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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE  
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF  
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Initial reports of States parties due in 2005**

**COSTA RICA\***

[12 December 2005]

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\* In accordance with the information transmitted to States parties concerning the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. INTRODUCTION

1. This report was prepared in accordance with the requirements set forth in article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It is Costa Rica's first report submitted to the Committee on the Rights of the Child under this instrument.
2. Article 12 provides that a State party should "submit, within two years following the entry into force of the Protocol for that State party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol".
3. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified by Costa Rica through Act No. 8172, which entered into force in February 2002.
4. No reservations were entered at the time of ratification. It should be pointed out that in Costa Rica "child prostitution" is commonly referred to as "engagement in paid sexual relations with minors".
5. Costa Rica submitted its third periodic report on the implementation of the Convention on the Rights of the Child to the Committee on the Rights of the Child in 2003. The present document refers in places to the third periodic report to indicate that more detailed information is contained in that report.
6. The Government of Costa Rica is also submitting to the Committee a report prepared in accordance with article 8, paragraph 1, of the Optional Protocol on the involvement of children in armed conflict.
7. The present report describes the legislative, administrative, judicial and other measures implemented in Costa Rica to guarantee the rights enshrined in the Optional Protocol on the sale of children, child prostitution and child pornography. The content, form and presentation of the report are consistent with the guidelines adopted by the Committee at its 777th meeting (twenty-ninth session), on 1 February 2002.
8. The report was drafted on the basis of information contained in documents and reports prepared by government authorities, including the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES).

## II. GENERAL INFORMATION

### **Governmental departments or bodies responsible for the implementation of the Optional Protocol, and coordination between them**

9. In 1996, an inter-institutional, intersectoral body, also comprising non-governmental and international organizations, was established to address the problem of commercial sexual exploitation from a rights-based perspective. This approach was agreed by consensus and integrated into the work of all the bodies and institutions involved in the initiative.

10. Subsequently, in 1998, the Children and Adolescents Code was adopted, establishing the National Council on Children and Adolescents as the leading body within the national child protection system. The Council bestows political legitimacy on the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES), which was established in 1996 and which became one of the Council's special thematic commissions. Consequently, there is a permanent forum and political support for debate and coordination in this area.

11. In order to further strengthen CONACOES, in 2002 the National Council on Children and Adolescents arranged for it to have an office within the National Child Welfare Agency (PANI), the lead agency in the area of children's rights.

12. CONACOES is composed of government institutions and non-governmental organizations, including: the San José municipal authority; the Paniamor Foundation; Defence for Children International; Alliance for Your Rights; the AIDS Foundation; the Rahab Foundation; the Costa Rican Association of Tourism Professionals; the American Association of Jurists; cooperation mechanisms such as the International Labour Office (ILO) and the United Nations Children's Fund (UNICEF); and all public institutions whose work is related in some way to children and who participate in the National Council on Children and Adolescents, namely:

(a) The National Child Welfare Agency, whose work focuses on the protection and comprehensive, full and ongoing development of children and adolescents. It is the lead agency and guarantor of their rights, and lays down guidelines and develops special programmes to protect particularly vulnerable youngsters;

(b) The Ministry of National Planning and Economic Policy guides, administers and coordinates the planning process in Costa Rica, which is based mainly on the national development plan and a global and strategic vision of society in the short, medium and long term;

(c) The Ministry of Labour and Social Security ensures that labour regulations for 15 to 18-year-olds comply with the Children and Adolescents Code;

(d) The Ministry of Public Security addresses situations where minors are exposed to great physical danger;

(e) The Ministry of Education devises strategies to prevent expulsion from school and ensure access to formal education for all minors;

(f) The Ministry of Health safeguards and guarantees access to public health services for all children and young people;

(g) The Ministry of Justice is responsible for measures relating to the prevention of violence and crime and the administration of juvenile justice;

(h) The Inter-Agency Institute for Social Assistance (IMAS) provides assistance to poor and extremely poor Costa Rican families;

(i) The National Institute for Women (INAMU) works to prevent domestic violence and sexual abuse in general;

(j) The Costa Rican Social Security Fund (CCSS) is entrusted with ensuring the physical and psychological welfare of minors;

(k) The National Training Institute (INA) offers training and vocational courses for young people to facilitate their entry into the labour market, and provides manual tools to encourage private enterprise;

Other participating bodies are:

(l) The Association of Private Institutions for Children and Adolescents (UNIPRIM);

(m) The Costa Rican Federation of Non-Governmental Organizations for the Defence of Children's Rights (COSECODENI);

(n) The National Council of Public University Rectors (CONARE);

(o) Employers' and union representatives;

(p) Guest members include: the president of the Council of Young Persons; the prosecution service's young offenders unit; and members of political parties represented in the Costa Rican parliament.

13. Commercial sexual exploitation as defined in domestic legislation comprises the following offences: rape; sexual relations with minors; paid sexual relations with minors; sexual abuse of minors and persons without full legal capacity; sexual abuse of adults; corruption; procuring; pimping; trafficking in persons; the manufacture or production of pornography; and the dissemination of pornography.

### **Dissemination and training in the provisions of the Optional Protocol**

14. The provisions of the Optional Protocol relating to dissemination and training have been fully incorporated into the CONACOES annual plan. The plan contains actions aimed at the media; action to promote changes in behaviour and community participation; action relating to the particular vulnerability of girls and young women to sexual violence; and activities aimed at the public and private tourist sector. Further details on such actions are provided in chapter V of this report.

### **Mechanisms and procedures used for the periodic evaluation of the implementation of the Optional Protocol and the main challenges encountered**

15. CONACOES is the body responsible for implementing systematic and sustained measures to address both structural problems and specific situations that facilitate the commercial sexual exploitation of children and young persons in Costa Rica. Priority is given to intervention in specific geographical areas within the framework of a nationwide strategy. CONACOES is responsible for follow-up to the national plan to combat the commercial sexual exploitation of children and adolescents, which was relaunched in August 2001.

16. This plan sets forth the guiding principles for action. Prevention strategies include:
- Networking and a rights- and gender-based approach;
  - Decentralized management and nationwide coverage;
  - Training for teachers, parents and others with responsibility for schoolchildren; judicial officials and personnel; members of the police force; owners, managers and staff of hotels, restaurants and bars; and taxi drivers;
  - Continuous training for police officers;
  - A preventive campaign aimed at the general public;
  - Action to prevent children who drop out of school from finding themselves at risk;
  - Inter-institutional coordination and cooperation is fostered and sustained by:
    - The mandates contained in the national development plan for 2002-2006, which contains specific targets. Within the framework of the national evaluation system of the Ministry of Planning and Economic Policy, institutions report periodically on progress towards these targets;
    - The legal framework, which requires compliance with non-transferable institutional responsibilities;
    - Inter-institutional cooperation agreements on the development of specific programmes.
17. Coordination is also fostered by the agreements reached by the CONACOES general assembly, which is a forum for proposals, criticism and analysis of current tasks relating to the eradication of commercial sexual exploitation. The task of monitoring the implementation of such agreements falls to the unit of the National Child Welfare Agency entrusted with combating commercial sexual exploitation.

### **Main challenges encountered**

18. Given that commercial sexual exploitation happens “behind closed doors” and constitutes an offence, obtaining quantitative data is not an easy task. Institutional information management systems generally do not include indicators, and capacities for following up on individual cases are yet to be fully developed. The population remains very reluctant to lodge complaints, either for fear of repercussions or because such practices are tolerated. This is exacerbated by the sometimes slow institutional response, which has various causes, including a lack of resources and the persistence of old paradigms and ideologies that impede adequate institutional action. Furthermore, the stigma attached to commercial sexual exploitation hampers the detection of cases and the provision of assistance; victims are often unwilling to use institutional services, as many are afraid of becoming involved in poorly administered proceedings.

19. Breaking old patterns is a daily challenge facing institutions; the challenge is even greater for institutions working with children and young people, especially in the area of commercial sexual exploitation.

20. There is no specific public policy to eradicate commercial sexual exploitation and no comprehensive, rights-based victim-care system that takes account of gender and age. These shortcomings have a high opportunity cost: lack of cooperation between the government institutions responsible for combating commercial sexual exploitation in all its manifestations; a lack of clarity and awareness with regard to the sphere of competence of different institutions; non-compliance with specific obligations relating to the issue; and a severe shortage of the resources needed for action in the field of prevention, promotion, protection, care, investigation and suppression. All this is reflected in the resulting assessment of the achievements and results obtained. The absence of a specific policy also hampers the creation of partnerships between government institutions, non-governmental organizations and civil society, whose participation in efforts to address this social problem is crucial.

### **Applicability of the Optional Protocol in Costa Rica**

21. Costa Rica's commitment to promoting and protecting the human rights of all persons living in its territory and to upholding democracy is the basis for decision-making in all areas. Therefore, constant efforts are being made to safeguard and enhance the protection of minors.

22. With regard to the status of the Optional Protocol in domestic legislation, article 7, paragraph 1, of the Constitution provides that: "Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws upon their enactment or from the day that they designate."

23. With reference to international human rights instruments, including the Convention on the Rights of the Child and its optional protocols, the Constitutional Chamber established in 1989 pursuant to an amendment to articles 10 and 48 of the Constitution has declared that: "With reference to the international human rights instruments in force in Costa Rica, constitutional case law states that the provisions of article 7 of the Constitution do not apply, since article 48 contains a special rule with reference to human rights instruments, endowing them with a regulatory effect ranking with that of the Constitution itself; the case law further acknowledges that the human rights instruments in force in Costa Rica not only have similar status to the Constitution, but, insofar as they grant more rights or safeguards to individuals, take precedence over the Constitution" (No. 1319-97 at 2.51 p.m. on 4 March 1997).

24. It may be deduced from the above that in Costa Rica, while the Constitution suggests that international human rights standards are ranked above the law, by virtue of the binding judicial interpretation of the Constitutional Chamber of the Supreme Court, the standards contained in the international human rights instruments which go beyond the safeguards of the Constitution take precedence over the Constitution.

25. In addition, with reference to the ranking of legislation, article 8 of the Children and Adolescents Code states that the provisions of the Code are to be applied and interpreted in conformity with the Constitution, the Convention on the Rights of the Child and other instruments pertaining to the rights of children and young persons, in the following order:

- (a) The Constitution;
- (b) The Convention on the Rights of the Child;
- (c) Other pertinent international treaties and conventions;
- (d) The guiding principles of this Code;
- (e) The Family Code and related legislation;
- (f) Social and cultural customs and traditions;
- (g) General legal principles.

### **Implementation of the Optional Protocol in relation to the general principles of the Convention on the Rights of the Child**

#### **Non-discrimination (article 2 of the Convention)**

26. Article 3 of the Children and Adolescents Code stipulates that the provisions of the Code apply to all minors without discrimination of any kind, irrespective of the ethnicity, culture, sex, language, religion, ideology, nationality or other status of their parents, legal guardians or other persons responsible for the minor. It is further stated that the rights and guarantees bestowed on minors are in the public interest, cannot be waived and are non-derogable.

#### **Best interests of the child (article 3 of the Convention)**

27. As regards the best interests of the child, domestic legislation stipulates in article 5 of the Children and Adolescents Code that all criminal or private actions concerning persons under 18 years of age must take into consideration their best interests, to guarantee respect for their rights in an environment conducive to their physical and mental health and personal growth. When determining the child's best interests, the following must be taken into consideration:

- The child's status as a subject of rights and responsibilities;
- The child's age, maturity, capacity for discernment and other personal traits;
- The child's socio-economic situation;
- The congruence between the individual's and society's interests.

28. Furthermore, article 9 of the Children and Adolescents Code stipulates that preference should be given to applying the most favourable provision: "Whenever there is doubt, in law or practice, about the proper application of this Code, the provision that is most favourable for the minor shall be applied, based on the criteria used for determining their best interests."



**Right to life, development and survival (article 6 of the Convention)**

29. The right to life is enshrined in Costa Rican legislation. The Children and Adolescents Code provides that: “Minors have the right to life from the moment of conception. The State shall safeguard and protect this right by adopting economic and social policies that guarantee decent conditions for pregnancy, birth and the child’s all-round development.”

**Respect for children’s views (article 12 of the Convention)**

30. Article 105 of the Children and Adolescents Code stipulates that the views of minors must be respected: “Minors shall participate directly in the processes and proceedings set out in this Code and their views shall be heard. The judicial or administrative authority shall always take account of the minor’s emotional maturity when deciding how these views should be accommodated. To this end, the Supreme Court shall establish appropriate mechanisms for conducting interviews with the assistance of an interdisciplinary team and in the presence of a judge.”

31. The Government of Costa Rica is of the view that a minor’s right to be heard is closely related to determining what is “in their best interest”. Seeking the viewpoint of a minor does not simply mean listening to them, but also considering and thinking of them as a person. When assessing what might be in the minor’s best interest, the judge’s objective is to improve their quality of life, both in physical and psychological terms, enhance their development and reduce the risks they face.

**Implementation of the Optional Protocol in relation to articles 1, 11, 21, 32, 33, 34, 35 and 36 of the Convention on the Rights of the Child**

32. Article 2 of the Children and Adolescents Code stipulates that, for the purposes of the Code, a child is considered to be any person from conception to the age of 12, and an adolescent to be any person between 12 and 18 years of age. Where there is doubt, the person will be treated as a child rather than as an adolescent, and as an adolescent rather than as an adult.

33. Regarding article 11 of the Convention, it should be mentioned that the issue of the deportation of minors is currently under debate in Costa Rica. The Children and Adolescents Code contains the following provisions in this connection:

**Article 16**

**Departure control**

The Migration and Aliens Office of the Ministry of Public Security shall control the departure of minors from the country. In order to prevent minors from leaving the country illegally, the Office shall keep a register of exit bans based on relevant information submitted by the judicial authorities.

## **Article 17**

### **Right of foreign minors to protection of their interests**

In connection with the entry and stay of foreign minors, the competent administrative authorities will assess the application of existing migration legislation with a view to protecting the interests of this group and ensuring that their rights are respected in a healthy physical, social and mental environment.

### **Article 21 of the Convention**

See chapter III of this report (“Prohibition of the sale of children, child pornography and child prostitution”).

### **Article 32 of the Convention**

34. As regards the economic exploitation of children, including child labour, please see the third periodic report submitted by the Government of Costa Rica to the Committee on the Rights of the Child in March 2003 (CRC/C/125/Add.4) and the subsequent reports submitted this year. In Costa Rica, such activities are considered offences, not work.

35. The following measures have been taken recently:

(a) Adoption of the second national plan of action for the prevention and eradication of child labour and the special protection of juvenile workers (2005-2010) which was a priority of the National Steering Committee for the Prevention and Progressive Elimination of Child Labour and the Protection of Juvenile Workers;

(b) The National Child Welfare Agency, through its local offices, monitors and provides assistance in cases involving child labour; the offices take protective measures designed to put a stop to such economic activity and request the Inter-Agency Institute for Social Assistance to provide financial assistance. Furthermore, the Ministry of Education and the National Training Institute conduct educational and training programmes for both minors and adults;

(c) In 2005, a plan was drawn up to give staff from regional and local offices training in the concept of child labour; the institutional protocol (developed by the National Child Welfare Agency); and the inter-institutional protocol (developed jointly by the Inter-Agency Institute for Social Assistance, the National Training Institute, the Ministry of Education, the Ministry of Labour and Social Security and the National Child Welfare Agency). The inter-institutional protocol aims at expediting coordination in the processing of cases. It is further planned to launch prevention campaigns and projects in priority cantons, as well as national campaigns;

(d) The work carried out by the Ministry of Labour and Social Security is particularly noteworthy: the Ministry currently runs a programme to train its labour inspectors in the eradication of child labour and the protection of young workers. Representatives of the National

Child Welfare Agency, the National Training Institute, the Ministry of Education and the Inter-Agency Institute for Social Assistance have addressed participants on the contribution made by each institution in this area.

