

FORTALEZA, BRAZIL, 11-15 MAY 1998

R E P O R T

Second
Hearings of the
International
Tribunal for
Children's
Rights

“Brazil: Beyond
Child Prostitution
and Sex Tourism”



BUREAU
INTERNATIONAL
DES DROITS DES ENFANTS

INTERNATIONAL
BUREAU
FOR CHILDREN'S RIGHTS

OFICINA
INTERNACIONAL
DE LOS DERECHOS DEL NIÑO

Second Hearings of the International Tribunal for Children's Rights on international dimensions of sexual exploitation of children, Fortaleza, Brazil, 11-15 May 1998

"Brazil: Beyond Child Prostitution and Sex Tourism "

R E P O R T

Contents

1. Background
 - 1.1. Context
 - 1.1.1. Social, political, economical and cultural context of Brazil
 - 1.1.2. Sexual exploitation of children in the Brazilian context
 - 1.2. Legal framework
 - 1.2.1. International
 - 1.2.2. National
 - 1.3. Past initiatives in the struggle against sexual exploitation of children in Brazil
 - 1.3.1. General comments on earlier recommendations
 - 1.3.1.1. International perspective
 - 1.3.1.2. National and Regional Perspectives
 - 1.3.2. Results
 2. Second hearings of the International Tribunal for Children's Rights
 - 2.1. Convention on the Rights of the Child
 - 2.2. Response of the international community and of the International Bureau for Children's Rights
 - 2.3. International Tribunal for Children's Rights
 - 2.3.1. Rules of procedures
 - 2.3.2. Members of the Tribunal
 - 2.3.3. Key themes
 - 2.3.3.1. Judicial prosecution of sexual exploitation cases in Brazil
 - 2.3.3.2. Government's and society's response
 - 2.3.3.3. Case studies and research
 3. Evidence
 4. Conclusions and recommendations of the Tribunal
- Annexe 1: Rules of procedures
Annexe 2: Detailed final programme
Annexe 3: Expert witnesses and speakers
Annexe 4: Written reports and other documentation

Background

The 1996 World Congress on commercial sexual exploitation of children, held in Stockholm, Sweden, would seem to have awakened a great deal of people to the urgent and extensive nature of the sexual exploitation suffered by children around the world¹. At an international level, the general atmosphere in the build-up which preceded the World Congress was of intense action and genuine interest. The Stockholm Congress may very well have been the climax of all efforts, the aftermath of which gave place to numerous initiatives, some greater and some smaller. What needs to be evaluated is where things stand presently, nearly two years later.

With all the credit due to the organisers and participants of the aforementioned World Congress, it was neither the first time, nor will it be the last time people sit down to discuss the issue of child sexual exploitation and seek out solutions. It was however, without a doubt the largest meeting to bring together representatives of NGOs and governments from around the world, and did a great deal to publicise and raise awareness on the extent of the problem. All parties present in Stockholm signed the Draft Declaration and Agenda for Action. All present agreed to take these recommendations home and promised to take whatever measures necessary to see to their implementation. Shortly after however, several nations and organisations may have noticed that some of these solutions or recommendations were not readily applicable in all contexts, and that in several cases, much work still needed to be done at a national level before internationally developed solutions could be applied.

While recognising the global nature of such a violation against the human rights of child, and the responsibility of all States and individuals in combating commercial sexual exploitation of children, one must understand that it remains a problem faced first and foremost by national authorities. It is all the more important for States, confronted with the sexual exploitation of their children, in one or some of its many forms, to develop their own strategies, defined in response to the particular nature of the problem as it exists within their country. Brazil is one such country, whose recent rapid development has not spared it from being afflicted with several serious social problems. The interaction between various social, economic, political and cultural factors has created a particularly dangerous environment for vulnerable children, hit by violence, poverty and lack of opportunities. Under these circumstances, the sexual exploitation of minors in Brazil has emerged as a very real problem.

During these Second Public Hearings held in Fortaleza from May 11-15, 1998, the members of the International Tribunal for Children's Rights heard evidence concerning the particular context of sexual exploitation of children in Brazil, and the response of local authorities. Evidence was presented relating to the legislative and judiciary context in Brazil as regards sexual crimes against minors. What needs to be determined is what efforts have been put forth and what was the outcome? If there has been little or no progress in combating child sexual exploitation, it is important to determine why. What have been the obstacles impeding the success of past campaigns and initiatives? If some experiences were successful, they must be examined and shared publicly, so they can serve as examples and be repeated where appropriate or possible.

¹ World Congress Against Sexual Exploitation of Children, organised by ECPAT, UNICEF and Radda Barnen, and held in Stockholm, Sweden in August 1996.

There have indeed been several initiatives in recent years, even preceding the World Congress in 1996. Several conferences and congresses were held on the particular subject of sexual exploitation of children, and every one of them resulted in notable recommendations and conclusions. In co-operation with civil society, the government also led campaigns aimed at educating and sensitising the public, locals and tourists, on the criminal nature of exploiting minors for sex. Smaller initiatives have also existed at local and regional levels within the country. The challenge facing Brazil's government and civil society, as well as the question put to the present Hearings is the following: what can be done to insure the implementation of these recommended changes and programmes?

1.1. Context

1.1.1. Social, political, economical and cultural context of Brazil

Brazil's territory spans over 8.511.864 km², with a long coast and a population of 157.070.163². The country was originally occupied by native Indians and was first visited by the Portuguese in 1500. The country has a very long and complex history, where the exploitation of land and resources intermingled with eras of slavery and military dictatorship. Division of social classes, unequal distribution of wealth and power and racism are only some of the natural consequences of such a tumultuous past. Modern day Brazil accepts these contrasts and divisions as part of the cultural reality. Even so, it is apparent that the poverty of a great part of Brazil's population is due, not to the country's incapacity to develop or to a lack of natural resources and wealth, but to the unequal distribution of such resources.

Brazil has the highest level of industry in Latin America and boasts the region's highest Gross National Product (GNP), and yet the United Nations ranks Brazil 63rd in human development, placing it behind much poorer countries of Central and South America. According to the United Nations indicators on the difference in income and quality of life between rich and poor, Brazil takes first place, with the most extreme inequality of distribution of wealth among the 71 countries compared. In Brazil, the 10% which make up for the wealthiest segment of the population, own 51.31% of the country's wealth, while the 20% poorest own 2.1%.

This situation of extreme poverty afflicting the greater part of the Brazilian population has an impact on a great number of children whose families must survive with the little income they can. The children are directly affected by the extreme poverty their families live in. Not only do they live with hunger and frustration, but their development is seriously compromised by the conditions they are forced to deal with. Some estimates place at least half of Brazilian children in families with a monthly income of less than ½ minimum salary (which is presently of R\$ 130,00). Another 25% of children live in families where the monthly income is less than ¼ of the legal minimum wage.

The contrasts within Brazil also have something to do with geography. Wide gaps in development exist between Brazil's various political and economic regions. Prosperity and advanced development in the Southeast, large agricultural and industrial areas in the Central

² Data according to 1996 census by the IBGE (Brazilian Institute for Geography and Statistics).

region and the modern structures and equality-oriented South are in extreme contradiction with the wild North and the drought and poverty of the Northeast. All social indicators point to the existence of two separate “countries” sharing this same geographic space; the rich one, where people have access to the same goods and technology available in the first world, and the other, where individuals' most basic needs are not met.

Although inflation, which had reached an incredible 2000% in the mid 1980's, is now low, at 0.49% in March 1998 (according to IBGE's national price rate), unemployment has increased considerably in the last ten years, going from 4.33% in February 1988 to 7.42% in February 1998. People with no occupation, working but not earning any money or earning less than minimum wage make up for 15.30 % of the economically active population. Among people with work, several are working on the black market. What this means is that many workers have no social security or welfare protection. The income of people working with full labour guarantees fell 11.63% in past years, pointing to a drop in salary for formal work.

Lack of investment of energy and funds towards dealing with social problems is a common complaint. A recent article in Brazil's most important newspaper³ claimed the government has the power and the means to spend more money in social programs than it is actually doing. For whatever reason, this issue is simply not a priority. Within this extreme context, constitutionally guaranteed social services and programmes would help palliate the suffering caused by low wages and high unemployment in the urban areas and lack of resources and growth in the rural areas. These social services being nearly in-existent means that in certain parts of the country, children's basic rights are not being respected.

Education is still the country's biggest challenge though. Data from the beginning of the decade (1991) shows that 20.43% of the population over the age of 15 were completely illiterate. In 1997, MEC (Ministry of Education and Culture) furnished numbers showing that 2.7 million children and adolescents, between the ages of 7 and 14 do not attend school. Among the children in school, the drop-out rate is around 11%, and failure is at 16.7%. These same rates are even higher in the Northeast, where 15.7% of children in school are dropping out, and 19.2% are failing.

The government has been developing a large-scale national campaign to get all children into school. It is a definite demonstration of will, but at this point, good will is not enough to change a cruel and deeply rooted situation. The schools are poorly structured, and cannot guarantee a place for every child. Teachers' salaries are low, their work-days are usually very long and their training often outdated. As a result, they lack the knowledge to teach the children of tomorrow. In Ceará, this year, where the State government has special projects to promote education, some primary school classrooms hold up to 50 students. There is quite a difference between the age at which a child should normally finish school and the actual average age of graduating students. Many children study nights in order to work days and contribute to the family's income.

³ Oswaldo Buarim JR, FHC gasta menos do que pode com social, *Folha de São Paulo*, ed. Nacional, 20 de abril 1998, 1-5

The public health care system in Brazil is going through one of its worst periods in the country's recent history. Although children's mortality has gone down to 40 for 1000 live births, the rate is still high, and shows that prevention work is still greatly needed. Furthermore, the last five years has seen a rise in diseases long forgotten in the developed world. *Dengue*, for example, is one of them. Transmitted by the *Aedes aegypti* mosquito, it can develop from a dull aching pain all over the body into a deadly disease, if it should reach the haemorrhage stage.

Security is another serious problem potentially harmful to Brazilian children's development. The rates of criminality have been steadily rising in the past few years, and by now most of Brazil's big cities are quite dangerous. The violence formerly associated to São Paulo and Rio has now spread to many other cities. In Ceará, for example, bank robbery and violent personal assaults are much more common now than only three years ago. Another face of violence is in its institutional form: the police, who are paid by taxpayers to protect the public, are usually involved in the aggressions. Police brutality is commonplace and the occasional death of a suspect or convicted criminal is not unusual. There may be room for criticism in the way police has received and responded to changes in children's rights legislation in the past ten years. Some police agents continue to claim that they have no power over juvenile criminals, raising the public's anger and frustration against this "dangerous youth".

This situation directly affects children's lives. The problems with education and health may determine their lives forever, the unequal land distribution increases social and economic problems for the whole society, affecting the children's families, just as the high unemployment rates do. The security matter gives children, from an early age, a permanent feeling of fear and insecurity, and the confusion brought about by police violence destroys children's early moral references concerning the notions of right and wrong.

The following section examines how sexual commercial exploitation of children fits within this general context. The social, cultural and economic background are important factors in the development of the issue, but this same background has also influenced the manner in which Brazil has chosen to fight sexual exploitation of children.

1.1.2. Sexual exploitation of children in the Brazilian context

The first and possibly the most important thing to be said about sexual exploitation of children in Brazil, is that it is a multi-faceted complex problem, with neither one specific root cause or source, nor any one easy answer or simple solution. Although this statement could be generally true of child sexual exploitation at large, and throughout the world, it is particularly true in Brazil's case. In Brazil, sexual exploitation of children neither manifests itself in the same forms, nor is it dealt with in the same manner as elsewhere in the world. The same social, economical and cultural elements of the context, as described in the previous section, come into play when trying to develop a response to the problem.

