Alternative Report to the initial report presented by the United Mexican States to the Committee on the Rights of the Child in accordance with the optional protocol to the convention on the rights of children related to the sale of children, child prostitution and child pornography.

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Produced and presented by ECPAT International and ECPAT Mexico

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I. Introduction

ECPAT International and ECPAT Mexico have developed this Alternative Report to the United Nations Committee on the Rights of the Child.

ECPAT International is a network of more than 80 organizations worldwide, has an expertise in the issue of commercial sexual exploitation of children and young people, including child prostitution, child pornography and trafficking of children for sexual purposes. Through generation of knowledge, advocacy, training, reforms, public policies and laws reforms and initiatives to strengthen law enforcement, ECPAT International seeks to ensure the rights of children and adolescents to live free from sexual exploitation. In addition, ECPAT International is mandated to promote, support and monitor the actions of governments in the implementation of the Declaration and Agenda for Action to which several governments pledged to implement in the First World Congress against Sexual Exploitation of Children and Adolescents (CSEC) in Stockholm, Sweden, in 1996, renewing this commitment in the subsequent 2001 and 2008 conferences. The work of ECPAT International also focuses on contributing to international mechanisms to protect children's rights. The Optional Protocol on the sale of children, child prostitution and use of children in pornography is relevant and therefore seeks to strengthen its implementation and action against commercial sexual exploitation of children and young people.

Currently under the status of national group, ECPAT MEXICO is formed by civil society organizations, Espacios de Desarrollo Integral, A.C. (EDIAC), Unidad de Capacitación e Investigación Educativa para la Participación, A.C. (UCIEP), Fundación Infantia, A.C, and by individuals with both social and academic recognition in the fight against CSEC. The axis that guide its actions include creating awareness and sensitization of different social sectors on CSEC in all its forms, the development and implementation of policies, programs and projects on the subject, the implementation and dissemination of all outstanding research on the issue, lobbying and public policy monitoring and promoting the active participation of children, adolescents and youth in the prevention of CSEC. Its main function includes the monitoring of public policies regarding CSEC and to establish partnerships and coordination with both individuals and institutions of civil society at national and international levels in order to join efforts in fighting this violation of children’s human rights.

Some of the information presented in this document is based on the diagnosis Explotación Sexual Comercial de Niñas, Niños y Adolescentes. Una Aproximación Nacional (Commercial Sexual Exploitation of Children and Young People. A National Approach) regarding actions taken by Mexico in terms of commercial sexual exploitation of children and young people conducted between 2008 and 2009 by ECPAT MEXICO in collaboration with ECPAT International. This diagnosis was the result of workshops conducted in four regions of the country with the participation of researchers, public authorities, legislators and civil society organizations in order to analyze the specific situation to each region on legal frameworks, specific public policies, research and good practices related to the CSEC.
In addition the Global Monitoring Report on Actions Against the Sexual Commercial Exploitation of Children and Young People in Mexico\textsuperscript{1} prepared by ECPAT International, was used as a baseline of information on measures and actions not undertaken and considered necessary to address CSEC taking into account the framework established by Agenda for Action of the World Congress against CSEC (1996, 2001 and 2008).

II. Overview

Despite the recognition of the existence of commercial sexual exploitation of children and Young people (CSEC) in Mexico, there are no statistics to report on its extent. This is a result of the lack of an integrated and formalized system to quantify the problem of sexual exploitation. The initial report submitted by the United Mexican States government cites some figures, but these estimates vary widely, reflecting different concepts and represent different groups. For example, national research on commercial sexual exploitation of children and Young People in Mexico that estimated at 16 000 number of victims, was made based on the number of cases reported in the press between 1998 and 2000, dates from 2000. However, the UN Special Rapporteur against the Sale of Children, Pornography and Child Prostitution, warned during his visit in 2006 than in Mexico could be near 80 thousand girls and sexually exploited children in the principal cities\textsuperscript{2}. The lack of knowledge about CSEC is reflected in the lack of information and concrete actions for each type of this phenomenon.

Therefore, we need a study to understand the current situation and evaluate progress by the Government of the United Mexican States in reducing the incidence of Commercial Sexual Exploitation of Children and Young People. Highlighting the lack of scientific methodology and updated figures to estimate the incidence of CSEC in a National level. It is mentioned that no institution has accurate data on victims of CSEC and that the term Sexual Exploitation is improperly used. Moreover, there has been no research to deepen into the commercial sexual exploitation of children and adolescent boys.

