these conducts.

Elements of Objective Type: the active subject is established as undetermined; and the passive subject will be persons under eighteen years of age.

Verbo Rector:

Promote: To initiate or promote a thing or a process, seeking its achievement;

Finance: To provide economic resources or means necessary to carry out the activity;

Manufacture: To produce objects in series, generally by mechanical means;

Reproduce: To make a copy, in one or many copies, of a work by intaglio, electrolytic, photolithographic or mechanical processes and also by casting. To be a copy of an original;

To publish: To make notorious or patent, by television, radio, newspapers or by other means, something that one wants to make known to the public. To disseminate by means of printing or any other procedure a writing, a print, image, etc.; Commercialize: Negotiation that is done by buying and selling or exchanging goods or merchandise;

Importing: Introducing pornographic material into the country;

Export: Selling pornographic goods or material to another country;

Spread: To extend, spread, propagate physically. To propagate or disseminate;

Distribute: To deliver a commodity to sellers and consumers.

Normative Elements: material for purposes of Sexual Exploitation: this particular concept is understood in a broad sense, i.e. as equivalent to any object that serves as a support for any pornographic production, whether written, spoken, graphic (cinematographic or video graphic), etc. And which are expressly related to the type such as: the image or the voice of a person under eighteen years of age in sexual or erotic activity, real or simulated, explicit or implicit, or the representation of their genitals for sexual purposes.

Mode Accessory Elements: through any means, whether direct, mechanical, digital, audio visual or with computer support, electronic or otherwise.

Elements of Subjective Type: Sexual Exploitation purposes, which means that the Type is merely Malicious, so that the representations of a sexual or erotic nature in which the image of minors is represented or included, with the purpose of or for the

purpose of sexual or erotic exploitation, are not considered to be for Sexual Exploitation purposes.

literary, artistic, scientific or educational content has a justifying value, making the conduct atypical.

2.5.1.3. Third Modality

"Whoever, for purposes of sexual exploitation, possesses pornographic or erotic material in the terms expressed in the preceding paragraph, shall be punished with the penalty of one to two years of imprisonment."

Legal Good: the protected legal good is the image and privacy, as components of a broader right to dignity and integral development of persons under 18 years of age.

Element of objective type: the active subject is established as undetermined; and the passive subject will be persons under eighteen years of age.

Verbo Rector:

Possess: To have in one's possession something;

Normative Element: pornographic or erotic material, being the subjective element the purpose of sexual exploitation. This means that we are dealing with a fraudulent criminal offense.

The sanctioning of possession of pornographic or erotic material is an innovation, but nevertheless the range of protection in the field of prevention is limited, since for the conduct to be typical, possession must be for purposes of exploitation.

2.5.1.4. Fourth Modality

"Whoever performs a sexual or erotic act with a person over fourteen years of age and under eighteen years of age of either sex, by paying or promising to pay or

to give him in exchange an economic advantage or of any other nature, shall be punished with imprisonment of five to seven years".

Juridical Good: the intangibility or Sexual Indemnity of those over fourteen and under eighteen years of age, protecting the free development of their personality from deviations or haste that may harm the minor psychically or spiritually.

Elements of Objective Type: the active subject is established as undetermined; and the passive subject will be persons over fourteen and persons under eighteen years of age, both of either sex.

Verbo Rector:

Execute: Action and effect of executing. To execute, to put into practice, to carry out.

Normative Elements: called sexual or erotic act

Accessory Elements of Mode: paying or promising to pay economic advantage or of any nature.

Element of Subjective Type: We are dealing with a fraudulent type, where the knowledge of the age of the person is relevant, so there could be an error in the type that in any case eliminates the typicality.

The consent of the victim is irrelevant, for the criminal action to be committed, it does not require a habitual or reiterated exercise, for the crime to materialize, a single act is enough, a promise is enough.

It is important to note that the range of legal protection in this criminal offense is quite broad since it is not restricted to sexual acts generally related to sexual intercourse, but includes any other form of sexual intercourse or erotic activity, which includes the physical-sexual approach between the victim and the exploiter, with the purpose of arousing the sexual appetite.

Special forms of occurrence of the crime: the typical conduct described above includes several alternative modalities of commission, all of them qualified by a certain sector of the doctrine as mere forms of participation, equating for punitive purposes to the degree of authorship behaviors of various kinds.

It is a crime of mere activity, which does not require a material result for its perfection, its consummation coincides with the execution of the conduct described by the verb of the type, although its commission can be appreciated in degree of attempt.

Likewise, it may happen that these conducts are accompanied in practice by the subsequent commission of some other infraction, and t h e relevant rules of competition must be observed.

Provocation, conspiracy and proposition are punishable.