In his study on the topic, Prof. Vicente de Paula Faleiros⁴ refers to the culture of violence in which the child is submerged. The violence begins at home and persists in the streets. The way adults and children relate to each other, gender roles and class distinctions are all contributing factors. This environment makes for a vulnerable and insecure child, whose rights are violated from birth, be it through poverty or the all-too familiar social, gender or race-based injustices which condition one's position in life. It is this child who is most vulnerable to commercial sexual exploitation in Brazil. For the most part girls, but also a small and growing number of boys, go from the physically and/or sexually abusive situation at home towards the hostile environment of the streets, where they attempt to survive. Culture also has a great deal to contribute to the present situation in Brazil. Aside from the violence and social divisions mentioned above, one cannot deny the role played by concepts of sexuality, sexual development and education. Sex education is not the only kind that is lacking, the problems faced by the State in providing all children with access to free and adequate education has resulted in a serious lack of options for the children and their future.

It is very important not to confuse information when dealing with as delicate a subject as child sexual exploitation. Too much has been said about this matter, and there has been a tendency to quote numbers and use estimates from various sources, some more reliable than others. For reasons of caution and reserve, stating statistics and numbers was avoided when possible. One of the objectives of these Second Hearings of the *International Tribunal for Children's Rights*, was to try to dispel the myth about the importance of foreigners' involvement in child sex tourism in Brazil. While this is one of many forms of sexual exploitation that Brazilian children are exposed to, recent research reveals that the problem is not of the magnitude that authorities, as well as international and national NGOs once believed it to be.

Sex tourism certainly exists in Brazil, and in some cases, involves minors and foreigners. However, the majority of cases of commercial sexual exploitation of children are of a more "traditional" kind. That is to say that most cases are of simple prostitution, with or without an intermediate. It is important to distinguish the situation as it exists in Brazil, from what might occur in Asia, be it Thailand, Sri Lanka, Philippines or Vietnam. It is also quite different from what is growing into a serious problem in Eastern Europe, and just as far from the cross-border trafficking nets that we are seeing between African States. The problem in every case is unique, and the solutions therefore cannot be universal.

Part of the myth is due to the fact that local and international media tend to over play the proportional importance of sex tourism by foreigners by giving the issue more coverage than others. Even the nature of the sex tourism as it exists in Brazil is quite different from other countries where it occurs. Foreign sex tourism mostly occurs in the North-eastern coastal States of Brazil, where the beaches are beautiful and the population is particularly poor. In an article by Márcia Dangremon⁵ the author describes the romantic fantasy surrounding the relationship

⁴ FALEIROS, Vicente de Paula, "An unequal society and the question of sexual exploitation of children and adolescents" , in Sexual exploitation of children and adolescents in the Americas, (pp.55-58). For more on this subject, see: MAHONEY Kathleen, "Sex tourism, law and cultural values" (pp 131-139). Same conference.

⁵ DANGREMON, Márcia, "Networks of sexual exploitation and Sex-tourism", in Sexual exploitation of girls and adolescents in Brazil, (pp. 55-63).

between the foreigner and the local girl. In Brazil, sex tourism would seem neither to be an organised “industry”, nor an extremely lucrative or even “commercial” business. The young girls often are not even paid except in gifts and outings. They consider the sexual relations as an investment in a relationship or possibly marriage. Some of the girls involved are minors, usually adolescents, but this particular form of transaction does not seem to involve small children. Police and NGO's claim that if there is a market for small children, it is hidden and discreet, not open and on the streets as in some other countries.

Much more common, is the sexual exploitation of children through juvenile prostitution serving local clients. According to numbers reported by ABRAPIA⁶, which collected anonymous telephone reports of sexual exploitation of children, nearly 90% of cases concerned Brazilian nationals. This data does not represent an actual field study, as it only covers reported cases. It does however demonstrate the predominantly local nature of the problem. There has been increased reporting however of trafficking of children for sexual purposes, sexual exploitation of child domestic workers, and now pornography.

In the Northern Region, independent gold mining colonies have been linked to the existence of brothels holding children, trafficked there for sexual purposes. The most complicated and potentially wide spread problem is the growing occurrence of pornography involving children. There have been reports of pornographic films and photographs being produced, but pornography through the Internet is surely the quickest growing trend. The unfortunate added quality of the Internet for pornographers is that this medium allows them to reuse and redistribute their photos and films. Images need not be new to circulate world-wide on the rapidly expanding Information super highway. Brazil can now count itself among the numerous countries that are confronting the near impossibility of controlling “cyber-porn”. Besides the complexity of the technology involved, enacting adequate legislation is a problem far from being solved. Brazil's particular socio-economic structure creates an environment where children are exposed to forms of sexual exploitation which traditionally affect developing countries, while having to deal with the emerging problems of the more developed countries.

The particular nature of sexual exploitation of Brazilian children is also, as in many other countries, closely tied to the problem of education, child labour and the phenomenon of street children. In the past few years, these four key-subjects have been approached individually from different angles. The interaction between these four questions is an important one. In a study conducted by ANDI (Children's rights News Agency in Brazil)⁷, a noted decrease in media attention from the topic of street children gave place to an interest in sexual exploitation, which was then replaced by an active interest in education, and we might suppose that child labour will be the subject of choice in the next years. This may denote a certain problem concerning public and political interest which seems to arise in waves. One thing is certain: sexual exploitation, as a matter of media interest has fallen behind education. Child labour, which is gaining considerable importance at an international level, may not be “replacing” child sexual

⁶ ABRAPIA, Campanha nacional de combate à exploração sexual infanto-juvenil – Relatório fevereiro de 1998. Evolução dos indicadores de fevereiro/97 a fevereiro/98.

⁷ ANDI (Agência de notícias dos direitos da infância), Pesquisa: os jovens na mídia, agosto, setembro e outubro de 1997.

exploitation as a topic of interest, but rather following it in a natural evolution and progression of ideas. We will see, in the following section, that international legislation is bringing these two forms of exploitation into the same sphere of discussion and that they are in fact quite closely linked.

1.2. Legal framework

1.2.1. International

Before entering into an analysis of national legislation pertaining to children's rights and sexual exploitation, one should examine international law as it applies to Brazil, and consider this particular country's international obligations and responsibilities concerning its children.

In his statement presented on behalf of the Brazilian government, at the World Congress in Stockholm, in 1996, Mr. Luiz Felipe de Teixeira Soares recognised Brazil's role as a member of the international community. He listed some of the commitments made by Brazil at the international level, be it through the signature or ratification of human rights instruments or the participation at various conferences or congresses. In another document, entitled "How Brazil is fighting the commercial sexual exploitation of children and adolescents", also presented at the Stockholm Congress, one can find a summary of Brazil's commitments and accomplishments at both international and national levels which relate to the fight against sexual exploitation of children. Among the instruments and documents which protect or somehow strengthen Brazil's arsenal of international commitments in this particular field, the most important is surely the signature of the *UN Convention on the Rights of the Child*, on January 26th, 1990. The same *Convention* was ratified on September 24th of 1990. We will not be entering into an analysis of the *Convention*, and its importance as a tool in the combat against child sexual exploitation. In the Report of the First Public Hearings of the International Tribunal for Children's Rights, in Paris, 1997, Secretary, Judith Ennew, presents an excellent summary of the *Convention* and article 34 which directly prohibits sexual exploitation of children. Of equal interest are sections 35 and 36 of the *Convention*. Article 35 refers to the sale, trafficking and abduction of children for any purpose, and article 36 specifies that all States Parties must "protect the child against all other forms of exploitation". As we will also be referring to the ILO Conventions and the relation between sexual exploitation and child labour, we would mention article 32, which guarantees the child protection from all forms of work "that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".

Brazil signed the *Convention on the Rights of the Child* without reservations, and is therefore subject to all its provisions, including the monitoring process of the *Committee on the Rights of the Child*, as set forth in Sections 42 through 45 of the *Convention*. However, Brazil has not yet submitted a report to the Committee on the Rights of the Child. As is the case for many other countries, the report by the Brazilian government is long overdue, having been scheduled for presentation on October 23 1992. According to UN registers on overdue reports, three reminders have been sent, but the Committee is still waiting on the first report. Without it, the *Committee* can not offer any recommendations towards improving the implementation of the *Convention* in Brazil.

There was nevertheless a visit from the Special Rapporteur on the Sale of children, Child prostitution and Child pornography to Brazil in February 1992. The report not only offers an interesting and useful historical and socio-economic background, but also reviews the various problems of exploitation covered by the Hearings. The perspective given by the Special Rapporteur is objective and daring. He attributes some responsibility to the international community for the present socio-economic situation in Brazil of great disparity between the rich and poor; a fertile breeding ground for sexual exploitation of children. He refers with great care to certain questions such as organ trafficking, which have received a lot of attention, but where little information exists to support allegations. He speaks of prevention in cases where actual evidence of abuse is lacking. His report is sober and factual, without generalisations or attempts at sensationalism⁸.

As stated earlier, child labour is a matter of growing concern in relation to sexual exploitation. In Brazil, as elsewhere in the world, children involved in *commercial* sexual exploitation, are also victims of child labour. Juvenile prostitution is indeed an intolerable form of exploitation of child labour. Another potent example of the inter-relation between sexual exploitation child labour, is the case of child domestic workers. In the past 50 years, the *International Labour Office* (ILO) has put forth several documents enacted in an effort to eliminate child labour. The ILO/ IPEC paper prepared for the World Congress, in Stockholm, gives a clear picture of the ILO's position towards the commercial sexual exploitation of children and how they feel the ILO instruments can be used in combating it.

This paper refers to various conventions such as the *Forced Labour Convention 29* (1930), which renders all forms of forced labour punishable as penal offences. Like the *UN Convention on the Rights of the Child*, the *Forced Labour Convention* is nearly universally ratified (with 139 ILO member States as of June 1996). Brazil ratified the Convention on April 25, 1957. As said in the same paper, this Convention is not a tool that stands alone, but rather in conjunction with other ILO instruments such as the *Abolition of Forced Labour Convention* of 1957 (No.105), ratified by Brazil on June 18, 1965, and the *ILO Minimum Age Convention* of 1973 (No.138)⁹. Recent developments within the international community, especially with regards to the growing interest and priority given to eliminating child labour, have propelled the ILO to submit a proposal for the adoption of new international standard on child labour in 1999. At the Stockholm World Congress, a Resolution was also adopted in this direction, concerning the elimination of child labour. The need for a new instrument against the most intolerable forms of child labour, is justified by the lacunae of the *Forced Labour Convention*, which does not list these forms of labour. The need is enforced by the low rate of ratification of *Convention No.138* (48 member States) and the general lack of priority given to preventive measures in these two documents.

⁸ We must however put forward certain reservations concerning this document. On the one hand, it is not a recent study and certain elements may have varied considerably in six years. As for the research that went into the report itself, the Rapporteur himself indicates to having been limited in his findings. He had access to very few sources of information and had to base himself for a great part on conversations and verbal reports. Another point concerns the language barrier. The Rapporteur explains in his report that due to language problems, he could not use a number of written documents, as they had not been translated from Portuguese.

⁹ Although there was a large-scale campaign in 1996-1997 in favor of the signature and ratification of this instrument, the government has not yet taken any steps in this direction.

1.2.2. National

Strong legislation can often be a very important tool both in preventing and combating the commercial sexual exploitation of children. In the years preceding the adoption of the UN *Convention on the Rights of the Child*, changes in the principles relating to children's rights were being felt at an international level, but the signature and ratification of the Convention by the Brazilian government imposed changes in national legislation. As a result, Brazil's legislation concerning children has improved a great deal in the last ten years, starting with the adoption of the new Constitution in October 1988 and culminating in the drafting of a special new code on children's rights: *Estatuto da criança e do adolescente* of 1990. The Constitution changed the way the child was regarded in Brazilian law, going from a paternalistic vision of the child as an *objet de droit*, to a more modern vision of the child as *sujet de droit*. With this great change in the Constitution, the Minor's Code of 1979 became obsolete and the new Statute was adopted in order to ensure the application of the child's constitutional rights in accordance with this new line of thought. Another important legal document concerning children and their rights is the Penal Code, listing most of the crimes that are committed against children. The Penal Code has yet to be modified in accordance with the recent tendencies in the protection of children's rights, but a Bill is being considered at the National Congress with proposed changes.

