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# Child Prostitution and Sex Tourism: Brazil -Sweden

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# Contents

<a href="#"><u>SUMMARY</u></a> .....	4
<a href="#"><u>ACKNOWLEDGEMENTS</u></a> .....	6
<a href="#"><u>ABBREVIATIONS</u></a> .....	7
<a href="#"><u>1 INTRODUCTION</u></a> .....	8
<a href="#"><u>1.1 Aim</u></a> .....	9
<a href="#"><u>1.2 Delimitation &amp; Disposition</u></a> .....	9
<a href="#"><u>1.3 Defintions &amp; Terminology</u></a> .....	10
<a href="#"><u>1.4 Method and material</u></a> .....	11
<a href="#"><u>1.4.1 Minor field study in Brazil</u></a> .....	11
<a href="#"><u>2 CHILD PROSTITUTION IN BRAZIL</u></a> .....	13
<a href="#"><u>2.1 A country overview</u></a> .....	13
<a href="#"><u>2.2 The nature and extent of child prostitution</u></a> .....	15
<a href="#"><u>3 SEX TOURISM</u></a> .....	22
<a href="#"><u>3.1 Introduction</u></a> .....	22
<a href="#"><u>3.2 What is sex tourism?</u></a> .....	22
<a href="#"><u>3.2.1 Who is a sex tourist?</u></a> .....	23
<a href="#"><u>3.2.2 Preferential and situational child offender</u></a> .....	24
<a href="#"><u>3.3 Sex tourism in Brazil</u></a> .....	25
<a href="#"><u>4 INTERNATIONAL LEGAL INSTRUMENTS</u></a> .....	30
<a href="#"><u>4.1 Introduction</u></a> .....	30
<a href="#"><u>4.2 The Convention on the Rights of the Child</u></a> .....	30
<a href="#"><u>4.2.1 The Committee of the right of the Child</u></a> .....	31
<a href="#"><u>4.3 The Optional Protocol</u></a> .....	31
<a href="#"><u>4.4 The Worst Forms of Child Labour Convention, 1999</u></a> .....	32

<b><u>5</u></b>	<b><u>NATIONAL PREVENTION AND LEGAL PROTECTION IN BRAZIL</u></b>	<b>34</b>
<b><u>5.1</u></b>	<b><u>National legislation on sexual violence and child prostitution</u></b>	<b>34</b>
<b><u>4.5</u></b>	<b><u>Enforcement of the law</u></b>	<b>38</b>
<b><u>4.6</u></b>	<b><u>Other governmental and nongovernmental efforts to combat sexual exploitation of children</u></b>	<b>40</b>
<b><u>4.7</u></b>	<b><u>The role of the media</u></b>	<b>44</b>
<b><u>6</u></b>	<b><u>SEX TOURISM AND THE RESPONSIBILITY OF SWEDEN</u></b>	<b>45</b>
<b><u>6.1</u></b>	<b><u>Introduction</u></b>	<b>45</b>
<b><u>6.2</u></b>	<b><u>The “Code of Conduct”</u></b>	<b>45</b>
<b><u>6.3</u></b>	<b><u>What is extra territorial jurisdiction?</u></b>	<b>46</b>
<u>6.3.1</u>	<u>A Swedish suspect in Brazil?</u>	46
<u>6.3.2</u>	<u>Removal of the double criminality requirement</u>	50
<b><u>7</u></b>	<b><u>FINAL CONCLUSION AND RECOMMENDATIONS</u></b>	<b>53</b>
	<b><u>SUPPLEMENT</u></b>	<b>59</b>
	<b><u>Salvador, in the state of Bahia</u></b>	<b>59</b>
	<u>1. Interview with judge, Mrs Rita Magalhães</u>	59
	<u>2. Interview with professor, Mr.Gey Espinheiro</u>	60
	<b><u>Recife, in the State Pernambuco</u></b>	<b>61</b>
	<u>3. Interview with police chief, Mrs Conceição de Fátima Ferreira</u>	61
	<u>4. Interview with the tutelary counsellor, Mr José Fereira</u>	62
	<b><u>Natal, in the State of Rio Grande do Norte</u></b>	<b>63</b>
	<u>5. Interview with prosecutor, Mrs Arméli Marques Brennand</u>	63
	<u>6. Interview with judge, Mr. José Dantas</u>	63
	<u>7. Interview with federal police officer, Mr Moreira</u>	64
	<b><u>Fortaleza, in the State of Ceará</u></b>	<b>65</b>
	<u>8. Interview with prosecutor, Mr Carneiro</u>	65
	<u>9. Interview with lawyer, Mrs Leila Paiva</u>	67
	<u>10 . Interview with police chief Mrs Rena Gomes</u>	67
	<b><u>Rio de Janeiro, in the State of Rio de Janeiro</u></b>	<b>68</b>
	<u>11. Interview with prosecutor, Mrs Maria Amelia Peixoto</u>	68
	<u>12. Interview with judge, Mr Siro Darlan</u>	69
	<b><u>BIBLIOGRAPHY</u></b>	<b>72</b>

# Summary

Commercial sexual exploitation of children (CSEC) has been a major cause of concern in recent years. The term CSEC is used to describe the various activities exploiting children for sexual purposes and includes trafficking of children, child pornography, child prostitution and sex tourism. The sexual exploitation implies that the child is not only sexually abused but that it has a value on a market which includes demand and supply. In the current political debate the demand side is often addressed to sex tourists, (mainly men) from the western world who travel to poorer countries- so called supply countries- to sexually abuse children.

A First World Congress on CSEC was held in Stockholm 1996, hosted by the Swedish government. The meeting brought together 122 governments and several non governmental and governmental organisations (NGOs and GOs) in order to try to identify the nature and extent of the CSEC in the world and to find strategies to eradicate the problems. Two non-binding documents were adopted; the Stockholm Declaration and the Agenda for Action, which set out concrete and time bound goals in the struggle to combat the phenomenon. The governments committed themselves to elaborate their national plans of action by the end of year 2000. A Second World Congress was held in Yokohama, Japan 2001 to view progress in implementing by states the goals set forth in Stockholm and to strengthen international cooperation. On the Stockholm meeting 1996 there was a broad consensus that since CSEC is a cross boarding phenomenon, the only way to combat the phenomenon is through enhanced cooperation between countries.

Since the Stockholm Conference 1996, several political actions and activities have been carried out through out the world; new international legal instruments have rapidly been created aiming to strengthen the protection of children, new laws have been passed in several countries enabling to prosecute its citizens for sexual crimes committed against children abroad, thus demonstrating that the international community takes a clear action against the problem. The international community does play a vital role by rapidly adopting conventions and standards, showing that the problems are taken seriously. The important, difficult and interesting part is to turn these provisions into concrete measures at a national level.

This thesis deals with two parts of the CSEC; child prostitution and sex tourism. Brazil has claimed to be the second country in the world, after Thailand, with the highest number of children in prostitution. The country has also a reputation for attracting a great amount of sex tourists from the western world. Therefore Brazil represents a supply country in this thesis.

Since a few years Swedish citizens (residents) have the possibility to travel as charter tourists to the Northeast region of Brazil, where the population is

particularly poor and the problem of child prostitution is said to be most severe in the country. As it happens that Swedish nationals are travelling abroad committing sexual crimes against foreign children, Sweden will represent a demand country. Given the concept of demand and supply and international cooperation I raise the over arching questions: To what extent does Brazil as a supply country legally and through other means protect and prevent its children from prostitution? How does Sweden, representing a demand country, protect the Brazilian minors from being sexually abused or exploited by Swedish nationals? In terms of international cooperation, how can the responsibility of the countries be defined?

When it comes to defining the responsibility for the exploitation, it is *Brazilian* minors who enter prostitution or fall victims of sexual exploitation. There are always fundamental structural problems within every country that generate child prostitution. In the case of Brazil, poverty, underdevelopment, inequitable socio-economic structure, dysfunctional families, corruption, lack of education, urban-rural migration, gender discrimination and irresponsible adult behaviour are all contributing factors to create an environment where the Brazilian minors are likely to be vulnerable to sexual exploitation. Therefore it is in the first place the Brazilian government and the Brazilian people who have to find strategies to solve the problem, according to the nature and extent of how the problem appears in *Brazil*, not in Asia or other parts of the world. The problem of international sex tourism becomes in this sense not the biggest challenge, even if must be dealt with.

Sustainable tourism includes awareness of the economic inequality between rich and poor countries or regions and the responsibility which accompanies this consciousness. Sweden can contribute to the protection of the Brazilian children by continue to increase this awareness and by informing on the criminal nature of sexual offences against children in Brazil.

Extra territorial prosecution is as a valuable tool among others to prevent sex tourism. Sweden has already this possibility. However, even if it is possible to carry out extra territorial prosecutions, there is a broad consensus that the trial of any crime committed abroad shall at first hand be held in the country where the crime is committed, since it is foremost a responsibility of that country to bring the offences to justice. It might be easy to get trapped in the belief that it becomes a responsibility of Sweden to take care of what Brazil does not care for or does not prioritise.. In addition there are several difficulties connected to such a prosecution. The current suggestion of abolishing the double criminality requirement for serious sexual crimes committed against children abroad, will generally not facilitate the process. However, due to the Brazilian and Swedish legislation in combination, such a change gives the result that a Swedish offender could when having sexually violated a Brazilian child be brought to justice in a Swedish court room. Without such a change this would at date under some specific circumstances probably not be possible.

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# Abbreviations

ABRAPIA	Multiprofissional de Proteção à Infância e à Adolescência
ANDI	News Agency on Children's Rights ( <i>Agência de notícias dos direitos da infância</i> )
CECRIA	Center of Reference, Studies and Actions on Children and Adolescents ( <i>Centro de Referência, Estudos e Ações sobre Crianças e Adolescentes</i> )
CEDECA	Center for the Defense of the Child and the Adolescent ( <i>Centro de Defesa da Criança e do Adolescente</i> )
CONANDA	Council of the Rights of Children and Adolescents ( <i>Conselho Nacional dos Direitos da Criança e do Adolescente</i> )
CPI	Parliamentary Commission Investigation ( <i>Comissão Parlamentar de Investigaçãõ</i> )
CRC	The Convention of the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
ECA	The Statute of the Child and Adolescent ( <i>Estatuto da Criança e do Adolescente</i> )
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
GO	Governmental Organisation
HRW	Human Rights Watch
IBCR	International Bureau for Children's Rights
IBGE	The Brazilian Geographic and Statistical Institute ( <i>Instituto Brasileiro de Geografia e Estatística</i> )
ILO	International Labour Organisation
IPEA	Institute of Applied Economic Research ( <i>Instituto de Pesquisa Economica Aplicada</i> )
NGO	Non-governmental organisation
UN	United Nation
UNICEF	United Nations International Fund for Children
WTO	World Tourism Organisation

# 1 Introduction

Commercial sexual exploitation of children (CSEC) has been a major cause of concern in recent years. The term CSEC is used to describe the various activities exploiting children for sexual purposes and includes trafficking of children, child pornography, child prostitution and sex tourism. The sexual exploitation implies that the child is not only sexually abused but that it has a value on a market which includes demand and supply. In the current political debate the demand side is often addressed to “sex tourists”, (mainly men) from the western world who travel to poorer countries- so called supply countries- to sexually abuse children.

A First World Congress on CSEC was held in Stockholm 1996, hosted by the Swedish government. The meeting brought together 122 governments and several non governmental and governmental organisations (NGOs and GOs) in order to try to identify the nature and extent of the CSEC and to find strategies to eradicate the problems. Two non-binding documents were adopted; the Stockholm Declaration and the Agenda for Action, which set out concrete and time bound goals. The governments committed themselves to elaborate their national plans of action by the end of year 2000. A Second World Congress was held in Yokohama, Japan in 2001 to view progress in implementing by states the goals set forth in Stockholm and to strengthen international cooperation. On the Stockholm meeting 1996 there was a broad consensus that since CSEC is cross boarding, the only way to combat the phenomenon is through enhanced cooperation between countries. Since 1996 several political actions and activities have been carried out through out the world; new international legal instruments have rapidly been created aiming to strengthen the protection of children, new laws have been passed in several countries enabling to prosecute its citizens for sexual crimes committed against children abroad, thus demonstrating that the international community takes a clear action against the problem.

This thesis deals with two parts of the CSEC; child prostitution and sex tourism. Brazil has claimed to be the second country in the world, after Thailand, with the highest number of children in prostitution. The country has also a reputation for attracting a great amount of sex tourists from the western world. Brazil will therefore represent a supply country.

Since a few years Swedish citizens have the possibility to travel as charter tourists to the Northeast region of Brazil, where the population is particularly poor and the problem of child prostitution is said to be most severe in the country. As it happens that Swedish nationals are travelling abroad committing sexual crimes against foreign children, Sweden will represent a demand country.



## 1.1 Aim

Given the concept of demand and supply and international cooperation I raise the over arching questions: To what extent does Brazil as a supply country legally and through other means protect and prevent its children from prostitution? How does Sweden, representing a demand country, protect the Brazilian minors from being sexually abused or exploited by Swedish nationals? In terms of international cooperation, how can the responsibility of the countries be defined?

## 1.2 Delimitation & Disposition

Child pornography and trafficking are of greatest concern intimately linked to child prostitution, but will fall outside the scope of this thesis.

Gender discrimination in a patriarchal structure is crucial factor behind the overwhelming part of girls entering prostitution. The issue indeed deserves an analyse, which I am not able to carry out within the scope of this study.

This study focuses on the specific phenomenon of children in *prostitution*, which mean that the children technically offer ( or are forced to offer) sexual service for money or other remunerations. Researches have shown that sexual abuse and incest *may* lead a minor into prostitution. Results from my research indicates that sexual abuse, often committed by close family members might be a more prevalent problem in terms of sexual violence against children than the commercial exploitation itself. Due to the complexity surrounding family sexual abuse, it is perhaps understandable that the commercial aspect of the sexual violence draws public attention and encourages political activity to a greater extent than these hidden family problems. It is my personal view though, without defending the criminal act by the latter, that sexual abuse by a close family member causes the minor a deeper harm than that of a temporary commercial sexual act with a sex tourist, foreigner or not. Moreover, when a country considers prosecuting its nationals for sexual crimes committed abroad, the commercial aspects is only a legal formality when defining the type of crime. For these reasons I occasionally discuss sexual abuse or incest as expressions of sexual violence against children, which actually is the fundamental question.

There are several international instruments, which could be applied from different aspect on this issue. For the purpose of this thesis I have chosen to focus on central articles in the UN Convention of the Rights of the Child (1989), The Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution (2000) and the Convention of the Worst Form of Child Labour (1999). However, if eradication of sexual exploitation is the aim, then the maximum force of articles should be brought into action, in order to ensure that eradication campaigns do not consist merely of declarations of intent, legislation, prosecutions, rescue operations and

rehabilitation of victims. Protection of children from sexual exploitation requires making use of all relevant articles in the treaties and conventions.

Finally, I present a short overview of today's Brazil. For those interested to read more there is a great amount of available literature.

The thesis is divided into seven chapters. After this introductory chapter, the second chapters focuses, after a brief presentation of today's Brazil, on the nature and extent of, and causes to child prostitution in the country. In the third chapter the phenomenon of sex tourism will be explored and how the phenomenon occurs in Brazil, mainly in the Northeast region. In the fourth chapter I present relevant international legal instruments to which Sweden and Brazil are State Parties. In the fifth chapter I examine how Brazil as a supply country legally and through other means protects its children from prostitution and other forms of sexual violence. The sixth chapter deals with how Sweden, representing a demand country, in the same sense protects Brazilian children from being sexually exploited or abused by Swedish nationals or residents. In the final chapter I conclude the previous chapters by answering the questions I have raised in this thesis. Personal thoughts, some opinions and recommendations will also be given.

### 1.3 Defintions & Terminology

Child prostitution is defined as the use of children, (below 18 years) in sexual activities for remuneration or any other form of consideration (Optional Protocol to the CRC, art 2).

The definition of child prostitution is on one hand not the ultimate term as it makes no distinction between children and adolescents. The term child prostitution may lead us to associate minors in prostitution as to be very small children, which is not always the case.<sup>1</sup> Although there are reporting of smaller children involved in sexual exploitation in Brazil, the majority seems to be adolescents, above 14 years, which is the legal age of sexual consent in the country, (see 2.2).

*Sex tourism* may be defined as a temporary escape from roles, responsibilities and every day social norms and where the main purpose or motivation of at least a part of the trip is to consume sexual relations. *Child sex tourism* can then be understood as travelling to a foreign country to engage in sexual activities with a child (see chapter 3).

The term commercial sexual exploitation of children (CSEC) includes child pornography and trafficking of children for sexual purposes, child

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<sup>1</sup> This image is unfortunately supported by some sensationalistic journalists, NGOs and others activists, who continue to emphasise on the smallest children in the most horrible situations, which is not a representative picture in the case of Brazil (child prostitutes chained by bed and caught on fire, shot in the vagina and so forth).

pornography and sex tourism.<sup>2</sup> When I use *commercial sexual exploitation* or only *sexual exploitation*, it should in this context be understood as exploitation of children in prostitution.

I have chosen to use *child prostitutes* in order to distinguish it from the other forms, although the politically correct term is *victims of sexual exploitation*. In a similar way I also use the words clients and sexual service without placing any guilt on the child, although the better expressions are exploiters and sexual exploitation. The commercial aspects become more obvious, i. e. that money is involved in the relation.

## **1.4 Method and material**

For the purpose of this thesis I have used international and national legal texts, literature on the theme, which is very scarce concerning Brazil, documents and reports issued by UN bodies, governmental and non governmental organisations (GOs and NGOs). I have also used information received through the interviews I have conducted with law enforcement officials, representatives of NGOs and others working in this field both in Sweden and Brazil.

### **1.4.1 Minor field study in Brazil**

Between the 1 of June and 1 of August 2002 I visited Brazil. The stay was made possible through a Minor Field Study scholarship from the Swedish International Development Cooperation (Sida) and other valuable grants.