2.5.2. Specific aggravating circumstances in the case of sexual exploitation, pornography and sexual acts with adolescents for payment.⁵¹

The penalty shall be six to eight years imprisonment when:

- The fact is executed for profit;
- The perpetrator or perpetrators are part of a group organized to commit crimes of a sexual nature, except in the case of organized crime;
- Involves deception, violence, abuse of authority or any means of intimidation or coercion; or

⁵¹ Article 176, CRIMINAL CODE OF THE REPUBLIC OF NICARAGUA. Law number 641, published in the Official Gazette, numbers 83, 84, 85, 86 and 87 of May 5, 6, 7, 8 and 9, 2008 (entry into force: 60 days after publication).

- The perpetrator commits the crime taking advantage of a relationship of superiority, authority, kinship, dependence or trust with the victim, or of permanently sharing the family home with the victim;

If two or more of the circumstances foreseen concur, the penalty to be imposed shall be seven to nine years of imprisonment. The maximum penalty shall be imposed when the person is disabled or under fourteen years of age.

2.5.3. "Promotion of Tourism for Sexual Exploitation Purposes".

"Those who inside or outside the national territory, individually or through tour operators, advertising campaigns, reproduction of texts and images, promote the country as an attractive or sexual tourist destination, using persons under eighteen years of age, shall be punished with five to seven years of imprisonment and one hundred and fifty to five hundred days fine"

Legal right: sexual indemnity of minors under eighteen years of age.

Elements of Objective Type: the active subject is established as undetermined; and the passive subject will be persons under eighteen years of age.

Verbo Rector:

Promote: To initiate or push forward a thing or a process, seeking its achievement.

Normative Elements: it will be the national territory as an attractive country or sex tourism destination.

Mode accessory elements: within or outside the national territory, individually or through tour operators, advertising campaigns, reproduction of texts and images.

Having already analyzed in detail the articles of the CPN, it is necessary to break down the provisions of the CPCr. Thus, Article 173 of the Costa Rican Penal Code defines what this body of law considers as the manufacture or production of pornography as the action carried out by whoever manufactures or produces pornographic material, using minors or their image, shall be punished with imprisonment for a term of 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.

The dissemination of pornography in article 174 of the CPCr defines the actor as whoever trades, disseminates or exhibits pornographic material to minors or incapable persons, shall be punished with imprisonment of one to four years.

Pimping and its aggravating circumstances are covered by both bodies of law: Article 178 of the CPN defines it as "whoever induces, promotes, facilitates or favors sexual exploitation, pornography and remunerated sexual act of a person of any sex, keeps them in it or recruits them for that purpose, shall be punished with imprisonment from four to six years and from one hundred to three hundred days fine".

In this regard, the CPCr condemns it in article 169 Whoever promotes prostitution of persons of any sex or induces them to practice 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.

Regarding the aggravating circumstances of the aforementioned crime, the aggravating circumstances according to article 179 of the CPN are:

The penalty shall be six to eight years imprisonment and three hundred to six

hundred days fine when:

- a) The victim is under eighteen years of age or disabled;
- b) There is a profit motive;
- c) There is deception, violence, abuse of authority or any means of intimidation or coercion;
- d) The perpetrator commits the crime taking advantage of a relationship of superiority, authority, kinship, dependence or trust with the victim, or of permanently sharing the family home with the victim.

The CPCr establishes aggravating circumstances in article 170, being that The penalty shall be four to ten years of imprisonment when one of the actions set forth 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 relationship of trust with the victim or his family, whether or not there is a family relationship.

Ruffianism is another modality of exploitation and is defined according to Article 180 of the CPN, which states that "Whoever, by means of threats or coercion, makes himself financially supported, even partially, by a person who performs a sexual act for payment, shall be punished with imprisonment of three to five years and a fine of sixty to two hundred days.

If the victim is under eighteen years of age or disabled, the penalty shall be five to seven years of imprisonment and a fine of two hundred to four hundred days.

The same penalty shall apply when the perpetrator is united in marriage or in a stable de facto union with the victim".

The CPCr defines it in its 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 years of age but younger than eighteen years of age

It should be noted that Nicaragua's law contains in Article 176 specific aggravating circumstances in the case of sexual exploitation, pornography and sexual acts with adolescents for payment.

The penalty shall be six to eight years imprisonment when:

- a) The fact is executed for profit;
- b) The perpetrator or perpetrators are part of a group organized to commit crimes of a sexual nature, except in the case of organized crime;
- c) Involves deception, violence, abuse of authority or any means of intimidation or coercion; or
- d) The perpetrator commits the crime taking advantage of a relationship of superiority, authority, kinship, dependence or trust with the victim, or of permanently sharing the family home with the victim.

If two or more of the circumstances foreseen concur, the penalty to be imposed shall be seven to nine years of imprisonment. The maximum penalty shall be imposed when the person is disabled or under fourteen years of age.