The present Penal Code dates back to 1940, and life in Brazil, as elsewhere in the world, has changed considerably since the adoption of this law. Concepts of morality and social norms have gone through various transformations. People's reactions to as well as their understanding of the world have changed, and as a result, so have children. It is perhaps regarding sexual behaviour and taboos that society has changed the most, and as a result and natural consequence of these new tendencies, legislation which no longer corresponds to society and children's needs must be modified.

By analysing these three most important Brazilian laws concerning children's rights; the Constitution, the Statute of the Child and Adolescent and the Penal Code, one can have a clear idea of how children's issues are being dealt with in this country, especially regarding the question of sexual exploitation.

The Constitution's modifications began with the drafting of an entire chapter dedicated to: Family, children, adolescents and the elderly (chap. VII). Section 227, establishes children and adolescents as being an "absolute priority", stressing the duty of both the Family and the State to provide them with all means necessary to their full development. Thus, children's rights to dignity, leisure and respect are constitutionally secured. The law also specifies that the Family and the State have a joint responsibility to keep children safe from any form of violence and exploitation.

The Statute of the Child and Adolescent, (Section 2, *caput*) defines what is considered a child or an adolescent by law. Children are all people under the age of twelve, and adolescents are people over twelve and under eighteen. The entire social protection and service system is based on this distinction between the child and the adolescent. The juvenile criminal system also uses this distinction, which determines different treatment depending on the offender's status as a child or adolescent. The Statute lists and guarantees the basic rights of every child and adolescent, and any violation of these rights is subject to criminal prosecution. The Statute

became a set of guidelines for identifying and prosecuting all specific crimes against children and/or adolescents, as well as setting the guiding principles for all social institutions, care services and programmes for children and adolescents. The law creates new infrastructure for promoting, protecting and guaranteeing the rights of children and adolescents, and the administrative section of the Statute determines every government department's specific role and responsibilities within this infrastructure.

All the articles of the Statute share a common thread. They all aim to protect children from any form of violence, but the following ones apply directly in cases of sexual exploitation, by specially punishing pornography and reminding parents of the importance for them to know their children's whereabouts. One of the innovations in the Statute is in drafting new specific crimes against children such as *torture against children*¹⁰ and *pornography involving children* (ss. 240, 241). The law also punishes individuals *sheltering or transporting children without their parents' knowledge* (ss. 250, 251), and gives special attention to the case of *children being brought from the countryside to perform domestic work* (s. 248). The Statute also protects *the identity of children involved in criminal acts* (s. 247) and *prohibits the sale of any products, which may cause physical or psychological dependence, to any person under the age of eighteen* (s. 243).

All criminal activity relative to children and adolescents falls under the Penal Code of 1940, since the proposed modifications have not yet passed into law. The specific crimes relating to sexual exploitation can be found in the Code's 6th title: "Crimes against public morals". Chapter one, entitled "Crimes against sexual freedom", covers ss. 213-216. The specific offences are *rape* (violent and non consensual sexual intercourse) in s. 213, *violent sexual assault* (other kinds of sexual violence, not including sexual intercourse) in s. 214, *sexual relations by fraudulent means* (obtaining consent to sexual intercourse on the basis of false information and fraud) in s. 215, *sexual assault by fraudulent means* (any kind of sexual relation other than sexual intercourse with an honest woman through fraud) in s. 216. The preceding crimes only apply in the case of minors aged between 14 and 18 years, in as much as the sentence is increased when the victim falls within this age group.

Chapter two, entitled "Seduction and corruption of minors" covers ss. 217 and 218, and recognises specific sexual crimes against minors between 14 and 18 years of age. *Seduction* is qualified as having sexual intercourse with a teenager over fourteen and under eighteen, by taking advantage of her lack of experience or extreme confidence in the seducer. The *corruption* of a minor, in section 218, consists in practising any libidinous act with a minor, or making him or her do or watch such an act. The crime of seduction only applies in the case of a virgin woman, while the corruption of a minor applies to both male and female teen-agers. Chapter four, entitled "General provisions", specifies that any sexual criminal act accompanied by violence automatically increases the sentence. The same section also states that such violence is presumed in any case where the victim is under the age of 14 years (s. 224).

¹⁰ This article no longer applies as it has been substituted by the provisions of a new law on torture (Lei No 9.455 de 7 de Abril 1997), which is more severe and imposes heavier sentences.

Finally, Chapter five entitled “ Exploitation and Trafficking of women”, ss. 227-232, determines the crimes corresponding to prostitution. At this point, it should be noted that, as in many other countries, prostitution is not formally illegal in Brazil. However, the acts of inter-mediation and facilitating, as well as profiting from the prostitution of others are illegal, ss. 227-230. Under these particular offences, the sentence is automatically heavier when the victim is between 14 and 18 years of age. In section 231, *trafficking of women* involves promoting or facilitating the entrance or exiting of women into or from the country, with the intent of practising prostitution.

The proposed Bill to amend the Penal Code would bring some very important changes to the law and the way it is applied by correcting certain aberrations which, in many cases, both disadvantage and stigmatise the victim. Firstly, crimes of a sexual nature would no longer be under the title “Crimes against public morals”. These crimes would be under the title “Crimes against sexual integrity”, which shows a change in the way the issue is regarded. Another important modification would eliminate, in all cases except rape, the condition that the victim be a female, by replacing the word “woman” with “person”. Some derogatory and stigmatising language would be removed, such as the condition of being “honest” or even a virgin, which also alleviates the burden of proof. Another important amendment would specifically categorise all sexual crimes against children and adolescents. This would be an improvement on the present situation, where these crimes fall under the generally applicable rules, with only a possibility of stronger punishment when the victim is a minor.

Should these proposed modifications be passed into law, the sections of the Penal Code would become of great use in fighting sexual exploitation of children in all its dimensions. We must not forget that unless the Police and Judiciary are given the necessary means to implement and enforce the law, these legislative improvements might never find their way into practice.

1.3. Past initiatives in the struggle against sexual exploitation of children in Brazil

1.3.1. General comments on earlier recommendations

1.3.1.1. International perspective

The following is an analysis of some recommendations resulting from past initiatives for children's rights, taking the form of conference papers, campaign results or various reports. From an international perspective, the most important source and point of reference concerning commercial sexual exploitation of children is without a doubt the World Congress Against Sexual Exploitation of Children, organised by ECPAT, UNICEF and Radda Barnen, which was held in Stockholm, Sweden in August 1996.

The principle recommendations to come out of the Stockholm Congress, and to be applicable to all participants, were assembled and included in the Draft Declaration and Agenda for Action. There were however several other significant contributions, by NGOs, UN institutions and other organisations, which have a certain value when analysing the background of the recommendations.

Draft Declaration and Agenda for Action:

Of note is the apparent similarity, both in format and in content between the final Draft Declaration and Agenda for Action and its European version which was submitted as the result of a regional consultation. Europe is becoming more and more directly affected by the problem of child sexual exploitation, and all members of the international community have some responsibility to take in a problem which is already taking global proportions. It is therefore not surprising that the European community participated so actively in the preparation, organisation and process of the event. Both documents do seem to project a mostly European perspective on the question of sexual exploitation of children, especially regarding the point of view of the traditional “sending countries of sex-tourism”.

In retrospect, one might question how much consideration was given to the concerns and contributions of non-European countries, some of which are most seriously affected by the problem of sexual exploitation of children. For those States, sex-tourism can be viewed as part of a much greater problem, which begins at home.

Included in the greater ensemble of information sources to come out of the Stockholm event, are the contributions from the ILO, the European Commission, the WHO, INTERPOL, as well as many other UN bodies, several NGOs and State representatives. Brazil presented a concise address with reference to its international obligations and past attempts at curbing sexual exploitation of children. Recommendations also came from the Panel on Tourism and Sexual Exploitation with its various workshops. These recommendations mostly centred on the two following points: information and training. Reference was made to resolutions coming from the tourism industry itself¹¹.

Another important document to come out of the World Congress, is the report of the Rapporteur-General, Prof. Vitit Muntarbhorn. It is a concise and almost complete summary of the whole event, and can be used as a commentary to the Draft Declaration and Agenda for Action.

1.3.1.2. National and Regional Perspectives

“Conferência Metropolitana sobre Prostituição infanto-juvenil”, October 1994, organised by CEDECA-BA, in Salvador.

This Conference was possibly the most structured of the local events in Brazil, and one which produced the most concrete recommendations for change within existing structures. The organisers decided that the issue of juvenile and child prostitution was so complex that the only possible approach had to be a multi-disciplinary one. The idea was to tackle every aspect of social intervention in its relation to the problem at hand. Some 70 organisations participated,

¹¹ The following declarations were contributed to the Congress:

- *World Tourism Organisation Statement on the Prevention of Organised Sex Tourism*, October 22nd 1996 in Cairo;
- *UFTAA’s Children’s and Travel Agents’ Charter*, to be signed during the next UFTAA World Annual Congress;
- *International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF-ITF)*, June 28-30th 1995, in Penang, Malaysia;
- *IUF-HRC’s Resolution on Prostitution Tourism*, December 6th and 7th 1995, in Budapest, Hungary;

including public as well as civil institutions. The Conference produced a series of recommendations directed at the different levels of government responsible for each appropriate action. The Conference was only concerned with the situation in the State of Bahia, and the recommendations are therefore very specific, with proposed changes especially focused on the region. It would be difficult for them to be extended to other parts of Brazil, but the model is still interesting and useful.

Since the recommendations and conclusions were very specific and properly targeted, follow-up action was possible and results could be more easily evaluated. The conclusions and recommendations covered a large variety of areas of social intervention, including health, education and social assistance. These areas all come into play when we consider the present situation and environment where minors are sexually exploited. The approach was very interesting and successful, examining the question from a curative as well as a preventive point of view. Specific recommendations were directed to all sectors of society. Some were even made to the Press, concerning the language they use when dealing with children's rights issues. Some recommendations were so specific as to propose reducing the prices of condoms.

Among the most interesting recommendations were for government and international structures to support smaller, successful local initiatives, instead of shutting them down to create new ones. The demilitarisation of the police was recommended, as it had been by the UN Special Rapporteur in his report on Brazil¹². The recommendations also cover children's rights training courses for police and public officials dealing with children's issues, as well as external control of public institutions, be they administrative, judiciary or executive. Because the recommendations were extensive and covered every area of society related to the root causes, incidental factors and possible solutions to the problem of sexual exploitation of children, only a few of the most interesting ones have been highlighted here.

After the Conference ended, all recommendations were submitted to CONANDA (a joint government/ NGO composed Counsel on the rights of the Child and the Adolescent). In this particular instance, the NGOs involved had to face a certain lack of political will on the part of the government and few actions were taken. There is presently in Brazil, no mechanism by which interested parties, such as NGOs, can submit proposals, recommendations or changes to the government through its competent departments, and demand it to take action.

“Sexual exploitation of girls and adolescents in Brazil”, organised by UNESCO and CECRIA, in March 1995, in Brasilia.