### **Articles 33 and 34 of the Convention**

36. In Costa Rica, commercial sexual exploitation is defined as any type of sexual act performed with a minor in exchange for money or presents.

37. The definition of the term “sexual act” in the pertinent legislation includes the use of minors in the production of pornographic material and the act of exposing children and adolescents to pornography. The possession of pornographic material is not currently a criminal offence, but a bill that would criminalize the possession of pornographic material is currently before the Legislative Assembly.

38. The National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents and the National Child Welfare Agency have launched large-scale campaigns to raise public awareness of the consequences of commercial sexual exploitation and to publicize the pertinent legislation. Measures have been taken to give parents greater control over their children’s access to the Internet, and the authorities have taken steps to regulate the presence of children in public places with Internet access, such as Internet cafes and video game arcades.

39. Strict controls have been introduced in the tourist sector and partnerships have been established with hotel owners, networks of taxi drivers and other stakeholders.

40. However, there are still occasional complaints of adults engaging in the commercial sexual exploitation of minors. The practice of purchasing sexual services from minors is widespread and enjoys tacit social acceptance, as shown in a recent study on adult men’s views of sexuality and their relations with minors.

41. The study revealed that men think it normal to engage in paid sexual relations with individuals who have reached physical sexual maturity.

42. Given the above, the authorities have decided to change their approach, to ensure that awareness campaigns stress that engaging in such acts constitutes an offence and is liable to severe punishment. There is also a need to use more explicit language. The study revealed that the general public does not have a clear understanding of the term “commercial sexual exploitation”, which is associated with the failure to pay for sexual services. The study found that adults consider that they are not exploiting the minor if they pay for the services rendered.

43. In connection with the issue of commercial sexual exploitation, the Costa Rican authorities confirm the importance of language in society’s fight against such scourges.

44. While much has been done in this area, we acknowledge that the more significant changes will only be seen in the medium and long term, once the introduction of a new model of sex education in schools has taken effect. This model is based on a holistic approach to sexuality, which is quite unlike the approach known to the generations that now provide the ill-named “clients”.

### **Articles 35 and 36 of the Convention**

45. Costa Rica has done its utmost to ensure that migrant children enjoy the rights enshrined in the Convention on the Rights of the Child. The fruits of these efforts are most visible in the health and education sectors.

46. Child migrants are guaranteed access to education and health care and are looked after by parent figures or other supportive adults.

47. Considerable progress has been made in the protection of migrant children and young persons who are either smuggled into the country (a process known as *coyotaje*) or trafficked for the purpose of exploitation.

48. Minors are smuggled into the country by individuals who promise to take them to a family member in Costa Rica but who then abandon them without establishing the promised contact. This practice is particularly common in the border regions with residents from neighbouring Nicaragua.

49. In these situations, the National Child Welfare Agency provides temporary protection for the minor in one of its shelters and contacts its Nicaraguan counterpart to return the child to his or her family in the country of origin.

50. Trafficking activities are less visible. Empirical evidence suggests that Costa Rica is a country of origin, transit and destination in this respect.

51. In 2004, Costa Rica discovered 29 trafficked minors, who were offered due protection and returned to their countries of origin with the assistance of the appropriate institution there.

52. Given that Costa Rica is a country of origin, the migration authorities frequently witness the departure abroad of minors or young adults who travel with their parents' permission in pursuit of opportunities that are, by any reckoning, uncertain and unpredictable.

53. As a result, there was seen to be a need for an intensive campaign to make Costa Ricans aware of the potential dangers associated with lucrative offers from abroad.

54. As part of this campaign, a national coalition against people-smuggling and trafficking in persons is currently being formed, and will be formally established by the President in an executive decree.

55. The idea is to join forces to provide information, raise awareness and create an enabling environment for the comprehensive protection of the victims and potential victims of trafficking or people-smuggling.

56. The National Child Welfare Agency, with the support of several non-governmental organizations, has prepared and submitted to the United States Government a draft project to set up, with United States support, shelters and specialized victim-care services and to disseminate pertinent information.

57. The above-mentioned coalition intends to carry out activities in the area of prevention, promotion and protection for both minors and adults. One of its first projects would be to reform existing legislation with a view to guaranteeing the full protection of minors by closing existing legal loopholes that, in one way or another, make minors vulnerable to smuggling and trafficking activities.

### **III. PROHIBITION OF THE SALE OF CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION**

#### **Existing criminal or penal laws and regulations covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Optional Protocol**

58. Act No. 7899 revising a number of articles of the Criminal Code was adopted in 1999. The revised articles, which brought domestic legislation into line with international norms, were entitled “Law against the commercial sexual exploitation of minors”; the redefined offences are described below, with an explanation of the criminal offence in each case.

#### **59. Rape:**

**Article 156.** Anyone who attempts to have or obtains carnal access to a person of either sex by oral, anal or vaginal penetration shall be punishable with ten to sixteen years’ imprisonment in the following cases:

- Where the victim is under 12 years of age;
- Where the victim lacks full legal capacity or is incapable of resisting;
- Where physical violence or intimidation is used. The same penalty shall be imposed if the act involves the introduction of one or more fingers or objects into the vagina or anus. ...

#### **Commentary**

This definition of the crime of rape protects two legal interests: sexual integrity and sexual freedom. These rights may be violated in different ways in cases where the perpetrator of the crime uses sexuality to assault the victims. As previously defined, however, the crime of rape could be committed only through carnal access. As a result, acts that seriously harmed the sexual integrity and freedom of the other person were characterized as “indecent abuse” because there had been no carnal access, in other words no penal penetration of the anus or vagina. With the present revision of the Code, progress has been made in redefining this offence to counter attitudes and arguments to the effect that rape can only be committed by using the penis. Accordingly, the basic amendments to the definition of the crime of rape are as follows: (1) the revised Code punishes as rape not only the act of obtaining carnal access, i.e. penal penetration of the vagina or the anus, but also the act of attempting to obtain access; (2) the last paragraph includes other forms of sexual aggression which did not traditionally form part of the crime of rape but are now considered, in the light of new human rights principles, to constitute acts of

rape and can no longer be characterized - as was the case prior to the revision - as mere “indecent abuse”; the revised Code thus punishes as the crime of rape any assault involving the introduction of fingers or objects into the anus or the vagina; rape involving the use of animals is also now covered by the definition; (3) following the revision, rape can also be committed where the victim is compelled to engage in oral sex or where oral sex is performed on the victim under one or more of the circumstances constituting the offence.

**60. Sexual relations with minors:**

**Article 159.** Anyone who, taking advantage of age, attempts to obtain or obtains carnal access, by oral, anal or vaginal penetration, to a person of either sex who is over 12 and under 15 years of age, even with his or her consent, shall be punishable with two to six years’ imprisonment. A similar penalty shall be imposed if the act involves the introduction of one or more fingers or objects into the vagina or anus. The penalty shall be four to ten years’ imprisonment where the victim is over 12 and under 18 years of age, and the perpetrator’s relationship with the victim is that of ascendant, uncle, aunt, brother or sister by consanguinity or affinity, guardian or custodian.

**Commentary**

This article combines the offences of statutory rape and sodomy, but the revision eliminates the sexist and moralistic notions underlying the differentiated gender-based approach to protection. Previously, a distinction was made between statutory rape, which was intended to protect young women between the ages of 12 and 15 who were deemed to be “honest women”, and the crime of sodomy, which was designed to protect the sexual freedom of young men over 12 and under 17 years of age without requiring any moral judgement. The revised Code eliminates this sexist distinction and reverts to the historical origins of the offence as one of seduction and sexual fraud by including the phrase “Anyone who, taking advantage of age ...” but without making gender-based distinctions or using descriptive terms reminiscent of the patriarchal moral order. This approach is thus based on the necessary, albeit inadequate, principle of the formal equality of the persons concerned. The legal interest to be protected is no longer “honesty” but the sexual freedom of persons - male and female - over 12 and under 15 years of age. The revised Code furthermore extends the scope of the act beyond carnal access to include other forms of sexual aggression such as oral sex and the introduction of one or more fingers or objects into the anus or vagina. An aggravated penalty is imposed in cases involving a relationship of ascendant, uncle, aunt, brother or sister by consanguinity or affinity, guardian or custodian.

**61. Paid sexual relations with minors:**

**Article 160.** Anyone who pays a minor of either sex or promises to pay or to provide him or her with an economic or other benefit in return for performing sexual or erotic acts shall be punishable:

- With four to ten years’ imprisonment if the victim is under 12 years of age;

- With three to eight years' imprisonment if the victim is over 12 but under 15 years of age;
- With two to six years' imprisonment if the victim is over 15 but under 18 years of age.

### **Commentary**

This is a new offence. On the specific matter of prostitution, the Criminal Code contained only the offences of procuring (simple and aggravated) and pimping, which took no account in their conception or structure of the problem of the commercial sexual exploitation of children and adolescents through “child/youth prostitution”, despite the fact that the first clause of the definition of the offence of aggravated procuring referred to cases in which the victim was under 18 years of age. The latter approach is maintained and improved in the revised version, but it also goes much further, punishing both the user of child/youth prostitution and the intermediary and extending protection up to the age of 18 in conformity with the Convention on the Rights of the Child. The creation of this offence does not entail prosecution of the “prostituted” minor, who is rather the victim, but holds users of this kind of commercial sexual exploitation criminally accountable. The offence is one of endangerment, covering acts such as “paying”, “promising to pay”, “providing with an economic or other benefit” which in themselves harm the protected legal interest of sexual freedom and integrity. Moreover, the scope of the offence is broadened since it does not refer to mere carnal access but to “sexual or erotic acts”, concepts that must be included to reflect the complex reality of child/youth prostitution in Costa Rica. It is also important to note that the penalties are graded in the article according to the age of the person concerned: a harsher penalty is prescribed in the first subparagraph if the victim is under 12 years of age. In such cases, a multiple offence is committed: remunerated sexual relations combined with rape. The penalties prescribed in the other subparagraphs vary according to whether the victims are over 12 and under 15 years of age or over 15 and under 18.

#### **62. Sexual abuse of minors and persons without full legal capacity:**

**Article 161.** Anyone who abusively performs acts for sexual purposes on a minor or a person without full legal capacity, or coerces that person to perform such acts on the offender, on himself or herself or on another person, where such act does not constitute the crime of rape, shall be punishable with three to eight years' imprisonment.

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

- Where the victim is under 12 years of age;
- Where the perpetrator takes advantage of the victim's vulnerability or the victim is incapable of resisting, or where physical violence or intimidation is used;

- Where the perpetrator is an ascendant, descendant, brother or sister by consanguinity or affinity, stepfather or stepmother, spouse or person in a similar relationship of cohabitation, guardian or other person responsible for the education, care or custody of the victim;
- Where the perpetrator takes advantage of a relationship of trust with the victim or his or her family, through ties of kinship or otherwise.

### Commentary

This offence, together with the offence of sexual abuse of adults, replaces the offence of “indecent abuse”. The revised Code, by eliminating the element of “indecent”, rightly emphasizes the element of aggression, which is appropriate in the case of the protected legal interests of sexual integrity and sexual freedom. The definition of the criminal offence includes as a subsidiary clause “where such act does not constitute the crime of rape”, which means that it covers all acts that are not described in connection with the crime of rape and that a person performs for sexual purposes and abusively on another person who is a minor. The same applies to the following offence, which is committed against adults and differs in terms of the severity of the penalties and the aggravating circumstances. The concept of “vulnerability” as an aggravating circumstance is included in the Criminal Code for the first time; blood ties between the victim and the perpetrator of the crime are also considered an aggravating circumstance. It is important to note that other ties that are not mentioned in article 112 (1) of the Criminal Code are included: a similar relationship of cohabitation is included without reference to the concept of *de facto* union used in the Family Code, so that all the elements required for the latter need not be present in order to establish the existence of the aggravating circumstance.

#### 63. Sexual abuse of adults:

**Article 162.** If the abuse described in the preceding article is perpetrated against an adult, the penalty shall be two to four years’ imprisonment.

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

- Where the perpetrator takes advantage of the victim’s vulnerability or the victim is incapable of resisting, or where physical violence or intimidation is used;
- Where the perpetrator is an ascendant, descendant, brother or sister by consanguinity or affinity, stepfather or stepmother, spouse or other person in a similar relationship of cohabitation, guardian or other person responsible for the education, care or custody of the victim;
- Where the perpetrator takes advantage of a relationship of trust with the victim or his or her family, through ties of kinship or otherwise. ...



### Commentary

This offence relates to sexual abuse of adults of the kind described in the preceding article. The penalty is more severe where there are aggravating circumstances. See the commentary on article 161.

#### 64. **Corruption:**

**Article 167.** Anyone who promotes the corruption of a minor or a person without full legal capacity or who keeps such a person in a state of corruption shall be punishable with three to eight years' imprisonment. The same penalty shall be imposed on anyone who uses minors or persons without full legal capacity for erotic, pornographic or obscene purposes in public or private exhibitions or shows of that nature.

For the purposes of this article, corruption means:

- Performing sexual or erotic acts in front of minors or persons without full legal capacity;
- Coercing others to perform sexual or erotic acts in the presence of minors or persons without full legal capacity;
- Coercing minors or persons to perform sexual or erotic acts in the presence of others.

### Commentary

The previous definition of the offence of corruption displayed absolutely no respect for minors, since a clause at the end of the text indicated that the act was not punishable, i.e. it was not prosecuted, if the minor was corrupt; moreover, the legislation made a distinction between “a corrupt minor” and “an incorrupt minor”, basing itself on the assumptions of the old and now obsolete “irregular situation” doctrine. Moreover, the previous definition referred to “deviant, premature or immoderate acts”, terms that were not self-explanatory and whose interpretation was left to the discretion of the judge (What is deviant? When is something premature? What parameters should be used to define what is immoderate?), resulting in an open-ended definition of the criminal offence. The revised Code includes new elements in the basic definition of the offence and eliminates others: in addition to “promoting corruption”, the offence is broadened to include “keeping in a state of corruption”. A further addition is the act of “using minors for erotic, pornographic or obscene purposes in public or private exhibitions or shows”. These three adjectives - erotic, pornographic and obscene - were introduced to preclude discussions about the difference between them: it is of no consequence whether the purpose is erotic or pornographic when the aim is to protect the sound psychosexual development of minors and persons without full legal capacity. The concept of a “corrupt minor” has, of course, been omitted. There can be no question of leaving conduct unpunished because it was perpetrated against a minor who had previously been subjected to acts of corruption. Lastly, an innovative approach used only for this offence consists in including a definition of the concept of corruption in the description of the offence.

**65. Aggravated corruption:**

**Article 168.** In the cases set out in the preceding article, the penalty shall be four to ten years' imprisonment:

- Where the victim is under 12 years of age;
- Where the act is carried out for purposes of gain;
- Where the act involves deceit, violence, abuse of authority or any other means of intimidation or coercion;
- Where the perpetrator is an ascendant, descendant, brother or sister by consanguinity or affinity, stepfather or stepmother, spouse or person in a similar relationship of cohabitation, guardian or other person responsible for the education, care or custody of the victim;
- Where the perpetrator takes advantage of a relationship of trust with the victim or his or her family, through ties of kinship or otherwise.