Besides visiting the cities of Rio de Janeiro and São Paulo, I concentrated the field work to the touristy coastal cities of Salvador, Recife, Natal and Fortaleza in the Northeast region of Brazil, where the extent of sex tourism and child prostitution is said to be most visible in the country. In order to find information on relevant legislation, law enforcement and the nature and extent of the problems, I conducted in - depth interviews with judges, prosecutors, police chiefs, journalists, researchers and others working in this field, as I also took part of some the activities of leading nongovernmental organisation. The field work method had obvious advantages allowing me to compare information available from Sweden, with the results from my visit in the country. A summary of some of the interviews are annexed to the thesis in the Supplement.

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<sup>2</sup> The Stockholm Declaration and Agenda for Action.



# 2 Child Prostitution in Brazil

## 2.1 A country overview

Brazil is the 4th largest country in the world. It covers almost half of the South America continent. The country has a population of almost 170 million people, of which 60 millions are children (0-17 years). The country is organised as a federation with 26 states and the Federal District of Brasilia. The President is the head of the government and chief of the state.<sup>3</sup> Each state has its own government and constitution with a structure that mirrors the federal level. The individual states enjoy all the power which are not specifically reserved for the federal government or assigned to the Municipal Councils, as administration of the education, the police and justice system.

The 26 states are generally divided into five regions; the South, Southeast, Central West, North and Northeast. Social, economical, cultural and geographical disparities are significant between the regions. Prosperity and advanced development in the Southeast, large agriculture and industrial areas in the Central region and modern structures and equality-oriented South are in extreme contrast with the wild North and the droughts and poverty of the Northeast.<sup>4</sup>

The Brazilian population derives from four ethnic sources; the indigenous Indians, the colonising Portuguese in the 15th and 16th century, the African blacks as results of slave traffic into the country and different immigrant groups that have come to Brazil from every continent except from Australia. The racial diversity among the population varies between the five regions, the population of blacks and mulattos combined is greatest in the Northeast (70,3 %) and the least in the South, (15%).<sup>5</sup>

Brazil was ruled by military dictatorship 1964-85 but turned into democracy 1988, whereby by a new Constitution was adopted. The transforming process to democracy was relatively “calm” in comparison with other countries in Latin America. The Brazilian Government is however committed to tackling serious human rights abuses and to changing perceptions left over from the years of the dictatorship.<sup>6</sup>

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<sup>3</sup> Brazil's new president, Luiz Inacio “Lula” da Silva, Worker's Party, (PT) took office on 1<sup>st</sup> of January 2003, replacing Fernando Enrique Cardoso.

<sup>4</sup> *Brazil: Beyond Child Prostitution and Sex Tourism* p 2.

<sup>5</sup> *The Legal Enforceability of the Right to Education in Brazil: A Critical Analyse*, p 5.

<sup>6</sup> Brazil developed two national human rights programs, one in 1996, which has focused primarily on civil and political rights and a second in 2002, which has been revised and expanded from the first version to now include economic, social and cultural rights. A

Brazil's large population, nature resources and broad industrial development gives the country opportunities to be one of the strongest economies in the world. However, almost half of Brazil's population live below the poverty line and the country has one of the most extreme unequal distributions of income in the world.<sup>7</sup> Mismanagement, corruption and lack of educated labour have contributed to hinder the well fare and equal distribution of resources among the population. Brazil's net public debt equals 62% of its gross national product (GNP) and income and potential investment are used to pay off the interest on the debt. In the year 2001, the Brazilian GNP was 503,857 million dollars, of which 46.2% was used for repayment of the foreign debt, to be compared with 5 % for expenditure on education.<sup>8</sup>

An expression of families' difficulties to survive is the great amount of children working in Brazil. To have the children work is often the only possibility to raise the family income. Statistics from 1995 shows that 20, 5 % of the children between 10-14 years old are engaged in some kind of work; boys more frequently called into agriculture and the service sector while girls often engage in domestic service.<sup>9</sup> The majority of the girls in domestic service are non-whites. The girls earn in average 60 percent of a minimum wage (200 reais). These children also tend to drop out of school. In recent years the government has made efforts to raise the level of education, but the quality, especially in public schools, is still very poor. Teacher's salaries are small. The drop out rate is high and the years of schooling are low for a large part of the population.<sup>10</sup>

The Brazilian population is increasing with approximately 3 500 000 every year.<sup>11</sup> Due to the population increase, droughts and the search for work, landless and unemployed rural people continue to migrate to a large extent from the Northeast to the big cities where many have little choice but to settle down in slum areas, *favelas*.<sup>12</sup> Increasing violence and criminality are consequences of this mass migration, which have turned rural poverty into urban areas.<sup>13</sup>

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National Secretariat for Human Rights was created in April 1997. *The Legal Enforceability of the Right to Education in Brazil: A Critical Analyse*, p 10.

<sup>7</sup> According to the United Nations indicators on the difference in income and quality of life between rich and poor, Brazil takes the first place with the most unequal distribution of wealth among the 71 countries compared.

<sup>8</sup> *The Legal Enforceability of the Right to Education in Brazil: A Critical Analyse*, p 12

<sup>9</sup> *Report of the Federative Republic of Brazil on the attainment of the goals set at the World Summit of Children, Sept 2001* p 82.

<sup>10</sup> *Gender Dimension of Child Labour and Street Children in Brazil* p 42.

<sup>11</sup> *Report of the Federative Republic of Brazil on the attainment of the goals set at the World Summit of Children, Sept 2001*.

<sup>12</sup> Almost half of the Northeast population live in rural areas. *Brazil: Northeast Microfinance Development Project, 2000*.

<sup>13</sup> *Market-Assisted Land reform and Poverty Alleviation in Brazil's Northeast: a study of the state Pernambuco* p 2.

Poverty is often claimed to be one of the main reasons for children entering prostitution. The Northeast region, which is primarily in focus of this study, constitutes the largest concentration of poverty in Brazil. The following data demonstrate the social and economical burden that rest upon the Northeast and its population.

The region has;

- almost 47 million inhabitants, of which, 70, 3 % are non-whites ;
- the highest unemployment rate;
- the highest illiteracy rate; the average of years in schooling is 4,3 years;
- the lowest average monthly family income;
- the highest number of under nourished children ;
- the highest infant mortality rate; 96,4 of 1 000 children do not reach the age of five;
- the lowest life expectancy rate. <sup>14</sup>

## **2.2 The nature and extent of child prostitution**

Child prostitution is a quite recent political issue in Brazil. Before about ten years ago there were not many discussions on the problem in the country. However, Brazil has in several international reports been pointed out as one of the countries with the most serious problems with child prostitution. At least 500 000 Brazilian children have been estimated to be engaged in prostitution. The problem is said to be foremost concentrated to the coastal tourist resorts in the Northeast region where the population is poor and the unlimited beaches and tropical climate attracts inbound and international tourism. <sup>15</sup>

Child prostitution does exist in Brazil. The estimated 500 000 children is however a high number, even for a country with a size as that of Brazil. One has to question from which sources the figures are collected and what kind of methods that have been used to measure them? Even if research efforts are improving, there is a substantial lack of adequate data in Brazil, which is a major problem when trying to accurately assess the nature and extent of the problem. When it comes to the poor Northeast region, the problem of child prostitution might be the most serious in the country, but still there is

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<sup>14</sup> The Brazilian Institute of Geography and Statistics (IBGE).

<sup>15</sup> See [www.globalmarch.org/worstformsreport/world/brazil.html](http://www.globalmarch.org/worstformsreport/world/brazil.html), where estimations on the extent of child prostitution in Brazil are collected and presented.

not enough evidence on the extent of the problem, but more indications and concerns.

It is probably impossible to be able to fully measure the extent of child prostitution. Whether it is actually increasing or not, as is often claimed can also be difficult to decide.<sup>16</sup> Perhaps it is the awareness of the problem that has increased. In Brazil's report to the Committee on the Elimination of Discrimination Against Women (Nov 2002)<sup>17</sup>, it is claimed that sexual exploitation and prostitution of younger girls, who live on the exchange of sexual favours for material or social advantages, have increased in all urban centres in Brazil, taking peculiar and diversified forms according to the social, economic and cultural reality of each region.<sup>18</sup>

In order for a country to try to identify the phenomenon and find strategies to the problem, there are many questions to raise, not always easy to answer. Which children are involved in the prostitution; age, gender, ethnicity? Why and in which manner do the children engage in this activity? What may hinder them to leave the prostitution? What is commercial and who actually exploits whom? What does the chronological definition of childhood mean with respect to sexuality and sexual activities, etc?

The actions in Brazil against sexual violence, however not limited to sexual violence against children, have within the scope of the Legislative Branch been implemented especially in the form of Parliamentary Inquiry Commissions (CPIs) In the 1990s, three CPIs were established in the National Congress plus four at state level. The work done by these commissions represented an important contribution to the collection of data on sexual violence in all regions in Brazil. It also led to a new understanding and a discussion of the phenomenon in the country.<sup>19</sup>

In the year of 1993 a first Parliamentary Inquiry Commission (CPI) was carried out, in order to identify the nature and extent of child prostitution and sexual exploitation of children in the whole country, as well as root causes to the problem. A final report of the collected data was presented at the National Congress 1994. Traditionally child rights orientated non-governmental organisations (NGOs) and journalists had been reporting on the problems. This was however a first official recognition that the problem existed, thus constituting an important step towards further political actions in this field. The investigation was carried out within a short period, only six months and a need for further investigations on the issue was requested in the report along with recommendations of adopting specific measures by the sectors concerned and competent authorities.

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<sup>16</sup> See e. g the article *Child prostitution on the rise in Brazil* by Selma de Oliveira.

<sup>17</sup> Brazil's report to the Committee on the Elimination of Discrimination Against Women (CEDAW), Comm Distr. General, CEDAW/C/BRA/1-5, 7 November 2002.

<sup>18</sup> Ibid. p 132.

<sup>19</sup> Ibid. p 115.



Among other things, the CPI stated that the numbers of girls in prostitution are higher than boys, although boys are represented to a large extent. Rape and/or incest, principally committed by family members, often fathers or stepfathers, were identified in most of the cases. There are distinctions between prostitution for survival and the one linked to consumerism. In some cases children engage in prostitution in order to combat hunger, in other cases to be capable to buy consumer goods as the children and adolescents from the Brazilian middle class. Prostitution related to private detention and slavery conditions was also identified, (see below about the *garimpeiros*). The CPI also stated that the police, through corruption, often are responsible for the impunity of the exploiters. Finally, the report concluded that prostitution in general is viewed as something normal within the Brazilian society, that communities and authorities generally tolerate sexual exploitation of minors, and that Brazil is the second largest country in the world after Thailand with the highest numbers of children in prostitution.<sup>20</sup>

CECRIA<sup>21</sup> is an entity within the National Human Rights Secretariat. It is responsible for the Network for Violence, Exploitation and Sexual Abuse of Children and Adolescents, initiating and promoting research efforts on sexual exploitation of children. A CECRIA report elaborated in close cooperation with several NGOs, released in March 1999, indicated that patterns of sexual exploitation of children correspond to the distinct economic and social profile of the country's region. In the northern Amazonian region, sexual exploitation of children centers on brothels that cater to mining settlements. In the large urban areas, children, principally girls, who leave home because of abuse or sexual exploitation, often prostitute themselves on the streets in order to survive. In the cities along the Northeast coast, sexual tourism exploiting children is prevalent, and involves networks of travel agents, hotel workers, taxi drivers, and others who actively recruit children and even traffic them outside the country. Child prostitution also occurs in the areas served by the country's navigable rivers, particularly in ports and at international borders. In port cities, crews from cargo vessels are a primary clientele. The report notes that although the problem develops in part to meet the demands of foreigners, the local population sustains it.<sup>22</sup>

In Salvador *one* research has been conducted on child prostitution in 1995. This research is referred to in the above mentioned CECRIA report. According to the researcher and author of the book/report, young girls were brought at night-time to foreign ships that anchor by the *Bahia de Todos os*

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<sup>20</sup> *Uma Leitura Jurídica do Abuso e da Exploração Sexual de Crianças e Adolescentes* pp 154-156, (A juridical lesson on sexual abuse and exploitation of children and adolescents).

<sup>21</sup> CECRIA, *Centro de Referência, Estudos e Ações sobre Crianças e Adolescentes*, (Centre of Reference, Studies and Actions on Children and Adolescents)

<sup>22</sup> US Department of State Brazil, Country report on Human Rights Practises, Released by the Bureau of Democracy, Human rights and Labour, Feb 23, 2000.

*Santos* at night. The report says that some agencies send photos to Germany, Switzerland, France and Italy and foreign tourists may choose their company for the days they will be staying in Salvador.<sup>23</sup>

Quite interestingly some of the interviewees referred to other places in the country where child prostitution could be more severe than in their own city or region, most often to places in the northern directions, e.g. in Amazonas, Acre and Pará.<sup>24</sup> Most probably they refer to what has been reported earlier in the media in the gold mining areas in the regions of *Pará, Rondonia, Amazonas, Acre* and *Amapá*, where there is intense gold prospecting (also mentioned in the CECRIA report). It is claimed that families turn over their minor daughters to gold miners (*garimpeiros*) in exchange for basic necessities and in other cases girls are convinced to work in restaurants or bars, and are offered better wages. When they show up, however, they discover that the work consists of providing prostitution services. It has been noted that in this setting, the owner of the *garimpos* wields a great deal of power, that the authorities adopt a passive attitude towards these events and that society is indifferent.<sup>25</sup>

Gilberto Dimenstein, a Brazilian journalist became famous because of his work on extra-judicial killings of street children. He has written the book *Little girls of the night*, (*Meninas do Noite*) which deals with child prostitution in the gold mining areas mentioned above. The book consists of a series of cases of girls who are forced to work as prostitutes in the Amazon region, especially in mining towns. He explains the system of debt bondage under which the girls are kept. Initially the girls are offered jobs, usually in restaurants or a luncheonette, in faraway regions. Upon the arrival, the girls are informed that they already owe money for the transportation, and can only leave after paying it. In addition, the girls have to pay rent for their room, and often receive perfumes and clothes from the owner of the brothel. Often the girls have no control over the money they make, as their clients pay directly to the owner of the brothel. Diseases such as malaria are common in the region, and when the girls get sick, and are unable to work, they have additional expenses with medication and food, making it more difficult to pay the debt, which only increases.<sup>26</sup>

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<sup>23</sup> The name of the report (book) is *Dor e Espelho* (Mirror and Pain) by sociologist Marlene Vaz. This research was carried out within the NGO CEDECA/Bahia. Mrs Hélia Barbosa, executive coordinator of the NGO said in an interview (24<sup>th</sup> June 2002) that the report is outdated and that no one has any idea of the number of children in prostitution in Salvador today. According to Mrs Barbosa, the NGO is about to initiate a research project on the theme in cooperation with the Federal University of Bahia (UfBA).

<sup>24</sup> See interviews 1, 2, 7, 11 and 12.

<sup>25</sup> de Oliveira, Selma, *Child Prostitution on the rise in Brazil*, (1995).

<sup>26</sup> *Children in Prostitution; How we can Measure and Monitor the Commercial Sexual Exploitation of Children, Literature Review and Annotated Bibliography*. See also *Child prostitution on the rise in Brazil* (1995).

Cases of small children in prostitution exist in Brazil. However, the major part of the boys and girls involved seem to be adolescents between 14 -17 years old. According to a researcher in Salvador, adolescents in prostitution do not necessarily identify themselves as prostitutes. They may engage in prostitution occasionally, moving in and out depending on financial needs and the season, may it be a couple of times a week or more intensive in high tourist seasons.<sup>27</sup> The prostitution then may serve as one source of income beside others available. These adolescents have generally little education and have difficulties to find work, which gives sufficient incomes.<sup>28</sup> In addition, many Brazilian teenaged girls (generally non-whites) are already mothers to one or two children. They are not seldom the single breadwinners for their children. In comparison with what a girl without education and job training skills may earn as a domestic servant in 10-12 hours day- less than minimum wage, prostitution may render more money in a considerably shorter time, a fact which also contributes to make it difficult to leave the prostitution.<sup>29</sup>

Young Brazilian girls who involve with foreign tourists often nourish a dream of getting married, preferably with a man from Europe and the United States, to be order to create a better life than they have in Brazil. The prostitution itself can then be regarded as a means of getting a first contact with a foreign tourist. Sometimes these first contacts lead to a relation during a short period of time, during a holiday, and sometimes actually a marriage, which fuels to maintain the dreams and hopes of other young girl who looks for a better life outside Brazil.<sup>30</sup>

A journalist in Recife made a reportage (2001) on five Brazilian girls between 13-17 years, living outside the metropolitan area, in a small poor city by the arid countryside (the *sertão*). The girls raised the family income through occasional prostitution with the awareness of the parents. Two-three days a week they were involved in prostitution. Brazilian truck drivers were often among their customers. The other days of the week the girls assisted their parents in the household. According to the journalist, the girls dreamt of marrying a Brazilian man, in the age of 35-40 years, who could take them away from their present lives, offer them economical security and with whom they could create a family.<sup>31</sup>

The objective of my 2-months fieldwork in the Northeast (and Rio de Janeiro) was at first hand to gather information through law enforcement officials and NGOs, not to look for or try to come in contact with child prostitutes. However, I regularly stayed in hotels or motels in areas where

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<sup>27</sup> Interview 2.

<sup>28</sup> This not organised juvenile prostitution is sometimes defined *neo prostitution*.

<sup>29</sup> Interview 6.

<sup>30</sup> Interview with Madeleine Barbosa, coordinator at World Childhood Foundation, Stockholm, Sweden, 14<sup>th</sup> May, 2002.

<sup>31</sup> Interview with Mariana Camarotti, journalist, *Jornal do Commercio*, one of the two main new papers in Recife, 5th July 2002.

the prostitution was claimed to be most visible, especially by the beach areas (*Beira Mar*) but also in the down town areas. I was walking around in the nights or going by taxi, discussing with drivers, bar owners, tourist guides and also with some prostitutes, trying to get an idea through my own observations. I was surprised that I didn't find more children and adolescents in prostitution, according to the high estimations. However, I identified different kinds of prostitution; the gay prostitution in the down town area, that along the highways and outside favelas, where the adolescent girls, but most women, walk up and down or sit along the road waiting for clients. These girls and women charge a very little payment (10 RS) in comparison with the more "fashionable" prostitutes (200-300 RS) along the beach area, where also tourists gather.

