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Protection against Sexual Exploitation of Children and Adolescents within the Framework of the International Convention on the Rights of the Child

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I. Introduction

The international community, through different channels and resolutions, has declared sexual exploitation of children and adolescents a very serious breach of human rights. This phenomenon represents a kind of crime particularly harmful and difficult to deal with due to the invisibility of its victims as well as the international connections supporting it.

In this context, prevention and eradication of sexual exploitation of children and adolescents should be an integral part of the spectrum of social, legislative and judicial policies developed at national and international levels to protect the full development of children and adolescents and to insure their fundamental rights.

Since the adoption of the Universal Declaration of Human Rights in 1948, a positive process of adoption and internalization of the fundamental rights has begun. This process of awareness and mobilization of international channels was also extended to children, a group juridically described in Latin America as infancy/adolescence and comprised of people less than 18 years of age¹.

Especially in the last 30 years, a consensus has been growing on the need to establish

national, regional and universal norms to protect the rights of children and adolescents. In 1959 the General Assembly of the United Nations signed the Universal Declaration on the Rights of the Child. In 1978 the United Nations started discussions on a Project of International Convention on this subject that would serve as a reference and juridical instrument for the Member States.

The approval by the General Assembly of the United Nations on November 20 1989 of the International Convention on the Rights of the Child (ICRC) brought this process to fruition. Under the influence of the ICRC, several international pronouncements have been made. Among them can be mentioned the World Summit of Infancy in 1990 and, on our specific topic, the First World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996, where a Declaration and Plan of Action was approved by all participant States.

In the last few years, new international instruments have been approved, each developing specific aspects of the protection of the rights of children. Some are directly related to the protection against abuses or sexual exploitation of children such as the Agreement of La Haya on the Protection of Minors and Co-operation in International Adoptions; Agreement 182 of the ILO, in 1999, on the worst forms of child labor and, the most important, the Facultative Protocol of the ICRC in the year 2000 about the Sale of Children, Child Prostitution and the Utilization of Children in Pornography².

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¹ According to legislation on infancy/adolescence, enacted after the ratification of the Convention by several Latin American countries, the beginning of adolescence is usually set at 12 or 14 years. For a compilation of the most recent legislation, see García Méndez, Emilio and Beloff, Mary "Infancy, Law and Democracy in Latin America" Editorial Temis and Depalma, Santa Fe de Bogotá/Buenos Aires, 1998.

² A/RES/54/263 June 26, 2000. These instruments, as well as the rest of the resolutions of the United Nations on the Rights of Children and Protection against Sexual Exploitation, can be found in www.unicef.org.

This development of juridical instruments shows the growing awareness that the care for the well being, for the development and for the juridical protection of human rights, are intimately related. Since the end of the cold war, clear progress has been made in the understanding that civil and political rights and economic, social and cultural rights are intimately related and that human rights and human development have "a common vision and purpose: to ensure the well being, liberty and dignity of everybody, everywhere"³ (United Nations Development Program).

The Rights of children have played an important role for the development of this tendency since "through the Convention on the Rights of the Child, the international community was able for the first time to close the ideological gap that historically has separated civil and political rights from economic, social and cultural rights"⁴. This has been considered as a "bridge between human development and the development of rights"⁵

In this context, it can be said that the international community has now a series of specific juridical instruments to prevent and eradicate sexual exploitation of children and adolescents.

The goal of this presentation is to review the existing international juridical instruments and highlight their relationship to public policies, with the understanding that any measure to protect the rights and well being of children has to be framed within the wider movement of promotion of development and universal protection of human rights.

³ Report on Human Development 2000, PNUD 2000, p.1

⁴ Grant, J. "The Rights of Children, base of Human Rights" UNICEF, N.York, 1993, p.6. Speech of the Ex World Executive Director of UNICEF at the World Conference on Human Rights.

⁵ Himes, J. "Implementing the Convention on the Rights of the Child", Martinus Nijhoff, Publishers, The Netherlands, 1995, note 39 p. 223.

The fight against sexual exploitation of children is not an exception and the present challenge is to place the measures for its prevention and eradication within the framework of all public and juridical policies towards children. By applying this strategy, the possibilities of success in achieving the planned objectives are increased.

