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ПРАВА РЕБЕНКА

**Доклад, представленный Специальным докладчиком по вопросу о торговле детьми,
детской проституции и детской порнографии Хуаном Мигелем Петитом**

Добавление

ПОЕЗДКА В ПАРАГВАЙ*

* Резюме доклада по итогам этой поездки распространяется на всех официальных языках. Сам доклад содержится в приложении к настоящему резюме и будет распространен на языке представления и на английском языке.

Резюме

Специальный докладчик по вопросу о торговле детьми, детской проституции и детской порнографии находился в поездке по Парагваю с 23 февраля по 5 марта 2004 года. Он посетил такие города, как Асунсьон, Энкарнасьон, Сьюдад-дель-Эсте, Пресиденте-Франко, Эрнандарьяс, Санта-Рита, Лос-Седралес, Коронель-Овьедо и Педро-Хуан-Кабальеро.

Эта поездка Специального докладчика свидетельствует о готовности ряда учреждений Парагвая сотрудничать со специальными процедурами Комиссии по правам человека, которые могут содействовать процессу укрепления демократии в стране. Именно в этом духе и проходила поездка Специального докладчика.

В контексте нищеты и социального неравенства, которыми характеризуется ситуация в регионе и самом Парагвае, сексуальная эксплуатация детей и подростков является реальностью. Проблемы, связанные с сексуальной эксплуатацией, как то сексуальные домогательства, жестокое обращение с детьми и практика использования детей в качестве домашней прислуги в обмен на питание, кров и даже базовое образование, имеют широкие масштабы. Не вызывает никаких сомнений, что проблема торговли людьми затрагивает и Парагвай, однако такие аспекты, как масштабы и особенности этой проблемы, а также связь с организованной преступностью пока еще не анализировались. В ходе своей поездки Специальный докладчик уделил особое внимание положению в районе, где сходятся границы трех государств, а именно Парагвая, Аргентины и Бразилии.

У значительной части детей нет свидетельств о рождении. Лица, не имеющие удостоверений личности и, соответственно, никаких прав, уязвимы перед любой формой эксплуатации. Специальный докладчик настоятельно рекомендовал правительству принять необходимые меры для обеспечения того, чтобы все парагвайцы имели свидетельства о рождении и чтобы регистрация актов гражданского состояния являлась надежным и доступным механизмом.

Существующие законодательные и нормативные рамки, касающиеся детей, соответствуют принципам, которые закреплены в Конвенции о правах ребенка. Задача состоит в полном осуществлении Кодекса законов о детях и подростках и предусмотренной в нем децентрализованной Национальной системы комплексной защиты прав детей и подростков. Приоритетным направлением работы является создание, формирование и укрепление муниципальных советов по вопросам защиты прав детей и подростков.

Что касается системы отправления правосудия, то осуществлению этого Кодекса должно способствовать создание во всех судебных округах специальных судов, а также включение в состав сотрудников национальной полиции экспертов, специализирующихся на вопросах защиты прав ребенка.

С учетом слабости институциональной структуры государству следует незамедлительно заняться решением социальных вопросов. Необходимо укрепить учреждения, с тем чтобы они могли согласованно решать такие сложные проблемы, как сексуальная эксплуатация. Правительству следует содействовать налаживанию взаимодействия между различными учреждениями в этой области с целью поддержки соответствующих инициатив, например инициатив министерства иностранных дел, при котором в конце 2003 года была создана межведомственная группа для изучения проблемы торговли людьми и повышения уровня информированности по этим вопросам.

В культурном контексте, где по-прежнему преобладает мужской шовинизм и терпимое отношение к сексуальному и бытовому насилию, весьма распространенными являются чувство безнаказанности и неверие в правосудие. Специальный докладчик настоятельно призывает правительство расследовать случаи коррупции или бездействия со стороны полиции и сурово наказывать виновных. Специальный докладчик считает, что для того чтобы разорвать порочный круг безнаказанности, о котором свидетельствует отсутствие или лишь небольшое число жалоб, главную роль в деле выявления случаев сексуальных домогательств и жестокого обращения, равно как и трудовой и/или сексуальной эксплуатации, должны играть, прежде всего муниципалитеты, а также преподаватели.

В стране отсутствуют специализированные учреждения, которые бы оказывали помощь жертвам сексуальной эксплуатации, и этот вопрос заслуживает самого пристального внимания. С учетом имеющегося опыта рекомендуется создать и укреплять специализированные центры по оказанию помощи жертвам.

Кроме того, Специальный докладчик хотел бы отметить, что он был глубоко взволнован вестью об ужасном пожаре в одном из крупных магазинов в Асунсьоне, который произошел спустя несколько месяцев после его отъезда из страны и в результате которого погибли более 400 человек, в том числе дети и подростки. Этот случай потряс все парагвайское общество и явился важным рубежом в жизни страны. Специальный докладчик считает, что этот случай еще раз подтверждает необходимость наличия государства, которое должно активно и решительно защищать права своих граждан, быть

способным принимать меры с целью урегулирования и контролирования ситуаций, когда жизни людей угрожает опасность, при первой же необходимости обеспечивать активное участие гражданского общества, а также транспарентный доступ к информации. В этой связи Специальный докладчик дает высокую оценку усилиям, предпринятым Национальным секретариатом по делам детей и подростков с целью удовлетворения потребностей детей, ставших прямыми и косвенными жертвами этой трагедии.