In Fortaleza a guide took me to an area close to a large favela where prostitution is concentrated. Along the highway there were in all about 10-15 adolescent girls and women offering sexual service. One or two of them were probably below 18 years. The guide, who passes the area daily, claimed that normally there are about 20-25 prostitutes every night. He had spotted a few girls in the age of 11-13 years and he assumed that these girls were addicted to drugs (crack). In the city of Salvador I stayed in a hotel by the Beira Mar (beach area) right in the centre of prostitution. During four nights I counted up to at maximum 15 young women engaged in the activity. Perhaps one or two of them were below 18 years. I also talked to one of the prostitutes who said that younger girls engaged in prostitution do exist in Salvador, but she did not confirm a wide spread phenomenon. She mentioned that it happens that minor girls try to accompany the adult women, but they avoid them, being afraid of being identified as female pimps (*cafetinhas*), which is illegal according to the Brazilian law (the prostitution it self is not illegal). In Salvador I had the opportunity to interview a researcher and author who has written two books on prostitution in Salvador during the 70ies and 80ies. He claimed that nowadays there are lots of discussions about child prostitution and commercial sexual exploitation of children in Brazil, but nobody actually knows what myth is and what reality in this field. According to his experiences, child prostitution does exist, but is not wide spread phenomenon in Salvador. He also said that the prostitution is generally not organised any more and that spontaneous contracts often are made between the prostitutes and the customers, which on the other hand makes the prostitution difficult to identify.<sup>32</sup>

The phenomenon of child prostitution is *complex* with neither one specific root cause, nor with any simple solutions to the problem. The issue also regularly draws great media attention and is often surrounded with sensationalism. The problem is often presented in an isolated manner rather than as a symptom of structures within a society that creates the problem. For natural reasons the phenomenon also awakes public outrage and

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<sup>32</sup> Interview 2.

condemnation; children should simply not be sexually exploited in prostitution or in other forms. As soon as a case is revealed in the media, the society reacts immediately and demands that politicians make measures to put an immediate end to the maltreatment and that those responsible get severely punished. Sometimes the media in combination with public emotional outrage encourages speculations on estimations, which actually tend to go beyond statistical probability.<sup>33</sup> UNICEF in Brazil has regarded the estimation of 500 000 child prostitutes as being “unreliable, scandalous and outrageously high”.<sup>34</sup>

It might be a reality that Brazil is the second country in the world with most minors in prostitution. This will to date remain an open question. Brazil is the fourth largest country in the world with approximately 60 million children and adolescent among its population, which has to be taken in consideration when discussing the issue. With or without this knowledge, *yet* there are young girls and boys who due poverty, consumerism, sexual violence at home, lack of social control in broken homes, poor education, socio economic disparities among the population and machismo, engage in prostitution, which is serious. In the CPI (1993) it was claimed that the Brazilian authorities and the society to some extent tolerate that children engage in prostitution. This is also serious. The political will to protect children is totally dependent on how the child and childhood is viewed upon within a society.

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<sup>33</sup> These mechanisms and tendencies are clearly analysed in *Children in Prostitution; how we can Measure and Monitor the Commercial Sexual Exploitation of Children, Literature Review and Annotated Bibliography* (1996). Hundreds of reports, researches and books on the theme have been critically reviewed by a research group within UNICEF, University of Cambridge and Childwatch International.

<sup>34</sup> United Nations Chronicle Edition, issue 4, 1997, *Brazil and UNICEF Join End Child Prostitution* by Arabela Rota, UNICEF representative in Brazil.

# 3 Sex tourism

## 3.1 Introduction

Since the Stockholm Congress (1996) much focus of concern has been centred on sex tourism as to address the demand side of sexual exploitation of children, whereby child prostitution is included. Sex tourism, which exists throughout the world, has come to be primarily associated with the cross boarding of tourists in the developed world (usually men), to less developed countries. The debate on sex tourism is influenced by a concern about child prostitution and many mean that sex tourism in general has to be combated since it as a necessary consequence encourages child prostitution.<sup>35</sup>

It is claimed that international sex tourism has started to move from Asian countries towards Latin America and Brazil and the Dominican Republic are the new favourite destinations for child sex abusers.<sup>36</sup> Before dealing with sex tourism in Brazil and its impact on children, specifically in the Northeast region, it might as a starting point be valuable to get a brief idea of the meaning of sex tourism, the market and its key players.

## 3.2 What is sex tourism?

*Sex tourism* can be defined as a temporary escape from roles, responsibilities and everyday social norms and where the main purpose or motivation of at least a part of the trip is to consume sexual relations.<sup>37</sup>

Ryan and Hall suggest that one of the main incitements for travelling abroad or within a country to consume sexual service is the *cost differential* that exists in the provision of both tourism and sexual services in the undeveloped world compared to such provision in the developed world.<sup>38</sup>

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<sup>35</sup> E/CN.4/2000/75; United Nations Economic and Social Council, Commission on Human Rights Fifty-sixth Session, *Question on a draft optional protocol to the Convention of the Rights of the child on the sale of children, child prostitution and child pornography*.

<sup>36</sup> *The Girl Child Prostitute in a Globalized World*; a minor field study on the Dominican Republic on the causes to girl children's prostitution, p5. The author refers to a report of the former UN Special Rapporteur, on the Sale of Children, Child Prostitution and Child Pornography, Ms Ofelia Calcetas-Santos, appointed by the United Nations Commission for Human Rights.

<sup>37</sup> Ryan and Hall: "Sex Tourism, Marginal People and Liminalities" (2001), preface x.

See also the definitions of WTO, [www.wto.org](http://www.wto.org), and ECPAT [ww.ecpat.org](http://ww.ecpat.org).

<sup>38</sup> A quick glance at the website [www.worldsexguide.com](http://www.worldsexguide.com) demonstrates that prices on sexual services are of major interest for the sex tourist. I would actually recommend researchers on the theme to use this website, since sex tourists share their experiences of locations, prices and ages of prostitutes in almost every country in the world.

This would mean that as soon as it is cheaper to consume sexual service in the home country or region, this will be prioritised.<sup>39</sup>

Sex tourism can be conceptualised as a series of links between a legally marginalized form of commodisation (sexual service) within a national industry (the entertainment industry), essentially dependent on, but with a dynamic function in an international industry.<sup>40</sup> The sex tourism industry varies in its *degree* of industrialisation from that when tourists arrange for their own sexual service, to pre-booked packaged forms (“all inclusive”) through international hotels and agencies. The latter form seems to have become less common in recent years as public condemnation of sex tourism has grown. At the same time the range of information of sources available to sex tourists has grown with the growth of Internet. The sex tourism industry also takes several different *forms*, ranging from production of pornographic movies and videos to nude dancing in bars and discos and prostitution, (free lancing, bars, clubs, brothels, dept bondage).

Due to the informal and often illegal nature of sex tourism it is extremely difficult, perhaps impossible, to assess the amount of those engaged in prostitution (and other sex work) as well as the demanders (the clients). International and local airlines and hotels, intermediaries, taxi drivers, entertainment localities, motels, street vendors and several others, are however all economical benefiting, directly or indirectly from the sex tourism market. Every government and politician, even when proclaiming that sex tourism is immoral and has to be combated, is aware of its impact on the economy.

### 3.2.1 Who is a sex tourist?

The struggle to combat sex tourism and the great industry which promotes the phenomenon, may not be an easy task to carry out. Sex tourism among adults is a complex topic involving issues of privacy, consent, religious and ethical beliefs, and also human rights.

Before dealing with the concept of child sex tourism, it might be interesting to identify some “types” of sex tourists who are targets in the struggle to combat sex tourism in general.

- The *situational sex tourists*, who do not travel with the specific purpose of buying sex but avail themselves if the opportunity arises;
- The *veterans*, who travel explicitly for anonymous sex and usually find several different partners;

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<sup>39</sup> Ryan and Hall (2001) preface xv.

<sup>40</sup> Ibid. preface x.

- The *returnees* who wants to be specifically with one whom they had met on a previous visit.<sup>41</sup>

Then, who are representing the demand side of sexual exploitation of *children*?

### 3.2.2 Preferential and situational child offender

Paedophiles are individuals who have an explicit sexual interest in children at certain ages, but do not necessarily act in such a relation. The paedophile has in the discourse of child sex tourism, been categorized as *preferential child offender*, in order to separate him (or her) from the *situational child offenders*, (compare with the situational sex tourist above). The differences in identity and amount of threat to children between the two categories have been described by ECPAT International as follows<sup>42</sup>:

[...The stereotype of the child sex exploiter that most people imagine is the preferential offender or "paedophile" - a person who explicitly seeks sexual contact with children to satisfy sexual desires. This image obscures the reality whereby situational child sex offenders are in greater number and thus are a far greater threat to children. Situational child offenders are people who do not explicitly seek to have sexual contact with children; their actions are ruled by other factors...] <sup>43</sup>

Some of these factors have been describe by ECPAT Sweden:

[...Not all sex tourists are paedophiles, but they abuse children just by pure thoughtlessness, lack of consciousness about the problem and the mental distance to the moral norms of the home country, facilitated by the distance and the different culture.] <sup>44</sup>

To some extent I personally find this is confusing. Paedophiles are those who have a specific sexual interest in children, while according to the references, situational child offenders, who are in greater numbers and a far greater threat to the children, are *not* paedophiles, but still they act as such. Pure thoughtlessness, distance from home, a minimal risk of detection, and

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<sup>41</sup> Ibid.

<sup>42</sup> ECPAT, (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), is the NGO, first established in Asia, which took the initiative to the First World Congress against CSEC, Stockholm 1996. After the congress the organisation is operating worldwide. It is not an exaggeration to claim that ECPAT has made more than any other organisation to bring CSEC on countries political agendas as well as within the international community.

<sup>43</sup> The quotation is from a speech delivered by Mrs Carmen Madrinan, Executive Director, ECPAT International, at the United Nations World Summit for Children, New York, 9 May 2002, [www.ecpat.org](http://www.ecpat.org), accessed 2003-03-15.

<sup>44</sup> [www.ecpat.sweden.org](http://www.ecpat.sweden.org).



the opportunity available in a country are triggering factors for these persons (non paedophiles) to enter a sexual relation with a child. Who is then a paedophile and who is not? More over, isn't it a questionable generalisation to claim that situational child offenders are in *greater numbers* and a *far greater threat* to the children, taking into consideration to the difficulties to measure the extent of sex tourism? What research is this statement based on? Presenting such stereotypic information, without nuances, *may* lead to the association that a latently hidden thrill for having sex with children is embodied within adult human beings, then again, who is then a paedophile and who is not?

On one hand the described image or motives of the situational child offenders in some sense holds true. There is a saying that the occasion sometimes creates the thief. There are probably some people who make abusive acts they otherwise would not do at home. On the other hand, it can be argued that foreign sex tourists *in general* seek sexual relations with *women* - not children - in the same way as they would do at home, in their own countries. When travelling to other counties the sex buyers may find young prostitutes whose ages sometimes may be difficult to asses<sup>45</sup>. Thai girls/women e.g. often appear younger than they actually are, while Brazilian girls may appear older than their age, especially when acting in prostitution and sometimes need to fool the police and perhaps the client. Maybe this is the meaning of being thoughtless when on a commercial basis sexually interfere with a person below eighteen.

Children are vulnerable, need special protection and *shall not* be exploited. But again, child prostitution and sex tourism are complex issues. Stereotypes and generalisations needs to be avoided in order to keep away from moral panic and witch hunting of sex tourists in general, which I do not believe will support children in need or a sound and rational debate, leading the adequate strategies.

### **3.3 Sex tourism in Brazil**

It is, as mentioned before, claimed that the concentration of sex tourism has slowly started to move from Asia to Latin American continent, due to increased international attention and restrictive measures taken by Asian governments.<sup>46</sup> Brazil, which is a fascinating and exotic country attracts tourists from all over the world. The country has reputation for being the favourite sex tourism destination in Latin America, also including child sex tourism. However, the first thing to point out is that a Red Light District as e

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<sup>45</sup> This is the experience of Per Olof Forslund, Super Intendent at Swedish Criminal Investigation Department on Sexual Abuse and Exploitation. Mr Forslund was also a former liaison affair in Thailand, telephone interview 29/10 2002.

<sup>46</sup> *Tricks of the Trade, Sex Tourism in Latin America*, by Ann Barger Hannum, Harvard Univeristy, [www.fas.harvard.edu](http://www.fas.harvard.edu). See also information available at [www.ecpat.org.uk](http://www.ecpat.org.uk).

g that in Amsterdam or an organised sex industry as that in Thailand, will not be found, neither in the Northeast nor in other parts of Brazil<sup>47</sup>.

In the report *Looking Back Thinking Forward*, which aims to monitoring the implementation by states the Stockholm Agenda for Action and which is issued by ECPAT/international in September, 2000, one can read in the chapter dealing with CSEC in South America, that child sex tourism, which is one form of child prostitution (?sic! ), is increasing most in the region. The biggest problem with child sex tourism is in Brazil and the country is one of the favourite destinations of European and American sex tourists.<sup>48</sup>

Since 1999, the Swedish tour operator Fritidsresor<sup>49</sup> annually, on the high tourist season, (October – March), transports about 4 000 - 5 000 *Swedish* tourists to Natal in the Northeast, (a fact that lead me to the approach of this thesis).<sup>50</sup> The same year the city got subjected to a pilot project, initiated by ECPAT/ Sweden, on implementing ethical codes in tourism to combat sex tourism and exploitation of children (see 6.2). In the evaluation report of the project it says that with regard to international and domestic arrivals in 1999, only a little less than 10 % of Natal's tourists were foreigners.<sup>51</sup> Due to established charter connections with Europe, the majority of tourists arrives from Italy and Portugal, ( every week two flights from Milano and Lisbon are arriving at the airport in Natal.)<sup>52</sup>

Traditionally Rio de Janeiro is the main tourist destination. The Northeast region of the country has in recent time come in focus and is claimed to suffer from growing international sex tourism. Tourism has become one of the leading growth sectors in this poor region. The most attractive destinations are the states of Bahia, Pernambuco , Rio Grande do Norte and Ceará, or more precise the coastal capital cities in these states; Salvador, Recife, Natal and Fortaleza, ( where I conducted the field study) , with tropical climate and unlimited beaches. The overwhelming majority of the tourists coming to the region are however Brazilian residents, while

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<sup>47</sup> Interview 12.

<sup>48</sup> *Looking Back Thinking Forward* (2001) p 68. Interestingly the report mentions a form of child prostitution which has recently emerged and involves teenagers, often schoolgirls who prostitute themselves in a limited period of time for financial reasons, (financing studies is an example mentioned in the report).

<sup>49</sup> Fritidsresor is a part of the Scandinavian Tourism Leisure Group.

<sup>50</sup> The amount refers to the year 2001, telephone interview with Fritidsresor, Stockholm, May 2002.

<sup>51</sup> Commercial Abuse of Children in Tourism, Code of Conduct Campaign, Training Possibilities Spot-Evaluation Brazil, Rio Grande do Norte, Natal, Dec 14-21, 2000 available at ECPAT/Sweden in Stockholm.

<sup>52</sup> Interview 5. In order to keep away from prejudices one has to keep in mind that the bigger country, the more people that are (sex-) tourists. There are e.g more German and French tourists than Swedish in Brazil , since Sweden is a smaller country than the former.

international tourism is still modest but has a large potential for future expansion.<sup>53</sup>

In the year of 1998, *The International Tribunal for Children's Rights* held hearings in Fortaleza (Northeast) on sexual exploitation of children in Brazil. One of the objectives of the hearings was to dispel the myth about the importance of foreigner's involvement in child sex tourism in the country. In the report from the hearing one can read: "While this is one of many forms of sexual exploitation that Brazilian children are exposed to, recent research reveals that the problems is not of that magnitude that authorities, as well international and national NGO's once believed it to be".<sup>54</sup> The report continues by stating that sex tourism certainly exists in Brazil and in some cases involves minors and foreigners, the majority of cases of commercial sexual exploitation of children are more "traditional" kind, that is to say that most cases are of simple prostitution, with or without an intermediate. Sex tourism in Brazil is not an organised industry or 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. Finally it says in the report that some of the girls involved are minors, usually adolescents, but this particular form of transaction does not seem to involve small children.<sup>55</sup>

While there is not, as pointed out before, an organised sex industry in Brazil, there are however indications of criminal nets in Natal and Fortaleza in the Northeast. It is claimed that residing foreigners, more specifically Italian nationals are involved in the nets. The criminal nets involve drug dealing, money laundering and sex trade, also including minors. The dominance of Italian nationals is explained by the fact that several Italians make investments in the tourism sector in these regions and most of the permanent residing Italians are today owners of hotels and pousadas (lodgings), restaurants and bars.<sup>56</sup> Governmental authorities are aware of the criminal nets and in Fortaleza a recent Parliamentary Commission on Investigation (CPI) reveals some of the network<sup>57</sup>. A group of prosecutors in Fortaleza are about to evaluate the report and to decide what further steps to take in this matter.<sup>58</sup>

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<sup>53</sup> World Bank: *Brazil: Poverty Reduction, Growth and Fiscal Stability in the State of Ceará*, p 27.

<sup>54</sup> The research, which shows that the major part of the reports concerns local offender, not foreign tourist, is carried out by the NGO *Abrapia*, (Multiprofessional de Proteção à Infância e à Adolescência, mentioned above. [www.abrapia.org](http://www.abrapia.org)).

<sup>55</sup> International Bureau for Children's Rights (IBCR), *Second Hearings on Commercial Sexual Exploitation of Children, Fortaleza, Brazil*, May 1998, [www.ibcr.org](http://www.ibcr.org).

<sup>56</sup> Interview 6 and 8.

<sup>57</sup> *Comissão arlamentar de inquérito que investiga a practica de turismo sexual em Fortaleza. Relatório Final, Março, 2002*. This CPI was carried out in collaboration between representatives of governmental agencies as the Federal Police and the NGO Cedeca/ Ceará in Fortaleza.