Likewise, our Penal Code has article 177 that stipulates the Promotion of Tourism for the purpose of sexual exploitation, defining it as

"Those who within or outside the national territory, individually or through tour operators, advertising campaigns, reproduction of texts and images, promote the country as an attraction or sexual tourist destination, using persons under eighteen years of age, shall be punished with five to seven years of imprisonment and one hundred fifty to five hundred days fine."

2.6. Guiding Principles of the National Policy for the Comprehensive Care and Protection of Children and Adolescents

2.6.1 Sexual Exploitation is a Fundamental Violation of Human Rights: being defined by this principle as a contemporary form of modern slavery, since it violates the most elementary rights enshrined in the Declaration of the Rights of Man and in the Political Constitution of Nicaragua.

2.6.2. The State is the main guarantor of compliance with the policy: the State must guarantee respect for and compliance with human rights and the Convention on the Rights of the Child and stop the sex trade of children and adolescents through legal mechanisms, higher levels of control, increased awareness and citizen control, and effective punishment of exploiters.

2.6.3. The problem of Sexual Exploitation must be approached from an Integral Vision: human beings live in society, we are social beings. Any approach and diagnosis must understand the child and adolescents in their social, historical, cultural and economic environment. It is not a problem of minors, it is a social problem. The models of attention to the problem of sexual exploitation are not universal. It is necessary to analyze the situation and the reaction of children and adolescents from their own history, taking into account their ambivalence with respect to the situation in which they live. Children and adolescents are not passive victims, with no capacity to react. They are in fact

survivors of abuse, who develop self-protection and survival strategies that often force them to remain in the commercial sexual exploitation network.

2.6.4. The State should Favor and Strengthen Civil Society and Especially Non-Governmental Organizations Working on the Issue: civil society organizations are the expression of political participation in a democratic society that represents the free association of people who organize themselves to carry out ideas and actions of a public nature. The support of the State should be translated, among other actions, into the promotion of regulatory frameworks that encourage the association and participation of citizens; the identification of new ways of delivering social services through local governments and civil society organizations, the promotion of philanthropy and volunteering and the establishment of financial and technical support mechanisms for those intermediate organizations that promote the economic insertion of the most vulnerable sectors of society.

Many organizations have come to define the spaces that favor sexual exploitation of our minors, as well as those who, as a general rule, tend to impose it and the causes of such violence. The following table summarizes these sectors.

	Most common forms of violence.	Persons Exercising Violence.	Causes of Violence.
In the Family	Ideally conceived as a privileged space for love	Adults: Dad;	Alcohol. Drugs.
	Most common forms of violence.	People who They exercise violence.	Causes of Violence.

<p>In the Family</p>	<p>and protection, it is perceived as a space of violence and fear.</p> <p>Common forms include: blows to the hands, with straps, whips, wires, hoses, electric cables, logs, bladed weapons, nettles, broomsticks, burns.</p> <p>Not allowing them to play is perceived by children as a form of violence.</p> <p>Neglect in their care, discrimination, abandonment, not being listened to, economic exploitation and violence. sexual.</p>	<p>Mother; Stepfather; Older brothers and/or sisters.</p> <p>In Sexual Violence the most frequent are parents and stepparents; the least frequent are uncles, aunts, uncles and/or siblings.</p>	<p>Economic problems. That the child suffers from a disability.</p> <p>- Failure to obey orders given to them.</p>
<p>At School</p>	<p>Physical and verbal violence as a disciplinary measure.</p> <p>Sexual harassment: used by teachers and male students.</p> <p>Peer violence and discrimination for economic or ethnic reasons also stand out in this area. Common forms of bullying include: hitting, pulling sideburns or ears, pinching, slapping, slapping, slapping, putting chalk on the head, etc., etc., etc.</p> <p>their mouths, force them to</p>	<p>Teachers; Professors; Directors;</p> <p>- Older children and adolescents commit aggressions against minors.</p>	<p>Violence as a form of discipline for non-compliance with rules.</p> <p>- Discrimination based on gender, social class, ethnicity or religious belief.</p>
	<p>Most common forms of violence.</p>	<p>People who They exercise violence.</p>	<p>Causes of Violence.</p>

At School	kneeling, forcing them to stay in the sun, shouting, humiliating comparisons, offensive expressions.		
In the Community	Sexual Violence. Citizen insecurity: robberies, gang presence, shootings in the streets, drug use, run over by vehicles, neighborhood fights, fights between peers.	Adult men and young men often rape women. Gang members usually attack both sexes.	Drug use. Poverty. Presence of gangs.

The informative nature of this study regarding the classification of the crime of commercial sexual exploitation of children and adolescents should not be limited only to what is stipulated in our Penal Code. But also to those procedures that ensure that our population is informed not only of the instances to which they can turn to, but also to the facts that can help identify when our minors are being victims of sexual exploitation.