**Commentary**

This article sets out cases in which the corruption is aggravated. The first circumstance entailing aggravation is where the victim is under 12 years of age and the second is where the act is carried out for purposes of gain; there is also a harsher penalty where the act involves deceit, violence, abuse of authority or means of intimidation or coercion. Corruption is also aggravated where there are kinship ties between the perpetrator and victim, where the perpetrator is responsible for the victim's education, care or custody, or where advantage is taken of a relationship of trust with the victim or his or her family, even without ties of kinship. As in the case of other aggravating circumstances included in the revised Code, the concept of de facto union used in the Family Code is replaced for the purposes of protection under criminal law by the broader concept of "similar relationship of cohabitation", which covers other relationships that may not necessarily correspond to the terms of family legislation. In all such cases, the penalty is four to ten years' imprisonment.

**66. Procuring:**

**Article 169.** Anyone who promotes the prostitution of persons of either sex, induces them to engage in prostitution, keeps them in prostitution or recruits them for that purpose shall be punishable with two to five years' imprisonment. The same penalty shall be imposed on anyone who keeps another person in sexual slavery.

**Commentary**

The acts covered by the criminal offence are expanded in the revised Code to include not only the act of "promoting" or "facilitating" as before but also that of "keeping" a person in prostitution or "recruiting" him or her for that purpose. Two subjective elements of the offence contained in the previous text have been deleted: "for purposes of gain" and "to satisfy the desires of other people". These elements added nothing to the definition of conduct involving

the promotion or facilitation of prostitution, and actually introduced a loophole that could be used to allege that the act did not correspond to the definition on the ground that it was not undertaken for those purposes. The revised definition of the criminal offence reflects the conduct of groups, organizations and individuals who engage in this activity. It is important to note that adult prostitution is not prohibited in Costa Rica, nor should it be. What is prosecuted as a criminal offence is the series of activities whereby such conduct is turned into a business. If prostitution was prohibited, the victims would be classed as criminals, a situation that lies beyond the scope of Costa Rican criminal law. What is prohibited, on the other hand, is using persons for prostitution, promoting such activity, inducing people to engage in it and keeping a person in prostitution. The last part of the definition includes the prohibition, under threat of criminal penalty, of keeping a person in sexual slavery. These are cases that cannot technically be described as prostitution but rather as coercion of someone to provide sexual services to another person although no remuneration is involved or because such services are deemed to form part of other paid services in the context of an employment relationship with the instigator of the conduct. This kind of situation is most likely to arise in the case of undocumented foreign women who are sexually exploited in return for their subsistence or survival.

67. **Aggravated procuring:**

**Article 170.** The penalty shall be four to ten years' imprisonment where one of the acts described in the preceding article is committed in any of the following circumstances:

- Where the victim is under 18 years of age;
- Where the act involves deceit, violence, abuse of authority, circumstances in which the victim is driven by necessity, or any other means of intimidation or coercion;
- Where the perpetrator is an ascendant, descendant, brother or sister by consanguinity or affinity, stepfather or stepmother, spouse or person in a similar relationship of cohabitation, guardian or other person responsible for the education, care or custody of the victim;
- Where the perpetrator takes advantage of a relationship of trust with the victim or his or her family, through ties of kinship or otherwise.

68. **Pimping:**

**Article 171.** Anyone who coercively supports himself or herself, even partially, by means of a person who engages in prostitution, exploiting the earnings from such activities, shall be punishable with two to eight years' imprisonment. The penalty shall be:

- Four to ten years' imprisonment if the victim is under 12 years of age;
- Three to nine years' imprisonment if the victim is over 12 and under 18 years of age.

### Commentary

The revised Code introduces an element - coercion - that was not formerly included in the definition of the offence of pimping. The intention was to make it clear that what is being punished is the act whereby one person compels another to support him/her by prostitution. “Coercively” means using any form of physical or mental violence, i.e. supporting oneself, even partially, through the earnings of persons engaged in prostitution. This term has been reinforced by the mention of “exploiting” earnings from prostitution. It may be inferred from the stress placed on the element of coercion in the definition of the offence that: (1) it is not the mere fact that one person is supported by another through prostitution that is punishable, if the latter does so voluntarily, since prostitution is not an offence in our country and money earned in this way can therefore be spent lawfully and freely; (2) as it is an offence against the right of free disposal and the right to property, it belongs by right in the part of the Code dealing with offences affecting those legal interests and not in the part concerning sexual offences. However, to avoid delays in the adoption of the revised Criminal Code, it was kept in the present part since the current revision of the Code is only partial. With regard to the penalties incurred, the revised Code substantially raises the maximum penalty to eight years’ imprisonment. The final section of the definition deals with aggravated forms of the offence: where the victim is under 12 years of age (if, in addition, the perpetrator has sexual relations with the victim, the rules of concurrence with the offence of rape become applicable), or where the person is over 12 and under 18 years of age.

#### 69. **Trafficking in persons:**

**Article 172.** Anyone who promotes, facilitates, or aids and abets the entry into or departure from the country of persons of either sex for the purpose of engaging in prostitution or to keep them in sexual slavery or slave labour shall be punishable with three to six years’ imprisonment. The penalty shall be four to ten years’ imprisonment if any of the circumstances enumerated with respect to aggravated procuring apply.

### Commentary

The title of the revised article treats all persons affected by this offence equally, since “trafficking in persons” refers not only to women and children but also to men as possible victims. This helps to give a higher profile to the sexual exploitation of males, be they children, adolescents or adults, although the sexual exploitation of women is more easily detected and recognized. The revised Code defines three types of conduct: “promoting” (initiating or furthering something to ensure its achievement; taking the initiative to bring about or achieve something), “facilitating” (making it easy or possible to carry out something or to achieve an aim) and “aiding and abetting” (helping, assisting someone; supporting an intention, undertaking or opinion; doing someone a favour). The new term “aiding and abetting” broadens the scope of the prohibition since it addresses a different kind of circumstance from promoting or facilitating. The newly worded definition of the offence covers all possible forms of involvement in moving people into or out of the country (men or women, adults or minors) to engage in prostitution, or to keep them in sexual slavery or slave labour. Regulating the traffic of persons into or out of national territory to engage in prostitution is in itself an important step but it does not go far enough, especially since this type of offence does not cover all the situations that arise in practice. Hence the importance of including the prohibition of these two forms of slavery which,

as experience has shown, are areas requiring protection under criminal law - sexual slavery and slave labour. In the case of the latter, this would not seem to be the most fitting place to deal with an offence that is not directly related to sexual violence and exploitation, but it was kept in this part of the Criminal Code and under this definition because the current revision of the Code is only partial. Moreover, this offence and the preceding one cover circumstances involving both immigration and emigration, given the seriousness of the problem of movement of persons both into and out of the country to engage in such activities. The article sets out the circumstances that attract a harsher penalty because they are deemed to have a more adverse effect on the protected legal interest.

**70. Manufacture or production of pornography:**

**Article 173.** Anyone who manufactures or produces pornographic material, using either minors or images of minors, shall be punishable with three to eight years' imprisonment.

Anyone who sells, transports or imports such material for commercial purposes shall be punishable with one to four years' imprisonment.

**Commentary**

This is a new offence. It criminalizes the manufacture and production of pornographic material using minors. However, this is not the only type of conduct that is criminally sanctioned. The scope of the definition is such that it should cover all types of activity occurring during the *iter criminis*, i.e. during the planning of the crime, as well as any subsequent activity in which a minor or the image of a minor is used in the content of the pornographic material. The first paragraph mentions two acts: "manufacturing" (which in this context means mass-production) or "producing" (which, according to the seventh meaning listed in the *Real Academia* dictionary, means creating things or services with an economic value) pornographic material in which minors or their images are used. The second part describes the conduct of marketing such material. The paragraph criminalizes the sale, transport or import of such pornographic material. Although the draft version of the revised Code also criminalized the possession of such material, parliament opposed this clause on the ground of protection of privacy. This point is still open to debate, especially in view of the State's obligation to protect a child's image irrespective of any other adult interest.

**71. Dissemination of pornography:**

**Article 174.** Anyone who sells, disseminates or exhibits pornographic material to minors or persons without full legal capacity shall be punishable with one to four years' imprisonment.

**Commentary**

This offence, like the preceding one, is new and punishes the sale, donation, lending, exhibition or any other form of dissemination of pornography to minors, conduct which may be viewed as a type of corruption but which was conceived as a separate criminal offence on account of the issues that gave rise to the revision of the Code.

72. Against the same background, the Criminal Code introduces a series of rules pertaining to the implementation of criminal legislation:

**Article 6.** Proceedings may be instituted for offences committed abroad and Costa Rican law may be applied in such cases, where:

- (1) Their results affect or may affect all or part of the national territory;
- (2) They were committed by persons in the service of Costa Rica and were not prosecuted in the place in which the act was committed owing to diplomatic or official immunity; and
- (3) They were perpetrated against any Costa Rican national or breached his or her rights.

**With regard to international crimes:**

**Article 7.** Irrespective of the provisions in force in the place in which the offence was committed and the nationality of the perpetrators, the following persons shall be prosecuted under Costa Rican law: anyone who commits acts of piracy or genocide; forges coins, securities, banknotes and other bearer instruments; takes part in the trafficking of slaves, women or children; engages in trafficking of narcotics or obscene publications; or commits other offences against the human rights set out in the treaties signed by Costa Rica or in this Code.

**When can the above-mentioned crimes be prosecuted?**

**Article 8.** For the offences set out in article 5 to be prosecutable in Costa Rica, State action shall suffice. For those set out in articles 6 and 7, the perpetrator must be present in national territory. Furthermore, in the case of article 6, a complaint by the aggrieved person shall suffice to initiate the proceedings, and in the case of article 7 the criminal proceedings may be instituted only on the basis of an application by the competent bodies.

**Article 376.** The mother, father or any other person with the status of legal guardian of an adopted minor who receives in that capacity any kind of payment, gratuity or financial reward shall be punishable with one to four years' imprisonment. The same penalty shall be imposed on anyone who makes a payment or gives a gratuity or reward with a view to obtaining a minor for adoption.

**Article 377.** Anyone who promotes or facilitates the trafficking of minors to hand them over for adoption with a view to selling their organs shall be punishable with five to ten years' imprisonment.

73. An important development in this area was the publication in *La Gaceta* of 6 May 2004 of the executive decree entitled “Regulations governing the control and regulation of premises providing public Internet services”, the purpose of which is to make it more difficult for persons under 18 years of age to obtain access to pornography and unsuitable material in cybercafes, Internet cafes or similar premises. Under these regulations, premises that take the necessary measures to provide a service without access to pornography are to be indicated by signs displayed outside. The Ministry of Public Security has circulated instructions to the police force on monitoring compliance with the regulations.

74. Another example of action taken in this area is the presidential directive on assessing the measures that need to be taken to enable Costa Rica to accede to the Council of Europe Convention on Cybercrime and its Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, which will permit the Legislative Assembly to take steps to establish a legal framework for ending the impunity that currently exists in the area of cybercrime, a vital requirement for the work of the cyberpolice unit set up recently in the country. The circumstances are favourable, since this first international treaty has entered into force following its ratification by a fifth country (Lithuania), according to a Council of Europe communication issued in March 2006.

**The age limit used for defining a child in the definition of each of these offences**

See previous reply.

**The penalties which apply to each of these offences and the aggravating or attenuating circumstances applicable to them**

See previous reply.

**The statute of limitations for each of these offences**

75. The articles of the Code of Criminal Procedure concerning the statute of limitations stipulate the following:

**Article 31**

**Statute of limitations for criminal prosecution**

If criminal proceedings have not been initiated, the right of action shall be time-barred:

- After the expiry of a period equal to the maximum penalty in the case of offences attracting a custodial penalty; in no case, however, may this exceed ten years or amount to less than three years;
- After two years in the case of offences attracting only non-custodial penalties and in the case of minor or petty offences.

## **Article 32**

### **Calculation of the limitation period**

The limitation periods for prosecution shall be determined by the main penalty prescribed by law and shall start to run: for completed offences, from the date of completion; for attempts, from the date on which the last act was performed; and for continuous offences or offences with continuing effects, from the date on which their continuation or continuing effects ceased.

The limitation period shall run or shall be suspended or interrupted individually for each person who took part in the offence.

In the event of joint adjudication of several offences, the respective criminal proceedings shall be subject to separate statutes of limitations on the date indicated for each one.

**Any other acts or activities which are criminalized under the penal or criminal laws of the State party and which are not covered by article 3, paragraph 1, of the Optional Protocol**

See previous reply.

**The liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Optional Protocol, indicating the definition of a legal person in the State party**

76. In Costa Rica, liability cannot be attributed to legal persons. The Criminal Code punishes what is known as “unlawful association”.

77. The following articles of the Criminal Code may be cited in this regard:

**Article 274.** Anyone who takes part in an association of two or more persons for the purpose of committing offences shall be punishable with one to six years’ imprisonment solely on the ground of being a member of the association.

The penalty shall be three to ten years’ imprisonment if the purpose of the association is to carry out acts of terrorism.

78. **International crimes:**

**Article 374.** Any persons who run or who are members of international organizations engaged in trafficking of slaves, women or children, or narcotics, or who carry out acts of terrorism or breach the provisions of human rights treaties signed by Costa Rica shall be punishable with ten to fifteen years’ imprisonment.



**The status, under the criminal or penal law of the State party, of attempts to commit and complicity or participation in the offences referred to previously**

79. The Criminal Code differentiates as follows between persons' degree of involvement:

- Attempt:

**Article 24.** An attempt occurs where steps are taken to initiate the execution of an offence by means of acts directly intended to ensure its completion but the outcome is prevented by causes outside the control of the offender. The penalty corresponding to an attempt shall not be imposed where completion of the offence was absolutely impossible.

- Principal and joint principals:

**Article 45.** A principal is anyone who commits an act defined as an offence either alone or using the services of one or more other persons, and joint principals are persons who commit the offence jointly with the principal.

- Instigators:

**Article 46.** Instigators are persons who deliberately incite another person to commit the offence.

- Accomplices:

**Article 47.** Accomplices are persons who provide the principal or principals with any kind of assistance or cooperation for the commission of the offence.

- Beginning and scope of the liability of participants:

**Article 48.** The participants shall be liable from the point at which the act begins, as set out in article 19. If the act proves to be more serious than they had intended, liability shall be incurred by those who accepted it as a probable consequence of the act undertaken.

- Transferability of the circumstances:

**Article 49.** The personal characteristics determining that an act constitutes an offence are also imputable to participants who do not possess them, if those characteristics were known to them.

The influence of relations, circumstances and personal characteristics entailing a reduction or waiver of the penalty shall be confined to participants in whose case they arise.

Material circumstances that aggravate or attenuate the offence shall be taken into account only with respect to those who were aware of such circumstances when they collaborated.

**Bilateral and multilateral agreements which are applicable to the State party and how the State party ensures that all persons involved in the adoption of the child act in conformity with these international agreements**

80. Before a decision is taken in Costa Rica to separate a child or adolescent from his or her family environment, the following operational guidelines are observed by the National Child Welfare Agency:

- (a) Resort to alternative care facilities only where the physical and emotional integrity of the child or adolescent is at serious risk within his or her family unit;
- (b) Give priority to family- and community-based alternative care facilities;
- (c) Promote preparatory procedures for placement with and withdrawal from different alternative care facilities, taking into account the age, characteristics and circumstances of the families concerned;
- (d) Give priority to the joint placement of groups of brothers and sisters among whom ties exist. In very exceptional cases, where this is not possible, arrangements should be made to ensure that existing ties are maintained and strengthened;
- (e) Continuously review the duration of the period of institutionalization or of separation from the family group so that it is kept as short as possible;
- (f) Respect the cultural context as far as possible, by seeking to place children and adolescents in alternative care facilities in their regions of origin, provided that this would be in their best interest.

81. In all such separations, every effort should be made to work intensively with the children or adolescents and their families in order to make arrangements within the legally prescribed period for their return to the family unit or placement in other family-based or institutional facilities that enable them to enjoy their rights to the full.