<sup>58</sup> Interview 8.

The Federal Police in Natal is also aware of a similar situation but claim that they have difficulties to find evidence and are therefore not doing any concrete investigation. They also refer to lack of resources since the unit for foreign issues have been decreased and they can just handle urgent matters as investigation on airplanes, vessels and expelling processes of foreigners with expired visas.<sup>59</sup> Some collaboration between judges in Natal and Italy seem however to exist<sup>60</sup>.

When it comes to preferential child offenders ( see 3.2.2), paedophiles are entering Brazil, as they do in other countries where the risk for detection is lower than in the home countries. In June 2002, during my stay, an American lawyer and photographer, was arrested in Salvador for having photographed 8-13 year old girls in “sensual positions”. The girl’s mothers were paid a small sum of money for letting their children be photographed by the American. There was nationwide media coverage on the case, which demonstrates that Brazil is not “free haven” for foreign paedophilia.<sup>61</sup>

The results from my field work in the Northeast confirm that the local demand is the absolute major part on the sex market in the Northeast. This is however not surprising, but valuable to point out as foreigners draw more media attention when they are caught by the police compared to when locals are involved<sup>62</sup>. In the UNICEF report *Profiting from Abuse* (published in the year 2001) one can read that the international media has brought a great deal of attention to sex tourism, that it is a myth that child sexual exploitation is a recent phenomenon largely initiated by sex tourism. Child sexual exploitation has a long history with most abuse perpetrated by member of the local communities.<sup>63</sup>

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<sup>59</sup> Interview 7.

<sup>60</sup> Interview 6.

<sup>61</sup> See e.g. the news paper article in *O’Globo*, 9 th of June 2002. I interviewed lawyer Mr Mauricio Pinheiro, and Mr Fabio Reis, working with detection of child pornography on the Internet at the child rights organisation Cedeca/BA. Both were involved in the case, assisting the public prosecutor in charge of the case in Salvador. It is claimed that the American tourist is responsible for a paedophile website where pictures of small girls are presented. The pictures are not pornographic, but are presented in an abusive environment. Due to the narrow Brazilian law relevant for the case (ECA art 240,241) it is difficult to charge him for any crime.

<sup>62</sup> Interview 3.

<sup>63</sup> Two other popular myths are dispelled in the UNICEF report; one which says that sex exploiters are all paedophiles and strangers. Instead the majority of sexually abused children are not involved in commercial sexual activities. They are abused by someone they know, by their family or extended family. The other myth says that sexual abuse or exploitation of children is caused by poverty. Poverty creates conditions that may contribute to sexual exploitation, but poverty can never alone be the reason. Family breakdowns, globalization, local culture, the low status of women and children and weak law enforcement all contribute to create an environment which increases children’s vulnerability to sexual exploitation. It also says that children who have been sexually abused are at heightened risk of being drawn in to the commercial sex trade. *Profiting from Abuse* is available at [www.unicef.org](http://www.unicef.org).

In the above mentioned report from the Hearings on the issue in Fortaleza (1998) it says that it is much more common that the sexual exploitation of children through juvenile prostitution serves local clients. According to numbers reported by Abrapia, which collects anonymous telephone reports of sexual exploitation of children in the whole nation, nearly 90 % of cases concerned Brazilian nationals. The 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.

It seems as if the intolerance to sex tourism and commercial sexual exploitation is to some extent lower in Natal compared to the in the other cities I visited during my field study. There are more processed cases involving foreign tourists, there are contacts between judges in Natal and in Italy and there is an attempt to close localities where sexual exploitation occur which seems more “serious” than in the other cities. The contacts between the police, prosecutors and judges seem more effective than in the other cities, and I would suggest that one explanation is the size of the city and its population. Natal is the smallest of the four cities in focus. Another factor is most probably the existence of an influential non governmental organisation in the city, whose executive coordinator also was the general secretary of the Brazilian National Plan of Action against CSEC. Moreover, one of the national preparatory meetings to draft the National Plan of Action, which gathered several governmental representatives, GOs and NGOs, was held in Natal.<sup>64</sup> Finally, another contributing factor is the implementation of the *Code of Conduct for Tour Operators Against Child Sex Tourism*” in the city, mentioned above, initiated by ECPAT Sweden in 1997, (read more at 6.2)

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<sup>64</sup> Interview with Ms Dilma Felizardo, General Secretary to the Brazilian National Plan of Action against CSEC. She is also the Executive Director of the NGO Casa Renascer, Natal, 30 June 2002.

# 4 International Legal Instruments

## 4.1 Introduction

The 1989 UN Convention of the Rights of the Child (CRC)<sup>65</sup> was the first treaty that explicitly imposed a duty on State Parties to protect children from all forms of sexual exploitation and abuse. After the Stockholm Congress on CSEC 1996, the ILO Convention on the Worst Forms of Child Labour (1999) and the Optional Protocol to the CRC (2000) were adopted to strengthen action against this form of violence and to combat sex tourism.

## 4.2 The Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) has achieved almost universal ratification, thus demonstrating the essential in preserving and protecting a sound development of children. Both Brazil and Sweden have ratified the Convention.<sup>66</sup>

The CRC is founded upon the concept that a child is a legal subject of rights, and a *child* is defined as an individual below the age of 18 years, unless the law applicable to the child majority is attained earlier (art 1).

The *best interest* of the child is a fundamental principle which shall serve as a guide in all actions and decisions concerning children whether undertaken by public or social institutions, courts, administrative authorities or legislative bodies (art 3).

Civil, political, economical, social and cultural rights are set forth in the Convention. To a child's fundamental rights belongs the right to a good physical and mental health and an education. The child has a right to not be exposed to any form of exploitation; following articles in the Convention directly prohibits sexual exploitation of children:

### *Article 34*

States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For the purpose, State Parties shall in

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<sup>65</sup> The UN General Assembly adopted the Convention of the Rights of the Child on the 20 November, 1989. It came into force 2 September, 1990, ([www.unhchr.org](http://www.unhchr.org)).

<sup>66</sup> Brazil ratified the CRC on the 25 September 1990, and Sweden the 29 June 1990, ([www.unhchr.org](http://www.unhchr.org)).

particular take all appropriate national, bilateral and multinational 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 19*

States Parties are obliged to adopt legislative, administrative, social and educational measures to protect children from any form of physical or mental violence, bodily harm or abuse, negligent treatment, mistreatment or exploitation, including sexual abuse, so long as they remain in the care of the parents, legal guardians or other person responsible.

### **4.2.1 The Committee of the right of the Child**

The Committee on the Rights of the Child is established to monitor the implementation of the Convention. State Parties have a duty to report on the implementation progress to the Committee initially two years after the ratification and then every five years (art 43, 44). The Committee responds to the countries by officially publishing its concerns and recommendations (*concluding observations*).

Brazil has not submitted any report. After three reminders the Committee has given the Brazilian Government a deadline - 13<sup>th</sup> of May 2003 - to present its official report. If Brazil continues to neglect this obligation, the Committee will take any other available information in the country in consideration (shadow report).<sup>67</sup>

### **4.3 The Optional Protocol**

In order to strengthen the implementation of the CRC and as a reminder of the Stockholm Declaration and Agenda for Action, the United Nations General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which came into force 18th January 2002. The Protocol covers the same grounds as those in the CRC,

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<sup>67</sup> The Ministry of Foreign Affairs has created a group which together with some NGOs are about to elaborate the official report. Interview 2002-06-15 with Ms Denise Stuckenbruck, former coordinator at Save the Children/Sweden, established in Recife, Brazil.

but focus upon child-centred proceedings and draws the attention on the disproportionate numbers of girls who are sexually exploited<sup>68</sup>.

The Optional Protocol provides States with a central point of key terms, defining *child prostitution* as the use of children in sexual activities for remuneration or any other form of consideration (art 2).

State Parties are obliged - as a minimum- to criminalize sexual exploitation offences whether committed on its territory or transnationally, and it clarifies the necessity to exercise extraterritorial jurisdiction. This means that criminal laws shall be developed or strengthened to criminalize the acts of national or residents of a State when they abuse children in other countries (arts 3 and 4).

Sweden has ratified the Protocol and Brazil has signed it, which means that they intend to ratify it.<sup>69</sup>

#### **4.4 The Worst Forms of Child Labour Convention, 1999**

The International Labour Organisation adopted Convention No 182 on the Worst Forms of Child Labour in June 1999. The term *the worst forms of child labour* comprises the sale and trafficking of children, the use, procuring and offering of a child for prostitution and the production of pornography or for pornographic performances, (Art 3 b).

ILO no182 is important because it has a horizontal effect by obliging States to consult with the civil society to establish or to designate mechanisms to monitor the implementation of the provisions (art 5). The Convention declares the importance of sensitising the society of the harm of the sexual exploitation of children and is particularly valuable as a tool to prevent sex tourism that directly promotes the sale of children, child prostitution and child pornography. The ratifying states are bound to take *immediate* and effective measures to secure the prohibition and elimination of child prostitution as a matter of urgency (Art 1), and to assist other State Parties to give effect to the provisions of the Convention through enhanced international cooperation and assistance, (Art 8). It also stresses the

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<sup>68</sup> CRC arts 1, 11, 21, 32-36. In contrast to Convention 182, the Optional Protocol to the CRC is seen as undermining rather than strengthening international legal provisions on the issue. Many hold that the CRC afforded sufficient protection for children from CSEC under art 34, 35 and that the Optional Protocol weakens the standard of protection available by using a weaker language.

<sup>69</sup> Sweden ratified the Optional Protocol on the 8 sept 2000, and Brazil signed it the 6 sept 2000, [www.unicef.org](http://www.unicef.org).



importance of education and vocational training as means to eradicate child prostitution (art 2 c).<sup>70</sup> Brazil and Sweden have ratified the Convention.<sup>71</sup>

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<sup>70</sup> The Convention is supplemented by detailed recommendations on how to implement the provisions; *R 190 Worst Forms of Child Labour Recommendation, 1999*.

<sup>71</sup> Brazil ratified the Convention 2 Feb 2000, Sweden on the 13 June 2001.

# 5 National Prevention and Legal Protection in Brazil

## 5.1 National legislation on sexual violence and child prostitution

In the 1990s Brazil took important and decisive steps towards the implementation of policies on children and adolescents. The Federal Constitution was adopted 1988, which set out the principles of full protection guaranteed by the Convention of the Rights of the Child. The Statute of the Child and Adolescent (ECA), which is the most important national legal instrument relating to children's rights in Brazil, was published in the same year as the federal government ratified the CRC in 1990. Through the adoption of ECA, Brazilian children turned from being objects of guardianship to subjects of legal rights. ECA is considered one of the world's most advanced laws in child protection.<sup>72</sup>

The children's rights to be protected from sexual violence and exploitation derive from the Constitution, the norms of ECA and the Penal Code. ECA defines an individual up to 12 years old as a child and between 12 and 18 years old as an adolescent<sup>73</sup>. This is different from the definition in the CRC, where a child is defined as an individual below 18 years. The Penal code is built on the distinguishes on ages, defined in ECA.

### *The Federal Constitution.*

- Art 227 states that is the duty of the family, the society and the State to ensure to children and adolescents with *absolute priority*, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression
- Paragraph 4. in art 227 article states that the law shall *severely punish* abuse, violence and *sexual exploitation* of children and adolescents
- Art 5 includes *rape* among the heinous crimes, which shall not be subjected to e. g bail or amnesty.<sup>74</sup>

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<sup>72</sup> *Report of the Federative Republic of Brazil on the attainment of the goals set at the World Summit of Children*, Sept 2001.

<sup>73</sup> ECA, art 2.

<sup>74</sup> Law 8.072, of 25 July 1990,

### *The Statute of the Child and Adolescent (ECA)*<sup>75</sup>

- Art 244 A is most central with regard to child prostitution. It states that is a crime to submit or induce a child or an adolescent to sexual exploitation or prostitution. Also those offering localities for the sexual exploitation will be held responsible and will be similarly punished with 6-10 years imprisonment. Furthermore, art 227 states that all crimes in the Statute are *unconditionally public actions* (de ação pública incondicionada), which mean that the crimes are not subjected to a prior complaint from parents or legal guardians, but requires immediate action and full protection by the state. Article 244 A is a recent provision, which came into force 26th June 2000.<sup>76</sup>
- To lodge a child or an adolescent in a hotel or motel unaccompanied by parents or guardian or without the written authorisation of them, or by a judicial authority, is illegal and renders a fine penalty of ten to fifty reference wages. In the case of repetition, the judicial authority may determine the closing of the establishment for up to fifteen days (arts 82 and 250).
- Non fulfilment, either wilfully or culpably, of the duties inherent to paternal power or consequent upon custody or guardianship, as well as the determination of the judicial authority or the Tutelary Council (a council responsible for implementing children's rights, see 4.5) may render a fine of three to twenty reference wages or double that amount in case of repetition (art 249).
- Should a medical doctor, professor or any element responsible for an institution of health assistance and basic education, preschool or day care centre, fail to notify the proper authority of cases of which he has become knowledgeable, involving suspicion or confirmation of maltreatment against a child or adolescent, it will render a fine of three to twenty reference wages, and double that amount in the case of repetition (art 245).

### *The Penal Code*<sup>77</sup>

The Brazilian Penal Code is dated 1940, reflecting the Brazilian society by the time before the Second World War. Although many amendments have been made, the section on sexual crimes is remarkable unchanged. With regard to sexual exploitation and child prostitution, if commerce cannot be proved, the sexual abuse shall still be brought to justice, and the Penal Code will be applied instead of the ECA, art 244 A.

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<sup>75</sup> Law 8.069 of 13 July 1990, (Estatuto da Criança e do Adolescente).

<sup>76</sup> Law 9.975, 23 June 2000.

<sup>77</sup> Decree law N 2.848, 7 Dec 1940.

Besides a few exceptions, every criminal act listed in the Penal Code are considered unconditionally public actions, which mean that where violations do occur, the State is required to investigate and submit the perpetrators to justice. The sexual crimes are however an exception. Sexual crimes are generally considered *private legal actions* (which we can recognise in Swedish history on sexual crimes). This means that the victim, and in the case of a minor, its parents or legal guardians have to file a formal complaint before a case can be proceeded in court. From this procedural regulation there are important exceptions when it comes to children and adolescent victims unable to file a complaint because they haven't reached the age of majority, and where the perpetrator is a parent or a guardian. The crime then becomes an unconditional public action.<sup>78</sup> This is essential as in many cases of sexual violence, family members, often fathers or stepfathers are the abusers.

As a consequence of categorising sexual crimes within the private sphere the victim itself has to engage and pay for a private lawyer, *even* if the Constitution guarantees the right to a free legal defence. In the private proceeding the public prosecutor is present at the hearings and the trial, only observing and monitoring the process. However, when the victim/ victim's family can't afford a lawyer the public prosecutor will be in charge of the case. Result from my fieldwork indicates that in the majority of cases the victims come from low income families, which turns the private actions to public obligations.<sup>79</sup>

The sexual crimes are categorised under a chapter called "Crimes against the morals or customs (*crimes contra os costumes*). This categorisation has been criticised since it indicates that the sexual crime is committed against morals and values of the society instead of an assault against the individual. As pointed out, the Penal Code is dated 1940. At least half of catalogue of sexual crimes refers to an *honourable woman*, a *virgin* or *morals and customs*, which not only reflect an ancient Brazilian society. It also leaves an open space for judges, prosecutors and lawyers to emphasis on the behaviour of the girl/woman, more than on the criminal act of the perpetrator, thus putting a proof burden upon the female victim. More over, as an immediate consequence of these connotations (honourable woman, virgin), in combination with distinguishes on ages in the crimes, a boy victim below 12 years who has been seduced without violence or threat is

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<sup>78</sup> Art 225 § 2 in the Brazilian Penal Code states that for the matter of the crimes in the chapter , *Crimes against the customs*, in order to act, the Public Prosecutors Office is dependent on a former complaint *(a ação do Ministério Público depende de representação)*, except when the offence is committed by legal guardians, or any other responsible for the custody of the child or adolescents.

<sup>79</sup> Interview 6 and 11, and interview with Mr Homero, lawyer at the child rights organisation Cedeca/Bahia in Salvador, 2002-05 –06. There might be procedural differences between the states. The interviewees mentioned in this footnote have described the situation in Salvador.

completely unprotected in the legislation. Moreover, *rape* can only be committed by a male and the victim can only be a female (intercourse is also required). Other sexual penetrations are considered *Violent acts against the morals/customs*” (art 214). Even if the penalties are the same, the legislators in 1940 did not take homosexuality in consideration. Another expression of this outdated legislation is that a sexual crime actually can be cured if the offender marries the victim. This is conserved in the current legislation.<sup>80</sup>

The age to give legal consent to sexual relations is 14 years in Brazil. The Penal Code states that violence is presumed if the victim is not older than fourteen years of age. The sexual act will automatically constitute a rape and renders a penalty of 6-10 years imprisonment (arts 213 +224). This crime is also subjected to a formal complaint by parents or legal guardians even if rape is considered a heinous crime according to the Constitution, which is a contradiction.

The Brazilian legislation does not consider incest a crime. On the other hand, sexual intercourse between descendants, ascendants, a legal guardian or curator and the protected person, can eventually be prosecuted with the use of following articles 213 (rape), 214 and 218 of the Brazilian Penal Code.

- Article 214 states that it is a crime to constrain someone with violence or under serious menace, to practice or permit the practice with him, of a libidinous act diverse from carnal conjunction.
- According to article 218 it is a crime to corrupt or facilitate the corruption of a person older than fourteen (14) and younger than eighteen (18) years of age, practising with her a libidinous act, inducing her to practice it or to be present.

Furthermore, it is illegal to induce someone into prostitution, to facilitate someone entering prostitution or to hinder someone to leave prostitution (art 228). This regulation partly covers the same circumstances as in 244 A in ECA, with the difference that the latter specifically addresses children and adolescents. Finally, commercial brothels are illegal and the owner or manager is liable for up to five years imprisonment, (art 229).