This conference was organised by CECRIA, in collaboration with UNESCO. This conference was highly academic in nature, reuniting renowned researchers and experts in the field of children's rights. Legal experts, sociologists, criminologists and psychologists submitted papers and presented their findings. Representatives from NGOs and international organisations, such

¹² Commission on Human Rights, ECOSOS, Rights of the Child : Report by Special Rapporteur Mr. V. Muntarbhorn, in conformity with resolution 1990/68 of the Commission on Human Rights, Addendum : Special Rapporteur's visit to Brazil. E/CN/1992/55/Add.1, 11 February 1992.

as UNICEF and UNESCO were also present throughout the conference. Members of the media also participated actively in the debates as well as in the elaboration of recommendations.

The result of this seminar is an intelligently assembled report, with interesting debates and submissions. The language of the final recommendations is positive and proactive, and some of the propositions cover new and important areas. One of the priority areas highlighted by the participants in the recommendations covers the need for effective research and stresses the importance of further analysis work. Some other recommendations spoke of multi-disciplinary consultation groups for judges dealing in matters regarding children's rights, as well as stricter guidelines for the selection and training of magistrates. It was also suggested that schools integrate sexual education classes into the curriculum.

“Sexual exploitation of Children and Adolescents in the Americas”, organised by CECRIA, in Brasilia, April 1996.

According to the report produced by the organisers of the World Congress in Stockholm, in August 1996, the Seminar was initiated by CECRIA, independently from the World Congress, but later served as a regional consultation of the Americas. As such, the conclusions and recommendations were later used in Stockholm, to represent the contributions of the American continent to the international event. The subject was in fact very similar to that of the World Congress, studying the situation of sexually exploited children, particularly the victims of commercial exploitation.

Participants from 25 countries in North, Central and South America were present and contributed to the various discussion panels. This was a large-scale event and originally intended to be international, but of the 470 participants, 400 were from Brazil, which makes this Seminar particularly interesting to Brazil. Furthermore, the main organisers were of CECRIA (Centro de Referencia, Estudos e Ações sobre Crianças e Adolescentes do DF), a strictly Brazilian NGO. The panels also included members of ILO, INTERPOL and UNICEF, among others.

The Seminar was divided into panels and subsequent workshops. Every one of these workshops produced recommendations, which appear in the CECRIA published report, but not in the Stockholm edition. The actual outcome of the Seminar was the “Letter of Brasilia”, which was later submitted to the World Congress in Stockholm, as the official result of this regional consultation. The “Letter of Brasilia” was written during the preparatory phase and was later submitted to participants at the Brasilia Conference, for comments.

Some of the ideas arising from the workshops recommended easier access to justice and legal remedies, as well as modifications to certain outdated terms in the penal code, which do not define the client as the “exploiter”.

“Workshop” organised by CEDECA-CE, Fortaleza, February, 1997.

This last initiative, although smaller and local in nature is mentioned here because it concerns the specific region where the Hearings were held. It is also the most recent of projects, organised by

CEDECA-Ceará, local partner NGO in the organisation of these Second Public Hearings. At the closure of this event, certain general conclusions were drawn and projects were proposed within specific time-frames. Participants to this event included NGOs, representatives from several levels of government, as well as members of the Judiciary and Public Security bodies. The main objective was to develop an efficient and aggressive policy against agents and exploiters of prostituted children and adolescents in Ceará.

Finally, it is interesting to see an example of one initiative to come as a direct result of recommendations and suggestions from previous events: the “Campanha Nacional”. This Campaign is of some importance and scale. ABRAPIA (Associação Brasileira Multiprofissional de Proteção à Infância e Adolescência) took on the responsibility of receiving telephone calls reporting cases of sexual abuse across the country. The Campaign was first developed in 1996 by the Government Tourism Bureau (EMBRATUR) as an awareness raising campaign against sex tourism and sexual exploitation of children, and received support from the Justice Ministry. This is a project that the government was, and continues to be, particularly involved in. Although the response was rather strong in the first months, bringing in numerous reports, the campaign seemed to lose some ground after the first year¹³. ABRAPIA has produced an interesting report documenting the complaints received. The campaign has been renewed for a third year but beyond that, the future of the project remains unsure.

1.3.2. Results

This brings us to a final point. How effective were these numerous and sincere attempts at combating sexual exploitation of children at a national and regional level? One of the principle motives for holding these Second Hearings of the International Tribunal for Children's Rights, in Fortaleza, was to try to answer this fundamental question. Some of the recommendations were made as nearly three years ago, and little information exists to indicate whether these recommendations were followed and whether any policies were enacted.

Some of the proposed changes to the legislation are presently in motion. The Penal Code is being reviewed and a Bill is being presented to Congress proposing some very important changes concerning the crimes against minors, removing, for example, some of the derogatory language and focussing the definition of the crime on the victim. The other important follow-up to past recommendations concerns the “Special Court for Crimes against Children”. Various specialised courts are presently being introduced throughout the country. The response is slow and at the early stages, since there are presently only three such Courts in Brazil: in Recife, Slavador and very recently in Fortaleza. This last one however has yet to begin hearing cases.

1. Second hearings of the International Tribunal for Children's Rights

The second public hearings of the International Tribunal for Children's Rights, held from May 11th through 15th, 1998 in Fortaleza, in the state of Ceará, Brazil, were a important step in the development of the *International Bureau for Children's Rights*' activities. The main objective of

¹³ Cited earlier. ABRAPIA, Campanha nacional de combate à exploração sexual infanto-juvenil – Relatório fevereiro de 1998. Evolução dos indicadores de fevereiro/97 a fevereiro/98.

its activities and projects is to sensitise individuals as well as governmental and non-governmental organisations to issues pertaining to children's rights by compiling and disclosing pertinent data, from which concrete measures and initiatives may be set forth. In addition the Bureau provides moral support to efforts made by the international community to bring into effect the terms of the *Convention of the Rights of the Child* in a thorough and efficient manner.

1.1. Convention on the Rights of the Child

The driving force behind the public hearings entitled "*Brazil: Beyond child prostitution and sexual tourism*" was, first and foremost, *the Convention on the Rights of the Child*, unanimously adopted by the General Assembly of the United Nations on November 20th, 1989 and which came into force on September 2nd, 1990 after being ratified by the twenty States required by Article 49 of said *Convention*. As was outlined in the Report of the first Tribunal held in Paris:

"The Convention on the Rights of the Child is unique among international human rights instruments in that it covers the full range of human rights, not only civil and political but also economic, social and cultural. Besides this wide scope it also contains two major conceptual innovations. The first is that the principle of the 'best interests of the child' should be the guiding principle in all 'actions governing children' (Article 3(1)). The second is that the views of children should be 'given due weight in accordance with the age and maturity of the child' (Article 12 (1)). These two key ideas provided guiding principles for the deliberations and recommendations of the members of the Tribunal at the Hearings.

The Convention on the Rights of the Child does not stand alone. It is an integral part of a human rights agenda with a long history which has gained increasing impetus since 1945 in the context of the United Nations. As the Preamble to the Convention makes it clear, it is fundamentally based in the body of previous United Nations human rights instruments, which the judges took into consideration [...]. Moreover, this Convention has its own history within the broader human rights project. The first five-point declaration of children's rights, known as the Declaration of Geneva, was adopted by the Fifth Assembly of the League of Nations in 1924 and the United Nations Convention on the Rights of the Child should be viewed as the culmination of more than six decades of activity within the international community on behalf of children."¹⁴

The need to formulate and adopt an international convention, based specifically on the recognition of the rights of the child, is an acknowledgement of children's unique and particular vulnerability. Among the articles of the *Convention* which specifically address the protection of the child from any form of abuse or exploitation, Article 34 sets forth:

¹⁴ INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS, "Extraterritorial Legislation in Response to the International Dimension of Child Sexual Exploitation", First public hearings of the International Tribunal for Children's Rights (Report), Paris, 1997. (Hereinafter, the Paris Report).

“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:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- c) The exploitative use of children in pornographic performances and materials.”*

Article 34 is further completed by other provisions of the *Convention*, specifically those found between Articles 32 and 36 which concern exploitation and sexual violence in general and which aim at both prevention on one hand and the prohibition of trafficking of children on the other. In addition, Articles 19, 26 and 27 concern support to families. Articles 13 and 16, for their part, contain important recommendations regarding children’s right to self-determination and freedom of expression which are particularly significant in interpreting questions relating to the child’s consent to sexual activities.

1.2. Response of the international community and of the International Bureau for Children's Rights

Guided by the principles enshrined in the *Convention*, we have assisted a number of initiatives at the international level which have been primarily focused on monitoring trends, identifying and revealing violations of children’s fundamental rights as well as of human rights in general. There have been subsequent developments in terms of creating effective means to enforce existing international conventions and to progressively enact of their provisions. In the case of the *Convention on the Rights of the Child*, emphasis to date has been placed on formal questions, such as the adoption of legislative measures by states and the filing of reports by the States Parties with the *Committee on Children’s Rights* in accordance with Articles 43 and 44 of the *Convention*. At page 2 of the *Paris Report*, we emphasised the following:

“A crucial catalyst for the development of international awareness of the dimensions of the sexual exploitation of children was the *World Congress Against the Commercial Sexual Exploitation of Children*, held in Stockholm, Sweden, in August 1996.”¹⁵

And further, one reads:

“[...] it is understood that there is now a need for systems to be put in place to combat the sexual exploitation of children at national and international levels. Both governments and civil society realise that the challenge no longer consists simply in promoting a campaign of awareness-raising. The priority is implementation, not only of the UN Convention on the Rights of the Child and related instruments in

¹⁵ Paris Report, p. 2.

terms of legislative changes, but also protection of children and prosecution of offenders.”¹⁶

The International Bureau for Children’s Rights, by means of its International Tribunal for Children’s Rights, held its first public hearings in Paris from September 30th to October 2nd 1997, following the action plan proposed in Stockholm, which took into account the international dimensions of sexual exploitation of children and from which the Draft Additional Protocol originated and was finally made official in Tunis in 1993.¹⁷ Through these first public hearings, the International Bureau for Children’s Rights aimed to reinforce initiatives to enact extraterritorial legislation adopted as a means to curb the sexual exploitation of children.

This initiative was based on the members of the International Bureau for Children’s Rights’ strong conviction that lobbying representatives of concerned sectors of society in order that they establish all requisite operational and administrative measures was and remains an important step in following through with the implementation of the Convention.

1.3. International Tribunal for Children's Rights

The International Tribunal is a moral forum rather than a formal judicial institution, established by the International Bureau for Children’s Rights in order to collaborate with constantly renewed global efforts to meet the challenges posed by the implementation of the provisions of the *Convention on the Rights of the Child*. From such a perspective, the hearings offer an opportunity for public consultations and for sharing experiences and views, either orally or in writing. The judges of the Tribunal are only vested with the power of persuasion, which they exercise, first and foremost, through the comments and recommendations recorded in the Tribunal’s reports.

In order to meet this goal, certain preliminary measures must be taken with regard to the organisation of the Tribunal’s public hearings.

1.3.1. Rules of procedures

A series of procedural rules were adopted in order to ensure that the hearings proceed smoothly, that the established agenda is duly followed and that all participants are each given an opportunity to speak. The rules of procedure adopted for the purposes of the second public hearings of the International Tribunal for Children’s Rights followed the broad lines of those rules adopted for all of the hearings on the topic of sexual exploitation of children, while taking into account the particular characteristics of the second public hearings, held in Fortaleza, Brazil.¹⁸

¹⁶ Paris Report, p. 2.

¹⁷ During the “Second International Workshop on National Institutions for the Promotion of Human Rights” held in Tunis in 1993.

¹⁸ The Rules of Procedure are reproduced at Appendix 1 of this Report.

