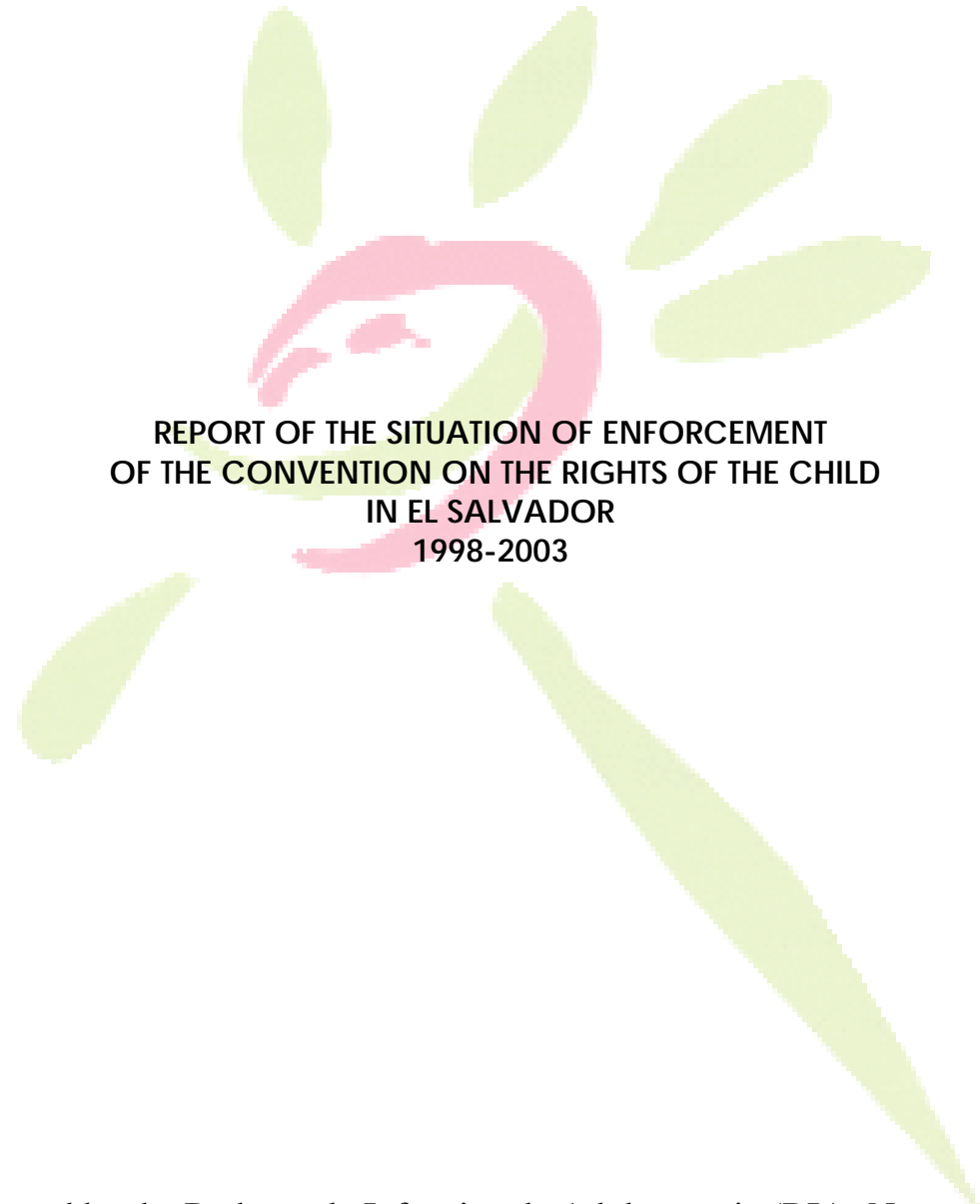


**RED PARA LA INFANCIA Y LA ADOLESCENCIA**



**REPORT OF THE SITUATION OF ENFORCEMENT  
OF THE CONVENTION ON THE RIGHTS OF THE CHILD  
IN EL SALVADOR  
1998-2003**

Presented by the Red para la Infancia y la Adolescencia (RIA- Network for  
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## I. INTRODUCTION

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This document results from the analysis of the information obtained to update the report about the situation of enforcement of the convention on the rights of the child in El Salvador, to assess the applicability of the CRC, within the framework of the commitments subscribed by the Salvadoran State. Therefore, there has been an analysis of research results and stocktaking that orients the detection of the main advances, as well as areas of concern, based on available indicators, especially during the period between 1998 and 2003.

The Red para la Infancia y la Adolescencia, RIA, (Network for Childhood and Adolescence) designed and prepared this document utilizing various working strategies, with a clear awareness of the importance of the participation of civilian society and especially child and adolescent population as true subjects to rights.

In the first place, there was a compilation and revision of 64 bibliographic sources that report the situation of children and adolescents. This included research, reports, and pronouncements contributed by non-governmental organizations and institutions of superior academic education, as well as international cooperation organizations, especially those produced within the past five-year period.

There was also a consultation of available official documentary sources, of institutions directly linked to the guarantee of child and adolescent rights, such as the Ministry of Education and the Salvadoran Institute for the Full Development of Children and Adolescents, (Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia, ISNA). There was particular emphasis on consulting documentary sources produced by the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH).

The PDDH is the governmental institution created in 1992, by constitutional mandate, as an essential component of the national establishment. The goal was to ensure impartial criteria and decisions in the monitoring and vigilance of the work of the power structures faced with the human rights of the general population. The Assistant Attorney's Office of Children and Adolescents figures within this institution, with the mandate to promote, guarantee, and supervise respect to the human rights of these specific age groups.

The information provided by the Attorney's Office has allowed comparing the degree of progress and violation of human rights made by state institutions, especially regarding the situation of children missing during the armed conflict, childhood undernourishment, police violence, the circumstances of adolescents in conflict with the law who are in internment centers, and the constitutional controversy of the recent Anti-gang Law, among others.

It is extremely important for RIA to gather the participation of child and adolescent population as true subjects to rights. Therefore, the contribution of children and adolescents was a second source of primary information. They represented non-governmental organizations that participate in the Network for Childhood and Adolescence. A methodological strategy involved the organization and application of a content analysis technique to the information collected from

four focus groups. There were 54 participants in the focus groups, distributed by age and gender. The information the participants contributed allows comparing the closeness between what the adult civil society reported and how the child and adolescent population feels.

This experience was followed by a workshop to consult with representatives of institutions that constitute the RIA or that are linked to the topic of childhood. There were a total of 31 participants in this workshop, mainly non-governmental institutions. Their contribution enriched the updating of this report.

A content analysis of newspaper articles and reports regarding children rights published by the two main printed media in the country was also carried out. The main reference was the information produced within the six months previous to this report.

As a complement for some aspects where documentary information was lacking, six interviews with key informants were conducted. Participants had links to the topic of children rights and had lengthy experience in work with juvenile penal justice, children subjected to sexual and commercial exploitation, working children, and children living in the street.

Taking into consideration the final observations made by the committee of children rights, El Salvador, was of no little relevance for the updating of this report. The Committee examined the initial report of this county in September of 1993 and identified five positive aspects and a set of difficulties and factors of concern that hinder the application of the Convention. The Committee's exact words were:

1. Notices the difficult economic and social situation in El Salvador, worsened by persistent poverty and 12 years of internal conflict and violence. The government acknowledges the need to carry out national efforts to resolve many of the problems generated by the conflict and to guarantee full observance of the dispositions from the Convention. The Committee trusts that the democratic institutions of the country, as well as its policy of social reconciliation, will soon consolidate.
2. The Committee regrets that El Salvador has not adequately taken into account the dispositions of article 4 in the Convention and that the budgetary restrictions that affect social programs have resulted to the detriment of the protection of children's rights.
3. Notices also the lack of coordination between public and private entities and the organizations that look after children's rights.
4. The Committee expresses its preoccupation with the concept of children in irregular circumstances written in Salvadoran legislation. A clarification that includes the criteria utilized to define that concept is necessary, along with the possible application of penal law to these children.
5. In addition, the Committee deems as necessary the serious consideration of issues related to the legal definition of the child, particularly with respect to the minimum age to get married, be employed, join military service, and offer testimony before the court system.

It seems that these dispositions do not adequately take into consideration the principles of the best interest of the child and the no discrimination.

6. The Committee is alarmed with the high number of children that have been abandoned or displaced or that have become orphans as a result of the armed conflict. It is also alarmed with the cases of children that, in order to subsist, are forced to live and work in the street.
7. The Committee is also concerned with the generalized discriminatory attitudes against disabled children, as well as with the existence of numerous cases of abuse and violence against children within the home.
8. The Committee notices with concern the lack of training of professional groups that take care of children.

This report resumes the preoccupations noted by the Committee with the goal of establishing the balance between progress and recessions, based on an analysis of qualitative and quantitative indicators reported in the different studies conducted by governmental and non-governmental organizations regarding the current state of children and adolescents rights in this country.

## II. BRIEF SALVADORAN CONTEXT

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El Salvador, one of the countries with less territory in America, is 21,040 Km<sup>2</sup>. According to the General Office of Statistics and Census (DYGESTIC in FESAL, 2003), it is estimated that by the middle of 2003, El Salvador had an approximate population of 6,638,168 inhabitants, out of which 3,932,569 (59.24 percent) live in the urban area and 2,705,599 (40.75 percent) are in the rural area. This characterizes the country as a society with great urban activity. The population density is estimated to be around 315 inhabitants per Km<sup>2</sup> (FESAL, 2003).

El Salvador is a country where the majority of the population is young. Thirty-seven percent of the population is under age 15. The dynamics of the population has been characterized by keeping a relatively high birthrate. During the period between 1992 and 2001 the population in the country grew at an average yearly rate of 2.1 percent. The rate of natural growth reduced to 1.9 percent for the period between 2000 and 2005. It is estimated that for the year 2010, twenty years after the Convention on the Rights of the Child, CRC, the total population will be 7.4 million inhabitants (National Department of Family, 2001).

The country's Global Rate of Fertility, GRF, fell significantly within the last three decades, from 6.3 children per woman in fertile age in the period between 1973-1978 to 3.5 children in 1992 and to 2.97 during the period between 1997 and 2002. With this tendency, the GRF in El Salvador has reached the second place among the lowest in Central America.

The economic plan of stabilization and structural adjustment was implemented since 1989. With this, the Gross Internal Product (GIP) experienced high growth rate and the fiscal deficit decreased from 4.5 percent in 1992 to 0.1 of the GIP in 1995. In the past years there has been a slower growth, where the GIP grew at a yearly average lower than 3 percent (Molina and collaborators, 2003).

As pointed out by the United Nations Development Program (UNDP) in its Report on Human Development in El Salvador (2003), poverty continues to be high and it is not well estimated. Different reports affirm that poverty has experienced a significant reduction in the nineties. In the period between 1992 and 1998, poor households decreased from 65.4 percent to 44.6 percent. However, between 1999 and 2001 the tendency towards a decrease in poverty continued at a slower pace, dropping from 41.3 percent in 1999 (FUSADES, 2001-2002) to 38.8 percent in 2001 (Molina and collaborators, 2003). In opposition to these data the UNDP points out that at least 43 out of every 100 inhabitants in the country continues to be poor. Nineteen percent out of this percentage lives in absolute poverty. This means that their income is lower than the cost officially estimated to cover the identified set of minimum food and household items (*canasta basica*) at a minimum standard of living.

It has been pointed out that there are problems with the methodology for estimating poverty, because the parameters that are utilized are not valid anymore. The increase of 4 to 10 times in the price of electricity, housing, and gas is not taken into account, which are included in the estimation of the expanded set of minimum food and household items (*canasta basica*)

*ampliada*). The situation is more deteriorated among rural population. Total poverty affects 55.8 percent and 29.1 percent live in absolute poverty.

In addition, the official minimum diet (*canasta de alimentos*) for the rural area is of inferior quality and cost than for the urban area. In any case, the reduction in the percentage of absolute poverty is mainly based on emigrants and their remittances (monetary). It is estimated that if the family remittances were to stop, the levels of absolute poverty would be the highest in the past 10 years. In 2001, the remittances reached \$1,910.5 million, above the revenue produced by coffee and *maquila* (manufacture industry) (López and colleagues, 2002).

