

CHILD SEXUAL EXPLOITATION IN COSTA RICA

I. INTRODUCTION

In 1990 the United Nations Convention on the Rights of the Child (CRC) entered into force.¹ Every nation-state except two² ratified this Convention, the first international treaty to address directly and focus upon the rights of children.³ As momentum swept around the world in favor of the CRC, Costa

1. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (1989) [hereinafter CRC]. For the text of numerous other international documents regarding children, including regional and global treaties, see GERALDINE VAN BUREN, ED., INTERNATIONAL DOCUMENTS ON CHILDREN (1993).

2. Neither Somalia nor the United States have done so. See U.S. Dept. of State, *Country Reports on Human Rights Practices, Appendix C*, Feb. 25, 2000. There are several advantages to the United States' ratification of the Convention. First, ratification would help to make children a national priority throughout the several states. CYNTHIA PRICE COHEN & SUSAN H. BITENSKY, UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: ANSWERS TO 30 QUESTIONS, 6 ¶ 30 (1994). Secondly, ratifying the treaty would enhance the United States' role as a human rights promoter, provide the country with the opportunity to elect members of the Committee on the Rights of the Child, and help monitor whether States Parties comply with the Convention. *Id.* Elizabeth Bevilacqua notes that one reason why the CRC faces opposition in the United States is the United States' federalist system of government. See Elizabeth Bevilacqua, *Child Sex Tourism and Child Prostitution in Asia: What Can Be Done to Protect the Rights of Children Abroad Under International Law?*, 5 ILSA J INT'L & COMP. L. 171, 176 (1998). That is, many of the CRC's guarantees have traditionally fallen under the domain of the states. *Id.* For a collection of essays discussing the differing standards between state laws and the Convention, see CYNTHIA PRICE COHEN & HOWARD A. DAVIDSON, CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW (1990). One conflict is between the Convention's prohibition against the execution of minors and life sentences without parole under CRC Article 37, *supra* note 1, and Indiana's law that allows executions and life sentences without parole for children as young as sixteen years old. IND. CODE ANN. § 35-50-2-3 (Michie 2000). The opposition's disapproval of the CRC is evident in a resolution submitted by Senator Helms to the Committee on Foreign Relations warning that "if the President does attempt to push this unwise proposal [urging passage of the CRC] through the Senate, I want him to know . . . that I intend to do everything to make sure he is not successful." Stefanie Grant, *The United States and the International Human Rights Treaty System: For Export Only?*, in FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 327 (Philip Alston and James Crawford, eds. 2000). Even if the United States ratifies the Convention, separate implementing legislation is necessary because the United States follows a policy of "non-self-execution," meaning that ratified treaties do not automatically become national law. CYNTHIA PRICE COHEN & SUSAN H. BITENSKY, UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: ANSWERS TO 30 QUESTIONS, 5 ¶ 18 (1994).

3. According to CRC Article 1, "a child means every human being below the age of eighteen years unless[,] under the law applicable to the child, majority is attained earlier." *Id.* at art. 1. Costa Rica codified this principle in Article 2 of the El Código De La Niñez Y La Adolescencia (Child and Adolescent Code), which states that "[f]or the effects of this Code, every person will be considered a girl or a boy from conception until the age of twelve, and an adolescent for children older than twelve but younger than eighteen." La Asamblea Legislativa

Rica⁴ not only ratified the treaty,⁵ but also codified the agreement into national law.⁶ However, despite the fact that Costa Rica has a relatively good track record regarding human rights,⁷ at least one non-governmental organization alleges that the Costa Rican government is failing to uphold its obligations

de la República de Costa Rica, EL CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, Ley 7739 de 6-1-1998, at <http://imprenal.go.cr/> (last visited Oct. 15, 2000) [hereinafter Code].

4. Costa Rica is a democratic republic that gained its independence from Spain on September 15, 1821. See U.S. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2000—COSTA RICA, (2000), available at <http://www.cia.gov/cia/publications/factbook/geos/cs.html>. (last visited Oct. 1, 2000). The country occupies 51,032 square kilometers and has a population of approximately 3.67 million. *Id.* San José, Costa Rica's capital, is the country's largest city with 1.2 million inhabitants. *Id.* Life expectancy in the country is approximately seventy-six years. *Id.* The economy is based upon tourism, agriculture and electronics exports. *Id.*

5. See La Asamblea Legislativa de la República de Costa Rica, Executive Decree No. 19884-PJ of 23 August 1990. U.N. Committee on the Rights of the Child, Summary Record of the 91st Meeting, ¶ 24 (1994) [hereinafter Summary Record of the 91st Meeting].

6. The Code of the Child and the Adolescent was enacted to codify this Convention. See Code, *supra* note 3, at art. 1. The Code states that it shall constitute the minimum judicial mark for the integral protection of the rights of minor persons. It establishes the fundamental principles including the social or community participation as well as the administrative and judicial processes that are invoked by the rights and obligations of this population. Any norms that provide [children] greater protection shall supercede the provisions of this Code. *Id.*

7. No political or extrajudicial killings nor politically motivated disappearances were reported during 1999. See U.S. DEPARTMENT OF STATE, BACKGROUND NOTES: COSTA RICA (June 2000). Additionally, authorities generally respect the constitution's prohibition against cruel or degrading treatment as well as the restriction against arbitrary arrest and detention. *Id.* The State Department expressed its concern that some prisoners are incarcerated without bail for long periods of time awaiting trial for serious offenses. There were no reports of political prisoners. *Id.* "An independent press, a generally effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and of the press." *Id.* The constitution protects and the government permits freedom of association, and clergy of all denominations practice freely. *Id.* The government does not restrict freedom of movement. *Id.* There are no legal impediments to women participating in politics. *Id.*

Additionally, Costa Rica has also ratified the following conventions relating to children's rights:

- (a) Supplementary Cooperation Agreement on Child Welfare signed in Santiago, Chile, on 6 March 1992, which entered into force from [sic] 22 September 1993 in pursuance of Article VI. The Agreement was promulgated in Costa Rica by Executive Decree No. 22413 of 30 June 1993;
- (b) Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption signed on 29 May 1993, Law No. 757 of 22 June 1995 (Official Gazette No. 135 of 17 June 1995);
- (c) Inter-American Convention on International Traffic in Minors signed in Mexico on 18 March 1994 at the Fifth Inter-American Specialized Conference on Private International Law.

U.N. Committee on the Rights of the Child, Periodic Reports of States Parties due in 1997: Costa Rica. Oct. 1, 1998, CRC/C/65/Add.7, ¶11, available at <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/424c5b0a328c2971802566fa005101c4?Opendocument> (last visited Oct. 28, 2000). Additionally, "[t]he Convention on the Civil Aspects of International Child Abduction, adopted in the Hague on 25 October 1980, is currently awaiting approval by the Legislative Assembly." *Id.* at ¶ 12.

under these national and international requirements to protect children, particularly in regard to child prostitution for sex tourism.⁸

The present note argues that Costa Rica is not in full compliance with the Convention on the Rights of the Child. Although Costa Rica has made important strides in bringing its national legislation into conformity with the Convention's requirements, it is failing to ensure that these rights are enforced and protected. Due to this failure, Costa Rica is providing children only paper rights rather than actual guarantees of what the state promised children when the government ratified the Convention in 1990.

To analyze Costa Rica's compliance and non-compliance with the CRC, this note will first consider the Convention's background in Part II. Then, after a discussion of sex tourism and the causes of child prostitution in Parts III and IV respectively, the note will examine Costa Rica's compliance, or lack thereof, under individual Convention articles. This investigation will begin in Part III with the Convention's obligations as set forth in Article 4. In the subsequent sections, the note will consider Costa Rica's compliance in protecting children from sexual exploitation; in providing children the highest attainable standard of health; and, lastly, in ensuring the resources necessary to enforce legislation that prohibits child sexual exploitation.