In this sense, in 1994, the Committee for the Rights of the Child, an organism of the United Nations created by the ICRC to follow and implement its principles, made a series of recommendation on sexual exploitation of children, stressing the need to deal with it within a comprehensive perspective, since the rights of children are "indivisible and interdependent" and therefore the implementation of the right to be protected against sexual exploitation must, at the same time, "consider the implementation of all the other rights of children"⁶

This interdependence demands the comprehensive protection of the rights of the child. Any situation of vulnerability, threat or restriction of rights must be evaluated within the perspective of the effects they produce on the whole of the rights protected. This analysis is particularly relevant to avoid "re-victimization" or "secondary victimization" of children and adolescents subjected to any form of abuse or sexual exploitation.

This integral and interdependent character of the rights proclaimed by the ICRC, shows the need for comprehensive protection. This is the fundamental aspiration and goal of the new legislation on children and adolescents that the Latin American countries are trying to implement since the Convention ⁷

⁶ Report of the Committee on the Rights of the Child (CRC/C/24, January 28, 1994 in www.unicef.org

⁷ Alluded to in the common affirmation that the Latin American legislation is based on the Doctrine of Comprehensive Protection". See García Méndez, E. "Rights of Children and Adolescents in Latin America. From ir-

II. Juridical Instruments and political strategies for the prevention and eradication of sexual exploitation.

As previously explained, the international norms on sexual exploitation of children and adolescents come mainly from the ICRC, Agreement 182 of the ILO on the worst forms of child labor in 1999 and the Facultative Protocol of the ICRC in 2000, on the sale of children, child prostitution and the utilization of children in pornography. The ICRC recognizes the right of children and adolescent to be protected from sexual exploitation, as well as the right of those victimized to psychological care and social reintegration (articles 34 and 39 of the ICRC). The Committee on the Rights of the Child also recognizes them as victims needing special protection and promotion in health, education and development.⁸

To render this protection effective, the Declaration of Stockholm establishes the importance of three basic principles of the ICRC: 1: That in all measures, the main consideration must be the best interest of the child (art. 3 ICRC) 2: That all rights must be equally protected and that children and adolescents be free from any form of discrimination (art. 2, ICRC) 3: That the child be consulted and his opinions considered (art. 12 ICRC)⁹

II.a. The best interest of the child

The principle of the **best interest of the child**¹⁰ is one of the better known precepts of the Congress although its origin goes far back. The Committee on the Rights of the

Child of the United Nations has adopted it as a guiding principle that should be used to interpret all other dispositions of the ICRC together with the principles of no discrimination, right to life and security and respect for the opinion of the child.

In this respect, the principle of the best interest of the child assures a comprehensive protection, favoring measures of prevention and protection of the rights of children sexually exploited within the context of the protection of all their rights, thus avoiding negative results.

In spite of the importance of this principle, neither the ICRC nor the Committee on the Rights of the Child has defined it in a precise and clear way. So, in the absence of a conceptual formulation, the idea has prevailed that the best interest of the child is something vague and undefined, to be interpreted in each case following juridical as well as psychosocial criteria.

In the approach previous to the Convention - made up of laws applied by juvenile courts - the recourse to the best interest of the child would be considered just a way to give juridical legitimacy to decisions made on behalf of the child, affecting their life and future, and made by authorities and adults (parents, judges, legislators, social workers, etc). These resolutions were not based on the overall protection of the rights and freedoms of children, since these were not juridically recognized yet, but on discretionary decisions based on the particular idea of those making decisions about what is in the best interest of the child.

With the adoption of the Convention, however, the best interest of the child has acquired the character of a fundamental norm, with a strictly juridical role and a specific content, to be applied to public policies. Therefore it is legitimate and opportune to propose an interpretation of the "best interest of the child" within the new context, trying to

regular situations to comprehensive protection" Ed. Forum, Pacis, Bogotá, 1994

⁸ CRC/C/24, January 28, 1994

⁹ Congress of Stockholm, Declaration No 4.