Приложение

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INTRODUCTION

1. The Special Rapporteur on the sale of children, child prostitution and child pornography visited Paraguay from 23 February to 5 March 2004. He would like to thank the Paraguayan Ministry of Foreign Affairs and, in particular, its human rights department for their valuable help in organizing a busy schedule. The visit was seen as a milestone in the consolidation of democratic change in a country that had been under dictatorial rule for several decades.
2. The Special Rapporteur would like to express his sincere gratitude to the United Nations Children's Fund (UNICEF) for its admirable support during the visit. He would also like to thank the International Labour Organization (ILO) for assistance in drawing up the schedule, the United Nations Development Programme (UNDP) for logistical support and the other agencies represented in the United Nations country team for being so open to dialogue. The Special Rapporteur had lengthy meetings with the country team at the beginning and end of his mission, and these helped him to understand the national context and to involve the country team closely in the visit. The country team subsequently expressed interest in following up on the recommendations contained in this report.
3. The visit began and ended in Asunción, passing through Encarnación, Ciudad del Este, Presidente Franco, Hernandarias, Santa Rita, Los Cedrales, Coronel Oviedo and Pedro Juan Caballero. The Special Rapporteur had the opportunity to meet representatives of the most relevant institutions and organizations during a hectic schedule that included over 70 meetings and contacts with 570 individuals. He met representatives of the executive, the legislature and the judiciary. In particular, he had the honour to meet the President of the Supreme Court, the Minister of Foreign Affairs, the Minister for Children, the Minister for Women, the Deputy Minister of Education, the Deputy Minister of the Interior, the Ombudsman and members of Congress. Away from the capital, he met representatives of the three branches of government and several mayors.
4. The Special Rapporteur met representatives of non-governmental organizations (NGOs) and civil society. He would like to say a special thanks to Rosa María Ortiz, a member of the Committee on the Rights of the Child and deputy director of the NGO Global Infancia, for being such a great help in the preparations for the visit.
5. The Special Rapporteur also visited the Archivo del Terror (Archives of Terror) in Asunción, the prisons in Ciudad del Este, Coronel Oviedo and Pedro Juan Caballero, and two indigenous communities near Pedro Juan Caballero (the Pyryt̃y and the Panambĩy). These visits gave him a broader picture of the human rights situation in the country. The purpose of the visit to the Archivo del Terror was to offer symbolic support to the democracy-building process,

which must include remembrance and documentation of the crimes committed between 1954 and 1989 by the Stroessner dictatorship. In this context, the recent establishment of the Truth and Justice Commission should be hailed as a step forward.

I. CONTEXT

6. The transition to democracy in Paraguay took place only 15 years ago. The country does not have a long history or culture of efficient, stable and lasting democratic institutions. Its institutions are of recent date and need support if they are to become stronger.

7. This is the context to the Special Rapporteur's visit, which he made in response to a standing invitation from the Government of Paraguay to Commission on Human Rights mechanisms issued in 2003 at the Commission's fifty-ninth session, marking Paraguay's first term of membership of the Commission.

8. Paraguay is one of the countries with the highest levels of social inequality in Latin America. The richest 10 per cent of the population account for 40 per cent of total income, while the poorest 40 per cent survive on barely 10 per cent.

9. The population is young: children and young people (up to the age of 17) account for 48 per cent of the total population. Some 42 per cent of children under the age of 14 live in poor households where their basic minimum needs are not met¹.

10. There is still a strong macho and authoritarian streak in a culture that sees women as sexual objects who should resign themselves to a passive role. Authoritarian teaching practices that compound the devaluation of children persist in schools.

11. The sexual exploitation of children takes place against this background of poverty and inequality, and is the main focus of this report.

II. SEXUAL EXPLOITATION

A. Forms

12. The sexual exploitation of children and young persons is a fact of life in Paraguay. As in other countries, it is difficult to quantify the problem and the available statistical data do not adequately reflect its complexity. Nevertheless, the picture that emerges from the information, documentation and evidence received by the Special Rapporteur shows that the problem does exist in Paraguay.

13. About two out of three sex workers are minors. Most of the young people who are the victims of sexual exploitation are aged between 16 and 18 and began working in the sex trade between the ages of 12 and 13. Girls as young as 8 are involved. Some 98 per cent of these youngsters receive between 30,000 and 50,000 guaraníes (US\$ 5-8) for a sex act.² Some girls told the Special Rapporteur that they prostituted themselves for even less - 5,000 guaraníes or a meal.

14. In addition to their traditional haunts, such as the street or brothels, prostitutes work mainly out of shopping centres, discotheques, nightspots, hotels, massage parlours, truck drivers' stops and bus stations. There are also bars and *copetines* (rough and ready sales points for alcohol) that are in actual fact fronts for brothels. A dense but invisible prostitution network stretches from the poorest districts of cities to the major crossroads and rural areas. Every city has its undercover brothels, which range in number from 7 or 8 in Los Cedrales or Santa Rita to 107 in Coronel Oviedo. In most cases, the barman is the pimp, or procurer.

15. In Asunción, most of the victims of sexual exploitation have come from the hinterland with tales to tell of broken family ties, rape and sexual or physical abuse within the family. They have had very little education. Penniless and deprived of affection, they find the relationship with their pimp - their only point of reference - very hard to break. However, sexual exploitation does not affect only the lower socio-economic groups: there is evidence that young people from better-off families are also exploited for the purposes of prostitution and pornography under cover of activities such as "modelling".

16. There are clear indications of a link between sexual exploitation and organized crime. Threats against various people whose work brings them into contact with the victims of sexual exploitation, such as justices of the peace, officials working for the municipal councils on the rights of children and young persons (CODENIs) and teachers working with street children, show that there are powerful and dangerous forces at work in and profiting from the underground economy generated by sexual exploitation. The situation in border towns and cities where drug trafficking is rife, such as Capitán Bado, in the department of Amambay, is particularly worrying. The murder rate in this town of 15,000 inhabitants is shockingly high - up to 42 murders a month. Efforts by the police and the courts to investigate and deal with this phenomenon have so far been ineffective.

17. In Pedro Juan Caballero, the Special Rapporteur was told that there are powerful men in Amambay who take young girls to their ranches, in effect buying them from their parents for a small sum of money. The girls live on the ranch like girlfriends until the master of the house tires of them, and they end up as prostitutes or drug couriers.

1. Trafficking

18. There is no up-to-date nationwide analysis of the trafficking in human beings from, to and through Paraguay. Evidence that it takes place was found time after time in the cities visited and points to a widespread problem, even though the debate on the issue has barely begun.

19. Paraguay's borders are very vulnerable and permeable, and checks by immigration officials are rare. In Encarnación, Paraguayan nationals are checked by the police, not by immigration officials. The Special Rapporteur pointed out this anomaly to the Deputy Minister of the Interior and was informed by the Government in November 2004 that it had been corrected.