ECPAT MEXICO and ECPAT International recommend the Government of the United Mexican States to establish a permanent system of data collection at national level and the implementation of a quantitative study on the extent of commercial sexual exploitation of children and young people which will provide accurate data in order to make decisions about public policies and related interventions.

At this moment there is only data from small-scale research with which is difficult to extrapolate to the total number of victims. Furthermore, these data does not include disaggregated information on child and adolescent victims who are being treated (both Mexican and foreigners).

\textsuperscript{1} Informe Global de Monitoreo de las acciones en contra de la explotación sexual comercial de niños, niñas y adolescentes de México. ECPAT International. 2006

Mexico is seen globally as a destination for sex tourism. The problem affects the country’s main tourist destinations such as Tijuana, Cancun and Acapulco, which is known as the “Latin American Bangkok”. According to a research conducted in 2003, these cities are home to thousands of children and adolescents caught up in prostitution, exploited mostly by tourists from the U.S. and other developed countries\(^3\). Children and young people living in the streets are one of the groups particularly vulnerable to the recruitment techniques and abuse by tourists. According to ECPAT MEXICO, the Tourism Secretariats, both locally and at the federal level have been particularly indifferent as to the prevention of commercial sexual exploitation of children and young people in the travel and tourism sector. Not only have denied its existence in the national territory or of nationals on foreign territory, but have also ignored the actions taken by the Code of Conduct for Prevention of Commercial Sexual Exploitation of Children and Young People in the Travel and Tourism Sector

Statistics from the Mexican Federal Preventive Police (PFP) show that sexual exploitation of children and young people through the Internet ranks third in the list of cyber crimes, preceded only by fraud and threats. It also states that Web sites increase at a rapid pace. While in January 2004 there were 72 100 sites of child pornography, in early 2006 there were more than 100 000 sites. In addition, Mexico is second largest producer of child pornography worldwide, with increased production of child pornography also referred to as images of abuse and / or commercial sexual exploitation of children and young people\(^4\)

Despite these data, Mexico does not have a national research on sex tourism or pornography and sexual abuse images of children and young people. Given the limited information available, it is imperative to have updated data on what are the most vulnerable groups of children and young people in relation to the exploitation in prostitution, pornography, trafficking and tourism. Research conducted in different cities reveals marked differences in the strategies used by pimps and exploiters, which adapt to cultural patterns present in the victim’s communities (for example, stealing girlfriends, criadazgo, etc.)\(^5\). To date, investigations are known in Campeche, Yucatan, Oaxaca, Quintana Roo, Baja California and Colima, which gave way to projects and campaigns focused on prevention and providing services to children and young people victims and at risk\(^6\). However, it is not known whether they have been research conducted in other states, nor whether if there are plans to disseminate them.

Therefore, it is important to know how the dynamics of commercial sexual exploitation are given in every city or region, what are the recruitment strategies, who are the groups of exploiters (operators and brokers) and what are their forms of operation, what are the physical, social, emotional and psychological experiences of the victims as a mean to develop an intervention and care plan based on knowledge.

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Finally, we considered that the link between academic and education sectors and the public and civil institutions on CSEC it is to be strengthened to ensure that investigations are undertaken under methodological rigor. It should also seek both human and financial resources for research on this issue, since it is a limiting factor for research by civil organizations. Similarly, it is essential to ensure the incorporation of research results in the decision making for public policy issues and also the need to disseminate the research data.

III. Measures to implement the Optional Protocol

A. Mexican legal framework

1. Laws and regulations that support the implementation of the Optional Protocol

In February 2007, various provisions of the Federal Penal Code, the Federal Code of Criminal Procedure and the Federal Law against Organized Crime on what concerns commercial sexual exploitation of children and adolescents were amended by decree. The changes included additions and exceptions and stiffer penalties for exploiters. The following paragraphs are an analysis of federal legislation, which defines the criminal conduct on child pornography, prostitution, the sale, and trafficking of children and young people with sexual purposes as well as sexual commercial exploitation of children in travel and tourism sector.

Child pornography / sexual abuse images of children and adolescents

There is no specific law on production, sale or distribution of pornographic material of children and young people; the Federal Penal Code is applicable in this matter. Article 202 of the Federal Penal Code provides that:

“Anyone who seeks, require, facilitate or induce one or more persons under eighteen years of age or people who have no ability to understand the meaning of the event or people who are unable to resist to perform sexual acts or bodily display for lewd or sexual purposes, real or disguised, by any means, in order record video, photography, filming, display or describe thru printed material or transmission of data files in public or private network telecommunications computer systems, electronic or its substitutes, commits the crime of pornography.”