¹⁰ See Ph. Alston, *The Best Interests of the Child*. Oxford

University press, 1994 and M. Cillero "The Principle of the

Superior Interest of the Child in relation to the International

Convention of the Rights of the Child" within García Méndez

Emilio and Beloff, Mary, "Infancy, Law and Democracy in

Latin America" Editorial Temis and Depalma, Santa Fe de

Bogotá/ Buenos Aires, 1998.

fine tune its conceptual understanding and determine its function within a juridical system that recognizes the rights of children and subordinates to those rights all decisions made by authorities and parents.

In this new context, it is proposed that the best interest of the child is the respect and fulfillment of his rights. The best interest of the child is no more and no less than having his rights respected and implemented. It is opportune here to highlight two specific advantages regarding the function of this principle within a system of protection of human rights of children:

- a) It allows dealing comprehensively with the protection of the rights of children and adolescents, considering them as subjects of rights rather than objects of protection
- b) It establishes a non-exclusive priority of the rights of children in relation to the rights of other people that will have its application in solving individual cases, in bringing up legislation and in the formulation of public policies in general.

The application of the principle for the formulation of public policies and the protection of concrete cases of sexual exploitation of children and adolescents is obviously an efficient mechanism to give priority to the protection of the rights of victims of sexual exploitation over any other interest, thus avoiding degrading or stigmatizing proceedings that may turn into new forms of victimization.

The principle of the best interest of the child demands then that in each concrete case the legislator, the judge, the public or private authorities and the organizations supporting sexually exploited children, assume responsibility and seriously ponder the fact that "not all assistance will always be beneficial to the child"¹¹. It is imperative to make a careful

analysis of the diagnostic, probational, judicial and therapeutic procedures applied, in order to determine which decision would provide effective protection for the rights of children. They have to assure themselves that the decision adopted will not bring negative outcomes that will turn the intervention into a new source of infringement on the physical or psychological integrity, honor or reputation of the child.

As a consequence of all this, it is imperative that together with the obligation to criminalize sexual exploitation and punish the perpetrators, the State assumes also the obligation not to punish children victimized by these practices¹², as disposed by the General Assembly of the United Nations. It is also imperative to safeguard and promote the right of children and adolescents to family life, avoiding their separation from parents (article 9 ICRC) and considering their internment in institutions only a last resource and always on a temporary basis.

In the area of recuperation and social integration of victims, the development of alternatives should be specifically directed to re-establish and strengthen the right to family life. This can be done through programs of orientation and by providing material help to parents if necessary (article 27.3 ICRC).

II.b. The Principle of Non Discrimination

The **principle of non discrimination** which appears in the second article of ICRC, demands the egalitarian application of the Convention to all children without distinction (article 2.1 ICRC) and obliges the States to take all possible measures to assure effective pro-

Comission on Human Rights" N° 124. (A/52/482, 16 de Octubre 1997. In www.unicef.org

12 General Assembly of the United Nations. Resolution on the rights of the child (53/128)

¹¹ "Report on the sale of children, child protection and pornography prepared by the special rapporteur of thewww.unicef.org. Child.6 of February 23, 1999. In

tection against all forms of discrimination (article 2.2 ICRC).

Although there is empirical evidence that sexual exploitation applies to both sexes, there is also evidence of cultural and socio-economic patterns that lead to discrimination against women, affecting their lives and favoring the exploitation of girls and female adolescents over the exploitation of boys.

The Convention on Elimination of all forms of discrimination against Women, stipulates in article six that "*the States will take all appropriate measures, including legislative ones, to eliminate all forms of trade and sexual exploitation of women*"¹³. Therefore, all measures adopted for the prevention and protection of sexual exploitation should have a gender focus trying to remove practices or cultural stereotypes that lead to the devaluation of women, particularly girls, and their utilization as sexual objects¹⁴.

It also should be mentioned that factors such as poverty, family make-up, ethnic background, cultural practices and place of residence are often mentioned as explanation or justification for abuse or sexual exploitation, especially commercial sexual exploitation. It is important to unmask these arguments as unacceptable forms of discrimination, specially coming from States within an international community that recognizes without distinction equal human rights for all people.

On the contrary, it is an obligation to reverse those circumstances and social practices by fighting poverty and putting an end to all tradi-

tional practices harmful to the well being of children, thus complying with article 24.3 of the ICRC.

