

# LAW ENFORCEMENT IN BRAZIL



International  
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Office



COLLECTION of **Good Practices and Lessons Learned** related to the prevention and elimination of commercial sexual exploitation (CSE) of girls, boys and adolescents

Programme for Prevention and Elimination of Commercial Sexual Exploitation of Girls, Boys and Adolescents in the Triple Border Area (Argentina-Brazil-Paraguay)

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**Isadora Minotto Gomes**

Programme for Prevention and Elimination of Commercial  
Sexual Exploitation of Girls, Boys and Adolescents in the  
Triple Border Area (Argentina - Brazil - Paraguay)

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First published 2005

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MINOTTO GOMES, Isadora.

*ILO/IPEC. Collection of good practices and lessons learned related to the prevention and elimination of commercial sexual exploitation (CSE) of girls, boys and adolescents:*

LAW ENFORCEMENT IN BRAZIL

*Asunción: ILO, 2005. 124p.* Child labour, Good practices, Prevention, Sexual exploitation, hazardous work, Girl, Children, Legislation, Application, Brazil, ILO Pub. 02.02.1

ISSN: 92-2-117886-2(Print)

ISBN: 92-2-117887-0 (Web Pdf)

ISSN: 92-2-117890-0 (Print Complete Collection)

ISBN: 92-2-117891-9 (Web Pdf Complete Collection)

ILO Cataloguing in Publication Data

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Printed in Paraguay

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Funding for this publication was provided by the United States Department of Labor. This publication does not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

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# Index

Presentation	7
Summary of acronyms	9
Executive summary	11
1. Introducción	17
2. Objectives and methodology	23
3. Recent progress identified in the brazilian legislation	27
At the national level	28
At the state level - State of Paraná	39
At the municipal level - City of Foz do Iguacu	40
4. Summary of rights assurance procedures adopted by the judiciary and security systems and by associated institutions in Foz do Iguacu	43
5. Factors that facilitate or impede the response of security and judicial systems, agencies for children´s and adolescent´s rights and particularly law enforcement officers in Foz do Iguacu	47
5.1. Factors that have a negative effect	50
5.2. Factors that have a positive influence	67

6. Results and difficulties of the work of the task force and or the denunciation hotline service _____	87
6.1 Factors that hindered task force _____	89
6.2 Factors that facilitated the action of the task force on the streets _____	92
6.3 Factors that had a negative influence on the denunciation hotline service _____	96
6.4 Factors that had a positive influence on the work of the denunciation hotline service _____	99
7. Principal lessons learned on law enforcement _____	103
8. Good practices in Foz do Iguacú _____	107
9. Next steps : Conclusions and recommendations _____	115
Bibliography _____	121



## Presentation

The book that you are having in your hands forms part of a series of publications about Lessons Learned and Good Practices related to the prevention and elimination of commercial sexual exploitation of girls, boys and adolescents. This series is a product of a project of the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Office (ILO) that with funding of the US Department of Labor has been implemented in the triple border area between Argentina, Brazil and Paraguay in the period between September 2001 and October 2005.

This project has been a consequence of the unanimous adoption of ILO Convention 182 (in 1999) on the worst forms of child labour. This Convention considers the sale, trafficking and commercial sexual exploitation of children as practices similar to slavery and it urges all Member states to take effective and time-bound measures for their prohibition and elimination.

During its implementation, the project in the triple border area has collected many lessons learned and good practices that will be of use to the Member countries in this task. This book describes lessons learned and good practices related to the enforcement of the legislation related to sexual exploitation in Brazil. It presents the lessons learned related to the modus operandi of the law operators and identifies factors that facilitate or complicate the daily work of these law operators in the



enforcement of the existing Brazilian legislation to prevent and punish the sexual exploitation of girls, boys and adolescents, especially in the city of Foz do Iguacu.

Another book in the series analyzes the lessons learned and good practices in law enforcement in Argentina and Paraguay. In addition, there are studies about lessons learned and good practices in the field of awareness raising and institutional strengthening, income generation and – finally –the strategies used for prevention and withdrawal of girls, boys and adolescents from commercial sexual exploitation.

We hope that this book will be useful in the struggle to prevent the recruitment of children and adolescents to the different modalities of commercial sexual exploitation, to protect and return the rights of the victims and to repress and punish their exploiters, not only in the three countries involved in the project, but also in other parts of the world.

Paraguay, September 2005

## Summary of Acronyms

CEDEDICA	Centre for the Defence of the Rights of Children and Adolescents
PCMI	Mixed Parliamentary Investigation Committee
PCP / CPC	Code of Criminal Procedure
CSEC	Commercial Sexual Exploitation of Children
EADI	Interior Customs Station
ECA	Statute of the Child and Adolescent
FC	Federal Constitution
GERCO	Special Group for Repression to Organized Crime and Drug Trafficking
GO	Governmental Organization
ILO	International Labour Organization
IML	Legal Medical Institute
INTERPOL	International Criminal Police Organization Division of the Federal Police
IPEC	International Programme on the Elimination of Child Labour
MERCOSUL	Southern Common Market (in Portuguese)
MERCOSUR	Southern Common Market (in Spanish)
MP	Public Ministry
NGO	Non-Governmental Organization
NUCRIA	Nucleus for the Protection of Children and Adolescents Victims of Violence
PC	Penal Code
PIC	Criminal Investigation Prosecutor's Office
STF	Supreme Court of Brazil
UN	United Nations





## Executive summary

The present paper is one of the outcomes of the *Project for the Prevention and Elimination of Commercial Sexual Exploitation of Girls, boys and Adolescents on the Argentina/Brazil/Paraguay Border*, carried out between 2001 and 2005 by ILO (International Labour Office), through IPEC (International Programme on the Eradication of Child Labour), funded by the US Department of Labor. It presents a grouping of lessons learned from the observation of the way law enforcement agents operate and it identifies factors facilitate or complicate the day-by-day practice of such enforcement agents as regards compliance to the existing Brazilian legislation in preventing and sanctioning the sexual exploitation of girls, boys and adolescents, especially in Foz do Iguacu.

The Project has allowed for the implementation of several actions, such as the diagnosis of the affected population and of the public and private capacity for institutional response; institutional strengthening; capacity building of several different professionals; mobilization and awareness raising of society, governmental bodies and of the population affected by the problem; direct interventions carried out vis-à-vis victims, allowing them access to legal, psychological, social, educational and health services, while promoting their social reinsertion as well; monitoring and inspection of key areas and sectors and the establishment of sustainability mechanisms for such actions.

Aiming at analyzing the project's impacts, the present study had the overall objective of systematizing lessons learned and identifying good practices in the application of the legislation regarding the fight against, the repression, prevention and punishment of sexual violence against girls, boys and adolescents in the city of Foz do Iguacu. The specific objectives include: trying to identify progress in the Brazilian legal framework; analyzing procedures adopted by the justice and safety system of the State of Paraná, particularly of Foz do Iguacu, aiming at identifying factors that facilitate or create obstacles to an efficient response by the system, particularly in the action of law enforcement agents. Practical outcomes and difficulties faced by the Denunciation Hotline supported by the Project and by the Task Force - an action that was implemented during the project's lifetime - were assessed as well, followed by suggestions and recommendations for the next steps.

At the national level, progress has been made in regard to the prevention and repression to crimes of sexual violence against girls, boys and adolescents as defined by **Law no. 10764, of November 12, 2003**, which alters Law no. 8069, of 13 July 1990, which governs the Statute of the Child and Adolescent (*Estatuto da Criança e do Adolescente - ECA*), by including an overall forecast for more severe penalties for infractions under Articles 240 and 243 of the ECA, including for those holding a position or function or also with the intention of obtaining equity advantages. This new law innovates by typifying photographic activity or any visual medium that publicizes or contains a pornography scene, of explicit sex or vexatious scene involving girls, boys or adolescents or the exhibition of a child's image in a pejorative way through the world wide web (Internet), or whoever helps, guarantees, facilitates, or assures the means or services and the access to such images through the world wide web.

Within the scope of Mercosur, legislative progress has been made as well. To be highlighted are **Decree no. 4975, of 30 January 2004**, which promulgates the Extradition Agreement among the Mercosur Parties, establishing commitments among the subscribing countries that the Parties commit themselves to, reciprocally, extradite people found within their corresponding territories and that are being sought after by the other Party's competent authorities, in order to be sued for the presumed practice of some criminal offence, to respond to a process already under way or for the execution of a punishment of deprivation of liberty.

Another recent piece of legislation is Decree 5007, of 8 March 2004, which promulgates the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which considers as a criminal offence the offer, delivery or acceptance, by any means, of a child for the purposes of: sexual exploitation of children; transplantation of a child's organs for profitable purposes; involvement of children in forced labour, undue induction to consent, as middleman, for the adoption of a child through the violation of the applicable international legal instruments on adoption; the offer, gain, acquisition, enticement or delivery of a child for child prostitution purposes.

Also to be highlighted is Decree no. 5015, of 12 March 2004, which promulgates the UN Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, which shall be executed and complied with in all of its content, with the objective of promoting cooperation for preventing and fighting transnational organized crime more efficiently. It should be noticed that the National Congress has approved, by means of Legislative Decree no. 231 of 29 May 2003, the text of the UN Convention against Transnational Organized Crime.

Decree no. 5016, of 12 March 2004, should also be highlighted. It promulgates the Additional Protocol to the UN Convention against Transnational Organized Crime, against the Smuggling of Migrants by Land, Sea and Air, ruling that the dispositions of the referred protocol shall be fully complied with. Finally, Decree no. 5017, of 12 March 2004, that promulgates the Additional Protocol to the UN Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

As to progress achieved at the state level, Law no. 14607 of 5 January 2005, establishes that educational institutions in the State of Paraná that teach 5th to 8th grade must contemplate lessons on the undue use of drugs and child prostitution in their teaching proposal, for student guidance purposes. At the municipal level, Law no. 2999 of 6 December 2004 must be mentioned. It addresses the inclusion in the municipal teaching programme of studies on the Statute of the Child and sets other provisions. The objective is to stimulate the children's knowledge on measures that grant citizenship rights to the infant and juvenile population. Law 2897, of 29 March 2004, governs the obligation of any establishment to feature a poster on a visible spot containing the telephone number of the police station specialized in the defence of girls, boys and adolescents, with an open warning that the Sexual

Exploitation of Children and Adolescents is a crime. However, these laws have not yet been regulated.

The factors that hamper a more effective response from the justice and safety systems towards assuring the rights of girls, boys and adolescents in Foz do Iguacu include the precarious social and economic conditions of a large number of girls, boys and adolescents; the fear to denounce offenders due to the lack of protection by the justice and safety systems; intra-family violence; discredit towards state bodies; difficulties in proving a crime; society's tolerance; the victim often becomes a victim of the system; the format foreseen by law for incepting a criminal action regarding crimes against costumes and against sexual liberty; the difficulty to typify conducts; and pending legislation gaps.

On the other hand, factors facilitating the action of justice and safety bodies include: the awareness building of victims in relation to seeking help; the capacity building of professionals working in this field; the existence of a favourable legislative instrument, Decree 2740 of 20 August 1998; the STF (Supreme Court of Brazil)

*stare decisis* 608; the publicizing and diffusion of the rights of girls, boys and adolescents; the establishment of specialized police stations (Women's and Tourists' Police Stations and NUCRIA); greater swiftness in investigations; some public programmes for protection; the work carried out by the Denunciation Hotline and the Task Force.

Among the results achieved and difficulties faced by the work performed by the task force, it has been identified that an inappropriate methodology has been used, made evident by: a lack of capacity building of the staff involved; pre-determined days, hours and locations for action; use of vehicles featuring identification, known by girls, boys, adolescents and exploiters; and the lack of access to all exploitation establishments and locations. Facilitating factors include: the indication by the victims themselves - which have become participants at the programme's reference centres - and the participation and support of the police forces and of the Guardianship Council.

As to the Denunciation Hotline service, constraints for the achievement of more satisfactory results have been the staff's lack of skills in receiving denunciations and collecting information data; the inappropriate referral of denunciations; lack of capacity building of police authorities in performing investigative work; lack of commitment and awareness of some representatives of the police bodies. Factors that have contributed to the work include: the wide publicizing and diffusion of the Denunciation

Hotline service; the establishment and implementation of Specialized Police Stations (for Women and NUCRIA); the awareness raising of victims and society; and the capacity building of staff involved in the programme and in the legal and police fields.

As a lesson learned, it has been noticed that crimes of abuse and sexual exploitation of girls, boys and adolescents are extremely complex and, therefore, require immediate denunciation so that evidence may not be lost, allowing for a thorough and precise police investigation of offences. Therefore, it should be stressed that there is great need for integration among the justice and safety bodies in promoting coordinated actions and exchanging information and experience, in accordance with each one's competent field of action.

When offences cross international borders, punishment becomes even more jeopardized due to the absence or lack of implementation of international instruments that may assure an effective cooperation and harmonization of the relevant criminal legislation. All existing decrees within the scope of Mercosur do not hold legal relevance due to the lack of applicability on the side of the law enforcement operators themselves, of implementation or even of incorporation of such treaties by each country's internal legal order.

Therefore, it is necessary to promote alterations in the Brazilian Penal Code, in order to generate a legal environment that may be effective in hampering the practice of sexual exploitation of girls, boys and adolescents, without leaving room for gaps, meeting the needs for extensive interpretation in the typification of conducts. As to the international instruments, it has been found that Brazil has complied with international policies, but harmonization remains very complex as the incorporation of a foreign law into the internal legal order may confront the State's constitutional principle of sovereignty.

Considering the previously highlighted constraints, we recommend the continuity of the process of permanent capacity building of law enforcement operators, so that they may recognize the peculiarities involved in such criminal conduct, as well as providing a means of interfering in the reality of victims by truly punishing offenders, in accordance with the instruments foreseen under the law; of legal and police agents and of all other professionals dealing with the problem; and the establishment of an intelligence centre for the investigation of such crimes. Nevertheless, such capacity building must reach the law enforcement operators intensively, aiming at integrating and coordinating



all bodies involved. Much has already been achieved in this regard, but the participation of a larger number of authorities still has to be achieved, so that the positive results that have been harvested and highlighted in the present paper may be enhanced.

On the other hand, there also is a need for permanent action towards the awareness raising and mobilization of society in addressing violence and the commercial sexual exploitation of girls, boys and adolescents, encouraging denunciations and joint actions, such as the intense publicizing of the problem through the media: newspapers, magazines, TV news, radios, etc.

Another aspect to be highlighted as a victory achieved by the Project for the Prevention and Elimination of Commercial Sexual Exploitation of Children and Adolescents at the Border was the realization of public hearings by the CPMI (Mixed Legislative Inquiry Committee) on Violence, Trafficking and Sexual Exploitation of Children, Adolescents and Women held in the city of Foz do Iguacu. On the occasion of the reading of the CPMI's final report, which took place in Brasília on 7 July 2004, two cases - one in Foz do Iguacu (Brazil) and another in Hernandárias (Paraguay) - were pointed out. As referrals and suggestions forwarded to the Brazilian government, the CPMI suggested the urgent signature of a cooperation agreement between the Triple Border countries, aiming at the responsabilization of the criminal agents that promote the trafficking of women and adolescents for sexual exploitation purposes; the provision of additional budgetary resources for the Federal Police in Foz do Iguacu; and recognizing and maintaining the social responsibility initiatives undertaken by Itaipu Binacional. The CPMI report also offered important and very significant proposals for alterations to the Brazilian Penal Code.

Another recommendation that deserves to be highlighted is the promotion of public policies aimed at the protection of rights foreseen under ECA (Statute of the Child and Adolescent) and under the Federal Constitution, addressing these as absolute priority: the preservation of the victim and his/her social rehabilitation; establishing effective mechanisms for income generation and vocational training; strengthening of self-esteem and family bonds; as well as the punishment of exploiters.



# 1. Introduction

The present paper is one of the outcomes of the analysis of experiences collected by the «Project for the Prevention and Elimination of Commercial Sexual Exploitation of Girls, Boys and Adolescents on the Argentina/Brazil/Paraguay Triple Border», carried out between 2001 and 2005 by the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Office (ILO), funded by the US Department of Labor.

In addition to national actions, especially in Paraguay and Brazil, the project has simultaneously promoted the capacity building of professionals related to law enforcement, police officers, psychologists, social assistants, law and child protection councillors, teachers, programme coordinators and university students in Foz do Iguacu, Ciudad del Este and Puerto Iguazu, encouraging the design and implementation of articulated action between civil society and the public authority. In the case of Foz do Iguacu, all activities were based on the Statute of the Child (ECA), established by Law no. 8069/90; on the International Convention on the Rights of the Child; on the Brazilian 1988 Federal Constitution, art. 227; on the Human Rights Convention; and on ILO Convention 182.

The activities related to training and institutional strengthening conducted by the project aimed at enhancing the potential of existing public policies, as well as alternatives for addressing the situation at the Triple Border; mobilizing society against commercial sexual exploitation; training professionals in the law enforcement field, such as the Law and Child

Protection Councillors, who work directly with girls, boys and adolescents when identifying and intervening in cases of sexual violence.

In the city of Foz do Iguagu, several works, studies and activities were carried out during project implementation, aiming at raising the population's awareness towards the existence of the problem and addressing it properly. Efforts have also been made towards improving conducts and proposals for the harmonization of the national legislations of the triple border countries, aiming at encouraging actions and mobilizing public policies that may allow for the prevention and elimination of commercial sexual exploitation of girls, boys and adolescents.

Several partnerships have been entered into with local public authorities, and the project has obtained the support of private sector corporations, especially of Itaipu Binacional. That has paved the way for the establishment of a network for fighting the commercial sexual exploitation of girls, boys and adolescents, mobilizing the Executive, the Legislative and the Judiciary. It has been widely covered by the mass media, and has counted on the effective participation of municipal secretariats and non-governmental organizations, which have greatly contributed to the awareness raising and mobilization of important sectors of civil society.

It should be highlighted that after the implementation of the Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents at the Border, campaigns, fronts and service networks have been intensified through the establishment of bodies and services by the judiciary and security systems. To be highlighted is the implementation of the Specialized Police Station for the Protection of Children and Adolescents (NUCRIA) and the establishment of CEDEDICA - Centre for the Defence of the Rights of Children and Adolescents.

The present study also makes reference to the legislative adaptations and other measures aimed at the implementation of the UN Declaration on the Rights of the Child (unanimously approved by the United Nations General Assembly on November 20<sup>th</sup>, 1989); ILO Convention 182 and Recommendation 190 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (concluded in Geneva, on June 17<sup>th</sup>, 1999); UN Convention against Transnational Organized Crime (adopted in Palermo, on November 15<sup>th</sup>, 2000) and other international norms considered relevant, as well as agreements and treaties regarding the topic, established within the scope of Mercosur, especially in relation to this border zone.

Within the scope of Mercosur – as Argentina, Brazil and Paraguay have subscribed the main international treaties in the field of children’s rights protection – it has been observed that social and cultural evolutions and the – at least theoretical – installation of free transit of people and merchandize, have caused criminal actions to become more elaborate, promoting them to the transnational level, moving beyond the concept of national sovereignty and hampering the application of a country’s legislation in the other country, based on the principle of territoriality (Sprandel: 2004).

In face of the several international commitments, Member States foresee legislative changes and adaptations in order to facilitate the process of harmonization of legislation, so that it may be effectively applied, irrespective of territorial boundaries. One of the major progresses made in terms of international treaties has been the UN Convention against Organized Transnational Crime and its two protocols against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Nevertheless, that legislation is very recent and its applicability is still being explored by law enforcement operators and the judiciary and security bodies; therefore, practical results cannot be assessed so far (Sprandel: 2004).

At the national level, in 2002 the president at the time, through the Department for Children and Adolescents of the State Secretariat for Human Rights of the Ministry of Justice, considering the outcomes of the Parliamentary Committee of Inquiry (PCI) of 1993 on sexual violence against girls, boys and adolescents in Brazil, has adopted the National Plan for Addressing Sexual Violence against Children and Adolescents. Its main objective has been to establish a set of articulated actions that may allow for a technical, political and financial intervention in fighting sexual violence against girls, boys and adolescents.

Aware of the need to promote cooperation towards preventing and fighting transnational organized crime in a more efficient manner, Brazil, by means of Decree no. 5015 of March 12<sup>th</sup>, 2004, has promulgated the UN Convention against Transnational Organized Crime. By means of Decree no. 5016 and Decree no. 5017, both dated March 12<sup>th</sup>, 2004, Brazil also promulgated two Additional Protocols: Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Brazil also has given the issue of sexual exploitation of girls, boys and adolescents priority, and a major example of the action of such policies has been the implementation of the project 'Child Friendly President' (*Presidente Amigo da Criança*) by the present President. The project has been designed by the Abrinq Foundation, based on the UN document «A World for Children». The project is coordinated by the Special Secretariat for Human Rights and foresees over 200 actions to be developed by seven different bodies of the Federal Government, with a view to implementing a transparent and transforming process, aimed at building a better future for our nation.

The above-mentioned project also observes the international agreements regarding girls, boys and adolescents that have been ratified by Brazil at the 1989 International Convention on the Rights of the Child and, especially, at the Special Session of the UN General Assembly on Children, which took place in 2002, in New York City, which has established the document «A World for Children». The Plan will comprehend the period between 2004 and 2007, when governmental actions will be focusing on the commitment to *«reduce the vulnerability of children and adolescents towards all forms of violence, improving mechanisms for the effective protection of their rights»*.

In short, it can be said that Brazil has been demonstrating political will towards advancing in the implementation of a legal framework for addressing the commercial sexual exploitation of girls, boys and adolescents. The Statute of the Child, a Penal Code that is being reviewed and a national public policy for the defence of the rights of the child presently being implemented are the main evidence. As far as international agreements are concerned, the country holds a progressive and updated position. Several government programmes and a great institutional mobilization by governmental and non-governmental entities are taking place, but the country still lacks a national policy that may comprise effective measures for addressing the issue, assuring their unification and widespread execution throughout the whole national territory, providing such protective apparatus with an efficient and agile response in face of situations of risk to which children in Brazil are still exposed to.

Usually there is a lack of credibility by the population itself, who does no longer trust the public actions of national rulers. At the same time, there is a lack of awareness and involvement of the several sectors of society, such as schools, governmental and non-governmental organizations, professional associations, among others, although this would enable integration between the system's beneficiaries and the

Public Authority, aiming at identifying their needs and meeting them by means of focused activities and efficient resources.

Nevertheless, we must be aware of the fact that one of the main drives for the sexual exploitation of girls, boys and adolescents is the profit obtained through prostitution and from the commercialization of the bodies of children and adolescents. That often hampers their being freed from such exploitative process, since there is a need to provide for his or her own subsistence, as well as for that of his or her family members. Therefore, the work that must be carried out needs to act simultaneously and efficiently upon reducing the vulnerability factors that afflict a major part of the infant and juvenile population and upon the reduction of the impunity of sexual aggressors and of middlemen in the commercial sexual exploitation of girls, boys and adolescents.

It must be said that the lack of more detailed investigation on violence, abuse and sexual exploitation crimes, associated to impunity – either due to the delayed response of judicial bodies, owed to their highly bureaucratic procedures and the lack of resources and infrastructure, or due to the high level of impunity – end up becoming the major reasons for offenders to continue practicing sexual crimes, since the punishing response seldom reaches offenders; and when it does, it takes place in a soft and long term manner.

As to the means of action of law enforcement operators, in spite of being restricted to the compliance to the law and in spite of the precariousness of the judiciary and security systems, it must be recognized that they already count on a certain experience regarding sexual exploitation cases and manage to properly fill in the gaps left by the existing legislation. They are knowledgeable about the problem, and often even are acquainted with the ways of the offenders, thus allowing for a more effective response by the Judiciary when punishing exploiters.