7 Relator Especial sobre la ESCNNA, A/HRC/7/8/Add.2, 2008
This definition is in accordance with the Optional Protocol (Article 2) in relation to pornography of children and young people, although it is unclear whether to include prohibitions on audio recordings of sexual abuse of children and young people. The penalty for this crime carries sentence of seven to twelve years imprisonment and a fine of 800 to 2,000 days of minimum wage.

Similarly, Article 202 criminalizes:

To the persons or persons who sets, prints, record on video, photographs and films or describe acts of exhibitionism lewd or sexual, real or simulated, involving one or more persons under eighteen years of age or person or persons who have no ability to understand the meaning of the act or a person or persons who have no ability to resist it, a sentence of seven to twelve years in prison and two thousand eight hundred day fine and confiscation of the objects, instruments and proceeds of crime will be imposed. The same penalty shall be imposed on anyone who reproduces, stores, distributes, sells, purchases, leases, exposes, advertises, transmits, imports or export the materials referred to in paragraphs above.

Article 202 Bis.- Stipulates penalties for mere possession of child pornography:

To the person or persons who store, purchase or lease the material referred to above, without marketing or distribution purposes a sentence of one to five years in prison and hundred to five hundred days fine will be imposed. He will be also subject to specialized psychiatric treatment.

It is important to note that Articles 202 and 202 Bis do not criminalize the use of and access to pornographic materials of children and adolescents. The Federal Penal Code also criminalizes the phenomenon of “grooming” of children and young people thru the Internet, crime directly related to the pornography of children and young people in the Internet. Some abusers use pornographic images of children and young people or even adults to reduce the inhibition of children or adolescents with the purpose of encouraging them to take photos or videos with sexual content. In some cases, the abuser to blackmail the victim then uses these materials. Likewise, legal responsibility must extend to companies, such as Internet service providers, cell phone companies, Internet search engines, and Internet cafes, among others, in case of involvement in the production or dissemination of these materials. The law should also have provisions to ensure identification, support and specialized care of victims of these crimes. ECPAT International and ECPAT MEXICO observe and recommend the Mexican authorities to resolve this legal vacuum in order to ensure the criminalization of all crimes related to pornography on children and young people.

Moreover, the Federal Criminal Procedures Code in Article 278 bis, forces concessionary companies and telecommunications services and the Internet Service Provider to collaborate with authorities to obtain evidence. This r
complies with the content of the Declaration and Call to Action of Rio de Janeiro, in connection with the investigation of cases of child pornography.

Within the relevant legislative developments relating to the use of children and adolescents in pornography, it is emphasized that the law incorporated as a penalty the confiscation of objects, instruments and proceeds from the crime and the punishment of the performance of sexual acts or bodily display to children and young people. But from a critical review of the language used is highlighted that the use of terms as "knowingly" provides legal tools for people who commit this crime to avoid a sentence that involves punishment.

Prostitution of Children and Young People

Article 204 of The Federal Penal Code refers to the procuring (pimping) of persons less than 18 years of age. The penalty for this crime carries an imprisonment from eight to fifteen years and 1,000 to 2,500 days of minimum wage fine.

The definition of the crime appears to be generally under Article 2 of the Optional Protocol. However, Article 204 - Section I, which punishes the person using the body of a child for sexual purposes, does not classify in a differentiated manner the use of child in sexual activity is exercised in exchange for payment (money) or other form of remuneration (e.g. safety, clothing, drugs).

Article 204 - Section II punishes the person who provides child prostitution (pimps) and Article 204 - Section III condemns people who run, manage or hold places in which the exploitation thru prostitution of children is held.

It is important to stress that Article 204 did not prohibit specifically the fact that offering, applying for, obtaining, or providing a child or adolescent for prostitution purposes which doesn’t comply in full with Article 3 b) of the Optional Protocol. ECPAT International and ECPAT Mexico observe and recommend the Government of the United States of Mexico to make relevant adjustments to close this gap typifying the figure of the client, even if the perpetrator does not know the victim's age. Similarly it is predominant to incorporate into the Federal Penal Code the crime of sale of children and young people in terms of the Optional Protocol. ECPAT International and ECPAT Mexico recommend to the Government of the United Mexican States that crimes related to children and Adolescents are grouped into a single title without equating them with people who have no Ability to understand the significance of the fact or persons who have no ability to Resist it.