82. National or international adoption has been defined as a public legal institution for the welfare of society and the promotion of family integration and protection. It is a legal and psychosocial process whereby the adopted child becomes part of the adoptive family as a son or daughter for all intents and purposes. It is a permanent and final alternative care facility, following which there can be no return to the family of origin. International adoption is subsidiary to national adoption, in accordance with the provisions of the relevant Hague Convention.

83. One of several key national legal instruments, the Organization Act establishing the National Child Welfare Agency, states that one of the Agency's aims is "to safeguard the right of minors to grow and develop within a family, be it biological or adoptive".

84. Act No. 7517 adopting the Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption was promulgated in 1995; two other very important instruments are the Family Code and the Adoptions Act.

85. In addition, various activities are being developed and implemented with a view to clarifying and underpinning many different aspects of national and international adoption and forging a stronger relationship with national judicial authorities. This aspect is felt to be of fundamental importance because of the many children and adolescents in Costa Rica whose legal status has not been clarified in accordance with the principles of safety and speed, a state of affairs that violates and obstructs their right to grow up in a family.

86. The National Child Welfare Agency is the chief authority for international adoption, a function that has been impeded by some family courts' mistaken position that the Hague Convention on this matter is applicable only to children and adolescents who are in the care of the Agency or of non-governmental organizations and does not apply to international adoptions based on consent that give rise to legal proceedings brought directly by lawyers before the family courts.

87. This situation demonstrates that children involved in international adoption procedures have been treated differently. In the first case, the procedures established by the Convention are respected, with a view to providing maximum safeguards for the children concerned. In the second case, the procedures are not followed and the children are denied the full protection to which they are entitled.

#### **IV. CRIMINAL PROCEDURE**

##### **Jurisdiction**

**Measures of a legislative, judicial and administrative nature to establish the State party's jurisdiction over the offences referred to in article 3, paragraph 1, of the Optional Protocol when:**

**These offences are committed in its territory or on board a ship or aircraft registered in the State party**

88. The Criminal Code regulates territoriality in the following terms:

- Territoriality:

**Article 4.** Costa Rican criminal law shall apply to any person who commits an offence in the territory of the Republic, save for the exceptions laid down in the international treaties, agreements and rules accepted by Costa Rica. For the purposes of this provision, the territory of the Republic shall be understood to mean, in addition to the natural or geographic territory, the territorial sea, the airspace above them and the continental shelf. Costa Rican ships and aircraft shall likewise be regarded as national territory.

**The alleged offender is a national of the State party or a person who has his/her habitual residence in its territory**

89. In Costa Rica, Costa Rican criminal law applies to any person who commits an offence in the territory of the Republic.

### **The victim is a national of the State party**

90. The rights of young victims, who are protected under the Children and Adolescents Code, are safeguarded by a panoply of provisions. Moreover judicial procedures which avoid double victimization were approved in a ruling of the Supreme Court meeting in plenary at its IXXth session, on 6 May 2002 (see attached document), the aim being to:

- Satisfy the best interests of the child and implement the relevant legislation;
- Curb the double victimization of children and adolescents;
- Ensure that law officers apply the rules on avoiding the double victimization of minors;
- Train and alert any court officials whose duties bring them into contact with children and young people to the issue of preventing their double victimization;
- Conduct criminal proceedings involving child or adolescent victims as promptly as possible;
- Use the technical means available to reduce the double victimization of children and adolescents.

91. There is also a Special Prosecutor's office that deals specifically with sexual offences and domestic violence. Most prosecutors have been trained to work with young victims. In addition, the Judicial Office for Social Work and Psychological Counselling runs a support programme for children and young persons who are victims of sexual offences.

### **Extradition**

92. In the absence of a treaty with the country in question, the Costa Rican law on extradition applies. It likewise applies to aspects for which no provision has been made in treaties. Under article 3 (a) of this law, extradition may not be offered or granted when the person whose extradition has been requested is Costa Rican by birth or naturalization. In these cases, the person will be tried by the national courts.

93. A series of extradition agreements commit the country to following a procedure that safeguards rights. One example which may be quoted in this respect is the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Costa Rica, which was signed on 4 December 1982 and which entered into force on 11 October 1991.

94. Extradition treaties have also been signed with, inter alia, Belgium, China, Colombia, Italy, Mexico, Nicaragua and Spain. The texts of these agreements are to be found on the website of the Ministry of Foreign Affairs and Religion, at [www.rree.go.cr](http://www.rree.go.cr).

### **Seizure and confiscation of goods and proceeds and closure of premises**

95. At the end of 2005, the Legislative Assembly was debating a bill which would permit the confiscation of all the property of persons engaging in commercial sexual exploitation so that the money could be invested in the prosecution and prevention of such crimes.

96. The proposal was part of draft legislation aimed at standardizing various articles which had been put forward by the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents.

97. The Executive has issued “Regulations governing the control and regulation of premises providing public Internet services” in a bid to prevent young people under the age of 18 from gaining access to pornography and unsuitable material in cybercafes, Internet cafes and the like (copy attached).

## **V. PROTECTION OF THE RIGHTS OF CHILD VICTIMS**

### **Information on the measures, including of a legislative, judicial and administrative nature, that have been adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol at all stages of the criminal justice process while ensuring the rights of the accused to a fair and impartial trial**

98. The national plan to combat the commercial sexual exploitation of children and adolescents includes a chapter on direct support for victims (and their families).

99. This plan covers all the measures taken by the Government to alleviate all the physical, psychological, social and spiritual effects of the exposure of minors to any form of sexual exploitation and to guarantee the full enjoyment of their rights. Direct victim support must be supplemented by proposals for legislative measures, punishment, awareness-raising and preventive campaigns in the interests of ensuring the comprehensive protection which the State has a duty to provide. This type of action includes interdisciplinary and intersectoral schemes to help children and young people who have fallen victim to commercial sexual exploitation.

100. Action in this sphere starts with detection and entails the participation of a whole gamut of services providing therapy, financial assistance, special treatment for drug addiction, pregnancy, etc. and medical treatment. It also involves ensuring that the minor rejoins the formal or informal education system, or encouraging him or her to remain in the system. All of this is done within the context of the family and community.

### **Ensuring that the best interests of the child are a primary consideration in the relevant domestic legislation and regulations governing the treatment of child victims by the criminal justice system**

101. One of the main principles guiding the Children and Adolescents Code is the protection of the best interests of the child. Provision of such protection is incumbent not only upon juvenile judges but upon all administrative officials taking decisions, assessing situations or in any other way weighing up and determining what is best for the young person.

102. It follows that the Code lays down an administrative process that offers certain procedural guarantees. Hence, from the moment the administrative authorities intervene, certain guarantees and obligations come into play and are applicable throughout any procedure to protect the minor.

103. To this end, procedural guarantees are provided in the form of due process and the right to a defence. Accordingly, in all administrative proceedings related to minors in which the latter's interests conflict with those of one of their parents, the other parent must receive prior notice of procedural steps or the beginning of proceedings. If proceedings are taken out against both parents, the child must be defended by the authorities, since it must be assumed in this scenario that there is a conflict of interest between the National Child Welfare Agency, the parents and the child.

104. As the person to be protected has not yet attained their legal majority, the Agency must act ex officio and, where appropriate, file a complaint with the relevant court. Nevertheless, since the youngster's parents still exercise parental authority, it is necessary to make sure that both are aware of what has been done and have access to all the proceedings. In this scenario, the Agency will provide legal advice to the parents until such time as it may be found that the parents' interests conflict with those of their son or daughter.

105. At all events, any ruling that the interests of both parents conflict with those of the child must be set forth in a reasoned decision. If, on the other hand, it turns out that the conflict of interest lies between the parents, the Agency must advise the parent best placed to safeguard the best interests of the child.

106. The special protection process begins with a duly reasoned decision to take action. Once proceedings are opened ex officio or in response to a complaint, article 133 requires the Agency to "ascertain the situation". This means that it must assess the situation referred to in the complaint on the basis of the evidence it can draw either from a visit to the youngster's home or from witnesses' testimony, and must do so as quickly as possible.

107. A hearing must be arranged immediately to allow the parents to defend themselves and to allow the young person's views to be heard.

108. It should be added that, in all administrative and judicial proceedings concerning a minor, the latter has the right to express his or her views on the issue at stake.

**Ensuring that criminal investigations are initiated even in cases where the actual age of the victim cannot be established, and the means used to determine the age of the victim**

109. Article 2 of the Children and Adolescents Code stipulates that, for the purposes of the Code, a child is considered to be any person from conception to the age of 12, and an adolescent to be any person between 12 and 18 years of age. Where there is doubt, the person will be treated as a child rather than as an adolescent, and as an adolescent rather than as an adult.

**Adapting procedures so they are child sensitive, with special regard to the dignity and worth of the child and her/his cultural background, including the procedures used for investigation, interrogation, trial and cross-examination of child victims and witnesses; the right of a parent or guardian to be present; the right to be represented by a legal adviser or to apply for free legal aid**

110. The Children and Adolescents Code establishes the right to justice and the procedural guarantees enjoyed by minors. The following articles concern the right of access to justice:

#### **Article 104**

##### **Right to file a complaint**

Minors shall be guaranteed the right to report a harmful act perpetrated against them and, through the representative of the Public Prosecutor's Office, to bring the appropriate civil action.

In fact, the National Child Welfare Agency has a free 911 hotline which is easily accessible to all.

#### **Article 105**

##### **Views of minors**

Minors shall participate directly in the proceedings and procedures established by this Code and their views on the matter shall be heard. The judicial or administrative authority shall at all times take emotional maturity into account in order to determine how to obtain these views. To this end, the Supreme Court shall establish suitable means of holding interviews, with the support of the interdisciplinary team and in the presence of the judge.

#### **Article 106**

##### **Exemptions from payment**

Actions brought by a minor or by the minor's representative shall be exempt from payment of costs and stamp duties of all kinds.

#### **Article 107**

##### **Procedural rights**

In any proceedings or procedures in which the material provisions of the Code are discussed, minors shall have the following rights:

- They shall be heard in their own language and their views and version of events shall be taken into consideration in the decision taken;

- They shall have a translator or interpreter and shall select one if necessary;
- They shall be accompanied at hearings by a social worker, a psychologist or any other similar professional or trusted individual;
- They must be informed clearly and precisely by the judge of the implications of each step in the proceedings at which they are present, and of each decision and the reasons behind it;
- All proceedings must be held without delay, using plain and precise terms;
- They must be told the justification for and precise nature of the protective measure ordered. In the decision laying down the protective measure, the judicial or administrative authority must explain to the minor, in a manner in keeping with the minor's age and maturity, the reason why the measure has been chosen;
- They must not be placed in any public or private institution save at the behest of the competent authority, subject to the exhaustion of all other placement options. This shall not apply to the provision of shelter ordered by local branches of the National Child Welfare Agency;
- The proceedings shall be confidential;
- The judicial and administrative decisions may be challenged in accordance with the provisions of this Code.

### **Article 108**

#### **Capacity to act as parties to the proceedings**

When legal proceedings concern the interests of a minor, the following may act as parties to the proceedings:

- Adolescents over 15 years of age, in person, when this is authorized by this Code; otherwise they shall be represented by the persons exercising parental authority or by the National Child Welfare Agency, as appropriate;
- Legally constituted child-protection organizations, when acting in defence of the persons they represent and a legitimate interest exists. Similarly, these organizations may act as additional parties to protect the rights of persons in receipt of their assistance in pursuance of this Code.



## **Article 109**

### **Supervision by the Office of the Procurator-General**

The Office of the Procurator-General, as the central administrative and judicial authority, shall, on behalf of minors, supervise the implementation of the principles embodied in this Code.

It shall be incumbent upon the Office of the Procurator-General, as the central administrative authority, to appear when so requested by the National Child Welfare Agency or the Ombudsman. The administrative authority in charge of proceedings shall notify the Office of the Procurator-General of the need to appear before it within five working days.

## **Article 110**

### **Action by the Office of the Procurator-General**

The Office of the Procurator-General shall act as a party and as guarantor of the rights embodied in the Convention on the Rights of the Child and in this Code in the following legal proceedings: actions to establish parentage, the suspension or loss of parental authority, exemption from obtaining consent to marry and the annulment of a marriage, criminal proceedings for offences against human life and the person and for sexual offences, and any other proceedings where the judge deems the participation of the Office to be necessary.

## **Article 111**

### **Representation of the National Child Welfare Agency**

In judicial proceedings and administrative procedures in which the interests of a minor are at stake, the National Child Welfare Agency shall represent the minor's interests when those interests conflict with those of the persons exercising parental authority. In other cases, the Agency shall participate as an additional party.

## **Article 112**

### **Interpretation of rules**

When interpreting and applying the procedural rules laid down in this section, the judicial and administrative authorities must be guided by the best interests of the child and the other principles of protection embodied in the Constitution, the Convention on the Rights of the Child, other relevant international treaties and the rules set out in this Code and in the Code of Civil Procedure when the latter does not conflict with the principles laid down in this law.

The better to determine the best interests of the child, the authorities shall receive support and advice from an interdisciplinary team.

## **Article 113**

### **Interpretation of this Code**

The procedural rules of this Code shall be interpreted in accordance with the following guiding principles:

- The judge shall have wide powers with regard to the conduct of proceedings;
- There shall be no procedural rituals;
- Proceedings shall be initiated by the State authorities;
- Proceedings shall be conducted orally;
- Proceedings shall be characterized by immediacy, concentration and expeditiousness;
- The same trial judge shall hear the whole case;
- The aim shall be to establish the whole truth;
- A wide range of evidence may be introduced.

## **Article 114**

### **Procedural guarantees**

In proceedings and procedures in which the rights of minors are discussed, the State shall guarantee:

- Free assistance: the State shall provide any minor with a free expert defence and legal representation;
- Public nature of hearings: any proceedings under this Code must be oral and held in public. The court may itself, or at the request of one of the parties, decide to hold the hearings in camera when this is deemed appropriate on account of the nature of the proceedings, bearing in mind the best interests of the minor and the nature of the offence;
- Equal treatment: the public authorities and the court must guarantee the equal treatment of the parties and ensure that proceedings are balanced and that all parties enjoy the right to a defence;
- Representation: the administrative or judicial authorities, as appropriate, shall guarantee the minor's right to be represented. The authority in question shall at all times ensure that there is no conflict of interest;

- Right to a hearing: the minor's views shall be heard in all administrative or judicial proceedings that have a bearing on his or her rights.

## **Article 115**

### **Duties of judges**

It shall be the duty of judges hearing cases concerning a minor to:

- Initiate the appropriate action ex officio;
- Allow the participation of co-litigants;
- Conduct the entire proceedings until the final verdict is delivered;
- Conduct proceedings in pursuit of the whole truth;
- Redo or rectify, of their own motion, procedural steps which might violate parties' right to equality of treatment or to a defence;
- Settle the claims of the parties and other matters as required by the provisions of this Code;
- Avoid any procedural delay;
- Evaluate the evidence critically;
- Use their power to impose precautionary measures;
- Punish abuse of legal process.

## **Article 116**

### **Duties of family judges**

In judicial proceedings, it shall be incumbent upon family judges: to hear, process and settle, by means of the special protective proceedings, complaints or claims concerning any act or omission which constitutes a threat to, or violation of, the human rights of minors and other rights recognized in this Code, with the exception of matters which come under criminal law; to deal with complaints of irregularities in public or private care facilities which cause, or which may cause, harm to minors, and to apply or recommend appropriate measures; and to apply the penalties laid down in this Code in cases of non-compliance with the rules governing the protection of minors.

## **Article 117**

### **Reporting violations of this Code**

Any public official or private individual may report to the judicial authorities any violation of the rights embodied in this Code.