After analyzing Costa Rica's CRC compliance, the note will then discuss legislation passed by the United States in an effort to curtail its citizens from going abroad to sexually exploit children. Finally, the note will recommend that the United Nations establish a special rapporteur to examine child prostitution in Costa Rica, that Costa Rica increase funding for its sex crimes unit, and that "alternative reports" submitted to the Committee on the Rights of the Child be made available to the general public on the internet.

8. Casa Alianza made this allegation. See Casa Alianza, *Presentation to the United Nation's Committee on the Rights of the Child, 24th Sess. for the Day of General Discussion: State Violence against Children*, Geneva, Switzerland, at <http://www.casa-alianza.org> (visited Oct. 28, 2000) [hereinafter Casa Alianza Presentation to the United Nations]. Casa Alianza recently was awarded the Conrad H. Hilton Humanitarian Prize for its "extraordinary contributions toward alleviating human suffering." Casa Alianza, *Casa Alianza Wins World's Largest Humanitarian Prize*, at <http://www.casa-alianza.org/EN/about/hilton/> (last visited Nov. 12, 2000). Bruce Harris, Casa Alianza's Executive Director, who was named a "human rights hero" by Amnesty International in 1991, is a recipient of the 1996 Olof Palme Award, as well as the 2001 "Monsignor Oscar Romero Award" from the University of Dayton. Casa Alianza, *Bruce Harris to Receive Monsignor Oscar Romero Award from the University of Dayton, USA*, at <http://www.casa-alianza.org/EN/lastminute/prize.htm> (visited Aug. 17, 2001). Queen Elizabeth II bestowed the Order of the British Empire upon Mr. Harris in 2001 for his "life's work with children in Latin America." Casa Alianza, *Queen of England Honours Casa Alianza Director*, at <http://www.casa-alianza.org/EN/lastminute/6172001.htm> (visited Aug. 17, 2001).

II. BACKGROUND ON THE CONVENTION ON THE RIGHTS OF THE CHILD

The CRC attained the unprecedented record of becoming essentially universally accepted within nine years after entering into force.⁹ The Convention covers a broad range of rights including civil, political, economic, social and cultural rights.¹⁰ In addressing these areas, the Convention "breaks new ground by being the first global instrument to explicitly recognize the child as possessing rights that states parties undertake to 'respect and ensure.'"¹¹ Aside from establishing guarantees for children, the Convention also provides a reporting process to enable governments, non-governmental organizations,¹² and others to work with the Committee on the Rights of the Child in an effort to realize the Convention's enumerated goals.¹³

A country's first report is due to the Committee on the Rights of the Child two years after ratifying the CRC, and then subsequent reports are due every five years thereafter.¹⁴ Guidelines¹⁵ created by the Committee establish

9. See THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 113 (Philip Alston and James Crawford, eds., 2000). For other works by Philip Alston, see Philip Alston (ed.), PROMOTING HUMAN RIGHTS THROUGH BILLS OF RIGHTS: COMPARATIVE PERSPECTIVES (1999), an analysis of the impact that international human rights have had on bills of rights around the world; Mara R. Bustelo and Philip Alston (eds.), WHOSE NEW WORLD ORDER: WHAT ROLE FOR THE UNITED NATIONS? (1991), a collection of papers regarding a "new world order" in international peace and security, in dispute settlement, in international law, in economic and social issues, and in the United Nations; and Philip Alston (ed.), HUMAN RIGHTS LAW (1996), a collection of essays regarding the human rights field; and Philip Alston & Bridget Gilmour-Walsh, THE BEST INTERESTS OF THE CHILD: TOWARDS SYNTHESIS OF CHILDREN'S RIGHTS AND CULTURAL VALUE (1996), an analysis of the principle that the best interests of the child should be promoted in all aspects of the CRC.

10. See GERALDINE VAN BUREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 16 (1995).

11. A. GLENN MOWER, JR., THE CONVENTION ON THE RIGHTS OF THE CHILD: INTERNATIONAL LAW SUPPORT FOR CHILDREN 3 (1997). CRC Article 2(1) reads

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

CRC, *supra* note 1, at art. 2(1).

12. The NGO Group works to "facilitate contact between the non-governmental community and the Committee on the Rights of the Child with particular emphasis on securing all relevant information for the State reporting process." NGO Group, *Aims, Priorities and Objectives*, at <http://www.defence-for-children.org> (last visited Oct. 24, 2000). This organization, founded in 1983 to assist in the Convention's drafting process, currently consists of over thirty-seven child focused organizations. Stuart N. Hart & Laura Thetaz-Bergman, *Role of Nongovernmental Organizations in Implementing the Convention on the Rights of the Child*, 6 *Transnat'l L. & Contemp. Probs.* 373, 388 (1996).

13. See THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING, *supra* note 9, at 114.

14. See CRC, *supra* note 1, at art. 44.

15. See U.N. Committee on the Rights of the Child, General Guidelines for Periodic

a thematic structure for these state party reports, including “[g]eneral measures of implementation; [d]efinition of child; [g]eneral principles; [c]ivil rights and freedoms; [f]amily environment and alternative care; [b]asic health and welfare; [e]ducation, leisure¹⁶ and cultural activities; and [s]pecial measures of protection.”¹⁷ These guidelines provide the primary source for interpretation of the CRC.¹⁸

In addition to reviewing reports submitted by State Party governments, the Committee also receives reports from non-governmental organizations.¹⁹ These “alternative reports” are useful because they provide Committee members²⁰ information not otherwise available to the Committee that is necessary to identify inconsistencies between the government’s assessment of the situation and the conditions on the ground.²¹ Furthermore, these reports permit Committee members to ask States Parties more probing, better focused, and more critical questions than without the supplemental information.²²

III. SEX TOURISM

In light of Costa Rica’s reports pursuant to the CRC, the Committee on the Rights of the Child declared that it was “profoundly worried by the high incidence of commercial sexual exploitation of children in Costa Rica.”²³ Given that more than one million children worldwide are involved in child

Reports, CRC/C/58, (Nov. 20, 1996); U.N. Committee on the Rights of the Child, General Guidelines for Periodic Reports, CRC/C/58 (1993).

16. The Code states that “[u]nderage persons will have the right to play and participate in activities, sports and cultural events that will permit them to occupy their free time to their benefit and will contribute to their integral human development.” Code, *supra* note 3, at art. 73.

17. THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING, *supra* note 9, at 127-28.

18. See Jonathan Todres, *Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and Its Early Case Law*, 30 COLUM. HUM. RTS. L. REV. 159, 177 (1998).

19. See THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING, *supra* note 9, at 118-19. A study completed by the NGO Group (*see supra* note 12) found that these alternative reports do indeed influence the Committee on the Rights of the Child. Hart & Thetaz-Bergman, *supra* note 12, at 389-90.

20. “The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to principal legal systems.” CRC, *supra* note 1, at art. 43(2). “The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.” *Id.* at 43(3).

21. See THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING, *supra* note 9, at 119. For a complete listing of the thematic structure, *see id.* at 127-28.

22. *See id.* at 119.

