

ARTICLES

"MADE THE LAW, MADE THE TRAP": PROGRESS AND CHALLENGES IN THE REGULATION OF COMMERCIAL SEXUAL EXPLOITATION IN COSTA RICA

"EVERY LAW HAS A LOOPHOLE": ADVANCES AND CHALLENGES ON THE REGULATIONS ON COMMERCIAL SEXUAL EXPLOITATION IN COSTA RICA

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SUMMARY

This article reviews national and international regulations related to the issue of commercial sexual exploitation, with the objective of reflecting on their applicability and finally outlining some recommendations that seek to improve the response of the Costa Rican State and its institutions in addressing this problem. The findings suggest that despite the existence of laws that protect victims and punish those who sexually exploit them, the Costa Rican State has not yet developed effective mechanisms to work with the potential container of the victims' families, create cultural policies of zero tolerance and strengthen the response to the problem at the local or community level.

KEYWORDS: COMMERCIAL SEXUAL EXPLOITATION * NATIONAL REGULATIONS * INTERNATIONAL REGULATIONS * PUBLIC POLICIES * HUMAN RIGHTS * HUMAN RIGHTS

ABSTRACT

This article takes a look at the national and international regulations related to the issue of Commercial Sexual Exploitation, in order to reflect on their applicability and to outline some recommendations that seek to improve the response of the Costa Rican government and its institutions in addressing this problem. The findings suggest that despite the existing laws to protect victims and punish sexual exploiters, the Costa Rican government has not yet developed effective mechanisms for working with potential holding capacities of the victim's families, for creating cultural policies zero tolerance and for strengthening the problem response at the local or community level.

KEY WORDS: COMMERCIAL SEXUAL EXPLOITATION * NATIONAL NORMATIVE * INTERNATIONAL NORMATIVE * PUBLIC POLICY * HUMAN RIGHTS

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INTRODUCTION

In recent years, the countries of Latin America and the Caribbean have committed themselves to preventing and eliminating the commercial sexual exploitation of minors by signing political declarations and ratifying various international conventions. The approval and ratification of these instruments have publicly committed the States to implement all necessary actions to make effective, within their territory, the commitments ascribed in these international conventions, mainly by developing actions in the areas of prevention, care and punishment of this crime, which should be reflected in public policies that have a direct impact on this problem and contribute to its progressive elimination.

Thus, when a State ratifies an international convention, it acquires the status of *State Party* to that convention, which means that it has made a public commitment to the international community to make all the necessary modifications to its domestic legislation to harmonize and adapt its laws to the international commitments acquired. This sense of obligation is what is called "binding character" (Bruna, 2003).

However, the lessons learned about the dynamics that characterize the sex trade with minors have revealed the urgent need not only to create new laws that criminalize this type of crime, but also to combine efforts and create mechanisms to enforce rights, where state institutions coordinate among themselves and function as sentinels of compliance and exercise of the fundamental guarantees that children and adolescents (nna) have; The permanence of many minors in the sex trade is synonymous with the inefficiency of public institutions in providing them with protection and security.

For this reason, *esc* is considered to be an extreme expression of social and family violence, due to the fact that there is a response to it.

This is because it is within the family where the first risk factors that make minors vulnerable to the "lucrative" sex business initially appear (Claramunt, 2008).

These two levels of lack of protection, state and family, together with the social reinforcement that exists with respect to the objectification of the female body and community tolerance of this phenomenon (Salas and Campos, 2004), make it feasible for those who sexually exploit to strip their victims of their human condition and classify them as sexual objects for commercial exchange. Considering this scenario, it becomes necessary to reflect on the applicability of national and international regulations in the implementation of policies and strategies aimed at reducing the social vulnerability of minors to organized sexual crime networks.

This vulnerability should be understood as all those individual, family and community characteristics that expose persons under 18 years of age to a higher risk of sexual exploitation. It includes individual, political, cultural and economic aspects that are socially constructed and reconstructed, hence the importance of modifying and impacting on them by creating protective factors at the state, family and community levels to minimize the risk that children and adolescents may become future victims of this crime (International Program on the Elimination of Child Labor and the International Labor Organization [ipec/IL0], 2004a).

For these reasons, the effective implementation of specific norms for this problem can contribute considerably to ensuring that minors fully enjoy their right to live free from all forms of abuse or exploitation. Thus, public policies are one of the key elements that States have to combat this form of modern slavery,

by defining principles, objectives, priorities, duties and legal responsibilities with respect to the actions of its institutions.

Based on the above reflections, this article will review the international and national regulations related to CSEC in order to identify the progress and challenges regarding their applicability and implementation, and finally outline some recommendations aimed at improving the response of the Costa Rican State and its institutions in addressing this problem.