In terms of the Index of Human Development, 2003, El Salvador is in the 105th position among 175 countries. Although it is true that the country has accomplished some progress, because of the progress promoted in other countries, its relative position has barely improved.

El Salvador has been historically characterized by its presentation of a highly concentrated structure of income distribution. In 2002 the poorest quintile decreased its participation to 2.4 percent of the total income and the richest quintile increased it to 58.3 percent, which shows the great socioeconomic inequities. In the past decade the inequities in the distribution of the income, far from decreasing have grown deeper (UNDP, 2003).

The social policies of the nineties have been marked by a neoliberal speech that tends to move away from the Benefactor State with the goal of reducing inflation and fiscal deficit, trying to increase income through indirect taxes (Janson and collaborators, 1997), by increasing the efficiency of the public sector, and by favoring austerity of expenses. It also tries to adjust the nominal type of exchange to the actual type of exchange. This also entails liberation of prices and salaries and reduction of public services to a minimum indispensable, deregulating the set of activities of the private sector. These measures have tended to debilitate the directing role of the State as promoter and guarantor of the social welfare and rights of children.

The commitment of the Government for 1999 to maintain the goal of assigning 50 percent of the budget to the social area, equivalent to 5.4 percent of the GIP, has not been enforced. Currently, the social investment is still inferior to the level held in 1975 (Pleitez, 1995, in Janson and collaborators, 1997).

The set of factors that have been implemented to accomplish economic recovery (increase of taxation, external aid, compensatory measures, and others) have positively contributed to improve some of the indicators related to the situation of children and women. However, such factors have not translated into a substantial improvement in the reduction of poverty.

Likewise, the Law of Monetary Integration came into force in January of 2001 facing the dolarization of the economy and eliminating the authority of the Central Reserve Bank to issue the national currency (Colón). Currently there is no available analysis that reflects on how this measure has benefited the poorest sectors of the population.

The earthquakes of January and February of 2001, that had repercussions in the totality of the country, affected 11.6 percent of the population and caused material damage in the amount of



1,603.8 million dollars, equivalent to 12.1 percent of the GIP. This helped increase the index of poverty between seven and ten percent. FUSADES (2001-2002) point out that close to 146,000 people became new poor. Out of these, 125 thousand became extremely poor and 20 thousand became relatively poor. In addition, there was a de-acceleration in United States economy, which affected Salvadoran exportations.

The DIGESTYC pointed out that approximately 20 percent of the housing in the country was damaged, 12 percent of these were declared uninhabitable. In addition, 1,566 school buildings were damaged. The Ministry of Education reports a reconstruction of more than 90 percent of these to this date.

The analysis of the budget for 2003 suggests that El Salvador and its general tendencies show a complex situation, where the government has had little capacity to reflect as it decided to correct a fiscal deficit by turning to a progressive contraction of the current expense and even of the total expense of the State (Romano, 2003).

In the social domain, violence in El Salvador is one of the characteristics that tend to seem permanent. Although it is important to mention that violence in the country is not a legacy of only twelve years of civil war, but a manifestation of a social history characterized by social exclusion, gender inequities, militarism, social and party polarization, weakening of State institutions, and a violation of the most fundamental rights. The homicide rate in the country is considered one of the highest in the whole world. For instance, in the past two years there have been 134 women murdered by their own partner (Gaborit, 2003).

In September of 2002 a strong resistance movement against government attempts to privatize health spurts up within the Instituto Salvadoreño del Seguro Social (ISSS- Salvadoran Institute of Social Insurance). The movement expanded to all the national health system and the medical and nurse association. Administrative and service staff joined the strike convoked by ISSS medical staff and union leaders. These actions have become extremely weakening through several months (Gonzales, 2003).

By the end of 2002, according to a public opinion poll of the Instituto Universitario de Opinión Pública (IUDOP- University Institute of Public Opinion) about how people rate the social and politic situation of the country, the results suggest there is a perception of a difficult economic situation, a stagnant political situation, and a deterioration of social problems.

### III. LEGISLATIVE AND INSTITUTIONAL MEASURES AND THEIR APPLICATION

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The adjusting of the legal normative of the State of El Salvador to the postulates of the Convention on the Rights of the Child has become evident with the promulgation of important tools consistent with the Doctrine of Full Protection, under the conceptualization of children and adolescents subject to rights and obligations. Specifically, this refers to the Law of the Salvadoran Institute for the Protection of the Minor, the Family Code, the Law of the Offending Minor, the Law of Vigilance and Control of the Execution of Measures for the Offending Minor.

The previous measures constitute a first step of formal accommodation toward the philosophic foundation and normative parameters that every State adopted when they ratified the mentioned international instrument and that now constitute a law of the Republic regarding children and adolescents.

In addition to this, a process started for adjusting institutions such as the Salvadoran Council of Minors and the General Office of Minors, which were turned into the Instituto Salvadoreño de Protección al Menor (ISPM- Salvadoran Institute for the Protection of the Minor) in 1990. Recently this has been renamed Instituto Salvadoreño de Desarrollo Integral de la Niñez y Adolescencia (ISNA- Salvadoran Institute of Full Development of Children and Adolescents).

The 1983 Constitution of the Republic establishes the human person and the goals of the State in its Title I, Only Chapter: "El Salvador acknowledges the human person as the origin and end of the activity of the State, which is organized to pursue justice, legal security, and common welfare. Likewise, it acknowledges as human person every human being since the moment of conception." And in its Chapter II, Social Rights, First Section, Article 35, it says "the State will protect the physical, mental, and moral health of minors and will guarantee the right of these to education and care... the antisocial behavior of minors that constitute a crime or offense will be subjected to a special judicial regimen"

The enactment of the aforementioned legislation has been the minimum necessary to make it consistent, at a basic level, with the process of institutional and legislative adjusting. However, it has not been enough for a real adaptation and internalization of the philosophy of the Doctrine of Full Protection.

The commitment of the States after ratifying the Convention on the Rights of the Child sets forth that rather than striving to create a whole set of normative bodies and make superficial institutional changes, children and adolescents must be acknowledged as human beings and, as a consequence, it must be ensured they are respected and have access to dignifying life conditions that include access to education, health, food, housing, justice, legal safety, and social justice.

Difficulties identified in the previous line of argument join in the understanding that legislative development is not always accompanied by economic, political, and social development of the people. In this framework, two major difficulties can be identified in the context of children and adolescents: a) Fragmentation of the topic of child and adolescent, and b) inexistence of normative conditions and circumstances for real application.

It is necessary to assume that the care offered to the child and adolescent population must be carried out under a unitary optic. It implies that although it is true that the problems that come up may be framed in different situations, one must have a clear understanding of the difference between assistance and help to the person violated in his or her rights. The jurisdictional application to someone who transgresses the law does not exclude that there must exist a whole approach strategy that implies and prevents the socially unprotected individual from transcending this situation into one of a child or adolescent in conflict with the penal law, "there is a sociologic and psychological continuum through which an abused and unprotected child is a potential young aggressor and behind a youth that carries out delinquent acts, there frequently is an abused child".<sup>1</sup>

The previous stance binds to the establishment of a whole multidisciplinary and inter-institutional approach strategy that involves all the conglomerate of situations, where the main actors continue to be the children and adolescents. In this context a questions arises, is there a need to create new legal instruments to regulate the child and adolescent issues or must there be a readjustment of the existing ones?

A first option suggests a child and adolescent Code that manages to approach the situation of the socially unprotected in a global way (children who are working, disabled, physically abused, verbally abused, psychologically abused, sexually abused, living in the street, abandoned, and in-conflict-with-the-penal-law). The reason is that the current norms that regulate these situations are diffuse, which in turn fragments the efforts for its treatment and makes them invisible.

The high number and the accumulated experience of non-governmental organizations that work with children and adolescents, joined to the state instances, far from contributing to the coordination of clear and specific policies based on the Doctrine of Full Protection, tend to culminate in unitary actions that when not reconciled, in many cases, with guidelines from the ruling government find themselves limited, hindered, prevented from carrying out programs and projects under a whole and intentional perspective.

Nearly 36 non-governmental organizations members of the Network for Childhood and Adolescence, RIA, agree in pointing out the importance of having a Child Code that succeeds in becoming a normative framework that expands, reconciles, and makes the national legislation regarding children's rights more effective. However, the bill of the Code must be carefully reviewed under the approach of the Doctrine of Full Protection, with a focus on rights, and must establish for its application the basis for the investment in the functioning of a National System for Protection. These institutions also point out that so far there has been limited participation of diverse sectors and parties in the process of elaboration and consultation of the bill for the Child and Adolescent Code.

"...In addition to the abuse in the use of principles, it is also important to point out the problem of normative recompilation. The bill for the Child and Adolescent Code makes a "collage" of

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<sup>1</sup> Sánchez Martínez. Francisco de Asís, Antecedentes y Nuevo Enjuiciamiento de Menores Ley 4/1992 (Law of Antecedents and New Judgment of Minors 4/1992), Chapter IV. Pag. 30 Marcial Pons, Ediciones Jurídicas y Sociales S. A., Madrid 1999, Barcelona

norms disperse in other instruments, such as the Convention on the Rights of the Child, agreements with ILO, the Civil Code, the Family Code, and even the Doctrine of Full Protection. However, the way it is currently designed, it does not introduce anything new to the already existing laws. Even more, it makes the existing normative confusing because it includes elements that hinder rights that had already been acknowledged. The sense of having a Code that gathers disperse norms must be developmental, that is, it must seek to improve the existing system of norms and protection. However, the bill, far from doing this, creates a more confusing system that hinders the effective application of the Code and of the other norms it seeks to improve." (PDDH, 2002).

Regarding the second option of readjusting the existing legislation, some institutions view this as a more viable alternative since its efficacy depends on entities that must guard its enforcement, more than on the normative itself. It should be clear that the law must be activated when all other utilized strategies have failed, under an optic of real effort, and it cannot and should not be indiscriminately utilized to resolve social rather than legal situations.

Inexistence of formal and real conditions for the application of the current legal normative within a framework of building a democratic state by right, where each of the entities fulfills its roles, where there is reciprocal respect among entities, and where the violation of the basic principles laid down in the Convention on the Rights of the Child are identified. For instance the no discrimination, the participation and best interest of the child (articles 1, 2, 3, and 40 of the Convention on the Rights of the Child). Regarding article 1... it defines the "child"... as a human being under age 18, that is, infancy extends until that age... the article makes the exception of those cases where national laws set full legal age before age 18, this means that a State can establish that full legal age is reached before age 18, but this should not be interpreted in a general way, and it is not allowed, based on this article, to set ages that could be contrary to the principles in the Convention.

In general, the minimum ages for protection... against the deprivation of liberty must be set as high as possible... article 2... the Committee for the Rights of the child defines the term "discrimination" as "any distinction, exclusion, restriction, or preference based on particular motives, such as race, color, gender, language, religion, politic preference, or any other nature... that has the purpose of or results in the invalidation or impairment of acknowledgement, enjoyment, or exercise of human rights and fundamental liberties of people under conditions of equity...article 3... this concept is defined by Miguel Sillero Bruñol: "*the best interest of the child*" is the full satisfaction of his or her rights and therefore it is a guarantee, since every decision that pertains to the child must primarily consider his or her rights"... article 40 refers to the rights of every child suspected of breaking a penal law... it is required from the State to establish a special justice system for people under age 18..."<sup>2</sup>

To deal with the situation of children and adolescents, there must be real, political, social, and economic will, so as to change the situation of high vulnerability of child and adolescent

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<sup>2</sup> Herrera de Ramírez, Agustina and others (2002). Convención Sobre los Derechos del Niño y Protocolos Facultativos explicados (Convention on the Rights of the Child and explaining Facultative Protocols). FESPAD ediciones. San Salvador. El Salvador. Editorial Maya.

populations. For this reason, it is necessary to make reference to some events that evidence the lack of motivation on the part of the State to fully address the issues of children and adolescents:

In the Bill for the Child and Adolescent Code (2003): under study, at the Family, Woman, and Child Committee of the Legislative Congress, it is important to consider some aspects that are addressed in the cited bill:

First, regarding the responsibilities of the State, the community, the family, and the child and adolescent, it is not clear what is and what includes the responsibility of the State. The responsibilities of the aforementioned entities are put on the same level with those of the children and adolescents, leaving out that precisely because of their condition of being minors, more than a regulation of duties there must be a mechanism for their protection. The same is true with the obligations and responsibilities of the State, community, and society, since the former should more than lay down a policy, help make it possible for people to develop within a minimum set of conditions; it could never be at the same level with the community and society.

