

NOTE

THE SEX TOURISM INDUSTRY SPREADS TO COSTA RICA AND HONDURAS: ARE THESE COUNTRIES DOING ENOUGH TO PROTECT THEIR CHILDREN FROM SEXUAL EXPLOITATION?

*Nancy Beyer**

INTRODUCTION	303
I. THE CHILD SEX TOURISM INDUSTRY IN CENTRAL AMERICAN AND BEYOND	304
<i>A. Evolution of the Industry</i>	304
<i>B. Reasons Behind the Existence of Sex Tourism</i>	306
1. <i>Poverty</i>	306
2. <i>Materialism</i>	307
3. <i>Inaction of the Government</i>	307
4. <i>Gender Discrimination</i>	308
5. <i>Beliefs of Sex Tourists</i>	308
<i>C. The Parties Involved in the Sex Tourism Industry</i>	308
<i>D. Effects of Sexual Exploitation on Children</i>	310
1. <i>Psychological Effects</i>	310
2. <i>Physical Effects</i>	311
II. THE RESPONSE OF THE COSTA RICAN AND HONDURAN GOVERNMENTS TO THE SPREAD OF SEX TOURISM INTO THEIR COUNTRIES	312
<i>A. Costa Rica</i>	312
1. <i>The Underlying Factors Which Account for the Explosion of the Sex Trade in Costa Rica</i>	312
2. <i>The National Laws of Costa Rica Relating to the Sexual Abuse of Minors</i>	314
3. <i>The Adequacy of Costa Rica's Judicial Investigative Body (OIJ) in Catching Sex Tourists</i>	316

* J.D. 2001, University of Georgia.

4. <i>Problems Encountered in the Judicial System of Costa Rica After Sex Tourists are Apprehended</i>	318
B. <i>Honduras</i>	319
1. <i>The Underlying Factors That Account for the Explosion of the Sex Trade in Honduras</i>	319
2. <i>The National Laws of Honduras</i>	320
3. <i>Investigative Difficulties in the Apprehension of Sex Tourists</i>	321
4. <i>Difficulties of the Judiciary in Incarcerating Sex Offenders</i>	322
III. THE OBLIGATION OF COSTA RICA AND HONDURAS TO TAKE AFFIRMATIVE STEPS TO PROTECT THEIR CHILDREN FROM SEXUAL EXPLOITATION UNDER INTERNATIONAL AGREEMENTS .	323
A. <i>United Nations Convention on the Rights of the Child</i>	323
B. <i>World Congress Against Commercial Sexual Exploitation of Children</i>	325
IV. ERADICATING THE SEXUAL EXPLOITATION OF CHILDREN IN COSTA RICA, HONDURAS, AND BEYOND	327
A. <i>The Enactment of Comprehensive Law</i>	327
B. <i>The Passage of Extraterritorial Legislation</i>	327
C. <i>Prevention</i>	329
D. <i>Using Networks</i>	330
E. <i>The Tourism Industry</i>	330
F. <i>Child Participation and Recovery</i>	331
G. <i>Taking Back the Internet</i>	332
V. CONCLUSION	333

INTRODUCTION

A thirty three-year old California bartender named David traveled to Costa Rica for the second time in two years.¹ This time, though, he arrived with one particular objective in mind—to have sex with a young girl who had no previous sexual experience.² Before this trip, David sifted through the numerous web pages that detailed the abundant supply of young prostitutes in Costa Rica.³ After arriving in the country, he made arrangements with a taxi driver to drive a thirteen-year old girl from her parents' home in a poor area of the city to his hotel.⁴ Her parents allowed David to utilize her for four hundred dollars.⁵

The Declaration and Agenda for Action of the First World Congress against the Commercial Sexual Exploitation of Children describes the commercial sexual exploitation of children as being comprised of "sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object."⁶ Although commercial sexual exploitation includes all classes of prostitution, pornography, and trafficking of children,⁷ this note focuses on the prostitution of children through the sex tourism industry.

The sex tourism industry, which began in Asia in the late 1960s,⁸ has now spread its tentacles into Central America, particularly Costa Rica and Honduras.⁹ Networks have been established within these countries to aid foreigners in sexually abusing local children.¹⁰ As the incidents of sex tourism

¹ See Serge F. Kovaleski, *Tourism's Dark Side in Central America. Child Prostitution Attracts Foreigners*, THE WASHINGTON POST, Jan. 8, 2000, at A19.

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ See *id.*

⁶ 1998-1999: *A Step Forward. The Third Report on the Implementation of the Agenda for Action Adopted at the First World Congress Against Commercial Sexual Exploitation of Children, Stockholm, 28 August 1996* [hereinafter *A Step Forward*], Chapter 2: Commercial Sexual Exploitation of Children (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/chap2.htm>>.

⁷ See *id.* at Chapter 1: Introduction, (visited Feb. 7, 2000) <<http://www.ecpot.act/a4a99/chap1.htm>>.

⁸ See Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT'L L.J. 1852, 1864-65 (1995).

⁹ See *Innocence for Sale* (visited Oct. 20, 1999) <<http://www.casa-alianza.org/EN/human-rights/sexual-exploit/press/990205.shtml>>.

¹⁰ See *id.*

are reaching alarming proportions in these nations,¹¹ the Costa Rican and Honduran governments are being criticized by the international community for failing to take the steps that are necessary to protect their children.¹² Officials from child advocacy organizations argue that these governments are willing to ignore the exploitation of minors since the sex tourism industry provides a fertile source of income at a time when they are in desperate need of revenue.¹³ Although Costa Rica has recently enacted new legislation in response to these criticisms, this action has not silenced the critics; they argue that the measures suffer from the same inherent weaknesses as the old provisions.¹⁴

Part I of this note examines the evolution of the sex tourism industry, the factors associated with countries where the trade has emerged, and the parties involved in the industry. Part II details the response of the Costa Rican and Honduran governments to the industry, including legislative enactments, investigative mechanisms, and judicial enforcement. Part III analyzes the obligations Costa Rica and Honduras have under international agreements to take affirmative steps to protect their children from sexual exploitation. Part IV outlines further measures Costa Rica, Honduras, and other countries frequented by sex tourists can take to prevent sexual exploitation.

I. THE CHILD SEX TOURISM INDUSTRY IN CENTRAL AMERICA AND BEYOND

A. *Evolution of the Industry*

The roots of the sex tourism industry can be traced back to the Vietnam War.¹⁵ Brothels, bars, and massage parlors cropped up around United States military bases in Thailand, the Philippines, and Taiwan in the late 1960s.¹⁶ Many of these establishments utilized underage prostitutes.¹⁷ When the war ended, the brothels lost their most valued customers. Instead of attacking the

¹¹ See Kovaleski, *supra* note 1, at A19 (noting the growing number of child prostitutes in Latin America).

¹² See *Costa Rica Improves Laws to Protect Children from Sexual Exploitation* (last modified Aug. 13, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990813.00317.htm>>.

¹³ See Kristin Jackson, *Child Sex Trade Booming in Economically Stricken Nations*, SEATTLE TIMES, Nov. 29, 1998, available in 1998 WL 14055938.

¹⁴ See *Scandalous Omissions in Costa Rican Law Could Mean Failure to Imprison Child Sex Abusers* (last modified Nov. 16, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19991116.00354.htm>>.

¹⁵ See Healy, *supra* note 8, at 1864.

¹⁶ See *id.* at 1864-65.

¹⁷ See *id.* at 1865.

rampant outbreak of prostitution in their countries, these Asian governments encouraged the industry in an effort to compensate for lost income.¹⁸ They instituted plans to promote international tourism and incorporated sex industries as part of the package.

When the high demand for female child prostitutes could not be satisfied by the supply of young child prostitutes in Asia, the sex tourism industry spread to other areas of the world.¹⁹ One indication that the sex tourism industry has become a worldwide phenomenon is the broadening scope of organizations fighting to end child prostitution. In 1990, End Child Prostitution in Asian Tourism (ECPAT) was established for the sole purpose of eradicating the child sex trade in Asia;²⁰ however, over time, that advocacy group realized that the industry was no longer a problem of widespread proportions only in Asian countries. Accordingly, in 1996, the organization evolved into an international campaign and changed its name to End Child Prostitution, Abduction, and Trafficking.²¹

Accurate statistical data detailing the extent of child prostitution is difficult to establish. Estimates on the number of children implicated in the sex tourism trade vary; while government sources tend to minimize the issue, child advocacy associations are inclined to inflate the figures.²² However, a United Nations Children's Fund report pronounced that over one million children enter into the industry every year.²³

With many countries traditionally associated with sex tourism cracking down on perpetrators, Central America has been experiencing rapid growth in the sex trade.²⁴ Two Central American countries experiencing high rates of sex tourism incidents are Costa Rica and Honduras. According to Bruce Harris, director of Casa Alianza, a charitable organization that provides programs for street children in Central America, the existence of child

¹⁸ See *id.*

¹⁹ See Laurie Nicole Robinson, Note, *The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of the Child*, 5 *IND. J. GLOBAL LEGAL STUD.* 239, 243 (1997).