INTERNATIONAL STANDARDS AND MEETINGS RELATED TO THE ISSUE OF COMMERCIAL SEXUAL EXPLOITATION

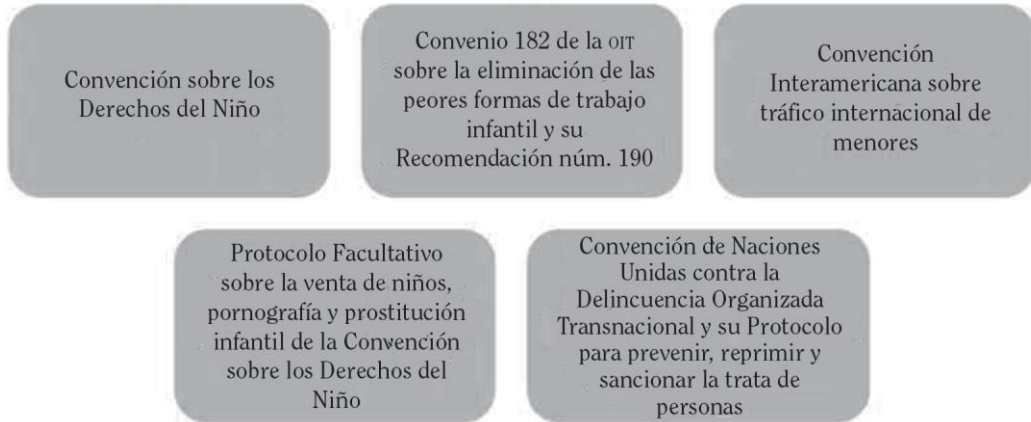
In order to understand the relationship between national public policies and international regulations related to the issue of commercial sexual exploitation, it is essential to point out that since 1989 (the year in which the Convention on the Rights of the Child was created), the international community has promulgated a series of international conventions and declarations that seek to recognize the social citizenship (Marshall and Bottomore, 1998) and human rights of all minors, without distinction of sex, gender, age, ethnicity or social situation; some of these conventions or declarations are: Convention 182 of the International Labor Organization

(ILO) (ILO, 1999a), the United Nations Convention against Organized Crime (United Nations General Assembly, 2000a), among others. In addition to these international instruments, regional, subregional, hemispheric and global meetings have been held, focusing on the approach that the "State Parties" should take to this violation of the fundamental guarantees that children and adolescents possess.

Thus, in order to understand the position acquired by CSEC in the national and international agenda, it is not only necessary to know the regulations (laws) concerning it, but also all those spaces of reflection in which the international community has joined efforts for the progressive eradication of this social scourge.

However, before learning about the international meetings on the prevention, care, punishment and elimination of CSEC and their subsequent political and legal declarations, it is prudent to take a brief look at the international regulations dealing with this issue. In this sense, given the complexity of commercial sexual exploitation of minors, the international legal framework that serves as a guide in the development of actions aimed at its elimination is mainly composed of the instruments indicated in Figure 1 (IPEC/ILO, 2002, 2004a and 2004b).

FIGURE 1
INTERNATIONAL INSTRUMENTS IN THE FIELD OF SC



Source: Own elaboration.

- ✧ The Convention on the Rights of the Child (United Nations General Assembly, 1989) is "the main international instrument that reflects the consensus of the countries that make up the United Nations system on the human rights of children and adolescents" (IPEC/ILO, 2002, p. 43). It was adopted by the United Nations (UN) in 1989 and ratified by Costa Rica in 1990. Although it is not a specific convention on the subject of children, it constitutes the paradigm of universal action for the understanding, promotion and protection of the human rights of minors and the best interests of the child, highlighting in articles 34, 35 and 36, the commitment of the "States Parties" to protect minors from commercial sexual exploitation, kidnapping, sale, trafficking and all types of cruel, inhuman or degrading treatment. ILO Convention 182 on the Elimination of the Worst Forms of Child Labor (ILO, 1999a) and its Recommendation No. 190 (ILO, 1999b) seek to "secure commitments from States Parties" to protect children from commercial sexual exploitation, abduction, sale,

trafficking and all forms of cruel, inhuman or degrading treatment.

States Parties to take the necessary measures to eradicate as a matter of priority the worst forms of child labor, including the establishment and application of penal or other sanctions, as appropriate" (ipec/ ilo, 2002, pp. 48-49). This Convention, ratified by Costa Rica in 2001, conceptualizes in Article 3 the worst forms of child labor as all forms of slavery or slavery-like practices, such as the use, recruitment or offering of children and adolescents for prostitution, the production of pornography or pornographic performances, the use of minors for illicit activities, and all work that by its nature harms the health, safety or morals of children (ipec/ILO, 2004e).

The Inter-American Convention on international trafficking of minors, adopted by the Organization of American States (oas) in 1994 and ratified by Costa Rica in 2001 (oas, 1994), has as its main objective the prevention and sanctioning of international trafficking of minors, as well as the regulation of

The "States Parties" shall be responsible for the civil and criminal aspects relating thereto. Thus, as specified in its article 1, each State undertakes to establish a system of international cooperation that establishes legal and administrative provisions to ensure the prompt return of minors who are victims of international trafficking, taking into account the best interests of the child in all actions proposed and implemented (ipec/ILO, 2007).