23. DEFENSORIA DE LOS HABITANTES DE LABORES, REPORTAJE ANUAL, 1999-2000, at <http://www.crcnet.cr/~defensor/> (last visited March 7, 2001).

prostitution, creating an annual US \$10 billion industry,²⁴ the problem is not unique to Costa Rica.²⁵ Indeed, “[c]hild prostitution . . . affects all countries,”²⁶ and as Vitit Muntarbhorn, a former United Nations Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography, noted, when strides are made to end child prostitution in one area of the world, the problem is further aggravated in another part of the world.²⁷ For example, United Nations Secretary-General Kofi Anan reported that increasing enforcement of restrictions in Southeast Asia, such as in Thailand and Sri Lanka, is shifting sex tourism to Latin America.²⁸ This shift has resulted in sex tourists constituting approximately five percent of the four million tourists that annually visit Central America.²⁹ In Costa Rica, the number of sex tourists in 1998 constituted ten thousand of Costa Rica’s one million tourists.³⁰

These tourists often come from the United States, Great Britain, Germany and Australia.³¹ A study of foreign tourists detained in Costa Rica for sexually abusing children between 1992 and 1994 revealed that twenty-five percent were from the United States, eighteen percent were from Germany, fourteen percent were from Australia, twelve percent were from Britain, and six percent were from France.³² A main reason why individuals travel

24. See ROGER J.R. LEVESQUE, *SEXUAL ABUSE OF CHILDREN: A HUMAN RIGHTS PERSPECTIVE* 1, 75 (1999). For another work by Roger Levesque, see Roger J.R. Levesque, *CULTURE AND FAMILY VIOLENCE: FOSTERING CHANGE THROUGH HUMAN RIGHTS LAW* (2001), a discussion of “definitions, legitimacy of standards, and methods for intervention to address family violence.”

25. Vitit Muntarbhorn, *SEXUAL EXPLOITATION OF CHILDREN* 8, ¶ 65 (1996).

26. *Id.*

27. *Id.* at 3, ¶ 20.

28. Note by the Secretary-General, *Sale of Children, Child Prostitution and Child Pornography*, Fifty-third Sess., A/53/311, ¶ 20 (1998). Despite this trend, Levesque notes that United Nations information indicates that there are 800,000 children in Thailand, 400,000 in India and 350,000 children in Brazil involved in prostitution. See Levesque, *supra* note 24, at 75. However, this problem is also evident in the United States. *Id.* Levesque, citing government statistics, stated that there are approximately 900,000 children in the United States engaged in prostitution. *Id.* at 1.

29. See *Central America Shuts Eyes to Prostitution of Children*, TORONTO STAR NEWSPAPER, Sept. 18, 2000, available in LEXIS.

30. Casa Alianza Presentation to the United Nations, *supra* note 8.

31. See MARÍA CECILIA CLARAMUNT, *SEXUAL EXPLOITATION IN COSTA RICA: ANALYSIS OF THE CRITICAL PATH TO PROSTITUTION FOR BOYS, GIRLS AND ADOLESCENTS* 35 (1999). These “sending” countries present a significant problem because they create the demand for child prostitution. See Jonathan Todres, *Prosecuting Sex Tour Operators in the U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B.U. PUB. INT. L.J. 1, 3 (1999).

32. See Casa Alianza, *Presentation to the Inter American [sic] Commission on Human Rights on the Subject of the Commercial Sexual Exploitation of Children in Costa Rica*, <http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/0003audiencia.shtml> (visited March 7, 2001).

overseas to engage in sexual relations with child prostitutes is for the impunity that host governments extend to such tourists through the lax enforcement of anti-child exploitation laws.³³

In Costa Rica's capital, San José,³⁴ the government estimates that there are at least three thousand child prostitutes.³⁵ Three primary types of intermediaries assist child prostitutes: bar and hotel owners, taxi drivers and pimps.³⁶ For example, Jorge Bubert Serrano was recently sentenced for pimping child prostitutes through an "escort service" that involved some of Costa Rica's five-star hotels.³⁷ Serrano advertised his child prostitution scheme on the internet, by placing brochures in hotels and classified advertisements in newspapers, and, more alarmingly, in "Naturally Costa Rica," a tourist magazine endorsed by two Costa Rican government agencies including the nation's Chamber of Tourism.³⁸ This operation existed for fourteen years.³⁹ One report⁴⁰ noted that the child prostitutes exhibited positive feelings regarding taxi drivers because the drivers brought the children customers and that "without them, everything would be more difficult."⁴¹ Child prostitution is also present in other areas of Costa Rica.⁴² Paniamor⁴³ identified, in particular, that ports catering to tourist yachts, such as Limón and Golfito, suffer from child prostitution.⁴⁴

33. See Heather C. Giordanela, *Status of 2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT'L & COMP. L.J. 133, 148-49.

34. San José has a population of 1.2 million (See U.S. Department of State, *supra* note 7) and serves as both the national capital and capital of the San José Province. See U.S. Central Intelligence Agency, *supra* note 4.

35. See U.N. Committee on the Rights of the Child, 596th Sess., Summary Record, ¶ 51.

36. See Claramunt, *supra* note 31, at 89.

37. See Casa Alianza, *Casa Alianza Disappointed after Pimp Get [sic] Just Five Years in Prison*, at <http://www.casa-alianza.org/EN/lastminute/jail.htm> (visited Aug. 17, 2001).

38. *Id.*

39. *Id.*

40. TATIANA TREGUEAR L. AND CARMEN CARRO B., INVESTIGACIÓN DIAGNÓSTICA: NIÑAS PROSTITUIDAS: CASO COSTA RICA 29 (1994). For an additional work by these authors, see generally TATIANA TREGUEAR L. AND CARMEN CARRO B., FUNDACIÓN PROCAL, NIÑAS MADRES: RECUENTO DE UNA EXPERIENCIA (n.d.) (discussing the situation of adolescent single mothers in Costa Rica).

41. *Id.* at 89.

42. See Milena Grillo R., *La movilización social como estrategia para prevenir la explotación sexual comercial de niños y niñas: construcción de una propuesta desde la Fundación Paniamor en Costa Rica*, REVISTA PRONIÑO, at <http://www.paniamor.or.cr/revista7.shtml> (last visited Oct. 28, 2000).

43. PANIAMOR, created in 1987, is a private, non-profit, non-partisan organization that aims to "attain compliance of the rights of people under the age of 18 in Costa Rica." Paniamor, *What is Paniamor?*, at <http://www.paniamor.or.cr/english/quees.shtml> (last visited Jan. 29, 2001).

44. See Milena Grillo R., *supra* note 42.

IV. CAUSES OF CHILD PROSTITUTION

In light of this sex tourism problem, it is helpful to consider the reasons why children enter into prostitution.⁴⁵ Although these reasons are diverse,⁴⁶ United Nations Children's Fund (UNICEF) has drawn a proportional correlation between the lack of education and child prostitution.⁴⁷ It is thus particularly troubling that thirteen percent of all Costa Rican children do not attend school.⁴⁸ This high percentage of children not attending school is present despite the fact that the Costa Rican legislature declared that "underage individuals will have the right to receive an education oriented towards the development of their potential."⁴⁹ The Public Education Ministry was created in an effort to "guarantee" that minors continue this education,⁵⁰ that the state guarantees the quality and equality of education,⁵¹ and that education is free and obligatory.⁵²

Secondly, the strength of the child's family is imperative in preventing child prostitution.⁵³ For example, a Hawaiian study that traced the lives of children who lived in poverty found that "unconditional acceptance by an adult" was the single constant factor in helping children avoid prostitution, drugs, and delinquency.⁵⁴ In Costa Rica, Paniamor cited two separate studies to conclude that physical, emotional, and sexual violence within the family constituted a common denominator in leading children towards prostitution.⁵⁵ Family abuse can also cause a child to run away and thus make the child

45. See World Congress against Commercial Sexual Exploitation of Children, *Contributing Factors*, at <http://www.childhub.ch/webpub/csechome/217e.htm> (last visited Oct. 22, 2000).

