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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of  
children, child prostitution and child pornography,  
Ms. Ofelia Calcetas-Santos

Addendum

Report on the mission of the Special Rapporteur to the  
United States of America on the issue of commercial  
sexual exploitation of children  
(9-20 December 1996)

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### Introduction

1. At the invitation of the Government of the United States of America, the Special Rapporteur on the sale of children, child prostitution and child pornography, visited Washington, New York, Tucson, Phoenix and San Francisco from 9 to 20 December 1996, to study the issue of commercial sexual exploitation of children in the United States of America.

2. The Special Rapporteur would like to take this opportunity to express her appreciation of the cooperation and assistance extended to her by the Government of the United States of America, enabling her to meet with representatives of many sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner.

3. The Special Rapporteur would also like to thank the United Nations Information Centre in Washington D.C, as well as the New York Liaison Office of the United Nations High Commissioner/Centre for Human Rights for the logistical support provided in connection with her mission.

4. During her visit, the Special Rapporteur met with high-level officials of the Departments of State, Justice, Health and Human Services and of the United States Customs Service, the United States Postal Service and the Federal Bureau of Investigation, as well as with representatives of the police, and non-governmental and children's organizations. During her visit to Tucson, Arizona, the Special Rapporteur met with representatives of the Mexican authorities. In San Francisco, the Special Rapporteur also had the occasion to visit a juvenile detention centre and to meet with juvenile street prostitutes. A list of selected persons and organizations with whom the Special Rapporteur met during her mission is attached as annex I to the present report.

5. The Special Rapporteur also met with representatives of the United Nations Children's Fund (UNICEF) and took part in a strategic planning meeting in New York to discuss the follow-up to the Stockholm World Congress against Commercial Sexual Exploitation of Children.

6. In connection with her mission, the Special Rapporteur was also invited to address the United Nations Association - United States of America annual meeting in Washington D.C. In addition, she participated in a panel discussion organized by the Department of Public Information of the United Nations and the High Commissioner/Centre for Human Rights on the occasion of Human Rights Day in New York.

7. The Special Rapporteur wishes to underline that the present report is intended as a case study of a phenomenon that affects most countries in the world, whether developing or developed. The Special Rapporteur chose to visit the United States of America on the basis of information and materials submitted to her pointing to the existence of child prostitution and child pornography, as well as in order to explore the phenomenon of child

pornography and the impact of the Internet in a developed country. In addition, the Special Rapporteur was interested in exploring the many initiatives already undertaken in the United States, both by the Government and by non-governmental organizations, to combat these problems.

8. In view of financial and time constraints, the Special Rapporteur was not in a position to visit as many places in the United States as would have enabled her to carry out a truly representative study of the various aspects and differing incidences of commercial sexual exploitation of children in such a large country, where geographical, ethnic and cultural factors significantly influence the nature of the problem. The Special Rapporteur, therefore, chose to visit Washington D.C., in order to meet with relevant federal government departments and agencies; New York City and San Francisco, California, in view of the persistent magnitude of the problem in both cities, and Tucson and Phoenix in Arizona, to assess the implications of cross-border traffic between the United States and Mexico for the purposes of child prostitution and pornography.

#### I. COUNTRY SITUATION

9. Outreach workers in New York City estimate that children as young as 5 to 11 years old are forced into prostitution for survival, money, affection and drugs. An estimated 300,000 girls and boys under 18 may be involved in child prostitution and pornography in the United States of America. 1/ Out of 70 million children under the age of 18 that live in the United States, 15.7 million (or 22.7 per cent) are estimated to live in poverty. 2/ There are more than 1 million runaway and "throwaway" young people on the streets at any given time and over one third of them leave home because of sexual abuse. 3/

10. In the United States of America, the recent increase in the existence but also in the awareness of commercial sexual exploitation of children raises many questions about the causes of such a phenomenon in a highly industrialized country.

##### A. Causes

11. According to information provided to the Special Rapporteur in discussions, the children who are most likely to fall prey to pimps, recruiters and abusers are children from farming families in rural and small-town areas in Mid-Western states, such as Iowa, Minnesota and Kansas. There also seems to be a rising trend towards an influx of predominantly white middle-class teenage girls into big cities from suburban areas, such as from Connecticut and New Jersey to New York City, looking for adventure or expanded career opportunities. 4/ Other sources of influx of children to urban conglomerations, such as Chicago, San Francisco and Los Angeles, Seattle, Portland and Minneapolis, are the states of Montana, Idaho and Dakota. In this regard, the Special Rapporteur regrets that she was not able to obtain any specific data on the number of such children, their states of origin or places of destination during her mission.

12. In answer to questions about ethnic, racial and class differences influencing the number of children living in the streets and/or involved in

prostitution and pornography, most experts agreed that, whilst children in marginalized, poorer communities, are presumably at greater risk of being affected, no such pattern can be confirmed. Indeed, child prostitution and child pornography seem increasingly to affect all sectors of United States society, but with varying root causes. If, however, the term "marginalized families" were applied to the ability to function as a family, as opposed to class, ethnic or racial differentiation, then such marginalization would count as the major root cause of child exploitation.

13. The Special Rapporteur can, however, state quite securely that poverty, that is to say economic hardship, per se, is not the primary cause of the commercial sexual exploitation of children in the United States. Nevertheless, one of the causes could be termed a different type of poverty, namely, hunger not for food but for love. In addition, such contributing factors as two-income families, caused by the need for additional sources of income, and migration, caused by a desire for an improved standard of living, could also be classified as poverty-related. The role of the Government in prevention, therefore, lies in revising and more clearly identifying its political priorities and resource allocations.

14. In this connection, it is to be noted that most experts the Special Rapporteur interviewed are of the opinion that broken families and child abuse within families are the main reasons why children run away from their homes and eventually end up in the streets. In addition to runaways, children also live in the streets who are "throwaways", i.e. who have been thrown out of their homes. This presumption is backed up by statistics which show that 1.2 million children run away from home each year and between 1 and 3 million children live on the street or receive emergency shelter services. 5/ It is estimated that 21 per cent of street children are "throwaways". 6/ The Department of Health and Human Services operates 379 runaway shelters nationally, servicing 80,000 children a year, but only one state has additional funding to provide a street outreach programme for young persons at risk of sexual abuse.

15. Reasons cited for children to run away from home are very particular to highly industrialized countries with both parents in full-time occupation, leading to alienation from their children. Children and adolescents also do not receive enough individual care in schools, leading to very little involvement in school activities. A communication breakdown between children and their families and/or teachers often leaves the children without any love, care or affection. The Special Rapporteur was informed that in so-called "bed-room communities" in the outskirts of large urban areas, where both parents are commuters, the most likely time for teenage pregnancies and substance abuse has been identified as between 3 and 7 o'clock in the afternoon, in the "unsupervised" time after school. Aggravating the isolation of children from their families and communities is the often readily available access to symbols of a modern consumer society, namely cars, portable telephones and computers. In addition to increasing mobility, these provide additional lures for children to seek adventure outside their homes and neighbourhoods.

16. From the above, it can be deduced that the primary reason for children leaving their homes in a developed country like the United States of America

is not to earn money through prostitution or pornography but to seek company, affection and "fun", for lack of love and attention at home. Of course, as already mentioned, the new trend of upper middle-class teenagers seeking to enter into prostitution in order to be able to buy the latest designer clothes and to afford the newest technological gimmicks is equally disconcerting.

17. In addition, many experts held that child abuse within the family is also directly linked to children leaving their homes. A non-governmental organization working in the streets of New York holds that almost all children who become prostitutes were physically or sexually assaulted in their homes. These children, not surprisingly with low self-esteem and sexual mores, are most vulnerable to sexual exploitation. In addition, according to information from the Office of Juvenile Justice and Delinquency Prevention, a direct correlation can be established between recorded child abuse victims and juvenile delinquents.

18. The Special Rapporteur is, therefore, especially concerned that statistics and data on commercial sexual exploitation of children, specifically in relation to child abuse, seem to be lacking across the country. If any data are available, they are not disaggregated to show the extent of the phenomenon, since all figures are included in the category of child abuse, which covers many distinct forms of abuse, such as incest and domestic violence.

#### B. Characteristics

19. Once children and adolescents have decided to run away from their homes they frequently become caught in a vicious circle of dependence. With no or minimal financial means and no job, and cut off from family contacts, runaways can easily become dependent on older men or protectors who "rescue" them from the streets. This dependence is often exacerbated by dependence on drugs and alcohol, which in turn may lead to their resorting to prostitution and sex for survival. Therefore, the Special Rapporteur is able to detect a direct correlation between runaway and "throwaway" children who end up homeless in the streets and child prostitution. With regard to involvement in child pornography, the correlation is not necessarily so strong since many children lured into pornography are simply recruited from their neighbourhoods, nearby schools or acquainted families with children.