20. In Ciudad del Este, approximately 5,000 people cross the border with Brazil every day. One immigration official called it "an open door". Children who cross the border are not checked. The Itapúa Secretariat for Women received a number of oral complaints from mothers saying that their children were supposed to be studying but had been trafficked to Spain. In 2003, 15 young persons between 12 and 17 years of age were rescued in Pedro Juan Caballero after being trafficked to Brazil. The cooperation of the San Pablo Child Protection Council in rescuing them made it possible to trace the route followed by the traffickers, through Pedro Juan Caballero, Bonito, Campo Grande and San Pablo.

21. These cases show that the risk of being trafficked is high if the institutional response is inadequate, partly because the authorities such as Interpol whose job it is to investigate them have no statistics on trafficking and sexual exploitation.

2. Child pornography

22. Although Paraguay has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, child pornography is not classed as an offence or crime in the Criminal Code. It is currently not possible to prosecute individuals who commit acts defined as child pornography in the Optional Protocol. A bill that would criminalize child pornography has been prepared by the National Secretariat for Children and Young Persons and is now before Congress.

23. The Xiscatti case that was brought to the Special Rapporteur's attention illustrates the need for appropriate legislation. In this case, a photographer was prosecuted for producing a series of photographs of naked girls. The photographs were posted on the Internet on a site accessible in return for payment. The photographer had signed contracts with the girls' parents stipulating that the girls would be photographed "in the nude", which is not an offence even if the girls are

young. Under Paraguayan law, such contracts constitute no offence other than that of being contrary to “morality and common decency”, which renders them null and void even though they do not constitute an offence as such.

B. Related issues

1. Sexual abuse, child abuse and domestic violence

24. The majority of child victims of sexual exploitation have suffered sexual and/or physical abuse before turning to prostitution. Sexual abuse, domestic violence and child abuse are some of the factors that leave children most vulnerable.

25. The level of sexual abuse and domestic violence against children, especially girls, and women is alarming. The Itapúa Secretariat for Women dealt with 1,200 cases of violence against women in 2003. Four or five cases a week are reported to the Amambay Secretariat for Women. In Ciudad del Este there are about 15 cases of abuse, domestic violence or ill-treatment a day. In Presidente Franco, there are between two and five reports of abuse a week.

26. Notwithstanding the high number of complaints, many more cases are thought to go unreported. Some research in primary schools shows that 10 per cent of children say they have suffered some form of ill-treatment in the home, school or community.³ The President of the Supreme Court has said that there is still “a culture of accepting sexual abuse and domestic violence”. And according to the justice of the peace in Los Cedrales, “Paraguayan women’s devotion to marriage is such that they will bear the unbearable until they die, so that for them to dare to file a complaint means that life must be hell for them”.

27. The level of sexual abuse helps explain the large number of early pregnancies, many of which result from relationships with members or friends of the family. Since attempted illegal abortions are one of the main causes of maternal deaths, the serious consequences of violence against girls and women become even more apparent.

28. The Special Rapporteur is also concerned at the high incidence of cases of abuse and domestic violence aimed at disabled children.

2. Birth certificates

29. It is estimated that between 15 and 20 per cent of Paraguayan children (about 250,000-300,000) have no birth certificate. They do not exist in the eyes of either the

law or the State, and are in no position to exercise their rights. This leaves them vulnerable to all kinds of exploitation and violence.

30. To obtain a birth certificate, a live-birth certificate issued by the hospital is required, but since in Paraguay only half of all births take place in hospital, people in remote areas or those who are less well off find it difficult to register a birth. The Ministry of Justice, with the help of the Ministry of Health and some local councils, is trying to remedy this situation by running campaigns to register children born in remote areas.

31. By law the initial birth certificate is free of charge, but in fact most registry officials, who work in an unpaid capacity, illegally charge between US\$ 1 and 10, which is a lot of money for the poorest people.

32. The register itself is not reliable. It is old and not computerized, and contains 14 million documents and 70,000 books; this enormous quantity of documents lends itself to all kinds of irregularities.

3. Child labour

33. Child labour is a serious problem in Paraguay. Working children accounted for 21 per cent of all children in 2001, with 242,000 children between the ages of 10 and 17 working. Their main occupation was farm work (40.8 per cent of them were doing this).

34. Although child labour is one of the causes of school drop-out and poor attendance (4 out of 10 working children do not go to school), and despite the way it impoverishes working children, culturally speaking, child labour is seen as a positive thing and as part of the country's tradition.⁴ Moreover, basic education is not free in practice. The cost of school uniforms, writing materials, transport and so on forces many children to work so that they can study. One group of NGOs opposed the ratification of the ILO Convention concerning Minimum Age for Admission to Employment (No. 138). The Special Rapporteur met two representatives of a youth movement that defends children's right to work as a way out of poverty. He respects the view of these working children and their right to express their opinion and take an active part in the debate on social issues that affect them. However, he notes that Convention No. 138 is based on the premise that the progressive elimination of child labour is a prerequisite for the full realization of the rights of the child.

4. Domestic work (*criaditas*)

35. Many sexually-exploited girls were once servant girls (*criaditas*), domestic workers who live with a family and are highly vulnerable to all kinds of abuse and rights violations. Paraguay has a long history of using servant girls, and it is estimated that there are about 40,000 of them between the ages of 6 and 12, including 12,000 in Asunción. Most of them are from the hinterland, from small villages or the countryside, and live with middle - or upper-class families, performing various domestic duties, supposedly so that they can go to school, though they do not always do so.

36. The fact that the servant girls are not part of a family makes it impossible for them to develop the healthy relationships needed for the development of a rounded personality. One of the most dramatic consequences of this is sexual abuse of the girl by a member of the family and her subsequent sexual exploitation as she seeks to escape from this situation.⁵ All of this makes domestic service an intolerable form of child labour that must be eradicated. However, as the exploitation of child domestic workers is culturally acceptable, its eradication will depend on social change rooted in an education system that promotes children's rights from an early age, on the media and on the cultural impact of society's various agents of change.