In Latin America, the survival of laws and judicial and administrative practices based on the old paradigm of social irregularity, confusing victims with perpetrators, is responsible for the pervasive discrimination against children and adolescents coming from the poorest sectors. This discrimination must be urgently stopped if we want to have some impact on eliminating the perpetuation and multiplication of sexual exploitation of children and adolescents.

We can still witness the existence of rigid mechanisms of confinement, control and punishment applied with particular rigor to girls victims of networks of exploitation, prostitution and pornography.

II.c. Participation of the Child

The principle that **the viewpoint of children and adolescents** should be considered, is probably one of the most innovative aspects of the Convention. It is expressed in article 12 of the ICRC in these terms: "*The Member States will guarantee that children able to form their own opinions will have the right to freely express those opinions in all matters affecting them, taking into account the opinion of the child in function of his age and maturity*".

This principle must be complemented with the recognition of the right of the child and adolescent to the "freedom to search for, receive and diffuse information" (article 14 of the ICRC). In the field of sexual development the obligation of the State is to provide children and adolescents with information on the basic principles of sexual health and family planning (article 24 of ICRC).

The right to express his opinion and be informed is also related to the acknowledgment of the progressive autonomy of children and adolescents in the exercise of their rights (arti-

¹³ Besides the text of the United Nations, we should also mention the pronouncements of the Ibero-American Convention to Prevent, Punish and Eradicate Violence against Women (Belem do Para).

¹⁴ The expression "sexual object" presupposes considering the other as simple instrument of pleasure, disregarding the personal dignity and goals of the other. See P. Bouddieu: "The Masculine Domination", Anagrama 2nd edition, Barcelona, 2000, p.134

cle 5 of ICRC)¹⁵. In order to accomplish this, the child has also the right to receive proper orientation and direction from parents or tutors. In summary, the right to participation accorded to children and adolescents, demands and implies the responses of parents, authorities, the media and the community as a whole.

The implementation of this principle demands revisions and modifications in the way public policies are created, whether they be directed towards prevention, protection or reparation. Also, effective mechanisms have to be put in place in order to get to know, value and apply the opinions of children and adolescents. It is also necessary to diffuse information on the risks of sexual exploitation to physical and mental health, to promote the use of the mechanisms for reporting abuse and especially to consider the opinion of children in the implementation of the processes of recuperation and social reintegration.

II.d Protection against Sexual Exploitation and Recovery of Victims as seen by the ICRC

Within these general principles, articles 34 and 39 of the ICRC must be interpreted as they make the most direct reference to protection from sexual exploitation of children and adolescents.

Article 34: "The Member States pledge to protect children against all forms of exploitation and sexual abuse. To this end, the Member States will take all appropriate measures, national, bilateral and multilateral to prevent the following:

- a) Encouraging or forcing a child to engage in any illegal sexual activity;*
- b) Exploiting a child through prostitution or any other illegal practices.*

- c) Exploiting a child through pornographic exhibitions or material"¹⁶*

Article 39: "The Member States will adopt all pertinent measures to promote the physical and psychological recovery and the social reintegration of any child victimized by any form of abandonment, exploitation, abuse, torture, inhuman or degrading treatment or who suffered the consequence of armed conflicts. This recovery and reintegration will be done in an atmosphere that promotes the child's health, self respect and dignity".

Article 34 of the ICRC provides guidelines on the obligations of the States towards prevention and repression of abuse and sexual exploitation. Article 39 complements it by highlighting the obligations towards recovery and social reintegration of victims.

It is of particular interest to note that the ICRC reiterates that these measures must be adopted not only at the national level but also through bilateral and multilateral agreements, thus stressing that the fight against sexual exploitation is not only a task to be assumed by each State, but also to be assumed in cooperation with the international community. In that sense, it is imperative to strengthen regional systems - in our case the Inter American System - to prevent sexual exploitation and to protect children and adolescents from falling victim.