²⁰ See *Background of ECPAT* (visited Apr. 4, 2001) <<http://www.ecpat.net/ecpat1/whatisep.htm>>.

²¹ See *id.*

²² See Healy, *supra* note 8, at 1859.

²³ See Heather C. Giordanella, Comment, *Status of 2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 *TEMP. INT'L & COMP. L.J.* 133, 134 (1998).

²⁴ See *Casa Alianza Warns that Central America is New Sex Tourism Destination* (last modified Nov. 18, 1997) <<http://www.casa-alianza.org/EN/lmn/docs/1997118.00050.htm>>.

prostitution in Costa Rica and Honduras has enticed foreigners to travel to these countries for the sole purpose of having sex with minors.²⁵

B. Reasons Behind the Existence of Sex Tourism

1. Poverty

The impoverished environment of developing countries is one of the main causes of child prostitution.²⁶ The sex tourism industry provides countries experiencing economic crises with an area of economic growth.²⁷ Families in areas where sex tourism flourishes struggle to provide their children with the fundamental necessities of food, clothing, and shelter.²⁸ Furthermore, due to the abundance of illiteracy and the presence of limited employment opportunities, families are left with few legitimate avenues to financial prosperity. These families become easy game for sex procurement agents who scour impoverished areas for families suffering financial hardships. In return for allowing the recruiters to employ their children, parents receive a cash advance. The children later compensate the recruiter through their labor.²⁹ Although many parents mistakenly assume that their child will be performing legitimate services, other parents are fully aware of the fate into which they have sold their child.³⁰

The sex tourism industry is not limited to providing economic benefits to families in these impoverished nations. Pimps, brothel owners, hotels, neighbors, travel agencies, teachers, local police, and recruiters are all reaping economic benefits from the continuation of this industry.³¹ The profitability of this trade causes even national governments to turn a blind eye to its existence.³²

²⁵ See *Innocence for Sale*, *supra* note 9.

²⁶ See Healy, *supra* note 8, at 1869.

²⁷ See Jackson, *supra* note 13.

²⁸ See Robinson, *supra* note 19, at 234-44.

²⁹ See Eric Thomas Berkman, Note, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 401 (1996).

³⁰ See *id.* at 401.

³¹ See Robinson, *supra* note 19, at 244.

³² See *id.* at 245.

2. *Materialism*

Although most families and children resort to sex tourism only due to economic desperation, a growing number of parents are turning to the sex trade for materialistic reasons.³³ While a number of parents see the industry as a resource that will enable them to attain modern indulgences,³⁴ an increasing number of children are entering the industry on the belief that prostitutes are considerably rewarded for their services.³⁵

3. *Inaction of the Government*

Although most of the countries where the sex tourism industry flourishes have legislation prohibiting child prostitution, the law enforcement entities of these regions have failed to enforce these laws against sex tourists.³⁶ Currently, the greatest punishment most sex tourists face in these developing countries is deportation.³⁷ The two most common reasons cited to explain the failure of these countries to enforce child prostitution laws is that the industry provides their economies with a meaningful amount of revenue³⁸ and that corrupt law enforcement officials take bribes from sex tourists who are caught.³⁹

Central American governments have also failed to initiate adequate plans to combat the growth of the sex trade in their countries. In a meeting called by the Interamerican Institute of the Child, representatives from Latin American countries stated that their inaction was due to a deficiency of research and a lack of public discussion on the issue.⁴⁰ Most programs that have been implemented in Central America were not the result of government efforts but of child advocacy organizations.⁴¹

³³ See Healy, *supra* note 8, at 1870.

³⁴ See *id.*

³⁵ See Roger J.R. Levesque, *Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights*, 60 BROOK. L. REV. 959, 980 (1994).

³⁶ See Healy, *supra* note 8, at 1870.

³⁷ See *id.* at 1870.

³⁸ See Marc D. Seitles, *Effect of the Convention on the Rights of the Child Upon Street Children in Latin America: A Study of Brazil, Colombia, and Guatemala*, 16 IN PUB. INTEREST 159, 182 (1997-1998).

³⁹ See Berkman, *supra* note 29, at 404.

⁴⁰ See Raul Ronzoni, *Rights-Latam: Battling the Sexual Exploitation of Children*, INTER PRESS SERVICE, Mar. 18, 1999, available in 1999 WL 5947622.

⁴¹ See *Regional Overview* (visited Feb. 8, 2000) <<http://www.ecpat.org/m.html>>.

4. *Gender Discrimination*

Another factor common in countries which have a problem with the sex trade is gender discrimination. Not only do these societies promote the image of females as sexual objects, but they also provide girls with fewer educational and employment opportunities.⁴² For example, in Latin America, while men are perceived as being the dominant gender and as having unquenchable libidos, women are viewed as the passive property of men and so are limited to performing household duties.⁴³

5. *Beliefs of Sex Tourists*

Two common beliefs among sex tourists promote sexual exploitation of children. First, many sex tourists believe that having sex with minors will allow them to remain sexually active farther into their later years.⁴⁴ Second, sex tourists conclude that sexual intercourse with children poses a decreased risk of contracting the HIV virus.⁴⁵ In fact, procurers often represent children to tourists as being virgins since sex tourists will readily pay more money for children who are undoubtedly free from the virus. This preference of the tourists also drives recruiters to attain children at increasingly younger ages.⁴⁶ However, sex tourists who engage in sexual activities with young prostitutes are faced with a greater risk of contracting the HIV virus. Due to the susceptibility of a child's thin anus and vagina to rupture during sexual intercourse, the HIV virus can easily be introduced into the adult's bloodstream.⁴⁷ This already increased risk is magnified by the practice of many sex tourists who, in reliance on the myth, fail to use condoms.⁴⁸

C. *The Parties Involved in the Sex Tourism Industry*

Four parties are involved in the sexual exploitation of children through prostitution: the perpetrator, the vendor, the facilitator, and the child.⁴⁹ The

⁴² See Healy, *supra* note 8, at 1872.

⁴³ See *Regional Overview*, *supra* note 41.

⁴⁴ See Berkman, *supra* note 29, at 399-400.

⁴⁵ See Robinson, *supra* note 19, at 247.

⁴⁶ See *id.* at 247.

⁴⁷ See Healy, *supra* note 8, at 1871-72.

⁴⁸ See Robinson, *supra* note 19, at 247-48.

⁴⁹ See Berkman, *supra* note 29, at 399.

perpetrator is usually a male from an industrialized nation⁵⁰ who is between the ages of twenty and sixty-five.⁵¹ For example, the nationalities of the 160 foreigners detained in Costa Rica between 1992 and 1994 for sexually abusing children were as follows: 25 percent American, 18 percent German, 14 percent Australian, 12 percent British, and 6 percent French.⁵² Although many men travel in organized groups to the countries commonly associated with sex tourism, others end up participating in the industry unexpectedly while visiting these regions for travel, business, or military purposes. Additionally, pedophiles account for a substantial portion of the demand side of the sex trade.⁵³

The party who provides the capital, the services, and the resources that make child prostitution possible and profitable is the vendor.⁵⁴ The vendor maximizes the profitability of his investment by keeping his or her child workers in inferior living conditions and by denying them a commensurate amount of the money they earned through prostitution.⁵⁵

The facilitator promotes the involvement of children in the sex trade and profits from his or her participation.⁵⁶ The following groups are classified as facilitators: recruiters, parents who sell their children into prostitution, and owners of hotels that allow industry participants to utilize their property.⁵⁷

The final party involved in the sex tourism industry is the child.⁵⁸ Although most child prostitutes are between the ages of thirteen and seventeen, some child prostitutes are as young as six years old.⁵⁹ According to a 1997 report, children as young as ten years old were being offered by over 100 brothels in San Jose, Costa Rica.⁶⁰

⁵⁰ See Healy, *supra* note 8, at 1867. See also *A Step Forward*, *supra* note 6, at Ch. 2: Commercial Sexual Exploitation of Children. Individuals also sexually exploit children in their own country. For example, in Latin America, local men account for 70 percent of the demand for child prostitutes in locations not frequented by tourists. See *id.*

⁵¹ See *A Step Forward*, *supra* note 6, at Chapter 2: Commercial Sexual Exploitation of Children.