Sale and trafficking of children and young people for sexual purposes

Mexico adopted the Law to Prevent and Punish Trafficking in Persons in 2008. The law has a vision of human rights by ensuring respect for the victims and potential victims, protection, care and assistance to the victim. Article 5 provides
protection for children and adolescents against human trafficking in their full, since this definition is harmonized with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 5 of the Law provides that:

“Commits the crime of trafficking in persons who promotes, solicits, offers, provides, obtains, transfers, gives or receives, for himself or for another person, a person, through physical or moral violence, deception or abuse of power to submit to sexual exploitation forced labor or services, slavery or practices similar to slavery, servitude, or the removal of an organ, tissue or its components. when the offense is committed against persons under eighteen years of age, or against those who do not have the capacity to understand the meaning of the act or ability to resist does not require the means of accreditation.

However, Article 5 does not include a definition of sexual exploitation.

Under Article 6 - Section II of the Law, the penalty for this crime carries a sentence of nine to eighteen years in prison and 750 to 2,250 days of minimum wage fine, if the offense is committed against a person under eighteen years of age the penalty provides increases up to one half, i.e., up to 27 years imprisonment and a fine 3,375 days. It will be aggravated if the perpetrator uses its public service, without having it be hold as such, or the perpetrator have either kinship by consanguinity, affinity or civil, when the victim is older of 60 years of age, or when the perpetrator is living in the same household as the victim, the victim is Indian (ab origen) or perpetrator is a guardian or caregiver of the victim.

It is important to emphasize that articles relating to the rights of victims are included (arts. 1 and 3), questions of extraterritoriality (art. 1), victims confidentiality (art. 18), best interest of the child (art. 12, Fracc. IV), the temporary residence (art. 18, Fracc. III) and secure repatriation (art. 20). On the responsibility of legal persons (companies) (art. 8), the judge will impose sanctions such as legal suspension, dissolution, ban from certain businesses or operations, or removal and intervention. On reparation of damage (art. 9), the judge must decide on the costs of medical treatment, physical therapy and occupational rehabilitation, transportation to the place of origin, food, temporary housing, lost income, damages and other redress.

Established in this law the incorporation of an Intersecretarial Commission (arts. 10 and 11) to be integrated at least by the holders of 15 departments and agencies of the Federal Public Administration an autonomous public agency representative concerning the subject, three representatives NGOs and three academic experts. It also sets out the development of a National Programme to prevent and punish trafficking in persons (arts. 10 and 12), including public policies, prevention and punishment, protection and assistance to victims (art. 10), Permanent Programs (art. 2) to prevent trafficking and plans and training
programs for public servants, as a minimum of public safety, administration and enforcement of justice and migration, with the aim of safeguarding the dignity and the human rights of the victim and the perpetrator (art. 13, Fracc. II, subsection C). However, both this Law and the Regulation of the Law does not include details on responsibilities and how to coordinate between agencies created to cope with trafficking in Mexico. Protective measures and comprehensive care are established (arts. 12-20), including preventive measures to eradicate the demand, inform about the risks and implications to potential victims, informing and warning service providers, training public servants, public awareness, information on the modus operandi for capture and recruitment of victims, to report on risks and of sexually transmitted diseases.

Among the protection measures inter-institutional agreements, scientific research and exchange of experiences, are promoted, the building of ad-hoc shelters, providing security and safeguarding their integrity of victims and their families, give special attention to Children and Young People, women, the elderly and the disabled and the indigenous people, to identify victims, ensure confidentiality, facilitate residence during the judicial process repatriate safely. Support Measures include generating models of protection and assistance, legal guidance, including immigration, designate translators, to ensure the physical care, medical and psychological, report the crime, issue documentation required for safe return and monitor judicial proceedings. However, limits the term "trafficked" to individuals who agree to cooperate with the authorities and it doesn’t set out measures to identify and protect foreign children and young people and omitting the right to seek refugee status in Mexico.

Although this Law is in accordance with international standards emanating from the Anti-Trafficking Protocol is applicable only when the case is considered a federal offense. For trafficking cases whose jurisdiction falls to the states, state laws will apply. According to ECPAT Mexico, on the harmonization of state laws with the Law to Prevent and Punish Trafficking in Persons in 2010, 25 states and the Federal District (of the 31 states) have made reforms to their penal codes to punish trafficking in persons (Aguascalientes, Baja California, Campeche, Chihuahua, Coahuila, Colima, Guanajuato, Guerrero, Hidalgo, Jalisco, Mexico State, Michoacán, Morelos, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosi, Sinaloa, Sonora, Tabasco, Tlaxcala, Veracruz, Yucatán, Zacatecas and Mexico City). Only 3 States and the Federal District have a special Law on Trafficking in Persons (Chiapas, Distrito Federal, Tabasco and Tlaxcala. States that have made reforms in their criminal codes and have the law are: Veracruz, Tamaulipas, Queretaro, Hidalgo, Sinaloa, and Yucatan.