5. Indigenous children

37. The indigenous population of Paraguay numbered some 85,674 persons (about 1.5 per cent of the population) in 2002, and is growing strongly. It is a disadvantaged population that suffers from an accumulation of discrimination and social deprivation of all kinds, such as high rates of malnutrition and low rates of school attendance. In the department of Amambay, the Special Rapporteur visited the Pyrytĩ and the Panambiĩ indigenous communities and observed at first hand the terrible deprivation and intimidation they have to endure. Their communities are threatened by Brazilian landowners who want them to abandon their land. Two individuals from the indigenous community were killed, and another disappeared. There has also been an increase in the cultivation of large plantations and crops (including soya) and in the widespread use of pesticides by landowners, which affect indigenous people's ancestral lands and their health. As a result of intimidation and the lack of means of subsistence, many indigenous people are leaving their communities to go to the cities, where they find themselves in a vulnerable situation. Thus, in the prison in Pedro Juan Caballero visited by the Special Rapporteur, 5 of the 11 inmates were indigenous persons.

6. Young persons in conflict with the law

38. Approximately 400 young persons are in prison; 251 of them are in a centre separated from adult prisoners. The Special Rapporteur is concerned about those young persons who are held alongside adult prisoners and who are not properly separated from them as required under international standards, and for whom there are no special rehabilitation or social reintegration programmes.

39. In June 2004, the Supreme Court signed an agreement to cooperate with UNICEF in a pilot project to deal with young offenders. The Special Rapporteur welcomes such initiatives and recommends that, once the pilot phase has been evaluated, the necessary steps be taken to ensure that all young offenders systematically follow a rehabilitation programme.

40. The Special Rapporteur visited the prisons in Ciudad del Este, Coronel Oviedo and Pedro Juan Caballero. Witnesses told him of young prisoners and women inmates being abused by other prisoners or by prison officers. Some juveniles are in prison for stealing, an offence that is currently punished more severely than rape and that should be less severely punished. The space for juveniles is very limited, even though relatively simple measures could improve their conditions. For example, the car park for police vehicles in the prison in Coronel Oviedo could be used as a recreational area for inmates. In the prison in Ciudad del Este, young persons could be rehoused in a separate wing currently accommodating 80 adult prisoners.

7. Children and public opinion

41. Some parts of public opinion and the media tend to stigmatize children. Children are not viewed as subjects of rights but as a source of problems. An image of children at risk is often used to suggest they are a factor in people's sense of insecurity. The Special Rapporteur would like to suggest that all sides in the public debate should bear in mind that children in situations of social risk are a warning sign, indicating that there is a far bigger hidden problem that needs to be tackled with new and innovative social policies. The most typical example of this sort of attitude is people's attitude towards street children. Much of the debate on children focuses on street children, as they pose a clearly visible problem even though the number of children concerned is in fact small.⁶ Over-simplification of the problem often leads to calls for a quick and radical solution. This idea lends itself well to the purposes of the media and politicians, but fails to get to the root of the problem. The problems affecting children are complex and will not be solved by forcing street children into institutions or locking them up, but by means of prevention programmes, shelters, the involvement of NGOs, and work in the communities and districts with the most problems.

42. The Special Rapporteur is concerned at the way the information presented to the public is manipulated. For example, in an article on his visit to the prison in Ciudad del Este, instead of reporting on the abnormal conditions and violations committed against juvenile prisoners and condemned by the Special Rapporteur, the article printed the names of the juvenile prisoners, the crimes they had committed and the court that had sentenced them. This is in clear violation of the principle of non-interference in children's privacy and confirms the readiness of some parts of the press to stigmatize children.

43. In order to help persuade public opinion to respect the rights of children and young persons, the Special Rapporteur supports initiatives such as the one by the Agencia Global de Noticias (Global News Agency), which is working together with journalists, the media and State-owned and civil-society organizations to improve press coverage of issues concerning children and young persons.⁷

III. ADOPTION

44. As pointed out by the Committee on the Rights of the Child in 1997,⁸ Paraguay had a serious problem with trafficking in babies for intercountry adoptions. Between 1990 and 1995, approximately 3,000 babies left the country as a result of intercountry adoptions that were riddled with irregularities.⁹ Most of these babies were taken to the United States.

45. Act No. 1,136/97 marked the break with this irregular situation and with the view of the child as an object of care. Under the Act, the Adoption Centre acts as a central administrative authority in adoption matters. Since the centre came into operation a good deal of effort has gone into putting an end to trafficking in babies for intercountry adoptions. This is a notable achievement, especially in a country with limited resources that has had to withstand pressure from powerful international forces. The Adoption Centre needs to be strengthened by giving it an adequate budget for its work.

46. The Special Rapporteur shares the view of the director of the Adoption Centre and the Minister for Children that the country should not be opened up to intercountry adoption. He is also concerned at the possibility that discussions may be opened on amending the Adoption Act, as this would give the most powerful parties an opportunity to pressurize institutions into allowing intercountry adoption once more. The continuing problems with domestic adoptions should be resolved before intercountry adoptions are allowed. At the domestic level, some people are abusing custody for the purposes of adoption and circumventing the provisions of Act No. 1136/97 relating to the process of guaranteeing the child's identity and maintaining family ties, which is compulsory prior to the adoption hearing.

IV. LEGISLATION

47. Great progress has been made in recent years in ratifying international instruments and passing legislation.

48. Paraguay has ratified the core international human rights instruments. In 2003, it ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It also ratified the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) and the ILO Convention concerning Minimum Age for Admission to Employment (No. 138). The United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, were adopted by Congress in December 2003 and May 2004 respectively. All that remains to be done is to complete the formalities for depositing the two instruments.

49. The 1992 Constitution grants constitutional status to the rights of children and young persons.

50. In 2001, Paraguay adopted the Code on Children and Young Persons, which was drafted in line with the principles of comprehensive protection. The Code establishes a system for the protection and promotion of children's rights.

51. The Criminal Code penalizes a number of offences related to sexual exploitation: trafficking in persons, trafficking in minors, sexual abuse of children and wards, statutory rape, procurement, living off immoral earnings and sexual molestation.¹⁰ However, the penalties for these offences are light: for example, the Code provides for a penalty of up to five years' imprisonment or a fine for procurement.

52. As has already been mentioned, pornography is not classed as an offence. Nor is there legislation to protect the victims of sexual abuse or exploitation.