⁵² See Jeremy McDermott, *Costa Rica the New Sex Tourism Mecca*, SCOTLANDON SUNDAY, Apr. 25, 1999, available in 1999 WL 5908380.

⁵³ See Healy, *supra* note 8, at 1867.

⁵⁴ See Berkman, *supra* note 29, at 400.

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See *Regional Overview*, *supra* note 41.

⁶⁰ See McDermott, *supra* note 52.

The majority of children involved in the sex trade are females.⁶¹ Additionally, children who abuse drugs face an increased likelihood of being sexually exploited, as prostitution can be utilized to pay for their drug habit.⁶²

Most of the children have suffered incidents of abuse at home.⁶³ For example, studies conducted in Latin America, the Caribbean, and the United Kingdom state that eighty percent of child prostitutes were victims of psychological or physical abuse within their families; furthermore, a majority of these children have suffered from acts of sexual aggression by family members.⁶⁴

D. Effects of Sexual Exploitation on Children

1. Psychological Effects

Children who participate in the sex tourism industry pay the additional price of sacrificing their psychological well-being. Every day these children suffer anxiety because they do not know whether their customers will force them to perform sadistic or painful acts.⁶⁵ Additionally, these children are under constant pressure to ensure that they service the number of customers that their procurers are expecting; otherwise, they risk being punished through beatings and being deprived of food.⁶⁶ Furthermore, they operate under the enduring fear that they will be taken into custody by the police.⁶⁷

Additionally, child prostitutes do not have the mental capacity to deal with the situations in which they are placed. According to the United Nations Working Group on Contemporary Forms of Slavery, child prostitutes suffer from a loss of dignity, self-esteem, and confidence due to being treated solely as sex objects.⁶⁸ Research studies demonstrate the psychological harm suffered by children who are sexually exploited by this industry. A study

⁶¹ See *A Step Forward*, *supra* note 6, at Chapter 2: Commercial Sexual Exploitation of Children.

⁶² See *id.*

⁶³ See *id.* at Chapter 4: Lessons Learned (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/chap4.htm>>.

⁶⁴ See *id.*

⁶⁵ See Berkman, *supra* note 29, at 402.

⁶⁶ See *id.* at 402-03.

⁶⁷ See *id.* at 402.

⁶⁸ See Healy, *supra* note 8, at 1872-73.

conducted by the University of Costa Rica in 1998 found that of 121 sexually exploited children, 54.5 percent wanted to die.⁶⁹

The psychological effects of engaging in the sex trade last longer than a child's participation in it. According to Judith Lewis Herman, children who experience long-term sexual abuse often endure complex post-traumatic stress disorder (CPTS).⁷⁰ Individuals suffering from CPTS may undergo periods of amnesia, blackouts, and transient disassociate episodes due to the traumas they endured as children.⁷¹ Additionally, these victims often find themselves unable to integrate into society and are incapable of retaining close relationships with others.⁷²

2. *Physical Effects*

Sex tourism also adversely affects the bodies of the child prostitutes it exploits. Due to the desire of procurers to make as great of a profit as possible off their investment, the children are housed in substandard conditions and are poorly fed.⁷³ These conditions lead many of the young to suffer from malnutrition and tuberculosis.⁷⁴ As mentioned above, procurers will beat children who they believe are not turning out enough profit.⁷⁵

Undoubtedly, a high amount of stress is placed on these children's bodies due to continuous exposure to sexual acts. The following are all typical injuries that child prostitutes endure: venereal infection,⁷⁶ rectal fissures, torn vaginas, penetration of the anus or the vagina with foreign objects, body mutilation, and ruptured uteruses.⁷⁷ Additionally, one of the most devastating consequences a prostitute can suffer is HIV infection.⁷⁸

⁶⁹ See Nefer Munoz, *Rights-Costa Rica: New Law to Combat Child Sex Tourism*, INTER PRESS SERVICE, June 17, 1999, available in 1999 WL 5949253.

⁷⁰ See Robinson, *supra* note 19, at 251.

⁷¹ See *id.*

⁷² See *id.* at 252.

⁷³ See Berkman, *supra* note 29, at 402-03.

⁷⁴ See *id.* at 402.

⁷⁵ See *id.* at 402-03.

⁷⁶ See Robinson, *supra* note 19, at 250.

⁷⁷ See *id.* at 249.

⁷⁸ See *id.*

II. THE RESPONSE OF THE COSTA RICAN AND HONDURAN GOVERNMENTS TO THE SPREAD OF SEX TOURISM INTO THEIR COUNTRIES

A. Costa Rica

1. *The Underlying Factors That Account for the Explosion of the Sex Trade in Costa Rica*

Throughout the past couple of years, Costa Rica has been labeled as the sex tourism capital of Central America.⁷⁹ In 1997, an editorial in *The Nation*, a Costa Rican newspaper, stated that the capital city of San Jose was home to at least 100 brothels that employed minors.⁸⁰ Furthermore, an investigation revealed that girls as young as ten years old were being prostituted in the Costa Rican sex trade.⁸¹ Officials from Costa Rica and representatives from international organizations have noted Costa Rica's emergence as a sex tourist haven. In 1998, the Director of the Costa Rican Judicial Investigative Unit (OIJ) acknowledged that at least one half of one percent of Costa Rica's foreign visitors each year were sex tourists; this figure equates to five thousand child exploiters.⁸² Furthermore, in a report dated April 8, 1999, the Human Rights Committee of the United Nations noted its concern over the "high incidence of commercial sexual exploitation of children in Costa Rica" and called upon the country's government to make the necessary efforts to eradicate the problem.⁸³ The Committee urged the Costa Rican government to make changes in its criminal code to address this growing problem and recorded twenty-two areas of "concern and recommendations" in relation to the economic and social condition of the country.⁸⁴

Both the economic situation in Costa Rica and the promotion of the country on sex tourism websites explain the emergence of Costa Rica as a

⁷⁹ See Ann Birch & Ana Salvadó, *Sexual Exploitation of Children and the Internet: The Use of Internet to Prevent and Denounce Child Sexual Exploitation and to Promote the Rights of the Child* (visited Oct. 20, 1999) <<http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/9902audiencia.shtml>>.

⁸⁰ See *Central America and Mexico: Children as Merchandise* (last modified Mar. 10, 1998) <<http://www.casa-alianza.org/EN/lmn/docs/19980310.00115.htm>>.

⁸¹ See *id.*

⁸² See *Costa Rican President Agrees to Discuss Child Sex Tourism* (last modified Oct. 20, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990226.00244.htm>>.

⁸³ See UN "Deeply Concerned" Over High Levels of Child Sex Tourism in Costa Rica (last modified Apr. 16, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990416.00265.htm>>.

⁸⁴ *Id.*

favorite of sex tourists. The country's economic problems date back to the 1970's.⁸⁵ Like other Central American countries, Costa Rica's economy has been tremendously dependent on foreign investment, and the government has used foreign loans to finance welfare programs and an industrial infrastructure.⁸⁶ The country used profits from the exportation of coffee to pay back these debts; however, when coffee prices drastically fell in 1978, and oil prices rose in 1979, the country became incapable of sustaining its foreign debts.⁸⁷ In the early 1980's, the government initiated several measures to tighten the national economy including abolishing many welfare provisions. During this same period, wages were decreasing due to inflation.⁸⁸ As a result, the government started promoting its tourism industry to bring foreign currency into Costa Rica.⁸⁹

The marketing of Costa Rica as a travel destination at a time when ten percent of the country's three million citizens live in a state of absolute poverty⁹⁰ has resulted in many sex tourists traveling to Costa Rica for the sole purpose of having sex with minors.⁹¹ Additionally, other individuals who were drawn to the country for vacation or business purposes become fascinated by the sex industry during their stay.⁹²

Furthermore, the Costa Rican government is not the only entity speaking in positive terms of what Costa Rica has to offer tourists. Networks of pedophiles have promoted the country on Internet websites as a great supplier of child prostitutes.⁹³ On these websites, sex tourists who have visited Costa Rica offer advice to other exploiters of children on where to find child prostitutes, the different rates charged by hotels to provide their customers

⁸⁵ See Birch & Salvadó, *supra* note 79.