1.3.2. Members of the Tribunal

The Tribunal is formed by a panel of judges chosen by the selection committee of the International Bureau for Children's Rights, in accordance with its current policy to that effect. Each judge is named for all hearings including the filing of the Tribunal's final report. The Bureau selects candidates, in accordance with the criteria established by the nominations policy, which include the following: the international reputation of the judge, peer recommendation and citizenship in a state having ratified the *Convention on the Rights of the Child*. During the second public hearings, the Tribunal's bench was formed by the following three judges:

Roch Lalande, président (Canada)

Maria DaGraça Diniz DaCosta Belov (Brésil)

Claire Suzanne Degla (Bénin)

1.3.3. Key themes

By focusing on evidence concerning the situation of essentially one country, Brazil, the format of the hearings differed from that adopted for the previous hearings held in Paris where fourteen representatives from Europe, Australia, Canada and the United States were heard. The first public hearings were organised with a view to examine more closely a wide array of experiences and efforts set forth to combat sexual exploitation of children and adolescents. During the preparatory phase of the second public hearings, the criteria used to select witnesses and intervenors focused on acquiring greater knowledge regarding various factors and conditions particular to the country itself, while preserving those features of the Tribunal's investigative model which offered a novel approach to examining the Brazilian context more closely.

Recognising the importance of ensuring the participation and representation of persons and organisations working in Brazil, in addition to the importance of receiving reports through local channels, which seemed essential to the success of the second public hearings, The International Bureau for Children's Rights prepared and organised the public hearings in conjunction with the Centro de Defesa da Criança et do Adolescente (Cedeca-Ceará), a non-governmental Brazilian organisation which defends the rights of children. The organisation was founded in 1994 in Fortaleza, in the state of Ceará, its mission being to guarantee and promote children's rights by means of social action and court challenges. The organisation is credited with holding two conferences in 1997 on the topic of sexual exploitation of youth specifically addressed to judicial professionals and officers (both lawyers and judges) and at others working with children.

In order to properly reflect the question of sexual exploitation and violence as it exists on a national level in Brazil, oral and written testimony was solicited and received from both government and from society at large. Such evidence centered around three general themes: (a) judicial prosecution of sexual exploitation cases in Brazil (b) Government's and society's response and (c) Case studies and research.

1.3.3.1. Judicial prosecution of cases of sexual exploitation cases in Brazil

On this topic, evidence focused on legal proceedings regarding sexual crimes committed against children with particular emphasis placed on legislation, institutions entrusted with law enforcement and investigations, judicial proceedings as well as statistics and pertinent jurisprudence. Discussion of these themes was preceded by a few general presentations concerning the cultural, social and economic contexts found in Brazil as factors which influence the operation and development of the Brazilian judiciary and government.

1.3.3.2. Government's and society's response

This theme was explored by means of presentations concerning various initiatives undertaken in order to curb sexual exploitation of children as well as results obtained, including obstacles encountered and lessons learned. In addition, participants were asked to suggest alternate solutions in order to respond more adequately in the future to the problem at hand. Such evidence, including certain case studies, was specifically aimed at creating a strong objective basis for discussion and analysis of the current state of the work being done in Brazil with regard to this question.

1.3.3.3. Case studies and research

The presentation of research projects concerning specific questions surrounding the fight against sexual exploitation of children in Brazil as well as in Latin America was featured under this third and final theme.

Time allowed for the presentation of testimony was determined in accordance with each participant's availability and by the weight given to the testimony in question. Scheduling of the public hearings was therefore planned in order that any such presentation be balanced time-wise as well as with regard to its subject matter.¹⁹

2. Evidence

A list of participants and the topics specifically addressed by expert-witnesses, in addition to the list of documents submitted to the judges by the participants and witnesses are respectively reproduced at Appendices 3 and 4 of this report. Other than the documents filed by the participants and witnesses during the course of the hearings, the members of the Tribunal had earlier taken cognizance of a preliminary working document developed jointly by the International Bureau and Cedeca-Ceará which outlined various themes, with supporting data, which would be addressed during the hearings. This document first examined context, as much the general social, political, economic and cultural factors at work in Brazil as the more specific question of sexual exploitation of children in Brazil. Second, the legal and judicial contexts surrounding this question, both at the international and national Brazilian levels were examined. Third, relevant data with regard to previous attempts to prevent or eradicate sexual exploitation

¹⁹ See the General Programme of the hearings reproduced at Appendix 2 of this Report.

of children in Brazil was reproduced, including commentary on earlier recommendations (from either an international, national and regional perspective) as well as on results obtained. The preparatory materials also contained extracts of legislation and a preliminary report for purposes of analysis highlighting recent national and international initiatives developed to curb the sexual exploitation of children. It is only after having taken cognizance of all of these elements, including written and oral testimony and after having deliberated that the Members of this International Tribunal for Children's Rights drafted this Report.

3. Conclusions and recommendations of the Tribunal

Preamble

Whereas the first public hearings of the International Tribunal for Children's Rights brought together representatives from fourteen countries (11 European countries as well as from Australia, Canada and the United States) these second hearings enabled the Tribunal to hear various testimony borne of experience and integrated efforts in the fight against the sexual exploitation of children in Latin America, principally in Brazil. Proceeding like this it was possible to deepen understanding as to the diverse internal factors influencing the national scene in the matter of the sexual exploitation of children. This hearings permitted to re-examine certain recommendations proposed following the Tribunal's first public hearing held in Paris between September 30th and October 2nd 1997:

« The international dimensions of the sexual exploitation of children should not be exclusively identified with sex tourism, nor yet confined to either developed or developing countries. Although extraterritorial legislation is important, it is one tool among many, and it is necessary to examine successes, failures and obstacles to the implementation of international law, in general, not only extraterritorial legislation » (p. 32)²⁰

Thus it is important to make sure that human rights in general and children's rights sanctioned in the Convention on the Rights of the Child, unanimously adopted by the general assembly of the United Nations and in force since 1990 be respected. Considering that the success of this proposition depends on establishing credibility in relation to criminal law based on the tangible results of its application, the report of the first public hearings underlines on page 32, that :

« [...] criminal law is not omnipotent. It cannot be used to right every social wrong or to eliminate ideological or political frictions. It would, therefore²¹, be an illusion to pretend that the elimination of international conflicts of jurisdiction can solve the underlying social or political conflicts. »

As for the influence of numerous cultural and socio-economic factors in the matter of sexual exploitation. The Tribunal declared:

²⁰ Point 5.1 contained in the report of the first hearings of the International Tribunal for Children's Rights.

²¹ The observation is from the *International Tribunal for children's rights*' report from the First Public Hearings, and refers to a document by the European Council : « European Committee on Crime Problems », (1992) 3(3) *Criminal Jurisdiction, Criminal Law Forum*, Spring 1992, 441-478, p.477.

« *Of which the most important are :*

- *The vulnerability and powerlessness of children as a group compared to adults;*
- *The generalised lack of awareness of children's rights as human beings and lack of knowledge of the Convention on the Rights of the Child;*
- *The structures of gender, class and race that lead to sexual inequalities and to the vulnerability of certain groups of children;*
- *The poverty of both certain nations and certain social groups, which is an essential factor in the vulnerability of some children to exploitation of all kinds;*
- *Imbalances in power between rich and poor nations, which create the underlying structure of sex tourism. »*

General Recommendations

Having analysed various testimony on the social, political, economic and cultural conditions at the root of the sexual exploitation of children and adolescents in Brazil, the Tribunal proposes the following recommendations :

1. Above all, it is essential to respect the complexity surrounding the question of the sexual exploitation of children and to recognise as a fundamental premise that commercial sexual exploitation in Brazil grew out of a sexuality that has been incorporated socially and historically since the colonial era and endowed with an explosive mythic nature fundamental to the evolution of Brazil's cultural identity. A paradigm at the base of Brazilian sexuality represented by the perilous seduction of men by women was established when the first European travellers discovered the physical beauty and extraordinary grace of the native women evidenced by a nudity perceived as innocent. Traces of this evolution of Brazilian sexuality are still evident today, thus one observes a tendency to consider the woman as the principal if not sole responsible party in cases of crimes of a sexual nature, notably rape. In the linguistic sphere the frequent use of terms such as "victim" and "prostituted" are confusing as to the involvement of the aggressor which contributes to projecting an image of innocence for the latter. In this case the substitution of these more common terms with expressions such as "prostituted person" or woman or young woman in a situation of or sexual exploitation, sheds greater clarity on the true nature of sexual violence vis-à-vis the woman, which places the latter in a position of extreme vulnerability, be it a question of sexual exploitation within or outside the family, or within the general boundaries of an unjust society as regards relations between the sexes.

To this end, fundamental aspects in the fight against sexual exploitation such as the redefinition of sexual crimes, placing a greater responsibility on the exploiter/aggressor and abolishing suspicion of guilt which victims must shoulder, are in line with a wider cultural transformation. Thus, efforts in the fight against commercial sexual exploitation are clearly situated within a wider intention of gradual destruction of

attitudes generally attributed to sexuality, thus allowing for profound changes in the values promoted until now.

2. *In this context the struggle against sexual exploitation of children and adolescents cannot be conducted in an isolated manner considering that violence and sexual exploitation in Brazil constitute specific cases of social, political and civil rights violations.²² All action aimed at combating this abuse should be placed within the widest framework respecting the rights of children, adolescent and adults.* This wider perspective entails the abandoning of any short-term expected results from a repressive or control-based intervention, taken as a response measure in a critical situation. It has been established that the unilateral nature of this type of action often leads to the development of solutions which are both exaggerated and prejudicial to the physical, mental and social well being of the child victim. The question of such a risk was an important theme in the Report put forth by the judges during the first hearings, in Paris.

“The primary goal is to protect the child from all forms of exploitation. Thus, the Tribunal wishes to draw attention to the danger inherent in an eagerness to pursue those responsible for sexually exploitation children to the extent that could involve an additional wrench for the child victim”. (p. 31)

Conforming to this principle and reminding people of the presumption of innocence to which all accused are entitled, the Tribunal reaffirms the importance of protecting the child against all forms of prejudice during case investigations of sexual offences committed against him or her; cites the risks to which children are subject in these cases; and recommends adopting a great number of measures allowing for the protection of children against whatever prejudice. (pp. 32-33)

The suppression of sexual exploitation must be firmly anchored in each one's right to his or her sexuality. This principle must be taken into account when evaluating the results. In cases involving children and adolescents, this right represents not only protection from sexual exploitation and forced sexual relations but also a guarantee that they themselves will not be prosecuted, incriminated and incarcerated for these same acts. Of an equally great importance is the guarantee of respect and care for both the child and adolescent during the discovery and development of their sexuality in all its dimensions. Strictly speaking, combating *abuse* (from the Latin *ab-wrong, usus : use*) implies a recognition of its *appropriate* use.

As far as victim women are concerned, it is important to recall the Declaration which came out of the World Conference on Human Rights, held in Vienna in 1993, and was ratified by Brazil. Article 18 of the Declaration states that the human rights of women and young girls are inalienable and an integral and indivisible part of Universal Human Rights, thus condemning and declaring all forms of gender-based violence as being incompatible with human dignity. The OAS Convention (Belém, Brazil) of 1994, ratified by Brazil in

²² Constitution of the Republic of Brazil, section 27, par. 4: “The law will severely punish all forms of abuse, violence and exploitation perpetrated against children and adolescents”.

November 1995, to which has been accorded constitutional status (Section 5 of the Constitution: immediate applicability of basic human rights and guarantees contained in international human rights treaties) also considers gender issues and establishes the various forms of violence which are committed against women, including rape.