20. The Special Rapporteur also attempted to determine whether children and adolescents are lured away from home into commercial sexual exploitation by professional recruiters or organized rings of pimps/procurers and criminals engaging in trafficking or sale of children for purposes of child prostitution and child pornography. While it seems that small groups of loosely connected individuals sometimes attempt to recruit children into prostitution or to become involved in child pornography, especially in the Mid-West, organized criminal rings involved in trafficking per se are not known to exist in the United States. The "selling" of a prostitute from one pimp to another, however, does occur and the current rate has been estimated at US\$ 3,000 per girl; whereas the rate for services by girl prostitutes was estimated at US\$ 75 an hour in New York City.

21. One shocking aspect of child prostitution brought to the attention of the Special Rapporteur relates to "second generation child prostitutes". According to this information, there exist cases where pimps have made their teenage prostitutes pregnant, with a view either to increasing dependency or to being able to put a very young child on the prostitution market in view of the increasing demand for younger, virgin prostitutes.

22. With regard to child pornography, it seems that in the United States pornographic materials, such as videos and photos, featuring children, are mainly produced by amateurs for the use of paedophiles and only in limited numbers, in view of the severe penalties applicable to the production, dissemination and possession of child pornography in the country.

23. In connection with substance abuse, it was noted that frequently pimps and procurers try to discourage the use of drugs and alcohol since the prostitute does not "perform" as well when under their influence and consequently does not bring in enough money. On the other hand, the Special Rapporteur was informed that there are an increasing number of "crack prostitutes", predominantly female, who operate without a pimp and sell their body only in exchange for drugs.

24. In connection with children who have either run away from home or have been lured into the streets, it was pointed out to the Special Rapporteur that, if hospitals and medical centres possessed an electronic recording system for children who seek their help, the chances of identifying and recovering missing children or children controlled by pimps might be increased. 7/ It was further emphasized that social workers and hospital staff are not informed enough to link up cases that are treated within their purview with organizations dealing with missing and abducted children. For example, in cases of teenage pregnancies, medical staff are much more likely to inquire into incest and/or abuse within the family than into possibilities of child prostitution.

25. The Special Rapporteur would like to emphasize that the above analysis applies to both girls and boys, but that the phenomenon of boy prostitution differs from girl prostitution in a number of ways. It was noted several times that young boys prostitute themselves much less openly on the street, partly owing to the social stigma attached to homosexual prostitution, and are more likely to operate independently of pimps. This could result from the fact that often boy prostitutes are not, nor do they consider themselves as, homosexuals and are, therefore, much more in control over their bodies and over the sexual acts they perform or let their clients perform. Consequently, boy prostitutes are, relatively speaking, in a much better bargaining position than their female counterparts and are able to charge a much higher price for their services. The ratio of boys to girls in child prostitution in the United States varies by region but, for example, in New York City, 51 per cent of child prostitutes are estimated to be boys and boy prostitutes are largely to be found concentrated in specific places such as San Francisco and New Orleans.

26. The Special Rapporteur is concerned at reports that the type of prostitution in which girls in particular are involved is becoming increasingly violent, including bondage, sado-masochism and spanking. The sexual act is most likely performed in cars and not, as in the past, in motels or brothels.

C. Profile of the perpetrator

27. There exists no doubt that the compulsive behaviour of a paedophile is much more difficult to deter or to cure than the behaviour of a sporadic "curious" abuser, whether in relation to child pornography or to child prostitution. It is believed that whilst a regular sex offender is known to abuse up to a maximum of 100 children in his lifetime, the rate for paedophiles is suspected to be 400 children. The Special Rapporteur is particularly concerned about the high rate of recidivism to be found among paedophiles. The recidivist rate for a sex offender who only occasionally abuses children is much lower.

28. The publicizing of successful federal investigations leading to the arrest of offenders in child sex cases should be considered an effective deterrent. The question of rehabilitation of the perpetrators is a very complex one, especially in view of the high cost of treatment of sex offenders. On the other hand, imprisonment for life also poses a considerable financial burden on the community. In connection with the efficacy of chemical sterilization as a punishment, it was held that this would not necessarily result in change of behaviour because compulsiveness cannot be physically deterred. Despite sterilization, the ability to have an erection can still exist and/or the abuser might resort to digital and other forms of abuse.

29. It is interesting to note that the profile of perpetrators and/or clients may vary notably. Whereas the majority of clients looking for prostitutes in New York City are reported to be white, male college students in their early twenties, the average child sex abuser/paedophile is reported to be a successful white businessman, between 30 and 60 years old, often with a family, often described as an "outstanding member of the community".

II. LEGAL FRAMEWORK

A. International

30. The Convention on the Rights of the Child, which defines a child as a person under 18 years old, is the most important international human rights instrument regulating the protection of children's rights. Of particular relevance to the aspects of commercial sexual exploitation of children discussed in this report, are the provisions referred to below.

31. Article 32 of the Convention recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.



32. Under the Convention, States parties also undertake to protect the child from all forms of sexual exploitation and sexual abuse and are required to take measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials. Article 35 provides that State parties shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

33. The Special Rapporteur notes with regret, however, that the Government of the United States of America is one of only five countries that have not yet ratified the Convention on the Rights of the Child. The President of the United States, Mr. Bill Clinton, in his address on Human Rights Day, on 10 December 1996, stated that it was "shameful" that the United States had not yet ratified either the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of the Child. In this connection, the Assistant Secretary of State for Human Rights reassured the Special Rapporteur of the strong commitment of the current Administration to make every effort to overcome the existing strong opposition within the United States Senate, with a view to the ratification of both instruments.

34. In this connection, the American Bar Association was of the opinion that a concentrated effort to educate and inform the public is needed. To this end and in order to address uninformed fears by state legislators, the Center for Children and Law is currently carrying out research on the legal implications for all states if the United States were to ratify the Convention on the Rights of the Child, for example in the areas of age of majority or the right to education.

#### B. National

35. In view of the highly decentralized state government structure in the United States, this section will mainly address relevant provisions in federal legislation, bearing in mind that state legislation across the country may differ significantly from state to state. Federal law in the United States is applied in all cases that have an inter-state character or that are determined to be of particular federal concern. The Special Rapporteur was able to observe, for example, that cases involving child prostitution are investigated by three federal agencies, namely the Federal Bureau of Investigation (FBI), the US Customs Service and the US Postal Service. Child prostitution cases which would, for example, involve the transportation of minors across state borders would also involve federal jurisdiction.

36. In some cases, both federal and state charges may be brought against the same defendant, but consecutive or concurrent prosecutions for the same conduct would violate federal policy. Some comments on common elements of state legislation in relation to commercial sexual exploitation of children may be of use. 8/ The United States Congress and most state legislatures have enacted criminal laws designed to protect children and youth from sexual exploitation by adults through prostitution or pornography. Under certain circumstances, other laws proscribing child sexual abuse or statutory rape can also be used to prosecute adults who sexually exploit children and youth. The mandatory reporting of child sexual abuse and exploitation to law enforcement

and child protection agencies by teachers, health-care professionals and others who are in a position to identify potential victims is also required by most state law.

37. Federal law, and most state law, prohibits the production, distribution, receipt and possession of child pornography. Conspiracy and attempts to violate the federal child pornography laws are also chargeable federal offences. Most statutory laws define child pornography as visual depictions of a minor engaged in "sexual conduct" or in "sexually explicit conduct". Child pornography is considered a criminal offence in the United States because it represents the permanent record of the sexual abuse or exploitation of an actual child.

38. Some jurisdictions specifically prohibit the use of computers in connection with child pornography. Federal law specifies that persons who knowingly transport visual depictions or advertisement of child pornography "by any means, including by computer" are criminally liable.

39. In this connection, under the United States Code, Title 18 on Crimes and Criminal Procedure (18 USC), chapter 110 "Sexual exploitation and other abuse of children", paragraph 2251, states that any person who employs, uses, persuades, induces, entices or coerces a minor to engage in ... any sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported. Paragraph 2252 prohibits the transportation, importation, shipment and receipt of child pornography by an interstate means, including by mail and computer. There is no requirement to show commercial purpose nor any minimum number of visual depictions. Paragraph 2251A prohibits the selling and buying of minors and makes the transfer of custody for purposes of visual depiction or engaging in sexually explicit conduct a criminal offence.