- ◇ The Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution to the Convention on the Rights of the Child (United Nations General Assembly, 2000b). It was ratified by Costa Rica in 2002, and establishes:

... that *States Parties* shall take all measures to ensure that, as a minimum, the acts or activities listed are fully covered by their criminal legislation, whether committed within or outside their borders, or whether committed individually or collectively. These acts related to sexual exploitation, and according to Article 3, are: the offer, delivery or acceptance, by any means, of a child for the purpose of sexual exploitation, transfer of organs of the child for profit, forced labor of the child; the offer, possession, acquisition or delivery of a child for the purpose of prostitution and the production, distribution, dissemination, importation, exportation, offer, sale or possession of child pornography (ipec/ ilo, 2002, p. 49). 49).

- ◇ The United Nations Convention against Transnational Organized Crime (United Nations General Assembly of the United Nations), the United Nations Convention against Transnational

Organized Crime (UNTOC) and the United Nations Convention against Transnational Organized

United Nations, 2000a) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol), ratified by Costa Rica in 2003 (United Nations General Assembly, 2000c), understands trafficking as the act of:

rape, it does provide contributions in the area of prevention.

..... the recruitment, transportation, transfer, harboring or receipt of persons under 18 years of age, whether or not by means of threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power, vulnerability, giving or receiving payments or benefits to achieve the consent of a person having control over another person for the purpose of sexual exploitation (article 3, paragraph A of the United Nations Convention against Transnational Organized Crime, 2000) (Monge and Cruz, 2004, p. 35) (Monge and Cruz, 2004, p. 35). 35).

All of these aforementioned international instruments have in common a clear example of the processes of typification, specification and positivization of the human rights of minors. They also seek to have an impact on the different modalities and manifestations in which child labor can occur, through the establishment of legal and administrative mechanisms that ensure the protection of victims and the punishment of exploiters; however, given the characteristics of this crime, other norms or declarations of international law can also be considered as regulations related to the subject, since they form part of the central nucleus of human rights and constitute progressive and indispensable elements for the interpretation and comprehensive understanding of international legal production.

In this area, it is important to recognize that, although much of the international legislation on women's human rights does not explicitly address the issue of

and elimination of this social scourge, as it safeguards the fundamental guarantees of girls and adolescents, who are the main victims of this crime. For example, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

-Convention of Belém do Pará (Organization of American States, 1994) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations [UN], 18 December 1979). Similarly, it is relevant to highlight the role of the 2030 Agenda and the Sustainable Development Goals (SDGs) in that they allude to vulnerability factors that are directly related to the issue of scarcity, in addition to aspiring for all people to enjoy peace, well-being and prosperity (United Nations, 2018). Taking up this idea, Monge and Cruz (2004) consider that:

... in addition to criminal legislation, States should promote, approve and reform other laws of a civil, family, child and adolescent nature, and even of an administrative nature, aimed at strengthening the mechanisms for the protection of the rights of minors in other areas, promote legislation to prevent sexual violence against minors, and promote non-sexist education and comprehensive sex education within the framework of public policies for the prevention and care of children (p.13).

Thus, international standards recognize that slavery is a form of modern slavery, an extreme manifestation of gender-based violence, a systematic chain of human rights violations and a form of economic exploitation, and urge:

...States to take measures to prevent and punish, including criminal sanctions, this scourge. Precisely in this context, the countries of the region, since 1999 and especially since 2003, have been promoting technical, political and legislative discussions to reform

criminal legislation (procedural and substantive) and adapt domestic legislation to the minimum content required by international instruments in this area (ipecc/ILO, 2007, p. 5).

The ratification of national regulations related to the issue of children has not only aimed to enter into force, but also to make States operationalize a series of basic principles that demonstrate, with concrete actions, the application of the human rights approach in the comprehensive protection of minors. Some of these basic principles are (ipecc/ILO, 2004a):

- 1) All persons under 18 years of age have the right to be protected against commercial sex.
- 2) Minors cannot consent to a crime against them.
- 3) Children and adolescents have the right to family coexistence and to the comprehensive protection of all their rights.
- 4) If families and communities are unable to protect minors from the crime, it is the state's responsibility to mediate and guarantee their protection.
- 5) States must legislate to ensure that the manifestations and modalities of CSEC are contemplated as serious crimes in their penal codes. In addition, they must create laws within their domestic legislation, in accordance with the rights-based approach and the doctrine of comprehensive protection, that safeguard the fundamental guarantees of minors and recognize all children as persons with rights, regardless of their social, family or economic status.