53. With regard to the prevention of the sexual exploitation of children, legislative action should focus on banning any media advertisements that encourage or publicize the commercial sexual exploitation of children or young persons.

54. The criminal legislation of the countries of the Southern Common Market (MERCOSUR) has still not been harmonized. The most advanced instrument in terms of cooperation in the fight against crime is the MERCOSUR Protocol on Mutual Legal Assistance in Criminal Matters,

signed in 1996. It is vital that Paraguay should incorporate the Protocol into its domestic legal system.

55. Paraguay is also a signatory to the 1999 General Plan on Mutual Cooperation and Coordination for Regional Security in MERCOSUR, Bolivia and Chile. In 2000, the MERCOSUR Council adopted a supplement to the General Plan, on trafficking in minors between MERCOSUR States.

56. These instruments deal with coordination between the police and courts in MERCOSUR countries and could enormously facilitate efforts to combat sexual exploitation in the region. In this context, the proposal by the local committees on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region for a tripartite agreement on mutual legal assistance in criminal matters in that region is an initiative that deserves support.

V. ADMINISTRATION OF JUSTICE

57. Cases of sexual exploitation or any other offence must be reported to the police or the public prosecutor. The victims, or a person acting on their behalf, can also report the matter to the local CODENI or a body such as the Secretariat for Women, which will turn the case over to the prosecution service. There is a need for more ombudsmen for children and young persons, as well as for more resources and staff for their offices. The prosecution service and court for children and young persons is required to take all necessary steps to protect children and young persons. Following a complaint, the prosecutors of criminal offences conduct an investigation and are responsible for bringing charges against suspects. The investigative phase lasts six months; this is followed by the preliminary hearing and then by the third and final phase, the trial.

58. In many cases, this procedure for punishing offences and compensating victims does not work. There is an overwhelming feeling that this kind of crime goes unpunished, which undermines democracy and community relations and increases mistrust of the legal system. This feeling was expressed by several very different speakers, ranging from the Minister for Children, who spoke of “massive impunity”, to a youngster from a deprived area who summed up the feelings of many of the young people in her neighbourhood when she said, “We’re really angry with the police, the prosecutors and the judges.”

59. Behind the reluctance to report incidents are the fear of reprisals, mistrust of the legal system, limited or non-existent knowledge of individuals’ rights, lack of resources and fear of stigmatization in a culture that accepts abuse, violence and exploitation as inevitable and as

something that has to be put up with. In addition, many victims do not see themselves as victims.

60. The joint efforts of several institutions, including the CODENIs and the departmental secretariats for women, to make people aware of the importance of reporting incidents have led to an increase in the number of incidents reported.

61. However, most reports are not followed up either by the police or by the prosecution service. The Encarnación CODENI sent a letter to the Minister for Women complaining about the failure by the police, prosecutors and judges to take any action in cases of domestic violence. A justice of the peace in Encarnación told the Special Rapporteur that he felt powerless in the face of the inefficiency of the legal system in cases of sexual abuse or exploitation: “The victims are victims twice over. As a justice of the peace, I can issue a restraining order against the abuser, but the police do not enforce it. I feel powerless because justice is not done and I can only weep with the victim.”

62. The fact that it is difficult if not impossible to keep the victims and the persons exploiting them apart is a key issue facing all the institutions concerned. Restraining orders against the abusers or exploiters are often not enforced, as the police do not have the means or the will to ensure they are observed. In other cases, the victims are pointed in the direction of a shelter that can help them. The absence or shortage of such shelters was pointed out in every place visited. Although the lack of shelters and of special programmes is a real problem, this does not justify the institutions’ failure to act or their frequent attempts to pass on the blame to other institutions.

63. Attention was repeatedly drawn to the police’s inability to conduct investigations into cases of sexual exploitation, as well as to significant pockets of corruption. Special measures will be needed to eradicate and prevent police corruption.

64. These shortcomings can be attributed in part to a lack of technical expertise in dealing with the victims of sexual exploitation and investigating complaints about it. The Code on Children and Young Persons provides for trained police officers who are experts on children’s issues, but this provision has not yet been put into effect.

65. The limited capacity available for investigating offences of sexual exploitation is also evident in Interpol, which has no statistics at all on the cases of trafficking and sexual exploitation investigated by it.

66. Even more worrying are the allegations of police corruption and failure by the police to act: there are so many allegations that they cannot be dismissed as isolated cases, but must be

seen as a structural problem in a police force that needs to modernize its structure and working methods.

67. Prosecutors point to difficulties in producing evidence of procurement or living off immoral earnings, highlighting the need for up-to-date technology. The prosecution service also points to the urgent need for a training course on children's rights and the principles of comprehensive protection. Such a training course is also needed by the ombudsmen for children and young persons, who report to the Office of the Ombudsman.

68. As far as the judiciary is concerned, the Code on Children and Young Persons requires the establishment of special courts. These have not all been set up as yet: there are only 6 juvenile criminal court judges - about 20 per cent of the number needed - 1 juvenile appeal court, 15 courts for children and young persons and 7 magistrates' courts for children and young persons. However, the Special Rapporteur welcomes the creation, thanks to a budget increase, of a further six juvenile criminal courts, nine courts for children and young persons and two magistrates' courts for children and young persons.

69. The Special Rapporteur would like to draw special attention to the initiative to set up human rights units within the various public authorities, including in the system of justice. This is one way to introduce a rights-based approach in institutions, and deserves to be supported.

70. The human rights unit in the Supreme Court is a training and research unit working on children's, indigenous and gender issues.

71. The Public Prosecutor's Office also has a human rights unit, which is responsible for dealing with reports of human rights violations.

VI. INSTITUTIONS, POLICIES AND PROGRAMMES

72. Many Paraguayan institutions are no older than the country's democracy. It is therefore particularly commendable that Paraguay, as a country in transition, should have made such progress in recent years in its legislation, particularly in the Code on Children and Young Persons and the new criminal procedure. The fragility of its institutions is structural in nature; the State is not present in those areas where it should be vigorously defending the rights of the weakest. This should be remedied by investing heavily to build up the institutions responsible for social policy (in the fields of education, children, health and the family) and to strengthen the national system for the comprehensive protection and development of children and young persons. Unfortunately, the institutions encountered by the Special Rapporteur were very weak and lacking in human and/or financial resources, had little technical capacity and received

limited State support. In the hinterland, local institutions complain that the State is not involved in social policy: “The State is not involved, and the little that is done is done locally, with community support”, according to the mayor of Encarnación. However, the Special Rapporteur would like to point out that there are underused human resources and capacity, and this leads him to think that it would be possible to develop new social welfare networks.