40. With regard to child prostitution, the Federal Government's primary law criminalizing child prostitution is the Mann Act, part of the Violent Crime Control and Law Enforcement Act 1994. The United States Code, Title 18 on Crimes and Criminal Procedure, chapter 117 "Transportation for illegal sexual activity and related crimes", paragraph 2422 prohibits enticing, persuading and inducing any person to travel across a state boundary for prostitution or for any sexual activity for which any person may be charged with a crime. Paragraph 2423, provides that "a person who knowingly transports any individual under the age of 18 years in inter-state or foreign commerce ... with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned for not more than 10 years, or both".

### III. THE GOVERNMENT

41. The Department of State, in discussions with the Special Rapporteur, reaffirmed the commitment of the Government of the United States of America to the strategies for the elimination of commercial sexual exploitation of children outlined by the United States delegation at the World Congress in Stockholm. The priorities pursued, which the Special Rapporteur would like to

endorse, include a multidisciplinary approach, involving social services and mental health workers, to interviewing and investigation, special treatment in court settings which are child-friendly and appropriate to age and status, and continuing care in order to address the lingering effects of commercial sexual exploitation. Measures are to be reinforced through education systems which provide children with skills and opportunities as a preventive strategy.

42. The Department of Justice trains trainers of local law enforcement agents on victim orientation in cases of child exploitation. The Special Rapporteur wishes to express her particular appreciation of the comprehensive training module developed in this regard and used since 1982 by the Office for Juvenile Justice and Delinquency Prevention, which is responsible for carrying out law enforcement training programmes on juvenile delinquency. Since 1983, training programmes on child abuse and sexual exploitation investigative techniques for local law enforcement officials have also been held nationwide. The training manual contains techniques on how to trace individuals who seek to have sex with children and how to investigate cases involving commercial sexual exploitation of children. Twenty thousand local law enforcement officials have already been trained through this four to five-day programme, which also allows for the participation of child protection officers and prosecutors.

43. The training is carried out by a multi-disciplinary team, since investigations into child abuse and sexual exploitation necessarily involve not only law enforcement officials, but also child protection social workers, prosecutors and medical professionals. Such a "team investigative process" (TIPS) works to develop a community protocol on how communities should handle cases of child abuse and exploitation, and the appropriate law enforcement response. The objective of such training is to avoid revictimization of the child and to ensure the provision of rehabilitation services for the child during the investigation. Computer child pornography constitutes a new component of the training and a pamphlet on computer exploitation investigation is currently being developed.

44. The Federal Bureau of Investigation (FBI) of the Department of Justice is one of three federal agencies investigating commercial sexual exploitation of children and has primary jurisdiction over the matter as a result of the inter-state character of this phenomenon. The FBI works in close cooperation with the United States Customs and Postal Services to combat child prostitution and child pornography. All crimes against children investigated by the FBI are considered violent crimes.

45. At the time of the Special Rapporteur's mission, the FBI, in cooperation with the United States Customs Service, was involved in identifying Internet service providers, with a view to investigating the production, manufacture and distribution of child pornographic material through service providers on the Internet. For "Operation Innocent Images", the Special Rapporteur was informed that FBI agents pose as paedophiles or as children, in order to trace suppliers and their clients on the Internet. A number of arrests and convictions were made in connection with this operation.

46. In discussions with the FBI, it was apparent that increasing priority is attached to training of agents in investigating cases of commercial sexual

exploitation of children. Furthermore, the Special Rapporteur was pleased to note that the FBI is attempting to forge stronger working relations with the non-governmental organizations which are really at the forefront of the issues in question.

47. The Special Rapporteur would like to express her particular appreciation of the efforts made by United States Customs Service officials to provide her with essential information and a comprehensive picture of their undertakings. In this respect, the Special Rapporteur is bound by certain confidentiality requirements, in particular concerning ongoing operations to combat commercial sexual exploitation of children, but will attempt below to summarize some of the successful initiatives undertaken in this regard by the United States customs authorities, as one of three federal agencies involved in these issues.

48. United States customs officials have authority to intervene in cases involving commercial sexual exploitation of children where any commerce, videotapes or computers, or computer parts, are made or originate outside the United States, automatically constituting a customs violation. With regard to child pornography, the United States Customs authorities have a mandate to intervene in connection with any images that are scanned from foreign magazines onto the Internet and are available within the United States. Any overseas mail arriving in the United States is verified by United States Customs agents within their jurisdiction but once such mail is channelled into the internal United States mail it enters into the jurisdiction of the United States Postal Service. In this connection it was noted that the United States Customs Service has observed a decrease in prepubescent pornography, involving children under 12 years old, which is being replaced by teenage pornographic material, mainly produced in northern European countries.

49. The United States Customs Service has already been involved in investigating child pornography in connection with computers since 1989. In 1993, the United States Customs Service launched "Operation Longarm" to investigate a European bulletin board system on the Internet, based in Bamse, Denmark, which was used to import printed child pornography materials, such as magazines, to the United States. In such operations, United States Customs Service special agents go undercover, enter "chatrooms", search bulletin boards for "buzz words", such as "Lolita", and request suspected distributors to supply them with pornographic material. During the investigation of the Danish bulletin board, agents discovered two more bulletin board systems which were supplying customers in the United States with child pornography. Once the distributors had been identified, a total of 18 computer hard drives were copied. They contained the names of over 16,000 individuals who had been using the bulletin boards, including several hundreds of individuals in 16 states of the United States. In November 1993, search warrants were issued for these identified users and 49 arrests were made.

50. Bulletin board systems are a valuable source for investigators since they generally have directories with activity records, including log-in, log-out and downloading information, and scripts are created on the bulletin board once a customer accesses it.

51. "Operation Longarm" had a snowball effect: in 1996, 227 search warrants were issued, 144 of them in connection with computer pornography cases involving children. This represents an encouraging increase of 220 per cent in the issuing of search warrants and of 167 per cent specifically related to computer cases. "Operation Cybertrader" and "Cyberstrike" are similar investigations operated by the United States Customs Service to crack down on child pornography on the Internet. In the period from 1 October to 12 December 1996, the United States Customs Service carried out a total of 30 searches connected with child pornography, of which 21 involved computer pornography.

52. In order for United States Customs Service operations, which always involve foreign materials, to be successful, international cooperation is essential. A case in point involving child pornography was discovered in San José, California, where approximately 20 adults, belonging to an association named "Orkin Club", were sexually abusing children, taking photos of these children and exchanging images over the Internet. The material produced was also transmitted across the border to Canada, where Canadian customs officials, tipped off by the United States Customs Service, seized a total of 38,000 photographic images depicting child pornography. In an effort to combat child pornography worldwide, the United States Customs Service maintains close links and exchanges strategic information with their counterparts in, among other countries, Canada, Mexico, France, Sweden and New Zealand. In addition, a United States customs officer is a member of the Interpol Standing Committee on the Rights of the Child. Furthermore, the United States Customs Service has 25 overseas attaches based in United States embassies who are in direct contact with the national customs authorities and act as contact points for information and tip-offs in international cases of child pornography.

53. In addition to actively investigating cases of child pornography, the United States Customs Service also takes preventive measures to eliminate the phenomenon, in cooperation with the National Center for Missing and Exploited Children, the Department of Justice and the United States Postal Service. To promote child on-line safety on the Internet, booklets, mouse pads and key chains have been developed, which advise children not to give out or send personal information via the computer without their parents' permission, to inform their parents or teachers about information that makes them feel uncomfortable and not to meet anyone with whom they might have had contact online without their parents' knowledge. The mouse pad and booklets also state that sexually explicit images, sent to or depicting a child, are against the law and must be reported to a 24-hour toll-free tip-line. The United States Customs Service has also developed a home page on the Internet providing similar information.

54. The United States Customs Service has special agents who specialize in investigating United States nationals involved in child sex tourism. Commentators pointed out to the Special Rapporteur that, although the amendments to the Mann Act granting the United States authorities jurisdiction over their nationals who engage in child sex tourism abroad constitute an important development in combating the phenomenon, the law also provides for

"intent of travelling" for purposes of sex tourism as a criminal offence. It is, however, next to impossible to prove such intent to engage in sexual acts with minors abroad, especially because sex tour operators do not advertise sex with children.

55. On another related matter, the United States Customs Service is using innovative methods to monitor the enforcement of the Mann Act, which prohibits United States citizens and resident aliens travelling abroad with the intention of engaging in sexual acts with minors and also addresses those who conspire in the commission of such acts, i.e. sex tour operators. <sup>9/</sup> In undercover operations, United States Customs special agents act as "brokers" to arrange sex tours through sex magazines and correspondence by mail in order to prove a certain disposition. It appears that 90 per cent of interested persons have been involved in previous child abuse and are most interested in girls between 8 to 12 years old.

56. The United States Postal Service is another of the three federal agencies involved in cases of child pornography in the United States. The jurisdiction of the United States Postal Service in this connection concerns child pornography transmitted by mail, which still constitutes the most common method of transporting child pornographic materials.