Second, the tendency to create and confound already defined categories, especially within article 4 of the abovementioned bill where it is established that "...children and adolescents: a child is any human being since conception until age 12, conception is understood as the fertilization of the ovule by the spermatozoid. Adolescent is the person older than 12 and up to age 18..." which contradicts what article 1 of the Convention on the Rights of the Child establishes, that is "it is understood by child any human being under age 18, except when by law applicable to him or her, he or she has reached full legal age before..."

In the same manner, article 345 of the Family Code lays down that a minor is someone who has not yet turned 18 years old. The Law of the Offending Minor also utilizes a unique category of minor to establish the scope of its application, when it lays down in its article 2 that such normative body will be applied to minors whose ages are between 12 and 18 years...", it is not know what are the parameters to introduce such a differentiation, which transgresses the normative previously mentioned and can also generate difficulties for its application.

The definition of conception as "the fertilization of the ovule by the spermatozoid" has a whole historic context of controversy between NGOs who are against and pro abortion under certain circumstances. This category is highly dangerous when the Constitution of the Republic, in its article 1, subparagraph 2, establishes: "... In the same way it acknowledges as a human person every human being since conception...", and in the same manner article 344 of the Family Code establishes "...the present regime lays down the principles in which the protection of the minor is founded, it acknowledges and rules his or her rights since conception until age 18...". We consider there should be a profound analysis of this issue. It should also be subjected to consideration not only from a moral, religious, ethical, and legal standpoint, but also from the medical optic and considering the contextual quality of life and the conditions for development available for the majority of the population, particularly for children and women.

Third, continuing with the analysis of the aforementioned article 4, it establishes a definition of care and full development, in sections b) and c), and when doing so in a restrictive manner, it

reduces the concepts and limits the possibility for an extensive interpretation of each case in particular and on behalf of the minor.

Fourth, regarding the Second Book, NATIONAL SYSTEM OF FULL PROTECTION OF CHILD AND ADOLESCENT, TITLE I, GENERAL DISPOSITIONS, it creates a whole apparatus that rather than simplifying the system for the protection of children and adolescents, it makes it complex and bureaucratic, making it harder to apply it. In TITLE II, LIABILITY MECHANISM WITH REGARD TO THE NONFULFILLMENT OF RIGHTS IN ADMINISTRATIVE AND LEGAL SEE, CHAPTER I, GENERAL APPLICATION NORMS, in particular and in relation to the administrative see, it grants to the Instituto Salvadoreño de Desarrollo Integral de la Niñez y Adolescencia (ISNA- Salvadoran Institute of Full Development of Child and Adolescent) authority that falls more within the jurisdiction of another State body, specifically the judicial.

When this designation of authority is executed by entities that are not meant to be, it makes one think of a regression to the Doctrine of Irregular Situation, under the conception of the "good father figure of the family". When there is not another entity different from ISNA, the process becomes vulnerable and basic conceptions of Modern Law and constitutional guarantees, such as Due Process of the person who denounces and the one who is denounced, become violated.

#### *About the child and adolescent in conflict with the penal law*

In relation to this population, there has been an atmosphere of hostility against the population under this normative and the enforcers of this law, and a constant confrontation between the Executive and Judicial Bodies since the Law of the Offending Minor came into force. This because of the eagerness to establish, given the high level of violence, that the majority of offenses and the gravest ones are carried out by minors, even though in a sample taken from the Court for Minors in San Salvador, in the period between January 1, 2000 and June 15, 2003, in a scale from 1 to 19, four out of the top five were classified as "Offenses against Patrimony", while "Offenses against Life" (wounds and homicide) occupy the seventh and tenth place respectively, which is evidenced by:

#### *- Emergency Transitory Law against Delinquency and Organized Crime*

This law came into existence by Legislative Decree #668, dated March 19, 1996, published in the Official Newspaper and in force since March 22, 1996. It was meant to last and have validity for two years. In Chapter IV it laid down SPECIAL RULES FOR OFFENDING MINORS, SPECIAL RULE, and in its article 22 it said: "...The Court for Minors will apply the penal dispositions of this law to those who individually or in group carried out offences contemplated in this Law, whose ages fall between fourteen and eighteen years old, subjected to the Law of the Offending Minor, according to the following rules:

a) No one type of conciliation will be admissible for the offenses included under this law, except for qualified theft...

b) The measure applicable to the offenses included under this law, except for qualified theft, will preferably be internment, which will be carried out in special centers different from those for adults and...

c) In the case of the second and third subparagraphs of Article 53 in the Law of the Offending Minor, appearance before the appropriate Judge for Minors should take place within seventy-two hours. The Policia Nacional Civil (National Civil Police) will carry out the steps for inquiry under the leadership of the Republic General Public Prosecutor. When the time limit elapses, the Public Prosecutor's Office will refer the minor to the appropriate judge for minors, with a certification of the inquired steps, and will continue the inquiry. The rest will follow what is established in the Law for the Offending Minor"... A disposition that was declared unconstitutional through sentence, by the Constitutional Court of the Honorable Supreme Court of Justice, on the fourteenth day of February of nineteen ninety-seven, which stated "minority [under age] comprises a period of existence of the human being that is not exact nor absolute, but varies depending on the type of relationships that can take place and directly depends on the positive ordinance that rules it.

It is evident that the constituent has established that antisocial behavior of minors will be subjected to a special regime, which cannot mean other than it is constitutionally forbidden to prescribe the same sanctioning regime for minors than for full legal age people... from the reading of subparagraph 1st, from article 22 in the Emergency Transitory Law against delinquency and organized crime, it indicates that the secondary legislator subjects minors to the same dispositions to which full legal age people are subjected, which contradicts what is established in the constitutional normative, and violates articles 3 and 35, subparagraph 2, of the Constitution, and as such it should be declared in the appropriate decision for this sentencing..."

### *Anti-Gangs Law*

The Anti-Gangs Law constitutes the Legislative Decree number one-hundred and fifty-eight, dated October ninth of two-thousand and three, in force since the tenth day of the aforementioned month and year. It is issued in a context where the problem with "gangs also called *maras*" has escaped the control of public safety authorities. This constitutes mainly an effort by the Executive Body, wanting to make it evident that delinquency is one of the major problems in Salvadoran society, and that the cruelest and most violent delinquency is carried out by gang members, and among these by minors.

In this respect, it can be observed there is a lack of integral strategies to address the problem of gangs. On the other hand, as a consequence of the indifference of the state to this problem, it is worth noticing that within the aforementioned law, in Title I, Chapter I, GOAL, PURPOSES, AND SCOPE OF APPLICATION, GOAL, article 1, The present law has the goal of establishing a special and temporary regime to legally combat groups known as *maras* or gangs. For the purposes of this law, "mara or gang" will be considered as an illicit group of people that acts to disturb public order or offend dignity and good customs, and that meets many or all of the following criteria: they get habitually together, they mark segments of territory as their own, they

have signs or symbols as a means of identification, they mark their body with drawings or tattoos".

Article 2 states that "... the present law will be applied to all those people older than age twelve, that commit offenses or mistakes contemplated under this law or in the Penal Code, which henceforth can be called behaviors, within the national territory... Offenders between the ages of twelve and eighteen and members of maras or gangs will receive a special treatment and proceeding determined in this law. When a minor included between these ages of twelve and eighteen commits offenses or mistakes contemplated in this law or in the Penal Code and the Republic General Public Prosecutor's Office notices that he or she has the discernment of an adult, it will request for the Judge of Minors to assess this situation.

If the Judge of Minors considers that the minor is capable of discerning as an adult the illicitness of the behaviors and infractions committed, he or she will declare the minor as a capable adult and will apply the appropriate legislation... supposing that what the previous subparagraph describes occurs, the Judge of Minors will rely on a multidisciplinary team in his or her charge and will order the expert work that he or she deems suitable. Minors under age twelve that are caught committing any of the punishable actions described in this law or in the Penal Code, who belong to a mara or gang and that the appropriate Judge of Minors assesses and then concludes are capable of discerning the illicitness of their conduct, will be subjected to the process here described for minors..."

The anti-gangs law clearly transgresses in a discriminatory way the treatment towards a particular portion of the population, which because of its characteristics, life style, and development, has deserved only a response through the punitive faculty of the State, such as the Penal Law. "... In the penal scope it is frequent to equate discriminatory treatment with unequal treatment, or in other terms, discriminatory behaviors tend to be interpreted as harmful to the principle of equality. This legislation that has been developed within the coordination of a plan of the Executive Body, with the National Civil Police and the Armed Forces (Grupos de Tarea Conjunta GTC -Group of Conjoint Duty), that has been called "HARD HAND PLAN", which since its application has generated a series of opinions in ample and diverse ways, but that converge in "the unconstitutionality of the law and the lack of interest in wanting to address the issue of "gangs and maras" in an integral and not only repressive and punitive way, that have had undeniably a whole context of violence, starting with violence among groups of students, generating a whole atmosphere of exclusion towards the sector against which it is directed and that in the majority of the cases ends up in arbitrary arrests and abuse by the police.

In different debates regarding the "Anti-Gang Law" Bill, which have taken place in the past days, all participants, including those from the official party, have agreed that the fight against criminality and specially against that committed by gangs, requires integral efforts that include three essential components: prevention, repression, and social inclusion. Punitive response, no matter how hard or efficient, will not constitute a solution by itself. However, there is consensus in that there is a need to give an immediate (repressive) response to alleviate the insecurity lived by hundreds of communities in our country. What is debatable is how to give a response. For FESPAD (Fundación de Estudios para la Aplicación del Derecho- Foundation for the Study of the Application of the Law), it is not necessary to have a special law, the only thing that is



necessary is that institutions in charge of criminal inquiry (National Civil Police and Prosecutor's Office) use their authority to track, detect, and accumulate evidence and then arrest and prosecute those responsible. (Desde FESPAD: observatorio de la justicia y los derechos humanos, pp. 12 y 13, Diario Co Latino- From FESPAD: Observatory of justice and human rights, pp. 12 and 13, September 16, 2003)

*The disappearance of the Re-educational Center "Rosa Virginia Pelletier"*

Since April of 2003, the re-educational center that was designated to take care of female offending children and youth was closed. As a consequence, the referral of the population that was deprived of their liberty was reassigned to the Re-educational Center in Ilobasco, which holds the population of offending males whom are not "identified as members of maras or gangs". This measure shows the discriminatory treatment for women within the scope of the Judicial System, particularly to the offending females.

It is hard to tell that with such a decision there will be a true process of inclusion, when the attempt to achieve the empowerment of women meets the disabling of even their physical space. This is not only about providing a physical space for the young females to define their issues.

In this sense, a juvenile penal justice that respects the rights of children must be attentive to the difficulties generated in the development of the rights of young women. There is one difficulty that joins those experienced by minors in general, but that represents a specificity that is necessary to address. The normalization of being women, female adolescents, and girls must seek to eliminate sexual stereotypes that favor discrimination, starting with an acknowledgment of their own human rights. That is how it is pertinent to note that when facing the designing of policies, plans, and programs, the participation of the civil society is not taken into account, much less the participation of children and adolescents.

## IV. CIVIL RIGHTS AND LIBERTIES

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### 4.1. Right to identity (article 7 and 8)

#### 4.1.1. Normative framework

Articles 7 and 8 of the Convention on the Rights of the Child regulate what pertains to the right to identity, when they specify that the member States, signing the Convention, commit to respect the right to preserve an identity, including name, nationality, and family relationships, according to the law without illicit interference (CRC, 1997).

El Salvador has made a commitment to preserve the personal identity of children according to the dispositions of the CRC, adopting important constitutional and legislative measures. Among these, the dispositions recorded in the Constitution of the Republic (article 36, subparagraph third and fourth) stand out. These acknowledge the right of every person to have a name that identifies him or her, delegating the development and regulation of the matter, including the means of inquiry and the establishment of paternity, to secondary law.

Article 36 in the 1983 Constitution of the Republic expressly lays down the right to a name, and the Family Code (article 203) rules the right of children to know who their parents are and to be recognized by them.