In this regard it should be highlighted that during the project implementation, the cooperation and integration of the judiciary and security system's bodies – even though very simple – has achieved positive results, deriving from the services delivered by the Task Force and the Denunciation Hotline.

In spite of requiring some adjustments in their action and approach, these two activities have demonstrated to be a good practice for identifying and hampering the action of many aggressors. From now on – and that is the recommendation provided by the present paper for the next steps – the focus should be to search for a massive participation of

law enforcement operators, since some of them had not been available for participating in the promoted campaign and capacity building opportunities, due to the huge volume of work demanded by the still precarious conditions faced by the judiciary and security systems.



## **2. Objectives and methodology**

The overall objective of the consultancy hired for the present study—which took place between January and April 2005 – was to prepare a document that may systematize the lessons learned, as well as the good practices identified in applying the legislation regarding the fight against, the repression, prevention and punishment of sexual violence against girls, boys and adolescents in the triple border region, especially in the city of Foz do Iguacu. The present paper focuses on the revision of previous studies and other documental information regarding the legislation, highlighting the legislative advances that took place at the national level; the identification and analysis of factors that facilitate or create obstacles to an efficient response of the judiciary and security systems, especially through the action of law enforcement operators; highlighting eventual good practices adopted by the judiciary and security systems and their operators; and practical results achieved and difficulties faced by the Task Force and the Denunciation Hotline.

The methodology that has been defined for the execution of the present study includes the documental analysis of legislative studies that already had been carried out by the triple border project, as well as by other programmes funded and implemented by ILO/IPEC in the region; analysis of regular project and action programme reports, databases for the monitoring of indicators, analysis of evaluation reports, publications, news reports produced on the topic, visits to official websites and



websites, assessment of IPEC manuals and guidelines, as well as reference to other studies on good practices and lessons learned by IPEC.

Contacts and field trips have been made, as well as direct interviews, and interviews by means of previously drafted questionnaires have been presented to law enforcement operators and to those in charge of security bodies, such as the Judge of the Childhood and Youth Court; the Public Prosecutor of the Childhood and Youth Court; the Head Police Officer of the Migration Nucleus of the Federal Police Station; the Chief Police Officer of the Criminal Investigation Prosecutor's Office (GERCO); the Public Prosecutor of the Criminal Investigation Prosecutor's Office (GERCO); the attorney of the Centre for the Defence of the Rights of Children and Adolescents; and the Judge Attorney General of the Municipality in charge of issues involving children and adolescents.

Hence, part of the conclusions presented herein are based on field observations and on the observation of certain work places, especially those of institutions belonging to the judiciary and security systems and the children's rights assurance systems, aiming at analyzing adopted procedures and identifying factors that may either facilitate or hamper the response of these institutions.

Our work has been based upon the data collected from the direct interviews, based on pre-formulated questions, and on the observation of the *modus operandi* of law enforcement operators, in order to identify those factors that facilitate or hamper the everyday practice of law enforcement, aimed at the effective punishment of the offenders. Law enforcement operators have highlighted the practices of both offenders and victims that hamper the identification of the crime, the legal procedures or, for some reason, impede the action of the judiciary. Law enforcement operators also nominated the practices – of both offenders and victims - that contribute to regular and effective law enforcement, allowing for the normal processing of criminal action, leading to the effective and inevitable punishment of offenders.

The survey also highlights the good practices of law enforcement operators, acquired through practical work experience, which allowed them to become knowledgeable about the problem's causes, developing a perception of the practical cases, thus contributing to the positive instruction of processes, leading to the punishment of offenders.

Another essential aspect of the survey has taken into account the material provided by the websites and webpages of governmental (Federal Senate, House of Representatives, Presidency of the Republic and Ministry of

Foreign Affairs) and non-governmental (Ciranda, Redescobrir, Andi and Abrapia) organizations, used for identifying legislative advances or bills referring to the improvement of the legislation related to fighting and preventing the different forms of sexual exploitation of girls, boys and adolescents or to sexual violence in general, starting May 2002, as well as other additional information on the topic.

In the field of legislative advancements, only laws, decrees, treaties, agreements and terms of agreement prepared after May 2002 have been taken into account. That was the date on which the paper *A exploração sexual comercial de crianças e adolescentes na legislação brasileira - lacunas e recomendações* (The commercial sexual exploitation of girls, boys and adolescents in Brazilian legislation - gaps and recommendations) - the legislative study authored by Márcia Anita Sprandel, Henrique José Antão de Carvalho and Adriana Mourão Romero, carried out by OIT/IPEC for the Project for the Prevention and Elimination of Sexual Exploitation of Girls, Boys and Adolescents at the Brazil/Argentina/Paraguay Border - has been concluded.



### 3. Recent progress identified in the Brazilian legislation

The study on the identification of gaps in the Brazilian legislation regarding the commercial sexual exploitation of girls, boys and adolescents, carried out by ILO/IPEC (Sprandel: 2002), pointed towards the following conclusions:

- a) The fundamental piece of legislation regarding the sexual exploitation of girls, boys and adolescents in Brazil is the 1988 **Federal Constitution** (art. 227, *caption, § 1, 3, IV, V and § 4; art. 228*); the **Penal Code**<sup>1</sup> (arts. 213 to 229, 233 and 234); the **Statute of the Child**<sup>2</sup> (arts. 5; 82 to 85; 149, 238 and 243; 250 and 255); the **Heinous Crimes Act**<sup>3</sup> (arts. 1 and 6) and the **Torture Act**<sup>4</sup> (arts. 1 and 4).
- b) Within the scope of Mercosur, Decree no. 3468 of 17 May 2000 deserves to be highlighted. It promulgates one of the main integration documents at the Mercosur level. By analyzing the legislation in force at the border, it has been found that the most advanced instrument available between Argentina, Brazil and Paraguay regarding legal collaboration for penal purposes is the Protocol for Mutual Legal Assistance in Penal Matters for the Mercosur, signed in 1996 in San Luis/Argentina, which restates the harmonization of the legislation of the member countries on their quest for achieving common objectives.

- c) The aforementioned protocol also preaches the strengthening of common objectives through norms capable of generating legal security for member countries, since transnational crimes often generate probative matter and criminal authorship in several different countries, moving beyond territorial barriers. Nevertheless, up to today, only Argentina has incorporated this protocol into its internal legal order.
- d) According to the protocol, in order to allow the system created by it to become operational, each Member State must designate Central Authorities, which will be responsible for receiving and transmitting addressed requests for mutual legal assistance, forming a process of direct, effective and non-bureaucratic communication between the competent authorities of the corresponding countries.

Among the legislative advances that took place starting May 2002, the following norms deserve to be highlighted:

## AT THE NATIONAL LEVEL

### 1) **LAW No. 10764, OF 12 NOVEMBER 2003**

Changes Law no. 8069 of 13 July 1990, which provides for the Statute of the Child and sets other provisions.

Art. 3 states the alteration of art. 240 of Law no. 8069 of 1990, which from then on enters into force with the following text:

**Before: Art. 240.** To produce or direct a theatre, television or film representation that makes use of children or adolescents in a scene of explicit sex or pornography:

Penalty - one to four years of confinement plus fine.

**After:** «Art. 240. To produce or direct a theatre, television or cinematographic representation, photographic activity or any other visual medium that makes use of children or adolescents in an explicit sex or vexatious scene:

Penalty - two to six years of confinement plus fine.

§ 1 Whoever counteracts with a child or adolescent under the same conditions referred to in this article will be subject to the same penalty.

§ 2 The penalty shall be of three to eight years of confinement:

- I - if the agent commits the crime while holding an office or function;
- II - if the agent commits the crime with the purpose of obtaining equity advantages for him/herself or for others.

The intention of the legislator was to increase the penalty for those promoting the vision of children and adolescents related to pornographic or explicit sex scenes, including scenes making use of photographic material or any other visual medium, adding another paragraph (§2) to the law. The first paragraph of the same article also punishes whoever, under the same circumstances, counteracts with children and adolescents.

The second paragraph includes an additional situation: it foresees a more severe punishment for those committing the crime described in the caption while holding an office or function, or when committing the crime in order to obtain equity advantages for him or herself or others.

Another evolution in legal terms is foreseen in the alteration to art. 241, which provides for a much broader typification of crimes involving the exhibition of images of children in a pejorative way in the worldwide web (Internet), which can be viewed as true progress, in legal terms. Thus, any image of children exhibited on the Internet in a pejorative manner is now qualified as a typical criminal conduct. Before that, this only was possible through an extensive interpretation of the penal law, a fact that was considered controversial by law experts.

The article also has received a first paragraph, which inflicts the same penalty to the hypotheses listed under numerals I, II and III, determining the same penalty to those participating in the exhibition of the child or adolescent, providing for data storage medium or service, or assuring access to images on the net. It entered into force with the following text:

**Before: Art. 241.** To photograph or publish a scene of explicit sex or pornography involving children or adolescents:

Penalty - one to four years of confinement

**After:** «Art. 241. To present, produce, sell, provide, divulge or publish, by any mass media, including the worldwide web or Internet, photographs or pictures containing pornography or explicit sex scenes involving children or adolescents:

Penalty - two to six years of confinement plus fine.

§ 1 The same penalty shall be applicable to those who:

- I - act as agents, authorize, facilitate or, by any means, act as intermediaries for the participation of children or adolescents in the production referred to in the present article;

- II - grant the means or services for storing the photographs, scenes or pictures produced as described in the caption of the present article;
- III - grant, by any means, access, in the worldwide web or Internet, to photographs, scenes or pictures produced as described in the caption of the present article. II - grant the means or services for storing the photographs, scenes or pictures produced as described in the caption of the present article;
- III - grant, by any means, access, in the worldwide web or Internet, to photographs, scenes or pictures produced as described in the caption of the present article.

The second paragraph foresees the aggravation of the penalty for those committing the crime while holding an office or function, as he or she for some reason establishes a relation of power over the victim, or if he or she commits the crime with the intention of obtaining equity advantages for him or herself or for others:

§ 2 The penalty shall be of three to eight years of confinement:

- I - if the agent commits the crime by taking advantage of his or her office or function;
- II - if the agent commits the crime with the purpose of obtaining equity advantages for him/herself or for others.»

**Articles 242 and 243** – which also feature conducts typified as criminal, in spite of no changes having been added to the caption, maintaining the conducts – have suffered an aggravation of the penalty. In the case of article 242, the penalty was aggravated from six months to two years of confinement, to three to six years, which certainly intimidates offenders, since even the regime for compliance to the penalty has been aggravated, in spite of excluding the fine penalty.

As to article 243, there has been no alteration in the typification of conduct either. Nevertheless, the penalty has become more severe, since it was altered from six months to two years of confinement without loss to the fine, in case the fact does not constitute a more severe crime, to a two to four-year confinement, including the application of fine for the same case.

**Before: Art. 242.** Selling, providing, even if free of charge, or delivering, by any means, guns, ammunition or explosives to a child or adolescent:

Penalty – six months to two years of confinement plus fine

**After:** «Art. 242. ....»

Penalty - three to six years of confinement» (NR)

**Before: Art.243.** Selling, providing, even if free of charge, ministering or delivering to a child or adolescent, by any means, without just cause, products whose components may cause physical or psychic dependence, even if by undue use:

Penalty- six months to two years of confinement, plus fine, if the fact does not constitute a more severe crime.

**After:** «Art. 243. ....»

Penalty - two to four years of confinement, plus fine, if the fact does not constitute a more severe crime»

## 2) **DECREE No. 4975, OF 30 JANUARY 2004**

Promulgates the Extradition Agreement between the Mercosur Member States, establishing a commitment among the signing countries by which Member States commit themselves to reciprocally deliver, according to the rules and conditions established under the present Agreement, those persons found within their corresponding territories that are being wanted by the competent authorities of another Member State, in order for them to be sued for the presumed practice of some crime, so that they may respond to a process that already is under way or for the deprivation of liberty.

Extradition is an act of international cooperation which consists in the delivery of one person, accused or condemned for one or more crimes, to the country reclaiming him or her. Extradition shall be requested based on the reciprocity of treatment for analogous cases<sup>5</sup>. The well-known jurist Cahali defines extradition as the act through which a State delivers, for the purpose of being sued or for the execution of a penalty, an accused individual or an individual known as being guilty of an infraction committed outside its territory, to another State which reclaims him or her and that is competent for judging and punishing such individual»<sup>6</sup>.

That certainly will facilitate the punishment of offenders acting at the triple border and in the Mercosur member countries, namely the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, since it takes into account a highly important document for the relationship between the Mercosur member countries, i.e., the Assunción Treaty, signed on 26 March 1991 between the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay,



and the Ouro Preto Protocol, on the institutional structure of Mercosur, signed on 17 December 1994. Nevertheless, that legislation is very recent and its applicability is still being explored by law operators and the judiciary and security bodies; therefore, practical results cannot be assessed so far.

According to the terms of article 2 of Decree 4975, when the text of the aforementioned Agreement is applied by the Federative Republic of Brazil, especially its article 5<sup>7</sup>, it is the responsibility of the Supreme Court of Brazil to process and judge the extradition requested by a foreign State, as well as to appreciate the nature of the offence, according to its internal rules and decision making procedures and its interpretation of the facts that provide the basis for the extradition request, according to Brazilian legislation.

### 3) **DECREE No. 5007, OF 8 MARCH 2004**

This Decree promulgates the Facultative Protocol to the Convention on the Rights of the Child, regarding the trafficking of children for child prostitution and child pornography purposes.

The Protocol was created as a response to the significant increase in the international trafficking in children for sale, child prostitution and child pornography purposes, and also by taking into account the increasing offer and availability of child pornography on the Internet and other modern technologies, in view of the conclusion of the International Conference on Combating Child Pornography on the Internet (Vienna, 1999), which demands the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, by emphasizing the importance of closer cooperation and partnership among governments and the Internet industry.

The protocol's adoption by the largest number of subscribing countries also is believed to facilitate the elimination of the sale of children, child prostitution and pornography, by promoting a holistic approach that may take into account factors contributing to their occurrence, highlighting the under-development, the poverty, the huge economic gaps, the unequal social and economic structure, malfunctioning families, irresponsible adult sexual behaviour, harmful traditional practices, armed conflict and trafficking in children.

Another objective of the Protocol is to stress before the States the need for efforts of public awareness raising for reducing the consumer demand regarding the sale of children, child prostitution and child

pornography, and also to highlight the importance of the strengthening of a global partnership among all players, as well as the improvement of law enforcement at the national level.

In short, Member States shall prohibit the sale of children, child prostitution and child pornography, as established under the present Protocol. Also, aiming at meeting its purposes, the Protocol defines those actions considered offensive, as stated under article 2<sup>o</sup>:

- a) Sale of children means any act or transaction by which a child is transferred by any person or group of persons to another person or group of persons, in exchange for remuneration or any other means of compensation;
- b) Child prostitution means the use of a child in sexual activities in exchange for remuneration or any other means of compensation;
- c) Child pornography means any representation, by any means, of a child involved in real or simulated explicit sexual activities, or any representation of a child's sexual organs for essentially sexual purposes.

Its third article features a series of commitments to be complied with, promoted and implemented by the Member States within their territories; shall be considered offensive conduct under the provisions of art. 2, the offer, delivery or acceptance, by any means, of a child for the purpose of: sexual exploitation of children; transplantation of a child's organs for profitable purposes; involvement of children in forced labour, undue induction to consent, as middleman, for the adoption of a child through the violation of the applicable international legal instruments on adoption; the offer, obtaining, acquisition, attracting or delivery of a child for child prostitution purposes, as defined under Article 2; and the production, distribution, dissemination, importation, exportation, supply, trade or possession, for the above-mentioned purposes, of child pornography, as defined under Article 2.

In its Article 6, the Protocol highlights the need for and presents as a commitment among Member States all possible assistance regarding the investigation or criminal procedures or extradition procedures incepted in relation to the offences described in the reference document.

At the end, under article 11, it contemplates the international cooperation among the Member States, as they commit themselves to adopt the necessary measures for intensifying international cooperation by means of multi-lateral, regional and bilateral agreements, for preventing, detecting, investigating, judging and punishing those

responsible for acts involving the sale of children, child prostitution, child pornography and child sexual tourism. The Member States also shall promote international cooperation and coordination among their authorities, national and international non-governmental organizations and international organizations. Nevertheless, that legislation is very recent and its applicability is still being explored by law enforcement operators and the judiciary and security bodies; therefore, practical results cannot be assessed so far.

#### 4) **DECREE No. 5.015, OF 12 MARCH 2004**

This Decree promulgates the UN Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, which shall be executed and complied with in all of its content, with the objective of promoting cooperation for preventing and fighting transnational organized crime more efficiently. It should be noticed that the National Congress has approved, by means of Legislative Decree no. 231 of 29 May 2003, the text of the UN Convention against Transnational Organized Crime.

As per the present convention, its article 18 also contemplates Reciprocal Legal Assistance, during investigations as well as during processes and other judicial acts. The signatory states also commit themselves to provide all legal cooperation possible, in accordance with the laws, treaties, agreements and protocols applicable to the Requested State, within the scope of investigations, procedures and judicial acts related to the infraction deriving from the act of a corporate body in the petitioner Member State.

Article 19 also highlights the importance of reciprocal cooperation and articulated actions among the Member States, establishing that even in the absence of cooperation agreements and protocols, issues regarding investigation, procedures or legal actions, and the carrying out of joint investigations may be casuistically decided.

Nevertheless, in view of such cooperation articles, joint actions and the exchange of information provided by the protocol, the principle of territoriality and sovereignty becomes evident when it proposes that the convention does not authorize any member State to exercise jurisdiction or functions, that the internal law of that State reserves exclusively to its own authorities, in the territory of others, thus respecting the constitution of each subscribing nation.

## 5) **DECREE NO. 5016, 12 MARCH 2004**

This Decree promulgates the Additional Protocol to the UN Convention against Transnational Organized Crime, against the Smuggling of Migrants by Land, Sea and Air, ruling that the provisions of the referred protocol shall be fully complied with.

The Decree defines Smuggling of Migrants as the promotion – with the objective of directly or indirectly obtaining financial benefits or other benefic material – of the illegal entry<sup>8</sup> of a person in a Member State of which such person is not a national or permanent resident, with the purpose of preventing, investigating and repressing the violations established under art. 6, whenever they are of a transnational nature and involve organized criminal groups, and protecting the rights of the victims of such violations.

In searching to typify a crime, the protocol includes the commitment by the subscribing State to adopt legislative measures and other measures it may deem necessary for the criminal characterization, as well as for promoting the aggravation of the penalty, without loss to the legal system's fundamental concepts. The protocol also grants that no provision under the instrument shall impede a Member State to undertake measures against a person whose conduct constitutes a violation against the internal legal order.

The protocol also foresees that if a Member State identifies a suspicious vessel, it may approach it with or without the help of another State, obstructing its right to liberty of navigation, demanding the pertinent documents. In case the vessel is suspicious or of an omitted or dubious nationality, the State shall be authorized to undertake the appropriate measures, in accordance with the internal and international applicable law, as long as it provides for the protection of people on board, of the vessel itself and its cargo, without harming commercial interests; measures undertaken must also observe the ecological environment.

As to acts that need to be carried out at the borders, the States are authorized – without loss to other commitments regarding the free circulation of people – to undertake the measures they deem convenient for preventing, detecting and fighting illicit trafficking in immigrants, according to the rules of internal public law.

Technical cooperation between the State and International Organizations, both governmental and non-governmental, is established as allowed by the corresponding norms of internal law, in order to assure the appropriate training of staff in the territories, with a view to

granting the application of norms foreseen by the present instrument. It is agreed that technical assistance and efforts for supplying the necessary resources and equipment for fighting the acts foreseen under article 6 of the present protocol are equally granted.

6) **DECREE NO. 5017, OF 12 MARCH 2004**

Promulgates the Additional Protocol to the UN Convention against Transnational Organized Crime to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children

The protocol foresees an efficient action towards preventing and fighting the trafficking in persons, especially women and adolescents, demanding a global and international approach by both the origin and destination countries that may include measures aimed at preventing such traffic, punishing violators and protecting the victims.

The protocol mentioned herein is a complement to the UN Convention against Transnational Organized Crime and its interpretation must occur jointly with this instrument. The protocol's main objectives are the prevention and the fight against the trafficking in persons, with special attention being provided to women and children, to protect and help the victims of such traffic, aiming at the full respect to human rights, and at promoting the cooperation among Member States so as to meet such objectives.

The cooperation measures among the subscribing States include the adoption of legislative measures and other measures deemed necessary for establishing the acts described under art. 3 of the protocol as criminal violations, whenever they have been intentionally practiced.

Each Member State also commits itself – whenever it deems necessary and in the measure allowed for by the rules of its internal law – to protect the privacy and identity of the victims of trafficking in persons, including the confidentiality of legal procedures regarding such crime. The Member State also must consider the application of a measure that may allow for the physical, psychological and social recuperation of victims, jointly with non-governmental entities, competent organizations and other elements of civil society, whenever the case.

Member States also shall promote the repatriation of traffic victims, without undue or unjustified delay, observing their safety and physical integrity, providing them with travel documents or any other type of authorization required that may allow the person to travel and be readmitted into his or her territory, whenever deprived of documents.

In terms of cooperation, the protocol foresees the exchange of information, respecting the corresponding norms of internal law, with a view to determining and identifying cases of absence or falsification of documents, the means and methods used by criminal groups for the purpose of trafficking in persons, the reinforcement of border controls for detecting and eliminating trafficking in persons, demanding travel documents from all crew members of certain means of transportation and, also, to apply sanctions in case of non-compliance to determinations stated under the present instrument. viajar e ser readmitida no seu território, quando desprovida de documentos.

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#### 7) **LAW No. 11106, OF 28 MARCH 2005**

This Law alters arts. 148, 215, 216, 226, 227, 231 and adds art. 231-A to Decree-Law nº 2848, of 7 December 1940 - Penal Code, and sets forth other provisions. The main topics of the Penal Code that have been reformed by recent Law 11106, of 28 March 2005, are listed below:

The cultural normative requirement «honest woman» has been suppressed; this expression had been included in several penal provisions (former crime of abduction, former crime of statutory rape, etc.). Only a «honest» woman could be the victim of such crimes, which used to give way to what the doctrine names an open criminal type, which required the judge to issue a judgment of value. It depended on the understanding of each judge to define the meaning of the expression «honest woman», which holds a very subjective meaning.

In fact, a woman's honesty can never be the object of penal tutelage. The alteration tried to recognize this in the realm of sexual crimes. What must be protected is the sexual liberty of the woman and man and not her or his honesty; nobody can be compelled to practice or witness any act that may attempt to his or her liberty. Therefore, the legislator has correctly eliminated the concept of honest woman from the Penal Code. That has also occurred in art. 215 PC (sexual possession by means of fraud), which now only

mentions the passive subject as being a «woman», without the adjective «honest».

Another major alteration has been brought by Law no. 11106/05, which proposed a new text for article 216 PC (indecent assault by means of fraud). Previously, only an honest woman could be a victim to this crime. Now the legal text properly refers to «someone», who can be a man or woman, adult, child or adolescent, rendering this article's typification much broader. The sole paragraph of this provision also includes an alteration: previously, there was a reference to the «offended party», now there is reference to the victim, thus providing for a much more comprehensive understanding.

The new law also revoked the condition of being married as a cause for increasing the penalty, whereas according to the opinion of the penal doctrine, such cause did not justify an increase in the penalty for sexual crimes. Being married or not does not alter the content of the criminal unfair (except in moral terms), giving priority to defending sexual liberty, irrespective of the agent's marital status. Nevertheless, if in a concrete case such circumstance becomes relevant, the judge may take it into account when establishing the penalty, in accordance with the guidelines set forth under art. 59 of the PC; but such condition is reserved for exceptional cases and is not the rule.