57. The United States Postal Service has been investigating child pornography since 1978, when national legislation first prohibited the use of the postal services to distribute child pornography for commercial purposes. This law had, however, a very limited scope in that it did not allow prosecution of the users/purchasers of such materials but only of producers and disseminators. The 1984 Child Protection Act abolished the limitation that child pornography be produced and/or disseminated for commercial purposes and added a new dimension by criminalizing those who "knowingly receive" such materials.

58. The United States Postal Service engages in pro-active undercover investigations by carrying out what it refers to as "control deliveries" or "reverse stings" against suspected perpetrators of child pornography, on the basis of investigations which have identified individuals who are prone to abuse the law in this respect. "Control deliveries" are mail deliveries set up by Postal Service agents where suspected perpetrators receive child pornography through undercover agents. Suspects are then monitored and arrested immediately upon first usage/viewing of the material delivered. Some 27,000 investigations have been carried out, as a result of which 2,500 perpetrators have been arrested and convicted.

59. One case to illustrate the above activities of the United States Postal Service, involved a man in the State of Alabama, who received a "control delivery" of a child pornography video from a United States Postal Service agent acting as a Federal Express agent. The suspect was caught 15 minutes later, in a house search, viewing the video with a 7-year old boy from the neighbourhood whom he had been abusing sexually. During the search, home-made videos of the perpetrator molesting the boy were also found in the house.

60. Another case of which the Special Rapporteur was informed involved the largest commercial distributor of child pornography ever in the United States.

This venture was operated by United States citizens based in Mexico, who produced pornography primarily involving boys between 7 and 21 years old. These videos were smuggled to the United States and then distributed through the internal mail. The United States Postal Service, in cooperation with the United States Customs Service, successfully shut down the overseas mail delivery of the videos and took over the operation, named "Overseas Male", "Mykonos" or "Island Male", undercover, with a view to tracing clients.

61. The Department of Health and Human Services informed the Special Rapporteur that the Congress had approved an allocation of US\$ 8 million, in accordance with new legislation, to establish street outreach programmes for young persons at risk of sexual abuse. Unfortunately, at the time of the mission of the Special Rapporteur only one state had received funding to carry out such a programme. The Special Rapporteur also regrets the lack of adequate state-run shelters for young runaways in critical locations. For example, in New York City there is only one state-owned shelter with 20 beds for children who have left their homes.

62. The National Center for Missing and Exploited Children in Arlington, Virginia, is a national clearing house and resource centre for missing and exploited children. It is funded by the Department of Justice and deals mainly with children abducted by members of their families but also by strangers. The Center's 24-hour hotline, which receives approximately 650 to 700 calls per day, provides information to parents on how to report a missing person and gathers leads on missing children. The Center registers approximately 10 to 12 new cases a day and 40 per cent of all cases handled by the Center are runaway children. The Center liaises with law enforcement officials and with parents during an investigation and is electronically linked to police stations nationwide. The Center produces leaflets and posters concerning children reported missing, provides video displays with information, has a web site on the Internet and operates a rural satellite broadcast to people who would not otherwise have access to the media or communication systems. According to officials of the Center, the chances of recovering a child abducted by strangers are very low.

#### IV. THE CRIMINAL JUSTICE SYSTEM

##### A. Law enforcement

63. In the United States, there are 17,000 law enforcement agencies across the whole country, employing 535,000 police officers.

64. In many discussions, it became apparent that for the law enforcement agent it is much easier to believe a young person in the street who says he or she is 18 years old or over. It is also cheaper, because if a minor is involved, the police have to follow specific rules for the treatment of minors and the social and welfare services are required to be involved in a very time-consuming procedure. Furthermore, police officers are not required to verify information given by individuals as to their identity. Therefore, police statistics concerning child prostitution probably do not reflect the real number of under-age children engaged in street prostitution. In fact, most information that is available stems from street prostitutes themselves, when they are arrested and interviewed.

65. In addition, it was held that there is significant reluctance on the part of police officers to deal with boy prostitutes, because of the social stigma attached to homosexuals. It was also held that law enforcement officials frequently tend to perceive cases of child abuse or exploitation as cases for social workers or child protection cases, not criminal cases.

66. The Special Rapporteur would like to highlight the professionalism, expertise and enthusiasm of the detectives of the Vice Division, Organized Crime Control Bureau, of the New York Police Department (NYPD). The fact that these detectives had all undergone specific sex crimes investigation training and participate in an FBI training programme on sexual exploitation and child abuse underlines the importance of training in order to create expertise among law enforcement officials. According to information provided by NYPD, children involved in prostitution and pornography in New York City come from all ethnic, social and racial backgrounds, originate from outside the city and the majority are between 15 and 16 years old. The major problem faced by police officers when seeking victims to testify against their recruiter or pimp is the fact that the police, for lack of public services, such as shelters, cannot offer anything in return for the testimony and that child victims do not want to talk to the police nor leave their pimps. For many children and youth, a return home would simply mean a return to sexual and physical abuse. In addition, the criminal justice system is primarily geared to arresting the perpetrator and not to identifying the victim, which makes it relatively easy for victims to change their identity and monitoring victims difficult.

67. With regard to boy prostitution in New York, NYPD detectives had discovered that a film producer would recruit boys in the Bronx and in Brooklyn for US\$ 30-40 to perform oral sex on him in motels in New Jersey. Another case involved a group of paedophiles who had picked up young boys on 42nd Street by distributing flyers in 1986. All but one of the perpetrators were arrested at the time. Ten years after the incident, in 1996, out of six identified victims who were re-interviewed, two were dead and four incarcerated. None of the victims had ever talked to anyone about their experiences after the interview during the police investigation 10 years ago.

68. The Special Rapporteur also met with experts at the National Center for Prosecution of Child Abuse of the National District Attorneys Association, which provides training and technical assistance to prosecutors and law enforcement officials during investigations of child abuse. In particular, the Association has developed a comprehensive manual on investigation and prosecution of child abuse for prosecutors and other relevant professionals, such as social workers and medical professionals.

69. An interesting initiative was used in training law enforcement officials in Washington, D.C. During their training course, police officers were given an opportunity to hear the testimony of a paedophile with a view to their gaining a deeper understanding of how most effectively to deter such abusers. In Tucson, Arizona, the Sex Crimes Investigators' Association provides training and exchanges information on investigative techniques. In Phoenix, Arizona, United States Customs Service agents provided a demonstration to local law enforcement officials of the use of the Internet for child pornography investigations.



70. In addition, police officers should study carefully and analyse the codified street jargon used frequently by procurers, pimps and drug dealers. A deeper understanding of this "language" would facilitate more effective street work by the police.

71. The Family and Youth Services of the Tucson Police Department established a Sex Offenders Registration and Tracking Unit in response to the high recidivist rate amongst sex offenders. This pro-active programme prescribes community notification of child sex offenders, which entails informing the community in which a convicted sex offender decides to settle after serving his sentence of his criminal history involving children, by means of, inter alia, a billboard.

72. Whilst this practice is widely supported and considered a method of prevention by most officials the Special Rapporteur met in Tucson and Phoenix in Arizona, in particular in view of the high rate of recidivism amongst paedophiles, it also raises serious concerns about respect for the human rights of the former offender. With a billboard notification system, the former offender is not given any opportunity to integrate into the community nor to rehabilitate him/herself fully since the criminal past will continue into the present and, most likely, the former offender will be ostracized by the community. Apart from questioning the right to privacy and other constitutional rights of the individual, such measures could in fact increase the risk of recidivism if the offender feels that he will be marked for life whether he re-offends or not. The Civil Liberties Section of the American Bar Association also considers that notification of perpetrators is upsetting the balance between constitutional rights and criminal offences.

#### B. The prosecutors

73. The Special Rapporteur is concerned that lack of financial resources appears to be an obstacle to the training of prosecutors and sensitization of judges concerning child abuse and exploitation. Such programmes could, however, if established be implemented at the National Judicial College, in Reno, Nevada, which trains state judges, as well as part of post-law school training for future district attorneys at the National College of District Attorneys in Houston, Texas.

74. In San Francisco, it was pointed out that whereas for the prosecution child abuse specialists handle cases concerning abuse and exploitation of children from beginning to end, judges in the same jurisdiction are not required to undergo any specialized training after their appointment.

#### C. The courts

75. In court cases involving child victims of sexual abuse, care should be taken that awareness is raised using the case against the perpetrator rather than the situation of the child victim. This should be done in order to protect the child victim from potentially harmful public and media attention. The Special Rapporteur was informed of special procedural rules that exist in the United States for the treatment of child victims and witnesses in courts,

including the involvement of a multidisciplinary team to work with the children, for example during the preliminary questioning. An "adult attendant" is also allowed to accompany the child when he or she testifies, but is not permitted to say anything.