46. *Id.*

47. See *id.* Indeed, "[e]ducation, at its best, is an empowering tool for children, enabling them to develop the necessary confidence, self-esteem, capacity for reasoning and social skills to protect their rights and dignity and to become productive, fully participating adult members of society." *Id.*

48. See Defensoría de los Habitantes de Labores, *supra* note 23. This percentage accounts for approximately 120,000 of the 952,395 Costa Rican children nationwide. *Id.* An average of 5,600 children abandon school every month and 281 children daily. See *id.* This same report states that the reasons for leaving school include the following: 55% due to limited access to schools and the prerequisites and expulsion; 35% due to work, the need to provide help at home, and the inability to afford school supplies such as books and uniforms or to pay for transportation. See *id.*

49. Code, *supra* note 3, at art. 56.

50. See Code, *supra* note 3, at art. 57.

51. See *id.* at art. 58(a).

52. See *id.* at art. 59.

53. See Levesque, *supra* note 24, at 81-82.

54. *Id.*

55. See Fundación Paniamor, *Plan Marco de Acción*, at <http://www.paniamor.or.cr/novedades/comision/comision.shtml> (last visited March 8, 2001).

“vulnerable to commercial sexual exploitation.”⁵⁶ UNICEF noted for example that forty-one of the fifty girl prostitutes interviewed in its study had experienced sexual abuse in their homes.⁵⁷ Although sixty-two percent of the interviewees reported undergoing physical abuse,⁵⁸ thirty-two percent by their father or mother,⁵⁹ sexual abuse need not be directed at the child to lead to long-term consequences to the child.⁶⁰ Seventy-eight percent of the child prostitutes interviewed by UNICEF witnessed “[s]pousal violence against the mother,” while seventy-four percent saw “physical violence committed by the father against siblings.”⁶¹

Thirdly, poverty is a contributing factor to child prostitution. For example, 76.7% of the girls interviewed for *NIÑAS PROSTITUIDAS: CASO COSTA RICA* stated that they relied upon prostitution as their sole means of income.⁶² If children cannot financially support themselves or their families by working in “legitimate” jobs, then some children will, out of economic necessity, resort to prostitution.⁶³ Indeed, some families send their children into prostitution as a form of family income.⁶⁴ This grave situation, combined with the fact that over twenty percent of the Costa Rican population lives in “excessive poverty,”⁶⁵ led one government agency to declare that “[p]overty reduction is one of the principle challenges that faces the country.”⁶⁶

56. *Id.*

57. Claramunt, *supra* note 31, at 117, citing a study completed by Treguear and Carro 1997.

58. *See id.* at 54.

59. *See id.* at 55, table 8.

60. *See id.* at 53, table 7.

61. *Id.* Additionally, this same study reported that 77% witnessed “[v]erbal violence committed by the father, mother or alternate figure against siblings”; 25% witnessed “[v]erbal violence against the mother” and 34% witnessed “[s]exual violence against anyone in the family group.” *Id.* The leading family characteristics for child prostitutes are:

[p]oor and large families with many children living under the same roof[;]
 [p]arental abandonment, generally the father . . . [;] [a]lcoholism and drug
 addiction in the father or substitute father[;] [f]amily violence . . . [;] [h]istory of
 prostitution for the mother, sisters, brothers, aunts or grandmothers[;] and
 [i]ncome earned in informal sectors of the economy, making it impossible to
 have a minimum salary or guaranteed labor benefits.

Id. at 56.

62. *See* TATIANA TREGUEAR L. & CARMEN CARRO B., *supra* note 40, at 32. Additionally, 3.3% relied upon “prostitution and factory work, 6.7% relied upon prostitution . . . , 3.3% relied upon prostitution and begging, and 10% relied upon prostitution and theft for income.” *See id.*

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

64. *See* Casa Alianza, *Cry of a Child*, available at <http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/99053.shtml> (visited March 7, 2001).

65. *See* Defensoría de los Habitantes de Labores, *supra* note 23.

66. *Id.*

V. CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 4

In assessing Costa Rica's compliance with specific CRC articles, it is important to view CRC obligations in light of Article 4. This article, in combination with the non-discrimination requirement of Article 2,⁶⁷ sets forth the overall standard by which to judge States Parties under the CRC.⁶⁸ Article 4 declares that

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.⁶⁹

This article stipulates two different standards under which states must perform their duties.⁷⁰ This distinction mirrors the differing obligations established under the International Covenant on Economic, Social and Cultural Rights⁷¹ (ICESCR) and the obligations under the International Covenant on

67. See Todres, *supra* note 18, at 177. CRC Article 2 states that States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

CRC, *supra* note 1, at art. 2.

Similarly, article 3 of the Code states that

[t]he provisions of this code are applicable to every underage person, without any distinction, independent of ethnicity, culture, gender, language, religion, ideology, nationality or any of his or her other characteristics, of those of his or her father, mother, legal representative or any other assigned person [to the child].

See Code, *supra* note 3, at art. 3.

68. SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 100 (1999).

69. CRC, *supra* note 1, art. 4. Similarly, the Code states that "[i]t will be the general obligation of the State to adopt the administrative, legislative, budgetary and any other necessary means to guarantee the plan effect of the fundamental rights of underage persons." Code, *supra* note 3, at art. 4.

70. See DETRICK, *supra* note 68, at 103.

71. RACHEL HODGKIN AND PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 55 (1998). The International Covenant on Economic, Social, and Cultural Rights in relevant part states that "[e]ach State Party to the present Covenant undertakes to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Civil and Political Rights⁷² (ICCPR).⁷³ Just as the IESCR only requires states to “progressively” implement the economic, social, and cultural rights protected under the agreement, under the CRC states are to take “all appropriate . . . measures” to the “maximum extent of their available resources” to ensure the economic, social, and cultural rights recognized by the CRC.⁷⁴ Thus, the Convention requires states parties “to move as expeditiously and effectively as possible towards [the rights protected by the CRC].”⁷⁵

Similarly, just as the ICCPR obligates states parties to provide immediate protection of its enumerated rights, the CRC declares that states “shall undertake⁷⁶ all appropriate . . . measures” to guarantee its civil and political rights.⁷⁷ This difference in standards aims to “save” CRC civil and political rights from the mere “progressive” implementation acceptable for economic, social and cultural rights.⁷⁸ Termed differently, states parties must only make a “good faith effort” to take appropriate measures regarding economic, cultural and social rights.⁷⁹

Sharon Detrick suggests two methods to determine whether a CRC guarantee is an economic, social, or cultural right or a civil or political right. First, she proposes that phrases such as “subject to available resources” and “in accordance with national conditions and within their means” indicate economic or social rights.⁸⁰ She suggests that the articles regarding the survival and development of the child,⁸¹ the right of disabled children to

International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, art. 2, 993 U.N.T.S. 3 [hereinafter IESCR].

72. “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.” International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 2(1) [hereinafter ICCPR].

73. See DETRICK, *supra* note 68, at 102-04.

74. See *id.*

75. *Id.*

76. The phrase “shall undertake” was intended by the Drafting Work Group to impose only a good faith effort to achieve the enumerated rights, rather than demand the actual realization of such rights. See Paul A. Goetz, *Is Brazil Complying with the U.N. Convention on the Rights of the Child?*, 10 TEMP. INT’L & COMP. L.J. 147, 166 (1996).

77. DETRICK, *supra* note 68, at 102-03.

78. See DETRICK, *supra* note 68, at 103. This distinction was a compromise made during the CRC drafting process. See Hodgkin and Newell, *supra* note 71, at 55. During this process, “in accordance with their available resources” was put forth in Article 4 to qualify states’ obligations. *Id.* However, to preserve the guarantees provided for under the ICCPR that are not subject to such restrictions, the limitation in the CRC was restricted to economic, social, and cultural rights. *Id.*

79. See Hodgkin & Newell, *supra* note 71 and accompanying text.

80. DETRICK, *supra* note 68, at 103.

81. See CRC, *supra* note 1, at art. 6(2). “States Parties shall ensure to the maximum extent possible the survival and development of the child.” *Id.*

special care,⁸² the achievement of the highest attainable standard of health,⁸³ the right to an adequate standard of living,⁸⁴ and the right to an education⁸⁵ are examples of such rights.⁸⁶ Second, Detrick recommends that a right may be identified as an economic, social or cultural right based upon its similarity to IESCR rights.⁸⁷

VI. CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 34

Costa Rica is not in full compliance with Article 34. This article declares that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

1. The inducement or coercion of a child to engage in any unlawful sexual activity;
2. The exploitative use of children in prostitution or other unlawful sexual practice . . . (c) The exploitative use of children in pornographic performances and materials.⁸⁸

The Commission on the Rights of the Child stated that conformity with this article can be determined by considering the existence of

82. See CRC, *supra* note 1, at art. 23(2).

States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
Id.