CHAPTER III
COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND
ADOLESCENTS FROM THE DOCTRINE OF COMMERCIAL SEXUAL
EXPLOITATION.

This chapter intends to compile the opinion of prestigious jurists on the subject of Commercial Sexual Exploitation, although they are not a formal source of Nicaraguan Law.

It should be noted that the legal doctrine arises mainly from the universities, which study the law in force and interpret it within the Science of Law.

It has no binding force, and is not recognized as an official source of law in most legal systems, contrary to what happens with jurisprudence, which is understood as the repeated interpretations made by the courts in their resolutions of the legal rules, and may constitute one of the sources of law, depending on the country⁵² .

**3.1 The Best Interest of the Child in the Framework of the International
Convention on the Rights of the Child⁵³**

The current evolution of legal thought makes it possible to affirm that behind the notion of human rights lies the idea that all persons, including children, enjoy the rights enshrined for human beings and that it is the duty of States to promote and guarantee effective equal protection. In turn, by virtue of the aforementioned principle of equality, the existence of legal protections and specific rights of certain groups of persons, including children, is recognized.

⁵² It can also be said to be the set of firm and uniform rulings issued by the courts of the state. Jurisprudence is the set of rulings that have resolved the same or similar cases in the same way or in the same sense.

⁵³ Miguel Cillero Bruñol. UNICEF. Justice and Children's Rights. Volume Number Nine. United Nations Children's Fund. 2008.

The only possible interpretation of the principle of the best interests of the child is to identify this interest with their rights recognized in the convention, it is possible to affirm that in application of this principle the protection of the rights of the child takes precedence over any cultural consideration that may affect them, as well as over any other calculation of collective benefit. The "best interests" principle, then, cannot be a way to introduce the debate on cultural relativism that has sought to affect the expansion of the universal protection of human rights.

The formulation of the principle in article 3 of the Convention allows the following characteristics to emerge: it is a guarantee, since any decision concerning the child, must primarily consider his or her rights; it is of a great breadth since it not only binds the legislator but also all authorities and public and private institutions and parents; it is also a rule of interpretation and/or resolution of legal conflicts; finally it is a political orientation or guideline for the formulation of public policies for children, allowing to guide public actions towards the harmonious development of the rights of all persons, children and adults, contributing, without a doubt, to the improvement of democratic life.

3.2 Penalty Theory and Commercial Sexual Exploitation of Children⁵⁴

If criminal law is intended to prevent the most serious attacks against the most important legal assets, it is essential to generate preventive effects, of a general nature, at the level of the Criminal Code. This function, known as preventive-general, must tend to create respect for the legal system in citizens (positive effect). The threat generated by the penalty is often used, in anti-democratic countries, to create

⁵⁴ LEGAL-CRIMINAL STUDY RELATING TO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN / Instituto Nacional de Ciencias Penales (INACIPE) / Erick Gómez Tagle López and Miguel Ontiveros Alonso / Estudio jurídico-penal relativo a la Explotación Sexual Comercial Infantil / Bases para su unificación legislativa en México.

terror in the citizenry, while sending a symbolic message to society, in the sense of making it believe that, through the contemplation of disproportionate and disproportionate penalties, "something is being done" to prevent crime (negative general prevention and symbolic criminal law).

The penalties to be imposed on those who commit crimes related to the commercial sexual exploitation of children must be severe, since one of the most important legal rights of children and adolescents is violated: the free development of their personality.

But they must be sufficiently rational and proportionate, in such a way that they do not violate the principle of readaptation embodied in our Magna Carta. This, which is not usually taken into account, must be translated into punishing more severely those who have had a greater interference in the protected legal good, but also the other way around, that is, imposing low penalties in those cases where the legal good has been barely endangered.

For such purposes, it is considered here that the Judge should not fulfill preventive purposes.

- The judicial individualization of the penalty should only be used to deploy acts of a preventive-special nature. This is so, since the general preventive function has already been put into action by the legislator, in such a way that, at the judicial level, trying to implement general preventive effects would mean instrumentalizing a human being to send messages to society by increasing the penalty, and this cannot be allowed in a State governed by the rule of law.

With regard to the last of the dimensions of punishment (after the legislative and judicial), we consider that only the preventive-special effects should also apply, since including general aspects in the area of enforcement of the penalty would mean not only increasing the *amount* of the penalty, but also the *manner* of its imposition, which could lead to the exercise of acts

that violate the human dignity of the prisoner, as prohibited by Article 1 of our Magna Carta⁵⁵.