76. In order to protect the child, there exists the possibility of excluding the public from the courtroom during the child's testimony and of disguising the relationship between the victims and the defendant. Furthermore, courts are required to keep two sets of files for each case: a public file without full names and identifying data and a confidential file with full information.

77. Some commentators also raised the question of the phenomenon of children's presence and testimony in court being abused to, for example, generate feelings of sympathy.

78. It was mentioned to the Special Rapporteur that the low number of cases of child abuse brought to court could be due to the lack of appropriate resources and training of officials to deal with the child in court. In this connection, the National Center for Prosecution of Child Abuse of the National District Attorneys Association noted that a training programme with a multidisciplinary approach to dealing with child abuse and investigation should be developed for judges.

79. In one anecdote told to the Special Rapporteur, law enforcement officials had discovered a 28-year old male filming a 9-year old girl performing oral sex on a 19-year old male. When the tape was shown to a New York City district-attorney specifically assigned to deal with sex crimes, his comments were "I can't show this to a grand jury. The girl was obviously enjoying it" and "That is not the first time that she gave someone a blow job because she knew how to spit on his penis". The victim had been sexually molested since she was five years old.

#### Sentencing

80. Sentencing practice with regard to child pornography seems to be very strict. The Special Rapporteur was informed that first time child sex offenders are liable to from 12 to 24 months' imprisonment, whereas for the second offence a minimum of five years in prison is to be expected.

81. On the other hand, it surfaced in discussions that sentencing for perpetrators of child prostitution is disproportionately low in some states, whereas much stricter measures are applied in others.

### V. CASE STUDIES

#### A. United States-Mexican border area

82. The Special Rapporteur visited Tucson and Phoenix in Arizona in order to study the implications of cross-border traffic between the United States and Mexico for the purposes of child prostitution and pornography. The Special Rapporteur was also attempting to assess the vulnerability of young juvenile delinquents, called "tunnel kids", on the United States-Mexican border, who enter the United States illegally through drainage tunnels, are homeless and

are immediately absorbed by criminal bands which exploit them sexually. Unfortunately, very little information and statistics were available on this subject. It appeared that any existing data only addressed the criminality of Mexican youth in the United States, rather than their victimization. The Special Rapporteur was, however, encouraged that, in response to the plight of the "tunnel kids", the shelter "Mi Nueva Casa" has been established on the Mexican side of the border, in Nogales Sonora.

83. It appears that, with the exception of a few cases, commercial sexual exploitation of children is concentrated in certain areas of the Texan-Mexican (El Paso, Tijuana, Ciudad Juárez) and Californian-Mexican border (San Diego), rather than in Arizona. The office of the United States Attorney of the District of Arizona informed the Special Rapporteur of the following cases in Arizona. The case United States v. Gerald Racicot involved the luring of young Mexican girls into the United States for sexually explicit photos and for sex, whereas the case In the Matter of the Extradition of Mario Cordova Lopez concerned the extradition of a United States citizen to Mexico for prosecution for luring very young children and then transporting them to the United States for sale. Another case involved the extradition of a Mexican citizen to Arizona for sexual molesting a child in Arizona.

84. United States Customs Service officials also stated that the transportation of children from Mexico to the United States for prostitution by wealthy United States citizens is a concern. Sometimes paedophiles fund orphanages and take children to the United States for "education purposes". After sexually abusing their victims, they discard them. Another case involved an Internet billboard, entitled "Penoche pequeña", distributing child pornography, which was operated from Tijuana, Mexico, by a United States citizen. Very typically of a paedophile, all materials used in the operation were found meticulously stored in the perpetrator's apartment upon a search with a warrant. Ironically, the private archives and collections of paedophiles, often kept over years, often greatly facilitate the work of law enforcement officials.

85. The District Attorney's Office also recalled a case in Tucson, without international implications, in 1990, of a gang of 13-year-olds involved in teenage prostitution. The children were recruiting from local middle schools and selling each other for prostitution.

86. Both the Mexican and United States authorities commented that increased cooperation was needed in order to monitor international traffic in child prostitution and child pornography, but that basic difficulties, such as language barriers, differences in legislation and in law enforcement practices, made institutional cooperation difficult. However, collaboration at informal levels and through personal contacts seemed to exist. For example, the border guards of Douglas and Nogales meet regularly, every two to three months, sponsored by the respective Mexican and United States consulates, with a view to assessing common problems encountered.

87. It is also interesting to note that Arizona State laws on crimes against children and sexual offences proscribe much stricter penalties for perpetrators than federal law. Arizona State officials consider that such strict legislation has, to a certain extent, succeeded in deterring offenders.

B. San Francisco

88. In San Francisco, male, female and transgender prostitutes have very distinct areas or streets of "operation". The Special Rapporteur, during a night round with the outreach organization Larkin Street Project, also observed that the street prostitutes whom she encountered were mainly under-age and eager to have a friendly chat with the streetworkers who were distributing different types of condoms and lubricants and casually informing them of the availability of support services, should they wish to leave the streets. The streetworkers, instantly recognizable by their purple jackets with the organization's logo, seem to be familiar to most of the "regulars" and have developed casual friendships with the children and adolescents who are forced to sell their bodies in the streets of San Francisco.

89. At the Juvenile Detention Center in San Francisco, the Special Rapporteur had the unique opportunity of attending a discussion group for female juvenile delinquents, many of them former child prostitutes, taught by a remarkable woman. That woman stood up in front of the young girls saying "I am a former prostitute and a recovering heroine addict. I came off the streets five years ago, after having spent 21 years there." Norma is now the director of the SAGE Project, a community-based organization which is helping young girl prostitutes to leave the streets and to build new lives. The topic of the class was sexual exploitation, and the young girls, after initial shyness, could not stop talking. With a frankness which brought tears to the Special Rapporteur's eyes, they spoke, with first-hand knowledge, of sexual abuse and exploitation. This experience made the Special Rapporteur realize how important peer-counselling and peer-education is. In return for Norma's openness, the young girls could identify with her and were, for once, not afraid that no one would listen to them or believe them.

90. From the age of five, Angel had been told that she would not be good for anything but sex. At the age of 14, she would charge US\$ 20 for oral sex after school, soon became a heroine addict and a full-time prostitute. However, after six months behind bars, where she had time "to clean up", she decided to change her life. Angel was helped by SAGE and is now married, with a daughter, and works as a volunteer at a day-care centre for prostitutes. Angel is only one of many former prostitutes whom Norma has empowered, restoring their self-esteem and confidence, as well as their economic independence.

91. The SAGE Project not only deals with victims of prostitution, but uniquely in the country, also with their clients, or "johns" as they are called in street jargon. In cooperation with the San Francisco Police Department and the office of the District Attorney, SAGE offers classes for first-time sexual offenders, in which the participants are informed of the legal consequences of a second arrest for sexual offences, about the health risks they were taking in soliciting prostitutes and exposes them to testimonies from former prostitutes. Comments received from participants reveal that the course "gets to them", and out of 500 "graduates", only 1 has since been arrested for soliciting.

92. Child prostitutes, boys and girls, in San Francisco come from all racial, ethnic and social backgrounds and are aged from nine years upwards.

According to the San Francisco police, there are 4,000 to 7,000 street children in San Francisco, of whom it is estimated that 45 to 50 per cent do not want to return home because the street is still the better choice. The most challenging task for State and local officials, therefore, is to rehabilitate these children outside their families, especially as hardly any programmes or shelters address the specific needs of sexually exploited children.

93. The San Francisco Police Department is trying to address the complex issues involved by having police experts on 24-hour call for any cases that involve child prostitution and pornography. The subsequent investigation follows a "triad approach", instituted in 1984, whereby a social worker, a doctor or nurse therapist and a police officer immediately attend to the child victims. The State then provides the child victim with psychological support and medical care, to a value of up to US\$ 15,000 over a lifetime, which is particularly important since experience shows that most rehabilitated victims can cope as long as counselling is available. The San Francisco police also believe that it is crucial and a key to success for trauma specialists to work with victims of sexual abuse and rape. This is particularly important since law enforcement is the first entry point for the victim into the criminal justice system and immediate confidence-building is required.

94. From most of the discussions the Special Rapporteur had in San Francisco, it transpired that despite an otherwise relatively sensitized criminal justice system, the District-Attorney's lack of attention to the special needs of child victims weakened the effectiveness of the system.

95. In San Francisco, the police, in cooperation with the Department of Justice and the FBI, require life-time probation for child sex offenders through obligatory registering when they change address, as well as every year on their birthday. Under this system, there are 3,000 registered child molesters, of whom approximately 200 are paedophiles, in San Francisco. In the State of California, there are a total of 60,000 registered sex offenders.