## **Article 118**

### **Notification by the judge**

Rituals shall be avoided in all proceedings. The judge shall notify the parties of the procedural steps to be completed in the cases for which express provision is made in this Code.

## **Article 119**

### **Abandonment or discontinuance of proceedings**

Proceedings in which the interests of minors are at stake may not be abandoned or discontinued. It is incumbent upon the judge to conduct the entire proceedings until the final verdict is delivered.

## **Article 120**

### **Assistance to victims**

Minors who are victims of offences must always be assisted and examined by child experts.

All judicial or other authorities handling the case, specialists from the Judicial Department of Forensic Medicine, criminal investigators and police officers must receive prior training.

## **Article 121**

### **Professional services**

Whenever the judicial authorities deem it necessary, medical personnel and forensic psychiatrists and psychologists shall be required to assist victims who are minors, in particular when the case concerns sexual offences.

In order to avert or reduce potential risks to the mental health of the victims of the offence under investigation, the expert assigned to the case shall submit recommendations to the judicial authorities. The latter must take them into account whenever they are required to give evidence at any stage in the proceedings.

## **Article 122**

### **Request for a report**

In any case concerning a sexual offence against a minor, the judicial authorities must request a report from the Judicial Department of Social Welfare and Department of Psychology. The report must be submitted within a fortnight.

## **Article 123**

### **Assistance**

The Judicial Department of Social Welfare and Department of Psychology must assist the minor against whom the offence has been committed and his or her family throughout the proceedings. Once the latter have been completed, the minor must be referred to the appropriate institution for treatment.

## **Article 124**

### **Training for interviews**

Officials from the Judicial Investigation Department or police officers, as the case may be, must be trained in how to interview minors. During interviews they will confine themselves to obtaining only such information as is strictly necessary in order to ascertain the facts and shall show respect for victims' dignity, honour, reputation, family and private life.

## **Article 125**

### **Interviews**

The judicial or administrative authorities must, as far as possible, avoid repeated or persistent questioning of minors who are victims of offences and shall reserve such questioning for the decisive stage of proceedings. When a lengthier statement needs to be taken from a minor, account must always be taken of the minor's right to express his or her views.

## **Article 126**

### **Conditions of hearings**

When a minor against whom an offence has been committed must take part in a hearing, the judicial authorities shall take all due steps to ensure this is held in camera if, in the court's opinion, this is necessary in order to guarantee the victim's emotional stability, or so as not to interfere with the minor's spontaneity when giving evidence. The only persons who may be present at this hearing are those specified by law; if the presence of the father, mother or persons responsible for the minor might influence the child, the judge may bar them from the premises.

## Article 127

### Use of technology in oral hearings

When oral hearings are held, the authority in charge of the case must use the technological or other means at its disposal to prevent direct contact between minors against whom an offence has been committed and the suspect. Due process shall be guaranteed at all times.

111. In addition to these provisions, as previously mentioned, the National Commission for the Improved Administration of Justice (CONAMAJ) has formulated guidelines to reduce the double victimization of minors in criminal proceedings. These guidelines were adopted by the Supreme Court meeting in plenary at its IXXth session, on 6 May 2002.

### **Legal consequences for a child who has committed an offence under the law applicable to her/him as a direct result of the practices prohibited under the Optional Protocol**

112. In the first place, it is important to note that when the Convention on the Rights of the Child entered into force the Constitutional Chamber stated that: “In accordance with the provisions of article 7 of the Constitution, as soon as the Convention on the Rights of the Child was ratified by our country, any legal standards that are at variance with the standards and principles set forth in that international instrument became unconstitutional.”<sup>1</sup> Here the Chamber establishes the primacy of the Convention as an international treaty with binding force for the State.

113. Furthermore, the Juvenile Justice Act, as part of a penal system with safeguards, establishes the observance of due process as an unquestionable obligation. Due process requires, among other things, that before a minor who has been charged with an offence can be subjected to any penalty, the constitutional and procedural safeguards applicable to adults must, at a minimum, be respected.

114. This principle is valid, not only in the context of Costa Rican legislation, but also under international law, including instruments specifically concerned with children and adolescents, notably the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and also human rights instruments such as the American Convention on Human Rights, and more particularly, article 8 of the latter, which sets forth a series of judicial guarantees, including every accused person’s right to a hearing, with due guarantees and within a reasonable time, the presumption of innocence and the validity of a confession only if made in the absence of coercion. With these standards, we can start from the essential proposition that in the field of juvenile justice, the above-mentioned principle must be respected if the safeguards available under the rule of law are to be effective.

115. The point of the foregoing discussion is to show that the drafting of the Juvenile Justice Act involved careful consideration of a series of principles derived from a host of world conferences on crime prevention that have been held under United Nations auspices since 1955.

More particularly, however, the drafting process was sustained and guided by the provisions of the Convention on the Rights of the Child, supplemented at the national level by the Children and Adolescents Code, which lays down a number of procedures in this area.

116. The Juvenile Justice Act is structured in accordance with the model of liability for criminal acts committed by persons under the age of 18. Its defining characteristic is that it establishes an essential minimum concept of criminal law. It recognizes the principles of legality and guilt. It includes procedural safeguards. It acknowledges adolescents as being persons who are subjects of rights and have responsibilities and it relies on the doctrine of comprehensive legal and social protection for them.

117. The action of the criminal justice system is limited by the fact that provision is made for a broad range of sanctions which are essentially educational in nature, with the result that penalties involving the deprivation of liberty are reduced to a minimum.

118. The Act takes as its first principle the comprehensive protection of minors, i.e. that the State, because of the distinctive situation of persons in that category, has an obligation to see to their social rehabilitation. This entails determining the specific characteristics and needs of those persons, to ensure that both trial procedures and penalties take into account and are adapted to their distinctive nature, in an effort to minimize the harmful effects of criminal prosecution.

119. The safeguards and fundamental rights laid down in the Act include the right to equality and non-discrimination, which must be observed by the police, the Public Prosecutor's Office, judges and those responsible for administering the penalty. The principle of specialized justice requires the State to establish institutions exclusively for adolescents, both during trial and after sentencing. The principle of legality requires that the limits provided for at law may not be exceeded, and this means that offences must be clearly defined and penalties established for purposes of trying and punishing juveniles. The principle of harm requires that before a juvenile can be punished for an act, damage or danger to a tangible asset must be clearly established.

120. Two fundamental principles that are characteristic of criminal justice proceedings against a juvenile are the right to privacy and the principle of confidentiality, which make it unlawful to reveal the identity of a juvenile who is charged with an offence or to divulge information about the acts committed. The principles that serve to ensure the imposition of an appropriate penalty are the principle of rationality and proportionality between the penalty and the offence, the principle of the determination of penalties that can be applied to a juvenile, and the juvenile's right to be sent to a specialized centre to serve his or her sentence.

121. Juvenile criminal law is applicable only to persons who are older than 12 but have not yet turned 18. Children under the age of 12 cannot be held liable. However, offenders under the age of 12 are dealt with by administrative authorities, and in such cases it is the National Child Welfare Agency that decides what measures are called for, except that the offender can be deprived of liberty only by order of a juvenile court judge. The Act distinguishes between two age groups: juveniles who are over 12 but have not yet turned 15, and those who are over 15 but have not yet turned 18. The effect of this legal distinction is that lighter penalties are imposed on grounds of diminished responsibility, depending on the offender's age group.

122. The basic principle governing the determination and administration of penalties for juvenile offenders is that such penalties must be educational, and that they must be framed so as to respect the best interests of the child and the comprehensive protection to which he or she is entitled. Socio-educational penalties seek to foster the growth of awareness in adolescents. The Act lists a number of these penalties: admonition and warning, which is a penalty that is executed immediately by the juvenile court judge and consists in drawing the adolescent's attention to his delinquent conduct; probation, which means that the juvenile offender may be released subject to the condition that he must attend educational programmes and remain under the guidance and supervision of the court and specialists from the juveniles programme of the Social Rehabilitation Office; community service, which consists in working without pay for a public or private entity, depending on the skills and abilities of the juvenile concerned; reparation for the wrong done to the victim, which consists in the direct performance of work by the juvenile offender; and, instead of reparation, compensation in the form of a sum of money earned by the juvenile's efforts.

123. The Act makes provision for orientation and supervision orders, which are instructions or prohibitions imposed by the juvenile court judge as a means of regulating the behaviour of the juvenile in the case. These may include an order to establish or change a place of residence; desist from dealing with specified persons; refrain from frequenting certain places; enrol at a formal educational institution or some other type of educational establishment; find employment; refrain from ingesting alcoholic beverages or hallucinogenic, mind-altering, narcotic or toxic substances that produce addiction or dependence; or an order for inpatient or outpatient treatment at a public or private health centre for detoxification and elimination of addiction.

124. As regards penalties involving the deprivation of liberty, the Act makes provision for three types of detention comprising progressively more severe forms of punishment. The mildest is house arrest, which means that the adolescent continues to live with his or her family and that his or her work or education is not affected. Next comes confinement during the offender's free time in a place of detention. The harshest measure, which is imposed only in exceptional cases, is full-time confinement in a specialized place of detention.

### **Protect, as appropriate, the privacy and identity of child victims**

125. Article 27, chapter II ("Rights of the individual") of the Children and Adolescents Code deals with children's right to protection of their image as follows: "It shall be prohibited to publish, reproduce, display, sell or use in any form images or photographs of minors to illustrate reports that attribute to them acts or omissions constituting an offence or misdemeanour, or conflicting with morals or common decency, the same shall apply when minors have in any way participated in, or been witnesses to or victims of, such events, if this affects their dignity.

126. "The publication of the name or of any personal data permitting the identification of a minor who has committed or been the victim of an offence, shall be prohibited save when authorized by the courts on the grounds of public security."



127. Article 28 of the Children and Adolescents Code, entitled “Suspension of action”, states: “When the image, photograph or identity of a minor is reproduced, published or used in violation of the preceding article, he or she may request the competent court, as a precautionary measure and without prejudice to the final decision, to order the suspension of the act or of any other action which might be attempted by the person concerned or by their representative, so as to protect the best interests of the minor.”

128. Section II of the Civil Code sets forth “the rights of the individual and the right to a name” and article 47 refers to photographs or images in the following terms:

#### **Article 47**

##### **Photograph and image**

The photograph or image of a person may not be published, reproduced, displayed or sold in any form without that person’s consent, unless reproduction is justified by their fame, the public office they hold, the needs of justice or of the police, or when such reproduction is related to acts, events or ceremonies that are of public interest or held in public. Images and photographs portraying stereotypical roles that reinforce discriminatory attitudes towards sectors of society may not be published, reproduced, displayed or sold in any form.

129. Accordingly, it is inappropriate and illegal to use a minor’s image for advertising or illustrative purposes. Articles 188 et seq. of the Children and Adolescents Code (referred to below as “the Code”) set out the penalties for doing so. Before looking at these penalties, we should first explain the procedure for dealing with violations.

#### **130. I. Procedure for receiving complaints and accusations:**

Under the Code, once a complaint or an accusation regarding an infringement of article 27 thereof has been received, the local branch of the National Child Welfare Agency must set in motion the special administrative proceedings to provide protection, as set out in articles 128 et seq., and, in particular, must order the measures provided for in article 137 of the Code, which reads as follows:

#### **Article 137**

##### **Other measures**

The following measures shall apply to employers, public officials or any other person who violates or who threatens to violate the rights of a minor: written warning regarding the violation or threatened violation of the right in question in the particular case and a demand to be duly informed about the minor’s rights; an order to put an immediate end to the situation which violates or is likely to violate the right in question, when the person who has been summoned does not appear by the appointed date or when he or she has appeared but the situation that is detrimental to the minor persists.

The above-mentioned article would apply, for example, to the press or television if they were to infringe the provisions of article 27. The local branch of the National Child Welfare Agency would order the measure provided for in article 137 of the Code to warn the media of the infringement and would then order them to immediately halt the publication, report or news broadcast violating young people's right to protection of their image. All the measures outlined above are taken on the understanding that the right to a defence and due process must be respected by informing the adverse party that they are entitled to challenge the decision through the channels established by the Public Administration Act. If the press or television do not comply or they repeat the offence, the Agency is obliged, in the name of the best interests of the child, to take the case before the competent court under article 28 of the Code. The person concerned could also turn directly to the court under article 117 of the Code, which states that "any public official or private individual may report to the courts the violation of rights embodied in this Code". In the latter case, it would be up to the court to decide whether or not to entertain the complaint or warn the parties, if appropriate, that the administrative channels should be exhausted.

### 131. **II. Penalties applicable to public officials or private individuals:**

Chapter I, section V ("Final provisions") of the Code, includes article 188 on the misdemeanours of public officials, according to which "violations of the provisions contained in articles 27, 32, 35, 41, 46, 49, 50, 55, 56, 59, 60, 63, 67, 68, 69, 121, 122 and 123 by public officials through acts or omissions shall be regarded as serious misdemeanours". As can be seen, article 188 refers to article 27, on the right to image, so that if, by an act or omission, a public official infringes the provisions of article 27 - and this is the point of interest to us - this is deemed to be a serious misdemeanour, as a result of which the administrative authorities will be obliged to proceed as stipulated in article 189, taken together with article 211 of the Public Administration Act. Properly speaking, proceedings in such cases are governed by article 189 of the Code, which reads as follows: "If a complaint is submitted against a public official, his or her superior must apply the disciplinary proceedings laid down in article 211 of the Public Administration Act or the measures provided for by the rules applicable to the person against whom the complaint has been lodged, without prejudice to the fines which may be imposed by the competent court in keeping with the amounts laid down in the following article. This measure must be enforced immediately to prevent the penalty from becoming time-barred; if the superior fails to enforce it, he or she will be committing the offence of dereliction of duty. If the official is found to have repeated the misdemeanour, he or she shall be dismissed."

132. Article 190 refers to offences by private individuals, and reads as follows:

"Infringement of the provisions of articles 27, 35, 43, 45, 49, 50, 55, 56, 59, 60, 63, 64, 68 and 69 by private individuals shall, in addition to any measure taken by the court, carry a fine determined according to the following rule: an amount equivalent to three months' wages of a grade 1 clerk if a provision has been infringed for the first time; an amount equivalent to five months' wages of a grade 1 clerk if the official repeats an offence for which he or she has already been punished.

If the offence is committed in a private establishment, the latter shall be jointly and severally liable for the civil-law consequences of the offence."

133. Article 192 of the Code states: “The amounts collected from fines must be deposited in the account of the Children and Adolescents Fund. Fines imposed as a result of the infringement of this Code may be paid through any of the authorized banks in the National Banking System.”

134. **Conclusion:**

(1) The National Child Welfare Agency, acting in the best interests of the child, must apply the standards set forth in the Children and Adolescents Code. For this purpose, provision has been made for a procedure which starts with an official warning or inquiry that affords an opportunity to correct the irregularity immediately, before judicial proceedings are initiated.

(2) Article 27 of the Code may be violated by public officials (article 188 of the Code) or by private individuals, as is made clear by article 190. Both situations are punishable by law.

(3) If article 27 of the Code is violated, the institution (the local branch of the National Child Welfare Agency) is required to apply the measures provided for in article 137 of the Code against the media in order to halt the publication of the report or news broadcast showing the minor’s face. Due process and the right to a defence must be observed throughout these administrative proceedings.

(4) When such violations occur, the Agency, as the lead agency, may act ex officio, since there is no rule to prevent it from doing so, or at the request of the party.

(5) Once a complaint has been lodged for a violation of article 27 of the Code (on the right to protection of one’s image) and this complaint has been processed by administrative channels using the special protection procedure, the Agency will announce its decision and order the measures provided for in article 137 of the Code.

(6) Due process and the right to a defence must be observed throughout this procedure.