It also stands out that the Law of the Name of the Natural Person passed during 1990, through legislative decree No. 450, which regulates the name in terms of formation, acquisition, elements, and changes. This constitutes a guarantee that protects human dignity, and therefore according to the law, a proper noun that is harmful to human dignity, improper for a human being, discriminatory or equivocal regarding gender, cannot be assigned. This authority is granted in a discretionary manner to the official from the Family Registry that serves the municipalities in the country.

On the other hand, it is important to point out that when the States ratify the CRC, they undertake the commitment to use all the mechanisms under their disposition to establish the elements for their identity, such as genetic testing and search of relatives for family reunification (Cardona and Diaz, 2003).

### 4.2. State of the right to identity in the country

One of the situations that constitute a point of concern relates to the fulfillment of the universal right of children to register in the national registry. Estimates reveal that 9.8 percent of the population, among these children and adolescents, that is 638 thousand and seventeen, lack a birth certificate, according to estimates based on the Multiple Purposes Homes Poll, from the Ministry of Economy<sup>3</sup>

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<sup>3</sup> La Prensa Gráfica, 638 thousand children without a birth certificate, October 2, 2003

According to data from ISNA, relative to percentages of the national sub registry, it is noted that in the past years there has been a per cent growth of the population without record. In 1998 the percentage of national sub registry was estimated to be in 5.1, for 1999 it was estimated to be 8.2, and for 2000, it was 9.8 percent. Besides, it is indicated that the results reflect that the problem in Latin America is greater than in the rural and urban marginal areas. When one reviews the data on registry of birth by department, it is observed that San Salvador, La Union, and Chalatenango represent the highest percentages (ISNA, 2003).

This per cent growth may give way to two hypotheses: first, that the registrar system is more and more precise. Second, that there is a growth of girls that are not registered.

In one of the policies that the country has started up, the enrolment registration are carried out at the hospitals among mothers that are receiving care. However, those who are born at home are not covered by this measure yet.

#### **4.3. Issues of concern**

The lack of registration of identity documents constitutes a violation of the human right to identity. According to the opinion expressed by representatives of NGOs that constitute the Red para la Infancia y la Adolescencia (Network for Childhood and Adolescence) (González, 2004), without a birth certificate, a child does practically not exist. Although it is true that there are laws that acknowledge the right to an identity, there is no protection mechanisms established to facilitate the fulfillment and full exercise of this right, because in practice the process is bureaucratic and the services involve an economic cost. There is a median intention to guarantee this right, but it is not evident that what prevails is the best interest of the child or that children are a priority.

The registration in the Family State Registry should be free of charge. However, the Municipal Major's Offices tax fees to offer the service of issuing birth certificates. The cost to have a birth certificate issued averages two dollars.

The conditions of precariousness of poor families are one of the main issues associated to this grave situation. Having available two dollars to carry out the procedures involved in getting a birth certificate, in a country where more than one fifth of the population lives on less than one dollar a day, many times constitutes an obstacle (UNDP, 2001; FUSADES, 2001).

Once the legally established period to register the birth of children is up, parents fall in a delayed category. The Transitory Law for Family Registry (Article 28) establishes a period of fifteen days after birth to register a newborn in the Major's Offices. When the procedure is not carried out within the time frame stipulated by law, there is a fine because of the late registration. . This variable makes the possibility of getting the aforementioned document even more difficult, since parents tend to postpone the legal registration of their children.

The gravest thing is that if the child turns five without having been registered, the process does not remain administrative only, but it becomes non-litigious judicial. The law stipulates that in those cases when five years have gone by without registering the child, the family or responsible parties should follow a judicial process, specifically an identity trial in the Family Court. The situation becomes even harder given the higher cost it involves, because the parties have to request the services of a lawyer or they have to be represented by an assistant agent of the Republic General Prosecutor's Office

According to an interview held with a representative of ISNA (November, 2003), there are ongoing negotiations about an initiative for a Legislative Decree at the Women and Children Committee of the Legislative Congress with the purpose of allowing municipalities to exempt the fine of \$2.86 for late registration, so families or responsible parties are able to register their children, even when the deadline to obtain the birth certificate has expired. In addition, there are negotiations to extend the time for registration in the municipalities.

If these measures were to take effect, they may have a positive impact in the matter of human rights of children. However, it must be kept in mind that it is necessary to introduce other type of temporary measures, so the social sectors at greater socioeconomic disadvantage can exercise the right to have an identity and a name for their children.

ISNA also reports that it has constituted a social network for the support of massive registration of children without a birth certificate. This network is constituted by ISNA, Ministry of Public Health and Social Assistance, MSPAS (health units), Ministry of Education (Centers for Child Development, school centers), Republic General Attorney's Office, and parishes. There have also been radio and TV campaigns with particular focus on the right to identity. These have been carried out by ISNA and by other non-governmental organizations.

Even with all set forth by ISNA, an issue of concern is that the process introduced by the law, as well as the measures implemented up to now, does not facilitate the exercise of the right to an identity. This issue is important because the governments attending the last Summit of the Americas, that took place in Toronto, agreed to do whatever was necessary to eliminate all these obstacles. However, in the Salvadoran case this process has been slow, evidencing once more the lack of political interest to invest in children.

In 1993, the Committee on the Rights of the Children pointed out that the difficult economic and social situation of the country was one of the conditions that needed to be overcome. The Committee also pointed out the importance of carrying out efforts to guarantee full observance of the dispositions set forth in the Convention. However, there are concerns with the low priority shown in low profile measures adopted to guarantee the fulfillment of civil rights.

## V. BASIC HEALTH

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### 5.1. Children and adolescents with disabilities (article 23)

Much progress has been accomplished in the matter of rights of population with disabilities. Specifically, it can be pointed out there have been advances regarding the terminology that used to be, by itself, a way of disqualifying and discriminating against this sector of the population. The substitution of terms such as crippled person with that of people with disabilities, limitation of activity rather than incapability, and restriction of participation as a substitute of handicap, reflect a different conception of people with disabilities.

WHO and ILO reports (in the final report of the Poll for people with disabilities, 2000) state that in countries that have lived armed conflict, such as El Salvador, there is an estimated prevalence of disabilities with multiple etiology that ranges between 10 and 13 percent. The same sources state that 98 percent out of the total of people with disabilities are unprotected and marginalized from health and rehabilitation services. However, it is also argued that only between 1 and 1.5 percent of people with disabilities require specialized rehabilitation and highly complex services (Laínez, Muñoz y & Hasbúsn, 2003)

From what the government report stipulates, there is no reliable information to illustrate the situation of people with disabilities in general, and children and adolescents with disabilities in particular. Nevertheless, the report devotes a significantly extensive section to present the conditions of this sector of the population.

#### 5.1.1 Legislative measures

Regarding legislation, there are two situations that deserve a positive appraisal because of their great importance. The first one refers to the passing of the Law of Equal Opportunities, issued under legislative decree No. 888, dated April 27, 2000. The National Counsel on Integral Care of people with disabilities (Consejo Nacional de Atención Integral para las personas con discapacidad, CONAIPD), founded in 1993 through legislative decree No. 111, is the guiding entity that formulated the National Policy and the Law of Equal Opportunity for people with disabilities.

Equal opportunities is understood as *"the process established to guarantee adequate conditions for people with disabilities to have equal opportunities as other people, without restrictions to access and enjoyment of the benefits of the social and judicial system, physical environment, housing, transportation, communications, health and education services, work opportunities, cultural, social, recreational, sports, economic, and political life"* (Pan-American Health Organization, 2001, p. 6).

The second advancement occurred in 1997, when the Ministry of Education (Ministerio de Educación, MINED) formulated the policies for the accessibility of education to children and youth with special educational needs (Pan-American Organization of Health, 2000). Starting from this, there have been some curricular adaptations based on the differential learning approach.

MINED has an office for the coordination of special education, which is under the General Office of Education. From this entity, it offers alternatives for the care of special educational needs, broadening its services in special schools, offering inclusive education, reinforcement of educational support, the program of Salvadoran Sign Language (Lengua de Señas Salvadoreñas, LESA) for deaf people, services for people with cognitive disorders, sensory disorder, learning disabilities, severe learning problems, and multiple disabilities.

According to the 2000 report, it offers services to 33,980 children and adolescents that attend the various centers, depending on their educational needs. The responsible teaching staff has been trained through a program of teacher training to serve children with mental disabilities and special learning needs (Government of El Salvador report, 2001).

Regarding children with learning difficulties, between 1995 and 1996 MINED and the Foundation for Special Education (Fundación Pro-Educación Especial-FUNPRES) confirmed that approximately 30 percent of students at the elementary school level in the national educational system present with learning problems, and to face this problem teachers that serve them regularly require urgent training and advice.

### *5.1.2 Services for people with disabilities*

The key entity for the provision of services for people with disabilities is the Salvadoran Institute for the Rehabilitation of Disabled (Instituto Salvadoreño de Rehabilitación de Inválidos , ISRI). It was founded in December, 1961 under decree No. 503. ISRI currently has nine centers for specialized rehabilitation for various disabilities and one center for evaluation and diagnosis. This institute provides physical and integral rehabilitation services through its programs of primary care, occupational health, and medical care for rightful claimants

It also has a wide range of services that allow integral care: cultural activities, social activities, collective transportation service, and family counseling for the elimination of barriers in the home. A key element is the promotion of sports in different disciplines and the participation in the Special Olympics.

Another advance in this area is the follow up of beneficiaries, once they have been functionally qualified. That is, they are trained in the technical area at the Professional Center of Rehabilitation, with centers in the western area (CRIO) and eastern area (CRIOR) of the country. This helps decentralize services, allowing access for users.

### *5.1.3 Community Services*

The Ministry of Public Health and Social Assistance, in coordination with the Salvadoran Institute for the Rehabilitation of Disabled (Instituto Salvadoreño de Rehabilitación de Inválidos, ISRI) have set the service for people affected by the war as a priority. This entails people who present some type of disability and live in areas where they have little access to specialized care that would allow them have a full rehabilitation.

The project "Tri-party Initiative through the Project for the Full Rehabilitation of Victims of Anti-personal Mines" started in El Salvador in 1999. Its headquarters were the Basic Health System (Sistema Básico de Salud, SIBASI) from Metapan, in the department of Santa Ana. It was a pilot experience that later was extended to seven SIBASIs located in the western, mid-central, and eastern areas. The project closed in March, 2003.

This project had four big components, three of which were defined since the beginning of the project and the fourth started in the second year: Rehabilitation Based on the Community (Rehabilitación Basada en la Comunidad, RBC); economic reintegration of people with disabilities, Disability Information System, and Orthopedic Technique.

This initiative was meant to promote the Rehabilitation Based on the Community (RBC), which was defined by WHO, ILO, and UNESCO as "A strategy within community development for the rehabilitation, equal opportunity, and social integration of all people with disability". This is why ISRI and the Pan-American Health Organization are coordinating efforts to expand the coverage for the population with disability and decentralize services.

It is expected that this initiative will strengthen the prevention strategies through the detection and early care of disabilities, with the goal of decreasing the incidence of preventable disabilities and minimizing the consequences produced by a disabling cause.

### *5.1.4 Advances in professional training*

There are two significant efforts in the training heading. The first one is the establishment of a university technical program in prosthesis. It was created by ISRI. Don Bosco University is in charge of the theory and practical training. The effort is coordinated with the German government. Starting from this, El Salvador became the regional headquarters for training in prosthesis and ortesis.

The second involves the promotion of training to bring up to date and specialize professionals in different areas. This has been coordinated with governments from friendly countries and organizations.

Finally, there is the National Committee of Accessibility, whose purpose is the architectonic rehabilitation for the mobility of people with disabilities. There have been visible results in the designs of new buildings and the modification of others where there have been considerations for access, parking spots, and the inclusion of sanitary services to facilitate the mobility of people with disabilities.

In spite of all this progress, there is no up to date information about the amount of children with disability in El Salvador. The most recent data comes from a study about people with disabilities conducted in 1994 between the National Counsel for Integral Care of the Person with Disability (Consejo Nacional de Atención Integral a la Persona Discapacitada, CONAIPD) and the Ministry of Planning. From a representative sample of 15,000 Salvadoran households, the study determined that 12 percent of their members had a physical disability, sensory disability, or both. There was no measure of mental disabilities, which are estimated to be 129,154.