83. CRC, *supra* note 1, at art. 24(4). "States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right [to the highest attainable standard of health]. In this regard, particular account shall be taken of the needs of developing countries." *Id.*

84. CRC, *supra* note 1, at art. 27(3). "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing." *Id.*

85. See CRC, *supra* note 1 at art. 28(1). "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. . . ." *Id.*

86. See DETRICK, *supra* note 68, at 103.

87. *Id.*

88. CRC, *supra* note 1, at art. 34. Similarly, the IESCR provides in Article 10(3) that "[c]hildren and young persons should be protected from economic and social exploitation." See IESCR, *supra* note 71, at art. 34(3). In interpreting the ICCPR, the U.N. Human Rights Committee stated that Article 24(1) includes "measures to prevent children from being exploited by means of forced labour or prostitution." DETRICK, *supra* note 68, at 589-90.

1. The development of legislation aimed to ensure protection of child victims of sexual exploitation and sexual abuse, including through access to legal and other appropriate assistance and support services;
2. The consideration of sexual exploitation of children, including child prostitution and child pornography, and the possession of child pornography as criminal offences under penal law.⁸⁹

Costa Rica's Code of the Child and the Adolescent complies with the Committee's CRC interpretation that children have a mechanism for legal access to pursue sexual exploitation claims. The Code stipulates that each child is to be provided an audience to state his or her grievance⁹⁰; that the child is represented⁹¹; that such representation is gratuitous to defend the child's rights⁹²; and that the child is afforded procedural equality.⁹³ The Code further supports children's access to the legal system by allowing any public servant or private individual to file a complaint regarding a violation of a right proscribed in the Code.⁹⁴ The Children's Trust (El Patronato Nacional de la Infancia, also known as PANI)⁹⁵ helps to ensure children's access to the legal system. Article 3 of the Code requires PANI to represent children when charges are brought against the child's parental authority⁹⁶ and to serve as an "assistant" in all other child sexual exploitation cases.⁹⁷

PANI also helps Costa Rica comply with the Committee's CRC interpretation by providing exploited children assistance and support services. This organization serves as "the chief institution and leader in the protection, attention, promotion, and defense of the rights of the child, the adolescent, and his or her family."⁹⁸ In pursuit of this goal, the organization seeks to guarantee those rights provided to minors in the Costa Rican constitution, the CRC, and the Code.⁹⁹ To help complete these obligations, the Code requires that PANI operate local offices to provide individualized care and assistance to

89. See DETRICK, *supra* note 68, at 594.

90. See Code, *supra* note 3, at art. 114(f).

91. See *id.* at art. 114(e).

92. See *id.* at art. 114(a).

93. See *id.* at art. 114(c).

94. See *id.* at art. 117.

95. This organization was created in 1930 by Law 39 in response to the Declaration of the Rights of the Child of 1924. See El Patronato Nacional de la Infancia [hereinafter PANI], *Reseña Histórica*, available at <http://www.pani.org/historia/html> (last visited Oct. 27, 2000).

96. See *id.* at art. 111.

97. See *id.*

98. PANI, *Visión*, available at <http://www.pani.org/myv.html> (last visited Oct. 27, 2000).

99. See *id.*

children.¹⁰⁰ Through this requirement, PANI attended to 14,276 cases during 1997.¹⁰¹ These cases included sexual mistreatment,¹⁰² family conflicts,¹⁰³ psychological mistreatment¹⁰⁴ and abandonment,¹⁰⁵ among other classes.¹⁰⁶ To fulfill these responsibilities, PANI works with “public institutions, international organizations, non-governmental organizations and other community groups.”¹⁰⁷

In spite of these national efforts, the government is failing to provide the mechanisms necessary to ensure that CRC rights are extended to children and are not just rights protected on paper. Costa Rica partially fails its obligations under Article 34 by failing to fund PANI adequately.¹⁰⁸ Although legislation passed in 1996 requires that the national government budget seven percent of the taxes collected during the previous fiscal year to PANI,¹⁰⁹ the government is yet to provide the organization this promised funding.¹¹⁰ Between 1997 and

100. See Code, *supra* note 3, at art. 135. For example, PANI is to provide (a) orientation, support and temporary support to the family; (b) enroll the child in school and provide assistance to formally establish the teaching of the child; (c) include official programs or auxiliary commentaries to children's families and to minors; (d) order medical, psychological or psychiatric treatment; (e) provide official programs . . . for the treatment of alcoholism; (f) provide provisional care to substituted families; (g) provide temporary shelter in either private or public institutions.

Id.

101. See PANI, UNIDAD DE INFORMACIÓN Y ARCHIVO, CASOS ATENDIDOS SEGÚN MOTIVO, AÑOS: 1993-1997, available at <http://www.pani.org> (last visited Oct. 27, 2000).

102. A total of 1,055 cases were attended to during 1997. See *id.*

103. In 1997, the organization attended to 2,730 cases. See *id.*

104. PANI tended to 36 such cases during 1997. See *id.*

105. Approximately 1,778 cases were attended to during 1997. See *id.*

106. *Id.* The other classifications of cases include administrative depositions, “child problems,” “adolescent problems,” child care conflicts, child well-being, inadequate nutrition, registration, adoptions, paternity investigations, parent legitimacy, social valorization, unknown, unclassifiable. *Id.*

107. See PANI, *Coordinación Interinstitucional*, available at <http://www.pani.org/coordinacion.html> (last visited Oct. 27, 2000). For example, PANI works with “la Comisión Nacional Contra la Explotación Sexual y Commercial de Niños, Niñas y Adolescentes; el Comité Directivo Nacional para la Erradicación del Trabajo Infantil y la Protección a la Persona Adolescente Trabajadora; la Comisión de Proyecto de Promoción y Defensa de los Derechos de los Pueblos Indígenas; el Comité de Estudio y Tratamiento de la Violencia Infanto-Juvenil, y el Comité Permanente de Coordinación e Interacción del Sistema Penal Juvenil.” *Id.*

108. See “Ángela Ávalos Rodríguez, PANI sin plata para niñez, LA NACIÓN, Sept. 12, 1998, at http://www.nacion.co.cr/ln_e/1998/septiembre/12/pais4.html (last visited Nov. 4, 2000).

109. See La Asamblea Legislativa de la República de Costa Rica, Ley Orgánica del Patronato Nacional de la Infancia, Decreto 7648, Artículo 34(a), available at http://cr.derecho.org/legislacion/Derecho_Civil/1-7648 (last visited Oct. 18, 2000).