Finally, for the purposes of the penalty to be contemplated in the Penal Code, it should be taken into consideration that the printing of a pornographic image of a child on the Internet, for example, cannot be punished more severely than sexual abuse committed directly against the same child. Penalties must be rational, while taking into account the principles of humanity, resocialization, proportionality and, finally, the principle of culpability.

It is true that society demands strong measures against those who commit one or more of the crimes that are the object of this study, but this should not be the guiding criterion of the legislator at the time of setting the penalty in the Criminal Code, since this only generates a symbolic criminal law, leaving aside the guiding principles of a modern, guaranteeing and democratic criminal law, and approaches a merely retributive criminal law, which looks to the past and not to the future.

The penalty must comply with the purpose of the social readaptation of the sentenced person. Any other objective would be illegitimate in the social and democratic rule of law, since what should not be done is to contemplate such disproportionate penalties in the area of commercial sexual exploitation of children, which approach, as has occasionally been proposed, the minimum penalties for homicide.

The study carried out here is governed by the guiding criteria of a modern and democratic criminal law, the only law that can be derived from our Political Constitution. It takes into consideration the advances of science, technique and technology, and reflects them directly in this document.

⁵⁵ The author refers to the Political Constitution of his country, Mexico.
LEGAL-CRIMINAL STUDY RELATING TO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN / Instituto Nacional de Ciencias Penales (INACIPE) / Erick Gómez Tagle López and Miguel Ontiveros Alonso / Estudio jurídico-penal relativo a la Explotación Sexual Comercial Infantil / Bases para su unificación legislativa en México.

The origins of this study lie in the reflections that have been generated for years regarding the commercial sexual exploitation of children, which have been taken up in other latitudes with successful results. Therefore, although much remains to be done, the first step is to recognize that our legislation is no longer capable of preventing the most serious crimes committed against children, adolescents and people who do not have the capacity to understand the meaning of the act, and that it is necessary to adapt to the International Conventions and Treaties to which our country is a party. This is a matter of legislative technique, but also of will and attitude.

3.3 Irregular Situation Doctrine⁵⁶

This Doctrine denies the inequality of power in which minors find themselves with respect to adults, and instead places them as if they were equal participants and co-responsible for the abuse and criminal conduct.

3.3.1 Two expressions derived from this doctrine are:

3.3.1.1 Moral qualification - adult-centric. This occurs, for example, when it is established that the crime of corruption is not punishable if the minor victim is corrupt⁵⁷ and that it is rather the adult who is the victim, or when it is required that the victim be an "honest woman" (in the crime of statutory rape).

3.3.1.2 The use of the concept of formal equality in the relations between adults and minors, considering only freedom as the legal right protected in the crimes of Commercial Sexual Exploitation. This approach favors in the analysis of the offenses, the

⁵⁶ CRUZ, FERNANDO / MONGE, IVANNIA. Commercial Sexual Exploitation: Minimum Standards on Commercial Sexual Exploitation of Minors, according to International Standards. Working Document with recommendations for Central America, Panama and Dominican Republic. San José, Costa Rica: ILO, 2004.

⁵⁷ In Costa Rica, this provision existed in the crime of corruption, which was reformed by the Law against Sexual Exploitation. Judges, before the reform took place, had already de facto disappplied this element.

knowledge or not of the victim, considering that there is no harm if the victim consented or accepted the criminal conduct.

Under no circumstances can equality become a conception that guides the criteria of judges, erroneously assuming that the "will" of a minor excludes the criminal offense, ignoring his or her eminent dignity, which is a philosophically and constitutionally protected good. In this type of offenses there can be no "agreement", because there does not exist, between a minor and an adult, the equality that justifies a supposed "consensus" and also because human rights are inalienable and non-negotiable.

3.4. How to Know if a Child or Adolescent was or is being Abused, Exploited or Sexually Treated.

3.4.1. Physical Indicators

3.4.1.1 Torn, stained or bloody underwear: whoever is taking care of the child or adolescent will be able to see these details when washing his or her underwear. Blood stains or holes in the underwear are always signs that should cause concern and above all cause the responsible adults to act to discover the origin of these stains.

3.4.1.2 Itching, swelling or pain, lesions or bleeding in the genital or anal areas: genital areas should be understood as the reproductive apparatus or intimate parts of each sex; in the case of the female/female gender the vagina and in the case of the male/male gender the penis. It is therefore, that the aforementioned characteristics should be given their respective definitions⁵⁸. Itching is the same as saying that itching; swelling is when some part of the penis is swollen or swollen, and itching is when some part of the penis is swollen.

⁵⁸ García-Pelayo and Gross Ramón. Little Larousse Illustrated.

The body increases its volume or size since that area of the body bulges a little more than its normal size; pain will be all that annoying sensation of any part of the body; injuries are the unfair damage caused in the body or health of a person caused by injury, blow or disease; finally, but less important, blood is the red liquid that circulates in the veins and arteries of the human body, bleeding is when this liquid loses its normal channel as a result of an injury.