#### *5.1.5 Civilian society efforts*

As far as the civil society is concerned, it undertakes the problem through the creation of the centers: Roberto Callejas Cerebral Palsy Home, the Home for the Abandoned Disabled Child, founded by Father Vito Guarato, the Salvadoran Association of Parents and Friends of Children with Disability (Asociación Salvadoreña de Padres y Amigos de Niños con Discapacidad - ASAPAED), Progress Labor Center, Teleton Foundation for Rehabilitation (Fundación Teletón Pro Rehabilitación-FUNTER), and FUNPRES developed activities to address the problem.

Even with all these efforts, the offer is insufficient to satisfy the demand throughout the whole country. It is believed that the situation can become critical if the programs for the prevention and early detection of disabilities are not implemented in all the centers of medical service, accompanied by an educational component about disabilities and other risk factors that directly influence their development.

In addition, there is a challenge to eradicate the marginalization to which children with disabilities have been subjected. That is why it is necessary to monitor the measures that aim to actively integrate them in society. In this sense, one should not lose sight that the measures intended to improve the situation of adults with disabilities constitute progress that will benefit children and adolescents in the future.

## **5.2. Health and sanitary services (article 24)**

“... Nevertheless, the precarious sanitary conditions of the population, worsened in the rural area, show the weight of poverty and the little efficacy of the action performed by the State, regarding the condition of insalubrity in the country.

The gratuitousness of the service to the poor is not being respected with the establishment of voluntary fees and the exercise of great pressure for these fees to be paid. The high infant and maternal mortality rates, the malnourishment index, and the high number of adolescent mothers greatly keep El Salvador away from fulfilling articles 23 and 24 of the Convention on the Rights of the Child”

UNICEF Report of the Half-Term Revision. UNICEF-GOES, August 27, 1999.



According to UNICEF's report, from where the previous paragraph came from, in 1999 these were health problems that affected Salvadoran people. However, after four years, it can be argued that there is not a glimpse of substantial changes regarding the social situations pointed out in the preceding paragraph.

As pointed out in the Report on Human Development: El Salvador *"The condition of health is the result of many factors: sanitary conditions of a community, food, access to drinking water, healthy life practices, and access to quality health services"* (UNDP, 2003, p. 72).

The appraisal of the fulfillment of this fundamental right must implicitly include the aforementioned factors.

Even though there have been initiatives to bring accessibility to health services for the majority of the population, these have not been successfully taking shape. On the matter, towards the end of 2003 a legislative decree approved the elimination of voluntary fees. However, the President of the Republic put a veto on this decree, arguing that *"voluntary fees are part of a solidarity fund that helps finance other poor people in the health system"* (Cardona y Díaz, 2003, p. 73).

A great deal of the population that does not have the economic resources to pay for basic health services and even less for specialized treatments is affected with this decision.

In this sense, health has been one of the most problematic and questioned heading in El Salvador in the last years, beginning with the functioning of the health system that responds to an organizational outline that dates from 40 years ago (Medical School, 1999).

### *5.2.1 Proposals for health changes and reforms*

In 1999, a presidential decree created the Counsel for the Reform of the Health Heading, which was constituted by representatives from different sectors: Ministry of Public Health and Social Assistance (Ministerio de Salud pública y Asistencia Social, MSPAS), Salvadoran Institute of Social Insurance (Instituto Salvadoreño del Seguro Social, ISSS), representatives of private suppliers for health services, professional unions, users, institutions for the training of human resources in health, and management unions. This Counsel presented in 2000 a proposal for the Integral Reform of health, where it laid out the strengthening of the guiding function of the MSPAS, the optimization of existing resources, modernization of the legal system, articulation of service subsystems, and improvement of accessibility and quality of services (Cardona and Diaz, 2003).

Nevertheless, the study of this proposal has not made progress as expected, raising subsequent conflict because the proposal degenerated in attempts to privatize health services, which brought along a rejection of this initiative by diverse sectors linked to this heading, giving rise to a strike that lasted over a year.

This strike was carried out with the purpose of rejecting the privatization of health services, which if established would directly result in the worsening of the already precarious life conditions of the majority of Salvadoran population, including of course children and adolescents, in terms of access to health.

There is not a set of rules that governs access of children to the health system in El Salvador. Relevant regulations are scattered in other tools, such as the Code of Health that includes some articles regarding maternity and children, the Family Code, that in the fifth book regulates aspects of health of minors based on articles 353 and 355 that makes hospitals and clinics that receive public funding responsible for providing immediate assistance to all minors that require emergency medical care; article 378 that makes the Salvadoran Institute of Social Insurance responsible of providing immediate medical assistance when because of employer's omission the working child were not registered; article 397 that contemplates a complementary disposition regarding the duties of the State.

In addition, there are regulations in the Penal Code, the Social Insurance Law, the General Education Law, the Law for the Offending Minor, the Law for the Institute for the Protection of the Minor, and the Regulating Law for the Production and Commercialization of Alcoholic Beverages (Martínez, J; Díaz, X and Vaquerano, N, 2002)

### *5.2.2 Inequitable distribution of the health budget*

According to the report presented by the United Nations Development Program (UNDP, 2001), El Salvador has shown progress in health matters, specifically in the battle against infectious and contagious diseases such as poliomyelitis, measles, and malaria.

The UNDP (2003) report states, based on data from the MSPAS reported in 2002, that the total expense for this heading in 2001 was 8.8 percent of the GIP, which was kept at a similar level for the past six years.

Nevertheless, the disparity in the administration of the budget is reflected in the fact that the ISSS had a budget equivalent to 1.6 percent of the GIP to cover for only 17 percent of the population in 2000, while the budget for the MSPAS was 1.8 percent of the GIP to provide services for 80 percent of the population. Based on these figures, it is established that the MSPAS had a per capita allocation of 48 dollars, while the allocation for the ISSS is 222.60 dollars per capita.

This difference somehow reflects one of the most preoccupying problems in the country, since the percent of the population that has access to health services is the one that has a steady job or is a beneficiary of the spouse for the services. As it can be noticed, it is a small percentage compared to the rest of the population, although it is already known that not all the remaining 80 percent qualifies as economically active population.

In this sense, MSPAS has had an increase in its allocation from the public expense, which has gone from 1.2 percent in 1994 to 1.8 percent for 2000. However, in spite of this increase, health

services are described as still deficient. This is justifiable if one takes into account that the budgetary allocation is insufficient for the percentage of the population it is intended to serve.

### 5.2.3 *Enforcement of the convention on the rights of the child in the matter of health*

According to article 24 of the Convention on the rights of the child:

1. The States Starts Off acknowledge the right of the child to enjoy the highest possible health and to access services for the treatment of illnesses and rehabilitation of health. The States Starts Off will make efforts to ensure that no child be deprived of his or her right to enjoy these health services.
2. The States Starts Off will ensure the full application of this right and, in particular, will adopt appropriate measures to accomplish the following goals:
  - a) Reduce infant mortality

One of the main indicators of economic and social human development is the one regarding a decrease in infant mortality. According to UNDP (2001), there has been a decrease since for the five-year period of 1988 to 1993 the infant mortality rate was 41 for each thousand born alive, while in the quinquennium of 1993 to 1998 the rate decreased to 35, and between 1998 and 2003 there was a significant drop, with 25 children for every thousand born alive reported (FESAL, 2003).

From these figures one can identify relevant progress in this domain, even more so when the data from this poll reflect equity between the percentages for the rural area and urban area. It can be noted that there is a remarkable improvement in the rural area, which reported 41 per every thousand born alive in the five-year period of 1993 to 1998, as opposed to 24 for the quinquennium of 1998 to 2003. Based on these figures, UNDP (2003) concludes that the gap between the rural and the urban areas would be closing, specifically for this indicator.

#### - *Main causes of infant mortality*

In the UNDP reports (2001 and 2003) it is concluded that the main causes of infant mortality have remained the same for the past 10 years. Diseases that begin in the perinatal period are pointed out as the first cause of death. Gastrointestinal diseases, such as diarrhea and gastroenteritis, with presumed infectious origin, constitute the second cause. Pneumonia follows, along with depletion of volume and various hearth malformations.

Regarding the first cause of infant mortality, this source states that only 78 percent of urban deliveries and 43 percent of rural deliveries had intra-hospital services. As for FESAL (2003), it reports that 69 percent of the deliveries of the total of children born alive in the period between November of 1997 and October of 2002 received intra-hospital services. Access to hospital

services has increased because of educational level and socioeconomic level. Eighty-seven percent in the urban area and 54 percent in the rural area received intra-hospital care. These figures reflect an increase in the number of women who go to hospital centers to deliver their children. This shows a clear correspondence between access to medical services and decrease of infant mortality.

It can be noticed how some of these diseases are directly related to basic sanitary and contamination conditions in the environment. These could be dramatically reduced with appropriate strategies to promote prevention and improvement in the living conditions of the most vulnerable population.

These causes are similar to those of childhood mortality (1 to 4 years of age). Therefore, as children grow up the risks persist. This does not guarantee their survival, unless their living conditions are modified.

- b) Ensure the provision of necessary health care for all children, stressing the development of primary health care.

According to the data provided by the government in 1999, 1.6 million consultations were provided for children under age one. The decrease in the mortality rate from 41 per thousand live births in 1993 to 18 per thousand live births is attributed to this service, with coverage of 80 percent of children served within the health network. In spite of this figure, this indicator should be analyzed with regard to the infant population that actually has access to not only one consult, but to quality medical care.

It is worth noting that the development of primary health care has been a priority in the period between 1993 and 1999. This is evident in the checking of children, since according to figures offered by MSPAS, it occupied the first place in the outpatient services provided at health centers between 1998 and 1999.

The governmental report recounts a series of steps forward regarding the extension of general and specialized care services, coverage, opening of new health units, and extension of schedules. In the rural area there has been an increase of health dispensaries, implementation of rural nutrition centers, and health homes.

Nevertheless, it is necessary to point out that care in the primary levels must be a priority. Almost 60 percent of the MSPAS budget is invested in secondary and tertiary levels in El Salvador, so the primary level receives a lower percentage. This does not enable to meet the demands for services at this level. In addition, the impact of the earthquakes that took place in 2001, and that damaged a significant number of health buildings, decreased the capacity to provide services down to 29 percent. Among the damaged building there were 21 hospitals, 105 health units, 3 health homes, and one rural health center (Cardona and Diaz, 2003).

- c) Combat diseases and malnourishment in the frame of primary health services, through, amongst other, the application of available technology and the provision of appropriate food and salubrious drinkable water, bearing in mind environmental dangers and risks.

With regards to child nutrition, FESAL (2003) makes a comparison of nutritional conditions throughout the past 15 years. According to this source, there was a qualified and important improvement in the nutritional condition of children under age 5 in the period between 1988 and 1993. This is not the case for the period between 1993 and 1998, where no major change was registered.

In the period between 1998 and 2003 there was a change, but of a lesser degree, than the one occurred in 1988 and 1993. According to these figures, one in every 5 children under age 5 presents with a chronic malnourishment.

These results are consistent with the figures published in a Salvadoran newspaper in 2001, where it is reported that 54 percent of children that are admitted to hospitals have some level of malnourishment (Martínez, Díaz, and Vaquerano, 2002).

Another alarming figure that corroborates this situation is related to the high level of chronic undernourishment identified in the west part of the country. This was pointed out by the First Report about the situation of Undernourishment in the Rural Areas in El Salvador, prepared by the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH, 2003). This report states that 49.33 percent of children from Tacuba Municipality, in the Department of Ahuachapan, fall under the "very high" category. In like manner, a newspaper report affirms that in 2002 there were more than forty child deaths in this municipality due to undernourishment and that in the first two months of 2003, there were 12 deaths of children reported<sup>4</sup>.

Other figures found in other municipalities in the area indicate a prevalence of undernourishment among children under age 5 well above the figures reported by official sources. Another figure that catches one's attention is that 20 percent of children have some anemia. There are differences in this occurrence between urban and rural areas, with 16 percent for the former and 23 percent for the latter. Although other indicators suggest progress in decreasing the gap between the rural and urban areas, there are still significant differences regarding accessibility and quality of services provided.