(7) As part of due process, the Agency is required to notify the adverse party of all steps taken by the administrative authorities and to make the file available to them for review and allow them to make copies.

(8) If, despite the measures referred to above, the media concerned continue to flout the Agency’s order, the appropriate court must be apprised of all the steps taken by the administrative authorities (article 28 of the Code) so that the court may, as a precautionary measure, order the suspension of the offending act - the media concerned may be ordered not to show the minor’s face in the news report - and may apply the penalty laid down in article 190 of the Code to the media concerned. The court will apply the precautionary measure laid down in article 28 of the Code to the case in question.

**Adequate procedures to seek compensation for damages**

135. The Code of Criminal Procedure offers the possibility of taking out a civil action for compensation, which permits the filing of claims for compensation for material losses or moral prejudice and for damages.

## **VI. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Measures, including of a legislative, judicial and administrative nature, and the policies and programmes adopted to prevent the offences referred to in the Optional Protocol; information on children concerned by these preventive measures and on the measures used to particularly target children who are especially vulnerable to such practices**

136. The Pacheco de la Espriella administration of 2002-2006 declared the situation of children and adolescents a national priority and stated its intention to combat the commercial sexual exploitation of persons under the age of 18. Specific guidelines on this social problem are included in:

- The national development plan for 2002-2006;
- The national plan for overall security and citizen participation;
- The “New Life” plan to overcome poverty and develop human capacities;
- The national plan to combat the commercial sexual exploitation of children and adolescents.

137. These guidelines form part of the State policy enshrined in the national plan for children and adolescents for 2003-2006, which is defined in the National Agenda for Children and Adolescents for 2000-2010. The national development plan and its strategic goals provide the framework for all the other plans.

138. It is against this background that the National Commission to Combat the Commercial and Sexual Exploitation of Children and Adolescents (CONACOES) has been operating since 2000 as a special commission of the National Council on Children and Adolescents. The National Child Welfare Agency is in charge of implementing and following up such measures, together with the institutions involved in intersectoral, inter-agency and interdisciplinary coordination, in cooperation with other bodies which, although they are not an integral part of the Commission, are key players in the implementation of the plan.

139. In 2002, CONACOES revised the national plan to combat the commercial and sexual exploitation of children and adolescents dating from August 2001, which was presented at the Second World Congress against Commercial Sexual Exploitation of Children, held in Yokohama, with a view to achieving a viable plan of action with greater impact in the medium and long term. The plan was approved by the National Council on Children and Adolescents in December 2002, and served as the basis for work done by CONACOES in 2003.

140. After 2004, the theme of eliminating the commercial and sexual exploitation of minors and the plan for achieving this were incorporated in the national plan for children and adolescents for 2003-2006. It ties in with existing government plans and was drafted with the aim of transcending government policies to achieve State policies. It is therefore based on a commitment signed and ratified by the different social partners to abide by the National Agenda for Children and Adolescents for a period of 10 years.<sup>2</sup>

141. With regard to policies, it should be noted that in 2000, the National Child Welfare Agency and UNICEF jointly drafted some basic guidelines for a national policy to eliminate commercial sexual exploitation. For the time being these are only ideas, but they should be developed, ratified, approved and implemented by early 2006, according to the schedule established by CONACOES.

142. An important step in this process was the proposal on policies to eliminate the sexual exploitation of children and adolescents that was brought to the attention of CONACOES on 6 May 2004 for its consideration and comments. The proposed policies were drafted as part of the second national plan for the prevention and gradual elimination of child labour and the comprehensive protection of juvenile workers and endorsed by the National Steering Committee on Child Labour. They are based on article 3 of Decree No. 31461-MTTT of November 2003 and the ILO Worst Forms of Child Labour Convention (No. 182), since ILO considers the commercial and sexual exploitation of children a form of economic exploitation tantamount to an offence.

143. Although this initiative is based on a proposal by the National Steering Committee on Child Labour, it falls within the remit of the National Child Welfare Agency (PANI). As the lead agency in the field of children's and adolescents' rights, PANI will monitor implementation of the policy to eliminate commercial sexual exploitation.

144. The guidelines are also backed up by public policies that the Agency is drafting within the framework of the National Council on Children and Adolescents and that will be issued this year. These guidelines will pave the way for the implementation of policies according to the schedule established by CONACOES, as mentioned above.

145. The Children and Adolescents Code (Act No. 7739, based on the Convention on the Rights of the Child, and in force since 1998) contains provisions on the civil, economic, social and cultural rights of minors. These provisions must be applied by the administrative and judicial authorities when they are dealing with matters affecting the interests of children and adolescents.

146. According to article 13, on the right to State protection, the National Child Welfare Agency, the Inter-agency Institute for Social Assistance and the Ministry of Labour and Social Security are required to provide opportunities for social and human development and advancement through relevant programmes, and to strengthen networks linking government agencies and civil society bodies that prevent the abuse, ill-treatment and various forms of exploitation of minors.

147. The National Child Welfare Agency is the body that decides on the administrative measures that will ensure an inter-agency response when individuals in a situation of commercial sexual exploitation require immediate protection.

148. As far as the non-commercial sexual exploitation of minors is concerned, it is worthwhile noting the proposed public policy whose implementation will be coordinated by the National System for the Treatment and Prevention of Domestic Violence and Sexual Abuse by

Non-Family Members (PLANOVI), which provides guidance to the National Institute for Women (INAMU) in matters relating to children. With regard to sexual abuse, in February 2001, CONACOES agreed to maintain its special role in efforts to eradicate the commercial sexual exploitation of minors in Costa Rica.

149. The Government Alliance against Paedophilia was established recently by an executive decree published in *La Gaceta* of 25 September 2003, as the government body that provides mechanisms for preventing and reporting acts of sexual exploitation or abuse of minors and their involvement in child pornography. It is composed of top officials from the Office of the President of the Republic, the ministries of the interior, the police, public security, education, justice and tourism, and the National Department of Community Development. It is chaired by the Minister for Children and Adolescents.

150. It should be noted that this year the Ministry of Education submitted a national plan to CONACOES on the prevention of commercial sexual exploitation in the period 2004-2006, and the plan has already been approved by the National Council on Children and Adolescents. The Ministry of Education has approximately 1 million students under its supervision. Budgetary funds have not yet been allocated for the plan.

151. Furthermore, last February, the public policy on young persons for 2004 was made public. It was prepared following national consultations, and adopted in October 2003 by the National Assembly of the Young Persons Advisory Network (established under the Young Persons Act of May 2002, which covers persons between the ages of 12 and 35). The policy refers to commercial sexual exploitation in several paragraphs, as the issue had been raised during consultations with young people and public institutions. The State of the Nation programme is in charge of drafting the plan of action for the public policy on young persons after holding public consultations.

### **National plan to combat the commercial sexual exploitation of children and adolescents in Costa Rica**

152. The basic objective of inter-agency, inter-organizational and interdisciplinary action is to deploy systematic and sustained efforts to tackle the root causes of, and change the conditions that give rise to, the commercial sexual exploitation of children and adolescents in Costa Rica.

153. Action taken against commercial sexual exploitation is comprehensive in scope and therefore entails activities in the following areas: promotion and prevention; care of victims and their families; legal reforms and law enforcement; international outreach; and monitoring and evaluation. The participation of minors and research are considered as cross-cutting issues.

154. The adoption of the national plan to combat the commercial sexual exploitation of children and adolescents for 2002, which is in line with the guidelines issued by the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1999, was a significant step forward in this area.

155. The national plan was drafted with the participation of representatives of government agencies with expertise in the subject.

156. According to the national plan, there are three types of sexual exploitation: the use of children for sexual relations, for the production of pornography and for sex shows. It also mentions the four modes of commercial sexual exploitation of children and adolescents: exploitation at the local level; sex tourism; trafficking in children for the purposes of commercial sexual exploitation; and the dissemination of pornography over the Internet.

157. The national plan of August 2001 states the following: “The Government shall resolutely combat the promotion and practice of commercial sexual exploitation of children and adolescents wherever it takes place. It shall take punitive measures against organized groups that promote the recruitment of children and adolescents for this vile business. It shall coordinate police and judicial action in order to dismantle the networks in which procurers, taxi drivers, hotel and bar owners, waiters, travelling salesmen and the families and clients of prostitutes are (directly or indirectly) involved. It shall promote reform of the legal and penal systems and it shall implement comprehensive social rehabilitation measures so as to restore all rights to the victims of commercial sexual exploitation.”

158. The plan defines three areas of action based on a system-wide approach:

- Prevention;
- The law (includes legal reforms and law enforcement);
- Direct care of victims.

159. The participation of children and adolescents and research are considered as cross-cutting issues.

### **Promotion and prevention**

160. The prevention of commercial sexual exploitation calls for the development of a social and political process that brings together personal, family, community, intersectoral, institutional and political efforts, based on a national commitment to protect the human rights of children and adolescents. It is necessary, on the one hand, to make an impact on the root causes and, on the other, to identify the risk factors in everyday situations that give rise to this fundamental violation of the rights of children and adolescents in Costa Rica.

161. Work in the area of promotion and prevention consists of a range of measures based on information, awareness-raising, pooling efforts, organization, training and the participation and mobilization of people, families, community organizations and public and private institutions. Their purpose is to make an impact on the root causes and to change the conditions that give rise to the commercial sexual exploitation of children and adolescents in Costa Rica.

162. The contribution of the National Child Welfare Agency is in addition to the leadership role it is called on to play in accordance with its legal mandate.

### **The law**

163. This area is subdivided into legal reforms and law enforcement.

164. *Legal reforms:* This includes the formulation of proposals for the revision and amendment of domestic legislation so that it incorporates provisions that punish those who profit from and use children and adolescents in Costa Rica for the purposes of commercial sexual exploitation. In order to do this, the four aspects of the commercial sexual exploitation of children and young people must be taken into consideration. The implementation and success of legal reforms means that action must necessarily be taken in the areas of prevention and care.

165. *Law enforcement:* This refers to the application of all provisions under Costa Rican legislation intended to eliminate the commercial sexual exploitation of children and adolescents and to bring to justice those involved in such acts. Punitive measures will be taken against those who cause the problem, but not against the children and adolescents who are the victims.

166. In January 1998, a specialized unit was established within the Public Prosecutor's Office to deal with sexual offences and domestic violence. Its sphere of competence is restricted to the first judicial circuit of San José, though this may be extended to elsewhere in the country by the Office of the Attorney-General. The unit deals with all offences relating to domestic violence, including attempted murder, sexual offences and crimes against property, as well as sexual offences committed by third parties. Furthermore, at the end of 1999, a unit to combat the sexual exploitation of children and adolescents was established within the Ministry of Public Security, and another specialized unit was set up within the Judicial Investigation Department.

167. Work is under way to coordinate the efforts of the different bodies investigating the problem, to assess the impact of punitive measures and to monitor cooperation between the Governments of the United States of America and Costa Rica in training the judicial and police authorities. Operations to curb instances of commercial sexual exploitation are also under way.

### **Direct care of the victim (and the victim's family)**

168. The State has taken a series of measures to reduce the overall biological, psychological, social and spiritual effects of exposing minors to any form of sexual exploitation and to guarantee them full enjoyment of their rights. Direct care must complement the proposals relating to legislation, law enforcement, promotion and prevention so as to guarantee the comprehensive protection that the State is supposed to provide. Action of this kind includes interdisciplinary and intersectoral measures to help children and adolescents who are the victims of commercial sexual exploitation.

169. Action in this area is based on identifying needs. It entails a comprehensive approach that offers services such as therapy, financial assistance and specialized treatment for specific problems such as drug addiction or pregnancy, as well as medical treatment. It also involves reintegrating minors into the formal or informal education system, or else encouraging them to stay on longer at school. All this is done in the context of the family and the community.



## **Means used to raise awareness within the population at large about the offences prohibited under the Optional Protocol**

### **Information and educational strategies and measures in cooperation with the media**

170. The launching of campaigns through and with the media to raise national awareness is an important strategy for Costa Rica. One successful example is the project entitled “Internet security for children: safe surfing”, launched in mid-2003 to prevent forms of sexual violence, with the emphasis on pornography involving children and adolescents over the Internet. This campaign is promoted by Defence for Children International (DCI) and the Spanish NGO Association against Child Pornography (ACPI); also participating are the Ministry of Education, the National Child Welfare Agency and Radiográfica Costarricense (RACSA).

171. The material for the campaign is varied and innovative: it consists of information and training material for adults and children; in addition there are posters, mouse pads, brochures and training modules.

172. RACSA is a public enterprise and Internet service-provider in Costa Rica; it operates [costarricense.cr](http://costarricense.cr), which provides a free e-mail service. RACSA uses this service to send mass mailings to inform users about the consequences of misuse of the Internet for the purposes of child pornography and to warn them that RACSA has the technology to trace anyone who uses the Internet for these purposes and will report them to the competent authorities.

173. As well as encouraging the use of filters to help children navigate safely on the Internet, RACSA, Defence for Children International and the National Child Welfare Agency have set up a link to make it easy to file complaints with the competent authorities over the Internet.

### **Information and educational strategies and measures to change attitudes**

174. A training project on the implications of commercial sexual exploitation in the education sector was run by the National Department for the Prevention of Violence and Crime (DINAPREVI) within the Ministry of Justice. A forum for training and research was set up, and over the years has provided insights into institutional culture (practices, myths and knowledge of the issues at stake) that resulted in a report on the outcome of its work and the “Handbook on procedures for detection and reporting: What to do when confronted with situations of violence and abuse in the education sector”. The handbook is targeted at different workers in the education community, and is in the process of being published and distributed nationwide.

175. Furthermore, after 2002, awareness-raising and training activities for law-enforcement officers were stepped up. The course/workshop held in 2002 entitled “Prevention and comprehensive care in the area of the commercial sexual exploitation of children and adolescents” and its follow-up resulted in the establishment in two of the seven regions of Costa Rica of an investigation and monitoring network linking prosecutors’ offices and police forces, as well as progress in the drafting of protocols. Moreover, thanks to coordination between the Ministry of Public Security and partner organizations, training forums were launched to strengthen the preventive role of the police.

176. In one year, awareness-raising and training activities relating to the sexual exploitation of minors for commercial purposes were provided for 1,100 police officers and 25 investigators working undercover in the 10 administrative areas of the Ministry of Public Security. One preventive strategy that the security forces have used successfully is to approach suspicious-looking adults who are in the company of minors and make enquiries on the spot to identify situations of risk and take action where appropriate.

177. At the start of 2002, there were 32 police officers dealing with domestic violence; now there are 132. This increase meant that in 2003 officers were able to visit 254 schools, where they gave talks to a total of 73,540 children, adolescents and teachers.

178. Furthermore, ILO, through its International Programme on the Elimination of Child Labour (IPEC), has consistently supported the Judicial Training College in organizing courses for judicial staff in different parts of Costa Rica on the subject of commercial sexual exploitation.

### **Community-based strategies and measures**

179. In its programme on the prevention and promotion of the rights of children and adolescents, the National Child Welfare Agency promotes activities to bring about social change that will increase citizen participation in promoting, protecting and guaranteeing the rights of children and adolescents, with the active assistance of the child and adolescent protection boards which make up the national system of comprehensive protection (established under the Children and Adolescents Code). The Agency also promotes preventive measures to strengthen the capacity of families to provide protection to the children and adolescents in their care. To date, 43 such boards have been set up, mainly in the cantons identified as having priority in the fight against poverty, many of which have run “school for parents” projects.