When it comes to sex tourism, there is no specific legislation, which prohibit or prevent the organisation and advertising of sex tours and trips. However, there is an EMBRATUR regulation from 1996, which prohibits using hotel establishments for sexual exploitation of children.<sup>81</sup>

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<sup>80</sup> Interview 8 and interview with Ms Lia Cavalcante, lawyer at the child rights organisation Cedeca/Ceará in Fortaleza. See also Penal Code, arts 213,214,217 and 218.

<sup>81</sup> EMBRATUR; *Instituto Brasileiro de Turismo* Regulation no 367, 26.11.1996, Annex 2 Item 2.1.7.

Moreover, ECA arts 240 and 241 prohibit the organisation and advertising of sex tours and trips especially affecting children.

## 4.5 Enforcement of the law

While the criminal law is federal, the administration of justice in respect of crimes committed at the state level is wholly within the authority of the states. Where violations do occur, the states are required to investigate and submit the perpetrators to justice.

Since the Stockholm Congress (1996) the federal government, or more specifically, the Department of the Child and Adolescents (DCA), within the Ministry of Justice, has intensified its efforts to protect the child and the adolescent from different forms of violence, including sexual abuse and exploitation.<sup>82</sup> Among other things, more severe punishments for abusive or violent conduct are defined in the law. Special police departments on crimes against children and adolescents have been created in several states and special Criminal Courts to curb crimes against children and adolescents have been established in some states, with the intent to speed up the trials on these crimes and reducing the level of impunity. Currently there are special criminal courts in the states of Bahia (Salvador), Ceará (Fortaleza) and Pernambuco (Recife).<sup>83</sup> Court trials are in general extremely slow in Brazil and may last for several years. Before the establishments of these specialised courts, a trial could last between 8-12 years, with the result that people did not bother to bring sexual crimes to justice, witnesses gave up or disappeared or had moved to other parts of the country. In the specialised courts in Fortaleza, and Salvador the judicial processes nowadays last about a year in the first instance.<sup>84</sup> Training of judges and public prosecutors in guaranteeing the rights assured by the Statute of the Child and Adolescents (ECA) has also been carried out to some extent.<sup>85</sup>

Although improvements are made for the protection of the children against sexual exploitation, there are fundamental factors, which hinder an efficient enforcement of the law in Brazil. Corruption, lack of interest and lack of resources are significant problems within the Brazilian society. And even if Brazil is burdened upon huge debts, when referring to lack of resources for not investing in the judicial system (or social investments), it can sometimes actually be understood as a lack of political will. Impunity is anyhow a result

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<sup>82</sup> Brazil's report to the Committee on the Elimination of Discrimination Against Women (CEDAW), 7 November 2002 p 126.

<sup>83</sup> Ibid. 132.

<sup>84</sup> Interview 1 and 9.

<sup>85</sup> Brazil's report to the Committee on the Elimination of Discrimination Against Women (CEDAW), 7 November 2002 p 127.

of these factors. CECRIA claims that the government's efforts to combat CSEC need to be better tailored and coordinated. It cites 40 separate programs in the country operated by national and international NGOs, some in partnership with government entities and notes that most of the programs face shortfalls in resources and personnel.<sup>86</sup>

With regard to corruption, according to David V. Fleische, professor at the University of Brasilia and the author of *Corruption in Brazil, Defining, Measuring and Reducing*, (July 2002), the annual cost of corruption in Brazil is estimated at R\$1 trillion or about 68 percent of Brazil's gross domestic product. Fleische defines corruption largely in terms of officials using their public position to extract private profits and claims that reducing corruption should be considered a national task in the country.<sup>87</sup> Corruption among law enforcement officials is pointed out among the interviewees. Motels, brothels and other locations where sexual exploitation of minors occurs can "work" undisturbed by the police and some police officers are directly involved in the sexual exploitation. Public prosecutors interviewed require the control over the investigation processes in order to control police corruption and to achieve better inquiries. The prosecutors, due to corruption, lack of knowledge and interest cannot use police investigations in court. The civil police work independently without interference of the public prosecutors during the investigation. Prosecutors claim that in order to achieve successful prosecutions, they have to double check information gathered by the police and make their own investigations.

Moreover, the forensic medical service, which is of major importance for securing sufficient proof in court, is subordinate to local state police. A lack of routines to bring the victims to the forensic medical institute has been mentioned. Public prosecutors demands that the institute should be separated from the police and put under the control of the Public Prosecutor's Office (Ministério Público). This means a radical change of the organisation of the police system, which in these cases requires a change in the Constitution. Such a change is discussed in Brazil.<sup>88</sup>

Results from my fieldwork indicate furthermore a lack of uniform interpretation of the law. The recent legislation on sexual exploitation of minors (ECA 244 A) is an example. The article states that it is a crime to submit a minor into prostitution. When a minor prostitute voluntarily takes the first contact with the client (exploiter), which is normally how it works in the streets, the client has literally not forced or submitted the girl or boy to the prostitution. The police chief in Recife was, when having arrested a German tourist for sexual exploitation of a 14 year old girl, afraid of having committed an authorial abuse by having the man arrested without legal grounds. She assumed that the judges and the defence lawyers in the city

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<sup>86</sup> US Department of State, Brazil, Country Report on Human Rights Practices, Feb 2000.

<sup>87</sup> This information is collected at [www.csis.org/pubs/2002\\_brazil.htm](http://www.csis.org/pubs/2002_brazil.htm).

<sup>88</sup> Interview 8.

would focus on the girl's behaviour, her own initiative.<sup>89</sup> A public prosecutor in Natal, to whom I referred the case, claimed that the minor girl would be viewed upon as a victim even though she was the one who took the initiative to the sexual act. The girl would be considered a victim of sexual exploitation, social, emotional and economical circumstances will be taken into consideration in court.<sup>90</sup>

Another delicate problem is how to prove the crime (sexual exploitation and prostitution of minors, ECA 244 A). Victims are inclined to protect the client/exploiter and in order to get sufficient evidence the abuser must often be caught red handed in a motel or hotel room, which can be difficult to carry out. Lack of interest, social acceptance and resources has to be taken in consideration here as well.

One has to keep in mind when dealing with this issue, that the reporting on sexual crimes has increased only in recent years. As mention previous, only ten years ago, hardly any Brazilian politician discussed the issue in public. The open street violence remains however a serious problem in many parts of Brazil and demands lots of resources. As resources are scarce, priorities are given to crimes as homicides (often in combination with robberies), which probably is a more prevalent crime than sexual exploitation of children.<sup>91</sup>

#### **4.6 Other governmental and nongovernmental efforts to combat sexual exploitation of children**

Brazil does not have an executive agency that coordinates comprehensive child protection or care. The National Council for the Rights of Children (CONANDA)<sup>92</sup> and the Tutelary Council (Conselho Tutelar)<sup>93</sup> are two different organs created accordingly with ECA to protect the rights of the children. They are working at the national, state and municipal level, created by the Federal Ministry of Justice 1992. Members from the governments and representatives from NGOs compose CONANDA. It is the sole organ of a national nature, which formulates national policies for the promotion, observance, and protection of children's rights.

The Tutelary Council is a permanent but *non-jurisdictional* organ, which must be set up in every municipality. The councils are entrusted with the fulfilment of the children's rights, aiming to protect and monitor the implementation of the rights according to ECA. The Councils have the

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<sup>89</sup> Interview 10.

<sup>90</sup> Interview 5.

<sup>91</sup> Interview 2 and 8.

<sup>92</sup> CONANDA; Conselho Nacional dos Direitos de Criança e do Adolescente.

<sup>93</sup> Conselho Tutelar; Conselho Nacional dos Direitos de Criança e do Adolescente.



power to issue warnings to parents, call for the loss of custody or it can recommend *judicial actions* to the Public Prosecutors Office (Ministério Público).<sup>94</sup> It is also within their competence to order the parents or guardians to submit children to psychological or psychiatric treatment and to enrol the children in school.

Results of my fieldwork indicate that the Tutelary Councils are lacking essential equipment as personnel and sufficient and adequate treatments programs to offer the children, which immediately hamper the fulfilment of their duties required by the law. In addition some Tutelary Councils have been established quite recently, which mean that the knowledge about the Council's duties and rights among the population still is poor.<sup>95</sup>

The Parliamentary Front for the Child and the Adolescent of the National Congress was formally established in 1993. Its main activities include implementation of Parliamentary Inquiry Investigations (CPIs) to verify the responsibility for the exploitation and prostitution of children and adolescents and to launch national campaigns on the issue. Several representatives of the Front have regularly submitted bills on the elimination of sexual violence.<sup>96</sup> Moreover, in cooperation with civil society, the government (The Front) has, led campaigns that aimed to educate and sensitise locals and tourists about the criminal nature of sexually exploiting minors. Smaller initiatives have also existed for some time at local and regional levels within the country. 1997 a campaign, *Sexual Exploitation of children. Beware, Brazil is watching you!* was carried out to combat sex tourism by informing on laws imposing jail sentences on foreigners caught purchasing sex from children. Travel agencies and tour operators in the country were called not to promote sex tourism.<sup>97</sup>

A nationwide toll free hotline service (*disque denuncia*) was also established for the reporting of commercial sexual exploitation and abuse of children, principally committed by tourists. 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. The campaign, which was supported by the Ministry of Justice, has been renewed annually and is still operating through the NGO Abrapia,.

Quite recently, due to a federal law, the 18 of May has become a national day for the struggle against sexual exploitation and abuse of children,

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<sup>94</sup> Inter-American Commission on Human Rights Organization of American States, Country Report on Brazil.

<sup>95</sup> Interview 4 and 12.

<sup>96</sup> Brazil's report to the Committee on the Elimination of Discrimination against Women, 7 November 2002, p 116.

<sup>97</sup> [www.ecpat.org.uk](http://www.ecpat.org.uk).

aiming to protect the children and sensitize locals and foreigners on the issue.<sup>98</sup>

With regard to the importance of the work of NGOs, a survey carried out by CECRIA based on a period 1993-1999, identified 120 organisations that, with the support of the government and international funds, carry out different actions towards the elimination of sexual violence against children and adolescents. Those organisations have identified four areas for intervention:

- Political articulation: national and international meetings.
- Knowledge: surveys, training and databases.
- Legislation: Parliamentary Inquiry Commission (CPIs) and law-amendment proposals.
- Publicity: campaigns and intervention in the media.<sup>99</sup>

At the Stockholm Congress 1996, 122 governments committed themselves to carry out national plans of actions reflecting the Stockholm goals. The Brazilian National Plan of Action to combat sexual exploitation and violence against minors (NPA) 2001-2003, is elaborated by governmental and non governmental in cooperation. At the Second World Congress in Japan 2001 it was considered the best example of cooperation between the government and the civil society. According to the Brazilian NPA, every state shall create their own action plans adjusted to the specific conditions in the individual states.<sup>100</sup>

As a part of the goals in the NPA, in 2000 the Federal Government instituted the Sentinela Program to combat the sexual exploitation of minors. 200 centres are expected to be constructed in capital cities and areas where sexual exploitation is prevalent, to assist victims of sexual abuse and exploitation. The multi professional staff at the centres shall help victims to claim their rights and remove them from abusive situations. When necessary, staff shall also place victims in foster homes.

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<sup>98</sup> [www.violenciasexual.org.br](http://www.violenciasexual.org.br).

<sup>99</sup> Report by Cecria *Exploração sexual comercial de meninos, meninas e de adolescentes na América Latina e Caribe, Relatório Final-Brazil, 2001*. See also Brazil's Report to World Summit for Children, Sept 2001.

<sup>100</sup> Interview with Mrs Hélia Barbosa, executive coordinator, Cedeca/BA, Salvador 24 June 2002.

The coordinator of the Defence Centre for Children's Rights in Salvador, Cedeca/Bahia, was very positive to the program, since they now could reach every little municipality which otherwise would be left behind. The NGO is responsible for the coordination and implementation of the Sintinele program in Bahia<sup>101</sup>

The Coordinator of *Coletivo Menina Mulher*, an NGO in Recife, said in an interview that in the municipalities on the arid country side (*sertão*) there are no educated people who can carry out the Sintinele Program. A multi professional staff of eight persons (including herself) are making long trips on heavy roads from Recife to the *sertão* a couple of times a week to reach the small communities. She also said that it is not always the most skilled people who are employed for carrying out the program, but rather friends and relatives of governmental functionaries.<sup>102</sup>

Cedeca/Ceará, is a child rights NGO in Fortaleza. The NGO is a part of the monitoring system on the implementation of the National Plan of Action, (NPA). According to the coordinator of the NGO, the budgeted money for the implementation of the NPA is only used to a little less than 50 % ( June 2002), which quite interestingly demonstrates how easy it is to design well articulated action plans and another to turn these plans into practice .<sup>103</sup>

As mentioned before, the 18<sup>th</sup> May has, as a part of the Action Plan, through a federal law ( year 2000) become a national day for the struggle against sexual violence and exploitation of children and adolescents, aiming to raise awareness of the problem in the country.<sup>104</sup>

As the government's investments are scarce and there is a lack of tradition to make social investments within the Brazilian enterprises, the competition on available international funds<sup>105</sup> is hard and might to some extent hamper cooperation between Brazilian child rights NGOs. Due to the deadline given to Brazil from the UN Committee of the Rights of the Child in Geneva to submit a report on the status and well being of the Brazilian children, there will probably start a process on elaborating an alternative report to the

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<sup>101</sup> Ibid.

<sup>102</sup> Interview with Mrs Socorro Malafaia Ramos, coordinator, social assistant, *Casa Menina- Mulher*; (House of girls and women) and *Rede de Combate au Abuso e Exploração de Sexual de Crianças do Estado de Pernambuco*, (Network for the Combat of Sexual Abuse and Exploitation of Children in the State of Pernambuco), Recife, 4 July 2002.

<sup>103</sup> The figures are presented in *Fórum Nacional DCA Oficina Nacional: Elaboração de estratégias da sociedade civil para o acompanhamento da implementação do Plano Nacional de enfrentamento da violência sexual infante juvenil 11/6/2002* Interview with lawyer and coordinator of Cedeca/ Ceará, Mr Renato Roseno, Fortaleza 15 June 2002.

<sup>104</sup> Law 9,970.

<sup>105</sup> Save the Children/ Sweden, with office in Recife and World Childhood Foundation with office in São Paulo, (founded by Queen Silvia) are economically supporting interesting programs and research projects within the frame of the National Plan of Action against CSEC.

official one. The monitoring of the implementation of the Convention of the Rights of the Child is essential, but still there is little awareness of the CRC. The former coordinator of Save the Children/Sweden, (established in Recife) mean that the pressure from the Committee offers a good political opportunity for child rights NGOs to strengthen and improve the cooperation in a national network, acting as “watch dogs” concerning national policies on children.<sup>106</sup>

## 4.7 The role of the media

The former UN Special Rapporteur on the Sale of Children , Child Pornography and Child Prostitution, Mr Vitit Muntarbhorn has pointed out the justice system , education and the media as crucial factors in the combating of CSEC. The more the media sheds light on the phenomenon, the more pressure the government gets to keep its status and respect within the international community. This is also an important aspect in view of other countries responsibility for extra territorial prosecutions, which will be discussed in chapter 6.

ANDI (News Agency on the Rights of the Childhood), is an NGO researching on how the media throughout Brazil deals with commercial sexual exploitation of children. In their research *An analyse of the journalistic treatment on sexual crimes*, they conclude that commercial sexual exploitation is seldom described in a socio-economic context. Sensationalism surrounds the issue to a large extent and the media tend to over stress the importance of foreign sex tourism as a cause to sexual exploitation of minors. One can also read that recently UNICEF had said that the numbers it had used from ECPAT International ( New York) is not reliable and that no one knows if there are 100 000, 10 000 or 1 000 sexually exploited children and adolescents in the country.<sup>107</sup>

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<sup>106</sup> Interview with Ms Denise Stuckenbruck, former coordinator of Save the Children Sweden/ Brazil, Recife, 2002-07-07. Hej

<sup>107</sup> *Infância na Mídia; Uma análise do tratamento jornalístico dos crimes sexuais*, 12 Março 2002 p 25, (Childhood in Media: An analyse of the journalistic treatment on sexual crimes), 12 March 2002, pp 25-27.

# 6 Sex Tourism and the responsibility of Sweden

## 6.1 Introduction

Sex tourism (and CSEC), is partly a cross boarding phenomenon and the call for international cooperation to combat sexual exploitation of children is clearly defined in the Convention of the Rights of the Child, the Optional Protocol and in the ILO Convention on the Worst forms of Child Labour. The importance for countries to adopt and apply extra territorial laws to combat sex tourism has been clearly stressed in the international debate. Article 3 in the Optional Protocol to the CRC directly points out the necessity for a State to exercise extraterritorial jurisdiction. Another important instrument in this field, which involves the civil society, is the “Code of Conduct for Tour Operators against Child Sex Tourism”

## 6.2 The “Code of Conduct”

With grants from the European Union, the project: “*Code of Conduct for Tour Operators Against Child Sex Tourism*” was initiated by ECPAT/Sweden in 1997<sup>108</sup>. The “Code” was elaborated with tour operators and recommendations from the World Tourism Organization (WTO). By adopting the “Code of Conduct” travel agencies, tour operators and hotels commit themselves to establish an ethical policy regarding child sex tourism. The agreement includes to train personnel in the country of origin and travel destinations, introduce clause in contracts with suppliers that proclaims a common repudiation of child sex, provide information to travellers through catalogues, brochures, in-flight spots, ticket-slips, web sites, provide information to local “key persons” at the destinations and to make annual reports on the progress.<sup>109</sup>

In 1998 an agreements was signed with tour operators in three pilot destinations: one of them was *Natal* in the Northeast of Brazil where also the Swedish tour operator *Fritidsresor* since 1999 have charter flights. An evaluation of the project was made in December, 2000. According to the report it was due to the short implementation period too early to assess the

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<sup>108</sup> About 40 tour operators, covering some 98 % of the Swedish market and 75 % of the Scandinavian market have adopted the “Code of Conduct”.