The GOES report (1999) states that vitamin "A" deficiency has been eradicated because 91 percent of the sugar is fortified. It indicates the same is true for iodine deficiency among children who attend school, because 99 percent of salt produced in the country is iodized. Although iodine and vitamin A deficiencies have remarkably decreased, this is not the case for iron deficiency, which go up to 19 percent among children under age 5 (UNDP, 2003).

To this respect, the coverage and efficacy of these programs should be analyzed because the figures regarding the nutritional condition of the infant population are not very encouraging. On the contrary, these figures constitute a point to reflect on and to take into account when designing

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<sup>4</sup> La Prensa Gráfica, February 17, 2003, pag. 8 and 10.

strategies to counteract this problem, because as it is known, the consequences of undernourishment in infancy have repercussions on people's health in the long run.

GOES report highlights two programs for the care of children: Integral Care of Prevalent Child Diseases (Atención Integrada a las Enfermedades Prevalentes de la Infancia, AIEPI) and Healthy Schools (Escuelas Saludables). Children receive direct benefit from these programs as these help increase access, increase school continued enrollment, and decrease drop-out rates and repetition. In addition, it allows the active involvement of the community, improving the learning conditions for students. This is carried out in coordination with the Ministry of Education. Healthy School Program has been considered one of the main accomplishments of this period.

One of the advances in preventive health is related to child immunizations. According to data from FESAL (2003), 70 percent of children between 12 and 23 months old received complete immunization with BCG, DPT, anti-polio, and measles. On its part, MSPAS, as cited by the UNDP (2003), reports the following coverage for 2001: 90 percent DPT and 91 percent anti-polio.

- d) Ensure appropriate prenatal and post natal health care for mothers.

As pointed out in section a, there is a connection between the decrease in infant mortality and the provision of timely medical services for mothers. Nevertheless, the medical care needed by Salvadoran women should not be limited to only the pre and post natal periods.

*"The malnourishment of the woman significantly contributes to the increase in maternal mortality rates and is directly related with a diminished nutritional condition and a delayed growth of children"* (UNDP Report, 2003, p. 73).

According to results from a poll by FESAL (2003), there is a relationship between the degree of chronic undernourishment, small size for age, and educational level for mothers, which implies that the lower the educational level for the mother, the higher the undernourishment level for the children. This indicates it is necessary to provide services in education so girls and adolescents have access.

This same source points out that there was a 9 percent prevalence of anemia among mothers. According to these figures, one in every 5 children under age 5 and one in every 10 mothers have anemia. These findings show the problem faced by these less privileged groups when it comes to exercising their right to health or counting on the resources to provide a balanced diet for themselves.

- e) Ensure that all groups in society, and particularly parents and children, know the basic principles for the health and nutrition of children, the advantages of breastfeeding,

environmental hygiene and drainage, and the accident prevention measures, have access to appropriate education and receive support for the application of this knowledge.

According to FESAL (2003), breastfeeding is a generalized practice in El Salvador. Figures indicate that 94 percent of children born alive within the 5 years previous to the poll have breastfed some time. In addition, between FESAL 98 and 2003, there was a registered increase in the duration of breastfeeding, which went from 15.5 months to 19.2 months. This indicator could be considered as an advance for the integral health of newborns.

Regarding children under age 6 months, 24 percent breastfed exclusively (only breast milk) and 22 percent breastfed predominantly (breast milk, water, and other liquids). One percentage had other type of milk besides breast milk. Fifteen percent also had atoles (drinks made from corn flour) or puree, and 8 percent did not receive any type of lactation.

Based on these figures, it is established that only 4 children under age 6 months receive exclusive maternal lactation. According to these figures, babies are fed with complementary foods before the ages recommended by the World Health Organization and the MSPAS.

- f) Develop preventive health care, orientation to parents, and birth control education and services.

### *Reproductive Sexual Health*

One of the relevant areas omitted in the government report is the one related to reproductive sexual health, even though its knowledge and application affect all the adolescent population. According to reports, a high percentage of adolescents have had some type of sexual experience, for which they have not been appropriately oriented because the topic of sexuality is not openly addressed within the family. Furthermore, the school often addresses it only in terms of biological changes, instead of pursuing a more integral approach.

According to figures provided by FESAL 2003, one in every 5 women between the ages of 15 and 19 has at least one child currently alive. In addition, adolescent women or youth become pregnant from men who are older than they are, which according to what the CRC sets forth regarding age, a high percentage of adolescents become pregnant precociously.

According to the findings, only 61 percent of women between the ages of 15 and 19 report having received information about pregnancy in educational centers and only 54 percent reported having learned knowledge about some birth control method.

Unwanted pregnancy is not the only risk involved in having sexual relationships at an early age and without protection. According to the National Program of STDs, HIV and AIDS of the MSPAS, people with these conditions fluctuate between the age ranges of 14-15 and 25-34. This last age range is the most affected, which implies that they got infected when they were teenagers (Pan-American Health Organization, as cited by Martínez, Díaz, and Vaquerano, 2002)

According to figures provided by the Ministry of Health, at least 500 of each 180,000 women who become pregnant in the country every year carry the immunodeficiency virus (HIV). This figure comes from a study carried out by the MSPAS between the months of July and September of 2003. Infected women are homemakers and employees who had no idea they were carrying the HIV. Starting this year, the test will be applied to pregnant women throughout the nation, to take preventive measures and prevent the virus from being passed from the mother to the child. By October, 2003 the MSPAS had registered 450 children carriers of the HIV. Ninety percent of this figure had been contaminated through the mother and 10 percent through sexual aggressions<sup>5</sup>.

In this regard, the MSPAS and other non-governmental organizations are carrying out campaigns to emphasize prevention, so as to avoid that more Salvadoran people join the already alarming number of people living with HIV and AIDS.

#### *5.2.4 Epidemics in El Salvador*

Even though the UNDP report (2001) points out there is progress in El Salvador regarding the control of contagious diseases, there have been a series of epidemics in the past three years, such as conjunctivitis, dengue fever, and pneumonia, which have had adverse consequences for the general population.

The Ministry of Health has registered 155, 632 cases of conjunctivitis nationally. Care for this epidemic involved an expense of 1 million and 958 thousand dollars in terms of social insurance for the payment of sick leave for 54 thousand patients out of 90 thousand seen that requested the subsidy<sup>6</sup>. This sum comes only from the ISSS, so the MSPAS made an additional payment to cover for the care of cases at the national level.

On the other hand, the dengue fever epidemic had a more intense presence in El Salvador. According to MSPAS reports, there were 817 cases of classic dengue fever reported in 2001; 4,410 cases in 2002; and 1,365 cases up to the current date for 2003. The most critical year for the incidence of this epidemic was 2002. With regards to hemorrhagic dengue, there were 24 cases registered in 2001; 370 cases in 2002; and 75 cases in 2003. The report does not break up the information in terms of age or gender<sup>7</sup>. The number of deaths is not reported either. With regards to 2003, the MSPAS reports 25 thousand confirmed cases of classic dengue fever and 99 of the hemorrhagic type up to October 19 of the current year<sup>8</sup>.

Another epidemic that affected Salvadoran population and the groups of greater vulnerability, such as children under age 1 and older adults, was pneumonia. According to health officials, this

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<sup>5</sup> La Prensa Gráfica, Wednesday, October 22, 2003, “VIH afecta a 500 embarazadas al año” (HIV affects 500 pregnant women every year).

<sup>6</sup> La Prensa Gráfica, Tuesday October 28, 2003, “ISSS reporta más de 155 mil casos de conjuntivitis” (ISSS reports more than 155 thousand cases of conjunctivitis).

<sup>7</sup> La Prensa Gráfica, Saturday October 4, 2003, “Cuatro alertas durante el año” (Four alerts during the year).

<sup>8</sup> La Prensa Gráfica, October 19, 2003, “Estudiantes inician visitas a casas” (Students begin home visits)



illness has resulted in 352 deaths, 195 of which are people over age 60 and 74 children under age 1. Because of these results, the then Minister of Health, José López Beltrán, issued a red alert decree<sup>9</sup>. There were 71,075 people with the illness in the whole country<sup>10</sup>. This became the epidemic that resulted in the greatest number of mortal victims during 2003.

These diseases are classified as epidemics, but as the cases decrease they become an endemic disease, that is, they annually affect certain average of Salvadorans. For this reason, it would be expected from the MSPAS to implement a prevention plan so as to decrease the incidence and prevalence of this type of illness. Newspaper reports do not provide information broken up in terms of gender and age, so the percentage of children who were affected is not know.

According to official figures provided through the MSPAS and recent studies from the FESAL poll (1998 and 2003) and the UNDP Human Development Report (2001 and 2003), it was pointed out that there had been significant progress regarding health, which is supported through the appropriate indicators for each heading. However, it is important to point out that in some cases reality does not correspond with the available indicators. It must be noted that the main causes of infant mortality are directly related to poverty and as long as the conditions of social exclusion are kept, the incidence and prevalence of these diseases will not decrease significantly.

Many are the conditions that are not reflected in these reports, such as the lack of coverage mainly for the rural area, which discriminates against the population that lives in this area when they are deprived of the universal right to have a decent and healthy life.

As analyzed, the allocation of budget for this heading is insufficient to provide coverage and offer quality services to almost 80 percent of the population that turns to MSPAS establishments seeking medical care, with the aggravating that there is no respect for the right to gratuitous care, which limits even more access to these services.

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<sup>9</sup> La Prensa Gráfica, Saturday October 4, 2003, “ Cuatro alertas durante el año” (Four alerts during the year).

<sup>10</sup> La prensa Gráfica, Tuesday September 9, “Neumonía sigue cobrando vidas de menores de edad” (Pneumonia continues taking lives away from minors)

## VI. EDUCATION AND CULTURE

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### 6.1 Fitting of the national normative framework

Articles 28 and 29 of the CRC clearly lay down the wide framework of the right to education for children and adolescent population. Article 28 of the CRC establishes that the States acknowledge the right to education for children and adolescent population, so it can be *progressively exercised* and under conditions of equal opportunities. For this, compulsory and gratuitous elementary education for all should be instituted.

In addition, it specifies that the development of secondary education will be promoted, in its different forms, including general and professional training, so all children are educated and have access to education. Therefore, appropriate measures are required, such as the institution of gratuitous education and financial aid in case of need.

A correspondence between what the Convention establishes and the Constitution of the Republic can be noted in Salvadoran legislation that regards education as an inherent right of the human person. For this purpose, article 53 of the Constitution in force since 1983 states that it is responsibility of the State to provide gratuitous pre-school, elementary, and special education.

The Legislative Congress passed the General Law of Education in 1990. It has been subjected to continuous process of reform in 1991, 1992, and 1993. The last reform was passes by legislative Decree No. 917, on December 12, 1996 (MINED). This law describes the levels of education that are guaranteed with gratuitous and compulsory character by the State, according to what the Constitution prescribes.

It is proper to point out that article 28 of the Convention commits States Starts Off to guarantee the progressive development of Education. To clearly understand the spirit of the law and the degree of progress in the national context, the national report about the situation of the rights of the child, prepared by the PDDH, clearly states that the General Observation 13, from the Economic, Social, and Cultural Rights Committee, is explicit when it points out to five levels of commitment and obligation imposed by the right to education to the States Starts Off: respect, protection, fulfillment, facilitation, and provision.

According to Cardona and Díaz (2003), the Committee urges for the concept of *gradually progressive* foreseen in the Convention not to be interpreted as a lack of sense of obligation for the States Starts Off. Gradual fulfillment means that the States have the specific and permanent obligation "to proceed as promptly and efficaciously as possible" to fully apply article 13.

Likewise, the right to no-discrimination and equal treatment acquire special importance in the frame of the CRC. The States must adopt special measures, with temporary and urgent nature (legislative, institutional, budgetary), to favor traditionally excluded social groups, including girls, children with disabilities, and rural children, so as to attain equality in the results.

## **6.2 Current situation of the right to education in the country**

### *6.2.1. General Progress*

The current situation of the right to education in the country emphasizes great efforts in the past years, but there are still deficiencies and gaps in terms of access and quality that require the implementation of positive actions for greater progress. This balance is illustrative, because it coincides to a great extent with affirmations made in the United Nations Report on Human Development, El Salvador (2003) and the educational balance- El Salvador, 2002, prepared by the Inter-sectorial Association for the Development and Social Progress (Asociación Intersectorial para el Desarrollo y el Progreso Social, CIDEP; Rivas, 2002).