⁸⁶ See *id.*

⁸⁷ See *id.*

⁸⁸ See *id.*

⁸⁹ See *id.*

⁹⁰ See *id.*; see also *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: Costa Rica*, Committee on the Rights of the Child, 4th Sess., U.N. Doc. CRC/C/15/Add.11 (1993) (defining families in situations of extreme poverty as not having "enough income to cover their food needs").

⁹¹ See Rocio Rodriguez, *Casa Alianza to Take Park in International Conference on the Commercial Sexual Exploitation of Children in Latin America and the Caribbean* (last modified Oct. 19, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19991019.00344.htm>>.

⁹² See Birch & Salvadó, *supra* note 79.

⁹³ See Ana de Lara Ruiz, *Commercial Sexual Exploitation of Children from a Central American Perspective* (visited Mar. 21, 2001) <<http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/9805audiencia.shtml>>.

with minors,⁹⁴ and how to evade law enforcement officials.⁹⁵ For example, on the Costa Rica section of the "World Sex Guide," a sex tourist told his "colleagues" about the availability of sixteen or seventeen-year-olds at the Hotel Park; however, he only recommended these girls to those who enjoyed unenthusiastic partners.⁹⁶

2. The National Laws of Costa Rica Relating to the Sexual Abuse of Minors

The international criticism of the Costa Rican government's failure to take affirmative steps to combat the sex tourism industry finally led the legislative and executive branches to pass new laws intended to afford the nation's children with more protection from sexual exploitation.⁹⁷ In 1999, the President of Costa Rica signed these new laws into force.⁹⁸ The Costa Rican government proclaimed that the new laws are proof that the administration is dedicated to getting tough on those who sexually exploit children.⁹⁹

The laws aim to close loopholes apparent in previous legislation that have resulted in sex offenders avoiding prosecution. First, although a provision that criminalized the possession of pornography was withdrawn from the bill, the production and distribution of child pornography is now deemed to be illegal.¹⁰⁰ Second, the new laws expanded the scope of the legal definition of rape. Previously, only physical penetration of the victim by a man's penis could equate to rape; with the new laws, rape includes not only oral sex¹⁰¹ but also penetration of a victim's vagina or anus by fingers or objects.¹⁰² Third, women can now also be charged with rape.¹⁰³ Fourth, the discretion of judges in cases where the perpetrator paid the victim for sex has been limited. The new law explicitly provides that sexual abuse charges can be raised against an

⁹⁴ *See id.*

⁹⁵ *See* Birch & Salvadó, *supra* note 79 (claiming that pedophiles, on websites, are learning tips from colleagues to be more successful in their criminal acts).

⁹⁶ *See id.*

⁹⁷ *See* Costa Rica Improves Laws to Protect Children from Sexual Exploitation (last modified Aug. 13, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990813.00317.htm>>.

⁹⁸ *See id.*

⁹⁹ *See* Scandalous Omissions in Costa Rican Law Could Mean Failure to Imprison Child Sex Abusers, *supra* note 14.

¹⁰⁰ *See* Costa Rica Improves Laws to Protect Children from Sexual Exploitation, *supra* note 97.

¹⁰¹ *See id.*

¹⁰² *See id.*

¹⁰³ *See id.*

adult customer of a child even if the minor is willing to perform sexual services or is paid in money or in kind for his or her sexual services.¹⁰⁴ This law is aimed at eliminating the practice of judges rejecting claims of sexual abuse due to the existence of a commercial transaction in cases where the child was paid.¹⁰⁵ Fifth, the minimum age at which Costa Rican law allows an individual to make a personal decision as to whether or not to engage in sexual activities is now eighteen. Previously, the law allowed those fifteen and older to make this determination.¹⁰⁶ Sixth, a new law also eliminates an article of the criminal code used by rapists to avoid conviction. Rapists are now unable to avoid serving time by marrying their victims.¹⁰⁷

Additionally, the new enactments also provide guidelines for the sentencing of sex tourists and others who participate in the sexual exploitation of Costa Rican children. These guidelines were enacted to ameliorate the problems encountered due to the previous legislation's failure to clearly outline the range of possible offenses.¹⁰⁸ Individuals who are convicted of having sex with minors now face sentences ranging from four to ten years. In addition, sentences of four to ten years are handed down to persons who "exploit children under twelve through deception, violence or intimidation"¹⁰⁹ and those who produce, market, disseminate, or exhibit pornographic material in which children appear.¹¹⁰ Finally, procurers and family members who participate in the exploitation of a child can be sentenced to a maximum of ten years in prison.¹¹¹

Despite the short period of time in which these laws have been in force, they have already been criticized.¹¹² Specifically, while those who sexually abuse minors face penalties ranging from four to ten years, the laws fail to outline what form the punishment will take. For example, will the offender serve his or her term in prison or merely be placed on probation?¹¹³ Therefore,

¹⁰⁴ *See id.*

¹⁰⁵ *See* Munoz, *supra* note 69.

¹⁰⁶ *See id.*

¹⁰⁷ *See Costa Rica Improves Laws to Protect Children from Sexual Exploitation, supra* note

12.

¹⁰⁸ *See* Munoz, *supra* note 69.

¹⁰⁹ *Id.*

¹¹⁰ *See id.*

¹¹¹ *See id.*

¹¹² *See Scandalous Omissions in Costa Rican Law Could Mean Failure to Imprison Sex Abusers, supra* at 14. For example, Casa Alianza, who initially praised the Costa Rican government for its "get tough" approach, is now questioning the administration's willingness to take vigorous action. *See id.*

¹¹³ *See id.*

a judge applying the new law to the Costa Rican penal system is unable to send someone who is convicted of sexually abusing a child to prison due to the legislature's failure to include a prison time as a possible form of punishment.¹¹⁴

3. *The Adequacy of Costa Rica's Judicial Investigative Body (OIJ) in Catching Sex Tourists*

Any positive changes made by the Costa Rican government will be effective only if the country finds a way to address the inadequacy of its investigative bodies in catching sex tourists. Casa Alianza, an organization which aids street children in Mexico and Central America, has discovered that the government has failed to give the Judicial Investigative Body (OIJ) the necessary resources and information to investigate effectively in order to apprehend more abusers.¹¹⁵ Casa Alianza has played an enormous role in aiding the OIJ become more effective crime stoppers. In fact, prior to talks between Casa Alianza officials and OIJ agents, OIJ investigators had little knowledge about the Internet even though this information source provides sex tourists with most of the information they gather about the child sex trade in the country.¹¹⁶ When Casa Alianza members showed OIJ agents both the kind of information the Internet provides the global community and the ease with which one can find a child prostitute in Costa Rica, they were astonished.¹¹⁷ Furthermore, although the Internet could be a useful tool in investigating the areas where sex tourists gather and in making successful raids of child prostitution networks, the Special Prosecutor Against Sex Crimes is unable to access this resource; the Judicial Branch has provided her with only one outdated computer.¹¹⁸

Due to the lack of support the OIJ has received from the Costa Rican government, Casa Alianza has assumed the role of providing the investigative body with evidentiary aids and other devices to attack the sex tourism problem. First, the organization has furnished the Special Prosecutor with the following investigational supplies: video cameras (used to gather evidence against sex tourists and child prostitution networks), marked currency, and

¹¹⁴ See *id.*

¹¹⁵ See *Sexual Abuse of Children in Quepos, Another Example of Sex Tourism in Costa Rica* (last modified Jan. 8, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990108.00222.htm>>.

¹¹⁶ See Birch & Salvadó, *supra* note 79.