**A. The institutional framework established by the Code
on Children and Young Persons**

73. The Code on Children and Young Persons establishes a national system for the comprehensive protection and development of children and young persons to prepare for and oversee the implementation of national policy in that regard.

74. At the top of the institutional pyramid is the National Secretariat for Children and Young Persons, which has ministerial status. The Secretariat should give top priority to the full implementation of the Code, particularly by supporting the establishment and strengthening of CODENIs and the departmental councils for children and young persons.

75. The National Council for Children and Young Persons is a joint body that formulates and monitors public policy on children.

76. The Special Rapporteur acknowledges the work done by the Secretariat for Children and Young Persons in establishing the departmental councils, and urges it to continue with that work, since only 7 of the 17 departments in the country have such councils.

77. Pursuant to the Code, CODENIs are set up and funded by town councils to provide a permanent and free service for the protection, promotion and defence of the rights of children and young persons. So far, about half of the planned CODENIs have been set up. The NGO Global Infancia has done and continues to do a remarkable job of supporting the establishment of CODENIs, staff training and institution-building. The task of institution-building is one that will have to be taken over by the State, in this case by the Secretariat for Children.

78. In the few years since they have been in operation, and with almost no resources, CODENIs have become - virtually unchallenged - a byword for the protection and promotion of children's rights at the local level. Their prominence in the field of children's issues, when combined with the inaction of other institutions (particularly the system of justice), has led many people to file complaints and requests that are outside the CODENIs' field of competence and beyond their capacity. In some cases, CODENIs have become extra arms of the courts.

However, they cannot be expected to deal on their own with problems such as trafficking in children or the sexual abuse of children, especially where organized crime is involved.

79. CODENIs are all short of resources. This severely hinders them in their work, even though they have made themselves indispensable in a very short time for their strategic role in the defence of children's rights. The examples of CODENIs with few or no resources speak volumes. In Presidente Franco, the CODENI is not operational because it has no premises. In Los Cedrales, the CODENI has been in existence for a year but has never had a budget and is staffed by a single volunteer. In Asunción, only 10 of the municipality's 6,000 civil servants work for the CODENI. The Asunción town council's failure to give the CODENI its full backing not only affects the children and young persons who receive no help, but also the functioning of the comprehensive protection system, in which it is a very important link.

80. The Special Rapporteur recommends that the Government should, as a matter of urgency, provide CODENIs with the financial, material and human resources to enable them to do their job, set up and run effective departmental councils and strengthen the National Council for Children and Young Persons with a view to monitoring the plans adopted. Lastly, the Special Rapporteur would like to commend the staff of the CODENIs, who, despite the lack of resources, have shown great dedication and done vital work to help children. It was heartening to see young volunteers in the CODENIs in small towns taking such a modern approach to children's issues.

B. Public policy

81. The national plan for the prevention and eradication of the sexual exploitation of children and young persons was adopted in December 2003. The plan was drawn up following a broad participatory process and inter-agency consultations.

82. The National Council for Children and Young Persons monitors the implementation of the plan. Success indicators would be useful for monitoring progress towards the plan's objectives.

83. The Special Rapporteur is concerned at the lack of a budget for the implementation of the plan. Without a budget, the plan will remain a dead letter, reducing the Government's chances of dealing effectively with the sexual exploitation of children.

84. Attention is also drawn to the adoption in December 2003 of the national plan for the prevention and eradication of child labour and the protection of young workers, after a full process of consultations. This plan too, however, has no budget.

85. In July 2003, the National Council for Children and Young Persons adopted the national policy on children and young persons and the national action plan for children and young persons, which provide an even more detailed reference point for policies and programmes relating to children.

86. The Special Rapporteur found no evidence that the national policy or its accompanying plan are being used as strategic guides by institutions or other bodies dealing with children's issues.

C. Programmes

1. Programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region

87. In 2001, ILO started up its programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region (where the borders of Argentina, Brazil and Paraguay meet).

88. Local committees on the prevention and elimination of the commercial sexual exploitation of children and young persons, consisting of representatives of public and private institutions, were set up in Ciudad del Este (Paraguay), Foz do Iguazú (Brazil) and Puerto Iguazú (Argentina). A tri-national committee consisting of representatives of the local committees from these three towns was also set up.

89. Institutional coordination was not easy at first, but now the institutions are connected in a network and know more about the issues surrounding the commercial sexual exploitation of children and young persons. The triple-border committees are perhaps the only example of institutional coordination in dealing with these issues. They show how institutional coordination requires a good deal of investment but is vital to the sustainability of a policy.

90. The programme has an important training component aimed at key players such as teachers, the police, officials from the Public Prosecutor's Office and the judicial system, community workers, trainers and opinion-formers. Guides and training manuals were produced for the various groups.

91. In a campaign against sexual abuse and exploitation, 12,000 handouts were printed, radio and television commercials were broadcast and a complaints hotline was set up to forward complaints to the Public Prosecutor's Office.

92. The Centre for the Comprehensive Care of Victims of Commercial Sexual Exploitation was set up. As it is the only centre of its sort in the area, it is under pressure to deal with cases outside its remit, such as cases of sexual abuse.

93. One noteworthy part of the programme is the training offered by the Esperanza Foundation to some 500 families of youngsters who have been victims of commercial sexual exploitation on how to set up a micro-enterprise to boost family income.

2. Luna Nueva

94. Luna Nueva is an NGO that runs a programme of comprehensive care for victims of sexual exploitation at its La Casa centre and in its ongoing outreach activities in the streets and brothels of Asunción.

95. After preparatory work by street teachers, Luna Nueva proposes what it calls a “multistage journey back to life” for girl victims of sexual exploitation. Girls who agree to embark on this journey are invited to sign a written agreement. The journey takes about three years and falls into five stages: welcome, integration, exploration, life plans and training for life.