110. See Defensoría de los Habitantes de Labores, *supra* note 23.

2000, Costa Rica failed to provide PANI approximately US \$68.3 million.¹¹¹ This shortfall “without doubt directly effected the restructuring and modernization process of [PANI] as desired by the legislature.”¹¹² Specifically, the agency cannot fill sixty-three job vacancies, mainly social worker and psychologist positions, nor can the agency open twenty-one local offices in San José and eleven throughout the country.¹¹³ Consequently, if the agency does not have offices or personnel, then it cannot fully achieve the goals required by the CRC.¹¹⁴ In response to this shortfall, the Costa Rican Constitutional Court ordered that Costa Rica pay PANI the unpaid balance.¹¹⁵

Costa Rica also fails to provide adequate institutional support to its police sex crimes unit and thus is unable to enforce the nation’s anti-child prostitution legislation effectively.¹¹⁶ The unit lacks vehicles, it does not have a budget to travel outside the city of San José, and it does not have evidentiary gathering equipment such as video cameras.¹¹⁷ Even when the authorities are able to locate individuals victimizing children as prostitutes, the police do not always work to support the law. For example, a court convicted Rogelio Ramos, the Director of Intelligence of the “Special Support Police,” in January 2001 for aiding a brothel owner escape arrest for prostituting children.¹¹⁸ Corruption within the police also extends to allegations of officers requiring detained young girls to perform oral sex in police vehicles.¹¹⁹

Additionally, Costa Rica has failed to criminalize possession of child pornography as required by CRC Article 34(c). Although the production of child pornography¹²⁰ and distribution of child pornography¹²¹ are criminalized under the Costa Rican penal code, the possession of child pornography is legal.¹²² “One could argue that the possession of child pornography should not be prohibited because of the fear that such a prohibition would infringe upon

111. EFE News Service, *Costa Rica: Children Costa Rica Ordered to Turn \$68 Million Over to Children’s Fund*, Mar. 21, 2001.

112. See Defensoría de los Habitantes de Labores, *supra* note 23.

113. See Ávalos Rodríguez, *supra* note 108.

114. See Casa Alianza Presentation to the United Nations, *supra* note 8.

115. *Id.*

116. See Casa Alianza, *Dozens of Reports of Child Sexual Exploitation in Costa Rica*, at <http://www.casa-alianza.org/EN/Imn/docs/19990811.00316.htm> (visited March 7, 2001).

117. See *id.*

118. Posting of Bruce Harris, media@casa-alianza.org, to rapid-response-request@casa-alianza.org (Jan. 31, 2001) (copy on file with author).

119. See Casa Alianza, *supra* note 32.

120. See Law 7899, *infra* note 162, at art. 173. “Whoever fabricates or produces pornographic material, using minors or their image, shall be sanctioned with a prison sentence of three to eight years.” *Id.*

121. See *id.* at art. 174. “Whoever sells, distributes, broadcasts, or exhibits pornographic material of minor children or individuals who cannot care for themselves, shall be sanctioned with one to four years in prison.” *Id.*

122. See Casa Alianza, *Child Sexual Exploitation*, at <http://www.casa-alianza.org> (last visited Oct. 29, 2000).

the Costa Rican constitutional right of freedom of speech.” However, this defense is insufficient because, as noted in Article 27 of the Vienna Convention, “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹²³ Furthermore, under the Costa Rican constitution, ratified treaties are self-executing.¹²⁴ Consequently, ratified treaties “[take] precedence over national legislation”¹²⁵ and thus “a provision of the Convention [takes] precedence over any legal or regulatory provision that [is] incompatible with it and [has] not yet been repealed.”¹²⁶ Thus, Costa Rica is in violation of the obligation to criminalize possession of child pornography.

In spite of these shortcomings, Costa Rica need not literally implement “all appropriate” measures to be in compliance; rather, it must merely take steps to fulfill progressively these obligations to be compliant with CRC Article 34.¹²⁷ Since Article 34 is classified as an economic, social, or cultural right, the State’s obligation is one of “progressive” implementation, rather than literal full compliance.¹²⁸ The Committee has acknowledged that the economic burden facing the country as a whole is creating a difficult situation for Costa Rica to implement fully the CRC.¹²⁹ First, the Committee noted that the country has a large external debt,¹³⁰ which the U.S. Central Intelligence Agency estimates is US \$3.9 billion.¹³¹ Further highlighting this problem is the fact that over twenty percent of the population lives in “excessive poverty.”¹³² Therefore, the government could argue that it is complying with the Convention because it is progressively making efforts to eradicate child prostitution, as evidenced by its legislative reforms that bring national laws into conformity with the Convention’s requirements.

However, as noted above, Costa Rica has not even made partial payments to PANI, much less provided the total budget amount promised. Additionally, the government’s potential financial constraint argument will logically fail if the government follows through with President Miguel Angel

123. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 27, 1155 U.N.T.S. 331.

124. *See* La Constitución Política de la República de Costa Rica, art. 7. “Treaties, international conventions and accords, upon approval of the Legislative Assembly, shall have from their promulgation or the day they designate, superior authority over [domestic] laws.” *Id.*

125. *See* Summary Record of the 91st Meeting, *supra* note 5, ¶7.

126. *Id.*

127. DETRICK, *supra* note 68, at 593.

128. *See id.*

129. *See* Summary Record of the 91st Meeting, *supra* note 5, ¶41.

130. *See* U.N. Committee on the Rights of the Child, Concluding Observations on the Rights of the Child: Costa Rica, ¶ 6 (1993).

131. U.S. Central Intelligence Agency, *supra* note 4. This figure is a 1998 estimate. *Id.*

132. Defensoría de los Habitantes de Labores, *supra* note 23.

Rodríguez' proposal¹³³ to revoke the legislation requiring that the national government fund PANI. If the government stops funding PANI, then it logically will no longer work to "progressively" implement this article and will thus be in full non-compliance with Article 34's requirements.

Furthermore, as Vitit Muntarbhorn noted, "[t]he seemingly easy option of reforming the law will never suffice unless the issues of high standards of law enforcement and effective measures to counter criminality and corruption within the system are also addressed."¹³⁴ Thus, mere paper legislation is insufficient; actual enforcement of laws is necessary to give the alleged protections significance. Although Costa Rica should be commended for the legislation that aims to fulfill the CRC's goals, the government is not adequately funding PANI and the sex crimes unit. Therefore, the government is not in full compliance with CRC Article 34.

VII. CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 24

Costa Rica's failure to fund PANI and the sex crimes unit jeopardizes the health rights protected under the CRC. Article 24 obligates "States Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."¹³⁵ As noted above, this guarantee is an economic, social, and

133. Casa Alianza, *Action Needed: Costa Rica Cutting Funding for Children*, available at <http://www.casa-alianza.org/EN/lastminute/8282001.htm> (last visited Oct. 9, 2001).

134. Muntarbhorn, *supra* note 25, at 3, ¶ 24.

135. CRC, *supra* note 1, at art. 24(1). "The enjoyment of the highest attainable" degree "of health" is also guaranteed by Article 12 of the IESCR ("States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health") (*See* IESCR, *supra* note 71) and by Article 25 of the Universal Declaration on Human Rights:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control . . .
- (2) Motherhood and childhood are entitled to special care and assistance.

G.A. Res. 217 A(III), U.N. Doc. A/810 at 71 (1948). *See* DETRICK, *supra* note 68, at 399. Additionally, the Convention on the Rights of the Child requires States Parties in art. 24(2)

1. To diminish infant and child mortality;
2. To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
3. To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
4. To ensure appropriate pre-natal and post-natal health care for mothers;
5. To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic

cultural right.¹³⁶ Therefore, Costa Rica is only required to “progressively” fulfill Article 24’s obligations.¹³⁷

In evaluating Costa Rica’s degree of compliance with this article, it is noteworthy that the World Health Organization defined “health” as “a state of complete physical, mental and social well-being.”¹³⁸ “[G]ood health should enable individuals to develop to the maximum of their physical and mental potential, and to live economically and socially productive lives in harmony with the environment.”¹³⁹ Health thus encompasses more than the mere absence of disease.¹⁴⁰

Child prostitutes suffer a range of mental and physical consequences as a result of sexual exploitation. Mentally, prostituted children “see their value reduced from a person to a classification of his or her body type and sexuality.”¹⁴¹ The children often suffer from chronic depression and anxiety.¹⁴² Additionally, they frequently “live in fear of violence and sadistic acts by their clients, fear of being beaten by the gangsters and pimps who control the sex trade, and fear of being apprehended by the police.”¹⁴³ UNICEF’s study declared that “it was easy to identify ongoing experiences of terror, abandonment, abuse, and humiliation” among child prostitutes.¹⁴⁴

knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

6. To develop preventative health care, guidance for parents and family planning education and services.

CRC, *supra* note 1, at art. 24(2). Similarly, CRC Article 6(2) requires that “States Parties shall ensure to the maximum extent possible the survival and development of the child.” CRC, *supra* note 1, at art. 6(2).