96. One case in Oakland, San Francisco, involved the arrest in October 1996 of two homosexual men who had solicited three boys aged 13, 14 and 15, for pornographic films. During a search of their apartment, 150 child porno movies were found, featuring the perpetrators engaged in sexual acts with boys ranging from 10 to 18 years old. Some boys were paid US\$ 50 for their favours. In addition, evidence of duplicating and trading of these videos was found. In this case, all three federal agencies are likely to charge the offenders.

97. Hospitality House runs a shelter, mainly for young Hispanic immigrants, where counselling, pre-employment training, a group house, opportunities to learn computer skills and to meet and talk with other homeless youth are available. Through a daily free soup-kitchen operation, Hospitality House attempts to win the confidence of homeless youth who, after coming regularly for their free meal, will be ready to leave the streets with the organization's support. Hospitality House has also established various innovative projects, such as a community arts centre which provides artistic skills-training with local artists and sculptors. In addition, Hospitality House carries out street outreach work by distributing free condoms and bleach

in the streets, along with pamphlet survival guides entitled "On your own" with contact names and addresses for street children. The Special Rapporteur was concerned that Hospitality House's young clients have a high rate of substance abuse and between 60 to 70 per cent engage in sex for survival. It was noted that anyone living on the streets for longer than three months will most likely engage in survival sex.

98. The Larkin Street Project is another example of highly effective community-based action directed at homeless and runaway youth aged 21 and under through street outreach work. Larkin Street workers address the youth in their own environment, providing information, especially on HIV/AIDS and health care, to otherwise unreachable populations, and build relationships of trust with them.

99. Larkin Street also runs a drop-in centre, an after-care programme and a shelter, Diamond House, for stays of up to one month. The HIV/AIDS services provided are sponsored by the Department of Health, and the Department of Education funds two full-time teachers who give courses which can be accredited towards a high-school diploma. Another innovative project run by Larkin Street is a programme training foster parents, from social backgrounds matching the street children, such as single-sex, single-parent families, to adopt children from the streets.

100. As a result of her observations in San Francisco, the Special Rapporteur was particularly concerned that the criminal justice system, by criminalizing prostitution, treats child victims of prostitution as offenders, in the same way as murderers and other criminals. This classification and resulting imprisonment in juvenile detention halls frequently victimize the child further, aggravating the trauma, if adequate social services and counselling are not available. In response to the Special Rapporteur's concerns, however, the Assistant Chief Probation Officer of San Francisco replied that the juvenile justice system only fills a void for victims by criminalizing the child or youth in order to be able to provide them with care, rehabilitation and counselling, which would not be available to them outside the system. It was noted that alternative services providing support for child victims are urgently needed in the community in order to rehabilitate child victims without criminalizing them.

#### VI. CHILD PORNOGRAPHY AND THE INTERNET

101. The Internet and on-line access to it through computers has brought a whole new and dangerous dimension to child abuse. Such new technological developments have made existing definitions of pornography in law out of date and are giving rise to controversial debates concerning constitutional rights, such as the right to freedom of opinion and expression, the human rights of the child and established societal values. Previously, access to pornographic materials in the form of magazines and videos was much more controllable than to the multitude of sources now available on the Internet. The major challenge, consequently, is how to reconcile the constitutional rights of the citizen with the fundamental rights of the child. This is a dilemma to which

the Special Rapporteur neither received nor expected a reply. Nevertheless, the Special Rapporteur considers it important to set out this problem with a view to seeking practical solutions through different experiences at the national level.

102. The Civil Liberties Section of the American Bar Association has as its principal task to press for the application of the First Amendment and for constitutional rights as a balance to criminal offences, which in connection with cyberspace has become a new challenge since legislation is not developing nearly as fast as modern communications technologies.

103. It was frequently mentioned to the Special Rapporteur that common sense, coupled with appropriate information and education, should prevail, especially with parents, when trying to address this issue. Information campaigns should also focus on deterring potential perpetrators, by providing information on possible legal consequences and punishments. Whereas such campaigns might deter the potential sporadic and curious abuser, it is acknowledged that, in the case of paedophiles, no change in behaviour would result. In connection with media and information campaigns addressing the commercial sexual exploitation of children, it is important to ensure that they are assessed by qualified experts in the field, so as to minimize accidental revictimization of the children. In other cases, well-intended media attention has resulted in raising the profile and desirability of the child victims so that they became objects of obsession by perpetrators.

104. The ability to communicate electronically via computer networks frequently leads paedophiles to contact like-minded individuals in order to validate their actions and behaviour. Often such communications constitute a support basis for their actions so as not to deal with denial. It is, however, also found that paedophiles prefer the moving image and the sound of videos to computer images, so that their use of the Internet is mainly limited to communication, and videos containing pornographic material involving children are sent by mail. With advancing computer technology which permits for the transmission of moving images and of sounds by computer, further avenues are opening up for child abusers over the Internet.

#### A. Definition of child pornography

105. As mentioned above, the Internet renders the definition of child pornography, namely the visual depiction of an actual child, as it exists in most national legislations, outdated. The Special Rapporteur noted with satisfaction that the Child Pornography Act in the United States had been modified as of 3 January 1996 to expand the definition of child pornography to include "any depiction of a child, real or imaginary". The Special Rapporteur would also like to highlight similar developments in the United Kingdom of Great Britain and Northern Ireland and in Canada where legislation specifically addresses "pseudo-child" pornography, prohibiting the "morphing" of children's images where the child's body is used with an adult face for pornographic purposes.

106. The International Criminal Police Organization (Interpol) has adopted the following working definition of child pornography: "the visual depiction of the sexual exploitation of a child, focusing on the child's sexual behaviour or genitals". 10/

107. In discussion with United States Customs Service officials, the Special Rapporteur was informed that three cases had been brought to trial in which it was argued that the existing definition of pornography in law does not apply to computer pornography since real children are not involved. In two of the cases the guilty verdict was unanimously issued, whereas the third guilty judgement was upheld by the Supreme Court upon appeal.

108. In addition to the urgent need for laws to adapt to technological developments to combat impunity, the Special Rapporteur is concerned at the abuse of children in connection with child pornography on the Internet, both with regard to the child being viewed and the child as a viewer of such material.

#### B. The child being viewed

109. The Special Rapporteur is concerned that the use of children in the production of sexually explicit material is a form of sexual exploitation which results in psychological and/or physical harm to the children involved.

110. The availability of child pornography on the Internet results in the repeated victimization of the child on an unprecedented scale. As the United States Congress stated in its findings, "where children are used in its production, child pornography permanently records the victim's abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years". 11/ This concern was validated in the Special Rapporteur's findings during her mission that many of the child pornographic images on the Internet are actually pictures scanned from child pornography magazines produced in the 1970's and 1980's.

111. A case in point was the discovery, by the United States Customs Service, of a small company in Tucson which was compiling adult and child pornography from the Internet on CD-Rom diskettes, mass producing them and selling each diskette for US\$ 25. Despite a clamp-down on the operation, the materials, having been advertised on various bulletin boards and in computer magazines, will continue to exist in thousands of sites on the Internet and to be downloaded on personal computers. Once such material is loaded onto the information highway, there is no way to stop its dissemination. It is of concern, however, that not all officials, in particular prosecutors and judges, are appraised of such repeat victimization as an aggravating factor for punishment of perpetrators.

112. As mentioned above, a development which has overtaken the legislation, is the "morphing" of children's bodies and images to create a virtual child. The Special Rapporteur feels very strongly that whether the image used for child pornography is real or imaginary, the effects remain the same and the legislation should address both issues in the same way.



113. The Special Rapporteur is also concerned about the effects of technological developments which allow for the transmission of moving images with sound by computer, since this will certainly attract clients who had until recently not explored the Internet for child pornography because they preferred the moving images and sound of videos and films.

C. The child as a viewer

114. In her discussions, the Special Rapporteur heard conflicting views on how readily and easily accessible child pornography is for the child as a computer user and viewer. Some commentators pointed out that child pornography is displayed during a limited time at specific web sites, which are only to be found if they are actively searched for, for example with "buzz words". Others believed that many children, being far more computer-literate than adults, are in a position to access child pornography easily. Opinions concurred, however, that predators certainly know when and where to find their child victims.