3. ***All efforts taken in an attempt to combat sexual exploitation must promote the status of children and adolescents as legal subjects (sujets de droit) and not as legal objects (objets de droit), for whom measures are taken.***
4. Witnesses speaking on the efficiency of aid and reintegration services for children and adolescent victims confirmed that we cannot speak of a right to sexuality if they cannot even benefit from minimal standards of education, health, culture, strengthened ties to the community, security and leisure. ***In order to guarantee respect and greater enjoyment of this right while pursuing the fight against sexual exploitation, all other social rights must be respected through effective social policies universally applied. These policies must be developed in direct response to the needs identified above.*** At this time, faced with discouraging statistics concerning literacy rates, the number of doctors and the ratio of available health care services for the current population, poor sanitary control of endemic diseases, crime rates, etc., we see a sort of “deficit in citizenship” or civic responsibility brewing within Brazilian society. In this context, the child and adolescent victims of sexual violence are offered the same services available to the general public. Current policies are universally and equally applied, extending coverage for sexually exploited children under traditional services, in an attempt to overcome discrimination. However, in this attempt to avoid segregation, the tendencies which lead to social stigmatisation have increased and the particular needs of the children overlooked.
5. Notwithstanding the importance allotted to the improvement of social policies favouring a more efficient struggle against sexual exploitation, it is essential to recognise that in many cases we would not be able to end, in a permanent fashion the risk situations in which children and adolescents find themselves, simply by adopting social policies. These risk situations are largely attributable to heightened levels of poverty, characteristic of large concentrations of populations and the social inequality ever present in Brazil, this despite the relative growth of the Gross National Product (GNP) and monetary stability when compared with other Latin-American countries in recent years. A rise in the unemployment rate and a fall in salaries is pushing children and adolescents onto the job market. Poor housing conditions, hunger and inadequate food, so many factors linked to poor income creates family situations not propitious to the healthy development of children and adolescents. Thus, such living conditions have an important influence on scholastic performance, family violence, parental alcoholism but also that of the young. These problems are consistent with familial abandonment by numerous children and adolescents fleeing mistreatment and looking for some personal autonomy. ***Therefore, the fight against sexual exploitation depends on the implementation of efficient economic development policies favouring a better general distribution of wealth, of land and goods. Moreover it is important, when developing measures applicable to the various sectors, to include job creation, with legal protection of job offers and where this is insufficient, providing guaranteed minimal revenues within the social security system.***

6. Finally, as to the procedures designed to minimise economic, cultural, political and social factors which allow for commercial sexual exploitation to exist and grow, *it is essential to go over current legislation relative to commercial sexual exploitation in general with a view to:*

- *Fully legally recognise the rights of children and adolescents to their sexuality;*
- *Permit adequate classification of violations to these rights;*
- *Clearly define the penalties to which exploiters and clients are subject.*

At the same time it is essential to promote that the legal and justice administration system be equipped with better infrastructure, without which there can be no effective or uniform application of the law. The high levels of impunity are in most cases due to discretionary and arbitrary application of the law. In Brazil, those in charge of law enforcement and public justice (prosecutors, lawyers, judges, police-chiefs) remain as likely as other to make value judgements based on prejudice and culturally enforced social stereotypes. This tends to diminish what faith the victims may have in the justice system, as well as any will to file a complaint or collaborate with authorities during investigation. This feeling of insecurity coupled with the fear of reprisals by the aggressors often makes it impossible to extend the protection of the law to all those who may need it.

The incidence of sexual violence committed against women and the predominant cultural attitude towards sexuality, is apparent in the wording of the law, as demonstrated by the fact that certain violations of a sexual nature, affecting men and women, are not considered criminal acts.

Specific recommendations

With a view to specifying the measures contained in the general recommendations, mentioned above and making them more objective, the members of the International Tribunal for Children's Rights, having acquainted themselves with and analysed both written and oral testimony that was presented within the framework of the Second Public Hearings adopts the following **Specific Recommendations:**

1. As for amendments to the legislation:

- a) On a national scale it is fundamental to recognise the place given to the protection of the rights of children and adolescents since implementation of the *Constitution of 1998* and the adoption, in 1990, of the *Statute of the child and adolescent* (Law no. 8069/90). The Constitution reflects a notable change in this direction, devoting an entire chapter to questions related to family, children, adolescents and to the elderly (chapter VII). Article 227 states the principle by which absolute priority is given to children and adolescents and underlines that the first duty of the State and the family is to furnish children and adolescents with all the necessary means to reach full development. The law specifies moreover that it is the duty of the State and family to protect children against all forms of violence or exploitation. Pursuant to the Constitution, the *Statute*

of child and adolescent defines the rights and specifies cases of violations, to which certain penalties will be applied, whilst stating the guiding principles governing the organisation, promotion and implementation of the rights. As regards more specifically the fight against sexual exploitation, the *Statute* explicitly provides for certain important interdictions, specifically with regards to child pornography (articles 240-241); the transportation and harbouring of unaccompanied children without parental authorisation (articles 250-251), the displacement of children from rural areas into the city with the objective of hiring them out for domestic services (article 248). The Statute also protects the identity of children and adolescents involved in criminal acts (article 257). Moreover the Statute provided in article 263 for the amendment to certain clauses of the Penal Code so as to better define the crimes and penalties as far as sexual exploitation is concerned. Later, the Heinous crimes Act (law 8072 25/7/90) modified the clauses bearing on rape and other violent indecent assaults (articles 213-214 combined with article 223) in such a manner as to not only increase the penalties but also add more severe conditions when presented with certain aggravating circumstances.

However, the classification of a good many infractions and the establishing of respective penalties are still subject to provisions contained in the Penal Code of 1940, a tool which is both inadequate and full of aberrations which both stigmatise and seriously disadvantage the victim judicially. It is therefore indispensable to proceed in **reforming** this outdated Penal Code. This matter has been the subject of recent discussions with the proposal of a bill which, if adopted, would establish the following modifications:

- Crimes of a sexual nature would no longer appear under the title “Crimes against customs” but rather “Crimes against sexual integrity” thus expressing the true nature of sexual crime while particularly underlining the need to guarantee the protection of the victims’ security as well as giving them assurance that no further damage will ensue.
- The setting up of a distinct treatment of sexual abuse crimes perpetrated against minors or handicapped persons as well as indecent assault and sexual harassment of minors.
- Recognising that the crime of kidnapping also applies in cases involving male victims. Application being presently limited to “honest women”, the provisions relating to kidnapping carry a moral connotation rather than a juridical one. Let us also note that the crime of “seduction” such as presently defined by law will be suppressed following the removal of another pejorative expression, by which the term “seduction” may only apply if the woman is considered “honest or a virgin” (specification which in fact reverses the burden of proof).
- The penal procedure will also be modified, particularly regarding the current requirements for lodging a complaint, except in cases where the family is unable for financial reasons, or in the cases of grievous bodily harm (defined in article 129,

paragraphs 1, 2 and 3 of the Penal Code). Although it is understood that this provision was originally adopted with the goal of protecting the victims right to chose to prosecute, we note that this imposes excessive limits on the judicial protection of victims of sexual abuse, considering that close to half of all cases begin in the family home. The amendment also creates the possibility of prosecuting cases of abuse of parental authority (or by persons in the roles as stepfather, stepmother, tutor or curator), also when the victim is under fourteen years old, mentally incompetent, handicapped or otherwise prevented from exercising his or her rights, and unable to offer adequate resistance.

- The increase of terms and the number of alternative penalties for persons found guilty of sexual crimes, with a view to promoting the educational dimension necessary in a corrective process and, incidentally, to diminish widespread impunity connected with this type of crime.
- b) Moreover it is necessary to limit the risks of a legislative reversal, notably in maintaining the clauses which offer an appropriate penalisation for infractions committed by adolescents be they of a sexual nature or not. We must resist pressures to lower the age of criminal responsibility set at 18 years in current Brazilian legislation. A consensus should then be reached between nations, not only concerning age of legal majority, but also on the issue of age of consent, as it applies to conditions in every provision on sexual aggressions against minors.
- c) As for international legal instruments, the Tribunal takes note of the ratification (without reserve) of the *Convention on the Rights of the Child* by Brazil on September 24th 1990. Brazil has therefore undertaken to respect the provisions of the Convention including those that specifically forbid the sexual abuse of children as in article 34. Article 35 prohibits the sale and traffic of children and article 36 obliges participating States to eliminate all other forms of abuse which threaten the well being of the child. Elsewhere article 32 is explicit in banning economic exploitation, aimed at all work carrying risks or likely to compromise his education, harm his health or his physical, mental, spiritual, moral and social development.

However the Tribunal sadly notes that to date Brazil has yet to submit any report to the Committee on the Rights of the Child. According to article 44 of the Convention, Brazil should have submitted its initial report in October 1992 as well as the first subsequent report in October 1997. This has proved to be an obstacle to implementing and applying the committee's regulatory mechanism and deprives Brazil of the recommendations concerning the application of the Convention in Brazil.

Moreover, considering the close relation between economic and sexual exploitation observed in the various forms of sexual rights abuses in Brazil, one should remember the importance of instruments such as the Convention of the International Labour Organisation, specifically Conventions # 29 and 105 which deal with forced labour (the former was ratified by Brazil on 25 April 1957 and the latter on the 18 June 1965). The inadequacy of these two instruments in view of the growth of economic exploitation of children and adolescents having been recognised by the international community, it is

all the more important to subscribe to Convention # 138 on the minimum working age for children, which allows the child to benefit from a basic education. Unfortunately the States have demonstrated a remarkable slowness in ratifying this Convention and Brazil does not seem near ratifying it. Support for the Convention in Brazil which was expressed during the campaigns of 1996-1997 principally comes from a significant part from children's rights defence groups.

2. As for necessary measures in view of greater rapidity, precision and efficiency in the application of legislation we underline the following:
 - a) On the matter of allocating resources to police forces. It is important to increase in the areas of both funding and staff;
 - b) The training of police officers and judges must take into account the specialised training necessary in view of dealing with victims and their families. So as to allow the latter to be treated fairly, without aggravating the shock and emotional tension that often accompany the process and to guarantee better application of the law. Moreover the training of police officers must take account of the shortcomings of current training methods, meaning the isolation of police officers, far from the present day reality of the country. The police must take part in this evolution, to better understand the origins of social issues, rather than only being summoned to react to them and arbitrate conflicts;
 - c) The State must effectively allocate the necessary resources for the follow-up and rehabilitation of those persons found guilty of sexual crimes including recruiting the adequate technical personnel (psychologist, social workers, doctors, etc) and provide a solution to the urgent prison problem in general. These professionals play a crucial role in aiding witnesses, especially the testimony of victims, if we consider not only the shame but also the fear which naturally occurs in the cases, often following threats concerning the disclosure of the true circumstances surrounding the crime;
 - d) The courts must be severe with individuals who abuse their positions of power or authority (including judges and police officers) humiliating, insulting or otherwise discrediting the testimony of plaintiffs in matters of sexual assault;
 - e) Better protection must be awarded to witnesses and victims, notably by reinforcing, among other instruments, GAJOP (operational, juridical support group and protection to victims and witnesses) which should extend its services to all Brazilian states. Such protection must equally be extended to judges. Experience shows that they too can be victims of persecution, or even removed from their posts;
 - f) Special attention should be given to existing legislation which protects domestic workers, whose situation of double exploitation (economic and sexual) places them in a particularly vulnerable state. There is a need to guarantee amongst other things, access to education for these domestic workers.
 - g) Special attention should also be accorded to monitoring the situation of children involved in international adoptions, taking into account the work done by INTERPOL

in this area. In this matter, notably as to the exchange and information sharing between foreign authorities in order to verify the living conditions of these children in their countries of adoption. Moreover we should plan to take better advantage of existing technology to detect false documents as well as better punishing the crime in falsifying these documents as an important measure in controlling the adoption procedure.