136. *See supra* note 83 and accompanying text. IESCR Article 12(1) states that “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” IESCR, *supra* note 71, at art. 12(1).

137. *See* DETRICK, *supra* note 68, at 402. “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” IESCR, *supra* note 71, at art. 12(1).

138. VAN BUREN, *supra* note 10, at 297.

139. *Id.* (citing the Declaration of Alma-Ata 1978, endorsed by the General Assembly of the United Nations).

140. *See id.* at 298. This “wholistic” approach to health was also followed by the drafters of the International Covenant on Economic, Social and Cultural Rights. *Id.*

141. Rosa Fallas Bonilla, *Adolescentes prostitutas, enfermedades de transmisión sexual y Sida: un episodio más de una historia de una historia de violencia*, REVISTA PRONIÑO, at <http://www.paniamor.or.cr/revista7.shtml> (last visited Oct. 28, 2000).

142. *See* Melissa R. Saad, *Civil Commitment and the Sexually Violent Predator*, 75 DENV. U.L. REV. 595 (1998). Although the UNICEF study did not include questions regarding mental health, the report noted that the following percentage of interviewed children showed particular signs of depression: 86% suffered “sadness”; 73.6% suffered “irritation”; 69.4% had a “problem concentrating”; and 64.5% suffered “feelings of guilt.” *See* Claramunt, *supra* note 31, at 81, Table 23.

143. Berkman, *supra* note 63, at 402.

144. Claramunt, *supra* note 31, at 80.

Unfortunately, the effects of prostitution can have a life-long impact, rather than just resulting in a temporary inhibited mental state.¹⁴⁵ “Sexually abused children stand a fifty-five percent greater chance of being arrested later in life, a 500% greater chance of being arrested for sex crimes, and a 3,000% greater chance of being arrested for adult prostitution.”¹⁴⁶ These problems are in addition to exploited children’s avoidance of adult intimacy or sexual relations in their adult lives and vulnerability to eating disorders.¹⁴⁷ Even more startling is the fact that these child-victims often become child molesters themselves, thus perpetuating the problem for future generations.¹⁴⁸

Exploited children also suffer physically.¹⁴⁹ This is evident primarily in their susceptibility to acquire sexually transmitted diseases,¹⁵⁰ including AIDS.¹⁵¹ Indeed, the risk of attaining these diseases is heightened by the fact that only five of the children included in Treguear’s study took precautions to minimize the risk of contracting a sexually transmitted disease.¹⁵² Such a failure is the result of both a lack of information regarding the need for protection and the fact that the client often determines what protection may and may not be used.¹⁵³ Children also face more immediate and direct physical threats such as “[p]hysical attacks by customers,” as reported by sixty-two percent of the children in UNICEF’s study.¹⁵⁴ Due to these physical and mental health effects, Costa Rica’s failure to prevent child prostitution under Article 34 triggers its non-compliance with Article 24.

A commendable aspect of the Code regarding children’s mental health is the Code’s requirement that a psychiatrist or a psychologist “accompany underage victims, especially those of sexual crimes, as many times to the judicial authority as necessary.”¹⁵⁵ Additional protection is provided to child-victims questioned by police¹⁵⁶ as well as when the child is deposed by an alleged child exploiter.¹⁵⁷ Furthermore, special protection is extended to cover

145. See Saad, *supra* note 142, at 605.

146. *Id.*

147. See *id.*

148. See *id.*

149. See Berkman, *supra* note 63, at 402.

150. See *id.* at 399.

151. See Levesque, *supra* note 24, at 86. “Indeed, AIDS is now a major threat to the health and survival of prostituted children, and its impact is expected to grow.” *Id.*

152. See TREGUEAR and CARRO, *supra* note 40, at 70.

153. See *id.* at 71.

154. See Claramunt, *supra* note 31, at 78, Table 22.

155. Code, *supra* note 3, at art. 124.

156. Officials of the Judicial Investigative Organ or the Administrative Police, whichever may be in the case in question, are immediately capable of interrogating minors. During the interrogation, the officials will be limited to receive the minimal amount of information essential to ascertain the facts and the child’s guarantee to dignity, honor, reputation, family and life. Code, *supra* note 3, at art. 124.

157. Code, *supra* note 3, at art. 121.

In order to avoid or diminish the risks that could arise regarding the psychiatric

the child's right to express his or her opinion¹⁵⁸ during the deposition.¹⁵⁹ However, such assistance is insufficient to constitute full compliance under Article 24 because it does not address the more direct health problems that occur due to child prostitution. Therefore, Costa Rica is not in full compliance with Article 24.

VIII. CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 19

Costa Rica is not in full compliance with Article 19. Article 19 holds that

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for . . . reporting, . . . investigation, . . . and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹⁶⁰

Costa Rica complies with this article's requirement to provide legislation to protect children from sexual abuse. The Committee on the Rights of the Child suggests compliance with the article's first section may be indicated by

health of the victims of the investigation, the [psychiatrist] assigned [to the child] will present recommendations to the judicial authority in charge of the case, who will take [the recommendations] under consideration when the defense requests to depose the child in any stage of the legal proceedings.

Id.

158. This right during judicial proceedings is protected by CRC Article 12(2) which states that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." CRC, *supra* note 1, at 12(2).

159. Code, *supra* note 3, at art. 125.

Judicial or administrative authorities shall avoid, as far as possible, repetitive or persistent interrogating of underage victims and will restrain their questioning for the decisive stage of the process. When a wider deposition of an underage victim proceeds, [the authorities] will always bear in mind the child's right to his or her opinion.

Id.

160. CRC, *supra* note 1, at art. 19.

"[w]hether legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, including . . . abuse, . . . or exploitation, . . . within the family."¹⁶¹ Costa Rica met this requirement by enacting Law 7899 that established stiffer penalties for relatives of child-victims who "corrupt" or pimp children than for strangers who commit the same crime against the same child-victim.¹⁶² A "corruptor" related to the child-victim will face four to ten years in prison,¹⁶³ rather than three to eight years in prison for corrupting a child not related to the perpetrator.¹⁶⁴ Similarly, a pimp related to the child-victim will face four to ten years in prison for such action¹⁶⁵ while a non-relative pimp will face only two to five years in prison.¹⁶⁶ Therefore, by implementing such deterrent legislation, Costa Rica complies with this article's first section.

Additionally, Costa Rica complies with the requirement to promote the reporting of child prostitution. That is, the legislature in enacting the Code stipulated that school officials must report cases of sexual abuse.¹⁶⁷ Article 66 of the Code further adds that "authorities of public or private schools . . . are required to notify the Public Education Ministry . . . of cases of physical maltreatment, sexual abuse or attempts to 'corrupt,' that involve a student-victim."¹⁶⁸

Although the Code provides a broad range of individuals the opportunity to report instances of child exploitation, including the children themselves, public officials, or any private individual,¹⁶⁹ Costa Rica is failing to provide the institutional support for the investigation and follow-up of such reports. Thus, Costa Rica is not in full compliance with the Article's second section. The Committee on the Rights of the Child suggests that providing "special training . . . for relevant professionals[,] and having "[e]ffective measures . . . for the . . . reporting, . . . investigation, . . . and follow-up of instances of maltreatment covered by Article 19" may indicate conformity with this section.¹⁷⁰ In assessing whether Costa Rica complies with these measures, it is important to note that Article 19 is an economic, social, and cultural right.¹⁷¹ Consequently, Costa Rica need only apply this article "progressively."¹⁷²

161. See DETRICK, *supra* note 68, at 324.

162. See La Asamblea Legislativa de la República de Costa Rica, *Ley Contra la Explotación Sexual Comercial de las Personas Menores de Edad, Ley 7899*, publicado en el Diario Oficial La Gaceta No. 159 del 17 agosto de 1999 [hereinafter *Law 7899*].