Moreover, in addition to these principles and conventions, the international community has developed a series of meetings whose main purpose has been to promote joint actions in the implementation of social and cultural policies that have an impact

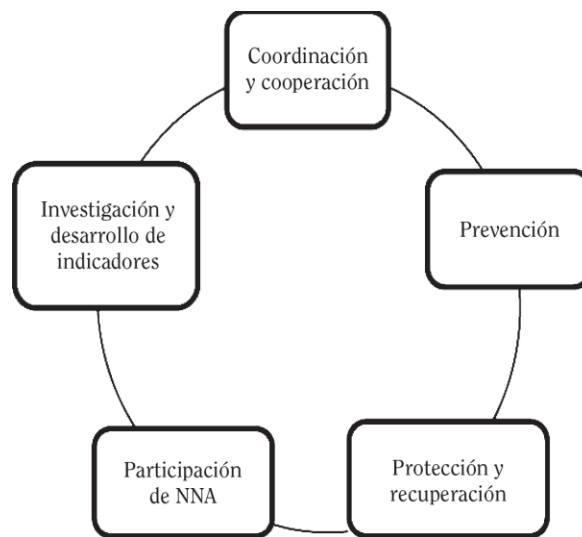
"The law is made, the trap is done": advances and challenges in the regulation of sexual exploitation...
on the causes of poverty. Thanks to the knowledge that the international community has gained in the past few years, the international community has been able to

The first World Congress against Commercial Sexual Exploitation of Children and Adolescents was held in Stockholm (Sweden) in August 1996, and the first World Congress against Commercial Sexual Exploitation of Children and Adolescents was held there.

The importance of this first congress lies in the fact that the participating countries saw the need to draw up specific national plans of action for the prevention and control of

and eradication of commercial sexual exploitation of minors. To this end, they materialized their agreements in the resulting "Declaration and Program of Action against Commercial Sexual Exploitation" (ipec/IL0, 2004a). This document established five priority areas of work that have been maintained in the various international commitments on the issue, and which have guided countries in their efforts to eradication of this problem (Figure 2).

FIGURE 2
PRIORITY AREAS FOR THE PREVENTION AND ERADICATION OF THE COMMERCIAL SEXUAL EXPLOITATION OF MINORS



Source: Prepared by the authors based on ipec/IL0, 2004a.

Following this first congress, in November 2001, the Regional Consultation on the Sexual Exploitation of Children was held in Montevideo (Uruguay) to evaluate progress and setbacks since Stockholm and to establish the basis for a regional strategy to be presented to the Second World Congress against Commercial Sexual Exploitation of Children and Adolescents to be held in Yokohama (Japan). The results of this regional consultation, which resulted in the document "A blueprint for a strategy against commercial sexual exploitation of children and adolescents",

were presented at the Second World Congress against Commercial Sexual Exploitation of Children and Adolescents to be held in Yokohama (Japan).

commercial sexual exploitation and other forms of violence against children and adolescents in the Latin American and Caribbean Region" (ipec/ILO, 2004a).

As part of the commitments made at the Stockholm meeting, five years later, in December 2001, the Second World Congress against Commercial Sexual Exploitation of Persons under 18 years of age was held in the city of Yokohama. The commitment made at that congress gave special importance to the ratification of international instruments on the protection of persons under 18 years of age.

The project emphasizes the urgent need to address the vulnerability factors that put children and adolescents at risk of commercial sex and the factors that promote, tolerate and legitimize the demand for sex with people under 18 years of age.

As a result of the congress, a "Global Commitment" was issued (the Yokohama Global Commitment), which reaffirms and reinforces the agreements made at the First World Congress in Stockholm (1996) and at the Regional Governmental Consultation on the Sexual Exploitation of Children held in Montevideo (2001) (Ipec/IL0, 2004a).

As a result of these two congresses and with the purpose of giving continuity to the commitments acquired by the countries in the area of prevention and elimination of commercial sexual exploitation, different organizations joined forces and held in San José (Costa Rica) the Follow-up Meeting to the Second World Congress of Yokohama (2004), with the objective of providing a space for reflection, feedback and regional exchange on the progress, obstacles, challenges and lessons learned in the area of public policies and action plans related to sexual exploitation, with emphasis on the prevention of the factors that lead to the demand and the elimination of commercial sexual exploitation. The objective was to provide a space for reflection, feedback and regional exchange on the progress, obstacles, challenges and lessons learned in terms of public policies and plans of action related to sexual exploitation, with emphasis on the prevention of the factors that cause the demand and the factors that place children and adolescents at risk from exploitation networks (Ipec/IL0, 2004a).

Finally, from November 25 to 28, 2008, various international organizations, representatives of governments, non-governmental organizations, religious leaders, minors, international cooperation agencies, among others, met in Rio de Janeiro (Brazil) for the Third World Congress on Combating the Sexual Exploitation of Children and Adolescents (Rio de Janeiro Pact, November 2008).

This activity reviewed the progress and actions taken in follow-up to the Stockholm Declaration and Agenda for Action (1996) and the Global Commitment made in Yokohama (2001). It also identified a number of lessons learned and actions taken.

The main challenges that must be taken up in order to prevent, confront and eliminate the sexual exploitation of children and adolescents.

Some of these challenges point to the inexistence (in several countries) of clear and effective laws aimed at preventing, addressing or sanctioning CSEC, a difficulty that is compounded by the lack of "reliable and disaggregated data on the prevalence and nature of [this manifestation of violence]" (Rio de Janeiro Pact, November 2008, p. 4).