180. A case in point is the Alajuelita protection board: it gave priority in its region to an educational project on the prevention of commercial sexual exploitation, which was funded by the National Child Welfare Agency’s Children and Adolescents Fund. As a result, in 2002, awareness-raising and training activities were organized for key players (teachers, community and religious leaders, and police officers); and information material (brochures and posters) was prepared and distributed to the community. In 2003, the Alajuelita board kept up the work, not only holding workshops for community leaders but also involving children in five workshops on the theme of self-esteem, in which 350 schoolchildren between the ages of 9 and 12 participated. Parents, teachers, community and religious leaders and members of the security forces attended the closing sessions of the workshops.

### **Strategies and measures relating to the greater vulnerability of girls and young women to sexual violence**

181. The programme of action for the prevention, protection and direct care of victims of commercial sexual exploitation in Limón province is a pilot model financed by ILO/IPEC and run by the Rahab Foundation in coordination with institutions which provide services in the following areas for the benefit of children who are being exploited or who are at risk: the

protection of children's rights (National Child Welfare Agency), education (the Ministry of Education), health (the Costa Rican Social Security Fund), poverty (the Inter-Agency Institute for Social Assistance) and public security (the Ministry of Public Security).

182. Government programmes enable children to resume their studies, and cater for their health needs. They also provide access to the benefits available under, for example, the "Building opportunities" programme (an allowance for teenagers who are pregnant, have children or are at risk, provided they enrol for a life-skills course) or the "We can do better" programme (an allowance for families who promise to keep their children in primary and secondary education). Thus far comprehensive care has been provided for 80 children and their families. The type of care provided favours action designed to strengthen the ties that keep families together, with placement in institutions as a last resort to be used only on an exceptional and temporary basis (only seven teenage girls have been placed in institutions).

183. This project is producing results that are and will be of great use to various bodies that will be running similar projects in other parts of Costa Rica, such as: the design of a database to be used by the National Child Welfare Agency's local office in Limón to follow up and monitor the action plans for all minors in its care, and to ensure that they never again become involved in commercial sexual exploitation; training modules; protocols or guides for identification and registration; guides for filing complaints; an ethical standard; and a system of references and cross-references. At the time of writing, ILO/IPEC is due to launch a project along similar lines in Golfito and Corredores, in the south of Costa Rica.

184. IPEC helped to produce a handbook on how to prevent exclusion from school and sexual abuse, two factors that make people particularly vulnerable to commercial sexual exploitation. The handbook will be used to train workers in the education sector at the provincial level. Government agencies have approved the handbook. In cooperation with the Foreign Office, IPEC is also preparing a range of information and training materials on commercial sexual exploitation and trafficking for all Costa Rican diplomats.

185. The Ministry of Education incorporated a unit on a culture of peace in the curriculum as part of the course on "Education for family life", which lays the foundation for learning about gender equality and for the early assimilation of new forms of social, family and sexual relations. It is important to note that for many years the country had taken no specific measures to provide sex education on a systematic basis. This shortcoming has been rectified by the recent implementation of this initiative.

### **Strategies and measures implemented with the public and private tourist sectors**

186. Over the last 10 years, the Costa Rican tourist sector has undergone rapid expansion and has become the country's primary source of income. Unfortunately, Costa Rica is also the country in Central America with the highest number of pages on the Internet promoting the country either directly or indirectly as a new destination for sex tourists.

187. Hence the importance of measures to combat the commercial sexual exploitation of children and adolescents related to travel and tourism. Costa Rica's basic strategies are to involve all public and private stakeholders in the tourist sector in preventing and reporting such

objectionable practices and, at the same time, to invite the tourist industry to develop programmes that promote healthy, responsible and ethical tourism, in line with the conclusions of the Regional Consultation for the Americas on the Protection of Children from Sexual Exploitation in Tourism, held in Costa Rica in May 2003 and organized by the World Tourism Organization in cooperation with the Costa Rican Tourism Institute and with the support of the European Union.

188. In this connection, attention is drawn to the Code of Conduct for the Protection of Children and Adolescents from Commercial Sexual Exploitation in Tourism.<sup>3</sup> This is an intersectoral project where the emphasis is on responsible and sustainable tourism: it involves service-providers, customers and entrepreneurs in the public and private sectors. In order to participate in the project, companies must sign the Code of Conduct, in which they undertake: to draw up and publicize an ethical policy on the protection of children and adolescents from commercial sexual exploitation; to train staff on the subject so that they can take preventive action; to put up signs informing customers and providers of their ethical policy; and to submit an annual report describing the measures undertaken in this area.

189. Under the project it is planned to train around 3,000 people in 130 companies (hotel staff, tour operators and taxi drivers). It is being run in the four regions with the largest tourist infrastructure (the greater metropolitan area, Limón, Puntarenas and Guanacaste) and the greatest influx of tourists, which increases the scope for the commercial sexual exploitation of minors related to tourism.

190. The project was launched in August 2003, and to date has been joined by: 10 tourist operators (30 per cent of the total target for the beginning of 2005); 3 car rental companies (37 per cent of the target for this sector); and 2 of the largest taxi companies in Costa Rica (Taxis Unidos Aeropuerto and the Sindicato Costarricense de Taxistas), which every month transport an average of 70,000 and 40,000 tourists respectively. Work with hotels began recently, with activities both in the greater metropolitan area and Limón province, and has so far involved eight hotels (10 per cent of the project's target for this sector).

191. The main aims for the project in future are:

- To continue introducing the Code of Conduct in companies in the tourist regions of Puntarenas, Limón and the greater metropolitan area;
- To start introducing the Code of Conduct in tourist companies in the region of Guanacaste;
- To distribute signs to companies that have signed up to the Code;
- To draw up and implement a system for monitoring the companies that have signed up to the Code;
- To conduct awareness-raising and information activities with officials from the departments and units of the Ministry of Foreign Affairs and the Costa Rican Tourist Institute with a view to making an impact on the problem;

- To establish links between organizations and entities implementing the Code in countries sending large numbers of tourists to Costa Rica.

192. This Costa Rican initiative was presented as good practice at the launch of the draft code of conduct in front of representatives of the United States tourist industry in New York on 21 April 2004, and was endorsed by the United States national security authorities.

193. Another success story was the strategic alliance between the National Child Welfare Agency, the National Department for the Prevention of Violence and Crime, the Costa Rican Association of Tourism Professionals (ACROPOT) and Visión Mundial in the “Formatur” project (training for unemployed young people over the age of 15 in the Guanacaste area to work in the tourist sector). A handbook entitled “What can young people working in the tourist sector do?” was produced in order to spread the word by including basic information on the subject in the curriculum.

194. A total of 350 young people took part in the Formatur project: 130 of them completed it and 90 subsequently found employment in the local tourist industry. The remaining 220 young people dropped out of the training, although 80 of them nonetheless managed, with the skills they had acquired, to find employment in the tourist sector. Although the project is now over, the handbook continues to be used in training sessions run by the National Department for the Prevention of Violence and Crime for staff at institutions that offer courses on tourism (the National Training Institute, the Ministry of Education and private universities).

#### **Other successful prevention strategies and measures**

195. The strategies and actions developed by the Migration and Aliens Office of the Ministry of the Interior and Public Security to prevent both domestic and cross-border smuggling and trafficking of minors are particularly noteworthy. In the past two years, the Migration and Aliens Office, in cooperation with its counterparts in the subregion, has taken on a leading role in subregional efforts to combat commercial sexual exploitation. In doing so, it goes beyond the simple task of recording migration data in Costa Rica.

196. At its XIXth regular meeting, held in October 2002, the Central American Commission of Directors of Migration Departments (OCAM) welcomed Costa Rica’s proposal concerning the fight against the commercial sexual exploitation of children and adolescents in Central America. It was agreed that specific targeted actions against commercial sexual exploitation should be incorporated in the plan of action of the Regional Conference on Migration.<sup>4</sup>

197. Of particular relevance are the efforts to create a database using information supplied by regional migration offices on alerts, arrests and bans on entry and departure in relation to offences arising from trafficking for the purposes of prostitution and the sexual exploitation of minors.

198. In addition, the “Guardian Angels” initiative was launched this year, to create awareness among migration officials and to train them in the rights of children and adolescents and the commercial sexual exploitation of minors. Special emphasis is placed on public officials’ duty to protect minors. The project also envisages the preparation of procedural manuals and protocols.

199. Last April, a campaign against the smuggling, trafficking and commercial sexual exploitation of minors was conducted at Juan Santamaría International Airport; the campaign was conducted jointly by the Migration and Aliens Office, Defence for Children International and Save the Children Sweden. The campaign involves the issuance of banners, posters, pamphlets and colouring books for children for distribution at land, air and sea border posts. In 2003, some 74 per cent of migrants passed through Juan Santamaría International Airport. The campaign is thus expected to reach a total of 2,500,000 persons entering the country this year, without taking into account that it will also be extended to all other migration posts in the country.

200. These strategic efforts cover key areas that, until recently, were not taken into account. Action is being taken to prevent any violations of the physical integrity and dignity of children and adolescents. This includes, for example, stricter controls on the entry and departure of minors; cross-checks between central and regional offices; the elimination of hidden migration; and the introduction of a special migration desk for children and adolescents at Juan Santamaría International Airport.

### **Important achievements**

201. One hundred and three training or awareness-raising events were organized to train some 2,200 representatives of different key target groups in the fight against commercial sexual exploitation, including:

- The judiciary, police force and other law-enforcement officials;
- The education and health sector;
- Migration officials and airport staff;
- Families, religious groups and other social actors in communities;
- Teachers or trainers in the tourist sector and its subsectors (such as accommodation, restaurants and tourist services), including hotel staff and taxi drivers' associations;
- Local government representatives and municipal advisers;
- Specially trained police officers, who visited primary and secondary schools to give talks on the prevention of sexual exploitation, abuse and violence;
- 61,011 children in 232 primary schools;
- 7,965 adolescents in 22 junior high schools;
- 4,564 teachers trained under the "Culture of peace" programme;

- The Paniamor Foundation, the Costa Rican Association of Tourism Professionals and the Costa Rican Association of Tour Operators signed an agreement to adopt the Code of Conduct for the Protection of Children from Commercial Sexual Exploitation in Tourism. The Code of Conduct applies to the different stakeholders in the tourist industry, including private and public-sector service-providers, clients and business-owners;
- The implementation of the Code of Conduct project for 2003-2005, with its focus on responsible and sustainable tourism, was initiated. The project aims to cover approximately 3,000 workers in 130 companies (hotel staff, tour operators and taxi drivers) operating in the country's main tourist areas;
- Inter-institutional coordination under the guidance of the National Department for the Prevention of Violence and Crime in the Ministry of Justice to formulate a two-year plan (2003-2004) to train teachers of tourist studies in technical colleges and lecturers at universities offering degrees in tourism to act as multiplier agents;
- Drafting and/or publication of training manuals for facilitators; some of the manuals target specific groups or address particular issues that encourage and perpetuate commercial sexual exploitation (such as expulsion from school and sexual abuse);
- The Defence for Children International campaign "Internet security for children: risk-free surfing", aimed at preventing sexual violence and pornography involving children and adolescents via the Internet. In cooperation with the Internet service-provider Radiográfica Costarricense (RACSA) and the National Child Welfare Agency, efforts were made to encourage families to use filters, thus ensuring their children's safe use of the Internet;
- The National Child Welfare Agency's radio campaign, with three spots broadcast by national radio stations over a five-month period;
- In 2003, key institutions working in the field of detection, assessment, evaluation, referral and reporting of commercial sexual exploitation and providing comprehensive victim care and protection established institutional procedures and/or guidelines to ensure they effectively discharge their duties;
- The National Child Welfare Agency developed a model procedure involving nationwide projects to foster the all-round development of under-age victims of commercial sexual exploitation:
  - *Temporary shelters*: first port of call where victims receive moral support and their physical, social, psychological and legal status is evaluated with a view to arranging treatment;
  - *Treatment centres*: places to engage in a process of physical, psychological, social and spiritual treatment that helps victims rebuild their lives;

- *Independence*: in cases where it is not possible for the person to return to their family, they will receive financial support to cover their basic needs and be granted access to education to help them gain their independence.

202. In 2003, the National Child Welfare Agency subsidized care for over 22 girls and adolescents without family or community support in the “Casa Hogar Mi Tía Tere”, which is the only institution specializing in the care of victims of commercial sexual exploitation. The type of care provided by the centre is consistent with the Agency’s guidelines.

203. A start was made on implementing the programme of action to prevent commercial sexual exploitation in Limón province and to provide protection and care for the victims. This pilot project, which is financed by ILO/IPEC and implemented by the Rahab Foundation, reaches out to 150 victims of commercial sexual exploitation and 700 minors at risk. Key service-providers in Limón province pledged to assist children and adolescents who were, or who were at risk of being, sexually exploited.

204. In the capital, a project was launched to identify and assist girls and young women vulnerable to HIV/AIDS and other sexually transmitted infections who are being sexually exploited or at risk. The project was approved by the Global Fund to Fight AIDS, Tuberculosis and Malaria and is being implemented by the Foundation to Combat AIDS (FUNDESIDA), in cooperation with other institutions. The objective for the first two years is to improve the identification, assistance and referral of girls who are being sexually exploited or at risk, in accordance with a set procedure, and to increase their access to comprehensive health care.

205. In 2003, efforts were pursued to identify and investigate domestic and foreign procurers, including raids in places where they operate. While the availability of additional staff and vehicles has enhanced the effectiveness of efforts to curb such activities, additional resources are required to investigate all the complaints lodged.

206. Various government entities conduct joint operations to prevent and punish commercial sexual exploitation (inspections at night clubs, bars, brothels and other places at night time). The National Child Welfare Agency, together with the Ministry of Public Security, took part in 82 joint operations. Repressive measures target perpetrators and possible accomplices, but never child or adolescent victims or potential victims, who are in need of urgent protection. This is why the Agency is present during the operations.

207. In two of the country’s seven provinces, a network with nationwide links to prosecution services and the police was established to investigate and monitor commercial sexual exploitation, following their respective procedures for combating such practices.

208. Domestic legislation was reviewed and amended with a view to creating an up-to-date legal framework that allows for the effective prosecution of persons who use and reap financial benefit from the use of sex workers under 18 years of age and ensures the effective implementation of the rights of children and young people in Costa Rica. In this context, the measures outlined below are particularly noteworthy.



209. A bill was presented to Congress on the commercial sexual exploitation of children and adolescents, which makes provisions for amending the Criminal Code and incorporating several new articles to protect minors. The bill was prepared by the Ministry of Justice at the request of the President of the Republic. It proposes amending the definitions of certain offences against minors and introducing some new ones. In particular, it makes the mere possession of pornographic material a crime.

210. The Costa Rican Tourist Institute, the Costa Rican Chamber of Tourism, the Costa Rican Chamber of Hotels and CONACOES joined forces to monitor commercial sexual exploitation and to promote amendments to the Tourism Development Incentives Act. The proposed amendments provide that tourist businesses that use their premises or tolerate their use for the commercial sexual exploitation of minors shall be ineligible for benefits and incentives, and that companies providing accommodation must keep an up-to-date register of guests, including minors, and record the minor's relationship with the person checking in.

211. The executive board of the Public Transport Council of the Ministry of Public Works and Transport agreed to include the following clause as grounds for withdrawing the licence to provide the public service of paid transport of persons in taxis: "When a final reasoned judgement has been handed down by a competent court proving that the licence-holder has used the operating licence (taxi licence) to engage in, promote or facilitate actions that constitute inappropriate sexual conduct or abduction under the legislation in force" (pursuant to Act No. 7969).

212. Provisions have been drawn up to regulate the operation of Internet cafes in order to avoid putting young customers at risk. These provisions are due to be published in an executive decree.

213. A bill has been prepared for submission to Congress on the seizure and confiscation of the proceeds from the crimes of procuring, smuggling or trafficking in minors for the purpose of sexual exploitation or the production and dissemination of child pornography.