The 1st World Congress held in Stockholm in 1996, had as a goal to propose mechanisms to assure the compliance with these dispositions of the ICRC and to promote international co-operation. From this Congress came the clear understanding that sexual exploitation of children and adolescents is a particular form of violence and infringement of the rights of children and adolescents who are treated as

¹⁵ See M. Cillero, "Infancy, Autonomy and Rights. A Question of Principles" in *The Right to Have Rights*, Volume IV, UNICEF - IIN, Montevideo, 1998

¹⁶ For a complete summary of the discussion preceding this article, see Sh. Detrick "The United Nations Convention on the Rights of the Child. A Guide to the "Travaux Préparatoires", Martinus Nijhoff Publishers, The Netherlands 1992, pp. 429-438

sexual and commercial objects. It was also concluded there that poverty or any other social consideration couldn't be used as justification for commercial sexual exploitation¹⁷.

According to the main conclusions of the Congress, the measures to be adopted by the States deal with three priority areas:

- * **policies towards prevention, protection, recovery and social reintegration**
- * **formation of alliances towards the sensitization of the problem; and**
- * **legislative adaptation and improvement of judicial systems**

These measures should be developed within a broad framework of international co-operation among Governments, international organizations and non-governmental organizations. At the national level, all local organizations should work together to form a broad coalition of governmental and non-governmental bodies. At all these levels, it is necessary to consider and respect the point of view of children.

In relation to **social policies**, the following were identified as priority preventive mechanisms: access to and continuance in the school system, proper care from health services and support for the development of children and adolescents, especially those whose rights have been threatened or violated. The need to set specific programs for the recovery and social reintegration of children and adolescents victims of sexual exploitation was also acknowledged.

In the area of **articulation of alliances and sensitization**, the goal is to promote the development of a culture of rights through specific measures that would make people aware of the dignity and equality of all children and adolescents, the illegality and negative effects of commercial sexual ex-

ploitation, the penal sanctions for the different forms of exploitation and finally the need to look at this problem from a gender perspective.

One of the strategic objectives of this sensitization is the formation of coalitions of public and private networks ready to lead the fight against commercial sexual exploitation within the framework of protecting the rights of children and adolescents. It is particularly important in this respect to mobilize the tourist industry.

It is also necessary to integrate the work of Government and Administrative agencies with the work of civil society organizations at all levels (local, regional, national and international) and to promote the participation of children, adolescents and young people, including victims, in planning measures of prevention, protection and assistance for victims of sexual exploitation.

In the **legal and judicial** aspects, a clear distinction must be made between protecting rights and helping victims on one side, and instituting punishment and criminal prosecution for the networks of sexual exploitation on the other. In order to achieve this, it is necessary to adjust domestic legislation in those countries where old laws or juridical practices contrary or inadequate in guaranteeing the rights of the ICRC still remain in place. It is also imperative to divulge the existence of the law and the system of prosecution and punishment for those who break it.

With regard to the protection of the rights of children and adolescents victims of sexual exploitation, the law should establish specific guarantees to assure that 1) the systems of recovery and reintegration reach all affected children and are not structured under policies of punishment and control; 2) all children can enjoy their rights, especially the right to education, health and family life; 3) the running of the programs will be under periodic supervi-

¹⁷ Declaration of Stockholm, 1996, points 5 and 6

sion by some authority, especially if it is a residential program (article 25 of the ICRC).

New agreements on international co-operation should also be signed to help the international community to face this problem. Areas of agreement should be on measures to eradicate sexual exploitation at work and on the signing of extradition treaties. In the area of international agreements, it is of paramount importance to ratify **Agreement 182 of the International Labor Organization on the worst forms of child labor (1999) and on the Facultative Protocol of the ICRC about the sale of children, child prostitution and utilization of children in pornography.**

Agreement 182, article 3, defines as the worst forms of child labor the sale and utilization of children in prostitution and the production of pornographic material.

In letter a) of this agreement, one of the manifestations mentioned is "*slavery or practices akin to slavery, such as the sale and trafficking of children*". Although slavery and the sale or trafficking of children are not always related to sexual exploitation, their possible connection is obvious. Even adoption systems could eventually mask child trafficking for sexual exploitation.

To fight this problem, it is important that the countries ratify the Agreements of The Hague on Protection of Minors and Co-operation in Matters of International Adoption; the Hague Convention on the Civil Aspects of the International Kidnapping of Children; the Hague Convention on Jurisdiction, applicable Law, Recognition, Execution and Co-operation in matters of Parental Responsibility and Measures for the Protection of Children.