Moreover, the definition of trafficking contained in state law is not always consistent with federal law. For example, in the case of Yucatan, the penal code does not include protection for the population aged 16 to 18 years and includes under "corruption of minors" to trafficking, pornography of children and adolescents and sex tourism. Therefore, does not define aspects that federal law contains such as transfer, delivery or receipt of a person to subject to

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10 Ibid
sexual exploitation\textsuperscript{11}. Such measures may include systematic training and awareness rising of security forces and judicial system personnel (to avoid confusion with smuggling, improving the capacity of victim identification and collection of evidence). ECPAT Mexico ECPAT International and observe and recommend to Government United Mexican States to ensure harmonization and standardization of state laws concerning human trafficking with federal law taking into account also the provisions of the Optional Protocol. The legal gaps and contradictions generated by the lack of consistency between the state law against human trafficking and federal law, the lack of clarity in terms of jurisdiction, weaken the system of legal response against persons involved in trafficking of children and young people in Mexico.

The scope of State measures to combat trafficking in persons is, in several cases, differ from the scope of the federal law. For example, six states Hidalgo, Querétaro, Sinaloa, Tabasco, Veracruz and Yucatan criminalize trafficking only in cases of sexual exploitation and prostitution\textsuperscript{12}.

Articles 17-20 of the Law to Prevent and Punish Trafficking in Persons ensure that trafficking victims, including children, once identified, will benefit from protection and assistance (Medical, psychological, legal, in terms of repatriation). However, it appears that these measures are not implemented and that procedures regarding the identification of victims and assistance vary from state to state\textsuperscript{13}. ECPAT Mexico and ECPAT International observe and recommend to the Government of the United Mexican States to ensure that children and adolescent victims of sex trafficking are protected and give specialized care in all states, regardless of whether the victim agrees to prosecute their traffickers. It is necessary to create centers with specific intervention models for children and adolescent victims of commercial sexual exploitation, with highly qualified personnel for its operation. It is necessary to have sufficient public funding to operate consistent and that their work is done in collaboration with civil society organizations. Also, the services must be ensured with appropriate and professional care for children and adolescents in the judicial process and the investigations through systematic training of the teams involved in the legal-criminal proceedings involving children and adolescents.

In 2008 the Special Prosecutor for Crimes of Violence against Women and Trafficking\textsuperscript{14} was created This unit aims to implement the mandate set by federal decree, to create the necessary administrative structure, given the federal nature of the crime of trafficking. The objective of this unit is basically to receive complaints and investigate, but also provides support to families of victims and coordinates with national and international agencies. In addition, the Office has a program for missing or unaccompanied children and adolescents, which provides legal and psychological advice as well as social work.

\textsuperscript{11} ECPAT Mexico. 2009. Op.CIt.
\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
\textsuperscript{14} Acuerdo A/024/08 mediante el cual se crea la Fiscalía Especial para los Delitos de Violencia contra las Mujeres y la Trata de Personas
Despite all these efforts, only one condemnatory sentence has been set (January 2010) for this crime, being that 38 cases were opened in 2008\textsuperscript{15}.. NGOs and other observers continue to report that corruption among public officials, especially the local police and immigration staff, is considered a problem. It has been reported cases of officials who allegedly accepted bribes or extortion and even sexual services, providing counterfeit identity documents, discouraged victims trafficking to report these crimes, or ignoring cases of child prostitution and other activities related to trafficking in human beings for sexual purposes\textsuperscript{16}.

ECPAT International and ECPAT Mexico ask that the Government of the United Mexican States take measures to ensure the implementation of the Law on the Prevention and Punishment of Trafficking, increasing the transparency of agencies and their accountability.

Commercial sexual exploitation of children and adolescents in the travel and tourism sector

The Federal Penal Code includes articles that deal specifically with the crime of sexual exploitation of children and adolescents in the travel and tourism sector. Under Article 203,

Commits the offense of sexual tourism he who promotes, advertises, invites, facilitates or arranges by any means that one or more people travel within or outside the national territory in order to perform any type of sexual acts actual or simulated with one or several persons under the age of eighteen, or with one or more persons who do not have the capacity to understand the meaning of the act or with one or more persons are unable to resist.