The importance of these international meetings lies in the fact that the participating countries (including Costa Rica) have glimpsed the need to develop specific national plans of action for the prevention and eradication of commercial sexual exploitation, have formed working groups against the issue, have committed to the ratification of international instruments on the protection of victims and have agreed on the need to promote spaces for national and international reflection. In this regard, according to the National Council for Children and Adolescents (2017), "Costa Rica has developed in recent decades a Framework Plan of Action (1998), an Immediate Intervention Plan (2000) and four National Plans against commercial sexual exploitation (2001, 2003-2006, 2008-2010 and 2017-2018)" (p. However, the introduction of new information and communication technologies has modified the modalities and manifestations of CSEC and diversified the forms of contact and payment, which has made it even more difficult to detect and address this problem.

Although international norms and the various political meetings related to the issue of slavery have shown progress in addressing and punishing this crime, they also reveal obstacles that still persist in several countries in the region to achieve the absolute disappearance of this form of modern slavery. Some of these pending gaps are mentioned in the Rio de Janeiro Declaration (2008) and allude to:

The existence of significant gaps in knowledge and understanding of how to deal with and respond to the emerging manifestations, trends and complexity of the different forms of sexual exploitation of children and adolescents.

The absence in many States of laws that adequately define and criminalize the different forms of sexual exploitation, in accordance with established international minimum standards.

The increase and persistence of impunity.

Lack of investigation and extraterritorial jurisdiction (extradition and repatriation agreements) to facilitate the punishment of this crime.

Violation of the right to participation of minors in the implementation of public policies that concern them.

The lack of sufficient resources dedicated to the investigation of crimes associated with the sex trade (Pact of Rio de Janeiro, November 2008).

COSTA RICAN LAWS ON COMMERCIAL SEXUAL EXPLOITATION OF MINORS

After a brief review of the regulations and inter-national meetings related to the issue of scs, it is appropriate to analyze the appropriation and harmonization processes carried out by Costa Rica in relation to its adherence to these standards (Figure 3).

FIGURE 3
NATIONAL INSTRUMENTS IN THE FIELD OF SC



Source: Own elaboration.

One of the first actions carried out by our country after its participation in the First World Congress in Stockholm (1996) was the analysis and critical review of its domestic legislation in order to identify the main legislative reforms needed to protect minors from the sex trade. Thus, it was noted that:

private organizations and public institutions that have worked to defend the rights of children and adolescents participated in the review and reform of legislation aimed at punishing this serious violation of human rights.

which began in 1996 and culminated with the entry into force in 1999 of the Law against the Sexual Exploitation of Minors (Law 7899) (ipec/IL0, 2002), p. 43).

Some of the most significant contributions that represented the approval of this law are (ipec/IL0, 2002):

- ✧ It was the first law of its kind in Latin America.
- ✧ The crime of rape was re-conceptualized and expanded (including rape with objects and fingers).
- ✧ Terms that revictimized and questioned the "honesty" of the victims, such as statutory rape and indecent assault, were eradicated.
- ✧ Revictimization is the process by which the victimization suffered by a person is actualized to such an extent that a new traumatic experience is created for that person. It may be carried out by the family, communities, service providers or society in general, when a victim is blamed for the consequences suffered as a result of the violation of one of his or her fundamental rights. The revictimization experienced by victims of commercial sexual exploitation under the age of 18 again violates their right to a life of dignity, free from all types of abuse and violence (Claramunt, 2004a and 2004b).
- ✧ The crime of remunerated sexual relations is created, which consists of offering and providing money or an alleged benefit to persons under 18 years of age to have sexual relations with them or to carry out other erotic activities.
- ✧ The crime of manufacture, production and dissemination of pornography is created.

In addition, as a result of the progress achieved with this law, the National Commission against the Commercial Sexual Exploitation of Minors (CONACOES) was established in 1999, whose mission is to promote and strengthen inter-institutional, intersectoral and interdisciplinary coordination and articulation to comprehensively address the problem of the *esc* of minors. In turn, *conacoes* is a Special Working Commission of the National Council for Children and Adolescents (ipec/IL0, 2002).

In addition to the fact that the Law against *esc* was the first Costa Rican and Latin American reference in terms of sanctioning this crime, there are also other domestic regulations that complement and support the effective application of this legal instrument. Thus, in addition to Law 7899 (Legislative Assembly of Costa Rica, 1999), the national legal framework on the issue of *esc* should include the following norms:

- ✧ The Political Constitution of Costa Rica (Legislative Assembly of Costa Rica, 1949) which, although it is not a specific regulation on the issue of *esc*, is the highest-ranking regulation in the country's legal system (ipec/IL0, 2002).
- ✧ The Code of Children and Adolescents, Law 7739 (Legislative Assembly of Costa Rica, 1998), which:

... gives rise to the creation of the National Protection System made up of the National Council for Childhood and Adolescence (*cnna*), the Childhood and Adolescence Protection Boards and the Community Guardianship Committees. This code constitutes [], so to speak, the main law that operationalizes the postulates of the Convention [on the Rights of the Child] (ipec/IL0, 2002, p. 50).