It should be noted that the legislator has missed an excellent opportunity for changing the name given to Title VI of the Penal Code, i.e., crimes against costumes, since costumes are not the legal object of penal tutelage, but modern penal dogma only conceives the existence of sexual crime as the one attempted against someone's sexual liberty or against the normal development of his or her personality, which is the case of children, whose personality is still being formed. Beyond such context, the incidence of penal values is not admissible for cultural concepts, at risk of confusing Morals with Penal Law, given that the role of the latter is not to correct people, nor to protect certain moral conceptions. Due to the principle of the exclusive protection of legal assets, there is no room in penal law for the tutelage of certain morals or religion or political or ideological parties.

Another innovation added by the legal text refers to the international and internal trafficking in persons. Previously the Penal Code only addressed the international trafficking in women, for prostitution purposes; now it refers to persons, in a broader sense. The legislator's intention was to create the criminal offence of internal trafficking in persons, for the exercise of prostitution. It is well known that prostitution is

not a crime, but that it is surrounded by several offences, such as, for example, when it involves children and adolescents. Any way, for the recognition of any violation involving prostitution, it is essential to identify not only the «exploitation», but also the clear offence against the victim's other legal assets, such as, for example, individual liberty, sexual liberty, etc.

Whenever the victim is of age, and has not been deceived or deluded, i.e., whenever the victim has freely adhered without any kind of coercion to traffic, obtaining certain advantages for herself through this act, there will be no crime at all. All legal assets involved in such trafficking are available. The victim's valid consent, as long as 18 years old or above, eliminates the situation of prohibited risk. Therefore, according to the theory of objective imputation, if there is no prohibited risk, there is no vagueness doctrine in such conduct, removing the action's illicit character.

Nevertheless, the legislator has created a typical situation by creating Article 231-A with the following text: To promote, intermediate or facilitate, within the national territory, the recruitment, transportation, transference, lodging or admission of a person that may exert prostitution: Penalty - three to eight years confinement plus fine. This article is followed by its sole paragraph, which contains the following text: The provisions of §§ 1 and 2 of art. 231 of this Decree-Law are applicable to the crime referred to under the present.

## **AT THE STATE LEVEL - STATE OF PARANÁ**

Paraná presents some evolution when referring to the protection of the rights of girls, boys and adolescents after the realization of the CPMI (Mixed Parliamentary Investigation Committee) on the Sexual Exploitation of Children and Adolescents, in 2003. By analyzing the final report of that CPMI, it has been found that the incidence rates of cases of sexual exploitation, abuse and violence suffered by girls, boys and adolescents is alarming and, therefore, calls for severe policies for the prevention, combat and elimination of crimes against the sexual liberty of girls, boys and adolescents. It also suggests that a cooperation commitment be drafted and signed between the Triple Border Countries, aiming at the effective punishment of offenders.

### **1) LAW No. 14607 OF 05 JANUARY 2005**

Regarding the evolution that took place in the State of Paraná, the Official Gazette of 05/01/2005 has published Law no. 14607. It sets forth that all schools in the State of Paraná teaching 5th to 8th grades must contemplate classes on the undue use of drugs and on child prostitution in their teaching programme, for guidance purposes.



Article 1 establishes that schools in the State of Paraná teaching 5th to 8th grades shall contemplate classes on the undue use of drugs and child prostitution in their teaching programme. Article 2 offers a few suggestions about how the issue should be presented to the students: the presentation of news reports, videos, lectures, statistics and other materials, for a better guidance of girls, boys and adolescents.

It is essential that children may have access to such information in an oriented manner through their teachers, and that they may debate the issue in class, as it affects the whole of society, considering that there is a strong trend towards denying reality. By means of this normative instrument, the problem of sexual violence against girls, boys and adolescents will be recognized and, thus, be duly addressed; youngsters are expected to be better informed and warned against prostitution.

Beyond that, the State must also organize a coherent policy for this issue, in addition to the defence of social rights, so that teachers may be duly trained for approaching such a touchy topic, still subject to taboo and prejudice. Students must be informed about the best way of detecting the problem, denouncing, demanding a response of the legal order and from the public protection and safety bodies. Each student must become a multiplier in fighting sexual violence or any other illicit action that may hurt or harm his/her rights to life, health, leisure, culture and all other rights contained in the Constitution of the Republic and in the Statute of the Child.

## **AT THE MUNICIPAL LEVEL - CITY OF FOZ DO IGUAÇU**

### **1) LAW No. 2897, OF 29 MARCH 2004**

As can be read in its text, this law governs the obligation of any establishment to feature a poster on a visible spot containing the telephone number of the police station specialized in the defence of girls, boys and adolescents, with an express warning that the Sexual Exploitation of Children and Adolescents is a crime, aiming at facilitating and increasing the number of denunciations related to this type of crime, as well as of all those implying injury or threat to the fundamental rights.

In case of non-compliance to the Law, article 3 features the penalties to be applied to entrepreneurs or owners of any kind of establishment who omit themselves or disrespect the legal text, such as the issuing of a notice, fine or even the suspension of his or her business license. Within thirty days upon being notified, the establishment that does not adequate itself to the law will be subject to a daily fine and, in case it does not

provide for its regularization within 30 days, its business license shall be suspended until the legal requirements are complied with.

This law does not foresee a solution for the problem of sexual violence against girls, boys and adolescents, but manifests society's commitment towards fighting and eliminating all forms of sexual exploitation. By adhering to the campaign, establishments demonstrate their concern towards the issue and make a public statement that they are against any kind of sexual violence against girls, boys and adolescents, a fact that encourages victims and all people who know persons that are being exploited or cases of exploitation, to denounce them, as accusers feel somehow backed by public opinion and reassured that society will do its best to defend them and help them.

It also demonstrates that society is aware of the problem and demonstrates solidarity towards the victims, that it shares the wish to prevent and repudiate exploitation, and that it also will demand from the Public Authority to take action in the sense of the effective punishment of aggressors, promoting a society that values the integral and healthy development of its children.

Nevertheless, in spite of it being a quite interesting proposal for the publicizing of the problem of sexual violence against girls, boys and adolescents and for avoiding that such cases may continue to go unpunished, the law has not yet been regulated in terms of the inspection of establishments regarding the exhibition or not of such posters. Article 4 states that the inspection of the compliance to the law will be left in charge of the competent municipal body, in accordance with the regulation set forth by the Executive.

Therefore, no inspection procedures are scheduled so far; which bodies will be responsible for inspection, how they will act, what fines will be charged or whether they will exist at all and what will be the amount, among other procedural aspects, are still to be defined.

Another aspect of the law that has hampered its compliance is contained in the provisions of article 5, which attribute the poster's design and manufacturing to the owner himself, in accordance to what has been established by the law. The campaign certainly would become more effective if posters were standardized, designed and prepared and paid for by the public administration, releasing owners from this burden.

## 2) **LAW No. 2999, OF 6 MARCH 2004**

This law inserts the Statute of the Child and Adolescent (ECA) into the school programme and sets forth other provisions. The objective is to

stimulate the children's knowledge about measures that assure the right to citizenship to the infant-juvenile population.

The law's second article states the responsibility and the commitment of the Executive towards carrying out the activities related to the study of the ECA, establishing that such activities shall be carried out during the school year and only on school premises (numeral I); that activities shall count with the participation of students, their families, principals, teachers and all school staff, aiming at their perfect integration and so that they may all become aware of the ECA (numeral II).

The aforementioned law aims at the prevention of social risk situations; as a preventive measure, it aims at the awareness building and mobilization of society, in relation to the integral protection to which Brazilian girls, boys and adolescents are entitled to<sup>9</sup>, so that they may become capable of identifying factors of individual and collective risk, understand and apply mechanisms for the protection and prevention against injury to the most common basic rights in their own environment, and also for considering the issue of integrity and dignity of the body based on human rights. And most of all, to demand respect for oneself, denouncing any discriminatory attitude he or she may suffer, or any violation to his or her rights as a child and citizen;

Nevertheless, in spite of the brilliant proposal presented by law and of the presentation of rights to the legitimate holders, so far the aforementioned legislation has not yet been regulated by the Executive; the way how it shall be applied has not been stipulated yet and the legal text on how these subjects will be implemented in the school curriculum have not been described yet, demanding urgent regulation so that they may become fully operational.

<sup>1</sup> Decree-Law n° 2.848, of 07.12.1940

<sup>2</sup> Law no. 8069, of 13 July 1990

<sup>3</sup> Law no. 8072, of 1990

<sup>4</sup> Law no. 9455, of 1997

<sup>5</sup> Source: website of the Ministry of Justice

<sup>6</sup> CAHALI, Yussef Said. *Estatuto do Estrangeiro*. São Paulo: Saraiva, 1983

<sup>7</sup> *Addresses Political Offenses, stating that extradition will not be granted for offenses that the requested Member State considers as being political ones or related to other offenses of a political nature. The mere allegation of a political end or motive will not necessarily mean the offense will be qualified as such.*

<sup>8</sup> *The protocol defines illegal entry as the passing of borders without fulfilling the required prerequisites for the legal entry in the host State.*

<sup>9</sup> *Guaranteed by the Federal Constitution and by the Statute of the Child*

## **4. Summary of rights assurance procedures adopted by the judiciary and security systems and by associated institutions in Foz do Iguacu**

This topic presents a brief and simplified outline of the procedures of the judiciary and security systems and social entities in charge of referring accusations (*notitia criminis*) to the competent authorities, especially in the city of Foz do Iguacu, with its Triple Border peculiarities, aiming at the finding of facts, such as circumstantial evidence of the authorship and the materiality of the crime, aiming at the later punishment of aggressors.

The following are the organs and entities in charge of receiving accusations of crimes of commercial sexual exploitation, child prostitution networks, cases of abuse and other forms of sexual violence against girls, boys and adolescents, as presented at the Workshop for the Formulation of a Plan of Trilateral Cooperation between Local Governments and Law Enforcement Operators, for the Implementation of Public Policies for Fighting CSEC on the Triple Border, which took place on 12-13 May 2005, in the city of Foz do Iguacu.

<b>Body/Entity</b>	<b>Procedure</b>
SOS Child	Carries out the initial inquiry of the denunciation and refers it to the Child Protection Council ( <i>Conselho Tutelar</i> ) for inspection of the place and of the people involved
Child Protection Council	Promotes the immediate stoppage of violations to the rights of girls, boys and adolescents; may carry out search and seizure of minors in situation of risk or on the streets.
Programme Sentinela 24 hours	Refers accusations to the Child Protection Council; carries out victim support and protection activities (social and psychological assistance).
Municipal Guard	Carries out the initial investigations, without any deeper involvement with the case; accompanies child protection councillors on diligences; inspects compliance to legislation and public order.
Nucria	Carries out all activities that are the competence of the State Civil Police, specifically those regarding the protection of the rights of girls, boys and adolescents.
Woman and Tourist Police Office	Carries out all activities that are the competence of the State Civil Police, specifically those regarding the protection of women's rights.
Federal Police	Responsible for the investigation of federal crimes, against human rights and trafficking in persons. Even though it is responsible for carrying out investigations, this body also plays an important role in receiving accusations; that is the reason it deserves to be included as a receiver of criminal news.
Prosecutor of the Childhood and Youth Court	Receives accusations and forwards them to the security bodies for investigation and elucidation of facts; may require urgent measures.
Judge of the Childhood and Youth Court	Receives accusations and forwards them to the security bodies for investigation and elucidation of facts; may determine diligences, urgency measures and search and seizure of minors.

Bodies with competence for carrying out investigations on notified crimes:

<b>Body</b>	<b>Activities developed</b>
NUCRIA (Nucleus for the Protection of Children and Adolescents victims to violence) Federal Police Special Group for Repression against Organized Crime and Drug Traffic Police Station for Labour issue Woman and Tourist Police Office	Investigation of notified crimes and inspection; may request preventive arrest
State Ministry of Justice Federal Ministry of Justice Criminal Investigations Prosecutor's Office Public Ministry of Labour	Promotion of Penal Action, investigation of notified crimes and inspection; may request preventive arrest

Bodies with competence for incepting the punishment process

<b>Body</b>	<b>Activity developed</b>
State Ministry of Justice Federal Ministry of Justice	To promote penal action, directly participate in the process, producing evidence; may request preventive arrest; inspector of the law and of constitutional guarantees.
State Judge Federal Judge	Collects depositions and evidences; promotes the processing of penal actions; may decree preventive arrest; adjudicates (punishment or acquitment)

The analysis of such procedures – adopted by the Brazilian judiciary and security systems, with emphasis in the State of Paraná and with special consideration for those developed in the city of Foz do Iguacu, according to the implemented bodies and established entities – is essential for the identification of factors that may facilitate or create obstacles to an effective response by the system, especially in the action of law enforcement operators, as reported below.



## **5. Factors that facilitate or impede the response of security and judicial systems, agencies for children's and adolescent's rights and particularly law enforcement officers in Foz do Iguacu**

It is difficult to punish aggressors effectively for crimes of exploitation and violence that have been committed against girls, boys and adolescents. One reason is that members of the security forces and justice systems often don't believe most of the victims.

During project implementation in Foz do Iguacu, there was always a lot of confusion on the part of the law enforcement officers, in both the judicial and security systems, with regard to differences in interventions, approach and characterization between sexual abuse and commercial sexual exploitation of girls, boys and adolescents. This can also be confirmed from the statements taken and incorporated into the present study.

It is therefore necessary to clarify the concepts and establish which factors differentiate this kind of offence. The different forms of sexual violence against girls, boys and adolescents are discussed in the present study. However the border project has prioritized interventions in the various CSEC modalities that have been summed up as being all those remunerated sexual activities involving children under 18 and taking place in the street or in closed environments – bars, hotels, brothels, etc.; and pornography and trafficking of children for sexual purposes.

Despite the peculiarities of the crime it should be observed that CSEC may include the participation of family members. It is however differentiated from sexual abuse within the family by particular characteristics, such as for example a commercial transaction, that is



remunerated in money or in kind, between client and victim or between client, intermediary and victim; by the tendency of the aggressors to be involved in correlated crimes like drug or arms trafficking, pimping, touting, etc.; and by the victims' awareness of their situation of "working" to satisfy their own needs or those of their families.

Although boys are also found in situations of sexual exploitation, there is a much greater percentage of girls and adolescents, corresponding to the same characteristics as adult prostitution. Victims can be between 8-10 years old, but most are adolescents. As a rule, the exploitation occurs outside the victims' homes.

Although sexual abuse is a relationship of power, it also has other characteristics. For example the fact that it happens in any social class shows that the victim's material needs do not justify the crimes. Also, it affects girls and boys indiscriminately. In 80% of the cases, the victims are 12 or under, or, they were 12 and under when the abuse first began. In some cases, the victims are babies. In this type of crime, the abusers are people whom the victims trust, such as fathers, mothers, neighbours, teachers, priests, or doctors, among those with some kind of responsibility for the child.

In the case of abuse, unlike sexual exploitation, the aggressor usually acts alone and there is no commercial transaction involved, nor does it necessarily imply the participation of third parties.

It is important to highlight this difference between crimes of sexual abuse and exploitation. Many law enforcement officers, working in justice-related and security systems agencies, deliberately confuse the two types of problems to justify not touching on the crucial points of CSEC (corruption, participation of authorities, prejudice, and discrimination against the population of children and adolescents involved in the sex trade). Unfortunately, NGOs that deal with victims of CSEC suffer from the same misconceptions and prejudices, as it is apparently much easier to "recuperate" victims of abuse than those who have already assimilated the codes of adult prostitution, an activity highly repudiated by Brazilian society.

In the present type of study, it is important to explore this difficulty in distinguishing between cases of sexual abuse and cases of sexual exploitation. The confusion surrounding these issues has created obstacles to responses on the part of: the legal and security systems, the organizations responsible for dealing with these cases, and society as a whole. The latter appears to be indignant about cases of sexual

abuse of girls, boys and adolescents but tolerates the participation of children and adolescents in commercial sexual exploitation.

Within the legal framework, an instrument must be created that gives some idea about how to establish strategies that both prevent and attribute responsibility for crimes committed against girls, boys and adolescents, while seeking above all to punish the aggressors. The importance of imparting responsibility to those who violate children's and adolescents' rights in view of the crimes committed, is an immutable concept at the very heart of society. However, legal institutions have shown many contradictions, failures and setbacks in their preventive systems and means of assigning responsibility. This is either due to authoritarianism and bureaucracy, or the crimes' socio-cultural or even economic aspects that are raised by the victims themselves, which all culminate in impunity.

In addition to these aspects there is the issue of a culture of corruption that has deep roots in the bureaucratic system of the security agencies through the existence of professionals who maintain links with the sexual exploitation networks. It is the third most profitable type of trafficking, surpassed only by drugs and arms, which favors impunity even more. Nevertheless, if on the one hand the legal and security systems suffer from the existence of parallel powers involved with corruption, on the other there are co-existing sectors that are dedicated to solving the problem, and are striving for justice.

With the different actions of governmental and non-governmental organizations, society has become aware and mobilized. It realizes that the legal position cannot be restricted simply to punishment, which is the strongest way of suppressing any kind of crime. More satisfying would be the implementation of a set of preventive measures and the squashing of the aggressors' actions, whether it be in the place where the conflict is established (family, community, school, workplace, street), or by dismantling the extensive networks of sexual exploitation of girls, boys and adolescents, given that these measures demonstrate their quota of contribution to the legal and security systems.

This is because society and the legal and security systems are aware that violence cannot merely be seen as an isolated action, as a purely criminal act that is an end in itself. It must be seen as a set of interlinked actions in temporary or permanent networks. In view of this piece of information, a concept can be traced taking as a point of departure a set of actions that make it possible to dismantle the sexual exploitation

networks and the identification of the offenders and all those involved in such criminal acts, by identifying and accompanying the cases that are denounced.

In their day-to-day performance, the law enforcement officers, including all the members of the legal and security systems, come across innumerable questions that prevent the meting out of due punishment to the offenders in crimes against sexual liberty, due as much to the questions set out below as by the peculiarities presented by crimes of this nature.

### **5.1. Factors that have a negative effect**

In the opinion of law enforcement officers, the following are among the most important factors that make it more **difficult** for the legal system and security forces to respond to the problem:

#### **1) Sexual exploitation ends up becoming a "lucrative activity for the victims"**

There is some resistance to denouncing the crimes to the appropriate authorities for a more thorough investigation. Victims try to conceal the fact that they are living or involved in a situation of commercial sexual exploitation, since by exchanging sexual "favours" they receive money, gifts, or other rewards. This crime becomes highly lucrative for the victims who in most cases live in situations of destitution and abandonment.

It is known that violence and poverty are considered to be risk factors. Children and adolescents do not have the capacity to discern what will be good or bad for them in the long term, and think only of immediate solutions to solve the problems they have at present, without evaluating whether what they are doing will be good or bad for the future. The victims create a "work" situation to correspond to their own needs or that of their families.

In addition to this, the capitalist system has built a society that is entirely orientated towards consuming, towards "having". Children and adolescents feel the need to live in the present, to be part of a group that admires them for what they have and for the "adventures" they live. They create a false fantasy world without analyzing the consequences or future effects.

In this way, poverty and destitution are seen as conditions that motivate the sexual exploitation of girls, boys and adolescents, favouring social

exclusion, whether it is through the demands of work and survival that fall on the backs of the children, or the family's poor living conditions or the way in which it organizes itself in order to survive.

There are cases in which the mothers themselves, who should be looking after the healthy and integral development of their offspring, are actually instrumental in helping them to ignore the problem as such. The reason is clearly that as long as the situation of exploitation lasts, the children are contributing resources to the maintenance of the family and thereby enable the family to have the minimum conditions for survival.

When the victims themselves do not denounce the sexual violence or exploitation, the police do not receive *notitia criminis*<sup>10</sup> of the crime. When they are finally told of the case, they cannot obtain precise information from the exploited child in order to be able to conclude the inquiry. Even worse, when they do take the victims' statements, these conceal the situation of sexual violence they are living in by omitting the truth, creating inconsistencies in a visibly manipulated manner so as to continue with the illicit activities in true collusion with the exploiter, thereby maintaining the situation of power and dominance.

In the opinion of a representative from the Federal Police and head of the Migration Unit of the Federal Police Department in the city of Foz do Iguacu, this becomes apparent when seen from the economic angle, as can be confirmed in the following:

"Often sexual exploitation occurs as a way of having an income. Desperate families and adolescents allow themselves to be exploited because they can find no other way to survive. On the triple border there is so much poverty and this contributes greatly to increasing the sexual exploitation of girls, boys and adolescents."

And he concludes by affirming that among other actions, it is necessary to tackle the root of the problem as well, thus:

"If the family has an income, the child is not going to go out and work in the street. If they are educated, the child will not be sexually exploited. If there is development the tendency to have crimes of exploitation will disappear."

According to the representative of the CEDEDICA (Centre for the Defence of Children's and Adolescents' Rights), there is also a connection between the legal and security systems' difficulties in responding and the socio-economic factor, affirming that the role of the Legal Branch should be:

"To eliminate a false impression of the principle of harmony among the three branches of state power, and, as an action in defence of human rights and the true interests of individuals, the Executives of the three branches of government shall promote public policies of social inclusion, that is, emancipating policies, not self-serving, meeting the needs of a certain clientele, paternalist or compensatory: the exact opposite of what is being promoted at present.

In view of these considerations it can be seen that to combat the factor that obstructs the denunciation of cases of sexual exploitation, it is necessary to promote public policies that work with adolescents and children to restore self esteem and social insertion, that give structure to families, and make alternative forms of work, and providing for oneself with dignity, feasible.

## **2) Weaknesses of the judicial and security systems**

The offences hardly ever come to the attention of the authorities who have the powers to investigate and punish, as the question of denunciation is much more delicate than is generally supposed. In spite of a widespread campaign to raise awareness about the problem of the sexual exploitation of children (boys and girls) and adolescents, society remains "macho", authoritarian, discriminatory and patriarchal - concepts instilled in its culture due to its historical origins.

The structural inequality of Brazilian society is not only reflected in class, race and gender domination. The mark of authoritarianism can also be found in the relationship between adults and children. Children and adolescents are not considered as subjects but rather as objects of adult domination, both through the exploitation of their bodies for work, and in the exploitation of their sex and their ideological submission: they must always serve the adults and submit to them. The domination springing from gender and race is shown by the fact that the great majority of victims of sexual exploitation are female, black, and mulatto.

Children who have been sexually abused consider themselves to blame for their situation. They believe themselves to be in a situation of exploitation of their own volition and not induced by the aggressors who, in most cases, make false promises and offers. Since the aggressors are older, they impose a relationship of domination, respect and submission to their commands.

In view of all this, the girls, boys and adolescents believe that the authorities and society will form an unfavourable opinion of them. They fear that they will suffer repression and will be judged with prejudice in matters involving sexuality. Afraid that they will be discriminated against and treated with hostility for being in a situation of sexual abuse and exploitation, they also think about the repercussions in society, and their acceptance within their own family, thus accentuating their fear of rejection. An informer from the Childhood and Adolescence section of the Foz do Iguaçu Jurisdiction states categorically that:

“The victim’s fear not only makes the application of the law difficult, it actually impedes it.”

Another factor is that the aggressors seek revenge against the victims and all those who denounce them, and against the witnesses in the case of a criminal investigation. The threat is constant as the repercussion of the crime in society reflects very negatively on the aggressor. So they seek to silence the victims with threats, retaliations, persecutions, intimidation and other acts that disturb the victim and frighten the accusers or witnesses to the crime.