96. In the initial phase, the street teacher establishes contact with the girl in the street or brothel. When the girl starts to visit La Casa, she is taken in hand by a woman teacher who introduces her to the other girls and to the way the centre works. La Casa offers a range of activities and workshops. The Special Rapporteur would like to underline the professionalism of the centre’s working methods, which, when combined with the exceptional personal commitment of the teachers, make it an experience that should be taken as a model to be copied elsewhere in the country and region.

3. Global Infancia

97. In collaboration with the Ministry of Education and ILO, the NGO Global Infancia runs a scheme to provide comprehensive care for children doing domestic work in other people’s homes in Greater Asunción. The scheme has made it possible to remove 445 children from domestic service or situations of exploitation.¹¹

98. Once again, the Special Rapporteur would like to commend Global Infancia for its outstanding work and for its support in the process of setting up CODENIs and training their staff.

4. The Social Expenditure Project

99. Although it is not directly related to the issues covered by his mandate, the Special Rapporteur would like to draw attention to the Social Expenditure Project set up jointly by the Ministry of Finance, UNDP and UNICEF. The project provides straightforward, accessible and transparent information on social expenditure under the national budget in relation to progress towards the millennium development goals in Paraguay.

100. The project offers the Government and citizens valuable guidance on where to channel social expenditure and how to organize priorities with a view to achieving the millennium goals.

5. Local initiatives

101. Apart from the programmes mentioned above, there is no organized effort to tackle the commercial sexual exploitation of children and young persons. A few small-scale local initiatives have been taken, such as the establishment of shelters that depend on relatively inexperienced volunteers from the community. This shows the pressing need to channel public and private funding towards the development of initiatives and programmes put forward by civil society.

102. One local initiative that deserves to be highlighted is the establishment of 120 women's committees in the department of Itapúa to provide social support and perform voluntary work at the community level. One of their functions is to make people aware of the need to encourage victims to report violence and abuse. Small initiatives of this kind help to strengthen the social fabric of the community by creating a sense of solidarity.

VII. CONCLUSIONS

103. Against a backdrop of poverty and inequality in the region and in Paraguay, the sexual exploitation of children and young persons is an indisputable and alarming phenomenon. There are other serious problems related to sexual exploitation, such as sexual abuse and the exploitation of child domestic workers. There is evidence of trafficking in human beings in Paraguay, although there is no up-to-date analysis of its extent, characteristics or connection with organized crime. New social programmes and preventive measures are needed, and the State and civil society need to pool their resources to build up a proper system to protect the rights of children in situations of social risk.

104. Children without a birth certificate account for a large proportion of the people with no identity or rights, who are vulnerable to all kinds of exploitation.

105. Democracy and its institutions have only recently been introduced in Paraguay. Building a culture of dialogue, consensus and institutional cooperation takes time, especially in a place like Paraguay, where there is no convenient historical precedent for a strong democratic culture. The country's institutions are obviously fragile for this reason. Although valuable progress has been made in terms of legislation and programmes, the State has still not achieved as much as it should have in the protection of children's rights, nor is it doing everything it could be doing. International and regional mechanisms for the promotion and monitoring of human rights can help guide the country through the process of consolidating democracy and in its policy decisions. In this respect, Paraguay's openness to international human rights mechanisms like the special procedures of the Commission on Human Rights is a positive sign of Paraguayan institutions' determination to move forward with an agenda of institutional reform and democracy-building.

106. The Special Rapporteur notes that the construction of a modern democracy - one that is fair, participatory and tolerant - will require a gigantic effort, with the role of the younger generation being crucial, especially in the design of innovative social programmes.

107. Significant progress has been made on the legislative front, with the ratification of international instruments and the adoption of the Code on Children and Young Persons. The challenge now is to implement them and, in particular, to actually put into practice the system for the comprehensive protection of children and young persons.

108. The national plan for the prevention and eradication of the sexual exploitation of children and young persons provides the framework for political action.

109. There is a widespread sense of impunity for crimes of sexual exploitation. Allegations of police corruption, inaction or complicity in crimes of sexual exploitation and abuse serve to increase and deepen mistrust of the system of justice. This gradually undermines the concept of citizenship that is the foundation of community relations in a free society.

110. There is a lack of far-reaching (coordinated, focused and ongoing) social policies for tackling structural problems such as poverty and social exclusion. The State has still not placed social issues on the political agenda, even though it has a vital role to play in dealing with problems that have been ignored for decades and that require action by, and the reform of, a wide range of institutions. The attitude that still persists in some quarters is that social issues are for NGOs to deal with, but this is a mistaken view that discourages some groups with much to offer. The State must share resources with NGOs, through joint programmes and exchange and monitoring mechanisms, to create a new institutional framework.

111. The ILO programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region is a good example of integrated action to tackle the problem of sexual exploitation. It is also a pioneering experiment in institutional coordination, a concept which Paraguayan institutions have not yet taken on board.

112. There are not enough specialized institutions to deal with the victims of sexual exploitation. Luna Nueva and the Centre for the Comprehensive Care of Victims of Commercial Sexual Exploitation are two models that should be copied elsewhere.

VIII. RECOMMENDATIONS

113. Priority should be given to the full implementation of the Code on Children and Young Persons and, in particular, the national system for the comprehensive protection of children and young persons. The Secretariat for Children should make the setting up and strengthening of CODENIs, and the transfer of resources from central government to town councils to fund them, one of its priorities. As regards the system of justice, the implementation of the Code entails giving full powers to the special courts and training police officers to deal with children's issues.

114. The State must assume its responsibility for tackling social issues, by introducing far-reaching programmes to reduce poverty and social exclusion. The Social Expenditure Project is a positive step in this direction. The State must also lead the fight against organized crime, not only with policing measures but also with social policies and programmes that guarantee basic welfare standards and the protection of the rights of children and young persons. If the State does not take a more proactive role in the defence of the most vulnerable groups, other forces could jeopardize democracy.

115. Paraguayan institutions need to be strengthened so that they can coordinate their approach to complex problems such as the sexual exploitation of children and young persons. It is recommended that the Government should promote the creation of inter-agency coordination bodies, building on and replicating the experience in the triple-border region.