- h) There needs to be an increase in the number of criminal procedures brought against sexual aggressors in an attempt to counter the loopholes and cracks in the legal system, and its manner of dealing with complaints.
3. As for the means designed to counter the impact of political, social and cultural factors which facilitate sexual exploitation:
- a) Priority must be given to education and health care while encouraging the adoption of universally applied social policies. Beyond quantitatively increasing the educational services offered, the quality must improve and realistic conditions for access to schools be established for all children of school age. Financial aid, such as bursaries can be used as effective strategies for facilitating access to school and improving scholastic performance for children from low income families. The educational system should include information and discussions on sexuality beyond the discipline of sex education, and simple classes on human biology, in such a way as to make sexual education an integral part of the school curriculum. When it is indispensable to offer children over 14 years, some professional training, this should be done keeping in mind what placement opportunities exist on the job market, thereby offering real alternatives to children who are continually subject to sexual exploitation. As for health services, treatment should be structured in such a way as to minimise social stigmatisation of sexual assault victims.
 - b) As for other social security policies; it is important to make social welfare assistance available to all who need it. Where justified, special assistance must exist for persons who are victims of sexual abuse, through specialised prevention and protection services. In cases where it is necessary to remove the father from the family as a result of sexually aggressive behaviour, the social security system should provide auxiliary compensation for the wife and children, thus ensuring the most favourable conditions for respecting the rights of the child to a family life, as stated in article 19 of the Statute of the child and adolescent (Estatudo da Criança et do Adolescente);
 - c) Promote awareness raising campaigns for the general public as to the different forms of sexual exploitation, through the combined efforts of governmental and private organisations whilst encouraging universal participation and diminishing the level of widespread tolerance towards these acts;
 - d) It is important to regulate, both from a legal as well as administrative standpoint, the conditions related to obtaining operating permits for commercial establishments, in order to see to their definitive closing when a legal closing only masks perpetuating activities linked to the sexual exploitation of children and adolescents. (as is the case for certain massage parlours and shows);

- e) Control over television programming must be maintained in order to convey information that may be useful to parents in selecting appropriate programs for their children, and to regulating scheduling restrictions for programs considered not appropriate for children and adolescents (including advertising);
 - f) Social preventive measures should be included in the planning of all projects with economic consequences for underdeveloped regions. This involves the large scale displacement of populations consisting for the most part of men unaccompanied by their families. Experience has shown that this phenomenon is not unrelated to the rise in female prostitution and other aggravating factors to sexual exploitation. The man travelling alone, far from his family, uprooted and therefore impervious to local social and cultural norms of decency, represents a risk factor. The well known “adventurous” identity often assumed by these men only feeds the sex market;
 - g) Faced with the expansion of tourism the Tribunal recommends modifying the manner in which this industry is promoted suggesting that ecological, historic and architectural aspects be promoted rather than the culture’s innate sensuality and exotic nature;
4. As for organising actions, given the complexity of the struggle against sexual exploitation, it is necessary to concentrate and structure in the form of a pact the efforts of government and civil society in general, calling on the commitment of everyone with a the goal of guaranteeing:
- a) A co-ordinated effort on public policy between the executive, legislative and judicial branches of government directed through the office of the Casa civil da Presidência da Republica. It is moreover fundamental to define the specific responsibilities of each of the three levels of government (municipal, state and federal), owing to the constitutional principle of political and administrative decentralisation and ensuring a concerted effort is developed rather than various parallel ones;
 - b) An increase in resources for funds linked to the defence Council for the rights of children and adolescents (Conselhos de Defesa dos Direitos das Crianças e Adolescentes), to the different levels of government seeking to introduce tax breaks to those who contribute to these funds as is provided for in the current legislation.
 - c) A special respect for regional differences, especially as to the establishing of policy on a national scale, whilst underlining the need for action in view of understanding the factors which increase the risk of sexual exploitation in certain parts of the country.
 - d) The systematic development of public control over different governmental authorities and sectors including the monitoring and evaluation of all public action. It is essential that non governmental organisations be able to count on clear relations with government so as to adequately define the nature of their work. In effect, there can be no question of the population receiving services from a third party at a lower cost, when these should, in principle, be guaranteed and offered by the government.

- e) Government, through its diverse organisations and if the case warrants with the help of international agencies, must take stock of all research conducted on the state of sexual exploitation in the country, and deepen its knowledge as to the causes and consequences of the problem. Above all, this means collecting and analysing reliable data with a view to offering an effective support to the government's and society's efforts to combat the various existing forms of exploitation.

5. As for the implementation of present recommendations:

- a) There is the need to establish, with the support of the *International Bureau for Children's Rights*, a system for monitoring the present recommendations including a division of tasks and responsibilities between national and international organisations in order to follow-up on the results which will be obtained in every area. Participants to these second hearings should draft a protocol to this effect;
- b) The International Bureau must ensure that the present report be as largely diffused and distributed, using all means available to reach this goal internationally.

São Paulo, August 1998

The members of the Tribunal for the Seconds Hearings :

Roch Lalande, President

Maria de Graça Diniz Costa Belov, Judge

Claire Suzanne Degla, Judge

Marta Silva Campos, Secretary

**Note : This text was translated into English from Portuguese. It is also available in French.*

Rules of procedures

The Tribunal has adopted a certain number of procedural guidelines to ensure the smooth progress of its hearings. As such, the Rules of procedures adopted for the First Hearings of the International Tribunal for Children's Rights have been slightly modified in order to reflect the context and needs of these Second Hearings, in particular the linguistic and cultural particularities of the host country, Brazil. The Rules are as follows:

1. The *Tribunal* is comprised of five Members or Judges, chosen by the *Selection Committee* in accordance with the *Policy on the Selection Procedure of Candidates suitable for the Tribunal*, and appointed for the duration of the Hearings and rendering of a subsequent report. Throughout the Hearings, the Members of the *Tribunal* are assisted by the Secretary of the *Tribunal*;
2. The Secretary of the *Tribunal* is assigned to the Members of the *Tribunal* for the duration of the Hearings. His or her role is to assist them in all matters relevant to the execution of their mandate. In particular, the Secretary of the *Tribunal* must record all names and functions of those who appear before the *Tribunal* to testify, as well as report to the Members of the *Tribunal* on relevant activities and events that surround the Hearings. At the end of the Session, the Secretary of the *Tribunal* will provide them with the support and advice needed for the preparation of their final report. Furthermore, he or she will act as *liaison* between the Members of the *Tribunal* and the *Bureau*, ensuring that the final report is completed in time for the publication of the *Bureau's* annual report.
3. A President of the *Tribunal* is elected by his or her peers, prior to the opening of the Hearings. Generally speaking, the President will be responsible for the orderly progress of the Hearings, from beginning to end. In particular, he or she must:
 - a) At the beginning of the first session, give an opening speech and officially declare open the hearings of the *International Tribunal for Children's Rights*;
 - b) Invite participants to make their presentation, according to the programme. If for some reason, a participant is late or simply not present at the appointed time, another will be called to the stand without delay and time will be made available at the end of that session, for the postponed presentation;
 - c) With the help of the Secretary of the Tribunal, ensure that the time limits for each session are not exceeded;
 - d) At the end of the last session, present concluding remarks to the participants and officially close the Hearings of the International Tribunal for Children's Rights.
4. Before making their presentation before the *Tribunal*, participants first have to be invited to do so by the President of the *Tribunal* or one of the other Members of the *Tribunal*.
5. Once on the stand, each participant is awarded a limited amount of time to express his or her views, opinions, concerns and experiences (or those of his or her government, group or organisation) on the case under review. Once the presentation is concluded, Members of the *Tribunal* are awarded another predetermined amount of time in order to ask questions and/or request further explanation from the witness. Should time permit, all participants in the room will also be invited to intervene in an orderly fashion, respectful of the *Tribunal* and of the whole process. Those unable to intervene because of time constraints will be invited to do so on the afternoon of last day of the hearings;
6. For the Second Hearings of the International Tribunal for Children's Rights, the official languages will be Portuguese, English and French, and simultaneous translation in all three languages will be made available throughout the Hearings. For the Third Hearings of the *International Tribunal for Children's Rights*. Therefore, all participants as well as Members of the Tribunal are invited to express themselves in either one of these three languages;
7. The *International Tribunal for Children's Rights* strongly encourages expert witnesses when invited to submit a written brief summarising their presentation, witnesses should do so at the earliest possible time, so that the Members of the *Tribunal* can take them into consideration for the preparation of their final report.

Detailed final programme

MONDAY MAY 11th

Press Conference (16:30-17:00) Esplanada Praia Hotel

Opening Ceremony (20:00) Esplanada Praia Hotel

Welcoming remarks by the President of the International Bureau for Children's Rights, the Co-ordinator of CEDECA-Ceará and the Director of UNICEF-Brazil

TUESDAY MAY 12th

Registration (08:30-9:30)

Opening session (09:30-11:45)

09:30- 09:45 Opening speech by the President of the International Tribunal for Children's Rights

A. Judicial prosecution of sexual exploitation cases in Brazil

09:45 - 11:15 “Sexuality and the Brazilian culture”
Testimony of Prof. Daniel Lins (Universidad Federal do Ceará)

11:15 - 11:30 Coffee break

11:30 – 12:15 Context
Testimony of Prof. Wanderlino Nogueira Neto (Prosecutor and former Professor -
Universidad Federal da Bahia)

Lunch (12:15- 14:30)

Afternoon session (14:30 – 17:00)

14:30 – 15:30 Context (continued)
Testimony of Prof. Vicente de Paula Faleiros (Centro de Referência, Estudos e Ações sobre
Crianças e Adolescentes – CECRIA –Brasília, DF)

15:30 – 16:10 Legislative response
Testimony of Charles Pranke (Vice-president of the National Council for the Rights of
Children and Adolescents)

16:10 – 16:25 Coffee break

16:25 – 17:00 Police investigations
Testimony of Officer Márcia Ayan Ferreira (INTERPOL – Polícia Federal)

WEDNESDAY MAY 13th

B. Government's and society's response

Morning session (09:00 – 12:15)

09:00 – 09:45 Judicial procedure: State of the law
Testimony of Leila Paiva (Centro de Defesa da Criança e do Adolescente - CEDECA –
Ceará – Lawyer)

09:45 – 10:30 Judicial procedure: Creation of specialised courts

Testimony of José Barreto C. Filho (Judge, 12th Chamber of crimes against children and adolescents, Fortaleza – Ceará)

10:30 – 10:45 Coffee break

10:45 – 11:30 Role of State prosecutors
Testimony of Prof. Eva Teresinha Silveira Faleiros (Centro de Referência, Estudos e Ações sobre Crianças e Adolescentes – CECRIA - Brasília, DF)

Lunch (12:00 – 14:00)

Afternoon session (14:00 – 17:15)

14:00 – 14:45 Co-operation between government and society: an NGO's experience
Testimony of Dilma Felizardo (Casa Renascer, Natal - Rio Grande do Norte)

14:45 – 15:30 Co-operation between government and society: an NGO's experience
Testimony of Rizete Costa (Coletivo Mulher Vida, Olinda – Pernambuco)

15:30 – 15:45 Coffee break

15:45 – 16:30 Co-operation between government and society: a bilateral group's experience
Testimony of Hamilton Vale Leitão (Co-ordinator of the Child and Adolescent in Danger Defence Pact, Fortaleza – Ceará)

16:30 – 17:15 Earlier recommendations: Past initiatives and lessons learned
Testimony of Margarita Bosch (Centro de Defesa Dom Helder Câmara and National Association of Defence Centres, CENDHEC - ANCED – Recife – Pernambuco)

THURSDAY MAY 14th

Morning session (08:30 – 12:00)

08:30 – 09:15 Campaigns and other awareness-raising strategies
Testimony of Sílvio Alberto Valente Soares (Brazilian Multiprofessional Association for the Protection of Childhood and Adolescence – ABRAPIA)

09:15 – 10:00 Case studies and research – Belém's situation (originally scheduled to be presented in the afternoon session)
Testimony of Marcel Hazeu (Centro de Defesa do Menor - Belém -Pará)