3.4.1.3 Frequent urinary tract infections, pain or burning when urinating: it is vitally important to mention that although it is true that women are more prone to bacteria, fungi and viruses attacking their urinary system, this does not mean that men do not suffer from this disease.

3.4.1.4 Discharge from the penis or vagina: the discharge can be colorless or white, the normal discharge is a product of our organism's actions aimed at removing germs and other undesirable substances. The characteristic odor has a subjective acceptance for individuals. Usually the odor is not unpleasant, but if it smells really bad, it is advisable to visit a gynecologist because it is a sign of vaginal infection in the case of women or even a sexually transmitted disease that should be treated immediately.

3.4.1.5 Enuresis or encopresis (urinating or defecating in clothes or bed): children do not wet the bed on purpose. Bedwetting can have a number of causes that may be related to a sleep disorder, slower than normal development of bladder control, or the result of emotions and stresses that require special attention. It rarely means that the child has a kidney or bladder problem.

Bedwetting may be related to some psychological and affective conflict of the child, with the child's need for attention. It may also be caused by fatigue or emotional stress. Another possible cause may be in the environment

The family in which the child lives, in a family that overprotects him or her or that offers little affection to their children. There are parents who believe that if the child does not control the pee is because he is lazy and does not pay more attention to the subject, and so they apply punishments and provoke them with teasing, which will cause the problem to grow even more.

3.4.1.6 Strange odor in the genital area: when such signs are seen in a minor or adolescent, the possibility of sexual abuse should be considered in those girls with unusual infections.

3.4.1.7 Sexually Transmitted Infections (STIs): are commonly known as venereal diseases and are transmitted from person to person only by intimate contact that occurs almost exclusively during sexual intercourse, including vaginal sex, anal sex and oral sex.

3.4.1.8 Pregnancy: is the part of the human reproductive process that begins with the implantation of the embryo in the woman. Pregnancy begins at the moment of nidation and ends with delivery.

3.4.1.9 Psychosomatic diseases (pimples, skin spots, constant diarrhea without apparent cause): psychosomatic disease is that you have bodily symptoms of psychic, emotional or mental origin.

3.4.1.10 Anxiety: tightness in the chest, shortness of breath, sweating of the hands.

3.4.1.11 Feeling sick for no apparent reason: this is an expression that the child or adolescent may use to attract attention. The obligation of the responsible adult is to be careful and seek medical attention to rule out the possibility of abuse of any kind.

3.4.1.12 Recurrent or permanent headaches: the disorder of which the child and/or

adolescent has been a victim can generate

that he/she feels pressured and even responsible. These types of problems or pressures cause a child to begin to have these types of conditions.

3.4.1.13 She has eating and sleeping disorders: the former is a disease caused by anxiety. This behavior may or may not be altered voluntarily, this is subject to internal and external factors such as the level of self-esteem, family pressures, frustrations for being overweight, constant comparison with someone close by a family member or friend, etc.. Generally these types of eating disorders, beyond the symptoms of each one in particular, are accompanied by a marked isolation of the person, excessive tiredness, sleepiness, irritability, aggression, shame, guilt and depression, registering a disorder in the identity from the aforementioned aspects.

3.4.2. Behavioral indicators

3.4.2.1. Sudden and abrupt change in behavior: behavioral problems in children refer to a person's behaviors that are unusual, measurable and modifiable.

3.4.2.2. Poor performance, absenteeism and/or dropping out of school: physical, psychological and sexual abuse affects the performance of children and adolescents in school in such a way that their grades may reflect a drastic change, and they also begin to miss classes because they do not feel well, which ultimately leads to dropping out of school.

3.4.2.3. Deficient or conflictive relationships with peers: this may be noticed when the child presents an aggressive attitude with children of his or her age, minors or even confrontations with older boys or girls.

3.4.2.4. Does not like to change clothes in group activities (sports): some schools ask children to change their uniforms. The child will express rejection of these activities (not wanting to show his body in front of others).

3.4.2.5. Age-inappropriate behavior and handling of sexual information (seductive behavior, obscene language, etc.).

3.4.2.7. Chronic absconding: according to their guardians or caregivers, they believe that the child is going to school and the child starts missing school, leaving home in uniform and going to school, but not arriving at his or her destination.

3.4.2.8. Infractions to the law: what we know fits in infringing the law the minor turns it into a habit.

3.4.2.9. Direct or indirect accounts of sexual abuse experiences: the child touches on sexual topics and expresses his or her situation in an indirect way by saying, for example, that someone he or she knows went through such a situation.