¹¹⁷ See *id.*

¹¹⁸ See *Dozens of Reports of Child Sexual Exploitation in Costa Rica* (last modified Aug. 11, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990811.00316.htm>>.

other logistical support.¹¹⁹ Furthermore, Casa Alianza informed OIJ investigators about the willingness of the United States Federal Bureau of Investigation (FBI) to accept calls from investigators in other countries who are inquiring as to whether a perpetrator they are holding has a prior record in the United States for similar crimes.¹²⁰ Prior to learning this information, OIJ officials did not place calls to the FBI since the OIJ did not have a budget for international phone calls.¹²¹

Casa Alianza has not limited itself to playing an indirect role in the investigation of sex tourists. An August 1999 news report posted on Casa Alianza's website stated that the organization was looking into seventy separate confirmed complaints involving the sexual exploitation of children.¹²² Members of the organization gather intelligence on bars, houses, and individuals that are involved in the Costa Rican sex trade and then pass the accumulated information on to the Costa Rican police and judicial officials.¹²³ Additionally, the group works closely with the FBI in tracking North Americans who are involved in the industry.¹²⁴

Furthermore, Casa Alianza has independently initiated legal proceedings against adults who sexually abuse children. Currently, the organization "has almost 600 criminal proceedings active in the local courts in Mexico, Guatemala, Honduras, Nicaragua and Costa Rica."¹²⁵ In addition, Casa Alianza has investigated and prosecuted sex tourists from the following countries: Germany, Switzerland, the United States of America, Chile, Mexico, Guatemala, Honduras, Costa Rica, Holland, and Sweden.¹²⁶ Presently, Casa Alianza is seeking capital for the establishment of a legal office in San Jose whose practice would be focused solely on investigating the child sex trade industry.¹²⁷

¹¹⁹ *See id.*

¹²⁰ *See Birch & Salvadó, supra note 79.*

¹²¹ *See id.*

¹²² *See Dozens of Reports of Child Sexual Exploitation in Costa Rica, supra note 118.*

¹²³ *See id.*

¹²⁴ *See de Lara Ruiz, supra note 93.*

¹²⁵ *See Birch & Salvadó, supra note 79.*

¹²⁶ *See id.*

¹²⁷ *See id.*

4. *Problems Encountered in the Judicial System of Costa Rica After Sex Tourists are Apprehended*

The ineffectiveness of the Costa Rican judiciary in relation to sex tourism does not stop with its investigation of those who sexually exploit children. The prosecution of apprehended sex tourists is also affected. Due to the inefficiency of Costa Rica's court system, apprehended sex tourists must await trial for several years.¹²⁸ In the interim, many of these child exploiters are released on bail only to victimize other children. For example, Arthur Carl Kanev and Joe Curtis Black were arrested for the sexual abuse and corruption of minors.¹²⁹ Several of the government's witnesses stated that Kanev and Baker offered them the equivalent of forty dollars to "party" at their beach home. Once these girls arrived at the dwelling, they were drugged, raped, and photographed.¹³⁰ After detaining Kanev and Baker, Costa Rican investigators found hundreds of pornographic photos of at least thirty-eight young girls, ranging in age from eleven to sixteen, in obscene positions.¹³¹ Additionally, they have verified that at least one girl abused by the two became pregnant and underwent an abortion.¹³² Despite the serious nature of the charges against Baker and Kanev, and the fact that investigators are now looking into the possibility that the two were running an international prostitution ring that paired pedophiles with children,¹³³ they have been released on bail in Costa Rica.¹³⁴ Neighbors report that Baker and Kanev have resumed their practice of bringing minors onto their property.¹³⁵ Once again, the Costa Rican government demonstrates its inability to protect its most vulnerable citizens from sexual predators.

¹²⁸ *See id.*

¹²⁹ *See Sexual Abuse of Children in Quepos, Another Example of Sex Tourism in Costa Rica*, *supra* note 115.

¹³⁰ *See Americans are Buying and Selling Children for Sex in Costa Rica, Says US News Network* (last modified July 29, 1999) <<http://www.casa-alianza.org/En/lmn/docs/19990729.00309.htm>>.

¹³¹ *See Sexual Abuse of Children in Quepos, Another Example of Sex Tourism in Costa Rica*, *supra* note 115.

¹³² *See id.*

¹³³ *See Americans are Buying and Selling Children for Sex in Costa Rica, Says US News Network*, *supra* note 130.

¹³⁴ *See id.*

¹³⁵ *See id.*

B. Honduras

1. *The Underlying Factors That Account for the Explosion of the Sex Trade in Honduras*

Honduras is another Central American country that has been experiencing increased incidences of sex tourism.¹³⁶ The distressed state of the Honduran economy accounts for most of the growth of the sex trade. The average annual income earned by adults in Honduras is \$700.¹³⁷

The desperate nature of the economic situation in Honduras was worsened by the savagery of Hurricane Mitch in 1998. For example, prior to Hurricane Mitch, Honduras had a foreign debt of 4.4 billion dollars and was expected to pay 500 million dollars in interest annually.¹³⁸ However, the bad economic situation these countries found themselves in only became worse after the hurricane necessitated the restoration of water and sanitation, education facilities, basic health care services, and satisfactory nutrition to millions of people.¹³⁹ UNICEF estimated that the cost of merely rebuilding the basic foundation of these countries would be in the hundreds of millions of dollars.¹⁴⁰

Over forty percent of Honduras' 5.7 million people are children,¹⁴¹ and at least two thousand of these children are homeless.¹⁴² Some "street children" made a conscious decision to leave their homes and live on the street. These children left homes riddled with family conflict or lacking adequate food.¹⁴³ In comparison, other children had no alternative but to live on the streets after Hurricane Mitch destroyed their residences.¹⁴⁴

In an effort to supplement their families' income, these children spend their days on the streets begging, selling small items, shining shoes, or washing cars; during the night, they sleep in abandoned buildings, in parks, or

¹³⁶ See *Honduran Judge Refuses to Free Jailed American Accused of Pimping Children* (last modified Aug. 25, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990825.00321.htm>>.

¹³⁷ See Jose Lambiet, *A Sexual Marketplace in Florida's Backyard: Young Victims Traded for Cash, Trinkets*, SUN-SENTINEL, May 17, 1998, available in 1998 WL 3265343.

¹³⁸ See *UNICEF Calls for Ease of Debt Burden for Hurricane-Stricken Central America* (last modified Nov. 17, 1998) <www.unicef.org/newsline/98pr58.htm>.

¹³⁹ See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See David Adams, *Poverty's Children Exploited for Sex*, ST. PETERSBURG TIMES, June 7, 1999, at 1A.

¹⁴² See Lambiet, *supra* note 137.

¹⁴³ See Adams, *supra* note 141.

¹⁴⁴ See *id.*

under bridges or in doorways.¹⁴⁵ Furthermore, they often find themselves selling their own bodies in order to provide themselves with life's necessities.¹⁴⁶

Honduras, like Costa Rica, has been featured on Internet sites which furnish tips from sex tourists who have sexually exploited Honduran children and evaded detection by local authorities.¹⁴⁷ To assist sex tourists in taking advantage of distressed children, these websites provide information on the location of street children hangouts in different Honduran cities and the compensation these children typically will charge for performing sexual services.¹⁴⁸ For example, one sex tourist promoted San Pedro Sula as having a large supply of children who will provide sexual gratification at a low cost. He stated, ". . . the prostitutes can be found in fifth avenue on the corner of eighth street, all have a small room which is rented for short periods, the cost of the room is 2 dollars and for the girl you pay 3 or 5 dollars for fifteen minutes."¹⁴⁹

2. *The National Laws of Honduras*

Honduras lags far behind Costa Rica in the development of law to combat the sexual exploitation of children. Under Honduran law, a public crime can be denounced by anyone, while a private crime can only be denounced by the victim, or, in cases where the victim is a minor, by the victim's parents.¹⁵⁰ Furthermore, only the sexual abuse of a child under the age of twelve is labeled a public crime.¹⁵¹ In that situation, organizations that fight to eradicate the sex tourism industry can step in and denounce the crime.¹⁵² The only circumstance in which a sex tourist will be brought to justice for sexually exploiting a minor between the ages of twelve and eighteen, however, is when the child or his or her parents have denounced the crime. Parents are often

¹⁴⁵ *See id.*

¹⁴⁶ *See Innocence for Sale, supra* note 9.

¹⁴⁷ *See Casa Alianza Monitors Internet Network Which is Promoting Child Sex Tourism in Honduras* (last modified Apr. 21, 1999) <<http://www.casa-alianza.org/EN/lmn/docs/19990421.00269.htm>>.

¹⁴⁸ *See id.*

¹⁴⁹ *Id.*

¹⁵⁰ *See de Lara Ruiz, supra* note 93.