115. The Special Rapporteur was informed that frequently children, who are generally more computer-literate than their parents or teachers, may spend hours in "chat-rooms" on the Internet where they converse electronically, become friendly, talk about their problems, share secrets and build friendships with other users. What children and their parents are mostly unaware of, however, is that their conversation partners could be paedophiles or child abusers and recruiters who pretend to be teenagers themselves in order to build up a relationship of confidence with the child on-line. The child might then be exposed to pornographic materials in an attempt to "normalize" child pornography and to convince him or her that there is nothing bad or illegal about viewing or being involved in child pornography. As Congress found, "a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children 'having fun' participating in such activity". 12/

116. These dangers raise the obvious question of how to ensure that children cannot access such potentially harmful information and material. The answer to this question is, however, not obvious at all. In fact, the Special Rapporteur posed the same question to nearly all the experts she consulted, hoping that in a highly developed country like the United States some experience in this regard had already been acquired. However, it seems that no answers are available at this stage. In some discussions, such as at the American Civil Liberties Union, it was emphasized that the Government could not be responsible for limiting access, whether of adults or children, to information, i.e. to the Internet, or for challenging the right to privacy and the right to access to information of citizens.

117. It was felt, however, that in order to ensure that the child as a viewer is not exposed to pornographic materials, the child's parents and family must take responsibility within the family's own private sphere. New programmes such as "Net Nanny" and the "V Chip", for example, provide for selective viewing of the information highway. In schools, access to the Internet should be regulated in such a way as not to deprive children of the educational benefits associated with the information highway and computer

literacy. However, the issue of access in schools becomes difficult when same access codes are used for all age levels, from children to adolescents.

118. During the mission of the Special Rapporteur, the Supreme Court, on 6 December 1996, agreed to study the Communications Decency Act in order to decide, in July 1997, whether Congress violated constitutional rights of free speech by attempting to restrict indecency on the Internet. A three-judge federal court in Philadelphia had blocked the new act from taking effect earlier in 1996, ruling that it would violate adults' right of access to sexual material that may be inappropriate for children. The federal law was considered too broad because "there is no realistic way for many providers to ascertain the age of those accessing their materials". 13/

#### VII. NON-GOVERNMENTAL AND COMMUNITY-BASED ORGANIZATIONS

119. The Center on Children and Law of the American Bar Association carries out research, writing, publishing and training on the protection of children, especially in the area of child abuse. The Center monitors how prosecutors handle child abuse cases and has also prepared a manual for judges on handling children as victims in court.

120. The National Organization for Victim Assistance in Washington provides training and technical assistance in dealing with victims of crime, through hot-lines and community services and also works with child victims of sexual exploitation and abuse. Whereas the Organization's primary goal is to provide information and to refer victims to specialists, crisis counselling and the accompaniment of victims to court is also available in individual cases. Over 1,000 volunteers nationwide have already undergone counselling training for victim assistance.

121. In discussion with Child Rights International, a New York-based non-governmental organization focusing on research on the rights of the child, the proposal for a children's ombudsman was put forward. 14/ Bearing in mind that children are not voters and, therefore, not a constituency that needs to be specially targeted, the establishment of a children's ombudsman within government at the national, state and local levels, would provide a "voice for children" and an "ear" for their, their parents', teachers' and social workers' problems. The ombudsman would, through a hot-line and other means, receive and act upon complaints concerning children's rights, and use the media as a tool for promoting and educating the public about children's rights.

122. The Special Rapporteur was encouraged that End Child Pornography ECPAT/USA is intending to take the lead in coordinating non-governmental organizations within the United States in a comprehensive follow-up to the Stockholm Congress. This is of particular importance since it appeared to the Special Rapporteur that, despite the existence of a multitude of organizations dealing with children's rights in general in the country only very few were focusing on the commercial sexual exploitation aspect.

123. Some non-governmental organizations, such as the Children's Rights Project of the Association Francois-Xavier Bagnoud, placed great importance on preventive care for marginalized children, such as street children and sexually exploited children. Although it is held that street children and

child prostitutes have very low levels of health-related awareness, the Special Rapporteur was able to detect heightened awareness among child prostitutes in the streets of San Francisco, for example, where street outreach organizations, such as the Larkin Street Project have been active for many years. In the light of such a successful example, it is imperative that efforts to provide sex and health education, in particular in connection with HIV/AIDS, be stepped up.

124. One of the Special Rapporteur's most informative meetings was with a street outreach organization operating in New York State called "Paul & Lisa"; "Paul" after a saint and "Lisa" after a young streetwalker who died. "Paul & Lisa" street workers patrol the streets in search of young prostitutes who might want to change their lives. The process of confidence-building and restoring the victim's integrity is time- and money-consuming, but well worth it. "Paul & Lisa" have helped over 100 young female prostitutes leave the streets, worked in depth with 370 young people and have provided over 3,500 street prostitutes with information on health care and support services. The organization has established a transitional housing programme that provides a safe living arrangement, counselling, job training, life-skills training and a structured routine for youth seeking to return to mainstream society. Their success stories prove the effectiveness of such locally targeted outreach programmes. Two women who were rescued from the streets by "Paul & Lisa" are now qualified medical doctors and one is married with two children and was recently elected "mother of the year" in her community.

125. Covenant House in New York operates crisis centres in 12 cities in the United States which provide advice and support to homeless youth without any questions asked. Youth seeking help might be referred to the Covenant House "mother and child" programme, which was developed in view of the increasing number of homeless girls with children, or to the "Rites of passage" job-training programme. The latter programme trains homeless youth in clerical, security and office management skills and provides contacts with over 600 private enterprises for on-the-job training or employment with the objective of building up self-esteem through work and economic independence. Under this programme, which has a success rate of between 65 and 70 per cent, participants are offered up to two years of accommodation for which nominal rent is paid into a pool which is used to make downpayments for apartments for future independent living.

#### VIII. CONCLUSIONS AND RECOMMENDATIONS

126. On the basis of open and constructive dialogue during her mission, the Special Rapporteur is able to conclude that child prostitution and child pornography in the United States of America is recognized as an existing phenomenon warranting immediate and concerted action at federal and State levels.

127. The Special Rapporteur is, however, concerned that her expectations for adequate statistics and research on commercial exploitation of children in the United States were not met. She is consequently not in a position to identify the real extent and prevalence of the problem for lack of adequate data. The Special Rapporteur, therefore, urges the Government of the United States of America systematically and comprehensively to gather information and data on

commercial sexual exploitation of children nationwide so that the extent of the problem can be ascertained. As stated in her discussion with officials of the Federal Bureau of Investigation, action to combat the phenomenon can be taken most effectively only when its real nature and extent is clearly established.

128. The Special Rapporteur would also like to share her concern over a certain perceived attitude of "minimalizing" the phenomenon of commercial sexual exploitation of children as affecting "only" social and ethnic minorities. National education and information campaigns must be particularly targeted at eliminating social stigmatization and stereotyping associated with child prostitution and child pornography.

129. The Special Rapporteur also calls upon the Government of the United States of America to ratify without delay the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, especially because such ratification would undoubtedly have a great impact on other countries and bring the Convention on the Rights of the Child one large step closer to universal ratification by the year 2000.

130. The Special Rapporteur is encouraged by the many federal and State initiatives undertaken to investigate commercial sexual exploitation of children. In this connection, it is recommended that successful investigations be adequately publicized by the media nationwide, in order to raise public awareness of the issue but also to act as a deterrent to potential perpetrators. The silence of the child victims needs to be broken by gaining their confidence in the criminal justice system and by eliminating impunity for perpetrators.

131. The Special Rapporteur considers the law enforcement training carried out by the Department of Justice to be an extremely valuable initiative. Such training and the comprehensive training module, which exist at national level in the United States, should be replicated at the international level. Through the participation of international observers in the training programme and the exchange of national experience and training materials, such training can be adapted to suit the different national settings.

132. The Special Rapporteur notes the strong emphasis on a multidisciplinary approach to the problem of commercial sexual exploitation of children. This means that in addition to the legal aspect of the issue, all other relevant areas, such as research, social services, education, rehabilitation and recovery must be inter-linked in an effective rights-based national response.

133. Within such a multidisciplinary approach, the Department of Health and Human Services should provide for the extension of street outreach programmes for youth in danger of sexual abuse and exploitation as a high priority nationwide, and it should develop a training module for para-psychological and social workers, volunteers and street workers, with a view to reaching out to child victims of commercial sexual exploitation.

134. In order to strengthen mechanisms to prevent and respond to the problem of child exploitation, the deeper involvement of child psychologists and psychiatrists to analyse the effects of sexual exploitation on children, and

also to sensitize all other sectors involved in combating the phenomenon, is recommended. Thus, a multidisciplinary approach should, in particular, be cultivated in courts and among the judiciary to child victim cases.

135. Sex education and health care programmes, in particular focusing on HIV/AIDS and other sexually transmitted diseases, targeted at marginalized children, should be implemented by street outreach organizations with the support of local government.