3.4.2.11. Promiscuity.

3.4.2.12. Excessive masturbation.

3.4.2.13. Tendency to sexually abuse other minors.

3.4.2.14. Fear and/or distrust of a particular person.

3.4.2.15. Fear of establishing relationships with people of the opposite sex.

3.4.2.16. Night terrors, nightmares.

3.4.2.17. Resistance to returning home after school.

3.4.2.18. Handling of money, articles or goods not provided in the home.

- 3.4.2.19. Suspected or confirmed alcohol and/or drug use.
- 3.4.2.20. Suicide attempts, wishes to die.
- 3.4.2.21. You stop doing activities that you used to find pleasurable.
- 3.4.2.22. Has difficulty concentrating.
- 3.4.2.23. Presents hyperactivity and/or passivity.
- 3.4.2.24. Presents self-aggressive behaviors.
- 3.4.2.25. He presents recurrent sadness.
- 3.4.2.26. Presents fear of being left alone or without identifying what.
- 3.4.2.27. Has sudden mood swings: from joy to sadness to elation to crying to shyness.
- 3.4.2.28. Presents an aggressive or submissive communication or permissive to everything.
- 3.4.2.29. Becomes angry for no apparent reason.
- 3.4.2.30. Neglect their appearance.
- 3.4.2.31. Frequent or unexplained crying spells.
- 3.4.2.32. Isolates him/herself, wants to be alone.

3.5. Consequences of Sexual Abuse, Commercial Sexual Exploitation and Trafficking in Children and Adolescents

- 3.5.1. Loss of self-esteem or love of self.

- 3.5.2. Loss of confidence in others and in oneself.
- 3.5.3. Difficulty paying attention.
- 3.5.4. Pregnancy, contracting sexually transmitted diseases.
- 3.5.5. Sleep disorders (nightmares, insomnia, etc).
- 3.5.6. Isolation, sadness, anxiety.
- 3.5.7. Crying, feelings of guilt.

3.6 What Should We Do in the Event of Sexual Abuse, Commercial Sexual Exploitation and Trafficking of Children and Adolescents?

Report the sexual abuse and simultaneously seek professional help.

3.6.1. Why do it:

3.6.1.1. Violation of human rights.

3.6.1.2. It violates the dignity and integrity of children and adolescents and has serious emotional and social consequences.

3.6.1.3. If not reported, the abuser may continue to do so.

3.6.2 Where to file a complaint or seek help from the

National Police.

Public Prosecutor's Office.

Commissioner for Women and Children.

Ministry of the Family.

CONCLUSIONS:

The efforts of the past decade and the beginning of this one have been directed toward the ratification of the instruments of international law relating to child labor and its worst forms; the next challenge has been the harmonization of national legislation with the ratified instruments, which to some extent has already been achieved.

Convention 182 has emphasized the need to create legal mechanisms to combat the worst forms of child labor. There is still work to be done to combat forms of exploitation in general and in particular.

Both the Penal Code of Costa Rica and Nicaragua, contemplate the minimum requirements to typify what is a scourge to the dignity of our children. It is equally gratifying that in spite of the delays in the approval of special laws that are determinant for the continuity in the protection and above all prevention of this type of crimes, we now have a body of law that protects our children.

It should be noted that although the study did not address the actions and measures currently implemented by governmental and non-governmental organizations, they have joined efforts to prevent this disease from spreading and causing so much damage to our children.

Nicaragua has made progress in addressing violence against children and adolescents. The State has ratified International Agreements on their rights, progressively adapting national legislation, designing public policies and programs, and creating institutions to comply with these agreements. The greatest achievement has been the reform of the Penal Code of the Republic of Nicaragua.

The implementation of the Childhood and Adolescence Code has improved prevention measures, psychosocial care and access to justice.

RECOMMENDATIONS

1. The entry into force of Law 641 "Penal Code of the Republic of Nicaragua" has already manifested the changes in the visualization of the issue of commercial sexual exploitation of children and adolescents, but we must continue to promote changes in our regulations that allow full compliance with the law. All national regulations should be harmonized, and should not contain points that allow confusion, ambiguities and even legal gaps.

2. In order to combat forms of exploitation in general and in particular, we must take into account those International Agreements that would allow us to broaden national regulations and adapt them to such agreements. Agreements should not only be ratified and implemented at the time they enter into force, but should also be constantly implemented in public policies as well as in those promoted by civil society.

3. Protection mechanisms should be promoted, that is to say, those projects that not only allow to specify the criminal type but also the actions for the care and protection of our children and adolescents victims of this scourge to their dignity and physical integrity, such as commercial sexual exploitation.

4. Governmental and non-governmental institutions should never stop their efforts and resources to keep their sources of information updated, as well as the measures and actions they implement for the protection of victims of commercial sexual exploitation, especially when it comes to our children and adolescents. Therefore, more adequate mechanisms and procedures should be created to assist victims of sexual exploitation in order to eliminate cumbersome and re-victimizing processes.