¹⁵¹ *See id.*

¹⁵² *See id.*

unwilling to denounce the abuse of their child because they have also profited from the crime.¹⁵³

Child advocacy organizations blame the government's failure to enact adequate legislation on the fact that sex tourists are bringing a huge source of revenue into the impoverished country.¹⁵⁴ Further, one should note that Honduran officials who pass strict legislation in response to the growth of this industry face the likelihood of being run out of office by those who profit from the industry.¹⁵⁵

The sex trade in Honduras is organized through strong networks of individuals from taxi drivers to hotel workers, all of whom get a piece of the action.¹⁵⁶ Instead of safeguarding these children from the harmful consequences of sexual abuse, these individuals either passively stand by and allow these practices to continue or actively aid the sex tourist in gaining access to his prey. For example, sex tourists who stay at the Hotel Parthenon Beach in La Ceiba are not even required to leave the comfort of their hotel to find a child prostitute. All these predators have to do is venture outside their room and approach one of the many child prostitutes roaming inside the hotel. Often these children can be found talking to the hotel's security guards.¹⁵⁷

3. Investigative Difficulties in the Apprehension of Sex Tourists

One of the greatest difficulties preventing effective enforcement of the Honduran laws regarding the sexual abuse of children is the problem of the corrupt cop.¹⁵⁸ Police officers, like other Hondurans, are feeling the effects of the economic condition. With an average income of only \$1,000 a year,¹⁵⁹ many police officers have succumbed to the temptation of taking lucrative bribes from sex tourists and others for their cooperation and silence.¹⁶⁰ However, many commentators note that corruption in the police force has been curtailed by the replacement of the military with a civilian police force.¹⁶¹ With the implementation of professional police training courses and the

¹⁵³ *See id.*

¹⁵⁴ *See Adams, supra* note 141.

¹⁵⁵ *See Lambiet, supra* note 137.

¹⁵⁶ *See id.*

¹⁵⁷ *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *See Adams, supra* note 141.

¹⁶¹ *See id.*

provision of new resources, police officers are beginning to produce more results in their investigations of sex tourists.¹⁶²

Even without the problem of corruption, investigators encounter numerous obstacles that impede their efforts to bring those who sexually abuse children to justice. First, due to the fact that local authorities are greatly understaffed, many individuals involved in the sex trade simply fall through the cracks. For example, one of the main providers of child prostitutes to sex tourists are *casas de tolerancia*, strip clubs, or *casas citas*, "date houses."¹⁶³ Although many of these establishments fail to fulfill the legally mandated requirements of registering and paying taxes, local authorities are unable to keep track of all these clubs.¹⁶⁴ Honduran officers periodically raid these businesses; however, the raids mostly result from citizens' complaints.¹⁶⁵ When the officers do close a club, the owners can simply continue their business in another city under a different name.¹⁶⁶

Second, authorities encounter investigative problems due to the fact that prostitution itself is not illegal in Honduras, provided that the prostitute is not underage.¹⁶⁷ Investigators are often unable to readily determine the real age of a prostitute because most child prostitutes have doctored birth certificates.¹⁶⁸ In order to gain legal proof of suspected child prostitutes' ages, the investigators have to order medical examinations.¹⁶⁹

4. *Difficulties of the Judiciary in Incarcerating Sex Offenders*

Sex tourists who actually find themselves in court facing charges of sexual abuse are sometimes aided by judges who strictly read the legal definitions of crimes. For example, a Honduran judge reversed Daniel Gary Rounds' conviction of raping two boys because Rounds had not anally but orally penetrated the minors.¹⁷⁰ Applying another law, the judge sentenced Rounds to a six-year sentence, which in actuality means that Rounds will only serve

¹⁶² *See id.*

¹⁶³ *See id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *See Adams, supra note 141.*

¹⁶⁷ *See id.*

¹⁶⁸ *See id.*

¹⁶⁹ *See id.*

¹⁷⁰ *See Casa Alianza Disappointed as American Sex Tourist in Honduran Jail Has Sentence Shortened* (last modified July 9, 1999) <<http://www.casa-alianza.org/EN/1mn/docs/19990709.00300.htm>>.

three years in jail.¹⁷¹ This result is especially devastating since Rounds' personal diary stated that he had engaged in sexual acts with children in Mexico, Costa Rica, the Dominican Republic, and Honduras.¹⁷² Some of these children were as young as seven years old.¹⁷³

III. THE OBLIGATIONS OF COSTA RICA AND HONDURAS TO TAKE AFFIRMATIVE STEPS TO PROTECT THEIR CHILDREN FROM SEXUAL EXPLOITATION UNDER INTERNATIONAL AGREEMENTS

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

The United Nations General Assembly passed the Declaration of the Rights of the Child in 1959.¹⁷⁴ Many children's rights advocates criticized the non-binding declaration due to its inability to require signatory nations to take actions that would protect children.¹⁷⁵ In response to this weakness, Poland recommended to the other U.N. member states that a binding treaty for the protection of children be enacted that incorporated the principles established in the Declaration of the Rights of the Child and previous human rights treaties.¹⁷⁶ Ten years later, on November 20, 1989, the United Nations adopted the U.N. Convention on the Rights of the Child.¹⁷⁷

The Convention was "the first legally binding international agreement that protects children from sexual exploitation."¹⁷⁸ Of all U.N. member states, only the United States and Somalia have not ratified the treaty.¹⁷⁹ The Convention entered into force in Costa Rica on September 20, 1990,¹⁸⁰ and in Honduras on September 9, 1990.¹⁸¹

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ See Seitles, *supra* note 38, at 165.

¹⁷⁵ See *id.* at 165.

¹⁷⁶ See *id.* at 165.

¹⁷⁷ See Berkman, *supra* note 29, at 405.

¹⁷⁸ *Id.*

¹⁷⁹ See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (visited Apr. 7, 2001) <<http://www.unhcr.ch/pdf/report.pdf>>.

¹⁸⁰ See United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child: Costa Rica's Status* (visited Apr. 7, 2001) <<http://www.unhcr.ch/tbs/doc.nsf>>.

¹⁸¹ See United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child: Honduras's Status* (visited Apr. 7, 2001) <<http://www.unhcr.ch/tbs/doc.nsf>>.

Two provisions of the convention explicitly address states' responsibility in regard to the sexual exploitation of children. Article 34 requires state parties to take all appropriate national, bilateral and multilateral measures "to prevent the inducement, coercion, or use of children in unlawful sexual activities or practices, prostitution, and pornography."¹⁸² Therefore, Costa Rica and Honduras are obligated to take all necessary steps, whether separately or in alliance with other governments, to avert the sexual exploitation of children through prostitution and pornography that occurs within their countries.¹⁸³ Article 19 of the convention places the following responsibilities on State Parties:

1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹⁸⁴

Therefore, the governments of Costa Rica and Honduras are required under the Convention to enact legislation to prevent both the use of children in the sex trade and the selling of children into the sex industry by their parents.¹⁸⁵ Furthermore, both governments are obligated to institute social programs to heal the mental and physical wounds suffered by children who have been sexually exploited.¹⁸⁶

¹⁸² *United Nations Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at art. 34, U.N. Doc. A/44/736 (1989).

¹⁸³ See Berkman, *supra* note 29, at 406.

¹⁸⁴ *United Nations Convention on the Rights of the Child*, *supra* note 182, at art. 19.

¹⁸⁵ See Berkman, *supra* note 29, at 407.

¹⁸⁶ See *id.*

Articles 43 and 44 outline the procedures used to monitor state compliance with the Convention. Article 43 establishes a Committee on the Rights of the Child to examine "the progress made by States Parties in achieving the realization of the obligations undertaken" in the convention.¹⁸⁷ The committee is to be composed of "ten experts of high moral standing and recognized competence in the field covered by" the convention.¹⁸⁸ Furthermore, Article 44 directs each state bound by the convention to present a report to the committee two years after the state ratifies the Convention and every five years thereafter, detailing the actions the state is initiating to fulfill the terms of the Convention.¹⁸⁹ The committee addresses the problems the state is encountering that affect its ability to carry out its obligations and, subsequently, provides recommendations to the state.¹⁹⁰

Nevertheless, the effectiveness of the Convention is hampered due to its inherent weaknesses. First, in situations where parties have failed to adhere to the terms of the Convention, the committee lacks the authority to take true enforcement measures; instead, the body is limited to acting only in an advisory capacity.¹⁹¹ Second, the committee does not have the ability to accept petitions from states or individuals that allege violations of the Convention.¹⁹² However, by affirming states' opposition to activities that are harmful to children, the Convention aids in establishing an international model on how to handle problems associated with the sexual exploitation of children.¹⁹³

B. World Congress Against Commercial Sexual Exploitation of Children

ECPAT, the United Nations Children's Fund (UNICEF), the NGO Group for the Convention on the Rights of the Child, and the Swedish government organized the first World Congress against the Commercial Sexual Exploitation of Children which was held in Stockholm, Sweden from August 27-31, 1996.¹⁹⁴ In addition to representatives from 122 countries, delegates from the

¹⁸⁷ See *United Nations Convention on the Rights of the Child*, *supra* note 182, at art. 43.