It is worth noting that, despite the efforts of the security and judicial institutions to repress and punish offenders, there are also known cases of public security entities, responsible for maintaining law and order, who have acted as “protectors”, but above all, the security and judicial institutions have been largely powerless in destroying violence in society. It is also important to point out that there are situations wherein the citizen is doubly disrespected, both by the police/legal institution who deals with him or her, and by the aggressor, thus aggravating the situation involving children and adolescents even more.

This phenomenon is observed because frequently in cases of sexual abuse or exploitation, the police and technical staff have not been adequately orientated. When they become aware of the case (through anonymous denunciations, complaints, representations or occurrences), they often get overly involved, allowing personal emotion to get in the way, taking on the role of judge meting out immediate punishment, thereby turning the aggressor into a victim.

This indicates the need for police stations that specialize in handling cases where the rights of children and adolescents have not been respected, where the norms set out in the Statute of the Child and Adolescent should be implemented. This took place in the city of Foz do Iguaçu, in the state of Paraná, with NUCRIA, as up till then there had

only been a specialized police station for the punishment and repression of adolescent offenders.

With this perspective, increasing the value placed on citizenship is an important concept in constructing guarantees for rights, as an instrument for broadening society's participation and re-establishing conditions of worthiness by legitimizing the word of those who have been violated by strengthening their participation in organized society. In this sense, sexually violated children and adolescents must be mobilized and made aware so that they may establish a place for themselves and their rights as citizens, together with society and the government.

### **3) Lack of trust in the legal system, in the security institutions and in the application of the legislation**

The victims do not denounce their aggressors because of their lack of trust in the security institutions and in the legal system itself, as justice usually comes late because of serious bureaucracy. The legislation is quite mild in relation to the aggressors, which is facilitated by the benefits they possess with the legal instruments and principles.

The weakness of the legal and security-related institutions is apparent from the lack of decent working conditions and low budgets for public bodies, demonstrated by the lack of materials (infrastructure, equipment, permanent and non-permanent material), staff shortages in the form of a lack of judges, prosecutors and police officers (staff numbers, capacity and training). This considerably delays the legal responses in effectively punishing the aggressors. The lack of human resources gives rise to an overload of work for the law enforcement officers, especially when there is a backlog of work and cases to be solved. The officers do not have enough time available for professional capacity building and retraining, and even less for analyzing calmly and carefully the crimes that they take cognizance of. It is important to emphasize that the law enforcement officers are true heroes when all the difficulties found in the legal and security systems are taken into account. They are obliged to work with the very little and very worn out equipment they have available, while administering their overload of work with great ownership, and sensibility, in order to give priority to the more urgent cases.

One of the municipality's lawyers states that this lack of trust of the legal and security systems exists because the judiciary does not effectively function as it should and requires resources to expand its structure and staff. He points out the following unfavourable topics:

"The processing delay, lack of resources and qualified staff to deal with these kinds of crimes."

In the opinion of the representative from the Federal Police, the overloading of the public authorities due to excessive work and lack of staff is an unfavourable factor in the process of guaranteeing the rights of children and adolescents. He affirms that:

"Unfortunately, the lack of police, prosecutors and judges is absurd. The people who work in these sectors are true heroes, as even under overloaded conditions they manage to obtain positive results. However the state could do so much more if there were an adequate amount of staff."

For the informant from the Special Group for the Repression of Organized Crime, the question of lack of resources and staff in public bodies is evident insofar as it directly influences the search for solutions to the problems, as can be seen:

"It is necessary to endow the various state bodies responsible for the repression of such crimes with effective means and an adequate structure for this problematic issue."

Brazilian legislation is limited and out of date in relation to crimes against sexual liberty. This makes its application more difficult in view of the constitutional principle of legality set out in the provisions of article XXXIX of the Federal Constitution<sup>11</sup>. The dynamics of the aggressors' behaviour have evolved so fast that the legislation has ended up being incapable of an adequate characterization of the crime. This gives rise to impunity according to the principle of legality (*«nullum crime, nulla poena sine previa lege»*), whereby only a law that has been elaborated in the form of the Constitution may indicate whether a particular act presents criminal characteristics.

The Penal Code presently in force is also out of date in that it does not include all forms of sexual violence, and that it considers that they are crimes against social custom and not against the person. Furthermore, in certain cases, it is necessary for the victim to register a complaint. If he or she remains silent, then the Public Prosecution finds itself unable to make an unconditional accusation. Despite the existence of international conventions, these agreements do not have the power to modify the structure of the internal legal order. This can only be done by due legislative process as set out in the Brazilian Federal Constitution.

It is known that it is the duty of the State in promoting the notion of justice, to punish the offenders, setting up an investigative inquiry and



establishing a due legal process so that measures may be adopted with greater involvement, efficiency, commitment and within the correct legal procedures. The objective that must be persistently pursued is that of installing Specialized Police Stations for the Protection of Children and Adolescents in each state as well as special Jurisdictions for Crimes against Children and Adolescents, as happened recently in the city of Foz do Iguacu, where the first positive results can already be seen.

#### **4) Material proof of the crime**

Due to the complexity of the crime, yet another problem for the effective punishment of the aggressor is that the material proof of the crime is not easily obtained. The crime of sexual abuse, violence and exploitation, in the great majority of cases, does not leave any traces, or if the victim puts off or delays seeking help, the vestiges of the crime disappear as time goes by. Without material evidence of the crime, its characterization may be affected. Other means of proof, such as the evidence of psychological damage, are obtained over the long term and are very subjective in nature. This may consequently give rise to much discussion and controversy in the ambit of the legal proceedings.

The materiality of the crime has to do with its actual occurrence, factors that in themselves state that some criminal act has, *de facto*, taken place. When a victim delays seeking the authorities' help and support, the symptoms that are proof of sexual crimes, such as bruises, edema, scratches, bites etc., will have disappeared through the victim's natural biological processes.

It may also happen, as it often does, that the crime does not leave any clear traces whatsoever. In the case of indecent assault, for example, there is no clear concrete mark left by the criminal.

On analyzing the question from this angle, the Federal Police informant affirms that this difficulty in obtaining consistent proof of the existence of the criminal act does indeed exist and he adds:

"This difficulty exists because very often it is a crime without a trace. The proof of the crime would require the testimony of witnesses or proof that necessitates an expensive effort on the part of the Police Authorities."

The representative of the Special Jurisdiction for Childhood and Adolescence, on analyzing this question, states that one of the factors that most interferes in the response of the bodies of the justice system is that some of the police inquiries are badly done and he declares:

“Good work on the part of the police is fundamental. A well-done inquiry is the half-way mark to just punishment within the scope of a criminal lawsuit.”

In the case of crimes against sexual liberty and all types of sexual violence under consideration in the present study, when the law admits it, the crimes’ material aspect is even more tenuous because the proof of the occurrence of the offence is given only by the statement of a witness, and by the report of the victim, whereby it becomes one person’s word against another’s.

In most cases, there is circumstantial and not concrete evidence set out in the expert opinions provided by the Institute of Forensic Medicine. Even the expert himself has to exercise a certain amount of caution and attention so as not to allow any detail, which may be highly relevant to characterizing the offence, escape unnoticed. It is also pointed out that when the female victim is no longer a virgin, the difficulty of finding marks or signs of violence in the female reproductive organ is even greater.

Many times, what happens is that the aggressor is released for lack of an eyewitness and lack of vestigial proof of the material aspect of the crime, since the examination of the body of the victim of the crime reveals nothing about the facts, and there is only the victim’s version of the crime that has been committed. From the fragility of the material proof and in view of the existence of doubt, the accused ends up invoking the application of the principle *in dubio pro reo*<sup>12</sup>, whereby, in the absence of sufficient proof on which to base a condemnation, the option must be to absolve. The Federal Constitution in article 5, LVII sets out the principle of the Presumption of Innocence, which states that no one shall be considered guilty until duly tried, judged and condemned.

Faced with this difficulty there is no way to carry out punishment, as according to the constitutional principle of the presumption of innocence, when doubt arises as to the material aspect or the authorship of the crime, the magistrate must opt for the absolution of the accused due to lack of proof.

## **5) Social tolerance**

Despite innumerable campaigns to combat and prevent the different modalities of sexual violence against girls, boys and adolescents, Brazilian public opinion on sexual violence against children and adolescents is very heterogeneous and contradictory. The processes of reformulation of “macho”, authoritarian and patriarchal concepts that seek to create a

new concept of the theme, involve normally stagnant values such as ethics, morals, religion and social mores.

Public opinion on the problem of sexual violence against girls, boys and adolescents is contradictory because it is very conservative when it blames the victims, who are already victims of the violence to which they were submitted, and are trying to defend and guarantee their violated rights.

The idea constantly crops up in the populations imagination, of turning those who have been violated into being co-responsible, at least to some extent, for what has befallen them. This transforms the violated person into a co-participant in the crime. It goes to the point of creating repulsion for the children and adolescents being exploited as if they were responsible for, or facilitators of, the process of exploitation. This happens because in the great majority of cases the victims allow themselves to be deceived by false promises made by the exploiters/procurers and sometimes even show some satisfaction in having participated in the process of exploitation because they obtain financial or other compensation from the illicit activity.

The prejudices present in public opinion and the popular imagination create an ever-present barrier. Strategies are required that help to overcome the problems of social differences and obstacles, prejudice, stigmatization, naturalization, violence, impunity and to dismantle those actions that culminate in sexual violence.

Often people don't denounce because they don't want to get involved in a problem that has nothing to do with them. The upper class believes that these things only take place in the lower classes, thus abandoning their sense of community and the pursuit of common well-being. In reality it is a problem that affects the whole of society, whose ramifications are absolutely disastrous. It is an illicit activity that also maintains close ties with several types of transgressions such as drug trafficking and trans-national organized crime.

According to the position of an informant representing GERCO, it is important for society to denounce, as it is an important tool for punishing offenders:

"I believe there is a need for a campaign in the various mass communication media to teach victims and other people the importance of reporting the case to the authorities in order to avoid that the aggressors benefit from impunity. In so doing, they will also discourage such acts and prevent new potential occurrences."

Along similar lines, a member of the CEDEDICA shares this opinion when stating that:

“Structural problems (the hierarchical organization of society with a view to domination; corruption as the ideological basis for sustaining power; self-interest, paternalism; favouring special clientele; all in the legal-political field) and contextual difficulties (globalization with exclusion, consumerism, social inclusion based on consumption; the deifying of individuals, among others) are immediate factors favouring the non-application of sanctions foreseen especially for the part of the population in a position of power or those related to them.”

The process of changing public opinion about sexual exploitation is in progress. It needs mobilization and awareness raising among the population and the different institutions so as to influence public opinion, and to avoid turning the phenomenon of sexual violence in Brazil into a banality.

It may be observed that within the scope of organized civil society, the mobilization and inter-action of governmental organizations at the national, state or municipal level, with the tireless action and support of non-governmental organizations, has facilitated a process of communication and inter-action which, even when informal, has produced results with regard to the strengthening of combative actions and a better understanding of the problem of sexual violence towards girls, boys and adolescents. In this sense, the major role of the campaigns and fronts for combating sexual violence against children and adolescents, and that of the councils, events, seminars, workshops, publications and surveys, should be acknowledged.

## **6) The victim becomes a victim of the system**

Another aspect that prevents the authorities from finding out about cases of sexual exploitation is that the act of denunciation is influenced by the victim's wish to completely forget the bad experience s/he went through. What happens in this case is that reliving the sexual exploitation or violence that they suffered causes the victims additional serious mental trauma, when they actually harbour the hope that they might readjust and start a normal life in an individual and healthy way.

They try simply to forget what they have gone through when they conceal the problem and avoid commenting on the case. When the victims go before the police authorities they must report with as much detail as

possible how the crime took place so as to help the work of the law enforcement officers. This provokes deep disgust as they have to relive the moments of anguish. Plus the fact that in the search for material proof that might characterize the crime, they need to undergo an expert examination which is embarrassing and distressing.

Furthermore, crimes of this nature are difficult to detect and despite all the efforts of the police authorities, the aggressors' astuteness manages to get them past all the police apparatus, making use of gaps in the law to work out a defence thesis, and in this way silence the legal system. Upon obtaining absolution or a mild punishment, the aggressor calmly returns to society and it is the victim who then receives threats and becomes the object of repulsion for not having been able to prove his or her statement.

When the processes are running smoothly, the victims have to wait for years for a solution from the courts. While the process is undergoing the necessary procedures, the question of sexual exploitation is not forgotten in the mind of the victim as s/he suffers in silence while waiting for a solution to the case. So the very system itself punishes the victim as long as it does not compensate him or her with the aggressor's effective and well-deserved punishment.

Along similar lines, despite the fact that the legislation protects witnesses and those who make denunciations, there are concrete examples of a lack of confidence in the effectiveness of these promises of protection, as the aggressor's retribution is often swift and cruel. This protective legislation needs to be implemented urgently, given that the security system itself cannot guarantee effective protection, whether this is due to a lack of resources or staff or to the overload of work in the police stations, in forums and the Public Ministry.

There isn't a single social programme that deals with exploited girls, boys and adolescents and victims of sexual violence, which monitors the victim once s/he has come of age at which point the chance that they will return to former practices is very high. At the same time, there is no effective public policy directed towards guaranteeing the physical safety of children who are removed from prostitution, but find themselves constantly threatened because of the information they have on the activities of those who exploited them and the exploitation networks. What prevails is the law of silence in exchange for the preservation of the life and physical integrity of the victim and his or her family.

This is a great challenge, since governmental responses in relation to the problem's complexity are very fragile. The lack of funds and instruments that might allow for better work on the part of the police, the dearth of personnel, and of trained investigators, also contributes towards discouraging the victims from denouncing the aggressions as they end up being victims of the security and legal systems themselves.

## **7) Establishing criminal proceedings in crimes against customs, sexual liberty, and other cases of sexual violence**

As a rule, in crimes against customs, including those against sexual liberty, the lawsuit is exclusively private and only proceeds when there is a complaint registered by the victim or his or her legal representative, as can be verified in the provisions of article 225, head paragraph, of the Penal Code<sup>13</sup>.

In this context, it is worthwhile highlighting the form that the law provides for establishing a Criminal lawsuit and the requirements for proceedings when the ministerial action depends on representation (article 225. paragraph 2, Penal Code). This is because the lack of any one of the conditions for the suit does not merely imply that the process will be extinguished without even being further examined, it means that the entire process will be null and void.

In a similar vein, Fernando Capez<sup>14</sup> avers that "*the conditions of the action must be analyzed by the judge upon officially receiving a complaint or accusation. Should any one of them be missing, the magistrate should reject the initial petition, declaring the author to be without suit. If this is not done at that moment nothing prevents it from being done, indeed it must be done, at any moment declaring, should it be the case, the nullity of the entire process (CPP, art. 564, II).*"

As can be seen, not much effort is required to show that in crimes against customs foreseen under chapters I, II, and III of Title VI of the Penal Code, the criminal lawsuit will be established upon receipt of a complaint made upon the initiative of the plaintiff, but it is explicitly, albeit exceptionally, admissible that it be made by an accusation proffered by the Public Prosecution.

The fact of it being a private lawsuit, or conditioned to representation, rather discourages the victim, as it can be observed that the *notícia criminis* is an act that the victims often avoid, as has already been shown. However, when it is an unconditioned criminal lawsuit, it is the exclusive right of the Public Prosecutor to offer the accusation, without

being able to utilize a criminal proceeding, because the punitive intention is transferred from the victim to the public interest.

When the legal action is public and unconditional then it is obligatory to file it. Then the criminal lawsuit is not an option (article 42 of the Penal Process Code) and the shelving of the police inquiry is controlled by the judge, which means that inevitably the supposed aggressor will be investigated.

It is recommended that the lawsuit be the victim's initiative because it is understood that the interests at play are more private than public and that the scandal produced by the legal process may be more harmful to the offended party than if nothing were done against the delinquent. In this case it is not the right to punish that is transferred but rather, the right to act as Guilherme de Souza Nucci<sup>15</sup> reminds us.

In this case the victim may enjoy the right to act, by renouncing the right to complain, allowing the dissolution of the process to occur, by the concession of pardon to the accused, allowing extinction to be declared and thus exempting the aggressor from responding to a criminal lawsuit.

## **8) Characterizing the types of conduct**

Another point that deserves special attention when speaking of the difficulties encountered in applying the legislation are the gaps in the legal system that hamper the actions of the security and legal bodies when carrying out their regular duties. Despite the existence of more specialized and updated international agreements, such treaties do not have the power to modify the structure of the internal legal order, which can only be done by means of a legislative process as set out in the Brazilian Federal Constitution.

It is important to point out that the activities of law enforcement officers are limited and restricted to the provisions of laws originating from the entire legal order. Despite having the legal authority to act at their own discretion in concrete cases by attempting to adapt the compulsory legal norms, they must also prioritize the harmony of the legal order and the quest for the common good, without contradicting the letter of the law, in spite of there being positions expressed in legal doctrine contrary to "the concession of this power to the magistrate".

The concept of crime is directly and predominantly related to the concept of law as the majority of legal commentators cannot conceive the existence of this phenomenon outside of the law because, according to their understanding, it is the result of disrespect for a normative precept.

Outside of this conception, the crime merely implies violations that should be situated in other branches whose sanctions have other foundations and purposes.

Discretionary power is the power to choose, within certain limits, the measures to be taken, considering whether they are opportune, and their convenience in a determined situation that is not expressly provided for in law. Rodolfo de Camargo Mancuso, in an article published in the *Revista dos Tribunais* (Courts Review) nº 643, *A Tutela Judicial na Segurança* (Legal Guardianship in Security), pp. 39/40 quotes Galeno Lacerda: "*Discretion*" does not mean being arbitrary, it is rather the freedom of choosing and determining within the limits of the Law.

Despite doctrinal divergences, most process doctrine specialists accept the existence of the judge's discretionary action and among them *Moniz de Aragão*, in «*Medidas Cautelares Inominadas* (Unnamed Preventive Measures)», *Revista Brasileira de Direito Processual* (Brazilian Process Law Review), 57/33, states the following:

*"It is customary to refer to the use of discretion by the judge in exercising the so-called general preventive power whereby he may authorize, or impose abstention from, acts not provided for in the legislation or merely exemplified in the same".*

This power vested in the Judge of being able to grant any precautionary measure according to the situation of each case, is essentially the power to use discretion, *taking into consideration whether the measure is opportune and the convenience of adopting it*, and in doctrinal terminology is known as the General Precautionary Power of the Judge. However it must be emphasized that when dealing with Criminal material or Criminal Proceedings this power of determining what is right becomes even more restricted in its applicability in view of constitutional principles (article 5, XXXIX and LIV of the Federal Constitution).

As for the material widely used by the aggressors in their defence, "The only source of criminal law is the legal norm. There is no criminal law wandering around outside of the written law. In criminal matters there is no way of distinguishing between law and the letter of the law. Thus criminal law is a closed system... ..» Nelson Hungria<sup>16</sup>.

Thus it is fundamental that laws be created that accompany social evolution and take into account the new faces of criminal activity, given that the attitudes of the offenders find a way out through gaps in the laws in effect and this factor contributes to impunity. This would be viable if society were to mobilize and prioritize the question of sexual



exploitation demanding that the Legislative Authority adopt the necessary position for dealing with the due punishment of the various forms of sexual violence against girls, boys and adolescents.

### **9) Gaps in the application of the legislation at the triple border**

In border areas and especially at the triple border, criminal actions take on an international dimension, going beyond the territorial boundaries of the countries where the criminal acts are reflected in one way or another in the legal order of the neighbouring countries, making it difficult for criminal law to reach that far. The borders merely represent a barrier to the application of the law but not to the criminal behaviour.

In the remarks proffered by an informant of the PIC, the absence of systematic joint legal actions among the countries at the triple border benefits the aggressors:

“The absence of a network of efficient and integrated services between Brazil, Argentina and Paraguay is quite certainly one of the most negative factors in the fight against sexual exploitation, violence and abuse as it leads to a lack of support for the persons submitted to these conditions and the isolation of the authorities responsible for repressive measures, thus hampering exceedingly the identification of the transgressors.”

This happens because criminal behaviour is astute and is constantly evolving, transcending the sovereignty of the states in the application of criminal law. The delinquent gets off from having to respond to criminal charges since national law cannot touch him in a country other than the one that he comes from, out of respect for the legal order of the neighbouring country.

The general rule is that criminal law can only be applicable within the territory where a country exercises its sovereignty. This is known as the Principle of Territoriality of Criminal Law. However, there are exceptions to this rule. In Brazil's case there are exceptions foreseen in the provisions of article 7 of the Penal Code, which allow for applying Brazilian Law to offences committed outside of Brazil. These exceptions make up the Principle of Extra-territoriality of Criminal Law as they make it possible, in certain cases expressly provided for, to extend the punitive power of one state to punish conducts practiced in another.

As an example of extra-territoriality, we mention those crimes which Brazil, through treaties or conventions, has committed itself to repress. This Principle of Extra-territoriality can be subdivided, according to the

case, into other principles, as for example when applying the so-called "Principle of Universal Justice" which with a view to favouring international cooperation in the struggle against crime, obliges the countries that are signatories to the treaty or convention to persecute and punish every criminal fact irrespective of the nationality of the author and the locality where it occurred. To that end, certain conditions must necessarily exist and are duly foreseen under the provisions of article 7<sup>o</sup>, § 2<sup>o</sup>, of the Penal Code, among which is the author's entering national territory<sup>17</sup>.

International treaties and conventions are instruments that ease up the rigor of state sovereignty, as they represent a country's submission to the interests of the international community on a set theme, given that the physical boundaries between states stop being effective barriers against the acts practiced in the neighbouring state, whether they be legal or illicit, civil or criminal.

Thus, international responsibility and jurisdiction are elements that make up the modern concept of state sovereignty, which, in view of social evolution and the strong tendency towards globalization, has been gradually built up with an international perspective, whereby the states in the international order relate to one another in a regime of cooperation and not subordination. This is why it can be said that the sovereignty of a state is not absolute but limited by the sovereignty of all the other states and by the norms of international law. The techniques for defining the international attributions of the states have been studied by Richard Anderson FALK<sup>18</sup>.

Instruments must be created or those that exist must be implemented, to enable the legal border authorities to carry out their investigative proceedings and due processes. The bureaucracy that the authorities encounter when they need to operate in another country causes lengthy delays, impeding the actions of the security and legal bodies in the penal persecution of the criminal, who merely needs to cross the territorial border to enjoy impunity.

## **10) The family**

Considering the complexity that surrounds the issue, in some rare cases, which nevertheless are worth mentioning, sexual violence may occur within the family environment when the victim and the aggressor are related. In such cases, the situation of domination and repression is even more accentuated, as the aggressor lives day and night with the

victim. Add to this the fact that after having made the accusation, the victim has no other option than to continue living in the company of the oppressor. When the oppressor is punished by being removed from the family home or when the victim is moved to an institution, the family structure unravels, causing the victim considerable trauma.

The child and the adolescent do not understand the problems that surround the question and conceal the situation of sexual abuse or exploitation from the family, or they feel constantly threatened by the daily co-existence and the continuous relationship of subordination. They also fear that they will be seen as the cause of the problem and end up turning it into something certain and inevitable. They do not know how to react or on whom to rely. They do not know how to denounce the fact and because of the concealment find themselves without support.

In other cases, victims do not make a denouncement because they receive financial assistance from the aggressors, or when the members of the family promote the sexual exploitation, the victims do not want to cause disequilibrium in the family structure with the inevitable investigations. Children and adolescents end up tolerating the situation of sexual exploitation because when the aggressor is a family member, they fear that he or she will go to prison and suffer with the condemnation. They see him or her as an integral member of the family as he or she truly is, and not as a delinquent offender.

In the view of a police representative of the Special Group for the Repression of Organized Crime and Drug Trafficking of the Office of the Federal Attorney for Criminal Investigations of Foz do Iguaçu, these cases occur frequently in the family realm, creating difficulties for the security and legal bodies to take action.