136. Programmes providing alternative avenues, such as job and skills training, for street children should be funded by local government, in cooperation with the private sector.

137. In line with proposals put to her, the Special Rapporteur encourages further elaboration and analysis of the possibility of establishing a children's ombudsman at the national level.

138. The Special Rapporteur is hopeful that legal associations and non-governmental organizations that are actively working in the area of child abuse will also apply their expertise and extend their activities to addressing the issue of the commercial sexual exploitation of children. It is an imperative need for research and information-gathering to assess the extent of the phenomenon and the response to it of the criminal justice system.

139. The Special Rapporteur strongly believes that non-governmental and community-based organizations have an important contribution to make, and would like to see the fullest use made of their expertise. She, therefore, feels strongly, that within the framework of the follow-up to the Stockholm Congress, the existence of a multitude of children's organizations in the United States should be exploited to the maximum. This is to say that increased coordination should be attempted with a view to defining more clearly the mandates of the various non-governmental organizations in order to avoid overlap on some issues and the falling into cracks of other issues related to human rights of children. The development of a nationwide NGO directory on children's rights, specifying the substantive focus of each organization, could be useful in this regard. Such coordination would also benefit non-governmental organizations in their relations with donors and funding agencies.

140. The Special Rapporteur is concerned that donors, in both the governmental and private sectors, are funding programmes focused on children without carefully ensuring that all aspects of prevention, intervention and rehabilitation are sufficiently funded. For example, for lack of shelter for street children in San Francisco, young homeless people would consider deliberately infecting themselves with HIV, so as to qualify for social welfare and housing available for HIV-infected homeless youth. Such situations must be avoided at all costs and donors urged to provide funding across the board for all needs and not only for projects addressing "hot topics".

141. Early intervention and prevention programmes in schools should be developed nationwide with a view to dispelling myths about the glamorous life of "escort girls" and raising awareness of potential recruitment techniques.

142. In line with recommendations made at the Stockholm Congress, the Special Rapporteur would like to stress the importance of adopting a non-punitive approach to child victims of commercial sexual exploitation in keeping with the rights of the child and of taking particular care that judicial procedures do not aggravate the trauma already experienced by the child.

Notes

1/ ILO estimates cited in Children's Rights, United Nations Backgrounder, Department of Public Information, United Nations, New York, January 1996.

2/ Statistical compilation prepared for the Special Rapporteur by the Children's Rights Project of the Association François-Xavier Bagnoud, New York.

3/ Childhood Ends when Sexual Abuse Begins, The Paul & Lisa Program, Inc., Connecticut, 1996.

4/ Discussions with Assistant Attorney-General Ms. Laurie Robinson, Department of Justice, Washington D.C., 9 December 1996.

5/ Children's Defense Fund statistics, New York, 1995 and US Congress Select Committee on Children, Youth and Families Report, Washington D.C., 1992.

6/ United States Government Accounting Office (GAO), 1989.

7/ Discussions with Ms. Barbara Mezo, Children Internationally Abducted, New York, 12 December 1996.

8/ This section is based principally on a comprehensive publication of the Office for Victims of Crime, Department of Justice, Child Sexual Exploitation: Improving Investigations and Protecting Victims, A Blueprint for Action, Massachusetts Child Exploitation Network, January 1995.

9/ 1995 Amendment to the Mann Act, Violent Crime Control and Law Enforcement Act of 1994.

10/ International Criminal Police Organization, Recommendations on Offences against Minors, 61st General Assembly, Lyon, 1995.

11/ 104th Congress of the United States of America, second session, "Megan's Act", subsection 1, Findings, 3 January 1996.

12/ Ibid.

13/ International Herald Tribune, "Court to rule on the Internet", 7-8 December 1996.

14/ For a more detailed discussion of the concept of a children's ombudsman in the USA, see Howard Davidson, Cynthia Price Cohen and L. Girdner, "Establishing Ombudsman Programs for Children and Youth", American Bar Association Center on Children and the Law, Virginia, 1993.

Annex I

SELECTED LIST OF PERSONS/ORGANIZATIONS CONSULTED  
BY THE SPECIAL RAPPORTEUR DURING HER MISSION

Washington

Mr. John Shattuck	Assistant Secretary of State for Human Rights, Department of State
Ms. Laurie Robinson	Assistant Attorney General, Office of Justice Programs, Department of Justice
Mr. Terence Lord Mr. J. Robert Flores Ms. Marsha Liss	Acting Chief, Senior Trial Attorney, Attorney, Child Exploitation and Obscenity Section, Department of Justice
Mr. Ronald Laney	Director, Missing and Exploited Children's Program, Office of Juvenile Justice and Delinquency Prevention, Department of Justice
Mr. Daniel Wright	Supervisory Special Agent, Federal Bureau of Investigation, Department of Justice
Mr. Curtis O. Porter	Program Specialist, Family and Youth Services Bureau, Department of Health and Human Services
Mr. Donald Huycke	Special Agent in Charge, United States Customs Service
Mr. Raymond Smith	Inspector, United States Postal Service
Ms. Marlene Young	Executive Director, National Organization for Victim Assistance
Ms. Lise Yore Mr. Peter Banks Mr. Gary Costello	Director, International Division, Director, Outreach, Exploited Child Unit, National Center for Missing and Exploited Children
Mr. Brian Holmgren	Senior Attorney, Criminal Prosecution Division, American Prosecutors Research Institute, National District Attorneys Association
Mr. Howard Davidson Mr. Clifton Cortez Mr. Penny Wakefield	Director, Center on Children and the Law Director, AIDS Coordination Project Director, Individual Rights and Responsibilities, American Bar Association

New York

Dr. Sadik Raschid Mr. Bertil Lindblad	Director, Programme Division, Chief, Children in Especially Difficult Circumstances Section, UNICEF
Mr. Frank Kopeski Ms. Nadia Smith	Special Agents, United States Customs Service
Mr. Mike Pascucci Mr. Kevin Mannion Mr. James Held Ms. Margaret Martinez	Detective-Sergeant, Vice Division Detective, Vice Division Detective, Pedophilia Squad Detective, Pedophilia Squad New York Police Department
Ms. Cynthia Price Cohen	Executive Director, Child Rights International Research Institute
Ms. Lois Whitman Ms. Samya Burney Ms. Jeannine Guthrie Ms. Yodon Thonden	Director, Children's Rights Project Women's Rights Project NGO Liaison (Asia) Counsel Human Rights Watch
Ms. Barbara Mezo	Children Internationally Abducted
Ms. Carol Smolenski	ECAPT/USA (End Child Prostitution in Asian Tourism)
Ms. Myriam Lyons	Children's Rights Project Coordinator, Association Francois-Xavier Bagnoud
Mr. Frank Barnaba Ms. Daphne Koop	President, New York City Projects Director, "Paul & Lisa"
Ms. Beth Haroules	American Civil Liberties Union
Mr. Tom Kennedy	<u>Senior Vice President</u> , Covenant House
Mr. Walter Beach	President, United Nations Association
Ms. Joan Luke Hills	United Nations Information Centre



Tucson/Phoenix, Arizona

Mr. Roberto Rodriguez Hernandez	Consul of Mexico, Nogales
Ms. Maria Elena Orias	Consul of Mexico, Tucson
Mr. Enrique Muñoz Castillo	Consulate of Mexico, Tucson
Mr. Daniel Knauss	Assistant Attorney-General
Ms. Terry Chandler	Deputy Chief, Criminal Division United States Attorney's Office
Mr. Grant Murray	Special Agent in Charge
Mr. David Penrod	Special Agent
Mr. Steve Bossler	Special Agent, United States Customs Service, Tucson
Mr. Thomas Winkler	Supervisory Special Agent
Mr. James Nagle	Special Agent (Yuma)
Ms. Judi Coulter	Special Agent, United States Customs Service, Phoenix
Ms. Kathleen Mayer	Deputy Pima County Attorney (Sex Crimes Prosecution)
Ms. Kathy Rau	Detective, Tucson Police Department
Ms. Susan Ward	United Nations Association

San Francisco

Mr. Terence Hallinen	District-Attorney
Ms. Kimiko Burton	Director, Mayor's Criminal Justice Council
Mr. Patrick White	Sergeant-Inspector,
Mr. Jere Williams	Sergeant,
Mr. Thomas Eisenmann	Sergeant, Juvenile Division San Francisco Police Department
Ms. Norma Hotaling	Director, SAGE Project
Ms. Nancy Petersen	United Nations Association
Ms. Geraldine Abello	Director of Development, Hospitality House
Ms. Judith Griffin	Assistant Chief Probation Officer, Juvenile Probation Department
Ms. Denise Albano	Aftercare Coordinator, The Larkin Street Youth Center

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