5. The right to a name, identity and nationality, expressed in the registration in the Registry of Civil Status of Persons, is an urgent task in the recognition of children and adolescents as persons and citizens and an action to confront violence, combat and reduce trafficking and commercial sexual exploitation of children and adolescents.

6. Raise awareness among citizens of the magnitude of the phenomenon of sexual exploitation of children and adolescents. It is necessary to raise the awareness of victims of commercial sexual exploitation to denounce their aggressors, breaking the culture of silence and social permissiveness.

7. It is of utmost importance to disseminate and educate on the contents of the legislation against commercial sexual exploitation of children and adolescents in the State, universities, schools and society.

BIBLIOGRAPHY .

ANTEZANA RIMASSA, PAULA. Reflexiones sobre la aplicación de los convenios de la OIT sobre el trabajo infantil y sus peores formas en América Central y República Dominicana. San José, International Labor Office, 2006.

BONILLA, JUAN DE DIOS. Violence against children and adolescents. For a safe environment for children and adolescents. CODENI / CONAPINA / Nicaragua Avanza / Plan Nicaragua / Save The Children / UNICEF.

CABANELLAS DE TORRES, GUILLERMO. Elementary Legal Dictionary. Enlarged and corrected by Cabanellas de las Cuevas.

POLITICAL CONSTITUTION OF THE REPUBLIC OF NICARAGUA.

CODE OF CHILDHOOD AND ADOLESCENCE. Law two hundred eighty seven - 287-, of March 24, 1998 and published in the Official Gazette number 97 of May 27, 1998.

PENAL CODE OF THE REPUBLIC OF NICARAGUA. Law number 641, published in the Official Gazette, numbers 83, 84, 85, 86 and 87 of May 5, 6, 7, 8 and 9, 2008 (effective 60 days after publication).

PENAL CODE OF THE REPUBLIC OF COSTA RICA. Law number 4573, of 4 of May 1970. Published in Official Gazette Diario Oficial number 257 of November 15, 1970.

CRUZ, FERNANDO / MONGE, IVANNIA. Explotación Sexual Comercial: Contenidos Mínimos en Materia de Explotación Sexual Comercial de Personas Menores de Edad, según las Normas Internacionales. Working Paper with

Recommendations for Central America, Panama and the Dominican Republic. San José, Costa Rica: ILO, 2004.

ERICK GÓMEZ TAGLE LÓPEZ / MIGUEL ONTIVEROS ALONSO. Study jurídico-penal relativo a la Explotación Sexual Comercial Infantil; Bases para su unificación legislativa en México. National Institute of Criminal Sciences (INACIPE). First Edition 2004.

UNITED NATIONS CHILDREN'S FUND (UNICEF El Salvador). Salvador). La explotación Sexual Comercial y La Trata de Niñas, Niños y Adolescentes (Commercial Sexual Exploitation and Trafficking of Children and Adolescents). 2007.

GARCÍA-PELAYO Y GROSS, RAMÓN. Small Larousse Illustrated.

LAW AGAINST COMMERCIAL SEXUAL EXPLOITATION OF PERSONS MINORS. Law 7899 published in Official Gazette number 159 of August 17, 1999. Costa Rica.

LÓPEZ HURTADO, CARLOS EMILIO. Paper Rights and the Role of Rights. Aplicación de la Convención de los Derechos del Niño y de los Códigos de la Niñez y la Adolescencia en Centroamérica. Procuraduría para la Defensa de los Derechos Humanos (PDDH); Save The Children Norway.

PUBLIC PROSECUTOR'S OFFICE REPUBLIC OF NICARAGUA. Case Theory and Debate Techniques in Criminal Procedure. Basic Prosecutor's Library. Institutional Strengthening Project. CHENNI AND COMPANY / USAID. Managua, Nicaragua, 2001.

ILO, IPEC. Basic Information Document on Commercial Sexual Exploitation of Children and Adolescents. Central America, Panama and Dominican Republic, 2006.

ILO, IPEC. Documento Básico de Información Sobre la Problemática de la Explotación Sexual Comercial de Niños, Niñas y Adolescentes. 2004.

ILO, International Program on the Elimination of Child Labor. Protocol of Procedures for the Repatriation of Children and Adolescent Victims of Trafficking in Persons.

SALAS CALVO, JOSÉ MANUEL / CAMPOS GUADAMUZ, ÁLVARO. Exploitation Commercial Sex Work and Masculinity: A Qualitative Study with Men from the General Population. San José, Costa Rica, International Labor Office (ILO), 2004. Sexual Exploitation, Research, Men, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Panama.

UNICEF. Justice and Children's Rights. Volume Number Nine. United Nations Children's Fund. 2008.