<sup>109</sup> [www.thecode.org](http://www.thecode.org).

impact of the project. The raised level of awareness had however a positive effect on the behaviour of the tourists coming to the city.<sup>110</sup>

## **6.3 What is extra territorial jurisdiction?**

Extra territorial jurisdiction means that a country is able to prosecute its own nationals for crimes they have committed in a foreign country. It is justified by the idea that a person should not be able to escape justice by leaving the country where the crime is committed. Extra territorial laws may then serve as a “closing door”. However, even if it is possible for a country to carry out extra territorial prosecutions, there is a broad consensus that the trial of any crime committed abroad shall be held in the country where the crime is committed, since it is foremost a responsibility of that country to bring the offences to justice.

### **6.3.1 A Swedish suspect in Brazil?**

Until now no Swedish citizen has been arrested for a sexual crime in Brazil. However, during my fieldwork an NGO in Natal asked me to follow and assist them with a case where a Swedish tourist (male) should have been involved in sexual exploitation of a 16 year old Brazilian girl. I thought that the Swedish man was arrested in Natal awaiting a trial. When I arrived I got the information that the Swedish man had been visiting Natal as a tourist two years ago. The girl had to some extent been engaged in prostitution with the protection of a *cafetinha*, (female pimp). The girl had been together with the Swedish man in Natal and had also visited him a couple of months in Sweden. According to the NGO, the Swedish man regularly sends her money on a bank account in Brazil. The social assistant at the NGO did not know where the girl was or what she is doing. Occasionally they get information from her little sister that attends the activities at the NGO. The NGO is still engaged in the “case”. I have however difficulties to find out what kind of crime this Swedish man should be charged for. If the man had have sex with the girl for money or other remuneration he could be accused, but this is totally dependent on the girl’s testimony. The likelihood for such a testimony is undoubtedly very small. Why should the girl cooperate with the police if she benefits from the relationship with the man? Maybe she considers him as her boyfriend and wants to marry him. The girl, if heard by the police, would probably say that the man is her “friend” or “boyfriend”. Since the age of consent to sexual activity is 14 years in Brazil, in fact there is no crime. There might be other information, which I do not know. I have however chosen to discuss the “case” because it demonstrates the difficulties to deal with these crimes, even more when a foreigner is involved. An extra territorial prosecution of the Swedish man is of course not in question.

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<sup>110</sup> Evaluation Report of the Implementation of the Code of Conduct in Natal, available at ECPAT/Sweden, Stockholm

However, in order to find out if a Swedish *citizen* can be charge for a sexual crime committed against a Brazilian child, within the Brazilian territory, I have sketched two concrete situations.

In the first case the offender has had sexual intercourse with a 13 year old Brazilian child, which according to the Brazilian Penal Code automatically constitutes *rape* (art 213, 224), since violation is presumed because the child is below 14 years.

In the second case the same offender has paid a sum of money for a sexual activity with a 16-year-old child, which according to The Statute on the Child and Adolescent, art 244 A, constitutes *sexual exploitation of minors*.

The man has in both cases been arrested and heard by the Brazilian police. Due to the Brazilian legislation he is released, either through a bail or because of the rules on Habeas Corpus after 10 days (most probably because the prisons are over crowded ). While awaiting the trial in Brazil, the man manages to escape the country and he has entered Swedish territory. The Brazilian authorities contact the Swedish authorities and request an extradition of the offender. According to the Swedish law, Sweden does not extradite Swedish citizens, except to countries within the European Union.<sup>111</sup> (If the perpetrator was a German citizen residing in Sweden, he could theoretically be extradited to Brazil). The Brazilian authorities may then request Sweden to initiate a prosecution of the Swedish offender, in Sweden. If all conditions required are fulfilled, in practice this would mean that the whole police investigation carried out in Brazil will be transferred to the Swedish authorities. Most probably, in order to facilitate the proceedings, the Brazilian prosecutor in charge of the case in Brazil, has to be present, assisting the Swedish prosecutor on the case. Since it is a norm that the State who carries out the prosecution shall pay the costs, Sweden will carry the total expenses for the prosecution. Then, which regulations permits Sweden to initiate a prosecution of the offender?

The application of the Act on international cooperation in criminal proceedings (1976:10) is according to art 1 restricted to the states that have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters, which is not the cases of Brazil. However, in order to take over the proceedings Sweden is not dependent on this Act. A bilateral agreement on extradition for criminal offences would be sufficient. Even

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<sup>111</sup> The Extradition For Criminal Offences Act prohibits the extradition of Swedish nationals. When Sweden signed the 1957 European Convention on Extradition, it declared for the purpose of the Convention, aliens who are residents of Sweden, nationals of Denmark, Finland, Iceland and Norway, and aliens who are residents of any of these States, may be considered equivalent to Swedish nationals. However, in order to conform to the 1996 EU Convention on Extradition, a Swedish national may be extradited to a Member State of the European Union provided that certain conditions are met. This information can be found at [www.regeringen.se](http://www.regeringen.se).

without a bilateral agreement, Sweden could extradite a person to any country, as long as it is not a Swedish citizen due to the restriction outlined above or to country which applies or where there is a risk for a death penalty. In the sketched cases above, the offender is a Swedish citizen. Brazil has neither acceded the 1972 Convention, nor is it a Member State of the European Union, and an agreement is not elaborated between Sweden and Brazil. Therefore chapter 2 in the Swedish Penal Code will be applied.

According to the regulations in this chapter, a Swedish citizen, an alien residing in Sweden or even a person who temporary stays in the country<sup>112</sup> and who has committed a crime outside Sweden is liable under Swedish law and in a Swedish court. However, in order for the Swedish courts to have jurisdiction, the act must be criminal both in Sweden and in the country where it was perpetrated, e g Brazil in this case, thus requiring *double criminality* for prosecution (2:2 § section 2). In addition, the sanction for such a crime may not exceed the maximum penalty prescribed for that crime under the law of the country where the crime was committed (2:2§ section 3).

In the *second* case sketched above, the offence by the Swedish citizen constitutes *sexual exploitation of minors* according to the Brazilian law (ECA 244 A), which renders a punishment of 4-10 years imprisonment. According to the Swedish Penal Code, the crime *seduction of youth*, (*förförelse av ungdom*) (6:10 §) can be charged against a person who, by giving compensation or promising such, obtain or try to obtain sexual intercourse with minors under 18 years of age. This statute is applied in Sweden to the sexual exploitation of youths in street prostitution or in other similar circumstances. The penalty for this crime is between six months and 2 years imprisonment. Thus the requirements outlined above are fulfilled, and the courts in Sweden have the competence to prosecute a Swedish national for having committed this crime against the 15-year-old Brazilian child.

In the *first* case the sexual violence constituted *rape*, according to the Brazilian Penal Code, which renders a punishment of 6-10 years imprisonment. Among the statutes in the Swedish Penal Code that protect children from sexual contact with adults is *sexual intercourse with a child below 15 years*, which is equivalent with the common law statutory rape. This crime applies regardless of whether obvious coercion has taken place in the course of the act. Consent of the child has thus no mitigating effect. The crime carries a maximum penalty of four years imprisonment (6:10 §). The requirements outlined above seem thus fulfilled. *However*, as mentioned in chapter 5.1, the Brazilian Penal Code (1940) requires under that parents or legal guardians file a former complaint on the behalf of the under aged

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<sup>112</sup> To be able to prosecute persons who only stays in Sweden, the punishment for crime must, according to the Swedish legislation, be above six months imprisonment.



victim, before the offence can be proceeded in court. (The statute on *sexual exploitation*, which came into force in the year 2000, does not have this requirement). If a former complaint is not given, such a case would be archived in Brazil.<sup>113</sup> This procedural rule is not equivalent with the Swedish legislation. The question is then whether the double criminality requirement is fulfilled, which is required in order to carry out an extra territorial prosecution in Sweden. This situation is not regulated in the Swedish legislation. In the Act on international cooperation in criminal proceedings (1976:10), 12 § the *opposite* situation is regulated, e.g. when only the Swedish legislation requires a former complaint, in order to initiate a proceeding, but not the other country, Sweden may prosecute an offender, even if the competent person (victim) in that other country, has not filed a former complaint, but is informed about the opportunity to raise an objection to the prosecution within a certain limited time.

Since only the opposite situation outlined above is regulated in the Swedish law, The Office of the Prosecution General, International Department in Stockholm ( Riksåklagaren) will make the interpretation that the Swedish regulation 2:2 § section 2 has to be applied. This gives that since a prosecution will not be initiated in Brazil, due to the fact that a former complaint was not given by parents or legal guardians, the offence does not carry any legal responsibility in Brazil, the offence does not carry any legal responsibility in Sweden either. The double criminal requirement not fulfilled.

The Swedish Penal Code, 2:2§ section 1 p 7, states that for crimes that carries a minimum penalty of four years, a crime committed abroad by a Swedish national (resident or a person who stays in the country), can be charged for in Sweden although the double criminality requirement is *not* fulfilled. This regulation is motivated by the idea that some crimes are regarded heinous crimes and should under any circumstances be brought to justice, independently in which country the crime is committed. However, *sexual intercourse with a child below 15 years*, carries a lesser minimum penalty than four years imprisonment (the crime carries a maximum penalty of four years), which anyhow is an impediment for an extra territorial prosecution. If the offence, according to the Swedish legislation (6:1 § section 3) would constitute a heinous rape (*grov våldtäkt*), the crime carries a minimum punishment of 4 years imprisonment, which means that the crime could be charged for in Sweden. In order to apply this statute, the Swedish law requires that the victim has been exposed to cruelty, serious violence or disease or that the victim is specifically young at age (a little child).

Consequently the Swedish authorities have competence to prosecute the offender in the case of sexual exploitation, e g money is involved in the

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<sup>113</sup> Theoretically, judicial authorities could probably find solution to the situation . But this is according to the information I have received normally the procedure in Brazil.

sexual violent act, and where no former complaint are required in the Brazilian legislation, while it has *no* competence in the first case of sexual violence (sexual intercourse with a child below 15 years), where no commercial element is involved, but where a former complaint is required in Brazil. (One has to ask what the Brazilian Congress actually intends to protect?) *If* the sexual crime would constitute a heinous rape (grov våldtäkt) according to the Swedish legislation, an extra territorial prosecution would be possible. This would mean that Sweden, due to the Brazilian and Swedish law in combination, actually is a free haven for Swedish citizens who have committed a sexual crime against a Brazilian minor, however not a heinous rape, but still having violated the child sexually within the Brazilian territory. Since the offender is a Swedish citizen, Sweden neither would extradite the person, nor carry out an extra territorial prosecution. The child victim is legally unprotected, the abuser remains unpunished and may continue to abuse another child. This must be objectionable for the Swedish sense of justice, considering that the offence is committed to a child and also contemplating on the idea of extra territorial jurisdiction; the offender shall not be able to escape justice by merely leaving one territory and entering another.

### **6.3.2 Removal of the double criminality requirement**

In the debate on commercial sexual exploitation of children, Sweden has been criticised for keeping the double criminality requirement since it should hamper an efficient extra territorial prosecution and also that it is not compatible with the principle of the best interest of the child as set forth in the CRC.

The 1998 Swedish parliamentary committee on sexual crimes has proposed the removal of the double criminality requirement for serious sexual crimes committed abroad against persons below 18 years old, as well as a renewal of the section of sexual crimes in the Swedish Penal Code. Rape, sexual exploitation of minors, seduction and procuring are considered serious sexual crimes. Abolishing the double criminality requirement would in practice mean that any comparison in the other countries legislation is no longer needed. It is enough for an extra territorial prosecution that the act is criminalized in the Swedish Penal Code.

In the above sketched case with the Swedish citizen who had sexually violated a 13 year old Brazilian minor in Brazil ( see 6.3.1), the abolishing of the double criminality requirement would decisively solve the situation , the offender could be charge for the crime in a Swedish court room.

The practical effects of such a change should however generally not be over emphasised. If a specific act is not criminalized or considered specifically serious in another country, which is then the position of the Swedish

authorities? The Swedish court is still as much dependent on the political will and investigation efforts by the foreign authorities as before. This is not clearly analysed in the proposal, but is noted by bodies to which the proposal is referred for consideration. If e.g. the Swedish authorities should act there has to be a serious interest in bringing the crime to justice in the country where the crime is committed. Since investigations are considered exclusively domestic affairs, Swedish authorities cannot themselves investigate in a crime in another country. Thus the political will in “host countries” is a crucial factor for the Swedish courts to act. The legal environment reflects the political environment and unless a state and its society give priority to its children the laws will not protect them. In the end it is a question of how the child is view upon.

Even if there exists police officers, prosecutors and judges in Brazil, not able to bribe, and who are committed to bring perpetrators of sexual offences against minors to justice, the corruption is a social cancer at every level within the Brazilian society, which indeed has to be taken in consideration. In addition, sexual crimes, commercial or not, are difficult to prove. For the matter of sexual exploitation, both a sexual activity and a commercial element must be proved. The police claim that in order to get evidence they have to make blitzes in hotel or motel rooms and catch the offender in action (red handed).<sup>114</sup> In order to enter a motel or hotel room- not just anyone or everyone- the police need substantial information. This information can come from their own observations, from anonymous denouncements or from the minor prostitutes. The other crucial element, lack of resources ( or political will) will hinder efficient investigations. In Fortaleza e.g the special police unit for crimes against children has attendance between 8 a.m. and 6 p.m., while most of these kind of crimes occurs at night time.<sup>115</sup> Further on, the minor prostitutes, often using false documents showing that they are at least 18 years of age, are inclined to protect their clients and might report to the police if they have been exposed to any violence or perhaps if they do not receive the sum agreed. Moreover, which also is serious; there seems to be a lack of routines to bring the victims to the forensic medical institute, which is of major importance in order to carry out successful prosecutions in Brazil. As mentioned, the Swedish courts are still as much dependent on the political will and investigation efforts by the foreign authorities as before the abolishment of the double criminality requirement.

Finally, the moral value of such a change seems to be of some importance, demonstrating that Sweden does not tolerate that its own citizens commit

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<sup>114</sup> Interview 1, 7, 8 and 10

<sup>115</sup> Interview 10.

serious sexual crimes to any child in any country. The change will probably go into effect in mid of 2003.<sup>116</sup>

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<sup>116</sup> SOU 2001:14. Sexualbrotten. Ett ökat skydd för den sexuella integriteten och angränsande frågor. Betänkande av 1998 års Sexualbrottsutredning. (The *sexual crimes. Increased protection of the sexual integrity and adjoining questions* (author's translation)) Mr Alhem compares the removal of the double criminality requirement with the criminalization of the sex buyer in Sweden. The law has very little practical effect since it is almost impossible to catch the customers, but it has a moral value showing that the Swedish society does not accept prostitution. There are however reference bodies who hold that since the practical effect is very small, it decreases the creditability of the law.

## 7 Final Conclusion and Recommendations

Children's vulnerability to any form of exploitation justifies international legal protection and cooperation between countries. Today there is an obvious consensus that cross-sectorial and international cooperation is needed and might be the only way to combat CSEC. The international community does play a vital role by rapidly adopting conventions and standards, showing that the problems are taken seriously. This is however not enough. The important, difficult and interesting part is to turn these provisions into concrete measures at a national level.

Using the concept of supply and demand, I have raised the overarching questions: To what extent does Brazil legally and through other means protect their minors from being sexual exploited through prostitution? How does Sweden protect Brazilian minors from being sexually exploited by its nationals? How can the responsibility of the countries be defined?

As I in Sweden started to look for information on child prostitution in Brazil I read reports and articles available on the internet, claiming that sexual exploitation of children in Brazil was becoming the country's next catastrophe. The problem was described as a *ticking bomb* and western child sex tourists were if not invading Brazil at least a very important reason for the exploitation. The amount of Brazilian children falling victims of prostitution annually, increased the closer to the First World Congress in Stockholm 1996, the reports were issued. Some estimation reached beyond statistical probability e.g. 500.000 children *every* year! Much of the information lacked research or method references. Considering that no one can accurately assess the extent of the problem, spreading such information might be a way to make the society react on these serious crimes and to push politicians and international donors to reallocate money for the struggle. And indeed it gives effect. It is however important when trying to describe the issue, in order to preserve strength and believe that it is *possible* to find solutions to the problem of child prostitution, to handle estimations with care and avoid sensationalism and emotional outrage. We are not fully aware of the nature and extent of commercial sexual exploitation of children in Brazil or elsewhere perhaps not whether the problems are increasing or not. It is however an incitement to invest in further research to try to find this out. Moreover it is too easy to point out Brazil, by its locals or others, as one of the most popular countries for child sex tourists as it is to put the guilt for sexual exploitation of children on developed countries.

*Sex tourism and the responsibility of Sweden*

There is a saying that “the tourist feels no shame”. To some extent it is certainly true. Sustainable tourism includes awareness of the economic inequality between rich and poor countries or regions and the responsibility, which accompanies this consciousness. The implementation of the “Code of Conduct” is a valuable instrument in this sense. ECPAT Sweden together with WTO and with the support of the European Union, have by initiating and developing the project in Natal, in the Northeast of Brazil, demonstrated how developed countries can take a responsibility of trying to prevent its nationals from taking sexual advantage of the vulnerability of a Brazilian minors, informing of the criminal nature of such an offence. I would however recommend ECPAT to handle estimations with a little more care. When UNICEF in Brazil claims that the estimation of 500 000 child prostitutes in the country is scandalously high, and that figures used from the organisation has been withdrawn, this statement shall be respected as being the reality of Brazil.

There are several Swedish NGOs active in Brazil, which sponsors good projects carried out by Brazilian NGOs working in this field. I would recommend them to continue to sponsor research projects in order to get more adequate data on the theme. This is an adequate contribution in the international cooperation.

Extra territorial prosecution is as pointed out a valuable tool among others to prevent sex tourism. Sweden has this possibility. Experiences show however that there are several difficulties connected to such a prosecution, which is dependent on investigation efforts in the foreign country. The abolishing of the double criminality requirement will generally not facilitate the process. Even if it is possible to carry out extra territorial prosecution, the trial of any crime committed abroad shall at first hand be held in the country where the crime is committed, since it is foremost a responsibility of that country to bring the offences to justice. It might be easy to get trapped in the belief that it becomes a responsibility of Sweden to take care of what Brazil does not care for or does not prioritise. The expenditures of extra territorial prosecutions shall in addition not be underestimated. However, as the 1940, Brazilian Penal Code on sexual crimes is an ancient legislation, which under some specific circumstances requires of a former complaint by the victim’s parents or legal guardians, thus hampering an extra territorial prosecution in Sweden, the abolishing of the double criminality requirement (for serious sexual crimes committed against children abroad), indeed has a practical effect. A Swedish offender could when having raped a Brazilian child be brought to justice in a Swedish court room under Swedish law.