"I believe that the greatest difficulty in demonstrating the materiality and authorship of these crimes is linked to the fact that in many cases the victims do not turn to the authorities for fear of being exposed in public or even because the majority of these cases have someone close to the family as the author, when it is not someone from the victim's own family."

For a representative of the Children's and Adolescents' Section of the Jurisdiction of Foz do Iguaçu, the lack of a family structure is what hampers the action of the judiciary:

"In the case of abuse, it is very difficult to detect the crime because many times it takes place inside the home, and the perpetrator

takes advantage of the defence of the family. It is necessary to do the preventive work of community family therapy where such cases frequently come to the surface.”

In the conception of a representative of the Federal Police responsible for the Migrations Sector, it is difficult to punish as the offences do not come to the notice of the public authorities, as he states:

“This difficulty exists because often these crimes are committed within the family itself, and because the victims and their relatives are afraid of reprisals. And finally because society itself connives with crimes of sexual exploitation.”

The informant from the Childhood and Adolescence Section of the Jurisdiction of Foz do Iguaçu shares the same understanding and highlights:

“Often the victims are ashamed or afraid to file the complaint. Most times victim and aggressor live in the same house (e.g. father, grandfather, cousin). In other cases the aggressors are neighbours or acquaintances of the victim.”

And he continues by stating that

“The state should have shelters for the victims of these crimes because often the victim is economically sustained by the aggressor, which creates a kind of blackmail that impedes the investigation of the crime.”

In these cases, the strengthening of family ties and psychological support are imperative, as much for the aggressor as for the victim, with integral attention to the needs of the family by increasing the actions of local social assistance networks and by implementing social assistance reference centres in the municipality.

## **5.2. Factors that have a positive influence**

It is important to remember that the occurrence of certain factors has a positive influence **facilitating the application of the law** relating to the fight against sexual exploitation and all forms of sexual violence against girls, boys and adolescents, making it possible to apply the law in the quest for due justice.

For the law to be fully applied, the factors presented below should occur concurrently in a single case as far as possible. Even though this proposal may seem rather utopian, the occurrence of any one of the factors will

enable and assist the action of the Justice Branch, Police Security bodies and the Public Prosecution.

### 1) When the victim seeks help

As these are crimes committed against girls, boys and adolescents, they generally do not know how to proceed. Doubts arise as to which is the appropriate body for making the denunciation and how to make it. They do not know where to seek help and guidance. To make matters worse, fear of rejection wells up, coupled with insecurity, ignorance of how to inform the authorities, the fear of being threatened by the aggressor, and all the factors that have been listed as hampering the act of denunciation.

The first step towards punishing the offenders is registering the complaint with the appropriate authorities. The role of the child protagonist is thus fundamental as the victim will contribute consciously to punishing the offender thus increasing his or her self-esteem, sense of responsibility and social commitment.

The representative of the Childhood and Adolescence Section of the Jurisdiction of Foz do Iguacu on analyzing the question of the factors that facilitate the responses of the justice and security systems in punishing aggressors identifies the following factors:

"the obtaining of precise information on the concrete case, the indication of witnesses that make it possible to confirm the denunciations, the request for help or assistance made by the victim to someone in his or her circle of acquaintance or to the authorities."

Furthermore, it is also important to emphasize that the person who has the most detailed information on the criminal activity is the victim himself or herself. S/he can faithfully relate the entire course of actions undertaken by the aggressor to consummate the act, or describe the attempt to commit a crime, should that be the case, in the pursuit of the just meting out of punishment through the action of the judiciary, supplying elements that contribute towards aggravating or even attenuating the penalty imposed for the criminal act.

Thus the decision handed down by the Court of the State of Santa Catarina stands out:

*"In the question of crimes against customs that usually occur in private, the victim's declarations represent an important piece of proof and are sufficient in themselves as a basis for the sentence*

*of condemnation, above all when such declarations appear to be plausible, coherent and balanced and have the support of circumstances and clues obtained in the process.*<sup>19</sup>

According to an informant from the PIC, the work of awareness raising and incentives, carried out by the entities that offer assistance to the victims, is fundamental:

“With regard to the preventive aspect, there is no need for much comment. As a preventive measure with respect to the aspect of repression, in most cases of sexual abuse, violence or exploitation, the system of repression cannot carry out its functions without the support of entities that offer care and assistance to the sexually exploited or violated person or the victim of sexual abuse.”

The work of widely divulging the problem of commercial sexual exploitation of children and adolescents, which is achieved by the joint actions of non-governmental organizations, has brought about the mobilization and increased awareness not only of the victims but of society as a whole. The population has begun to comprehend the problem, and is demanding that the security and legal institutions take a position and produce results by punishing the aggressors. As a consequence of these actions, public policies have been created that are geared towards the integral protection of children and adolescents, with a view to their healthy development, and respect for them as rightful citizens.

## **2) Capacity building for professionals**

There has been a great deal of capacity building during the course of the project. However, those agents and authorities who have undergone capacity building have not become sufficiently sensitive to the issue of commercial sexual exploitation of girls, boys and adolescents. This is due to the fact that the theme is truly complex, as has been seen, and the discussions on its characteristics and peculiarities, and the astute ways in which the aggressors operate, are very recent. If one combines this with the natural difficulties, both legal and physical, imposed by a border region, one has the reasons why the topic is always being viewed by the authorities as a problem of the neighbouring country. Such factors reduced the advantages obtained in the capacity building activities. The entire legal order necessary to face the problem has yet to be implemented, seeing that all the legislation for the fight, as well as all the international instruments referring to international legislation applicable within the ambit of the Mercosul, are relatively recent and

their results cannot be definitively appraised in view of the short space of time they have been in force.

Another obstacle to obtaining good results from the capacity building activities that is worth highlighting is the fact that many law enforcement officers, including bodies from Justice and Security, did not take up the cause with enthusiasm. Many did not show up at the capacity-building sessions in spite of having been duly invited, either because of the great backlog of work that swamps the Justice branch and the police institutions, or due to a lack of commitment to the cause, given that, as has already been stated, in addition to being seen as an internal family problem that should be solved within the family itself, it entails questions of corruption, with the authorities and political figures involved.

However, despite the obstacles mentioned above, there were also some successes on the part of those agents who have been involved in the cause. It is therefore essential to promote the continued capacity building of those professionals responsible for taking action on this issue (including members of the justice and security systems), so that they may acquire knowledge and familiarity with the cause, identifying cases of sexual abuse and exploitation of children and adolescents. The sensitivity necessary for dealing with the problem correctly should also be encouraged and complemented in these professionals, such as carefully collecting proof, thoroughly investigating victims' and witnesses statements, identifying offenders and proposing practical, swift solutions to problems that hamper their performance and the detection of the occurrence of a crime.

In the capacity-building process, the professional staff interacts with people with experience in fields related to the problem, who deal with girls, boys and adolescents, and know the *modus operandi* of the offenders and the provisions of the law, thus enabling them to exchange ideas and opinions among themselves and seek solutions for the impasses. A large network of information and opinions opens up in the quest to prevent and eliminate crimes of sexual violence against children and adolescents.

According to our informant from the Federal Police –Migrations Sector, the crime is undoubtedly highly complex, and the police authorities need training and an investment in resources as he declares:

"In the case of networks of exploitation and trafficking of children and adolescents, there is a need for thorough intelligence investigations to identify the criminal leaders and dismantle the

gangs, including actions in several Brazilian states and in other countries.”

The informant from the Childhood and Adolescence Section of the Jurisdiction of Foz do Iguacu shares the same opinion when stating that (there should be):

“More ostensive police patrolling and intelligence work in order to dismantle the actions of the gangs that are active in the area of sexual exploitation (...).”

Within the framework of the ILO project, many agents, police officers, educators and other people involved in the subject matter underwent capacity building. This is because the form of action, the way of approaching the victim, the examining of proof, among other aspects, must be taken into consideration by the professionals who handle the crimes indicated in the present study. They are very peculiar crimes with their own singular characteristics, which may go unnoticed if the professional in charge has not undergone the necessary preparation.

### **3) Decree 2.740 of August 20, 1998**

In this legal instrument, the promulgation of the Inter-American Convention on the International Trafficking of Minors, signed in Mexico City on March 18, 1994, is set out, and compliance with, and execution of its terms is determined in the decree. The states that are party to the convention consider the importance of ensuring effective, integral protection to minors through the implementation of adequate measures for guaranteeing respect for their rights, while being aware that the international trafficking of children is a universal preoccupation that needs to be combated effectively.

All the conventional legal instruments regarding the international protection of children were taken into consideration, especially the provisions of Article 11 and 35 of the Convention on the Rights of Children adopted by the United Nations General Assembly on November 20, 1989.

The decree also reconfirmed the importance of international cooperation in effectively protecting the interests of the child, declaring the need to regulate the civil and penal aspects of the international trafficking of children, and elaborating the present protocol, whose application is not yet in general use within the Brazilian legal order despite its having been duly promulgated. It has been observed that the law enforcement agents feel intimidated when they have to act in neighbouring countries for fear of transgressing the principles of territoriality and creating



diplomatic problems. They believe that the problem of trafficking for sexual exploitation is the neighbouring country's problem. Furthermore, this legislation is very recent if one takes the entire structure of the legal order into consideration, making it impossible to detect any practical results.

In article 4 the convention proposes to the signatory states to cooperate with those that are not in preventing and penalizing international trafficking in children whenever possible, and in caring for those who are victims of these illicit activities. In this sense, the appropriate authorities of the signatory states should notify the relevant authorities of the states that are not party to the agreement in cases where they find a child in their territory who has been the victim of international trafficking, so that the necessary measures may be taken.

According to the decree, after designating a central authority to be indicated to the General Secretariat of the Organization of American states by each state that is party to the convention, and to which all communications may be directed, the states commit themselves to offering mutual assistance in due legal and administrative judicial proceedings, in obtaining proof and other procedural acts necessary for fulfilling the convention's objectives. However, each state has its own form of internal organization whether in the case of its legal and security agencies, or in relation to the designated authorities, which often do not correspond to those of the signatory country. The mechanisms created are therefore heterogeneous, thus hampering their practical application.

In the case of the norm referred to, and in order to make cooperation feasible, it would be advisable to establish, by means of their central authorities, mechanisms for the exchange of information on national legislation, jurisprudence, administrative practices, statistics and the modalities adopted by the international trafficking of children in their territories. The signatories should set out provisions on the measures necessary for removing obstacles such as this heterogeneity in the forms of internal organization of the legal and security agencies, and the respect for the sovereignty of each state so that the norms do not clash with the legal norms of the individual countries, which may affect the application of the convention in the respective states.

According to article 16, if the relevant authorities of a state that is party to the convention detect the presence of a child, victim of international trafficking, in the territory under their jurisdiction, they

must take the immediate steps necessary for his/her protection including those of a preventive nature that will impede the transfer of the child to another state. At the triple border, there have been recent cases of exchanges of information among the local authorities which have made joint actions of law enforcement officials possible. However, despite their being considered exemplary, they are isolated cases, for, as has already been stated, the authorities are promoting this kind of exchange in a very gradual way, so as not to interpose themselves in the internal legal order of the neighbouring country where they wish to extend their actions.

Such measures will be communicated through the intermediation of the central authorities to the appropriate state authorities where the minor previously resided. The intervening authority will take all the necessary steps to communicate the measures that have been adopted to those responsible for locating and returning the child.

The widespread use of this decree by police and judiciary personnel of the signatory countries would permit the application of the law at least in theory, without unnecessary bureaucracy when dealing with cases of International Trafficking in Minors. It should bring with it the regulation of the civil and penal aspects that surround the matter. However, when taking into account the totality of the legislation on the subject, it seems to be very recent and its practical results will not be visible in the short-term. The eventual need to implement the norm due to the heterogeneity of the legal orders of the signatory countries can also be observed.

#### **4) Abridgement 608 of the Federal Supreme Court**

All the crimes defined in Chapters I, II and III (articles 213 to 220 of the penal code) according to the law should be the object of a private criminal action filed by the victim by means of criminal complaint. It happens however that the Federal Supreme Court by means of Abridgement 608 - "In the crime of rape committed with real violence the criminal action shall be public and not conditioned", established that the lawsuit must be public and not conditioned in the case of rape accompanied by real violence and which in the opinion of Guilherme de Souza Nucci<sup>20</sup> can be extended to include the case of indecent assault.

On the question of the abridgement's clarity, there are divergences in relation to its applicability and the doctrinal discussion is on whether the criminal action in cases of rape with real violence is public or private.

The current of opinion that favours the commandment of the Supreme Court establishes that when crimes of rape and indecent assault are committed with real violence (affray or bodily harm), Abridgement 605 of the Federal Supreme Court, fully in force, is applicable. The adepts of this trend make use of the provisions of article 101 of the penal Code, in the general part, which refers to the criminal lawsuit in a complex crime, in order to justify the application of the aforementioned Abridgement.

According to this wave of opinion, once the crime of rape with real violence has been committed, wherein there occurred light bodily harm for example, the Public Prosecution is authorized to file a public criminal lawsuit justified by that component of the crime (bodily harm – article 129, heading chapter, of the Penal Code) for which denouncement is foreseen.

By publishing Abridgement 608, the Federal Supreme Court has confirmed its position that article 101 of the penal Code should prevail over article 225, if there has been real violence in the crime of rape, offering conditions for the Public Prosecutor to file a criminal lawsuit, public and non-conditional, in view of the unrestricted applicability of the Abridgement under consideration<sup>21</sup>.

In the opinion of the doctrine experts ZAFFARONI and PIERANGELI<sup>22</sup> "Crimes against honour and customs are, as a rule, submitted to private criminal lawsuits but it is the Penal Code itself that establishes the exception. As for violent sexual crimes, article 101 prevails over article 225 and in this sense the Federal Supreme Court has come to publish Abridgement 608." They continue by stating that "it matters little whether the bodily harm is mild or severe. Here the criminal lawsuit is always public."

Sharing the same opinion is FLÁVIO AUGUSTO MONTEIRO DE BARROS<sup>23</sup>. This author recognizes that the relevance of the study of criminal lawsuits in complex crimes is somewhat attenuated by the provisions set out in Article 100 but avers that the fundamental point is linked to the form in which crimes of rape are composed. Thus, the said author states that, "*in the language of article 101 of the Penal Code, a complex crime is one that has, among its legal elements or circumstances, facts that in themselves constitute crimes. In articles 213 and 214, committed with real violence, that is as in articles 129 (bodily harm), 146 (illegal constraint) and 147 (threatening behaviour).*"

In the conception of the much acclaimed JULIO FABBRINI MIRABETE<sup>24</sup>, faced with the discussion on the penal lawsuit in the case of rape committed with real violence and the applicability of Abridgement 608

of the Federal Supreme Court and its justification, he declares that, *"the most adequate solution is to maintain Abridgement 608, not based on article 129 of the Penal Code, in which representation is demanded for penal action related to the crime of slight bodily harm, but rather based on article 146 of the same Statute ,seeing that the illegal constraint discovered by means of a public non-conditioned criminal lawsuit is indubitably a constituent element of the crime of rape and indecent assault."*

In reality this position adopted by the Federal Supreme Court stems from a criminal policy considering that in view of the gravity of the fact and of the wish of the victim to conceal the crime, the Court has deliberated that the crime be the object of a public non- conditioned lawsuit.

## **5) Dissemination and diffusion of the rights of children and adolescents**

With the occurrence of intense social evolution, people have come to observe their rights better, which have had repercussions in the media, in schools and in universities. Society has learned to be aware of its rights by means of access to information, despite not yet having learned to demand from the Public Authorities the guarantee, protection and implementation of these rights.

From this situation, children and adolescents have also learned to get to know their rights but they have inherited inertia from the adults in putting these rights into effect. Having as its point of reference the legislation that makes up the Brazilian legal order, the Statute of the Child and Adolescent - ECA - is a relatively recent conquest. Current policies have opted to insert the ECA into the school curriculum where, in the case of the city of Foz do Iguaçu, the legislation provides for such insertion (Law nº 2.999/2004).

Furthermore, the networks for combating sexual exploitation and all forms of sexual violence against girls, boys and adolescents formed by governmental and non-governmental institutions, whose actions are directed towards doctrines of prevention, protection and elimination, have conquered public recognition and become stronger in confronting adversity.

The objective of this form of action is to contribute towards the understanding and dissemination of the problem, to construct and provide incentives for taking a critical stand and to demand from the authorities the formulation and implementation of public policies involving the state as much as the communities, to confront sexual

violence against children and adolescents, so as to mobilize the population and do away with old authoritarian, prejudiced, patriarchal and “macho” concepts.

In the opinion of the representative of the Childhood and Adolescence Section of the Jurisdiction of Foz do Iguaçu, it is the role of the state to exercise the guardianship of the rights set out in the ECA:

“The judiciary has the role of concretizing various fundamental principles and objectives established in the Constitution of the Republic, and especially of making the principle prevail in practice of absolute priority in the attention given to the rights of children and adolescents and to their protection from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.”

The victims feel encouraged, as they are more aware of their rights and better informed as to how to proceed in a denunciation, conscious that they will not be entering into conflict with the aggressor without the support of society as a result of a legislation that protects him or her as a citizen. It is important to point out that this feeling of power has only been verified in those victims who have access to information.

## **6) The setting up of special police stations in defence of children’s and adolescents’ rights**

As soon as the ECA came into force, many law enforcement officers understood it to be a very protective and permissive law that allowed children and adolescents to abuse the legal and security systems upon acquiring certain legal prerogatives stemming from it whereby, in the case of punishments, these are carried out in a very weak manner.

However, it is now understood that the ECA does not represent retrogression nor a submission of the police service in view of the rights brought in with the advent of the statute. But even with all these understandings, some police staff still insists on maintaining authoritarian and repressive attitudes and their behaviour is one of imposition and oppression.

It is clear that the attitude adopted by a police officer when dealing with adults and children must be differentiated. It happens that in the dynamics of the daily round and with the rigidity of conduct that the profession demands, police officers generally do not manage to make this distinction, standardizing their conduct without differentiating the attention dispensed to adults and youngsters and where, in the majority of cases,

what prevails is arbitrariness, aggression and lack of sensitivity, embarrassing and frightening the victims in the pursuit of public order.

With the setting up of a specialized police station, the police officers, agents and superintendents turn towards the doctrine of protection, understanding the Federal Constitution and the ECA to be the basic rights of children and adolescents without which there can be no development with dignity or security. With this specialty, the security institutions manage to clearly define the rights and duties of this special section of the population, who are usually so misunderstood.

Orientated by questions of prevention, protection and maintenance of the rights of children and adolescents, the police can better direct their actions and feel more familiar with the cause, clearly understanding the world of children and adolescents made up of discoveries, desires, doubts, vulnerability, apprehension and the hope that society may offer them minimum conditions for survival.

The specialized police station limits the action of its staff to those cases that give attention to under 18 year olds who are suffering from the violation of any one of their basic rights (ECA and Federal Constitution). This facilitates rapid action and communication within the Police Station, the Judiciary Authorities and the Public Prosecutor's Office, thus the process is handled with greater speed and efficiency.

In the same vein, in the Section for Childhood and Adolescence, which specializes in analyzing cases that involve children and adolescents, they are penalized in a more appropriate way as related to their human condition.

What is observed when the field of action is being delimited, is that the legal processes and the police inquiries can be better analyzed and understood, as the enforcement officer is more familiar with the topic.

## **7) Speeding up the procedures and processes that relate to the topic**

The legal system is very slow and bureaucratic so that mechanisms should be created to allow for greater speed in the procedures and in the transmission of information among the different authorities. The rapid action of the legal system in receiving, instructing and sentencing a case of sexual exploitation would show society the effectiveness of justice and of public institutions, thus increasing credibility and giving victims an incentive to denounce the crimes.

When the procedure is swift, the response of the legal order is immediate, satisfying not only the victim, but society as a whole. Violations of children's and adolescents' rights deserve priority in the process according to legal precept. It can be perceived that due to a considerable effort of inter-governmental negotiation and integration, promoting the necessary synergy among the various actions can be achieved, in order to guarantee quality of life of the children and adolescents.

To our informant from the municipality responsible for matters relating to children and adolescents, the rapid and efficient processing of the cases is a fundamental condition for guaranteeing the rights of girls, boys and adolescents when he states that:

"In the investigation of all the crimes that involve children, the violation of morals and customs should be taken more seriously, with swifter processing. The emphasis here is not on spatial considerations but rather on seeing justice done so that everything is not lost with the passage of time, that feeling of impunity, or worse, of the eternal penitence of the victim and his or her family who have to live with the lack of a solution for the case (...)"

The Brazilian Constitution as the supreme charter representing the final will and power of the state, has brought a new dimension to the public policy on childhood and adolescence by declaring it an "absolute priority" to promote the integral protection of girls, boys and adolescents on the part of the state in all its manifestations, bodies, sectors, departments, on the part of the family and of society. Ever since then, this innovation has provoked legal and institutional transformations regulated in various pieces of legislation, the main one of which is the Statute of the Child and Adolescent – ECA (Federal Law N° 8069, dated July 13, 1990).

Compliance with the provisions of the legislation (ECA and Federal Constitution) is still a delicate question in Brazil, as it is considered advanced for being the only one in the context of Latin America that is adjusted to the principles of the United Nations Convention on the Rights of the Child. When it is effectively applied by the law enforcement officers, it produces extremely positive results. The priority given to processing those cases that directly involve the rights of girls, boys and adolescents makes the responses of the legal system swifter in the cases' *sub judice* and offers security not only to the victims but to the whole of society which expects the justice branch to play a preventive role, but especially a repressive one when faced with the criminal activities that threaten the rights of children and adolescents.

Thus, containing as it does, an explicit declaration that attention to the rights of girls, boys and adolescents and their respective protection must be prioritized, the constitutional text has introduced significant modifications in the field of action of the law enforcement officers and that of the institutions of the security system, guaranteeing preference in the processing and agility in the procedures of these cases within public entities.

## **8) Public policies for protecting the rights of children and adolescents**

The social protection of childhood and adolescence cannot be transferred entirely to society nor to private entities. It would be catastrophic for guaranteeing human rights, and a rather arbitrary practice. It is the state's role to organize a coherent policy on the issue, in addition to the defence of social rights, and including reactivating and forming partnerships with organizations within society for putting those rights into effect.

From the psychological point of view, it is important to point out that there is almost a complete lack of programmes that offer specialized treatment for the violence that takes place within the sphere of influence of the family and society. The current prison system does not appear fit for rehabilitating victims for the social context. On the contrary, in most cases it turns the ex-detainee into a bitter person who is excluded from society. The implementation of such programmes will permit the description of the profile of both aggressors and victims, repress transgressions and allow for treatment so that they do not go back to practicing violence.

One of the advances in terms of public policy is the present Federal Government programme entitled "Child friendly President", with a Plan of Action for 2004-2007, whose overall objective is to *"reduce the vulnerability of children and adolescents in relation to all forms of violence, improving mechanisms for putting their rights into effect"*<sup>25</sup>.

The term signed by the Federal Government is made up of Specific Objective Commitments that refer to improvements in the present indices related to children and adolescents, and Administrative Commitments that highlight the initiatives necessary to achieve the established objectives.



As can be noted, the Plan of Action is composed of four International Commitments made by the President of the Republic: 1 – Promoting Healthy Lives; 2 – Providing Quality Education; 3 – Protection against Abuse, Violence and Exploitation; and 4 – Combating HIV/Aids. Within each one of these major commitments the challenges that the various government programmes and actions will have to face can be found.

Under Point 3 of the said Plan, which is of the greatest relevance to the present study, the government foresees sectors of taking action and creating policies that sustain the Support for the Child and Adolescent in Situations of Social Vulnerability; Combat of Child Labour and Protection for the Work of Adolescents; Combating Sexual Exploitation and Protection against the Violation of Children’s and Adolescents’ Rights.