214. A proposal has been made to criminalize all forms of internal and cross-border smuggling or trafficking of persons.

215. The Migration and Aliens Office has presented a project to the Central American Commission of Directors of Migration Departments involving the creation of a database for regional migration offices on alerts, arrests and bans on entry and departure in relation to offences arising from trafficking in persons and the commercial sexual exploitation of minors. The project was adopted and is thus binding for the countries in the region. In this context, the Office launched its "Guardian Angels" initiative to train and sensitize migration officials from Guatemala, Honduras, El Salvador, Nicaragua, Panama and the Dominican Republic. Implementation will commence shortly and will benefit from ILO/IPEC support.

216. In February 2003, as part of ongoing joint efforts to eradicate commercial sexual exploitation, the Governments of the United States of America and Costa Rica and the Costa Rican Supreme Court agreed to amend the bilateral letter of agreement on drugs control dating from September 1999, as amended, so as to provide Costa Rica with additional funds with which to combat commercial sexual exploitation.

217. In this context, a series of projects concerning police investigation, judicial proceedings, the prevention of commercial sexual exploitation and victim care were formulated and submitted to the United States embassy in San José. The financing and implementation of these projects would considerably enhance efforts to address this issue.

218. Costa Rica is a candidate for hosting the regional headquarters of the United States National Centre for Missing and Exploited Children and has formulated a strategy setting out short-, medium- and long-term plans for such headquarters. The Centre acts as a clearing house for information on missing or exploited children; provides technical assistance to the general public and law-enforcement agencies; offers training programmes for law-enforcement and social-service professionals; distributes photographs and descriptions of missing children; coordinates child-protection efforts with the private sector; and provides information on legislation guaranteeing effective protection.

219. In 2003, Costa Rica hosted the Regional Consultation for the Americas on the Protection of Children against Sexual Exploitation in Tourism. It was recommended that a regional action group should be set up to raise awareness and promote the prevention and reporting of sexual exploitation in tourism. The agreements concluded are currently being followed up.

220. At the end of 2003, preparations were made, with the help of representatives from Latin America and the Caribbean, for the follow-up meeting to the Second World Congress against Commercial Sexual Exploitation of Children, which took place in Costa Rica in May 2004. The organizing committee consists of representatives of the Government of Costa Rica, ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), the Inter-American Children's Institute of the Organization of American States (IIN-OEA), the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents, ILO/IPEC and UNICEF, which services the event.

221. Programmes of the National Child Welfare Agency on "Protection and promotion of children's and adolescents' rights", and "Caring for children and adolescents and defending their rights".

222. Programme of action for the prevention of, and for the protection and care of minors who are the victims of, commercial sexual exploitation in Limón province (ILO/IPEC).

223. Project to identify and assist boys, girls and young women vulnerable to HIV, AIDS and other sexually transmitted infections who are being sexually exploited or at risk (FUNDESIDA).

224. Comprehensive programmes for the prevention of drug abuse entitled "Learning to look after myself" and "Finding the way" (Institute on Alcohol and Drug Dependency (IAFA), Costa Rican Drug Institute (ICD), Ministry of Education).

225. "Code of Conduct" project (Paniamor, Costa Rican Association of Tourism Professionals, Costa Rican Association of Tour Operators).

226. Training programme entitled “The commercial sexual exploitation of children and adolescents: What can young people working in the tourist industry do?” (Ministry of Justice, National Child Welfare Agency, Costa Rican Association of Tourism Professionals, World Vision).
227. Campaign on Internet security for children and safe surfing (Defence for Children International, National Child Welfare Agency, Radiográfica Costarricense, Ministry of Education).
228. Television campaign entitled “For a healthy and happy childhood” (McKann Erickson, National Child Welfare Agency).
229. Project to set up a database for regional migration offices on alerts, arrests and bans on entry and departure in relation to offences arising from trafficking for the purposes of prostitution and the sexual exploitation of minors.
230. Activities carried out by the Migration and Aliens Office to prevent the smuggling and trafficking of children.
231. Closer links between law-enforcement agencies and schools (Ministry of Public Security).
232. Operations to prevent and punish commercial sexual exploitation (Ministry of Public Security and other institutions).
233. Creation of a network to investigate and monitor commercial sexual exploitation (Ministry of Public Security, Paniamor).
234. Review and amendment of domestic legislation (CONACOES).

## **VII. INTERNATIONAL ASSISTANCE AND COOPERATION**

235. As shown in this report, United Nations agencies such as UNICEF, ILO and the International Organization for Migration (IOM) are involved in the work of the commissions established to fight these crimes.
236. Efforts are being made at the regional level to create a Central American network of cooperation in the prosecution of commercial sexual exploitation, with the emphasis on the detection, evaluation and investigation of offences related to such exploitation.
237. The procedures conducted to repatriate minors are based on full respect for victims’ rights. While the procedure may vary depending on the circumstances, it generally involves establishing the minor’s identity either by DNA testing or by verifying documents such as identity cards or birth certificates, with the help of the Ministry of Foreign Affairs of the minor’s country of origin. The ministry is requested to establish contact with the body responsible for children’s issues in that country. Once the viability of returning the minor is confirmed, the return is authorized and the competent authorities in the country of origin are requested to follow up the case.

**Financial and other assistance**

238. With regard to information on the financial, technical or other assistance provided and/or received through existing multilateral, bilateral or other programmes that have been undertaken to that end, and on bilateral cooperation agreements, the following deserve to be mentioned here:

- The ongoing joint efforts made by the Governments of the United States of America and Costa Rica to eradicate commercial sexual exploitation;
- The agreements concluded between UNICEF and its national partners. Important contributions are the annual reports entitled “Report on the state of child and adolescent rights in Costa Rica”, which are published jointly with the University of Costa Rica and the Interdisciplinary Programme of Research and Social Work in the Field of Child and Adolescent Rights (PRIDENA);
- The ILO-led practice of “horizontal cooperation” between countries participating in efforts to combat commercial sexual exploitation (Central America, Panama and the Dominican Republic). In this framework, ILO, in cooperation with ECPAT International, has organized subregional workshops on care models for victims of commercial sexual exploitation and minimum requirements for the relevant legislation.

**VIII. OTHER LEGAL PROVISIONS**

239. Please see the reports submitted by Costa Rica to the Committee on the Rights of the Child. See below for a list of the relevant legal instruments.

**Convention on the Rights of the Child**

240. The Convention on the Rights of the Child was ratified by Costa Rica on 18 July 1990 through Act No. 7184. Article 34 of the Convention requires States parties to take appropriate measures to prevent: “(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials”. Article 35 of the Convention requires States parties to take all necessary measures “to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”. The provisions of the Convention were incorporated into domestic legislation by Act No. 7739 of 6 February 1998, promulgating the Children and Adolescents Code.

**Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

241. The Optional Protocol was ratified by Costa Rica on 9 April 2002. Among other things, the Protocol enshrines the obligation for States to amend their legislation to criminalize the conduct targeted by the Protocol. States must also take appropriate measures to help child victims of commercial sexual exploitation to recover from the psychological or social damage done. To this end, the Act on the Commercial Sexual Exploitation of Children and Adolescents

was promulgated in 1999, and subsequently amended. Furthermore, executive decrees No. 29964-G and No. 29967-G issued by the Government and published in *La Gaceta* No. 228 of Tuesday, 27 November 2001 authorize the Migration and Aliens Office to prevent the entry of foreigners with a record of having committed sexual offences against minors and to withdraw residence and visiting permits from persons already in the country who are found to have such a record.

### **ILO Worst Forms of Child Labour Convention (No. 182)**

242. The Convention is applicable to all persons under 18 years of age and requires ratifying States to “design and implement programmes of action to eliminate as a priority the worst forms of child labour” and to “establish or designate appropriate mechanisms” to monitor the implementation of the Convention, in consultation with employers’ and workers’ organizations. In the context of implementation of this Convention, ILO/IPEC is implementing several national and regional projects to combat the commercial sexual exploitation of children and adolescents.

### **United Nations Convention against Transnational Organized Crime**

243. This Convention was ratified by Costa Rica through Act No. 8302 of August 2002. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was ratified by Costa Rica on 26 October 2002 through Act No. 8315. For the purposes of the Protocol, trafficking in minors means the recruitment, transportation, transfer, harbouring or receipt of a child or an adolescent for the purpose of exploitation, including forced labour, slavery, and sexual and other forms of exploitation. The Migration and Aliens Office coordinates the regional monitoring of migratory movements of persons engaged in the commercial sexual exploitation of children and adolescents that operate in or are based in the region.

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

244. To date, Costa Rica is the only country in the region to have ratified the Inter-American Convention on International Traffic in Minors (2001). The Convention aims at preventing and punishing the wrongful removal or transfer of minors from one country to another. It seeks to establish a system of judicial cooperation between States and to promote the adoption of legal and administrative provisions to prevent minors from falling victim to trafficking and guarantee the care and protection of the victims of such crimes (IPEC, 2003).

245. Other important legislation and reforms:

- Act No. 7899 amending the Criminal Code. Act on the Sexual Exploitation of Minors;
- Act No. 7999 on the punishment of trafficking in minors, amending article 376 of the Criminal Code;
- Act No. 8002 on the sexual abuse of minors, amending articles 161 and 162 of the Criminal Code;

- Act No. 8143, adding a second paragraph to article 174 of the Criminal Code to make the distribution by any means of pornographic or erotic material featuring minors or images of minors a criminal offence;
- Act No. 8237 on the entry of foreign minors into the country, which regulates their entry in cases where they might be at risk of commercial sexual exploitation, amending article 17 of the Children and Adolescents Code;
- Act No. 8200 amending Act No. 7425, on search, seizure and examination of private documents and interception of communications. The amendment authorizes the interception of communications in the course of investigations into criminal offences involving the commercial sexual exploitation of minors;
- Act No. 8178 authorizing the Costa Rican Social Security Fund to donate exposed photographic plates, fixers and solid residues to the Association for Social and Human Development and other non-governmental associations to fund residential care and therapy for children who have been sexually abused;
- Presidential Decree No. 29967-G, on preventing the entry of foreigners implicated in sexual offences against children and adolescents.

246. A series of legislative reforms are being undertaken, including:

- Proposal No. 14567 to amend various articles of the Tourism Development Incentives (Act No. 6990) of 15 July 1985, as amended. Any company providing accommodation that is covered by the tourism incentives scheme on whose premises the commercial sexual exploitation of children and adolescents is tolerated, facilitated or promoted will lose its entitlement to such incentives, in addition to any criminal penalties it may incur. It also provides for the registration of persons checking in with children or adolescents so as to have a record of their relationship;
- Proposal No. 14568 to step up the fight against the sexual exploitation of minors through amendments to and the addition of various articles of the Criminal Code (Act No. 4573 of 4 May 1970) and amendments to various articles of the Code of Criminal Procedure (Act No. 7594 of 10 April 1996). These far-reaching reforms would allow provision for the confiscation of proceeds from the commercial sexual exploitation of children and adolescents and their reallocation to the fight against such practices. They would also criminalize the intentional possession of child pornography, regardless of whether or not it is used for commercial purposes; and would make publicly actionable all crimes where the principal victim is a minor;
- Proposal No. 14204 to add a paragraph (4) to article 6 of the Criminal Code, to establish extraterritorial jurisdiction over sexual offences against minors. The objective is to facilitate the prosecution in Costa Rica of such offences committed abroad, subsequent to the codification of this type of conduct in criminal legislation;

- Proposal No. 14549 to amend articles 14 and 15 of the Family Code (Act No. 5476), article 38 of the Civil Code and articles 176, 177 and 181 of the Criminal Code (Act No. 4573) and to repeal article 19 of the Family Code and articles 92 and 384 of the Criminal Code, on the marriage of persons under 15 years of age. The proposal would outlaw marriage with a person under 15 years of age, even if the person exercising parental responsibility consents;
- Proposal to add an article 170 bis and repeal article 380, paragraph 1, of the Criminal Code (Act No. 4573 of 4 May 1970). Pursuant to this amendment, persons who use their commercial premises to facilitate, promote or tolerate the commercial sexual exploitation of children and adolescents would be liable to imprisonment;
- Proposal No. 14269 (Migration and Aliens Act) addresses various problems relating to the smuggling or illicit trafficking of persons across borders.

### **Harmonization of legislation with international instruments**

247. Based on the strategy for comprehensive protection and following an in-depth analysis of ways to improve the Act on the Sexual Exploitation of Minors (Act No. 7899, which entered into force in 1999) and the adoption of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Act No. 8172, which entered into force in February 2002), the Ministry of Justice, at the request of the President of the Republic, formulated and submitted to the Legislative Assembly a bill on the protection of minors through amendments to and the addition of several articles to the Criminal Code. The bill provides, inter alia, for amendments to codified offences against minors and the addition of new offences. In particular, the bill contemplates criminalizing the mere possession of pornography. The Legislative Assembly's discussion of the bill is pending.

248. Costa Rica is faced with a problem that has terrible consequences for the victims and their family, the community and the country as a whole - not because of the number of children and adolescents trapped in the sex industry, but because each of these persons has rights and the Government has a duty to protect them.

249. The growing number of measures being taken in Costa Rica are increasingly noticeable and are yielding positive results. Although much remains to be done, the way ahead is clear and there can be no turning back.

250. One of the most important strategic decisions for enhancing efforts to combat commercial sexual exploitation on various fronts was the establishment of an official national commission composed of experts in the field. The commission is attached to the National Council on Children and Adolescents, which is the highest authority in the national system of comprehensive protection. The commission was established to coordinate the implementation of a national plan to combat commercial sexual exploitation in a systematic and sustained manner.

251. The contribution of non-governmental organizations, universities (especially the University of Costa Rica) and international organizations (UNICEF and ILO/IPEC) has been crucial to obtaining the results achieved so far.

252. The issue has high priority in the area of academic research. Its importance in academic circles is illustrated by the widespread interest among lecturers and students in various fields who conduct research, write theses or participate in university-led community work. As a result, an increasing number of professionals with specific knowledge of this complex social problem are now entering the labour market.

### Notes

<sup>1</sup> Vote No. 1982-94 of the Constitutional Chamber.

<sup>2</sup> The National Agenda sets forth national and international obligations with regard to children and adolescents, establishing priority programmes and measures. It represents the political will of the main social partners at the national level to the development of a State policy on the subject. It should help to guarantee the enjoyment of the rights of children and adolescents by building on the national protection system, which consists of the National Council on Children and Adolescents, its secretariat and local agencies (the children and adolescents protection boards and the committees to safeguard the rights of the child).

<sup>3</sup> The administrator and body responsible for implementation is the Paniamor Foundation; the bodies jointly responsible for implementation are the Costa Rican Association of Tour Operators (ACOT) and the Costa Rican Association of Tourism Professionals (ACROPOT). The body which funds and manages the funds of the Costa Rica-Netherlands Agreement is Fundecooperación, which supports the project under the section of the cooperation agreement dealing with sustainable tourism. ILO/IPEC supports implementation in Limón province.

The Government agencies backing the project at the national level are the Office of the Ministry of Tourism, the Office of the Ministry for Children, the National Child Welfare Agency, and the Ministry of Public Works and Transport. The non-governmental organizations backing the project are the Costa Rican Chamber of Tourism (CANATUR), the Costa Rican Chamber of Hotels (CCH), the Southern Caribbean, Jacó and Quepos chambers of tourism, the National Ecotourist Network (COOPRENA) and the Costa Rican Car Rental Association.

<sup>4</sup> The Central American Commission of Directors of Migration Departments and the Regional Conference on Migration have made people-smuggling and trafficking in migrants a priority; coordinated action is being taken to combat criminal organizations engaged in such activities within the sovereignty and jurisdiction of each State, and it has been agreed to promote the exchange of information between member States with a view to taking concrete action to identify and close down this type of organization.

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