A sentence of seven to twelve years in prison and a fine of two thousand eight hundred minimum wage days will punish the offender.

Article 203 BIS provides penalties for the customer, thereby penalizing:

Anyone who through sex tourism performs any type of actual or simulated sexual acts with one or more persons under eighteen years of age, or with one or more persons who are unable to understand the meaning of the act or with one or more people without ability to resist it, will be charged and imposed a penalty of twelve to sixteen years of imprisonment and 2000-3000 day fine and will be also subject to specialized psychiatric treatment.

Although both articles are ample, they fail to penalize the hotels, motels and other forms of individual and collective accommodation, airlines and other carriers, travel agencies, restaurants and other businesses that promote or facilitate the commercial sexual exploitation of children and adolescents. Other countries in the region (eg Costa Rica) have exemplary laws that could form the


basis for strengthening the protection of children and adolescents ensuring reparation for victims and the punishment for the exploiters. ECPAT International and ECPAT Mexico observe and recommend to the Government of the United Mexican States to reform Articles related to commercial sexual exploitation of children and adolescents in tourism and travel in order to sanction private sector entities that through its services and structures facilitate and benefit economically from commercial sexual exploitation of children and adolescents. In the same way and in accordance with the terms used internationally recommended change to the term used for “sex tourism” in favor of "Commercial sexual exploitation of children and adolescents in the travel and tourism sector.” The Code of Conduct for the Protection of Children and Adolescents against Exploitation Sex in the Travel & Tourism Industry is an instrument of self-regulation and corporate social responsibility provides a strategy for the joint work of government, civil society and private sector.

Extraterritorial laws

In accordance with Article 4 of the Optional Protocol, Articles 1 and 2 of the Federal Penal Code establish that the United Mexican States have jurisdiction over federal crimes committed throughout the Republic as well as federal crimes initiated, planned or committed abroad. Article 4 of the Federal Penal Code provides that crimes committed abroad by a Mexican against Mexicans on foreigners, or by a foreigner against Mexicans, shall be punishable in the Republic under federal law, with the following requirements: I. that the accused is located in the Republic; II. That the accused has not been definitively tried in the country which he committed the crime;

Article 4 stipulates that Mexican criminal laws have extraterritorial effect. By which, Mexican citizens who sexually exploit children or adolescents in foreign countries can be prosecuted and tried in Mexico if they have not yet been tried in the country where they committed the crime. The same principle applies to aliens who have exploited sexually children or adolescents in Mexico.

However, Article 4 - Section III includes dual criminality as a precondition, i.e. Infringement for which is accused is an offense in the country where it was committed as well as in Mexico. This requirement significantly weakens the effect of extraterritorial criminal laws.

ECPAT Mexico and ECPAT International observe and recommend to the Government of the United Mexican States that this requirement is not taken in consideration in cases of commercial sexual exploitation of children and adolescents because it is not in their best interest.

2. Challenges for the implementation of laws and regulations in accordance with the Optional Protocol

In the diagnosis made by ECPAT Mexico in 2009, it is mentioned that the legal framework is weak and there are insufficient public policies in prevention, care and combating CSEC. The legislative framework within the country has laws of
different generations who are operating at the same time, which prioritizes the homologation of all legal tools. Gaps are legal loopholes that allow this problem to grow. In addition, there is no State resolute action to combat this type of crimes and all organized crime. There often is a complicity of the security structures and the political class with these criminal networks. One example is the case reported the Parish Priest Xalapa in Veracruz, Rafael López Muñiz. Mexican Cyber police found in his possession of pictures of babies and girls aged 6-14 years being raped and which he distributed from his parish\(^\text{17}\). Despite progress in the investigation of the case, the process stopped since the Archdiocese of Veracruz paid bail for the release of priest\(^\text{18}\). The granting of bail is granted through the intervention of Gov. Fidel Herrera\(^\text{19}\).

There are several cases in which shows the corruption and impunity in Mexico with respect to crimes of CSEC. Another is the international network of prostitution and use of children and adolescents in pornography in which people from the Cancun’s businessmen, senior politicians and hotel industry are involved., This information comes to light through work of a journalist and the result is the application to the journalist defamation\(^\text{20}\). In addition, there are the violations of children in preschool in Villa de Etla, Oaxaca and in the center of Oaxaca City, committed by the teachers of the victims, in cases, which were also allegedly Video taped and photographed\(^\text{21}\). The intervention of National Human Rights Commission, demonstrate that the authorities of the State Institute of Public Education in Oaxaca failed to timely intervention.