10:00 – 10:15 Coffee break

10:15 – 11:15 Law enforcement: Pernambuco's experience
Testimony of Chief Olga Maria de Almeida Câmara (Chief of Police, on Childhood and Adolescence Division, Recife – Pernambuco)

11:15 – 12:00 Prevention and recuperation projects (Ceará government)
Testimony of José Rosa Abreu (Labour and Social Action Secretary, Ceará)

Lunch (12:00 – 14:00)

Afternoon (14:00 – 18:00)

C – CASE STUDIES AND RESEARCH

14:00 – 15:30	Case studies and research – Fortaleza's situation Testimony of Prof. Glória Diógenes (Universidade Federal do Ceará)
15:30 – 16:30	Partnership between government and society in the struggle against sexual exploitation of children (originally scheduled to be presented in the morning session) Testimony of Hélia Barbosa (Centro de Defesa da Criança e do Adolescente da Bahia, CEDECA – Bahia)
16:15 – 16:30	Coffee break
16:30 – 17:15	Research at the national level Testimony of Marlene Vaz (Sociologist)
17:15 – 18:00	Case studies and research – Central America Testimony of Ana Isabel de Lara Ruiz (Defence for Children international – DCI and Casa Alianza – Covenant House – Costa Rica)

FRIDAY MAY 15th

Morning session (09:30 – 12:00)

09:30 – 10:15	Round table: Comments from specialists and experts Rosário de Maria da Costa Ferreira (Banco Interamericano de Desenvolvimento – BID – Consultant) : Synthesis of questions exposed during the Second hearings Marcel Hazeu : Brazilian Penal Code Reform Ana Isabel de Lara Diniz : Sexual exploitation of children in Latin America
10:15 – 11:00	Comments and interventions by the participants
11:00 – 11:15	Coffee break
11:15 – 12:00	Special thanks from Frans Van Kranen, CEDECA – CEARÁ and from Judge Andrée Ruffo, International Bureau for Children's Rights

Closing speech by the President of the International Tribunal for Children's Rights

Note : this programme reflects last minute modifications made during the hearings

Expert witnesses and speakers

1. Professor Wanderlino Nogueira Neto:

Lawyer, retired professor in law and social science at Bahia's federal University, former prosecutor for the State of Bahia, counsel to the Justice Ministry and to UNESCO.

Esplanada dos Ministérios – B.I.T. AnexoII – s/300
Brasília, DF CEP Brasil
Tel: 061. 223.7784
E-mail: linoneto@zaz.com.br

2. Professor Daniel Lins:

Professor and researcher in sexology and sociology at Ceará's federal University.

UFC, Fortaleza, CE, Brasil

3. Professor Vicente de Paula Faleiros:

Professor in social science at Brasília's federal district University, CECRIA's general co-ordinator.

CECRIA
Av.W 3 Norte Q 506 Bloco C Mezzanino, loja 21 e 25
Brasília, DF CEP 59600-000, Brasil
Tel: 084.316.1537
E-mail: cm8@serv2000.com.br

4. Professor Eva Silveira Faleiros:

Professor in social science at Brasília's federal district University, CECRIA's project co-ordinator.

CECRIA
Av.W 3 Norte Q 506 Bloco C Mezzanino, loja 21 e 25
Brasília, DF CEP 59600-000, Brasil
Tel: 084.316.1537
E-mail: cm8@serv2000.com.br

5. Charles Roberto Pranke:

Vice-president of CONANDA

Ministério da Justiça – Anexo 1-2 andar
Brasília, DF, Brasil
Tel: 061.225.2327 Fax: 061.224.8735

6. Marcia Ayan Ferreira:

Federal Police – INTERPOL, co-ordinator of the division on crimes against children and adolescents

Policia Federal/Interpol
SCS Ed. Serra Dourada, Quadra 02-4o Andar
Brasília, DF, Brasil
Tel: 061.315.3232

7. Leila Paiva:

Lawyer at CEDECA-Ceará

CEDECA-Ceará
Av. Francisco Sa, 1833 – Jacarecanga,
Fortaleza, CEARA CEP 600-10-450, Brasil
Tel: 085.238.7048
E-mail: cedeca@ibeuce.com.br

8. Odilon Silveira Aguiar Neto:

Co-ordinator of the Centre for Operational Assistance to Youth Prosecutors

Fortaleza, CEARA, Brasil

9. José Barreto C. Filho:

Judge, 12th Instance for crimes against children and adolescents (Ceará).

Fortaleza, CEARA, Brésil

10. Margarita Bosch:

Researcher and representative of ANCED (National Association of CEDECA).

11. Dilma Felizando:

General Co-ordinator of the Casa Renascer (Youth home and rehabilitation centre for young street girls and young prostitutes) in Natal, Rio Grande do Norte.

Rua Major Alfonso Magalhães No.23
Natal, Rio Grande do Norte CEP 59014-240, Brasil
Tel: (084) 202-3220
Fax: (084) 202-2155
E-mail: renascer@natalnet.com.br

12. Rizete S. Costa:

Co-ordinator for the “Viva a menina adolescente” Project, “Coletivo Mulher Vida” (Research and support centre for abused women and girls).

Av. Ministro Marcos Freire, 4263
Olinda, PERNAMBUCO
Tel: (081) 432-4970
E-mail: cmvida@cashnete.com.br

13. Hamilton Vale Leitão:

President and Co-ordinator of the Child and Adolescent in Danger Defence Pact, Fortaleza – Ceará

COMDICA
Rua Col. Manuel Jesuino, 112
Fortaleza, CEARA, Brasil

14. Silvio Alberto Valente Soares:

Psychologist and Co-ordinator of the National campaign sexual exploitation of children, ABRAPIA Centre.

Rua Fonseca Reles 121, 2o. Andar – S. Crisovão
Rio de Janeiro, RJ
CEP 20940-001, Brasil
Tel: (021) 281-1609
Fax: (021) 580-8057

15. Hélia Barbosa:

Researcher and representative of CEDECA - Bahia.

Rua Conceição da Praia, 32, 1o. Andar, Comércio
Salvador, BAHIA
CEP 40015-250
Tel: (071) 244-8499
Fax: (071) 243-8499

16. Olga Maria de Almeida Câmara:

Chief of police, Recife, Pernambuco.

Rua João Fernandes Vieira – 308 – Boa Vista
Recife, PERNAMBUCO
CEP 50000, Brasil
Tel: (081) 221-3893 971-5001
E-mail: dpcadir@fisepe.pe.gov.br

17. José Rosa Abreu Vale:

Secretary of Labour and Social Action, State of Ceará.

Rua Silva Paulet 365, Meireles,
Fortaleza, CEARA
CEP 60120-020, Brasil
Tel: (085) 261-8188
Fax: (085) 244-7610

18. Professor Gloria Diogenes:

Professor and researcher in Sociology at the federal University of Ceará.

Rua Dr. José Loureng 1.910 / 202
Fortaleza, CEARA, Brasil
Tel: (085) 224-5186
E-mail: gdiogene@fc.br

19. Marcel Hazeu:

Assistant Co-ordinator of the Youth Defence Centre - EMAUS (Belém, State of Para)

TV-Apinages 743
Belém, Para
CEP 66045-10, Brasil
Tél: (091) 224-7967
Fax: (091) 242-0752
E-mail: emausbe@interconect.com.br

20. Marlene Vaz:

Researcher, sociologist and Counsel.

Rua Félix Mendes, 207 Ed. José Eduardo, Ap. 804 – Garcia
Salvador, BAHIA
CEP 40100-20, Brasil.
Tel: (071) 237-0598
E-mail: mvaz@svm.com.br

21. Ana Isabel de Lara Ruiz:

Assistant Executive Director, Casa Alianza, Costa Rica.

Casa Alianza
SJO 1039 P.O. Box 025216,
Miami, FL 33102-5216 USA
San José, COSTA RICA
Tel: (506) 253-5439
Fax: (506) 224-5689
E-mail: analara@casa-alianza.org
dnicos@sol.racsa.co.cr

Written reports and other documentation

Ana Isabel de Lara Ruiz: «La explotación sexual-comercial infantil desde el contexto centro-americano».
Casa Alianza Covenant House – DNI –Costa Rica

«Atendimento ao adolescente em conflito com a lei» – Caderno 1
Departamento da Criança e do Adolescente-Secretaria Nacional de Direitos Humanos – Ministério da Justiça
UNESCO. Brasília, DF – 1998.

Câmara Municipal de Fortaleza. Publicações sobre Prostituição Infantil:
Uma CPI para enfrentá-la
Por uma política de atendimento às Meninas Prostituídas
Pacto em Defesa da Criança e Adolescente em Situação de Risco

Relatório Anual – 1997
CEDECA- Ceará

Charles Roberto Pranke: «A persecução dos casos de exploração sexual no contexto do Brasil»
CONANDA

Daniel Soares Lins: «História da sexualidade no Brasil: esboço»
Universidade Federal do Ceará, Fortaleza.

Dilma Felizardo: «Atendimento psicossocial às meninas em situação de risco pessoal e social - Projeto de prevenção e recuperação»
Casa Renascer, Natal – Rio Grande do Norte

Eva Teresinha Silveira Faleiros: « Políticas públicas e estratégias contra a exploração sexual-comercial e o abuso sexual intra-familiar de crianças e adolescentes»
Ministério da Justiça - CECRIA 1998

Francisca Vilani Batista Thé – «Tribunal da Criança» (poem)
Fortaleza - Ceará

Hamilton Vale Leitão: «Pacto em Defesa da Criança e do Adolescente em Situação de Risco - Planejamento Estratégico - 1996-2005»
Child and Adolescent in Danger Defence Pact, Fortaleza, Ceará, March 1996

Hélia Barbosa: «Termos de referência do Núcleo Jurídico do CEDECA - Bahia»
«O papel da sociedade civil organizada»
«Abuso e Exploração Sexual Infanto-Juvenil» (English and Portuguese versions)
CEDECA-Bahia, Salvador, Bahia

Marcel Hazeu: «Direitos sexuais da criança e do adolescente - leitura social e jurídica:
«exploração sexual» e « violência»
Centro de Defesa do Menor - Belém - Pará 1997.

Márcia Ayan Ferreira: Printed examples of child pornography from the INTERNET
INTERPOL/Polícia Federal, Rio de Janeiro

Margarita Bosch: «Revisão das Recomendações de Congressos e Conferências anteriores»

CENDHEC/ ANCED

Maria de Fátima Pereira Valente Sales: «Ministério Público Estadual - Centro de Apoio Operacional às Promotorias da Infância da Juventude»
Ministère Public, Fortaleza - Ceará

Olga Maria de Almeida Câmara:

«Violência: abuso e exploração sexual, uma nova abordagem policial»
«Projeto de Estrutura Técnico- Administrativo e de Funcionamento da Delegacia de Combate à Exploração da Criança e do Adolescente - DCECA»
«Estatísticas da DCECA desde a sua criação em 28/06/95»
Chief of police, Recife - Pernambuco

Rizete Costa: «Metodologia do trabalho de prevenção do Coletivo Mulher Vida»
Coletivo Mulher Vida, Olinda - Pernambuco

Silvio Alberto Valente Soares: «Relatório da Campanha Nacional de Combate à Exploração Sexual Infanto-Juvenil - Março de 1998»
ABRAPIA, Rio de Janeiro

Vicente de Paula Faleiros: «Fundamentos e Políticas contra Exploração e Abuso Sexual de Crianças e Adolescentes - Relatório de Estudo»
Ministério da Justiça – CECRIA, Brasília, março de 1997

Wanderlino Nogueira Neto: «Violência, Exploração & Abuso Sexual de Criança e Adolescente: contexto, em geral.»
Brasília, DF

International Bureau for Children's Rights

1185 St-Mathieu Street, Montreal (QC) Canada H3H 2P7
Tel: 514.932.7656 Fax: 514.932.9453 e-mail: tribunal@web.net