Research has shown that when there is substantial contact between law officials on a higher level in different countries, prosecutions may be carried out successfully. I would however assume that Swedish law officials *at this moment* do not have enough incitements to initiate specific contacts with Brazilian judicial authorities. Prevention aspects are important but demand resources. The Swedish resources may be better used to work out those

problems of sexual violence and exploitation of minors, which occur in Sweden. This does not exclude what may become of the future. One of the Swedish tourists who annually travel to Natal might end up in a Brazilian or Swedish court room, which will shed new light on the situation. Perhaps this study can serve as a modest contribution to facilitate the process.

There are however good reasons for the judicial authorities in *Fortaleza* and *Natal* to develop contacts with their equivalents in Italy, since there are indications of a sex trade, which involves minors.

### *Child Prostitution and the responsibility of Brazil*

One of the purposes of the study aimed to try to recognise factors within the Brazilian society, which increase the vulnerability of children and adolescents to sexual exploitation. To raise questions seems to me, as a Swedish citizen, with perhaps the same proportionate extent of sexual violence against minors in my own country but in different forms, somehow more reasonable than serving answers. Brazil does not lack any knowledge in this field, except sufficient research of the extent of the problems, but it seems to be improving. However, when it comes to defining the responsibility for the exploitation, it is *Brazilian* minors who enter prostitution or fall victims of sexual exploitation. There are always fundamental structural problems within every country that generate child prostitution. In the case of Brazil, poverty, underdevelopment, inequitable socio-economic structure, dysfunctional families, corruption, lack of education, urban-rural migration, gender discrimination and irresponsible adult behaviour are all contributing factors to create an environment where the Brazilian minors are likely to be vulnerable to sexual exploitation. Therefore it is in the first place the Brazilian government and the Brazilian people who have to find strategies to solve the problem, according to the nature and extent of how the problem appears in *Brazil*, not in Asia or other parts of the world. The problem of sex tourism becomes in this sense not the biggest challenge, even if must be dealt with. This is even clearer considering that the foreign sex tourism represents a minority of the abusers compared to the local demand and the sexual abuse facing some Brazilian children within their homes. This does not exclude adequate international cooperation at any point. Crucial for every effort is however that Brazil has to face to what extent it actually tolerates children in prostitution. How is the Brazilian children view upon in relation to adults? To ratify international conventions and pass national laws is the easy task for every government, but to turn the provisions into a reality always remains a the bigger challenge. No country wants to be identified in a shameful light within the international community, especially as it may render negative economical consequences in terms of decreasing trade balances and tourism which has a substantial impact on countries economies. The pressure to create policies, adequate laws and to strengthen the law enforcement in Brazil, increases with the international pressure, whereby the World Congresses on Commercial Sexual Exploitation of Children have played a crucial role. One

can however not avoid contemplating on what theme that will become the next decades *hot topic* on the international political agenda, which will result in a such world wide political movement, as in the case of commercial sexual exploitation of children in the 90ies and 2000, (in the 70ies starving children in Africa were in international focus, in the 80ies, the street children and extra juridical killings in South America drew lots of international attention).

The Federal and State Governments have undertaken legislative and other preventive measures to enhance protection of the right for the Brazilian minor not to be exposed to sexual violence, which is positive. The recent legislation on sexual exploitation and prostitution of minors, article 244 A in the Statute for the Child and the Adolescent (ECA) is an improvement, whereby a former formal complaint by parents or legal guardians are no longer needed in order to proceed the case in court. Thus the state takes the full responsibility for the protection of the sexually exploited child, i e when a commercial element is involved. However, by categorising sexual crimes within the private sphere, the legislators behind the 1940 Penal Code, which is used on sexual crimes without a commercial element, aimed to protect the victim against the shame that surrounded a sexual crime and the trial. This is the motive behind the requirement of a formal complaint. The victim has been given the opportunity to initiate a legal proceeding or not. There are reasons to question the preservation of such a system. The legislation has to reflect today's morals and values. The victim's or the family's shame, which probably was socially very harmful to the victim in the Brazilian society before the second world war, cannot legitimise that the state today, in the year 2003, avoids to fully protect children from sexual abuse. Shame, which is intimately linked to guilt shall not guide the choice of system, especially not when children are the victims. It is the public prosecutor's task to lead the process; a victim is naturally vulnerable and might feel shame and guilt due to the nature of the crime and the public light in a court room. If a child is sexually violated and none of parents or legal guardians, who are not the perpetrators, (otherwise the act becomes unconditionally a public action), are interested in filing a complaint on the behalf of the child victim, the public prosecutor must *archive* the case. The legal guardianship could theoretically be taken from the parents but in practice this is complicated. The underage victim will remain legally unprotected, the perpetrator goes unpunished and may continue the abuses. In addition, which is very serious as well, such a requirement would be a concrete obstacle for an extra territorial prosecution of a Swedish citizen who has committed a sexual crime against a Brazilian minor within the Brazilian territory and has escaped justice in Brazil.

The conduct of the victim is a focal point within the judicial process to prosecute a sexual crime. Rather than focusing on the existence of the legal elements of the crime in question, the practices of some defence lawyers - sustained in turn by some courts - have the effect of requiring the victim to demonstrate the sanctity of her reputation and her moral blamelessness in



order to exercise the remedies legally required. In addition, the Penal Code makes a big difference in gender, excluding the man as a target for sexual violence and it demonstrates interest in guarding actually the costumes, when such crimes should be regarded and categorised as crimes against the individual. A Bill has been presented to the National Congress proposing changes concerning sexual crimes such as removing some derogatory language. Some of the sexual crimes are also proposed to be sorted under the category “crimes against the individual liberty”<sup>117</sup> However, this is a small change. In order to harmonise with national or international requirements to protect the child against sexual violence and severely punish the perpetrator as set forth in the Brazilian Federal Constitution, a fundamental modification of the Brazilian Penal Code on sexual crimes is strongly recommended, which includes the abolition of requirement of a former complaint in order to proceed a sexual crime in court.

The Brazilian child rights organisations are essential in the struggle for the child rights in Brazil, which includes raising awareness of the problem of child prostitution and sex tourism in the country. Moreover some NGOs are immediately responsible for implementing child rights, which is a disputable issue. At date it seems however necessary as there is often more knowledge and experience among the NGOs than among state officials. Some mean that the work should be carried out by the federal and state governments and totally within their budgets. Today most of the Brazilian NGOs are to a large extent still dependent on international funds.

The Brazilian economy is burdened upon a huge debt. Some people hold that it might be a breach of human rights to prioritise the pay off to its actual extent as long as a large part of the people lives under shameful conditions. This is a complicated question which not can be dealt with in this context. Fernando Cardoso, the former President of in Brazil has however said that Brazil is not a poor country; it is an *unjust* country. The perverse distribution of income between different sections of the population would appear to be a major factor behind enjoyment of the most basic rights of Brazilian children and adolescents. Most fundamental is the right to adequate education, set forth in the Convention of the Rights of the Child, The Worst Forms of Child Labour, the Optional Protocol to the CRC, and of course in the modern Brazilian legislation for the protection of rights of children and adolescents. Adequate education is a legal right, and a fundamental strategy to prevent social problems, including child prostitution is available by making this right a reality for the Brazilian children. According to Prof. Wilber A. Chaffee, author of *“Desenvolvimento: Politics and economy in*

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<sup>117</sup>International Bureau for Children’s Rights (IBCR), *Second Hearings on Commercial Sexual Exploitation of Children, Fortaleza, Brazil*, May 1998, [www.ibcr.org](http://www.ibcr.org). See also projeto do lei n 1609/96 (law proposal), [www.precidencia.gov.br](http://www.precidencia.gov.br). To change laws in Brazil takes time. The old Civil Code is dated 1916 and it has taken 26 years of discussions to pass a new Civil Code, which has come into force in Jan 2003. Due to the long process, parts of it are already obsolete, according to Mauricio Pinheiro, lawyer at Cedeca/Bahia in Salvador.

*Brazil*”, (1998)<sup>118</sup>, a fundamental strategy for relieving the inequalities would be a long term commitment to increase the level of education of the Brazilian population. The years of schooling are the most profitable returns on investments in terms of increased gross domestic profit and their income distributional effects. Education, especially of young girls and women, has the advantage of lowering the birth rate and the level of infant mortality. Lower birth rate increases the resources available per child, which in turn increases personal savings, which in turn are available for further social and economical investments. Moreover, education is important in reducing violence, which is a substantial problem within the Brazilian society. People with education (and work) are probably less inclined to participate in violent crimes, may it be that of profiting from sexual exploitation of children or other violent crimes. According to the most recent governments’ figures released in November 1999 and confirmed by the UNICEF, the number of Brazilian children attending schools has increased.<sup>119</sup> This is a positive step in the right direction. However, in order to achieve a real social change in Brazil, there is indeed a far way to go.

As pointed out before, the legal environment reflects the political environment. Unless a state and its society give priority to its children the laws will not protect them. The federal and state governments are bound to take a responsibility to invest resources to fulfil their obligations according to the national legislation, which includes provisions in international instrument. A possible and efficient strategy is to make further investments in the current law enforcement system. The judicial system seems to have very little credibility among the Brazilian population in general. Educating and training police, public prosecutors and judges on the enforcement of the existing laws, aimed at combating sexual violence against children ( for the purpose of this study), is in this sense reasonable and adequate. It is also a reachable way to try to get away with some of the evil corruption and impunity in order to guarantee the Brazilian children their legal rights assured by the Brazilian law.

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<sup>118</sup> Mr Wilber A. Chaffee is professor of government at Saint Mary’s College, California

<sup>119</sup> [www.globalmarch/worst forms of child labour](http://www.globalmarch/worst forms of child labour).

# Supplement

## Salvador, in the state of Bahia

### 1. Interview with judge, Mrs Rita Magalhães

Mrs Magalhães is a judge at the specialised court for crimes against children and adolescents in Salvador., ( *1ª Vara Especializada da Criança e do Adolescente*) She says that the specialized courts for crimes against minors were created five years ago due to the great number of homicides and sexual abuse against minors. Before the legal processes lasted approximately 8-10 years, now they last at a maximum one year.

She cannot estimate the extent of minors in prostitution in Brazil, the estimated 500 000 seem however a bit too high. The media proclaims that the state of *Bahia* has one of the most serious problems of child prostitution in the country but she does not experience this situation in the court. In the last two years she has had four legal proceedings on sexual exploitation of minors, and she thinks that it is about the same amount in the second court. Most of the crimes ( 70%) concern sexual abuse within families. She says however that children of ten years old in are involved in prostitution in *the Amazons* and *Pará*.

Mrs Magalhães has not any idea about the extent of foreign sex tourism in Salvador but according to Cedeca/Bahia (NGO) it is widespread, especially during the carnival. She has however not experienced any case involving any foreign tourist in court. The judge in the second court has had one (1) case last year involving a German man who had sexually exploited a minor boy. The boy protected the German man when testifying in court.

Minors involved in prostitution may be between 15-17 years old. In the advertisements in the newspaper it is easy to identify the young girls. In the adds one may read *bonitinha* or *gatinha* (“sweetheart”, “pussycat”).

In Salvador there are *casa de prostituição* (brothels) used at least by Brazilians and maybe foreign tourists enter there as well but she does not know.

Prostitution itself is *not* criminalized, but to induce or submit a child or an adolescent to prostitution or profit on anyone’s prostitution is a crime. A client can only get punished for sexual exploitation if the sexual act *and* the payment can be proved, which in reality means that it almost impossible to convict him. Moreover, the police do not always investigate in the crimes, she says.

## 2. Interview with professor, Mr. Gey Espinheiro

Mr Gey Espinheiro is professor and researcher at the Faculty of Philosophy and Human Science and at the Federal University of Bahia, (UfBA) He is also involved in training the police in human rights. Due to current police violence and experiences from the period of dictatorship it is a hard work, he says.

He has written two books on prostitution in the city of Salvador covering the period 1970-80. He says that everyone is talking about child prostitution and commercial sexual exploitation nowadays, but the truth is that nobody really knows what is myth and what is the reality. Among the people (35 million) between 14-29 years old the violence is the most serious problem.

Children and adolescents who are sexually exploited exist, but they are quite few. The prostitution was more organised before. Nowadays often “spontaneous contracts” are made, which on the other hand makes prostitution difficult to identify. When most adolescents engage in prostitution, they do it in an occasional, spontaneous way. It has not necessarily something to do with prostitution as a life stile. There are cases when a young person is out of money and a job and she or he might desperately use prostitution as a way of supporting her or a family. Young person’s attraction to partying and to have access to fashion places is also a part of the picture. This is not synonymous with prostitution as an identity, he says.

Prostitution is related to places where there is a concentration of money and tourists, by the beach, *Beira Mar* and around *Mercado Modelo* [ a bigger market place]. *Cantina Galua* is a bar with many tourists. Adult prostitutes go there, but no adolescents.

He personally does not believe that foreign sex tourism is particularly widespread in Salvador.

Mr Espinheiro would estimate a little less than 1 000 persons are professionally involved in prostitution in Salvador today. He thinks that the problem with prostitution is greater in *Recife* than in Salvador. There are German tourists who prefer Brazilian women since they are less “masculine” than German women are.

Mr Espinheiro claims that impunity is significant in Brazil. The Brazilians do not believe in justice; “the law is silent”. Everyone knows that the police are involved in crimes which makes it difficult to discern the police in the street from the criminals. Police officers accused of crimes may continue their duty and impunity creates criminality, “you shoot first and then you ask” he says.

## Recife, in the State Pernambuco

### 3. Interview with police chief, Mrs Conceição de Fátima Ferreira.

Mr Ferreira is police chief of the Police Department for Crimes against Children and Adolescents in the state of Pernambuco (*DPCA, Diretoria de Polícia da Criança e do Adolescente/PE*). She says that crimes committed against minors are still not prioritised and that they are not considered a “real” police force among other police officers. A year ago they worked in a house with almost no furniture and without computers.

She says that denouncements on child prostitution occur seldom. Most of the sexual crimes involve Brazilians committing sexual abuse against minors but it is a “hidden” issue. Cases where foreigners are involved regularly draw greater media attention than when Brazilians are involved. In addition, foreigners are easier for the police to catch since “*they are tall, have money and they are gringos*”, [foreigners].

In a period of one and a half year Mrs Ferreira has dealt with five cases on sexual crimes involving foreigners; Americans, Germans and Europeans[sic!].

About one month ago she arrested a German tourist for having committed sexual exploitation of minor girls at *Boa Viagem* [the beach area ] The German man was reported to police by a 14 year old girl since he had refused to pay for the sexual service, only the motel costs. The German’s name and photo was published in articles in the main newspapers in Recife, headlined “*Sex tourism in Pernambuco!*” His passport was taken from him by the Brazilian authorities and the investigation is at date [ July 13<sup>th</sup> ] in the hands of the public prosecutor to decide on further legal action or not. The motel receipt and the girl’s testimony serve as evidence. According to Mrs Ferreira the suspect had said that he travelled to Recife to “*drink and have sexual contact with young girls*”.

According to Mrs Ferreira the statutes on sexual crimes are formulated too vague thus encouraging discretionary judgements in court. She is more or less convinced that there will be no prosecution or conviction of the man. There exists a flexibility among the judges since prostitution is “open” in Recife. It is the applicability of the the new statute on *sexual exploitation and prostitution of minor*, which is problematic and the hardship lies within the interpretation of the prerequisite “*submeter*”, [to subdue, submit or to force]. The statute implies that it is a crime to submit a minor to sexual exploitation or prostitution. Mrs Ferreira is questioning if she has any legal grounds for having the German arrested when it is *the girl* who has taken the initiative to offer her to the German in exchange for money, and not the opposite, which is the way works in the reality, she says ? Her justification for having the German arrested is that he indirectly had submitted the girl to

offer her self. Through his superior economic position he had seduced the girl and he had taken advantage of her vulnerable situation. The girl lives in the streets since she was about eight years old and she supports herself through prostitution. She shows a jurisprudential article where the matter is discussed and she is worried that she might be charged for authorial abuse by having arrested the man. In addition there is a very little interest in this issue in general and people do not want to interfere in these crimes.

#### **4. Interview with the tutelary counsellor, Mr José Ferreira**

Mr Ferreira is Counsellor at the Tutelary Council (*Conselho Tutelar*) at district 5 in Recife. The Tutelary Council is a committee created in accordance with ECA to protect the rights of children and adolescents. It is entrusted with monitoring the fulfilment of the rights and duties in the law and it applies protective or socio-educational measures for both children and adolescents and their families.

Mr Ferreira does not know about the girl involved with the German tourist, she probably lives in a neighbourhood outside his district.

He has not seen any statistics on the number of minors in prostitution neither in Brazil nor in Recife. Due to the economical situation and the structure of the families the number must however be high. Sometimes when he is on duty service at night in *Boa Vista* (the down town area), teen aged girls come and talk with him about their engagement in prostitution and how much they earn on “this and that” and it is very sad, he says.

The problem with foreign sex tourism is minimal, according to Mr Ferreira. The majority of the sexual abusers are their own nationals and according to recent statistics, of 100 legal processes on crimes against minors, 52 concerns sexual crimes mostly committed by fathers or stepfathers.

A special police unit for crimes committed against children and adolescents ( DPCA) is established in Recife and the amount of crime should have decreased but sexual crimes are still increasing. This is worrying because it marks the child and may lead him or her into prostitution, he says.

Mr Ferreira estimates that there are between 800-1000 street children in Recife and he says that Brazil does not need more institutions for children but instead to make investments in prevention measures as “*bolsa de escola*” (families get money from the government for each child they send to school) which will not cost much money in comparison to how much money Brazil can save. Even if the political will still is weak, Brazil is able to handle this.