Importantly, the amendments to the legislation will not be sufficient to eradicate CSEC until both human and material resources become available to combat these crimes. ECPAT International and ECPAT Mexico observe and recommend the implementation of laws, regardless of social or political status of the offender or criminal and cease the protection of the authorities and individuals involved in criminal networks of commercial sexual exploitation of children and adolescents. We recommend the creation of Councils to be considered in the laws protecting the rights of children and adolescents as the main instrument and who should make mandatory recommendations.

In Addition, we see big statewide legislative gaps, for example in the application of the law in the specific crime of prostitution and pornography of children and adolescents in the cases that it is not linked to organized crime, in many states are not punished locally. Inconsistencies in the interpretation and enforcement among states include the age of sexual consent, the suspension of all criminal proceedings for abuse or violation if there is a marriage, lack of penalties for the customer in the case of prostitution children and adolescents, the concept of "corruption of minors" which covers confusingly different forms of CSEC offenses with other type of crimes such as of consumption of narcotics,
commission of criminal acts, etc. Remarkable is the constant confusion about terminology and concepts related to CSEC.

As it was mentioned above, state laws have different challenges. For example, in the case of Yucatan there are deficiencies in the legal regulation on CSEC in different aspects such as outdated and anachronistic terminology used, the lack of protection for adolescents over 16 years, lack of regulation of the CSEC rules, lower penalties etc. In Baja California the main obstacles that were detected were the lack of interest of legislators, the ignorance of the laws by the police and lack of coordination of all involved in prevention an application of the law. In Oaxaca terrain issues, lack of information and ignorance of the laws, lack of culture of complaint, the corruption of authorities, the political and administrative bureaucracy between those aspects that impede the application of the law. There is a lack of follow up on citizen complaints and lack of documentation of cases as was evident in the case Etla mentioned above.

B. Overall strategy to eliminate CSEC

As mentioned in the initial report of the Government of the United Mexican States, Mexico has a National Development Plan (2007-2012), the National Programme for Human Rights (2008-2012) and Programme of Action A Mexico Fit for Children and Adolescents (2002-2010). These plans are aimed at promoting the integral development of Mexican children. Plan also highlights the National Action to Prevent, Attend and Eradicate the Commercial Sexual Exploitation of Children as the only national action plan that addresses the protection of children and adolescents from commercial sexual exploitation, and therefore provides for specific actions needed to eradicate this problem and provide specialized care to victims.

The National Action Plan has the objective to coordinate the actions of governmental institutions and civil society to care for victims, encourage the design and commissioning of practical tools and comprehensive strategies for prevention and care, promote the legal protection of children, defending and promoting their rights and promote the constant updating information through studies, diagnostics and research on sexual exploitation of children and adolescents.

Although this National Action Plan has no solid legal foundation and depends on the willingness the government in office to give continuity to its implementation, the actions of the National Integral Development of Children are included within the framework established by this Action.

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23 Ibid.
24 Ibid.
25 Ibid.
It is important to emphasize, that in 2008 the National Action Plan eliminated the term "Commercial" from the definition. This shift in national public policy is questionable because leaves out of consideration CSEC often linked to organized crime and has a strong economic element. On the other hand, it generates confusion with regard to child sexual abuse. CSEC implies extreme commoditization of the victims and therefore, ECPAT International and ECPAT Mexico observe and recommend to the Government of the United Mexican States to keep on the agenda of the government the Commercial Sexual Exploitation of Children and adolescents attending the specificity of the problem.

This National Action Plan is implemented through Local Action Plans that seek to specific situations and are designed for action on three levels: attention to individual victims, the Community level of attention to health problems and the general national strategy "to live better." As a result of the adaptation of general guidelines to the local specific context with an intervention scheme it has been possible to establish the operation of the Prevention Care and Eradication Program of Sexual Exploitation of Children (PROPAESI) in 190 cities with high incidence, in 18 states of the country that have more vulnerability to the phenomena. However, there is no information on the indicators used by this instance to determine the vulnerability in the states.

Several civil society organizations formed a committee promoting the Law (EDIAC, EDNICA, UCIEP, CIDES, Mama AC, Copome, FAI, FAM, Casa San Hipolita and Programa Niños Calle amongst others), indispensable considerations to the Law on Protection of Rights of Children and Adolescents who were not included, for example the creation of a monitoring and surveillance mechanism. The legal instrument that was created states in article 7 the obligation to draft a National Programme for the Attention of the Rights of Children and Adolescents and to date it does not exist.