116. The establishment of human rights units in various public institutions, including the justice system, is a creative way of integrating a rights-based approach and should be encouraged.

117. In the area of legislation, the Special Rapporteur recommends that:

- (a) Pornography should be classed as an offence, as provided for in the bill prepared by the National Secretariat for Children and Young Persons;
- (b) Penalties for sexual exploitation offences should be increased;
- (c) Criminal legislation in the MERCOSUR countries should be harmonized; and
- (d) A tripartite agreement on mutual legal assistance in criminal matters in the triple-border region should be concluded.

118. Appropriate mechanisms should be set up to ensure that the national plan for the prevention and eradication of the sexual exploitation of children and young persons is implemented. It is suggested that success indicators should be defined, so that the impact of action under the plan can be measured.

119. The Special Rapporteur urges the Government to investigate and crack down on police corruption and inaction. It is also recommended that a special unit should be set up within the police force to deal with family matters, and that police officers should be trained in how to deal with cases of sexual exploitation.

120. The Special Rapporteur recommends that the system for checking children who cross the border should be improved. He also recommends that a plan should be drawn up on cooperation between Paraguay, Brazil and Argentina in the field of social policies for the promotion and protection of children and young persons.

121. Possession of an identity is a fundamental requirement for the enjoyment of human rights. The Special Rapporteur urges the Government to take the necessary steps to ensure that all Paraguayans have a birth certificate and that registry offices provide a reliable free service. In particular, the Special Rapporteur recommends that:

- (a) Registry offices should be computerized as part of the modernization project already under way;
- (b) Registry units should be set up in hospitals to make it easier for children born in hospital to be registered;
- (c) Mobile registry units should be set up to serve the most remote communities; and

(d) The mass birth-registration programmes overseen by the office of the Director-General of the Registry Office should be continued.

122. Care for the victims of sexual exploitation is a priority area. It is recommended that special centres should be set up for victims, along the same lines as existing projects, which need to be strengthened.

123. The gradual eradication of the system of servant girls must be a priority objective, to be achieved through education, preventive programmes and campaigns to raise awareness of children's rights.

124. Teachers are key players because they can work from school with children and young persons and their families. They have a strategic role to play in preventing and detecting cases of sexual abuse and in forwarding complaints, including those related to sexual exploitation, to the appropriate authorities. It is recommended that teachers throughout the country should receive training like that provided under the programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region and the project to provide comprehensive care for children doing domestic work in other people's homes in Greater Asunción.

125. Recognizing the efforts and achievements made by Paraguay to put a stop to trafficking in babies for intercountry adoptions, the Special Rapporteur agrees with the decision not to open up the country to such adoptions and recommends that the Adoption Centre should be strengthened to enable it to do its work effectively and ensure that custody is not abused for the purposes of adoption. This is the best way to guarantee the legality of the adoption process.

126. The Special Rapporteur suggests that sustainable development programmes should be implemented for indigenous communities. In particular, he recommends that the communities threatened by landowners should be identified and protected. The civil registration of remote communities by means of mobile registry units and the establishment of schools close to the communities would be further steps in the right direction.

127. With regard to young persons in prison, the Special Rapporteur urges the Government to comply with the relevant international standards and to ensure that the young persons are not imprisoned alongside adult prisoners but properly separated from them. In addition, more educational alternatives to the deprivation of liberty and more rehabilitation programmes should be systematically introduced.

128. It is recommended that the Government should seek technical cooperation from the United Nations country team in the implementation of these recommendations. In particular, the country team could provide technical assistance in programmes to eradicate the exploitation of domestic workers, the computerization of registry offices, institution-building programmes and programmes promoting social dialogue, the establishment of centres for the victims of sexual exploitation and the training of their staff, awareness-raising campaigns and mechanisms to monitor the implementation of social policy.

129. It is recommended that international donors should invest in the promotion of children's rights through the comprehensive protection system provided for by the Code on Children and Young Persons. In particular, it is recommended that they should support the computerization of registry offices. The programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region could be replicated in other critical areas of Paraguay, such as the area around Pedro Juan Caballero.

130. To conclude, the Special Rapporteur would like to include a few comments from children in various parts of the country, which were among the many comments recorded during his visit. Perhaps they speak more eloquently than all the foregoing of the huge challenge facing Paraguay: "What is being done to stop girls turning to prostitution?"; "Lots of girls sell themselves while their family is nearby"; "If there were no adult customers, there would be no child prostitutes"; "The judge should talk to children, not impose his rules and ideas on them"; "Because you want affection, you have a pimp before you know it"; "Some parents just don't seem ready to cope with teenage children"; "Everything is easy on the street"; "We never realized we were victims, that we were the ones who needed someone to help us, someone to lend us a hand".

NOTES

¹ López, O., Bachero, A. and Ferreira, I., *Explotación sexual comercial infantil: cuaderno para el debate*, Asunción, 2003, pp. 18-19.

² National Plan for the Prevention and Eradication of the Sexual Exploitation of Children and Young Persons in Paraguay; Moreno, A., Equipo Técnico BECA, *La explotación sexual infantil en Paraguay*, Asunción, 2001, p. 88.

³ Betancourt, J., *Análisis de situación sobre el maltrato infantil*, Asunción, 1999, p. 17.

⁴ Céspedes, R., *Seguimiento de indicadores de la niñez trabajadora de Paraguay*, Asunción, 2003, pp. 14, 29 and 88-90.

⁵ *Diagnóstico cualitativo sobre la situación de niños y niñas criadas en tres municipios de Paraguay*, Asunción, 2002, pp. 90-91.

⁶ In Pedro Juan Caballero, 150 children work in the street but only 50 of them live in the street. In Ciudad del Este, the figures are 320 and 80 respectively.

⁷ www.globalinfancia.org.py/agenciadenoticias/.

⁸ CRC/C/15/Add.75, para. 20.

⁹ Hevia, R., *Adopción en el Paraguay, Compendio de publicaciones 1994-1998*, Asunción, p. 5.

¹⁰ Arts. 129, 223, 135, 136, 137, 138, 140 and 143 respectively.

¹¹ www.globalinfancia.org.py/www/criaditas.htm.