## **Natal, in the State of Rio Grande do Norte**

### **5. Interview with prosecutor, Mrs Arméli Marques Brennand**

Mrs Marques Brennand is a prosecutor at the Office of Public Prosecutors in Natal , ( *Promotoria de Justiça da Infância e da Juventude de Natal/RN*) since 9 years. She only handles crimes on sexual and domestic violence against victims at any age. She cannot give any estimation on the total number of minors in prostitution in Brazil but 500 00 is “*not a part of her reality*”, she says. She has not prosecuted a foreign tourist for sexual exploitation or abuse against a minor.

Only ten years ago there were hardly any discussions about sexual crimes, or sexual exploitation in Brazil People in general do not bother about their neighbour and they do not believe in citizenship. She says that the Brazilian mentality is ignorant, banal and egoistic. That is why people can die in the streets without anyone taking notice.

The legislation on sexual crimes it is too subjective and has to be reformed, what is for instance an *honourable woman*, she asks? The new legislation on sexual exploitation of minors [ECA 244 A] is however an improvement of the legislation. Every circumstance of the victim will be taken into consideration, social, psychological and economical thus not putting a responsibility on the minor for voluntarily engage in prostitution. The minor will still be considered a victim of sexual exploitation according to the law.

Sexual exploitation of minors is difficult to investigate. The police and people from the “high society” are among the exploiters. She says that all of a sudden an inconvenient police officer is removed from one area to another and they know that influential people in the society are involved in those removals. To overcome corruption Mrs Marques Brennand and some police chiefs have initiated a strong cooperation in Natal.

### **6. Interview with judge, Mr. José Dantas**

Mr Dantas is a judge at the *1ª Vara da Infância e da Juventude da Comarca de Natal* ; ( 1<sup>st</sup> Juvenile Court in Natal), since 8 years.

He cannot give any estimation on the extent of child prostitution neither in Natal nor in Brazil. The prostitution in Natal is however concentrated to *Ponta Negra* and *Pipa* [ beach areas].

Consumerism is a reason why minors enter prostitution, he says. The girls generally come from low income families and whose alternatives are to work as domestic servants, for a minimum wage of 200 reais a month through prostitution they may earn 500-600 reais a month. It also occurs that families send their daughters into prostitution.

Many motels, hotels and “*casa de drinks*” ( bars) permitting minors to enter have been closed (for 15 days). It is however difficult to investigate on crimes related sexual exploitation, he says. The girls use false documents showing that they are above 18 years old. In addition the prostitutes only reports to the police when they have been exposed to physical violence. Influential persons from the high society and the police are also involved in the sexual exploitation. At one occasion, for instance, the police, the judges and prosecutors together, planned a blitz on a specific location. Once the police arrived to the place, it was all empty (“cleaned”). Since the places are rented, the owners just pick there things and leave and reopen at another place and with another name

He does not know if the age of the girls entering prostitution has decreased. He remembers however a 23- year old woman working in prostitution, who applied for permission for her son to move with her to Italy. She claimed that she had nothing to do in Natal any more since she was considered too old.

According to Mr Dantas there exists organised sex tourism in Natal. Hotels, taxi drivers, *bugueiros* [buggy rides in cars on the sand dunes] are involved. He mentions a criminal network involving drugs, money laundering and prostitution including minors, where permanently residing Italians are responsible. Judges in Natal are cooperating with judges in Italy and with the Federal Police in Fortaleza and Salvador.

Among foreign tourists the Germans and Italians are most prevalent.

## **7. Interview with federal police officer, Mr Moreira**

Mr Moreira is police officers within the Federal Police in Natal. He explains that child prostitution is not within the competence of the Federal Police. When the civil police catches a foreign tourist (DPCA) the Federal Police gets a copy of the investigation and they will take care of the expelling process of the foreigner. Trafficking of women for sexual purposes is however within their competence.

The problem of child prostitution is, according to Mr Moreira, most serious in the Amazons, in Acre and Pará. He refers to a certain sexual liberal culture in these areas.

Mr Moreira lives in a hotel close to the *Praia Shopping Center*. There are lots of Americans and English speaking people in snack bars, restaurants and in and around the shopping centre. It is easy to spot the girls below 18 years old who are mingling with foreigners. Then the situation develops in a way that the Federal Police do not know much about, he says. “When you see the minors and the foreigners outside a motel you can however be sure that it is not a mass they will attend”, he says. It is very difficult to



investigate in these crimes. The only way to get evidence is to catch the abuser in act in the motel room.

Mr Moreira says that the Federal Police suspect that Italians are involved in a criminal network in Natal which besides drug dealing and money laundering, also involves sex trade e.g. trafficking of girls to Italy. Italian nationals invest in tourism in Natal and every week two charter flights from Milano (and Lisbon) arrive at the airport in Natal. Besides Italians and Portuguese, Americans, Spanish, Swedish and Germans are frequently visiting Natal. Some Brazilian women follow tourists to the airport and await other to arrive the same day and there is nothing criminal in that, he says. Concretely the Federal Police is not doing any investigations on the Italian mafia due to lack of evidence and resources. The staff within the Federal Police investigating on foreign issues has been reduced and only urgent matters can be investigated e.g. on air planes and vessels and to carry out expelling processes that cannot wait. It occurs that mothers want a passport for their teenaged daughters to travel to Italy or abroad. The Federal Police knows that the girls might work in prostitution outside the country but cannot do anything to hinder it since the mothers decide for their children.

## **Fortaleza, in the State of Ceará**

### **8. Interview with prosecutor, Mr Carneiro**

Mr Mauricio Carneiro is a prosecutor at the Office of the Public Prosecutor (*Ministério Público*) in Fortaleza. He says that last year there were about 15 criminal proceedings on sexual exploitation and rape of minors committed by foreigners in Natal. One or two of the accused foreigners were not charged guilty due to weak evidence. Americans were involved in three cases, French in three cases and Italians in nine cases.

Normally the police make blitzes at places where teenagers use to gather and abusers must be caught red-handed, (*delicto flagrante*) in order to be put in detention. The suspect has to be released after 10 days of detention and thus he awaits the trial in freedom. While awaiting the trial the suspect has a possibility to leave the country which also happens. The abused girls are sent home to their families and in general they are on the streets on the following day.

The victims are aware of that the law protects them and normally they give all the information during the police investigation and the trial. They tell that the abuser e.g. did not ask for their ID or that they accepted to have sexual activities because the abuser offered money. The accused denies the crimes or argue that the girls seemed older than 18 years or that they were already prostituted.

Mr Carneiro says that in general prosecutors are not used to give high punishments on sexual crimes even though the punishments are higher when minors are involved. Sexual exploitation of a minor is a new crime in Brazil and may render a penalty between 6 – 10 years imprisonment. This is a high punishment in comparison to e.g. robbery followed by homicide which is a more common crime, he says. Italians permanently residing in Fortaleza were condemned as if they were Brazilians, receiving sentences between 7-10 years imprisonment.

According to the Brazilian Constitution rape is considered a heinous crime and therefore not subjected to e.g. bail or amnesty. At the same time these crimes are categorised as offences within the private sphere, meaning that they can only be preceded before court if victims or legal guardians make a formal complaint. This is a contradiction in the Brazilian legislation, he says.

He describes an “atypical” pending case where an adult woman has seduced a 12- year old boy. Since the statute *rape* only protects the female victim it cannot be used in this case. The statute *seduction* only protects a victim who is virgin; *corruption* may only be applied when the victim is between 15 -17 years old and *a violent act of the morals and custom* requires violence or threat to be applied which there was not in this case. Consequently the legislation does not offer any protection to this boy.

.Only in exceptional cases where there is a certain public interest the prosecutors may intervene in the police investigations. Mr Carneiro requests a system as that of The United States ( and in Sweden) where the prosecutor is the chief of the police during the investigations. In general inquiries carried out by the police cannot serve as an evidence in court unless the information is controlled by the Public Prosecutors Office. The investigations have to be carried out twice. This is the major reason why criminal processes in general are very slow in Brazil. There is also a need to separate the Forensic Medical Institute from the control of the police and put it under the control of the Office of Public Prosecutor. Efforts are made to change this system in Brazil.

Mr Carneiro has recently received a Parliamentary Investigative Commission Report (*CPI*) on sex tourism in Fortaleza which indicates that there exist organised criminal nets on drug dealing, money laundering and prostitution where also minors are involved. Mr Carneiro explains the particular presence of Italians in Fortaleza, due to fluxes of this group coming to the city to invest in tourism. As a consequence of Italians buying hotels, *pousadas* (a kind of lodge), restaurants and so forth, it attracts other Italians to also invest or come as tourists. Mr Carneiro together with five prosecutors at the Office of Public Prosecutors are about to evaluate the information and to decide what steps to take.

## **9. Interview with lawyer, Mrs Leila Paiva**

Mrs Paiva is a lawyer in Fortaleza.. She has experienced three cases of sexual exploitation where foreigners were involved; two Italians and one German. She says that the main problem is that the minors are not willing to testify in court. They might be economically or emotionally dependent on the abusers or in general just afraid.

One of the Italian tourists had built a house to a Brazilian woman and her twelve year old daughter with whom he had a sexual relation. He transmitted her with HIV. The neighbours reported the case to the police. The girl did not testify in court. The Italian was convicted in Fortaleza but was transferred to Italy since he had applied that he wanted to die in an Italian prison.

The German tourist supported the children economically and they were not willing to testify against him in court. The German was however caught in act, which was sufficient evidence to convict him. He got the permission to await the trial in freedom, which is the normal procedure and during this time he left Brazil for Germany. German judicial authorities prosecuted the man by the use of extra territorial jurisdiction. Normally they get very low punishment in their home countries, she says.

## **10 . Interview with police chief Mrs Rena Gomes**

Mrs Gomes is police chief at the special department for crimes against children and adolescents ( *DECEDA*) in Fortaleza. She tells about a recent case of minor sexual exploitation. A police officer had registered a middle aged Brazilian salesman picking up a twelve year old girl into his car on a highway nearby a *favela*, [slum area]. The police officer brought the man and the girl to the police station and both had denied that there had been any sexual activity or sexual “commerce”.. Without a testimony from the girl a prosecution of the man is impossible, she says. Mrs Gomes sent the girl to talk to a social assistant and a psychologist but the day after tomorrow the girl she will be back on the highway again

Motels are not brothels but it functions as a “sex houses”, she says. Only by making blitzes during the night trying to catch perpetrators in bed it is possible to get evidence but the police station has only attendance Monday – Friday between 0 8.00 – 18.00.

The lack of control within families is one of the reasons why minors enters prostitution. Young mothers with one or two children to support are often single breadwinners. Some mothers send their daughters to prostitution. Better education, support to the families and long term social programs for children which follows them until they reach 18 years old are crucial factors in order solve the sexual exploitation..

The interpretation of the law has to be uniformed. When is for instance an abuser caught red-handed, she asks.

If the girl is 16-17 years it is hard to assess her age but if the victim is 9-10 years old a perpetrator faces difficulties in court. The accused of sexual exploitation against minors in prostitution often argue in that they didn't realise that the girl was below 18 years. The prosecutors often argue that the perpetrator has a duty to control the age of the girls while the judges consider it a mitigating circumstance if a girl appears older than she is.

## **Rio de Janeiro, in the State of Rio de Janeiro**

### **11. Interview with prosecutor, Mrs Maria Amelia Peixoto**

Mrs Peixoto is prosecutor and coordinator on legal issues concerning children and adolescent at the Public Prosecutor's Office in Rio de Janeiro (*Ministério Público do Estado do Rio de Janeiro*) since 10 years. She is assisted by two police officers from, *GAP, Grupo de apoio de promotoria* (Prosecutor's Support Group) who are present at the interview.

Mrs Peixoto says that sexual exploitation and prostitution are in minority of all crimes committed against children and adolescents. Sexual abuse within families is however common and in general the victims come from low and middle class families.

The picture of Brazil as a supply country of child prostitution is inadequate and the estimated 500 000 minors in prostitution should be compared with available official statistics. Mrs Peixoto and the police officers mention that the states of *Bahia, Pernambuco* and *the Amazons* have big problems with child labour and probably also with child prostitution.

Regarding the image of Brazil as a favourite sex tourism destination neither Mrs Peixoto nor the police officers would say that the foreign sex tourism has increased the amount of sexual crimes against minors. Brazilian sensuality is something to be proud, they say, and foreign sex tourism cannot be held responsible for children entering prostitution in Brazil. Maltreatment, sexually violence and very bad relations within families are the foremost reasons why children enter prostitution. If poverty alone would be the reason there would be much more people in prostitution in the country. The one million people e.g. that every day enters the central station in Rio de Janeiro to work are poor but they do not engage in prostitution.

The position of children has changed within the Brazilian society since the adoption of *The Statute for Children and Adolescents* [ECA] ten years ago and people are not afraid of denouncing sexual crimes on minors as before. She mentions that in all there are about 2 000 denouncements on sexual exploitation or abuse waiting to be investigated, either formally registered at

the police station or anonymously reported to *Abrapia*, [NGO in charge of the national hotline on sexual exploitation]. Due to several reasons sexual exploitation is difficult to prove, she says, and it would be easier to achieve evidence if it was allowed to provoke crimes. The amount of brothels has decreased in Rio de Janeiro and nowadays contacts with prostitutes often go through a telephone number which leads to another and so forth. Another problem is that the victims generally cooperate during the police investigations but when testifying in court they sometimes keep quiet or they do not appear at all. Moreover, there is corruption within the police. Some police officers are directly involved in sexual exploitation, she says. Even if many of the 2 000 denouncements lack substance there is still a big gap between the amount of denouncements compared with the amount of police investigations and that is the reason why Ministério Público since a year ago requires ongoing investigations from the police department. Mrs Peixoto says that investigations are often so incomplete that cannot be used in a legal process in court. In order to get sufficient process material the Ministério Público has start to cooperate with a group of police officers, GAP, which secretly carries out parallel investigations. GAP has found that important information is missing or is presented differently compared to the information they have achieved during their own investigations. The information achieved by GAP will become a part of the formal process material in court.

## **12. Interview with judge, Mr Siro Darlan**

Mr Darlan is a judge at the *1ª Vara da Infância e da Juventude do Rio de Janeiro/RJ* ( Juvenile Court in Rio de Janeiro). He is known for his engagement in the rights of children and adolescents, often controversial, initiating public debates on parental responsibility, child labour, schooling and street children. He has initiated an education for parents as an alternative to a punishment for negligence towards the children. He is a member of an advising group on social programs for children in Rio de Janeiro.

Mr Darlan says that children and adolescents engaged in prostitution do exist in Rio de Janeiro. It might be more prevalent in the Northeast than in the south of the country since tourist trips to the Northeast are promoted to a greater extent. He questions however how the estimated number of 500 000 children have been counted. No one presents him or herself as a prostitute in the streets and when visiting *Avenida Atlântica* (nightclub) one may find 10-20 adolescent young girls among the adults. Who can however be sure that these girls, who move around on different places, were not the same girls as those counted at another nightclub or bar the night before? he asks. Even when collecting information from the courts, the police or *Abrapia* (the NGO responsible for a national hotline on denouncements on sexual exploitation) such numbers would be just guessing.

The estimated number children in prostitution might be a similar exaggeration as that of the amount of Brazilian street children some years ago.<sup>120</sup> Some people claim e.g. that trafficking of Brazilian children for sexual purpose to other countries is a big problem but this nothing they “live with” he says. There is not much reporting on missing children and there also exists a public unit in Rio de Janeiro, which locates disappeared children. Brazil *has* social problems and is trying to administrate them, and the country *does not* have financial resources to combat all the misery but to proclaim that Brazil is the second country in the world with most children in prostitution without being able to measure it is questionable, he says.

The consumer market is a forceful factor why adolescents engage in prostitution since it is a way if getting the “easy money”. Emotionally disturbed families are another important reason for child prostitution. When parents report that the children have disappeared the Juvenile Court and *Ministério Público* know that in reality the children have escaped violence and sexual abuse at home. This is also the reason why 3 200 children are at institutions in Rio de Janeiro. In the streets these minors are forced to financially support themselves and they become more vulnerable to sexual exploitation. Mr Darlan estimates that there are 700-800 street children in Rio de Janeiro but says that it depends on the weather and season.

When Mr Darlan visited Europe he recognised a priority on children which do not exist in the Brazil. If a public administrator shall chose between investing in a *bridge* or a *school* he will invest in the bridge because a bridge gives immediately visibility to many people while a school does not. This is the main reason why resources directed to children are lacking. Brazilian children are loved and wanted but resources are simply not invested in them, he says.

Brazil is however improving and an important factor is that the Public Prosecutor’s Office ( *Ministério Público*) has started to require the implementation of the law (*The Statute on Children and Adolescents (ECA)*) thus forcing the government to make further social investments. This leads us unfortunately to another serious problem, he says. *Abrapia* e.g. is making a dynamic work in the area of sexual exploitation and abuse of minors but are out of resources. With the change of a Governor social programs get substituted and/or deactivated. The previous government in Rio de Janeiro established a well functioning socio-educational program for girls in prostitution and the current government put an end to it even if the results were good.

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<sup>120</sup> Contrary to what was formerly thought, most of the minors who live in the streets have families and live with their parents. Many of them live with their mother and some live on the streets and have lost contact with their families or see them only occasionally. For that reason, since 1980, a difference has been made between "street children" and “children in the streets." Inter-American Commission on Human Rights, Organization of American States, Country Report on Brazil 1997, ([www.cidh.oas.org](http://www.cidh.oas.org), accessed 2003-03-10).

Mr Darlan says that Brazil is known abroad for its sensual population, music, beaches and its tropical climate but that the country has an international reputation for being a favourite destination for sex tourists is nothing he is proud of. The Federal Government has launched a campaign calling for the tourist agencies not to promote sex tourism in order to cope with the marketing and offering Brazilian women and adolescents abroad. It is however very prejudicial against the Brazilian women to associate her with prostitution as it is to claim that the Brazilian culture is a favourite place for child sex tourism. Thailand and other Asian countries are open doors for sexual exploitation of women and children; this is not something typical for Brazil.

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