CIDEP states that in the past five years there have been sustained efforts to raise the national educational level, with extended programs for coverage, especially in literacy, elementary education, and processes for pedagogic renovation. The UNDP report (2003) suggests that national enrollment for the three levels of education (pre-school, elementary, and high school) increased to rates superior to population growth (1.6) for the period between 1999 and 2002, but this rate tends to decrease as the grades increase.

On the other hand, it must be taken into account the effects produced by the 2001 earthquakes on the national educational system. The earthquakes had a great impact on school infrastructure. These socio natural disasters had an impact in the fulfillment of some foreseen goals. In the account of the work of the Ministry of Education (MINED) for 2002-2003 it was reported that 90% of the school buildings damaged by the 2001 earthquakes had been re-built (MINED, 2003).

The lack of coordination between the government and non-government sectors was pointed out as one of the issue of concern by the Rights of the Child Committee in 1993. Currently, the Salvadoran government is credited with efforts to sustain links and coordinate actions with other entities of the Ministry of Education, Ministry of Health, ISNA, and non-governmental organizations to develop shared projects and with efforts to transfer educational technology for the provision of services to children with educational needs.

One of the results from the coordination is the constitution of the National Committee for the Education for All Campaign (Educación para todos y todas, EPT) and the Extended Committee, convened by the government. In this framework, the government and a group of non-governmental organizations assessed the fulfillment of EPT. They agreed there was a positive appraisal for the increased coverage for literacy and elementary education (Rivas, 2002). However, when it came down to the coordination with non-governmental organizations linked to the topic of girls and women rights, there were advances and regressions regarding the establishment of priorities and measures to fulfill the right to equality of opportunities and gender.

### *6.2.2. Literacy*

It has become evident that in the past few years there has been an express policy to reduce the rate of illiteracy. As reported by official figures, there was a 24.5% illiteracy rate in 1990. Gradually, year by year, the Ministry of Education has determined to reduce it by 1 to 2%. Official figures indicated there was a 14.2% illiteracy rate in 2002 for the population age 15 and above (UNDP, 2003)

Nevertheless, UNDP report points out that the literacy rate for people age 15 and older is 10 percent points under the mean rate for Latin America and the Caribbean. In addition, it is worth noting that the reduction in the illiteracy rate does not necessarily imply a progressive educational inclusion of children that do not attend to the formal school system.

### *6.2.3. The right to access to education by each level*

#### *- Early Education*

The Head Office of Statistics and Census (2000) reports ISNA serves approximately 9,400 children between the ages of 0 to 3. It is estimated that infant population between the ages of 0 to 4 is approximately 793,564. In other words, public system is serving 1.18% of the total population (Rivas, 2002). These figures reflect a greater number of boys, 59.2%, compared to 40.8% constituted by girls who participate in early education.

The effort is carried out jointly by MINED, Ministry of Health, International Agency for Development (Agencia Internacional para el Desarrollo, AID), and the community, through the modality of community educational centers. The National Policy for the Full Development of Children and Adolescents reports the creation of 212 Centers for Infant Welfare (Centros de Bienestar Infantil, CBI). Each one serves approximately 30 children.

#### *- Pre-school*

The growth rate for the pre-school level is one of the highest in the national educational system, compared to other levels observed within the past decade. The annual growth rate between 1992 and 2001 equals 8.8 percent, according to MINED. Official figures indicate that in 1998 the percent of children between the ages of 4 to 6 increased to 40.09. According to figures registered by the UNDP (2003) the gross pre-school enrollment rate is approximately 48.35%, which is low when compared to that of Latin America. Costa Rica, for example, has a rate of 87%. Nevertheless, there is still a good proportion of the school-aged population that is excluded from the right to pre-school education.

- Elementary Education.

Most of the educational service offer and budget is in this area. The 2002 Educational Balance (Rivera, 2002) affirms that there was a total enrollment of 1,042,755 in 1992. Afterwards, it reached 1,083,033 students in 1995 and 1,281,693 students in 2002. In terms of gross rate, enrollment reached 100% while the net rate is estimated to be approximately 87%. The difference between these two is explained on the basis of factors such as over age and repetition of grade. In turn, this situation obviously has an impact in the estimation of coverage of the educational system at the elementary level.

FESAL poll, 2002/03, one of the studies regarded as most representative of the country, reports that in 1998, 85% of the total of children between the ages of 7 to 14 was studying and 61% was attending the expected grade or one higher. In contrast, a slight increase was observed in 2002/03, with 88% studying during the 2002 school year and 62% attending the expected grade or one higher (FESAL, 2003).

The same source also says that *school drop-out* is more critical starting at age 12. It rapidly increases from 9 percent at this age to 20 percent among the population aged 14. It is also reported that the factors associated to drop-out include socioeconomic and sociocultural conditions, appraisal of education, distance to the school, cost of education, low academic performance, and child labor.

Regarding repetition of grade, it is pointed out that 14 percent of the child population that was studying during 2002 was repeating grade in that year and one out of three had repeated, one or more times, in the years previous to 2002. These figures are similar to results found by the FESAL poll carried out in 1998.

It is also worth pointing out that El Salvador is the third country in Latin America with the lowest fourth grade graduation rate, where one fourth or more of the student population that enrolls in the first grade does not make it to the second grade.

In terms of the quality of education, there has currently been a unified process of curricular renovation of the early and pre-school levels, so the population served by the Centers for Infant Welfare (Centros de Bienestar Infantil, CBI) must meet the same academic performance criteria required in the pre-school centers of the official educational system. This is expected to help overcome any social disadvantage at the moment of enrollment in the first grade. Steps have also been taken so the curriculum integrates, in a transversal manner, the gender approach.

- High school education

In general terms, this educational level comprises the adolescent population, between ages 15 and 18. According to Rivas (2002), the gross schooling rate in 1992 was 27.19 percent and it increased to 34.5% for 1998. For 2002 the gross enrollment rate reached 40 percent, but the net rate was 25% (UNDP, 2003).

Likewise, it is important to note that 40% of the gross enrollment rate is the result of the summed coverage of public school centers, added to the private sector. It is estimated that the State covers approximately 50% of the total current services provided. That is, this would mean close to 20%. The remaining percentage is covered by the private system.

### **6.3 Issues of concern**

Nonfulfilment of the right to gratuitous education. As pointed out, the Constitution of the Republic (article 53) lays down that education is an inherent right of the human person and that pre-school and elementary education *will be gratuitous* when provided by the State (articles 56, 57, and 60).

Obviating this juridical Constitutional framework, school centers have established for many years what is called *voluntary fees*, which are stipulated for families as an obligatory requirement to enroll any child or adolescent.

In a consulting workshop, NGOs linked to education and members of RIA have insisted in that the State must guarantee the right to gratuitous education. Likewise, children and adolescents participating in a focus group to consult this issue agreed with the aforementioned opinion.

*"In the school where I come from the fee increased and they were making it compulsory. I say that education should not be required to be paid"*

*Opinion of a girl representative of an NGO*

In the commemoration of ten years of the ratification of the Convention for the Rights of the Child by El Salvador, the Foundation for the Study of the Application of the Law (Fundación de Estudios para la Aplicación del Derecho, FESPAD; Díaz, Álvarez and Martínez, 1999) indicated that in 1999, 6,000 teachers were not receiving their salary from MINED, but from the contribution of voluntary fees.

It was until the end of 2003 that the Legislative Congress passed the Decree to eliminate voluntary school fees in the public schools, starting in 2004. In order to do this, articles 76 and 77 of the General Law of Education will be reformed, which authorized charging the aforementioned fees.

It is estimated that the collection of voluntary fees produce close to 100 million dollars annually. These are contributed by families mainly from low socioeconomic level. A good deal of these funds has been assigned to pay for teaching staff positions, administrative services positions, and to buy didactic material (Note published by La Prensa Grafica, October 31, 2003).

The Ministry of Education has allocated, as a complementary measure, the amount of 13.8 million dollars, which will be distributed among the various elementary education schools as a gratuity bonus for the present year.

Even with all that has been done, the guarantee of the right to gratuity is not fully solved. Teaching staff in the public schools face the first difficulties. The enrollment has increased, which results in other inconveniences such as lack of physical space, rooms, desks, and lack of administrative and logistic staff, among others (note published by La Prensa Grafica, January 14, 2004).

- *Financing of education and observations from the Committee*

A tendency to increase the financing of education has been observed in the past decade. However, it is important to review how the topic of budgetary allocation for education has worked in the past decade. In the 70's, the allocation ranged between 20% and 30% (Rivas, 2002). Afterwards, in the 80's, it decreased to 13%. An ascending process begins in the 90's, with the end of the civil war. Expense in education went from 1.8 of the GIP in 1992 to 3.2 for 2003. In spite of all the increase in the past years, the current expense level does not match the levels observed at the end of the seventies. Furthermore, it is below the average for Latin America, which is estimated to be 4 percent (UNDP, 2003).

The State invested 484.5 million dollars in 2003, which represented 19 percent of the budget. The Ministry of Education forewarned about the need to increase public expenditure 4 percent of the GIP, to achieve universal access of the population to education. Nevertheless, this projection does not seem to be a priority. In the government proposal for the budget for 2004 there has been a reduction in 20.9 million dollars compared to 2003 (Pronouncement of the NGOs, published in La Prensa Grafica, October 30, 2003).

In 1993, the Committee for the Rights of the Child pointed out in its comments to the Salvadoran government report its regret for the lack of consideration to the dispositions of article 4 of the Convention. It also regretted that the budgetary restrictions that affect social programs had a detrimental effect on the protection of the rights of the child. This comment is still sustained, especially when there is an intention to reduce the budget for the present year.

El Salvador is one of the Latin American countries with the lowest investment in education. PREAL (Programa de promoción de la Reforma Educativa en América Latina y el Caribe-Program for the Promotion of the Educational Reform in Latin America and the Caribbean) pointed out that it can hardly be ensured that the governments are preparing pupils to compete in a global economy (PREAL, 2001). On his part, Rivas (2002) points out that there is a problem conceptualizing education in terms of investment and financing.

Educational Conciliation (Concertacion Educativa), integrated by 21 non-governmental organizations, warns that the current budgetary allocation is insufficient to guarantee the right to education. It alleges that to fulfill the agreements of the World Forum for Education in Dakar, 2002, and therefore, to guarantee the right to education, it is necessary to invest 6 percent of the GIP, just like Costa Rica does (Pronouncement of the NGOs, published in La Prensa Grafica, October 30, 2003).

They add there is a need to transfer certain percentage of funds destined for less essential areas to education, such as the programmed increase for the presidency of the republic, the amount allocated for the Ministry of Defense, and self-publicity. In addition, they suggest the adoption of measures such as the selective tax to the cost of alcoholic beverages, among others.

- *Inaccessibility of preschool for children and inaccessibility of high school for adolescents*

In the World Conference about Education in Dakar, 2002, the commitments acquired in 1990 in Jomtien, Thailand, about the Conference "Education for All" were ratified and extended. The creation of national plans was one of the measures adopted, so as to ensure that by 2015 the right to education for all children, particularly those in conditions of greater social vulnerability, is satisfied.

The adolescent population in the country is one of the sectors made most invisible, both by government and non-government entities. This age group tends to be the focus of attention when it comes to perceive it as generator of problems, especially related to social violence and teen pregnancy.

The indicator that 60 percent of the population is prevented from accessing high school education evidently reflects the political inattention and lack of clear measures on behalf of the adolescent population. Nevertheless, it is asserted that success in finishing high school seems to constitute the threshold for education to play a preponderant role, in terms of improving the options for occupational mobility and avoid the probability to fall in poverty (CEPAL, 2000). The opinion shared by children representatives of NGOs asserted the following appraisals:

*"The government should focus more on education so there is not so much prostitution here in our country and the NGOs should help"*

(Opinion from a participant in the focus group)

On the other hand, within the mental health framework, access of the adolescent population to high school education has a close relationship with the phenomenon of juvenile social violence in the country. El Salvador is considered one of the most violent countries in Latin America. A variety of studies carried out by the University Institute of Public Opinion of the Central American University (Cruz, Trigueros, and González, 2000; Santacruz and Portillo, 2002) reflect that the lack of educational opportunities constitute a risk factor for juvenile social violence. An illustration of this affirmation can be observed in the fact that a good proportion of youth that join the "juvenile gangs" has quit studying and has reached a school average of 8th grade.