In turn, it has the characteristic that it does not contemplate norms of a criminal nature, it does not create crimes, but rather

sanctions of fines or non-compliance.



It therefore lacks express provisions on sexual exploitation; it only imposes the obligation to criminally report any reasonable suspicion of mistreatment or abuse committed against a child or adolescent (Ipec/IL0, 2002).

- ✧ Law 8590, Law for the Strengthening of the Fight against Child Pornography (Legislative Assembly of Costa Rica, 2007), which through an amendment to the Penal Code and the Code of Criminal Procedure, criminalized the possession of child pornography as a crime of public action, as well as extending the statute of limitations for sexual crimes committed against minors; these crimes would expire 10 years after the minor reaches the age of 18. Recently, the Law on the Right to Time, Law 7594 (Legislative Assembly of Costa Rica, 2019), was approved, which specifically reforms Article 31 of the Code of Criminal Procedure, extending the guarantees and protection of minors who are victims of sexual crimes by extending the statute of limitations for these crimes from 10 to 25 years, which allows children and adolescents to file a complaint until they reach the age of 43.
- ✧ Law 9095 in force as of February 8, 2013, Law against human trafficking and creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons (conatt) (Asamblea Legislativa de Costa Rica, 2013), is relevant not only for providing a specific framework for action on the issue of human trafficking, but also for promoting synergies and cooperative ties in the creation of conatt.
- ✧ Law 9406 "Strengthening the legal protection of girls and adolescent women in situations of violence".

The law "Ley de Relaciones Impropias, reforma Código Penal, Código de Familia, Ley Orgánica Tse y Registro Civil y Código Civil", known as the Law on Improper Relationships (Asamblea Legislativa de Costa Rica, 2017), which strengthens the protection of underage women by criminalizing sexual relations with persons under 18 years of age, when there is a sufficient age difference in the relationship (5 or 7 years) to establish power relationships because of age and prohibiting the marriage of persons under 18 years of age, which was previously popularly known as "early marriages".

As can be observed, Costa Rican regulations related to the issue of sexual exploitation are aimed not only at punishing those who sexually exploit, but also at creating mechanisms for the protection and enforceability of rights for all persons under 18 years of age; thus, thanks to the recognition of these norms and the principles they imply (principles of equality and non-discrimination and the best interests of the child), it is possible to identify a series of violated guarantees within national law when a case of commercial sexual exploitation occurs. These guarantees have been outlined in the Childhood and Adolescence Code (cna) based on the Convention on the Rights of the Child (CRC), as the international normative framework of reference in the area of social policies aimed at minors.

However, the harmonization with the con However, there are still several obstacles that must be overcome in order to achieve an adequate implementation of public policies aimed at the timely protection of underage victims of this crime and, above all, the strengthening of their families in the face of the sex trade.

IDENTIFYING CHALLENGES AND PENDING ACTIONS: IDENTIFYING, ANALYZING AND TAKING ACTION

After reviewing the international and national regulations on the issue of sex trade with minors, it is appropriate to develop some reflections on their implementation and impact.

In order to develop this exercise, it is important to initially recognize the relevance of laws in the actions of governmental institutions, since it is thanks to them that minimum standards can be demanded in addressing certain social issues. In this sense, the laws

-The use of public policies - understood as a fundamental part of public policies - can contribute to deterring and mitigating the consequences of CSEC by establishing sanctions against those who participate in exploitation networks, while defining reparation and protection measures for the victims.

Thus, in Costa Rica, basic legislation has been passed to prevent and punish slavery, in accordance with international norms and principles. This national commitment is key to eradicating

The progressive reduction of the sex trade, as it shows the firm stance of governmental authorities in establishing, implementing and monitoring the application of policies and laws, translating into domestic action the international commitments acquired (IPEC/IL0, 2004c; 2004d and 2004e). However, its application also requires the participation of various civil society actors in order to be more effective, such as: the tourism sector, the transportation sector (cab drivers), communities, among others. The active inclusion of these sectors is essential for the optimal enforcement of regulations on the commercial sexual exploitation of minors.

According to the most recent report of indicators of the Judiciary published on its website, which dates from 2017 (Ministry of Justice and Peace, 2018; Observatory of Gender Violence against Women and Access to Justice, 2019); a significant difference can be observed between the complaints made and the number of people convicted for crimes associated with ESC (Table 1 and 2). On the other hand, Table 3 shows the number of victims by sex for crimes associated with ESC in 2017.