Letter b) of article 3 of Agreement 182 of the ILO identifies as worst form of child labor "*the utilization, recruiting, or offering of children for prostitution, pornographic production or pornographic acting*" and promotes the mobi-

lization of Government organizations, Entrepreneurs, Workers and other social organizations for its prompt and total elimination.

These dispositions of Agreement 182 of the ILO encourage the States not only to create penalties but also to define these activities as illegal labor practices to be controlled and punished legally as well as through the system of controls and punishments established by the labor code.

Thus, there will be three independent state-judicial systems in place, not excluding each other but in co-ordination with each other, to prevent and punish sexual exploitation of children: the penal system, the system of protection of the rights of children and adolescents and the labor laws.

II e The Facultative Protocol of the ICRC on the Sale of Children, Child Prostitution and the Utilization of Children in Pornography.

The General Assembly of the United Nations, aware of the necessity to have more specific mechanisms in place to assure the respect for the rights of children established in the Convention, approved in June 2000 the **Facultative Protocol of the ICRC on the Sale of Children, Child Prostitution and Utilization of Children in Pornography**. This Protocol is open for ratification by the States.

The ratification of this Protocol by all American States is still a goal to be attained by the countries of the region and could be a universal goal to be reached at the II World Congress in Yokohama in 2001. According to information received through UNICEF, until the 10th of October 2001, 78 States have signed the Protocol of which only six are members of the OAS¹⁸.

The protocol deals with three specific problems: sale, prostitution and pornography, and therefore is a development of articles 34 and

¹⁸ UNICEF, www.unicef.org

35 of the ICRC. It must be remembered that the preparatory work for the Convention dealt with those situations in one single article. Several national delegations and representatives of governmental and non governmental organizations showed the need to separate those issues, particularly since the sale of children is a broader issue not necessarily linked to sexual exploitation¹⁹

The Protocol refers to sale, prostitution and utilization of pornography but it establishes a precise realm of application through the following definitions:

Article 2. "Regarding the present Protocol

- a) *The sale of children is all action or transaction in which a child is transferred by a person or group to another person or group in exchange for remuneration or any other form of retribution;*
- b) *Child prostitution is the utilization of a child in sexual activities in exchange for remuneration or any other form of retribution;*
- c) *Child pornography is any representation by the use of any media of a child engaging in explicit sexual activities, whether real or simulated, or any representation of the genital organs of a child for sexual purposes"*

After these general definitions, article 3 describes specific conducts that constitute sale, prostitution of child pornography. These conducts must be "at least" typified and punished by penal legislation whether they "took place inside or outside the borders" of the country and whether they were committed by an "individual or collectively". Also "penal responsibility of companies" should be established in conformity with the legislation of each country. Finally it is established that "each Member State will punish these crimes with penalties proportional to their gravity".

The Protocol obliges all States to establish in their legislation the sanctions and punishments necessary to fulfill their obligations towards the Treaty. In this way, International Law does not typify crimes but demands that they will be typified in the internal legislation of each country. At the same time the Protocol establishes in article 4 that the Member States punish those activities even when the crimes were committed outside of their territories. Article 5 goes even further, automatically incorporating those crimes to any extradition treaty present or future.

The Protocol also establishes the obligation of each country to help each other in relation to any investigation, penal proceeding or extradition proceeding, especially in matters of evidence in judicial trials (article 6).

The strong demands of this Protocol and the obligations it imposes, presupposes the understanding that once in place, the national and international penal systems will be greatly strengthened to deal with this kind of crime.

It is already possible to observe that due to these new international instruments, national legislation is being reviewed and adapted all over the world improving both prosecution of perpetrators and protection of rights of children and adolescents²⁰

The evolution of the legislation shows that crimes of sexual abuse that used to be classified as assaults to public morality are now considered crimes against people. Also sexual exploitation has started to be considered a severe assault against subjects of rights, endowed with freedom and dignity. An example of this tendency is the new Italian law 269/98 titled: "Law against sexual exploitation of minors as a new form of slavery". This law has had a profound symbolic-cultural impact by

¹⁹ Sh. Detrick, op. cit. p.430

²⁰ For a recent and comprehensive analysis of this see " Le violenze sessuali sui Bambini", Questioni e Documenti, N° 19, Istituto degli Innocenti, Firenze, Febrero 2001, specially the analysis of compared law pages 179-206

considering sexual exploitation of children and adolescents a crime against the rights of people akin to slavery²¹.