163. See *Law 7899, supra* note 162, at art. 168.

164. See *id.* at 167.

165. See *id.* at art. 170.

166. See *id.* at art. 169.

167. See *Code, supra* note 3, at art. 6.

168. *Id.* at art. 66.

169. See *supra* note 94 and accompanying text.

170. Hodgkin and Newell, *supra* note 71, at 239.

171. See *id.* at 247.

172. See *supra* notes 67-87 and accompanying text.

As noted above, because Costa Rica does not adequately fund the sex crimes unit,¹⁷³ the unit cannot adequately investigate alleged cases of child prostitution due to the lack of equipment, nor follow-up due to lack of a budget to travel outside San José.¹⁷⁴ This indicates that Costa Rica is not in full compliance with the requirement that the country investigate and follow-up alleged cases of child sexual exploitation.

However, Costa Rica is making some strides to assist law enforcement personnel to combat sex tourism linked to child prostitution. For example, Costa Rican police are gaining special training from the United States Federal Bureau of Investigation regarding crimes that are committed against minors on the internet.¹⁷⁵ This training is important given the fact that when Casa Alianza representatives spoke with Costa Rican Judicial Investigative Police officials regarding sex crimes occurring in Costa Rica, the officials did not understand what the internet was.¹⁷⁶

Despite this, Costa Rica's failure to adequately fund the sex crimes unit has resulted in the unit's not having the resources necessary to help end child prostitution. Thus, even if the unit is able to track-down pedophile-sex-tourism-internet sites, the unit lacks the more basic investigatory equipment, and so logically it cannot be expected to fulfill its responsibilities. Consequently, Costa Rica is not in full compliance with this article.

X. THE UNITED STATES RESPONSE

Like other western countries,¹⁷⁷ the United States implemented legislation to combat child sex tourism. This is accomplished through the Violent Crime Control and Law Enforcement Act of 1994.¹⁷⁸ This Act permits the U.S. Justice Department to prosecute United States citizens or permanent

173. See *supra* notes 116-117 and accompanying text.

174. See *supra* notes 116-117 and accompanying text.

175. See Casa Alianza, *FBI Trains Costa Rican Authorities on Child Cyber Crimes*, at <http://casa-alianza.org/EN/Imn/docs/20000504.00412.htm> (last visited Nov. 4, 2000).

176. See Ann Birch and Ana Salvadó, Casa Alianza, presentation at The Third Hearings of the International Tribunal for Children's Rights on International Co-operation in the Struggle against the International Dimensions of Child Sexual Exploitation, *Sexual Exploitation of Children and the Internet[:] the Use of Internet to Prevent and Denounce Child Sexual Exploitation and to Promote the Rights of the Child*, at <http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/9902audiencia.shtml> (last visited Mar. 7, 2001).

177. For a discussion of legislation passed in Australia, Sweden, France, Germany, and Britain, see Levesque, *supra* note 28, at 84. For a comparison of Argentina, Canada, United Kingdom, Holland, Japan, Mozambique, New Zealand, Poland, Russia, and Switzerland vis-à-vis the CRC, see MICHAEL FREEMAN, ED., *CHILDREN'S RIGHTS: A COMPARATIVE PERSPECTIVE* (1996).

178. See Elizabeth Bevilacqua, *Child Sex Tourism and Child Prostitution in Asia: What can be Done to Protect the Rights of Children Abroad under International Law?*, 5 *ILSA J. Int'l & Comp. L.* 171, 175 (1998). See *id.* President Bill Clinton signed this Act on September 13, 1994. See *id.*

aliens who travel across the national boundaries to engage in sexual relations with a minor.¹⁷⁹ The legislation states that

a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A [18 USCS §§ 2241 et seq.] if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 15 years, or both.¹⁸⁰

This legislation is particularly important because it may serve as a deterrent to individuals who travel abroad to engage in sexual activity with children.¹⁸¹ Although United States citizens and permanent aliens traveling abroad to exploit children sexually may still perceive a situation of impunity for themselves under the domestic laws of foreign countries, knowledge that Section 2423(b) provides extraterritorial liability for their actions overseas may prevent pedophiles from engaging in such conduct.¹⁸²

Marvin Hersh was the first person convicted under Section 2423(b).¹⁸³ During trial, the prosecution provided evidence that Hersh, a former Florida Atlantic University computer sciences professor, smuggled into the United States a Honduran child using a fake passport and birth certificate showing the child to be his son.¹⁸⁴ As a result of this conviction, Hersh, who had traveled to Mexico, the Dominican Republic, and Honduras for twenty years seeking young boys, received a 105-year prison sentence with no chance of parole.¹⁸⁵

XI. RECOMMENDATIONS

In light of the above observations, this author recommends the following action be taken:

179. See Heather C. Giordanella, *Status of 2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT'L & COMP. L.J. 133 at 133-34 (1998).

180. Title 18, U.S.C.S. §2423(b) (2001) [hereinafter Crime Bill].

181. See Giordanella, *supra* note 179, at 148-49.

182. See *id.* at 149.

183. See 105-year Term is Proper Penalty, SUN-SENTINEL (Fort Lauderdale, Fla.), May 27, 2000 at 12A.

184. See *id.*

185. See *id.*

1. The United Nations should establish a Special Rapporteur on Child Sexual Exploitation in Costa Rica. The United Nations needs to examine closely the situation in Costa Rica regarding child sexual exploitation. Although UNICEF conducted statistical studies regarding child sexual exploitation, an in-depth analysis is required for a more complete view of the current situation. In addition to gaining a more up-to-date perspective of child sexual exploitation, the special rapporteur's report would also likely aid researchers, help apply pressure upon public policymakers in Costa Rica to take a more aggressive stance against child sexual exploitation, and potentially promote social mobilization against this grave problem.
2. Costa Rica should increase funding for PANI and the police sex crimes unit. The lack of funding for both of these institutions places children, the very individuals who the two agencies are in part intended to protect, at risk.
3. The Committee on the Rights of the Child should make "alternative reports" available to the general public on the internet. As noted above, these reports can provide additional data, and new insights into issues before the Committee, as well as additional constructive criticism. Although some of the questions and issues raised in these reports are presumably included in the Committee reports, the Committee reports often lack specificity and do not fully explain allegations put forth by non-governmental organizations. Consequently, because the reports are not available to the public, or if they are, then not available to the degree necessary so that researchers may reasonably be able to access the reports, such information is essentially lost after the Committee members read the report and meet with the state party in question. Allowing public access to the reports would likely advance the goals of the CRC by promoting research, sparking debate, and potentially leading to influencing the necessary governmental officials to carry out the CRC goals. Making these reports available on the internet would facilitate worldwide dissemination of the reports and thus increase their usefulness.

XII. CONCLUSION

Costa Rica's strides made within the past several years in working towards fulfilling and providing the guarantees of the CRC are commendable. These strides, such as the passage of the Code and Law 7899, suggest that the government is indeed attempting to fulfill its obligations to the international community, to its constituency, and most importantly, to children. Costa Rica, however, is not presently in complete compliance with its CRC obligations, and more action is necessary to protect children throughout Costa Rica. Fortunately, the areas in which the country needs to improve upon most urgently, increased funding for PANI and the police sex crime unit, are both tangible and easily identifiable goals. Consequently, it will be relatively easy for politicians and other government officials to focus on these issues to show that the country is moving forward to protect one of the most vulnerable groups of society. It is time for Costa Rica to bring the paper rights found in the CRC and in national legislation for implementation at the ground level so that children may have what has been promised to them—their childhood.

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