TABLE 1
NET COMPLAINTS FOR CRIMES ASSOCIATED WITH ESC FILED WITH THE PUBLIC PROSECUTOR'S OFFICE AND THE JUDICIAL INVESTIGATION AGENCY

FELONY	PERIOD		
	2015	2016	2017
Paid sexual acts with underage persons			
Aggravated corruption of minors			
Corruption of a minor and incompetent person			103
Dissemination of pornography	247	262	
Manufacture, production or reproduction of pornography			
Sexual intercourse with minors (attempted)	294	254	
Sexual relations with minors	955	1096	2250
Paid sexual relations with minors	1	1	
Paid sexual intercourse with underage persons (attempt to)	0	0	
Seduction or encounters with minors by electronic means	82		186
Trafficking in persons			145
TOTAL	1781	1917	3107

Source: Observatory on Gender Violence against Women and Access to Justice, 2019.



TABLE 2
PERSONS CONVICTED OF CRIMES ASSOCIATED WITH ESC
2017

FELONY	SEX		TOTAL
	MALE	FEMALE	
Paid sexual acts with underage persons		0	
Corruption of minors		0	
Dissemination of pornography		0	
Manufacture, production or reproduction of pornography	1	0	1
Sexual relations with minors		1	
Paid sexual intercourse with a minor or incapable person (attempt of)	1	0	1
Seduction or encounters with minors by electronic means		0	
Seduction or encounters with underage persons		0	
Trafficking in persons			
TOTAL			

Source: Ministry of Justice and Peace, 2018 and Observatory of Gender Violence against Women and Access to Justice, 2019.

TABLE 3
NUMBER OF VICTIMS BY SEX FOR CRIMES ASSOCIATED WITH ESC ACCORDING TO THE PUBLIC
PROSECUTOR'S OFFICE, 2017.

FELONY	VICTIM		TOTAL
	MAN	WOMAN	
Paid sexual acts with underage persons			
Corruption of a minor and incompetent person	0		
Manufacture, production or reproduction of pornography			
Sexual intercourse with minors (attempted)	1	1	
Seduction or encounters with minors by electronic means			
Sexual relations with minors	132	1930	2062
Paid sexual relations with minors			
TOTAL		2121	2293

Source: Ministry of Justice and Peace, 2018 and Observatory of Gender Violence against Women and Access to Justice, 2019.

As mentioned above, the last year for updating the Judicial Branch indicators is 2017 and since then it is not possible to identify similar recent comparative data on its website; therefore, although this information contributes to clarify the picture regarding convictions for the

The law is incomplete and insufficient in the case of crimes related to the crime of slavery.

In this sense, it is possible to perceive a reduced institutional response starting from the detection phase, i.e., statistics show that of the number of cases detected or reported, only a small percentage of cases are reported.

The fact that only a smaller percentage of victims receive attention and follow-up, with the aggravating factor that a smaller percentage achieve full restitution of their rights and only a small number of the adults involved in the crimes are captured and convicted. Likewise, it is possible to observe how the female gender condition constitutes a primary risk factor for a person to be trapped by commercial sexual exploitation networks.

Although these statistics help to visualize some of the challenges that must be taken up in relation to this issue, they should be analyzed with caution given the clandestine nature and the underreporting of crimes associated with this violation of the human rights of minors.

However, in order to focus on the pending challenges that the Costa Rican State must assume in order to eradicate the sex trade of minors, the following are the main obstacles identified by both state organizations and non-governmental and international agencies (ipec/ILO, 2005b; Claramunt, 2008; Calderón and Salas, 2009; Castillo and Chinchilla, 2011; ecpat Internacional, 2014; Consejo Nacional de la Niñez y la Adolescencia, 2017; Castillo, 2019), in the effective and timely implementation of regulations related to the issue of *esc*, which can be abbreviated as follows:

- ✧ Lack of effective protection and disregard for the application of current regulations by the institutions, by using mechanisms and practices based on the approach of the irregular situation. The irregular situation doctrine is based on the so-called needs-based approach, a model of care that ensures the satisfaction of the needs of children and adolescents, and not the exercise of their human rights, and furthermore considers that the only minors for whom it is necessary to provide protection are children and adolescents.

The State is concerned about those whose family does not fulfill its protective function due to some particular "irregularity" or "dysfunctionality" (Castillo and Chinchilla, 2011).

✧

Costa Rica does not have an epidemiological system for the registry and surveillance of the *sc*

-In contrast, it is only possible to identify disaggregated -and often poorly documented or confusing- initiatives that give an account of the magnitude of the problem from the data collected on the victims and from the information collected on the perpetrators. Consequently, it is not possible to provide a real assessment of the magnitude of the problem in the country (Castillo, 2019).

✧

Lack of community diagnostics that provide an idea of the support resources available in the areas where assistance programs are being implemented or where a greater presence of victims has been detected.

✧

Lack of knowledge of the different dynamics of slavery by key institutions involved in addressing it, which leads to poor enforcement of the law.

✧

The use of information and communication technologies (*tics*) and social networks have given rise to new forms of recruitment and vulnerability for minors; in this sense, there is also a gap in national legislation to address these new forms of *scamming* that are facilitated by technology, some of these are *sexting*, *grooming* and *morphing*. *Sexting* refers to the sending of text messages, images or videos of a sexual or erotic nature; *grooming*, or online seduction, is the search for minors for sexual purposes through the use of the Internet.

of technologies, and *morphing* is understood as a digital mechanism to manipulate images of children and adolescents in order to show them in sexual or erotic activities (ecpat International, 2014).