Among the new legislative tendencies we can find the punishment for the user of child prostitution as well as for the possession of child pornography (article 600 of the Italian Law). The General Assembly of the United Nations also proposed in 1999 the penalization of both sex tourism and dissemination of child pornography via Internet.

In the judicial sphere, the Facultative Protocol of the ICRC establishes a number of guarantees that are a real challenge for the judicial systems of Latin America since they demand important and simultaneous modifications to the system of penal justice and the system of protection of the rights of children and may even demand changes in family and labor civil justice systems.

Article 8 of the Facultative Protocol of the ICRC makes specific reference to the rights of victims, with special consideration for their life, integrity and rights during judicial proceedings. From there emerges the need for certain guarantees that should govern all procedures.

- a) **Specialization of the procedures** so that they can be adapted in consideration of the best interest of the child, guaranteeing his/her rights, acknowledging his/her vulnerability and specially protecting his/her integrity when called to testify.
- b) **Professional specialization.** All administrators of justice at all levels must receive juridical and psychological training in order to relate to victims of sexual exploitation.
- c) **Information.** Victims must be well informed of their rights, their role, the date

and development of proceedings, their importance and their conclusions.

- d) **Assistance.** The protocol calls for "due" assistance, implying not only juridical assistance but also psychological, social, or any other assistance considered necessary.
- e) **Protection of Privacy, Identity and Security.** This demands the establishment of specific norms banning the publication of the identity of victims and any other personal information as well as protecting victims or witnesses against any form of aggression or retaliation.
- f) **Fast and fair resolution of the cause.**

III. Challenges

Throughout this presentation, several challenges have been put forward on ways to improve the protection of children/adolescents victims of sexual exploitation. Now, as a conclusion, I wish to present the following ideas that are also work agendas towards the fulfillment of this goal.

1. Consider the **Focus on Human Rights of Children/Adolescents** the inspiring principle for all actions and practices. We must understand that sexual exploitation of children and adolescents is a particularly serious infringement of their rights that should be dealt with within the context of their comprehensive protection, leaving behind all former approaches of control or fear for victims.
2. **Separate control/repression of the illicit acts from protection of the rights** of victimized children and adolescents. It has to be assumed that the basic orientation of the intervention is the restitution of the rights of victims.

²¹ Questioni e Documenti, N° 19, op. cit. p. 36.

3. Need to **strengthen public policies and juridical mechanisms for the prevention and repression of sexual exploitation of children and adolescents.** It is specially necessary to co-ordinate the different systems of the State, such as the penal, labor and tax systems, to control illicit activities.
4. **Give universal ratification to the Facultative Protocol of the ICRC on the Sale of Children, Child Prostitution and the Utilization of Children in Pornography.**
5. **Align legislation on the protection of children and adolescents** to the agreements of the ICRC and other international instruments.
6. **Strengthen alliances and co-operation** among the different national and international organizations, public, private and non-governmental.

Finally I find opportune to conclude by stressing the need to adopt an integrating system that would transcend all reductionist perspectives that under the guise of specialization, favor fragmented juridical and psycho-social strategies that often hinder the integral protection of the rights of children and adolescents.

Even though it seems paradoxical, trying to deal with the problems of children in an isolated way, according to the different manner in which their rights have been infringed upon, has been one of the factors that historically prompted the proliferation of the specific phenomena that now we are trying to combat ²². This tradition of reductionism and specialization has been totally overridden in the norma-

tive plan by the adoption of the policy of integration of the International Convention on the Rights of the Child.

Therefore we have in the Convention and in the other international instruments mentioned in this exposé, a framework for specific actions directed to the comprehensive protection of the rights of children and adolescents. This will become the building block towards the construction of a society that will ensure for all its members the eradication of any type of exploitation, discrimination and abuse of power, or, in other words, the construction of a more democratic society.

²² Historical studies done with a critical focus on the outcomes of Minor Legislation in Latin America, give several examples of this. In another area, one of the more classic cases has been "special education" created through the paradigm of special education for children of different capacities that now is slowly and painfully being replaced by integration and normalization.