In combating sexual exploitation, the Plan is committed to specific objectives<sup>26</sup>:

- To implement actions with the objective of combating sexual exploitation: implantation of a network of centres specialized in attending to children, adolescents and families in situations of sexual violence, prioritizing their establishment in regions identified as being trafficking routes and frontiers with other countries, as well as in other places of sexual and commercial exploitation of girls, boys and adolescents;
- Carrying out prevention campaigns against sexual abuse and exploitation;
- Maintaining the service for receiving and forwarding denouncements;
- Capacity building for agents participating in the System for guaranteeing Children’s and Adolescents’ Rights in combating the sexual exploitation of children.

According to the suggestion from the member of the CEDEDICA, it is imperative that public policies be implanted. She affirms that:

“(...) it would be more consistent to establish public policies capable of eliminating the social vulnerability of certain groups of society, that is, to eliminate the contract of these populations with undesirable social conduct or any conduct that increases their vulnerability, by means of a process of socialization different from what is being promoted or has been promoted up till now, which would increase self esteem, while constructing a culture of respect

for public spaces and the human being, eliminating individualism and extending genuine dignity to all”.

Institutional, political, economic and cultural evolutions need to be articulated and directed towards the protection of rights, mutually reinforcing one another, to face the economic inequalities and inequality of access to the guarantee of political, social and civil rights for the whole population, in the construction of citizenship, which can only be obtained through high quality public policies. The protection of girls, boys and adolescents should be highlighted in the actions of the government, institutions and society, due to their situation of social risk and vulnerability.

## **9) The CPMI on Sexual Violence, Trafficking and Exploitation of Children, Adolescents and Women**

A victory achieved by the Project for the Prevention and Elimination of Commercial Sexual Exploitation of Children and Adolescents at the Triple Border, was the holding of public hearings by the Joint Parliamentary Inquiry Committee on Sexual Exploitation in the State of Paraná and particularly in the city of Foz do Iguacu. In its final report, it recommended to the Public Prosecutor of the Federation and of the States that over 250 suspects be charged. This is the result of investigative work carried out over more than a year into networks of commercial sexual exploitation of children and adolescents in the country.

The CPMI of Sexual Exploitation was making inquiries in Foz do Iguacu on October 2 and 3, 2003, when a Public Hearing was also held. Those present included Senator Patrícia Saboya, Deputies Maria do Rosário, Ann Pontes, Laura Carneiro, Sandra Rosado and Luiz Couto.

The final report was read out on July 7, 2004 in Brasília by the Committee President Senator Patrícia Saboya Gomes. The document has over one thousand pages and contains 850 denunciations, judicial proceedings and public hearings in 21 states. It brings together proposals for alterations to dozens of legal provisions related to sexual crimes that appear in the Penal Code and in the Law of Heinous Crimes. Some of these were put on agendas for discussion and others were treated as a separate item (legislative advances), as reported in the present study. It is worth observing that on the occasion of the reading of the final report, two cases investigated in Foz do Iguacu and one in Hernandárias in Paraguay, were highlighted.

The parliamentarians who are part of this committee also feel that it is not sufficient merely to make all this suffering public. "Means must be found to put an end to impunity" they warn. Thus in the final document the CPMI on Sexual Exploitation decided to propose the creation of a committee for monitoring the recommendations made. Another proposal obliges the Public Prosecution to file a public criminal lawsuit when the victim is under 18 years old or presents some kind of mental deficiency. Presently the investigation of sexual crimes only occurs when a criminal complaint is filed, which many victims do not do out of fear or shame. This last proposal is a longstanding demand that has yet to be met by the parliamentarians.

The CPMI emphasized the importance of constructing a cooperation agreement between Brazil, Paraguay and Argentina with the aim of dealing with, and restricting, the sexual exploitation of girls, boys and adolescents in the Triple Border region. Along similar lines, it forwarded the documentation referring to the case and requested of the Brazilian Government:

- a) That a cooperation agreement be urgently drawn up between the countries of the Triple Border, Brazil, Paraguay and Argentina for the purpose of investigating and seeking to charge those criminal agents that promote the trafficking of women and adolescents for the purposes of sexual exploitation;
- b) To strengthen the resources of the Federal Police working in Foz do Iguacu, so that they may have the conditions to intensify their supervision with a view to eliminating the trafficking in persons for the purposes of sexual exploitation in the countries of the border region, as well as identifying and charging those responsible;
- c) To value and maintain the initiatives taken by the company Itaipu Binacional, which seeks to exercise an effective social responsibility in protecting the rights of children and adolescents. In view of its relevant results, the initiative should be taken as an example for public companies in Brazil.

The work of the CPMI also contributed to strengthening the recommendations on characterizing the crimes of sexual violence and exploitation committed against girls, boys and adolescents. In addition to creating nine new types of criminal offence, such as "lewd satisfaction obtained through the presence of a child or adolescent", the parliamentarians spoke in defence of factors for increasing sanctions

for sexual crimes against children or adolescents and people with mental deficiencies; proposed the revocation of certain offences such as “indecent assault”, which should then become “violent assault”; and altering the status of the practices of rape, trafficking for purposes of sexual exploitation and the promotion of prostitution, to the status of “crimes against humanity”, making them not extinguishable by limitation.

## **10) Legislative proposals being processed**

Faced with all the obstacles that hinder the punishing of those agents that promote the commercial sexual exploitation of girls, boys and adolescents, the Federal Senate advanced and in March of 2005 unanimously approved three Draft Bills that will contribute towards combating the sexual exploitation of girls, boys and adolescents. The draft bills propose changes in the Statute of the Child and Adolescent and also in the Penal Code suggested by the Joint Parliamentary Inquiry Committee, which investigated the sexual exploitation of children and adolescents in 2003. The bills will now be examined by the Chamber of Deputies.

One of the texts proposes to add to the Statute of the Child and Adolescent (ECA) the possibility of closing down a hotel, boarding house or motel that accommodates children or adolescents not accompanied by their parents or those responsible for them. Another project that has already been processed and approved according to constitutional criteria, so that it may become a norm with the status of a law, declares the practice of photographing or filming children or adolescents in circumstances that jeopardize their sexual integrity as a crime. This alteration has already been made to the Statute of the Child and Adolescent by means of Law N° 10764/2003 and provides for sanctions of two to six years of imprisonment for the criminal, as well as a fine.

Changes have also been made in the Penal Code in view of its being outdated (1940) and not dealing adequately with the sexual exploitation of children and adolescents. With this alteration, rape, which in the Penal Code only referred to cases of women, now extends to everyone, independent of sex, and is classified as a heinous crime. Also the characterization of crimes against children and adolescents, formerly only included in the ECA, has been included in the Penal Code. The proposal foresees the punishment of all those involved in the network of sexual exploitation, including the clients who benefit themselves from the illicit act.

The alterations to the Penal Code include the possibility that the Public Prosecution files an accusation in cases of sexual exploitation of children, irrespective of the victim's complaint. It also increases the penalty for sexual harassment when committed against a child, and makes the crime of international trafficking of people for purposes of sexual exploitation not extinguishable by limitation, increasing the penalty when the victim is below 18 years of age.

There is a further draft bill in the senate that proposes the alteration of the Penal Code and the Statute of the Child and Adolescent in order to combat prostitution and the sexual exploitation of children and adolescents. In the said project, it is stated that no child or adolescent may travel outside the jurisdiction of residence unaccompanied by their parents or the person responsible for them without express legal authorization, thus altering article 83 of the ECA.

The same draft bill, which is presently undergoing revision in the Chamber of Deputies, further brings with it a reading of article 232 of the Penal Code whereby in those crimes for which the chapter sets out provisions, the terms of articles 223 and 224 shall be applicable even when in this last case it deals with experienced children. It further adds in its final paragraph that those who enjoy or benefit from the crimes foreseen in this chapter, whether by means of payment or other means of stimulus, shall also be liable to the same penalties.



- <sup>10</sup> Latin expression meaning notice of the crime<sup>11</sup> Art. 5<sup>o</sup> XXXIX CF: There can be no crime without a prior law that defines it, nor punishment without legal sanction.
- <sup>12</sup> Latin expression meaning: when in doubt, decide in favor of the accused
- <sup>13</sup> Art. 225 Penal Process Code - CPP: In the crimes defined in the previous chapters, proceedings are only initiated upon receipt of a complaint.
- <sup>14</sup> CAPEZ, Fernando. *Curso de Processo Penal*. Ed. Saraiva. 3<sup>a</sup> Edição. São Paulo
- <sup>15</sup> *Código Penal Comentado, parte geral*, 3<sup>a</sup>. Edition, RT, 2003, São Paulo
- <sup>16</sup> HUNGRIA, Nélson. *Comentários ao Código Penal, Vol.I, Tomo I pg. 15 e II pg 18*, Ed. Revista Forense, Rio de Janeiro. 1955.
- <sup>17</sup> LOPES JÚNIOR, Aury Celso Lima. A prisão de Pinochet e a extraterritorialidade da lei penal: Quando a vítima é a humanidade In: *Âmbito Jurídico*, December 1998 [Internet]
- <sup>18</sup> International jurisdiction: horizontal and vertical conceptions of legal order, *Temple Law Quarterly*, 1959, v. 32, p. 295 – cited by MORE, Rodrigo Fernandes. *The prevention and solution of international litigation in International Criminal Law: fundamentals, background and establishment of an International Criminal Court (Treaty of Rome, 1998)*. **Jus Navigandi**, Teresina, a. 6, n. 55, Mar. 2002.
- <sup>19</sup> TJSC/JCAT 76/639
- <sup>20</sup> *Código Penal Comentado*, 3<sup>a</sup>. Edição, Revista dos Tribunais, 2003.
- <sup>21</sup> *Sharing this current of opinion are Eugenio Raúl Zaffaroni; José Henrique Pierangeli; Flávio Augusto Monteiro de Barros and Julio Fabbrini Mirabete*
- <sup>22</sup> Manual de Direito Penal Brasileiro, Parte Geral, 2<sup>o</sup> edition, 1999, Editora Revista dos Tribunais
- <sup>23</sup> BARROS, Flávio Augusto Monteiro de. *Direito Penal, Parte Geral*, 1999, Editora Saraiva, São Paulo
- <sup>24</sup> MIRABETE, Júlio Fabbrini. *Manual de direito Penal, Parte Geral*, 15<sup>o</sup> edition, 1999, Editora Atlas S.A.
- <sup>25</sup> *Multi-annual Plan 2004-2007 – PPA 2004-2007*
- <sup>26</sup> Source: Presidency of the Republic, Special Secretariat for Human Rights, Ministry of Planning, Budgeting and Administration/IPEA, Elaboration: MP/IPEA.



## **6. Results and difficulties of the work of the task force and of the denunciation hotline service**

The Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents at the Triple Border and especially in the city of Foz do Iguaçu can count on a network of institutions which, in addition to integrating actions for the eradication of the problem, promotes support for the victims of sexual violence.

Within this network of institutions, there is the Sentinela Programme as Reference Centre I of the network. This was conceived in the Project for the Prevention and Elimination of Sexual Exploitation of Children<sup>27</sup> as being the place where the children would be received, thus being characterized as an approach structure for the initial attention given to the child who is taken out of an CSE situation or living in a situation of risk.

Reference Centre I, represented by the Sentinela Programme, was able to count on specialized staff in the legal and psychological fields and in Social Assistance. In the same centre, the work of street educators took place with outreach made directly to children in risk situations and the receiving of denouncements of practices violating the fundamental rights of children and adolescents by means of the denunciation hotline (0800 free telephone service). The centre only lasted through the first phase of the programme.

The objective of the Sentinela Programme in its approaches in the street was to take children and adolescents out of a situation where they are



at risk of CSEC and promoting their social rehabilitation, handing them over to their respective families. These direct approaches consisted of staff driving around in a vehicle belonging to the Programme and adequate for this type of work and going through the streets of the city in search of children, especially in places with the greatest occurrence of sexual exploitation.

During the approach, the children were invited by the educators to get to know the care programme. They were introduced to the programme installations and the activities carried out there. The staff's intervention was first geared towards ending the situation of risk by removing the children and adolescents from the streets by means of dialogue and persuasion and convincing them to come and enrol in the programme so as to receive specialized attention.

During the functioning of the Reference Centre I, the Task Force was set up to inspect establishments suspected of harbouring sexual exploitation of children and adolescents, went into action, as it was noted that the educators of the Sentinela programme acting on the streets did not have the competence to go into commercial establishments or places with restricted access in order to carry out interventions to rescue victims.

Several different institutions of the Police Force took part in the operation, notably the Municipal Guards, the Military Police, Members of the Child Protection Council and the educators of the Sentinela Programme themselves.

The task consisted of a joint inspection of places where dubious or suspicious activities were carried out or were suspected of promoting sexual exploitation of children and adolescents, in different parts of the city, such as massage parlours, nightclubs, bars, brothels and others of that kind.

As a security measure, the operation entailed the police going in first, considered to be the risky part of the operation as it is a hostile activity. After that, documents of persons present in the place were requested and should any child or adolescent be located, they were removed from there and sent to Reference Centre I.

However, this strategy did not achieve very significant results with regard to effectively removing the children and adolescents from the inspected localities. After examining the weaknesses in the procedures and the mode of action, several factors were found that directly influenced the results obtained in a negative way.

## **6.1. Factors that hindered task force approach actions on the streets**

Among the factors that hindered the actions of the street staff and the task force in approaching children and adolescents in situations of real or apparent risk, the following had a negative effect:

### **1) Inadequate methodology**

The methodology of the approach used was not appropriate, so many children were not interested in getting to know the programme, or simply refused. The actions were not always in line with the children's way of thinking. In some cases, there was even a lack of sensitivity in dealing with the target group.

Sometimes the street appeared to be a more interesting and attractive place in the eyes of the children, given that it offered them a false sense of liberty, which was apparently denied to them in the Reference Centre. Sometimes the activities were represented as duties that the child had to perform as a condition for receiving the promised benefits.

In the case of the establishments, in spite of the Task Force's having acted in accordance with the legal norms and procedures, the children assembled were rather apathetic and even showed some antipathy towards the authorities who acted more as a repressors than as staff worried about rescuing them and offering them better living conditions.

What can be perceived is a lack of identification between the staff and the children and adolescents. The dialogue was out of step and did not satisfy the children's and youngsters' anxieties and expectations. The interests of those being educated encountered barriers in the proposals presented by the staff that approached them on the street.

According to a study done by Marta Casal Caharrón<sup>28</sup>, as the work unfolded, it was possible to confirm the deficiencies in the approach, as happened in the case of persons who did not show disposal to talk to the staff; in her presence, the staff adopted a control and vigilance approach instead of an educative one.

This inadequate methodology occurred due to the fact that the staff who carried out the work of educators did not possess the necessary techniques for dealing with the children and adolescents, showing a lack of experience with questions about childhood, whether in terms of oral or body language, where they frequently projected the image of a repressor instead of an educator, who is knowledgeable about the problem, and willing to help them.

## 2) Failure of staff to take advantage of the capacity building promoted by the project

Despite the capacity-building activities implemented by the project, the staff who approached the children and adolescents in the streets, and the task force, created a work routine that ended up interfering negatively with the long-term results. As time went by, the work carried out was not innovative and rigidly followed a predetermined routine, becoming repetitive and worn out. The results of the actions diminished, which discouraged the staff.

It should be further emphasized that the lack of capability of the staff and authorities regarding the matter at hand hindered their comprehension of the topic and the associated problems that they had to deal with in their daily round. It also hindered the comprehension of the risk situation in which the victims of CSEC live and find themselves. It is important to point out that the project did promote capacity building activities. However, not all the agents were disposed to frequent them, either because of the backlog of work or disinterest in the matter. It was found that the crucial point of this lack of acquired capacity was the fact that the police officers and the staff of Reference Centre I were not sufficiently sensitive to the problem.

Many of the staff that carried out direct approaches to the children and adolescents in CSEC situations appeared to be prejudiced and "macho". Sometimes the staff approached the children as if they were the criminals and not the victims, treating them with disdain. This created hostility in the victim and distrust of the programme as they feared repression and prejudice should they participate in the programme activities. This ended up discouraging the victim from registering in the programme.

As there was no retraining activity for the staff, they gradually distanced themselves further and further from the social dynamics that involve the relationships with the children and the adolescents, the highly voluble, creative, imaginative and sentimental beings that they are. So this increasing distance between the educators and the authorities on the one hand and those being educated on the other, whereby one side did not agree with the opinion expressed by the other, handicapped the complete interaction that could have produced positive results.

With no positive results from the team, the staff and authorities failed to achieve their objectives. There sprang up a feeling of impotence in the staff that discouraged the pursuit of conquests, challenges, and positive returns. The outreach work in the street and that of the task

force require great flexibility, creativity and constant re-training so that the staff may come to better understand the rich world of childhood and its highly mutable tendencies.

### **3) Pre-determined times, days and places for the activities**

Yet another factor that had a negative effect on the staff's performance in the street approaches and on the task force, was fixing the days and times for field activities and inspection. This created a work routine that was adopted without there being any subsequent innovation during the course of the activities. This inflexibility regarding the days of activity greatly hindered direct contact between the staff and the victims of CSE, and between the staff and the exploiters.

The children who were in a situation of CSE, whether on the street or in establishments, could thus tell when the programme or police vehicle would be driving through the street. They were already aware that the staff of the Sentinela Programme made their approaches on certain days and at certain times. Those children and adolescents who were not interested in participating in the activities of programme, who had withdrawn from them, or who intended, due to ingenuity, to remain as they were, in a situation of risk, simply avoided being there at those times and on those days when the staff would be passing through. They would merely change places, whether it were the street or a suspect establishment, or change the times and days that they were there, thus continuing to be in CSE or in a situation of risk.

At the beginning of the patrols carried out by staff and police authorities, many children and adolescents were found in the streets and in suspect places, clearly showing the situation of risk in which they found themselves. As the months passed and at the end of the programme, a sharp fall was noticed in the numbers of children encountered and approached. One of the factors that contributed to this reduction in the staff's performance was the approach strategy adopted, easily predictable as it was, by the dexterity of the children and adolescents and the owners of establishments suspected of promoting CSEC.

Furthermore, the times chosen for the interventions in the street and the police inspections did not exactly coincide with the times of greatest activity of children and adolescents in the streets and establishments. Therefore the interaction with the customs and attitudes of the children, together with the strategies adopted by the owners of suspect

establishments, made it possible for the victims and the exploiters to become aware of this deficiency in the work of approaching them.

#### **4) Identified vehicle known to the children, adolescents and exploiters**

Those children who had no interest in participating in the programme, or who, when registered, stopped coming to the interviews scheduled by the staff of the Reference Centre, or who simply did not want to participate in a certain activity, deliberately concealed themselves when they saw the staff vehicle.

Along similar lines, when the owners of establishments suspected of promoting sexual exploitation of minors spotted the police vehicle or even the programme vehicle, they immediately adjusted the environment, hiding any children or adolescents or expelling them from the locale, in an attempt to frustrate police actions.

Thus with the days, times and locations of the patrols being predetermined, the children could go undetected by the staff or conceal some undesirable act so as to avoid direct contact with them by simply identifying the programme or police vehicles.

Even if the patrols had continued to follow the same routine, simply changing the vehicle at least sometimes for the approaches on the street could have helped catch the children and adolescents by surprise. This further highlights the need to alter the methodology of communication and action.

#### **5) Lack of access to the establishments and localities of exploitation**

The staff of the Sentinela Programme, police authorities and members of the Child Protection Council invariably directed their attention towards the same localities suspected of promoting or facilitating CSEC. Also, the places where Task Force interventions took place were those explicitly identified with sexual commerce and already known to society and the authorities, although other places that operate clandestinely were not

### **6.2. Factors that facilitated the actions of the task force on the streets**

On the other hand, analyzing the *factors that facilitated* the performance of the street staff in approaching the children and

adolescents in real or apparent risk situations, the following produced positive results:

### **1) Recommendations from the victims themselves upon becoming participants within the Programme**

Many victims of commercial sexual exploitation in Foz do Iguacu have been registered in the Sentinela Programme, one of the entities integrated into the Network of the Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents. It seeks to offer integral care and inclusion in the programme's activities, including its three Reference Centres.

There the children benefited from psychological, medical, legal and social care and services, and participated in the activities offered by the programme and the Network as a whole. Upon receiving these benefits, they recommended the programme to colleagues who were in the same CSEC situation, who in turn enrolled as well. Some victims, who the Programme considered highly vulnerable, received preventive treatment.

So a relationship of trust was established between the children enrolled in the programme and the staff of Reference Centre I. These good references were distributed among the children and adolescents and many of them ended up accepting the staff's proposals to go to the Centre to receive attention in accordance with their needs.

### **2) The Centre was attractive to those children interested in getting to know it**

Upon enrolling in the Programme, the children were authorized to make use of the entire infrastructure, and of all the free benefits granted by the Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents, including its three Reference Centres.

In Reference Centre I, they could receive professional help from a social worker who evaluated the family, the risk conditions and the way of life, conducting a social, psychological and family diagnosis that also involved the psychological monitoring of the children in more traumatic and delicate cases, with therapy sessions wherever necessary. The children also benefited from legal services, where all of their personal documentation was organized. Legal advice was proffered not only for the children but also for the entire family.

In Reference Centre II, represented by the "Poly-ambulatory Unit", participant children and adolescents were sent for routine examinations and specialized medical attention. Travel vouchers for the transport from one centre to another were provided to the children and adolescents for the exams.

As for Reference Centre III the children and adolescents had at their disposal a well-structured community centre to spend the day in, enjoying cultural, educational, and social activities, among others. They had therapeutic support and recreation with a view to their scholastic and professional insertion and were also guided and assisted by staff to recover their self-esteem and their bonds of affection with the family.

The children and adolescents registered in the programme practiced innumerable cultural-artistic activities such as dancing and capoeira, and learned how to make different kinds of handicrafts like costume jewellery, embroidery, knitting and crochet, creating collages out of engravings among other activities. They also had the opportunity to participate free of charge in professional training courses, such as the activities undertaken in the CRIII Cooperative and computer courses. Sometimes the programme received donations of basic food packages that were distributed among the families of the beneficiaries.

### **3) Integration of the Centre's professional team at the beginning of activities**

At least at the beginning of activities, the team responsible for the approaches made in the street was always very united and determined, showing a lot of motivation in improving the approaches to children suspected of being in a situation of CSE. There was a lot of enthusiasm in carrying out the outreach activities.

Certainly the consequence of integration in a multi-disciplinary team is an optimization of results as the children sense the team's motivation and become interested in the work, seeking to find out about the activities and benefits offered by the Project for Prevention and Elimination of Sexual Exploitation of Children and Adolescents at the Triple Border, and especially in Foz do Iguçu.

Undoubtedly, when the teamwork shows the group's unification and integration, it ends up conveying a sense of security to the children, who then trust the work carried out by the Programme's coordinators and staff. With the team's enthusiasm, the children are motivated to

seek something good, healthy and honest in everything they do, regardless of whether they are operating inside or outside the activities of the Programme.

#### **4) The participation and support of the police forces and Child Protection Council**

The Task Force carried out the inspection of establishments suspected of promoting CSEC or of places where abuse and bad treatment had been reported, with the direct participation of members of the Municipal Guard, Civil and Military Police Forces and the Child Protection Council. This strengthened the task of the Sentinela Programme to outreach to children and adolescents in the street.