¹⁸⁸ *Id.*

¹⁸⁹ See *id.* at art. 44.

¹⁹⁰ See *id.* at art. 45.

¹⁹¹ See Berkman, *supra* note 29, at 408.

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ See *The Stockholm Congress: The First World Congress Against Commercial Sexual Exploitation of Children* (visited Oct. 19, 1999) <<http://www.ecpat.net/projects/whatis.html>>. ECPAT initially proposed the World Congress in 1994. See *id.*

following entities attended the Congress: UN and intergovernmental bodies, non-governmental agencies, and commercial industries.¹⁹⁵

These representatives unanimously approved a Declaration and Agenda for Action that requests governments, intergovernmental organizations, and members of society to work together in solving the new challenges surrounding the sexual exploitation of children.¹⁹⁶ Specifically, the Agenda for Action calls for states to take the necessary steps to ensure "that by the year 2000 there are national agenda(s) for action and indicators of progress to reduce the number of children vulnerable to commercial sexual exploitation."¹⁹⁷

The following is outlined in the Agenda for Action as a five-pronged approach to eliminate the problem of the commercial sexual exploitation of children: "the coordination of actions at the local, national, regional and international levels, the taking of preventative measures through the formal and informal education sector sensitizing relevant target groups to their rights and to the issue, the protection of children . . . through strengthening or development of relevant laws and policies and the strengthening of law enforcement programmes and international cooperation, the recovery and reintegration of children into society, to promote the participation of children . . . so that they are able to express their views to take action to protect children."¹⁹⁸

At this time, neither Costa Rica nor Honduras has developed a National Plan. Although the Costa Rican government has neither sent a delegation to the World Congress nor agreed to develop a National Plan, the government is developing one using the Agenda for Action as a guideline.¹⁹⁹ The Honduran government established the Honduran Institute of the Child and Family (IHNFA) in 1998 to formulate national policies on children and the family; however, the country has not made substantial progress in developing a National Plan.²⁰⁰

¹⁹⁵ *See id.*

¹⁹⁶ *See The Stockholm Agenda for Action* (visited Oct. 19, 1999) <<http://www.ecpat.net/projects/AforA.html>>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *See A Step Forward*, *supra* note 6, at Chapter 3: Country Reports (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/chap3.htm>>.

²⁰⁰ *See id.*

IV. ERADICATING THE SEXUAL EXPLOITATION OF CHILDREN IN COSTA RICA, HONDURAS, AND BEYOND

A. *The Enactment of Comprehensive Laws*

The first step that both the Costa Rican and Honduran governments need to take in order to eradicate the growing problem of sex tourism is to develop strict laws, free from omissions and loopholes, which prohibit child prostitution.²⁰¹ This legislation must be comprehensive in the sense that it criminalizes all forms of child sexual exploitation and includes penalties for exploiters, procurers, parents who sell their children, brothel owners, and members of the tourism industry who are helping sex tourists find their prey.²⁰² As an aid, the administrations can look to the legislation enacted in other countries that are making progress in this area.

B. *The Passage of Extraterritorial Legislation*

The Costa Rican and Honduran governments are not the only entities that can utilize legislation to deter sex tourism in their boundaries. The countries that supply the tourists can also play a major role by enacting or enforcing extraterritorial legislation which enables a country to prosecute its nationals for crimes committed in other countries.²⁰³ Therefore, even if a sex tourist escapes prosecution in the country in which he engaged in the criminal act, he can still be held accountable in his home country for his actions.²⁰⁴ Currently, over twenty countries have utilized extraterritorial legislation to punish those who sexually abuse children.²⁰⁵

Countries that have employed extraterritorial jurisdiction have adopted different approaches to achieve the same result. Some countries have enacted legislation that includes in its jurisdiction crimes committed by their nationals outside their territory.²⁰⁶ In contrast, other countries have amended their

²⁰¹ See *A Step Forward*, *supra* note 6, at Appendix 1: Model National Plan (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/appen1.htm>>.

²⁰² See *id.*

²⁰³ See Berkman, *supra* note 29, at 408.

²⁰⁴ See Giordanella, *supra* note 23, at 155.

²⁰⁵ See *First Public Hearings of the International Tribunal for Children's Rights: Extraterritorial Legislation in Response to the International Dimension of Child Sexual Exploitation*, 1.1.3 (visited Apr. 7, 2001) <http://www.web.net/~tribunal/hearings/paris_report.html>.

²⁰⁶ See *id.*

criminal or penal laws to contain the crime of sexual exploitation of a child through sex tourism.²⁰⁷ Finally, some nations have chosen to adopt completely new laws.²⁰⁸

Although extraterritorial legislation is a promising option to combat child sexual exploitation, it is not without its problems. Countries using these laws face both evidentiary and procedural obstacles.²⁰⁹ Since the majority of the evidence relating to the sexual abuse is located in the country where the acts occurred, those prosecuting the crime in the supplier country would have to attain the cooperation of foreign officials.²¹⁰ Furthermore, members of the international community have questioned whether the supplier countries have jurisdiction under customary international law.²¹¹ Nevertheless, supplier countries have found ways to address these concerns.

The United States and Australia have included provisions in their extraterritorial legislation which decreases the burden of prosecution from an evidentiary point of view. Australia penalizes its citizens and residents for either inducing a child under sixteen years of age to have sexual intercourse or having sexual intercourse with a person under sixteen years of age while outside of Australia.²¹² The Australian government recognizes the fact that bringing witnesses to Australia could be expensive to them, inconvenient for the witnesses, and psychologically damaging to victims; therefore, the administration allows the use of video link testimony.²¹³ Through the use of video link testimony, the prosecution obtains its evidence and the defendant retains the ability to confront his or her accusers.²¹⁴

On the other hand, the United States' Violent Crime Control and Law Enforcement Act of 1995 covers United States nationals who travel or conspire to travel outside the United States with the intent to engage in sexual acts with a child under eighteen years of age if the act would be a violation of United States federal law.²¹⁵ Since the law does not demand proof of sexual acts but only evidence of intent to travel for the purpose of engaging in sexual acts with minors, extraterritoriality is not a problem since the intent aspect of the crime

²⁰⁷ *See id.*

²⁰⁸ *See id.*

²⁰⁹ *See Berkman, supra note 29, at 418.*

²¹⁰ *See id.* at 416.

²¹¹ *See id.* at 418.

²¹² *See Healy, supra note 8, at 1898.*

²¹³ *See id.* at 1899.

²¹⁴ *See Berkman, supra note 29, at 418-19.*

²¹⁵ *See Healey, supra note 8, at 1905-06.*

occurs within the United States.²¹⁶ Furthermore, intent can be demonstrated through travel agreements and other contracts made by the defendant.²¹⁷

The states which have enacted extraterritorial legislation have relied on three different principles of international law which allow them to have jurisdiction to hear cases involving crimes committed outside of their territory. First, under the nationality principle, the country can have jurisdiction over acts committed by their nationals in another territory.²¹⁸ Second, under the effects doctrine, a state can apply its laws to crimes that are committed abroad if the acts have a "substantial effect within its territory."²¹⁹ When one of its nationals engages in child sex abuse, a country can argue that his or her actions are generating a negative image of the country in the international community.²²⁰ Third, the universality principle enables a country to prosecute anyone who is alleged to have committed the following crimes: piracy, slave trade, hijackings, genocide, war crimes, and possibly terrorism.²²¹ The assumption underlying this theory is that some crimes are so "universally condemned that the perpetrators are enemies to the entire world."²²² Although the sexual abuse of children is not explicitly included in the above list, a state could maintain that this behavior falls within the bounds of slavery.²²³

C. Prevention

The governments of Costa Rica and Honduras not only need to conduct research to identify the factors that make children vulnerable to becoming involved in the sex tourism industry, but they should take steps to eliminate these elements.²²⁴ For example, the governments can advance programs to address the issues of poverty and unemployment.²²⁵ Additionally, these countries need to provide children with educational opportunities that can serve as alternatives to prostitution such as vocational and life skills training.²²⁶

²¹⁶ See Berkman, *supra* note 29, at 416.