ECPAT Mexico and ECPAT International and observe and recommend to the Government of the United Mexican States to consider developing the National Program from which it is possible to emit public policies and allocate sufficient financial resources to have a diagnosis, indicators, clear targets and goals, that are measurable and accurate for the assessment and measurement of it's impact.

In an overall assessment with regard to public policies in Mexico, it is noteworthy that the CSEC should be part of the general policy of attention to Children several errors are found in the preparation and development of plans, including the inadequacy of legal frameworks. There is a widespread mistrust of the utility, scope and vision of State's public policies. Added to this, it is noted that the Government of Mexico signed and ratified international agreements, but then fails to meet commitments in a timely manner. An example is the reference to the report on the Optional Protocol to the Convention on the Rights of the Child that the government should have delivered in 2004 and has just submitted in early 2010.

26 ECPAT Mexico, Op. Cit
27 Ibid.
28 Ibid.
Also, the National Coordination to Prevent, Attend and Eradicate the Commercial Sexual Exploitation of Children has no mechanisms or financial resources to allow the implementation of the Plan and to maintain continuity of its programs.

According to the diagnostic developed by ECPAT Mexico, and the UN Special Rapporteur, although specific situations can vary by state, city and town according to the personal and professional characteristics of the personnel involved, everyone agrees point out corruption and police negligence as a major cause for the development and impunity of exploitation and trafficking.\(^{29}\)

ECPAT Mexico and ECPAT International observe and recommend to the Government of the United Mexican States on creating an ongoing police training programs and establishing protocols and regulations for monitoring federal and municipal agencies, and establishing safe mechanisms for reporting and punishing corruption.

Finally, it is noted there is no effective system of protection and assistance for children and adolescents who have been victims of such crimes, nor programs of rehabilitation or social reintegration, which becomes a cause of re-victimization. According to ECPAT Mexico, existing programs are directed to victims of domestic violence or to care for migrant population as in the center of Jalisco mentioned in the report submitted by the Government of the United Mexican States.

ECPAT Mexico and ECPAT International observe and recommend to the Government of the United Mexican States the creation and operation of specialized care centers for children and adolescent victims of commercial sexual exploitation.

C. Budget allocated for the implementation of the Protocol

The National System for Integral Family Development (DIF) has an annual budget of 7 million pesos for CSEC. In addition, each municipality provides for the prevention and victim assistance and there are other programs with resources that intersect with this problem.

In 2008, DIF Quintana Roo managed a budget of $500,000MXP provided by Federal DIF, DIF Yucatán allocated $300,000MXP for PROPAESCI, DIF Oaxaca had a budget of $400,000MXP, from which $108,000MXP were spent on scholarships for children living on the street and at risk of CSEC, and, finally DIF Baja California had a budget of $1,000,000MXP for children and adolescents who are at risk or victims of sexual exploitation (not commercial).\(^{30}\) The resources allocated Nationally is not only insufficient but at a local level there are differences in the total resources allocated and the specific resources

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\(^{29}\) Consejo de Derechos Humanos. *Informe del Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía, Juan Miguel Petit. Visita a México. 2008*

allocated to fight CSEC. The criteria for this budget allocation is unknown as is the information on its application. While the National DIF spent $7,000,000 MXP in 2008, one Departmental Unit of The Government of Mexico City spent $92,000,000 MXP on the construction of a Sport Center.

During the diagnostic process led by ECPAT Mexico in 2008, the lack of resources was constantly mentioned. The federal budget applied for programs and projects addressing CSEC are not itemized, but distributed in each state with programs alternating between the different needs childhood. This leads to the minimization of the resources and actions allocated to this problem due to a lack of specific labeling. Added to this, there is no actual data, which encourages the lack of attention and importance given.

ECPAT Mexico and ECPAT International observe and recommend the Government of the United Mexican States that fixed resources for implementation of plans and policies are accompanied with sufficient funds.

In his report, the Special Rapporteur, said the Mexican public education system is not prepared technically or administratively, to receive complaints of abuse, exploitation and trafficking by their Students. Given the wide coverage of this system throughout the country, it is losing the opportunity to act as a first barrier against violations of human rights of children and young people, although it should be noted the actions promoted by the National Human Rights Commission and its program of child human rights advocates in schools.

ECPAT Mexico and ECPAT International observe and recommend to the Government of the United Mexican States to provide the necessary measures so that the basic education educational plans incorporate in their curricula training in the rights of children and teenagers, particularly in the prevention and protection of CSEC.

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