Police Power belongs to the state. It consists of the discretionary faculty enjoyed by the Public Administration as a whole to condition or restrain the use and enjoyment of individual rights and benefits in favour of collective benefits or those of the state itself<sup>29</sup>, as well as the act of inspecting the presence of members of the Municipal Guard in the Task Force. The participation in the actions of inspection has ample legal justification. Along similar lines, the counsellors of the Child Protection Council are legitimized in their actions of recovering and redirecting children or adolescents whom they find in situations of risk. Thus the Programme has agents who are qualified to act in cases of sexual abuse and exploitation of children and adolescents, and can lead them to a safer destination.

In less technical language, it might be said that Police Power is the mechanism that Public Administration has at its disposal to prevent abuses of the rights of individuals. By means of this mechanism, which is a part of the Administration as a whole, the state (in the broadest sense: Federation, states and municipalities), restrains the activities of private individuals who are oppositional, obnoxious and problematic for social well-being and national security.

What all those who have published material on this matter uniformly declare is that the Public Administration has the power to dictate and execute measures that restrict individual rights to the benefit of the collectivity and the preservation of the state itself. This power is inherent to every Administration and is shared among all the administrative spheres of the Federation, states and municipalities for the protection of the individual or group against any violence directed at it, its goods



or its rights. In short, public security has always been one of the founding principles of the state.

With regard to the work of the Denunciation Hotline, established as an 0800 number and planned to function 24 hours a day receiving denouncements of all kinds of sexual violence against children and adolescents, the factors that made it **difficult to obtain positive results**, and those that facilitated the work of staff in implementing successful activities, must be outlined.

### **6.3. Factors that had a negative influence on the denunciation hotline service**

After analyzing the factors that had a negative effect on the denunciation hotline service established by the Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents, the following can be said:

#### **1) Staff's lack of skills for receiving the denunciations and collecting data and information**

One of the factors that hindered the effort to obtain satisfactory results for the denunciation hotline service was the lack of adequate preparation on the part of the staff in Reference Centre I, established within the Sentinela Programme, when answering a denunciation, whether it was anonymous or from an identified caller.

Although there was a card with a pre-established form to be used for attending the denunciation, the staff that initially received the denunciation in most cases neglected to note some important data on case, such as the physical appearance of the aggressor (or some unusual feature or mark) that might identify him/her when the caller was unable to provide the aggressor's name or nickname.

This meant that one had only a vague denunciation, which considerably jeopardized the work of the police force. Even if it is effectively confirmed that the crime was indeed committed, if the victim's statement is inconsistent, or if there is no other witness apart from the anonymous person making the denunciation, it becomes almost impossible to determine with any certainty who actually committed the crime, in the absence of the name, nickname or any special peculiarity that would identify the offender.

There were even cases where the denunciations were filed away due to the inadequate identification of the place where the crime took place. There was a report of the crime together with a brief description of the aggressor, but the staff member who received the denunciation did not adequately write down the address where the crime took place, or simply did not write it down at all. This type of difficulty also hampered the services of the Task Force, since it could not locate exactly where the crime was taking place.

It is important to note that in most cases, the person making the denunciation only made one phone call, thereby demonstrating a great preference for remaining anonymous, whether because s/he was related to the aggressor, had a certain friendship with the same or due to fear of reprisals. When the call is made, the attendant must be prepared to collect the greatest possible amount of data and information possible, to better elucidate the crime. The denunciation document is the starting point for all the investigative police work that follows.

Despite the carrying out of various capacity-building events by the project, reaching everyone directly or indirectly involved, the problem of the lack of knowledge about the topic, and doubts as to how to proceed, still persist. The theme is highly complex, with unparalleled peculiarities and situations, as indicated in the foregoing. Without a doubt, the capacity building for legal and police force staff and for all those who deal with the topic in question is indispensable. The training provided helps to prepare and inform all concerned. However, the experience and the shrewdness necessary for handling both the victims and the aggressors are only acquired as the activities unfold, and in the daily contact with cases of sexual violence and especially the commercial sexual exploitation of children and adolescents.

## **2) Inadequate processing of the denunciations**

Due to a lack of preparation, upon receiving a denunciation, the staff of Reference Centre I (Sentinela Programme) ended up forwarding it to a body with no mandate to investigate such cases, given the peculiarities and characteristics of the offence. So, upon receiving the denunciation, the staff member was unable to determine how to adequately transmit the crime report to the appropriate body for immediate investigation.

This happened because the denunciation hotline service functions 24 hours a day and there is always someone there to receive the reports of occurrences involving children and adolescents in CSEC situations or

being deprived of one of their lawful rights. However, the staff on shift does not always know how to decide which police body is appropriate for attending to the occurrence, or how to apply the procedures for transmitting the denunciations.

So when the police body receiving the denunciation declared that it was not qualified to deal with the case, although it did indicate the appropriate one, by the time it was sent back and then forwarded once again, much of the proof and evidence had been lost. By then the aggressor had managed to slip away and hide from the investigation. Each body of the legal order has rules for attending to the public according to its attributions and in accordance with the nature, dimension and respective legal sphere of the case being reported.

### **3) Lack of skill of the police authorities in investigative work**

On several occasions, the denunciations were filed away in the police stations themselves, whether because of lack of assistance from the victims due to factors already mentioned or due to a disregard of the police with the case presented. In fact, in the police stations there is no truly adequate understanding of the cases of sexual abuse and exploitation of children and adolescents.

These crimes require great astuteness and knowledge of the cause in order to be effectively clarified. As has already been said, they are crimes that are difficult to demonstrate and elucidate, as in most cases they do not leave visible traces, which creates problems for proving materiality and authorship. The proof is normally based on witness statements, and in most cases it becomes one word against another. There are also cases where the victims have had sexual relations but in the police station if they state that the abuser is a "boyfriend", it eliminates the possibility of characterizing it as a crime in the minds of most police authorities.

Police and legal authorities need to show great sensitivity and perception when taking down statements and show perseverance in the investigations, not just filing the case away on the basis of a witness statement or the victims' statements, seeing that the latter are constantly threatened by enticers, abusers and exploiters.

### **4) Lack of commitment and awareness of the police authorities**

As has already been stated, there should be some awareness raising among the police authorities and all those involved in the legal and

security systems, as cases of sexual abuse and exploitation of children and adolescents entail a range of problems, as mentioned in the previous section. When these are insuperable, they frustrate the entire police and legal array, also making difficult the work of members of the Public Prosecutor's office.

They are crimes that require extremely thorough investigation in which no detail can be ignored or allowed to pass without being given due attention, whether in the statements of the victims, or in the analysis of the expert examination and all the other evidence. Only duly trained staff, familiar with the problem, can bring the case to a favourable end: the punishment of the abusers, enticers and exploiters, and from this stems the importance of participation in the capacity building carried out by the programme.

#### **6.4. Factors that had a positive influence on the work of the denunciation hotline service**

On analyzing the factors that facilitated the work of the denunciation hotline service, the following stand out:

##### **1) Ample dissemination of the denunciation hotline service**

With the support of the press, the denunciation hotline service was widely disseminated. Thus the whole of society became aware of this "denunciation portal" which is available 24 hours a day to offer care and take the first steps in cases of the violation of children's or adolescents' rights.

In view of the free access and the dissemination of the service, many denunciations were made by members of society during the first months of the programme, and even by victims of crimes against sexual liberty and all the others mentioned here, whereby it is shown that this too reflects on the credibility of the programme in the eyes of society. In the beginning there was a great amount of denunciations due to the non-existence of any kind of service of this nature in civil society institutions connected directly to the population. In the last months of the programme, the number of denunciations suffered a considerable drop as everyone had reported those cases they had knowledge of, but the service continued to receive reports of crimes as the criminal activity still persists in the city.

Another important observation was the fact that the service did not require the identification of the caller. Attendants were told not to ask

the name of the person making the denunciation who would only be identified if s/he wished to be. Thus many people who, although they did not intend to get involved in the problem for fear of reprisals or threats, or so as not to be the object of persecution and to preserve their own intimacy, saw in the denunciation hotline an opportunity to help eradicate and minimize the problem without necessarily committing themselves.

## **2) The setting up of a specialized police station**

The establishment of the NUCRIA was a true victory and evolution with regard to the protection of children's and adolescents' rights. The specialized activity of care and protection directed at the healthy and integral development of children and adolescents brings with it great benefits, not only for those under guardianship but for the whole of society.

Attending to and investigating all forms of violence against children and adolescents, when done by a pre-determined group, leads to positive results. In this situation there is an affinity and knowledge of the matter and the problems; the language used is more accessible to the victims; and there is a greater interaction between the police institutions and the beneficiaries of the system. With this, the cases brought before the authorities get the attention they deserve.

The specialized police station deals only with certain cases where there is violation of the rights of children or adolescents. This means that the staff working there needs to increase their familiarity with the subject, learn about the multifaceted set of problems and identify all those factors that hinder or facilitate the work in the pursuit of the truth and, consequently, the implementation of justice

## **3) Increasing the awareness of the victim and of society**

Increasing the awareness of society and the victims themselves of the problem of the sexual exploitation of children and adolescents has led to an increase in the number of cases denounced. Those making denunciations were able to understand that the complex problem of the sexual exploitation and abuse of children and adolescents can only be solved or eliminated if the cases are brought before the police authorities for due investigation.

They have understood that the consequence of bringing these cases to the attention of the police is the discouragement and disapproval of the

whole of society in relation to crimes of violence and disrespect for the rights of children and adolescents. When society shows that it is more aware of the problem, ignoring its prejudice against the children and adolescents, then a greater number of crimes will be revealed and become liable to investigation. The number of criminal lawsuits filed will also increase due to the formal accusations made by the Public Prosecution.

By getting to know and revealing the problem, society has concluded that the exploited children are as much victims as society itself. Furthermore, it has become aware that the family is the fundamental group in society and is also the natural environment for the growth and well-being of all its members, especially the children, who must receive all the protection and assistance necessary to fully take on its responsibilities within the community.

#### **4) Capacity building of legal and police staff involved in the programme**

In August of 2003, capacity building was offered to all staff from the police and legal fields, including psychologists, social assistants, Child Protection Councillors, and legal councillors, educators, programme coordinators and university students, for the purpose of creating an appropriate working methodology to negotiate actions among government agencies and with NGOs. The purpose was also to create a form of work in which intervention in the form of a network would be possible, as would the definition and implementation of public policies for facing situations of sexual violence against children and adolescents.

By promoting the discussion of obstacles and other hindering factors detected not only by the studies undertaken but also by the experience of the law enforcement officers themselves, a flux of work can be created with coordinated strategies and actions to be implemented to face up to the question of sexual violence, and seeking solutions to situations of sexual violence reported by means of the Denunciation Hotline Service<sup>30</sup>.

One of capacity building's general objectives was to identify facilitating devices and those that block the defences of rights, the provision of care, and the attribution of responsibility in situations of intra- and extra-familiar sexual abuse and commercial sexual exploitation of children and adolescents at the stages of notification, police investigation, formal legal denunciation and guilt attribution.

The discussion that sprang up during capacity building led to new attitudes on the part of staff involved with solving the complex problems, developing new working methods and action strategies, and considerably improving the results of these actions as well as promoting a broadening of the knowledge possessed by these professionals.



<sup>27</sup> *Implemented through technical/financial cooperation of ILO/IPEC with the Nossa Senhora Aparecida Civil Society – SCNSA, from December 2002 to August 2004*

<sup>28</sup> *CAHARRÓN, Marta Casal. Consultoría para el análisis y sistematización de los resultados de la metodología adoptada para los servicios de atención directa ofrecidos a niños/as y adolescentes y sus familias en los centros de referencia instalados en la triple frontera ciudad del este, Foz de Iguazu - informe final, June 2004*

<sup>29</sup> *MEIRELLES, Hely Lopes. Poder de policía e segurança nacional. Revista dos Tribunais, v. 61, n 445, p. 287 – 298, nov. 1972*

<sup>30</sup> *Report on Judiciary and Police, capacity building for legal staff and police - consultant Dr. Clarissa Marin Coletto, August 2003*

## **7. Principal lessons learned on law enforcement**

The problem of the commercial sexual exploitation of children and adolescents is a considerably complex one. It requires the involvement of society, NGOs, and the Public Authorities (Federal, State and Municipal). There is a further need to implement joint actions that are negotiated and coordinated in such a way as to correctly and precisely pursue all cases of sexual abuse and exploitation of children and adolescents, and also to seek the social reinsertion not only of the victims but of the aggressors as well, to avoid the occurrence of a vicious circle.

With regard to the application of the legislation, the security and legal systems must pay attention to the smallest details surrounding the criminal act. They must give priority to the theme of abuse and commercial sexual exploitation of children and adolescents, considering the obvious difficulty in proving this type of crime, as well as the victim's difficulty, in most cases, to collaborate with the criminal investigations and persecution, and the problem of locating eye witnesses.

In the city of Foz do Iguacu, given its location on the Triple Border, criminals take advantage of gaps in the international penal legislation, especially that which refers to the application of the law in terms of territoriality. In that case, due to the barriers represented by the frontiers between states, they benefit from impunity due to a lack of international mechanisms for combating international crime, or a failure to implement existing mechanisms due to a lack of initiative and the fact that the



responsible authorities have not taken a formal stand. Moreover, the Brazilian penal legislation that defines the new cases that occur within the sphere of this issue is relatively recent, and it will only be possible to see the final results in the long term. All of this makes the need to create effective mechanisms for combating crime at international borders all too clear.

All the factors that prevent the criminals from being punished make it difficult to apply the legislation. The system is then weakened, requiring great effort and agility on the legal and security side in their attempt to punish the aggressors. The time factor is also an obstacle to punishing criminals. Delays in procedures due to bureaucracy, staff shortages, and lack of support, are all factors that hinder police investigations, with consequences on the preliminary stage of the legal process. Obtaining a condemnation and sentence is thus made even more difficult.

Another obstacle in the path of fully exercising actions of prevention and attributing blame, is proving the materiality of the crime that has been denounced. First of all there is the natural complexity that surrounds the offence, making clarification more difficult. Also, most police stations do not have sufficient, adequately trained human resources. Most of the witnesses cannot even count on police protection, which leads to the interruption of the inquiry. If the legal order does not have an adequate set of staff and resources to combat the problem internally, it will hardly be able to meet demands at the international level.

On the other hand, it has been verified that the promotion of training activities with the public sectors and professionals who deal with this topic, including educators and agents of the legal and police systems, mobilizing the professionals at the Triple Border, helps to familiarize them with and understand the problem of commercial sexual exploitation of children and adolescents. This would facilitate the identification of cases of social risk with a view to promoting rapid and effective measures to combat and eradicate CSEC and all other forms of violation of the rights of children and adolescents, each one within its own sphere of attribution, but seeking to implement actions of cooperation and integration among the state institutions involved.

Actions for raising awareness and mobilizing society to confront sexual violence and commercial sexual exploitation of children and adolescents should also be promoted, considering that they will allow for a process of communication and interaction which, even when conducted informally, will have resounding effects on strengthening the power of

civil society. They will also be reflected in other benefits in the legal process. In this respect, the campaigns for combating sexual violence against children and adolescents, the events, seminars, workshops, publications and surveys conducted under the Triple Border project, all play a major role in solving the problem at hand.

With regard to national level public policies, the "Child friendly President Plan" should be highlighted. It was launched in 2003 as an action plan for 2004 to 2007, and entailed four international commitments made by the President of the Republic: 1 – Promoting Healthy Lives; 2 – Providing Quality Education; 3 – Protection against Abuse, Exploitation and Violence; 4 – Combating HIV/Aids. The challenges that the various government programmes and actions will have to face come under the heading of each of these commitments.

In relation to protection against abuse, exploitation and violence, which is the theme of the present study, the plan envisages four challenges, which are: support for the child and adolescent in a situation of social vulnerability, combating child labour and protecting the work of adolescents, combating sexual exploitation, and protecting against the violation of the rights of children and adolescents as well as promoting the recovery and social reinsertion of those who have been victimized.

There is a dearth of qualitative and quantitative data and of concrete and recent research on the problem of sexual abuse and exploitation of children and adolescents. However, research and studies carried out in some regions of Brazil have shown the need for concepts and indicators for developing experiences and methodologies for understanding the problem, for staff capacity building, and for providing supporting information for public policies.

In order for the implementation of projects and programmes of prevention and rehabilitation of children and adolescents and due attribution of criminal responsibility to effectively take place, it is necessary to design a policy that guarantees the defence of rights. Accordingly, the state and the population would share the responsibility and comply with national and international regulations, thereby also contributing to the implementation of actions and the raising of resources for facing the problem, treating it as an absolute priority while seeking effective solutions.

As regards the national penal legislation, one of the main points made is that Brazil has adopted a truly progressive stance in relation to international conventions, agreements, treaties and norms. However,

the Brazilian Penal Code is need of urgent reform so as to generate a legal atmosphere that effectively impedes the practice of sexual exploitation of children and adolescents without leaving any gaps, and eliminating the need for extensive interpretation in characterizing the conduct as a crime.

Nevertheless, with the setting up of the CPMI on Sexual Violence, Trafficking and Exploitation of Children, Adolescents and Women and its final report, the Parliamentarians have shown that they are more aware of the problem than before and have already put forward draft bills intended to punish and prevent actions that violate the rights of children and adolescents, viewing the issue as a social problem, with an urgent need for the elucidation and eradication of this social evil. Progress has certainly been made with regard to the penal aspect and much more will follow. It is important to emphasize that the problem has now been fully recognized by the legislative authorities, and with the data collected by the CPMI, it is clear that such crimes need to be effectively combated.

As for the coordination and integration of the institutions of the security and legal systems, the Project has obtained good results. A better performance in the sense of prevention and punishment has been recorded as a result of the integration and exchange of information and experiences among the legal and police authorities. Along those lines, the Project developed at the Triple Border promoted capacity building, meetings of border authorities for debates and getting to know the problem, with the participation of institutions responsible for the protection of children's and adolescents' rights, Workshops for formulating Mutual Cooperation Plans and Treaties, all of which advanced considerably within the framework of the prevention, combat and eradication of CSEC in the region.

Finally, regarding the application of international legislation, Brazil has also made progress by incorporating international norms into its internal legal order. However, the country still has a long way to go considering that harmonization and cooperation between legal and police agencies in penal matters is still problematic, the ratification of international treaties and agreements on the theme are complex, and incorporation into the internal legal order are still the object of intense legal debate.



## 8. Good practices in Foz do Iguaçu

As an example of a good practice in Foz do Iguaçu adopted by the security and legal agencies, or more specifically by their officers (despite the fact that adoption is partial, considering that not all the authorities have committed themselves), and by the staff that constitutes the network for the prevention, combat and eradication of commercial sexual abuse and exploitation of girls, boys and adolescents, the **Coordination and Integration among the Institutions of the Legal and Security Systems Responsible for the Promotion and Protection of the Rights of Children and Adolescents** can be highlighted. Below are the main results successfully achieved as a result of this good practice.

**1.** In the area of security, with an emphasis on the performance of the police authorities, it was seen to be of fundamental importance to carry out constant inspection activities in areas identified as risk areas, and especially in critical areas where large numbers of children and adolescents were found to be in a situation of sexual exploitation. An example of this practice is the work carried out by the Task Force, which, despite some faults in its execution, achieved good results. It was only possible to carry out such an activity thanks to the coordination and integration of bodies of the legal and security systems, with special mention for the performance of the Child Protection Council, the Municipal Guards and the staff of Reference Centres I and III.

As an example of these results, we can cite the action that took place in August 2003 in Foz do Iguacu, when a Task Force activity directed at combating commercial sexual exploitation of children and adolescents was undertaken, with the participation of the Ministry of Labour, the Child Protection Council, the Federal Police, and the Civil Police. At the same time, the Chief of the Police Office for Women and Tourists announced a blitz that was carried out in a massage parlour in the city. This may be considered creative and innovative as it was the first time such an approach was used in the city. It was also effective, because a madam, who was the owner of a massage parlour, was arrested.

Also, in March 2005, Task Force work was carried out at the Friendship Bridge (*Ponte da Amizade*) and in the region of Jardim Jupira and Vila Portes, in a joint action with the Municipal Guards, SOS Child, the Federal Police, Civil Police/Nucria, the Special Police Station for the Adolescent, the Child Protection Council and the Federal Highway Police. Another operation took place parallel to this one, in Ciudad del Este. It was established that the institutions of the two cities involved in these operations intend to intensify cooperation mechanisms.

Another result worth mentioning occurred in mid-July 2003, when the Child Protection Council of Foz do Iguacu managed to remove two Brazilian girls from a brothel in Los Cedrales (Paraguay) with the support of the Public Prosecution of Ciudad del Este and the Paraguayan National Police. This shows that this kind of integration and cooperation among the legal and security institutions can actually culminate in good joint actions within the recommendations set forth in the legislation on Criminal Processes, and when carried out by the appropriate authorities within the standards of ethics and responsibility, all of which are proof that it can be replicated.

It proved to be a valid way of suppressing the illicit activity, in other words, curbing, suspending and reducing it, although not eliminating it entirely. Another example of a good result stemming from this practice was the removal of the huts along the roadside in the EADI, a place that was formerly the scene of intense sexual exploitation of minors. This act was supported by the police and the local committee for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents. This integration of investigative agents and entities responsible for promoting children's and adolescents' rights had good results in combating and preventing the various forms of sexual violence against children and adolescents.

**2.** As a further result of this good practice, the **capacity building of legal and police authorities** and of other staff that deal with this issue was of the utmost importance, since knowledge of both national and international criminal legislation on sexual exploitation and other forms of sexual violence was communicated. The result of this was that it has enabled the appropriate state bodies and non-governmental organizations to act with greater firmness, security and speed, in punishing the aggressors. It has also led to the promotion of debates, exchanges of information and comparisons of results, showing its relevance for the topic.

It is a pioneer programme, as the issue of the commercial sexual exploitation of children and adolescents has never been approached and demystified before. Many barriers were broken through the understanding of the problem and by the capacity-building activities that promoted not only the acquisition of knowledge but the exchange of information, with the identification of factors that either favour or hinder the application of the legislation in combating the sexual exploitation of children and adolescents. They have also promoted debates on the theme and correlated matters and diffused information on concrete cases so that they may be used in other similar situations.

**3.** To illustrate the good practices identified in the foregoing, the constant improvement of communication among the bodies that make up the protection network must be highlighted, promoting as it does the exchange of information and experiences as well as the collecting of accurate statistics on cases of sexual abuse and exploitation, thus enabling the activities to be effectively targeted. These are results of the **coordination and integration among the institutions of the legal and security systems responsible for the promotion and protection of the rights of children and adolescents**. In most of the cases where precise information was obtained about the circumstances in which the crime was committed, or concrete and accurate data on the aggressor, the investigations, police actions and the actions of the legal system and even those of the public prosecution were improved, making it possible for the institutions to successfully identify and punish the aggressor.

With regard to this point, the following consequences of this good practice should be noted: the integration and coordination of the activities undertaken by the entities that care for and assist victims help to promote the swift communication of criminal activities to the police and legal authorities. They also supply valuable information on

the crimes and locations where sexual exploitation is practiced. They are particularly helpful in referring the victims to the necessary medical care and attention, helping with their social reinsertion, referral to the police authorities, and afterwards, referring the victim for enrolment in the programme so that they receive more specific care and attention, such as psychological support and medical examinations to check for possible infections from sexually transmitted diseases. The data collected on adolescents remains permanently available to the Children and Adolescent Section of the Local Jurisdiction for joint monitoring.

**4.** Along similar lines, reflecting upon the integration mentioned above as a good practice, on 18 May 2003 in Foz do Iguacu, the launching of the Campaign of the Network against the Commercial Sexual Exploitation of Children and Adolescents took place. This campaign was carried out by "Ciranda" and stood out as an example of good practice in terms of **raising awareness** in Brazil, given that by bringing together representatives of civil society and government bodies, it promoted **coordination and integration among the institutions of the legal and security systems responsible for the promotion and protection of the rights of children and adolescents**, helping to make possible the sustainability of such good practice.