²¹⁷ See *id.*

²¹⁸ See *id.* at 420.

²¹⁹ *Id.*

²²⁰ See *id.* at 420-421.

²²¹ See Berkman, *supra* note 29, at 421.

²²² *Id.*

²²³ See *id.*

²²⁴ See *A Step Forward*, *supra* note 6, at Appendix 1: Model National Plan.

²²⁵ See *A Step Forward*, *supra* note 6, at Appendix 1: Model National Plan (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/appen1.htm>> (objective 7).

²²⁶ See *id.*

Furthermore, children should be informed about child sexual exploitation and where to get help if they become victims.²²⁷

D. *Using Networks*

Both governments should establish networks and institute procedures to share information with other organizations. These networks should include other countries, the tourism industry, members of the commercial sector, and organizations who fight for the protection of children.²²⁸ For example, the Center on the Exploitation of Children and the Obscenities Department of the Department of Justice of the United States amass lists containing the names and addresses of North Americans who travel abroad to sexually abuse children.²²⁹ These organizations share this information with foreign police authorities and utilize intelligence provided by outside agencies to facilitate the arrest of citizens upon their return to the United States.²³⁰ Additionally, the United Nations should document the extra-territorial legislation enacted in different countries and disseminate this data to each country which the sex tourism industry has targeted.²³¹ Furthermore, these countries should be provided with information on who to contact when the police arrest a national for the sexual abuse of a child.²³²

E. *The Tourism Industry*

On October 1, 1999, the new Global Code of Ethics for Tourism was adopted by the 106 World Tourism Organisation Member States.²³³ Article Two, Paragraph Three of the Code stated, "The exploitation of human beings in any form, particularly sexual, especially when applied to children conflicts with the fundamental aims of tourism . . ." ²³⁴ However, the tourism industry

²²⁷ See *id.* (under objective 8).

²²⁸ See de Lara Ruiz, *supra* note 93.

²²⁹ See *id.*

²³⁰ See *id.*

²³¹ See Bruce Harris, *Presentation to the UNESCO Conference on "Sexual Abuse of Children, Child Pornography, and Paedophilia on the Internet: An International Challenge"* (last modified Jan. 19, 1999) <<http://www.casa-alianza.org/EN/human-rights/sexual-exploit/unesco.shtml>>.

²³² See *id.*

²³³ See *Global Updates: ECPAT Newsletter-November 1999* (visited Jan. 30, 2000) <<http://www.ecpat.net/NewsNov99/page6.htm>>.

²³⁴ *Id.*

should go beyond making abstract statements and take affirmative actions to thwart the use of its resources by child abusers to exploit children.

Tourism agencies should conduct education programs to inform their employees about the existence and magnitude of the commercial sexual exploitation of children.²³⁵ ECPAT European groups conducted a project that developed a training kit for tourism teachers.²³⁶ Additionally, workers in the tourism industry need to be informed about the steps they should take after becoming informed about the use of children as sex workers. They need to be aware of where to go to report these violations in both the country where the violation occurred and in the sex tourist's native country.²³⁷

Furthermore, travel agencies, airline agencies, and hotels can inform their clients about the forms of child sexual exploitation that are prevalent in the country they are traveling to and what to do when they view instances of exploitation.²³⁸ ECPAT has utilized both luggage tags and in-flight videos to educate travelers about sex tourism child sex tourism.²³⁹

F. Child Participation and Recovery

Children who have been forced to work in the sex tourism industry can make valuable contributions to eradicating this form of sexual exploitation.²⁴⁰ They can identify the ways in which children become involved in the industry and provide information to law enforcement officials about the individuals involved.²⁴¹ Furthermore, they can become active in peer education programs to inform other children about the industry.²⁴² Additionally, by becoming involved in the fight against sex tourism, victims can take an important step in their recovery process.²⁴³

²³⁵ See *Exploited Child Unit: Prevention and Resources* (visited Apr. 7, 2001) <<http://www.ncmec.org>> (go to About Us, pull down and click on Child Sex Tourism Issues, and then click on Prevention and Resources).

²³⁶ See *ECPAT Fights Child Sex Tourism: Learning from the European Experiences* (visited Oct. 8, 1999) <<http://www.ecpat.net/newsjan/cover.htm>>.

²³⁷ See *id.*

²³⁸ See *Exploited Child Unit: Prevention and Resources*, *supra* note 235.

²³⁹ See *ECPAT Fights Child Sex Tourism: Learning from the European Experiences*, *supra* note 236.

²⁴⁰ See *A Step Forward*, *supra* note 6, at Chapter 4: Lessons Learned (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/chap4.htm>>.

²⁴¹ See *id.*

²⁴² See *id.*

²⁴³ See *id.*

Victims' participation in preventative programs, however, is not enough to ensure that victims recover from their traumatic experiences. These children need to be provided with counseling, and their communities need to be educated so they blame the exploiters and not the victims.²⁴⁴

G. *Taking Back the Internet*

Finally, Costa Rican and Honduran authorities should use the Internet as a tool for catching sex tourists.²⁴⁵ As mentioned earlier, although sex tourists utilize the Internet as a resource to get advice from others who have engaged in sex acts with children and evaded local authorities, many authorities either do not know what the Internet is or are unable to access it.²⁴⁶ The governments of Costa Rica and Honduras should ensure that their sex crimes investigators are educated in all aspects of the Internet;²⁴⁷ with this knowledge base, investigators can then use the Internet to stake out sex tourist hot spots. Other police agencies have successfully used the Internet as an investigative tool. For example, after unveiling a porn ring on a Internet network, the French police questioned 1,500 people and charged two with "sexual aggression against minors."²⁴⁸ Furthermore, the police can follow the lead of Casa Alianza and receive denunciations through the web from individuals who have information about sex tourism.²⁴⁹ Additionally, the governments can release information concerning cases of child sexual abuse to private organizations like Casa Alianza that take an active role in informing the public about the magnitude of child sexual exploitation in an effort to evoke public action.²⁵⁰

²⁴⁴ See *A Step Forward*, *supra* note 6, at Appendix 1: Model National Plan at Appendix 1: Model National Plan (visited Feb. 7, 2000) <<http://www.ecpat.net/a4a99/appen1.htm>> (objective 13).

²⁴⁵ See Thomas Sancton, *Preying on the Young: All Over the World, Boys and Girls are Abused in a Vicious Sex Trade Now Abetted by Computer Networks. What Can We do to Fight the Scourge?*, TIME INTERNATIONAL, Sept. 2, 1996, available in 1996 WL 10668674.

²⁴⁶ See Birch & Salvadó, *supra* note 79.

²⁴⁷ See Harris, *supra* note 231.

²⁴⁸ See Sancton, *supra* note 245.

²⁴⁹ See Birch & Solvodó, *supra* note 79.

²⁵⁰ See *id.*

V. CONCLUSION

The governments of both Costa Rica and Honduras have failed to take adequate measures to safeguard their children from sexual exploitation. Law enforcement officials lack adequate resources to uncover the areas frequented by sex tourists and the networks by which they are organized. Additionally, the laws in these countries fail to provide sufficient penalties for all of the parties involved in the industry, from the parents who sell their children to the members of the tourism trade who aid sex tourists in finding their prey. Finally, in the rare event that a sex tourist is apprehended, the judicial system lacks the legislative backing to effectively deter offenders from repeating their crimes.

In order to significantly reduce the incidents of sex tourism in Costa Rica and Honduras, the governments of these countries need to correct these defects. They should establish networks with foreign law enforcement agencies and other organizations in order to facilitate the sharing of information and resources. Furthermore, these governments should attempt to ascertain the factors which increase a child's vulnerability to sexual exploitation. At risk children need to be provided with educational opportunities and alternative means of generating income. Costa Rican and Honduran officials must not forget about the children who have already been victimized; they must be provided with counseling to ensure a successful reintegration into their communities.

The fate of Costa Rican and Honduran children, however, does not rest solely in the hands of their governments. Other countries can enact extraterritorial legislation which enables them to pursue the prosecution of their nationals for sexually abusing children abroad. Furthermore, members of the tourism industry can participate in programs to educate their employees and customers about the sex tourism industry and the consequences faced by those who actively participate.

By taking all of these measures, the Costa Rican and Honduran governments will finally demonstrate to the international community that they are more concerned with the well being of their children than the generation of income through any means possible.