- ✧ Weakness in the reporting process, due to fear, lack of knowledge of the law and community tolerance of abuse, exploitation and mistreatment.
- ✧ Lack of training for officials of governmental institutions to facilitate the application of regulations on cs. In this regard, a large number of service providers still lack knowledge about the human rights approach and the comprehensive protection doctrine, so they must be trained peremptorily; such training processes should not only affect the sphere of knowledge, but also the attitudes and practices carried out by the officials. Training by providing only information, without seeking to impact attitudes and practices, has proven to be insufficient in the fight against corruption and in the application of current regulations (Castillo and Chinchilla, 2011).
- ✧ Lack of success indicators to measure the impact of institutional actions.
- ✧ Low effectiveness of institutional responses, since in many cases they depend on the will of officials.
- ✧ Constant disarticulation of the institutional services needed to develop actions against the sex trade.

All these obstacles in the application of the regulations concerning esc can be explained from different starting points; however, one of the most outstanding aspects is the social tolerance at the local level and the permanence of the irregular situation approach in the actions of the service providers, who by government mandate must protect the rights of minors. Thus, the solution to this incompatibility between what is supported by the law and what is done in practice or what is experienced in the communities can be circumvented by promoting cultural policies that accompany and complement the laws. Other recommendations that could be implemented to resolve this discrepancy are as follows:

- ✧ Create care plans for victims and their families based on the cyclical model of articulated responses (Claramunt, 2005a and 2005b), since this model has shown high effectiveness in the protection of many children and adolescents. Such a model provides a cyclical response to the phenomenon of domestic violence, as opposed to the linear responses that have traditionally characterized care models (Castillo and Chinchilla, 2011).
- ✧ Create and standardize protocols and detection instruments in the institutions to avoid duplication of documents and thus facilitate compliance with government mandates.
- ✧ Sensitize and train the staff of state institutions. Such training and sensitization processes should include addressing the attitudes of service providers regarding sex, poverty, sexual diversity and sexuality in general. In this regard, it has been noted that the failure to comply with many public policies is based on the impact

that sexist, androcentric and gender-insensitive attitudes have on institutional practices (Fallas and Morera, 2004).

- ✧ Consolidate the processes of criminal denunciation and investigation through training for the law enforcement and judicial sectors.
- ✧ Incorporate "non-traditional" agents in the processes of detection and care for victims of commercial sexual exploitation, with a key role for communities directly and indirectly involved in commercial sexual exploitation networks, as well as civil society organizations.

Inter-institutional and intersectoral articulation and coordination, as well as with local protection subsystems, allow for efficient and effective actions to be carried out in the fight against CSEC, and allow for a better use of resources (Consejo Nacional de la Niñez y la Adolescencia, 2017, p.10).

- ✧ Seek the creation of follow-up programs that strengthen local support networks.
- ✧ Institutionalize self-monitoring mechanisms for civil servants as a protective factor with a view to improving performance in their jobs, which in turn will contribute to improving the application of regulations on the subject.

CONCLUDING REMARKS

The above overview shows how the Costa Rican government must combine new efforts to make the application of national and international regulations regarding the sex trade with minors more effective. Likewise, it must promote within the communities and

The need to develop a culture of zero tolerance of this crime within all its institutions and to develop synergies that seek to have an impact on its genesis, evolution, silencing and social legitimization. Other immediate needs that must be addressed include working with the potential of the families and strengthening the response to the problem at the local level, that is, within the communities, since the response to this problem cannot be isolated without the presence or inclusion of the public, since it is precisely because of the permissiveness existing in the communities and the lack of impact at the local level that the risk factors for the crime are maintained in spite of the existing regulations.

The phenomenon of commercial sexual exploitation requires that State institutions comply with their obligations, assume the pending challenges and provide protection and security to all minors, thus giving real meaning to the guiding principle of the best interest of the child, enshrined in the Convention on the Rights of the Child; to this end, the work in the development of cultural policies is essential to change the vision of the sex trade with persons under 18 years of age within the most socially vulnerable families and communities.

Only by working together with and for the communities, carried out in an artificial way, will it be possible to respond to the multiple needs of the victims and their families. Similarly, only by strengthening efforts at the local, national, regional, sub-regional and international levels will it be possible to prevent and eradicate the commercial sexual exploitation of minors, fostering an environment of security that provides real well-being, in which their fundamental guarantees are respected and they are kept away from any manifestation of social or family violence.

Without this joint work and without the revision of our personal attitudes towards sexual commerce, there will be no national or international regulations to ensure the dignity and integrity of minors in the face of sexual

These organized criminal networks, since those who promote sexual exploitation will always look for a way to capture and violate those children and adolescents they identify as vulnerable, making the old saying "the law is made, the trap is made" come true.

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