Part of this launching was an initiative of the Public Ministry of Labour involving the hotel sector: the signing of the "Term of Adherence" to the campaign for combating the commercial sexual exploitation of children and adolescents. Following that, a mobilization campaign to support the Protection Network was organized in the streets of Foz do Iguacu with the participation of 500 people. In July 2003, the Child Protection Council of Foz do Iguacu announced that after the campaign was launched, there was 400% increase in the denunciations of commercial sexual exploitation of children and adolescents. This statistic demonstrated once again integration and cooperation among the government institutions, culminating in the mobilization and participation of the population at large.

**5.** The **denunciation hotline** deserves special mention as a result and consequence of a good practice, considering the great number of denunciations attended to by telephone and the fact that all the law enforcement officers had previously complained that cases of abuse and exploitation do not come to the attention of the authorities. All the denunciations were passed on and brought to the attention of the police authorities for a detailed investigation, and to the attention of the legal authorities for starting criminal proceedings, should it be

necessary. The results are therefore effective, insofar as the CSEC cases are identified; efficacious when the information is forwarded to the police authorities for intensifying detailed investigations of the cases denounced; capable of being replicated in other regions as an example of how to act; and cloaked in ethics and responsibility whereby only those institutions qualified to act in the cases carry out investigations of indications of authorship and materiality of the crimes being registered.

This service has been thoroughly accepted by society insofar as it has facilitated the denunciation of cases of sexual abuse and exploitation and all other cases of violence against children and adolescents. Access to the service is free of charge whereby anyone may make a denunciation, plus the fact that it is available 24 hours a day, with attendants working in shifts. Another important fact related to this service is that it is not necessary for the persons making the denunciation to identify themselves, as statistics have shown that they are extremely fearful of reprisals and threats.

**6.** Another result achieved that stems from the same good practice, is the establishment in February 2003 of the **Special Police Station for Women and Tourists** in the city of Foz do Iguaçu. Until then, there was no unit that specialized in the defence of the child and adolescent based on their integral protection. This police station therefore took on such cases and began to investigate crimes of sexual violence, and especially of commercial sexual exploitation of boys and girls. It was a joint action of the State Police Station and the entire network for combat and prevention. Many victims had the chance of being heard by an authority, initiated investigations, underwent medical examinations, and had their personal documents issued without having to pay any fees.

**7.** The creation of the **NUCRIA**, in December 2004, can also be considered a positive mark in the combating, suppression and elimination of the commercial sexual exploitation of children and adolescents in the city of Foz do Iguaçu. This stemmed from the very same integration among the institutions of the legal and security systems and received additional incentive from the final report of the CPMI on Violence, Trafficking and Sexual Exploitation of Children, Adolescents and Women. As is stressed by the law enforcement officials, a well-instructed police inquiry is the first concrete step towards punishing the aggressors. It is at the inquiry stage that the police make investigations and collect the proof and clues that are evidence of the authorship and materiality of the crime, without which formal



denunciation cannot be made by a member of the Public Ministry, should it be the case, in the effort to obtain a conviction.

The establishment of a police station specialized in crimes of violence committed against the rights of children and adolescents, has led the police authorities involved to specialize in the fight and the principle points of investigation. They are considerably familiar with the issue, and are well aware of the difficulty in proving that a crime has been committed, the crucial points to be observed and the manoeuvres used by the aggressors in their attempts to outwit the investigative activities of the police authorities. The station also promotes the direct cooperation and integration of the institutions of the police and legal systems with other entities that also protect the rights of children and adolescents.

**8.** The entities that provide care and assistance carry out very interesting work in the protection and social rehabilitation of the victims of sexual exploitation. This creates a feeling of security among them because they know that there are public policies and effective social mobilization efforts that ensure their rights. The Project for the Prevention and Elimination of Commercial Sexual Exploitation of Children and Adolescents on the Argentina/Brazil/Paraguay Border, carried out by ILO (International Labour Office), through IPEC (International Programme on the Elimination of Child Labour), has brought with it innovations in the field of protection for those sexually victimized, giving incentive to, and promoting denunciations, as well as assisting in the recovery of these victims.

Through this protection and social promotion carried out by the care and assistance entities, a greater understanding of the problem has come about, insofar as the victim is constantly accompanied, not only by the entity providing the service, but also by the Child and Adolescent Section of the Local Jurisdiction. S/he also receives protection from the police authorities in a true network of cooperation and integration among the various care and assistance sectors and the whole governmental and police-legal system network of integral protection for the child and adolescent.

**9.** Finally, as a result and consequence of this integration and cooperation among the institutions of the legal and security systems responsible for the promotion of rights, there are the periodic meetings promoted by the local committee and by the Project for the Prevention and Elimination of Sexual Exploitation of Children and Adolescents on the Argentina/Brazil/Paraguay Border, with the presence of legal and

police authorities, as exemplified by the meeting of December 3, 2003 in Foz do Iguaçu, where a workshop was held entitled "Coordinated Action of Law Enforcement Officers at the Triple Border". On August 3, 2004 a meeting was held of the Law Enforcement Officers Working Group, created in Ciudad del Este, with the participation of officers from Brazil and Argentina, all of which is proof of the good results stemming from this integration and cooperation among the bodies of the legal and police systems.

This Working Group of Law Enforcement Officers enables the legal and police authorities, albeit partially, together with the bodies and entities responsible for directly promoting the rights of children and adolescents, to discuss the topic, present the good results obtained with practices that somehow contributed to the fight against sexual exploitation, as well as to seek solutions for the obstacles that spring up throughout the process of combating crimes against the sexual liberty of children and adolescents. Forming this round table has only been made possible by the coordination and integration of the police and legal authorities and all the other governmental and non-governmental institutions linked to the issue of combating commercial sexual exploitation.

The Law Enforcement Officers Group is involved in the formulation of a Trilateral Cooperation Plan between local governments and law enforcement committees and officers for the implementation of policies for combating the commercial sexual exploitation of children and adolescents in the Triple Border region. On May 12 and 13, 2005, a meeting was held in Foz do Iguaçu for the purpose of developing and signing a plan for joint action by the three countries of the Triple Border. Furthermore, some joint police actions have already been put into practice, such as those carried out in March and April 2005, when task forces against child labour and the commercial sexual exploitation of children and adolescents went into action on the Brazilian and Paraguayan sides of the *Ponte da Amizade* (Friendship Bridge), which allowed for information to be exchanged on legal procedures and the legislation of each country, seeking the harmonization of the legal procedures with a view to implementing effective actions.

Still stemming from the same good practice, the Mayor of Foz do Iguaçu, at a meeting with representatives of the Brazilian Consulate in Puerto Iguazú, in March 2005 announced the revival of the meetings of the Foz do Iguaçu/Puerto Iguazú Border Committee with a view to combating the commercial sexual exploitation of children and

adolescents by proposing the harmonizing of **municipal legislations** of the three countries regarding the punishment for this type of crime.

Presently an attempt is being made to unite the cities of Brazil/Paraguay/Argentina in the combat of commercial sexual exploitation of children and adolescents, with the object of harmonizing the **municipal legislations** of the three countries with regard to punishment for this type of crime. It is intended that the Municipal Councils of Foz, Puerto Iguazú, Ciudad del Este, Hernandarias and Puerto Franco should hold joint sessions to discuss laws that impose severe penalties on whoever commits this type of crime.



## 9. Next steps: Conclusions and recommendations

1. Upon analyzing the commercial sexual exploitation of children and adolescents from the angle of a global initiative to combat the trafficking of women, adolescents and children, the first recommendation is in relation to the need to **develop articulated actions with the State and Federal Justice Authorities and the Federal Public Ministry**, seeking support for local actions to confront the problem, together with the committed part of the media and international organizations, in passing on information on the reality surrounding the problem, with the aim of integrating actions and promoting exchanges of information but providing due protection for professionals who carry out such actions.
2. Considering the existence of a direct connection between the prostitution networks operating in Brazil, Paraguay and Argentina, which promote trafficking and transit of women, children and adolescents between these countries to work in prostitution, the recommendations previously presented in the legislative studies carried out by ILO/IPEC in the Triple Border Project (SPRANDEL: 2002 e 2004), are reiterated. The proposal is that there should be a diplomatic agreement, by means of a protocol of intentions between the three countries, in the sense of establishing joint actions that will, therefore, be more powerful and that will count with the support guaranteed by an international agreement, or even, the dissemination, implementation and execution

of the existing agreement (Decree 2.740 of August 20, 1998), as discussed before.

What is proposed is the ongoing commitment of the signatory states to harmonize their legislations and procedures and to agree about common legal solutions with a view to strengthening the process of integration and as a necessary measure to simplify, speed up and maintain **international cooperation**, thus making feasible the harmonization and compatibility of those norms that regulate the exercise of jurisdiction in the party states. It is noted that great progress has been made regarding the harmonization of legislation in Mercosul, but much still needs to be done.

**3.** On evaluating the question from the structural and internal angle, the first recommendation is the **Integration of Public Policies** at national, state and municipal levels by means of the elaboration of a plan of integrated action among government secretariats given the obvious importance of integration and cooperation among governmental and non-governmental bodies. However, the plan must have a permanent character instead of being a transitory government policy bound to a certain political administration. It could be proposed and monitored by the Local Committee, with joint actions in the three main cities at the Triple Border as well.

**4.** To implement a strategy of support, implementation and resource capturing for entities that work to guarantee children's and adolescents' rights, such as the Child Protection Council and the Municipal Council for the Rights of Children and Adolescents. Regarding Foz do Iguacu it is considered important that there be a **strengthening of organizations**, such as the Child Protection Council, that participate in the direct protection of girls, boys and adolescents, strengthening its structure and seeking to invest in the capacity building of its members, creating mechanisms to ensure that the Council for the Rights of Children and Adolescents is not controlled by government representatives bound up with the development of one or the other political administration, transforming this municipal organization into an open space for the discussion and deliberation of municipal policies of care, assistance and protection for childhood and adolescence.

**5.** As it is a programme of an eminently social nature, with its roots fixed in the social-cultural character of the local population, it is necessary to create concrete, immediate and efficient actions that seek to **generate permanent employment** in the city as well as promoting campaigns

related to the issue, with actions targeting vocational training, literacy training and schooling for adults. It promotes the integration and cooperation of the justice and security systems, as well as those that participate directly in promoting and protecting human rights, including girls, boys and adolescents, and whereby every level of society may participate in some way in the prevention and protection against CSEC, since the internal legislation and the entire legal order must be focused entirely on serving social ends.

**6.** Still on this topic, it is recommended that actions of **awareness raising and mobilization** activities among entrepreneurs be continuous. It is of the utmost importance that they be involved in the campaign, considering that they are responsible for generating employment and for the city's development. It is thus proposed that a campaign be carried out for donations to the Municipal Fund for the Child and Adolescent which may be made by private individuals or legal entities. Incentives will be in the form of income tax reductions for donors. In this way, the population will also enter into the network of integration and cooperation against CSEC.

**7.** It is also recommended that the **networks against the sexual exploitation and abuse of girls, boys and adolescents be strengthened and evaluated** at federal, state and municipal levels in the areas of promotion and defence, taking into consideration regional, cultural, social and political particulars. This is to ensure that the integration among law enforcement officers, justice and security bodies, and entities responsible for combating criminal activities may be strengthened even further in the pursuit of the integral promotion of children's rights.

**8.** In view of the lack of accurate, concrete, qualitative and quantitative data on the problem in the region, it is considered important to **continue conducting studies and diagnoses, thus creating a permanent database** on sexual exploitation of girls, boys and adolescents in its many forms in the city, and thereby being able to direct and sustain the efficiency of the actions to be carried out and to implement integration and cooperation among the justice and security systems.

**9.** To continue the constant promotion of campaigns for **combating and confronting the problem in sectors linked to tourism** (hotels, taxis, travel agents, etc.), also directly mobilizing society as a whole by creating and implementing free denunciation channels with the intention of promoting the eradication of child prostitution and increasing the

number of cases denounced as has already been taking place within the project.

**10.** From the angle cited above, it is recommended to do a mapping exercise of **programmes, projects and actions** at governmental and non-governmental levels in order to adjust them to the specific aspects of a policy for confronting sexual abuse and exploitation in accordance with the ECA and the international norms of the Universal Convention on the Rights of the Child and the respective facultative protocol on the trafficking of children, prostitution, and child pornography; ILO Convention 182 on the worst forms of child labour; the facultative protocol to the United Nations Convention on Transnational Organized Crime, to suppress, prevent and punish the trafficking of persons, especially women, children and adolescents among others; and including those signed under the aegis of Mercosul.

**11.** Another measure considered important is the **maintenance of the integration of all the justice and security institutions**, in joint action with the other organs of the executive power and public administration, with a view to integrated action, each within its own area of competence, promoting an intense exchange of information among the various sectors of the state, seeking greater involvement and commitment of these bodies in dealing with cases of violation and disrespect of the rights of girls, boys and adolescents as absolute priorities, as the Constitution of the Republic requires. This would help the repressive measures against exploiters. So what is proposed, is the construction of ethical, legal and evaluative paradigms that have as their main axis human rights and a policy of integral and integrated protection for the child and the adolescent as is being carried out by the project and as has been highlighted as a good practice in the present study.

Still on the same point, the recommendation must be made that the justice and police authorities become involved and integrated as a whole, at all levels and in all their attributions and representations, making it possible to maximize the good results achieved by such integration and cooperation. What can be observed is that not all the justice and police authorities have involved themselves in the prevention, combating and elimination of CSEC, whether due to a work overload, a lack of interest and attitude in regard to the theme, or because of a lack of available staff. However, the total unrestricted, strong integration of all the justice and security organs is recommended, so that the complete, solid and unrestricted cooperation among these

bodies may be possible thereby extending and intensifying the good results obtained.

**12.** Another point worthy of the attention of those in government which has also been stressed by the law enforcement operators, is the need to **promote public policies** that ensure the rights of victims and their families as well as the protection of witnesses who, when making statements that are fundamental for elucidating the facts, feel threatened and persecuted by the aggressors and fearful due to the current complete lack of protection. So, when the victim and the witness receive due protection from the state they feel safer in making statements on the criminal offences they have witnessed, whether it be at the police station or before the court. This is of fundamental importance when it is observed that the crimes of sexual abuse, violence and exploitation are difficult to prove as the evidence of the offence is fragile at best, and in the vast majority of cases it is dependent on witnesses' statements and confirmation by the victim her/himself.

**13.** Regarding the preventive and repressive measures for punishing the exploiters, it can be concluded that one way to increase awareness and build capacity of the police in relation to the seriousness of the problem and to give incentive to the adoption of more effective conduct, could be by **intervention and inspection carried out by superior levels of the national security and justice systems** such as accompaniment by the National Secretariat for Human Rights. Equally important is the help of the International Criminal Police Division (INTERPOL) of the Federal Police by means of its intelligence sector.

There is a dearth of intelligence entities in the region, especially for the task of identifying exploitation networks, where it is noted that such work must be undertaken by extremely competent and specialized professionals, since the networks are very dynamic, organized, and highly dangerous. There is thus a need for special training which could be undertaken by the specialized agents of INTERPOL. Another alternative would be the setting up of an Intelligence Agency within the Federal Police itself, specialized in the crime of trafficking in persons for the purposes of sexual exploitation.

**14.** Analyzing the question of identifying the cases of sexual abuse and exploitation of girls, boys and adolescents, specifically in the city of Foz do Iguacu, and complementing what has been set out above, it is recommended that use be made of the technique of the **Task Force** of integration and cooperation among law enforcement officers. This is a very promising alternative for locating and punishing exploiters.



**15.** In the same way, in the category of results achieved from good practice, the operations of the **Denunciation Hotline Service and the Task force** obtained many positive results with the revelation of hundreds of cases of sexual violence against girls, boys and adolescents, whereby it was possible to investigate, to accompany them and to bring them before the authorities for the purpose of punishing the aggressors and dismantling the networks of exploitation of girls, boys and adolescents.

**16.** Finally, priority must be given to **social participation and mobilization** around the defence and protection of children's and adolescents' rights, especially in relation to sexual abuse and commercial sexual exploitation (of boys, girls and adolescents) and other forms of sexual violence. For these reasons the following are recommended: the dissemination of the problem in the mass media; the holding of seminars and carrying out studies together with various sectors of society (universities, schools, associations, non governmental entities, etc.); the promoting of systematic and sequenced campaigns under the orientation of specialists in the matter; and incentive given to local and international community leaders to notify and accompany the cases identified.

## Bibliography

ARAGÃO, Moniz de. Medidas Cautelares Inominadas. Revista Brasileira de Direito Processual, nº 57/33.

BARROS, Flávio Augusto Monteiro de. Direito Penal, Parte Geral. 1999. Editora Saraiva. São Paulo.

BORJA, Sérgio. M E R C O S U L, Direito Constitucional: os Tratados, Convênios e Acordos Celebrados, II Encontro de Municípios no Mercosul, realizado nos dias 11,12 e 13 de julho, de 1996 no Centro de Convenções da Cidade de Encantado, RS.

CASAL C., Marta. Consultoría para el análisis y sistematización de los resultados de la metodología adoptada para los servicios de atención directa ofrecidos a niños/as y adolescentes y sus familias en los centros de referencia instalados en la triple frontera Ciudad del Este, Foz de Iguazu. Informe Preliminar. Mimeo. OIT/IPEC, Junho 2004.

CAPEZ, Fernando. Curso de Processo Penal. Ed. Saraiva, 3ª Edição, \*\*\*\* (ano) São Paulo.

CAHALI, Yussef Said. Estatuto do Estrangeiro. São Paulo: Saraiva, 1983.

CARNEIRO. Ana Gilka Duarte. Relatório sobre oferta institucional de proteção a infância e adolescência em foz do Iguazu. Mimeo. OIT/IPEC, Abril, 2002.

CARVALHO, Henrique; ROMERO, Adriana; SPRANDEL, Márcia (Coord.). A Exploração Sexual Comercial de Crianças e Adolescentes nas Legislações da Argentina, Brasil e Paraguai: Alternativas de harmonização para o MERCOSUL. Assunção, OIT/Programa IPEC Sudamérica, 2004.

COLETTI, Clarissa Marin. CAPACITAÇÃO DE PROFISSIONAIS, ÁREA JURÍDICO – POLICIAL – Relatórios. OIT/IPEC - Consultora Jurídica, Foz do Iguaçu, 01 de novembro de 2003.

Combate à exploração sexual de crianças e adolescentes avança com projetos aprovados no Senado BRASÍLIA, 02/03/2005 (PR) site [www.mj.gov.br/sedh/ct/conanda](http://www.mj.gov.br/sedh/ct/conanda).

FALEIROS, Vicente de Paula. REDES DE EXPLORAÇÃO E ABUSO SEXUAL E REDES DE PROTEÇÃO. Matéria veiculada no site [www.crecia.org.br](http://www.crecia.org.br)

Federalização pode contribuir para o combate à exploração sexual de crianças e adolescentes, Porto Alegre, 31/01/2005 (PR) site [www.mj.gov.br/sedh/ct/conanda](http://www.mj.gov.br/sedh/ct/conanda).

FUNDAMENTOS E POLÍTICAS CONTRA A EXPLORAÇÃO E ABUSO SEXUAL DE CRIANÇAS E ADOLESCENTES, Relatório de Estudo, *MJ/CECRIA*, Brasília, março de 1997.

Guías Buenas Prácticas, Identificación, revisión, estructura y diseminación, Organización Internacional del Trabajo, Programa Internacional para la Erradicación del Trabajo Infantil, Versión Preliminar, OIT/IPEC/DED. Ginebra, octubre de 2001.

HUNGRIA, Néelson. Comentários ao Código Penal, Vol.I, Tomo I e II, Ed. Revista Forense, Rio de Janeiro. 1955.

INFORME TÉCNICO DE AVANCE DEL PROGRAMA DE ACCIÓN, PÁGINA RESUMEN, Plano de Ação Sociedade Civil Nossa Senhora Aparecida. 11 de marzo de 2004 10 de junio de 2004 - Relatório Técnico do Programa de Atenção Integral à Criança e ao Adolescente em Situação de Exploração Sexual Comercial em Foz do Iguaçu, Paraná, Brasil.

LEAL, Maria Lúcia Pinto. CECRIA - Centro de Referência, Estudos e Ações sobre Crianças e Adolescentes, A Exploração Sexual Comercial De Meninos, Meninas E Adolescentes Na América Latina E Caribe, (Relatório Final – Brasil), 2ª EDIÇÃO, Brasília 1999.

Lopes Júnior, Aury Celso Lima. *A prisão de Pinochet e a extraterritorialidade da lei penal: Quando a vítima é a humanidade*. In: Âmbito Jurídico, dez/1998 (Internet)

MANCUSO, Rodolfo de Camargo. A Tutela Judicial na Segurança. Revista dos Tribunais nº 643, pág. 39/40.

MEIRELLES, Hely Lopes. Poder de polícia e segurança nacional. Revista dos Tribunais, v. 61, n. 445, p. 287 – 298, nov. 1972.

LEAL, Maria Lúcia Pinto. AS ONGS no Enfrentamento da Exploração, Abuso Sexual e Maus Tratos de Crianças e Adolescentes - Pós 1993. - fonte: site [www.cecria.org.br](http://www.cecria.org.br).

MIRABETE, Júlio Fabbrini. Manual de direito Penal, Parte Geral. 15º edição. 1999. Editora Atlas S.A..

MORE, Rodrigo Fernandes. A prevenção e solução de litígios internacionais no direito penal internacional: fundamentos, histórico e estabelecimento de uma corte penal internacional (Tratado de Roma, 1998). Site: Jus Navigandi, Teresina, a. 6, n. 55, mar. 2002.

NUCCI, Guilherme de Souza. Código Penal Comentado, Parte Geral, 3ª. Edição, Ed. RT, 2003, São Paulo.

Plano Presidente Amigo da Criança mostra avanços, Matéria veiculada no site [www.crecia.org.br](http://www.crecia.org.br).

Pesquisa Sobre Tráfico de Mulheres, Crianças e Adolescentes para fins de Exploração Sexual Comercial - RELATÓRIO DO ESTADO DO PARANÁ, Maio, 2002, Equipe de Pesquisa : Ana Gilka Duarte Carneiro – coordenadora, Fausto Rogério Amadigi - assistente Barreto –assistente, Instituições vinculadas: Universidade Federal do Paraná – Núcleo de Estudos Interdisciplinares sobre a Criança e o Adolescente, Órgãos Financiadores: De Paul College / Chicago.

Presidente Amigo da Criança e do Adolescente – Plano de Ação – 2004-2007, Outubro/2003.

Secretaria dos Direitos Humanos debate metas da ONU para a infância BRASÍLIA, 27/01/2005 (PR).site [www.mj.gov.br/sedh/ct/conanda](http://www.mj.gov.br/sedh/ct/conanda).

SPRANDEL, Márcia e ROMERO, Adriana. A exploração sexual comercial de crianças e adolescentes na legislação brasileira – lacunas e recomendações - Estudo legislativo, Organização Internacional do Trabalho. Escritório Regional Para América Latina e Caribe, Programa Internacional para Eliminação do Trabalho Infantil – IPEC, Mimeo. Março, 2002.

ZAFFARONI e PIERANGELI. Manual de Direito Penal Brasileiro, Parte Geral, 2º edição, 1999, Editora Revista dos Tribunais.

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COLLECTION of **Good Practices  
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to the prevention and elimination  
of commercial sexual exploitation  
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Financed by the United States Department  
of Labor

Drawing made in the workshop "We have  
the right to play" by boys, girls and  
adolescents of the CEAPRA and School 354  
of Ciudad del Este. July 2005.