- *Quality and efficiency*

The educational balance carried out by CIDEF (Rivas, 2002) points out that one of the main problems is that the government work is reflected in limited results in quality and efficiency of the system, in spite of having implemented a process of educational reform for over 10 years,



which included quality, coverage, and efficiency of the system as axes. The UNDP points out there are still gaps to overcome.

MINED has a National System of Educational Evaluation (Sistema nacional de Evaluación educativa, SINEA), which is applied to pupils in 3rd, 6th, and 9th grades in the basic courses: language, mathematics, science, and social studies. The results indicate that pupils have an intermediate performance. Nevertheless, pupils in the private sector attain better results than in the public sector. Likewise, pupils from urban areas attain better results than from rural areas. Results broken up by gender show that third grade girls attain better results than boys, specially in language. But this indicator tends to be the opposite for 6th and 9th grade.

In the national system of evaluation, results for people who graduated high school tend to be similar to those of people who graduated elementary education. Pupils attain an intermediate level of progress. Again, students from public school centers have lower scores when compared to school population from the private sector.

On the other hand, the State has implemented diverse programs to expand the educational coverage. The Educational Program with Participation of the Community (Programa de Educación con Participación de la Comunidad, EDUCO) is one of the most acknowledged. It functions in rural areas of the country. Since its creation in 1991 it has focused in geographic areas where there were no educational services offered. By 1990, it was possible to serve up to ninth grade with this program. This program functions with the direct participation of the community, through the negotiation of the management of school centers.

The program *Aula Alternativa* (Alternative Classroom) is another option. In this program, the teacher jointly, simultaneously, and at the same time separately attends to students from two or more grades of elementary education.

Although these programs have received acknowledgments in the international scope, two limitations must be pointed out. First, this strategy runs the risk of turning into means for the inattention to the responsibilities of the State, so it is advisable to precise the limitations for this participation (Cardona and Díaz, 2003). Second, there must be exhaustive studies to examine the quality of the education offered to the consignee population, with the purpose of eliminating the risk of having the educational offers turn into second category and therefore discriminatory, as it would have a negative impact on the poorest rural sectors, where the majority of these programs tend to be implemented.

- *The right to equity and no discrimination*

The UNDP (2003) and the consultation carried out in the workshop with non-governmental organizations pointed out that in spite of efforts performed in the country in the educational domain, there are still rural-urban and gender gaps that require substantial measures of attention.

FESAL 98 results indicate that 8 out of every 10 children that enter the formal educational system manage to finish the sixth grade. This situation is equal in terms of gender, but not in

terms of rural-urban sector. While 93 percent of the urban area finishes sixth grade, only 68 percent in the rural area finishes it. Nevertheless, there are not comparing figures for the present period.

Likewise, one of the six strategic goals of Dakar 2000 establishes as a priority the elimination, by 2005, of gender disparities in elementary and middle education, and the accomplishment of gender equity by 2015, particularly ensuring that girls have access to quality education and full and equal performance. This commitment acquired by El Salvador shows incipient results in terms of equity accomplished in the classroom, and equitable access to technical education for adolescents. Currently, the estimated relationship is 2 percent for female adolescents compared to 98 percent male (APREMAT, 2000); another related difficulty is the guarantee of the right to education for pregnant adolescents.

Official systematic research about the situation of discrimination of pregnant adolescents is lacking. A poll carried out by MINED (2002) in 146 institutions of high school education revealed that there are still public institutions where internal regulations contemplate the expulsion of youth because of pregnancy.

In the past three years the Ministry of Education has implemented pilot experiences, such as Project for Gender Equity in the Classroom, aimed at decreasing gender inequality in the school. Nevertheless, the reach of these actions represents close to 1 percent of 5,080 elementary schools in the country.

There have also been pilot projects in high school education, specially carried out thanks to the support of international cooperation agencies. MINED lacks specific budget and a serious plan of positive measures by itself. Far from it, there is hierarchical resistance to take on the topic.

Efforts carried out up to date are incipient to overcome gender gaps. Exceptionally, very limited women NGOs carry out awareness campaigns. However, it is worth pointing out that there have been positive measures adopted, such as granting scholarships to female adolescents interested in studying technical high school. These efforts are very limited.

- *Right to rest, leisure, and cultural activities (article 31)*

It is important to highlight the coordination effort carried out by government entities, including the Ministry of Governance, the National Counsel of Public Safety, the National Office for the Family (Secretaría Nacional de la Familia, SNF), the Ministry of Education, and some municipalities, with the goal of ensuring the fulfillment of the right of the child to recreation and cultural activities.

The Salvadoran government has taken the first steps to guarantee the creation of leisure and fun spaces for children and adolescents, such as recreational parks, the "Tin Marin" Children Museum located in a public park in the central zone of the capital city, and the Family Park.

Also, the Atletism Salvadoran Federation, like the Basketball one and others, have contributed with the expansion of sports spaces, which has resulted in significant quality accomplishments.

The Ministry of Education, on its part, offers cultural, sports, and recreational activities to promote healthy leisure for children and youth. It has structured, organized, planned, and developed activities for leisure and cultural activities. It has promoted the participation of the majority of the pupils. It has started the expansion of leisure spaces through the creation of school bonuses.

Nevertheless, one of the changes of the educational reform at the high school level was the elimination of teaching staff in the area of physical education and sports, especially those destined to teach the school levels that serves the adolescent population. In the recreation area, the Ministry of Education has developed different events of youth leadership, musical bands, and juvenile camps. This is an area that is well received by the child and adolescent population, and that must continue to be stimulated.

On its part, the National Institute of Sports (Instituto Nacional de los Deportes, INDES), started, between 1993 and 1999, sports efforts with the purpose of offering children, youth, and the general public appropriate and safe settings to practice sports. This seeks to make sports and recreation massive.

## VII. MEASURES OF FULL PROTECTION

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### **7.1. Children affected by armed conflict, including their physical and psychological recovery and their social reintegration (articles 38 and 39)**

#### *7.1.1. Mental health care*

This heading of the GOES report makes a recapitulation of the fulfillment of some of the commitment established in the Peace Agreements, among them, the creation of the Fund for the Protection of Disabled in the War, and the Program for the Reinsertion of ex combatants to the civil life, considering that 80 percent of participants accomplished reinsertion. Likewise, it points out that the National Plan for Reconstruction provided services to demobilized, displaced, and repatriated. According to figures reported by 115 local governments, 16 government organizations and 192 NGOs participated in this effort.

Mental Health Programs were executed mainly by NGOs, including *January 16 Foundation*, which developed a program for ex combatants, where the ex combatants themselves were trained as mental health promoters. There was a previous diagnosis about the mental health problems lived by ex combatants after the Peace Agreements.

One of the main axes in these organizations focused on the training of mental health promoters. The Association for the Training and Research in Mental Health (Asociación para la Capacitación e Investigación en salud Mental, ACISAM) and the “José Simeón Cañas” Central American University (UCA) stand out. These institutions not only trained promoters but also designed manuals addressing topics such as grief, self-esteem, and mental health, among others.

These institutions focused their work in the departments of Chalatenango, San Vicente, Morazan, and North area of the departments of La Libertad and Usulután. In these areas, there were communities of repatriates.

In 1995, the Association Pro-Searching (Asociación Pro Búsqueda) created a program for the psychological care of families who search for their children missing because of the conflict. The service is provided to the families through the process of search, and to the families that have found their children, to accompany the process of family reintegration. It also provides services to the youth that have been found. The intervention programs rely on group intervention and attention to individual cases. Likewise, there is a program of scholarships that has allowed youth to carry out their studies in elementary, high school, and university education. This has contributed to the social reinsertion of these youth.

Only few organizations that worked during the post war period continue providing services in this heading. Many of these carried out specific programs that responded to the circumstances and afterwards they closed the programs. In some cases, even the institutions closed. In this

sense, it is important to highlight the support provided by the international cooperation, which decreased as time went by. This situation affected the impact of programs, since the sequela and trauma produced by the war require long term services.

### *7.1.2. Children affected by the armed conflict*

The Convention on the Rights of the Child, in its article 39, lays down that "the States Starts Off will adopt all the appropriate measures to promote the physical and psychological recovery and the social reintegration of every child victim of any form of abandonment, exploitation, or abuse; torture or other forms of cruel, inhuman, or denigrating treatment or punishment; or armed conflict. This recovery and reintegration will take place in an environment that promotes health, respect of self, and dignity of the child."

The armed conflict in El Salvador caused great damage to the child-adolescent population. The disintegration and/or loss of families, the inappropriate living conditions, the physical and emotional consequences, and the constant displacement shown by a 1985 poll of 7,360 displaced families (UNICEF, 1987), determined that these family groups came from the departments with combat zones. This situation was cause for confusion, fear, and insecurity regarding the future of affected children, who were called "children of the war", because they were born and grew up in this environment.

Displaced families that later were integrated as part of the city poverty belts and whose needs were initially tended by churches, NGOs, and international cooperation entities, came originally from rural areas, traditionally dedicated to agriculture, and had many children. A fourth of these families were headed by women, and had a low formal educational level. Unemployment among these groups reached a rate of 70 percent, the remaining had a permanent employment for one or more of its members.

When the conflict ended with the signing of the Peace Agreements, with no plan for reinsertion at sight, many displaced people were relocated in their place of origin. Others were left in conditions of social marginalization, close to the departmental capitals or in the country capital.

At the same time, the contribution of the international cooperation decreased significantly. Some NGOs got organized to develop successful proposals for the mental health and work reinsertion of ex combatants. These were limited in their coverage. The State did not design a National Plan for the mental care of the population, especially the children.

### *7.1.3. Missing children*

During the civil war years lived in the country, hundreds of children disappeared because of causes directly associated with the armed conflict. The Association Pro-Searching of Missing Children (Asociación Pro Búsqueda de Niños y Niñas Desaparecidas”), a non-profit organization with the mission of "being a strengthened institution of Human Rights that constitutes a national and international referent because of its accomplishments in the clarification and establishment of permanent institutional tools for the research, care, and prevention of cases of missing

children, as well as the recovery and promotion of the historic memory, contributing to the establishment of a Lawful State that privileges the fulfillment of Human Rights, specially the rights of children".

There were 686 registered cases by May, 2003. Out of these, 340 were boys and 346 were girls. The association managed to solve 276 cases. According to Pro-Búsqueda (2002), 276 infants disappeared because of the conflict, 351 under the responsibility of the Armed Forces of El Salvador, 51 by the FMLN, 7 under the responsibility of the army of Honduras, and 1 by security forces of Guatemala.

According to Pro- Búsqueda reports, the majority of disappearances happened between 1980 and 1984 in the rural areas. The separation of children from their families was part of counterinsurgency strategies.

In the publication *La Paz en construcción. La Problemática de Niñas y Niños como Consecuencia del Conflicto Armado Interno en El Salvador* (Peace under construction. The problem of missing children as a consequence of the internal armed conflict in El Salvador, 2003), Pro Búsqueda points out that "... it has been identified that there is a total of 15 military operations of great breadth where children were subtracted... the quantity of documented cases of children subtracted through operatives varies between 3 and 39. The military operation where the majority of children disappeared was carried out in the north-east part of Chalatenango, between May 31 and June 2, 1982."

There were also cases of children who got lost in the midst of the confusion and terror of the flight that the inhabitants of these communities undertook during the military operations.

In the cities, the operatives were selective and were directed against persons or groups of so called "security homes", where members attempted to keep an image of normal family, which made it indispensable to have children present. When one of these houses was discovered, their inhabitants were assassinated or arrested, and joined the queues of missing, including the children.

#### *7.1.4. Response from the State*

Regarding the problem of children missing during the armed conflict, according to Pro-Búsqueda Association, the Salvadoran State has shown a lack of political will to find them. According to records, after the signing of the Peace Agreements, a Human Rights organization that carried out its work in the area of Chalatenango, jointly with relatives of missing children, presented their cases before the appropriate court. Many of these were filed, while the judges unfulfilled their obligation to act diligently to clarify the facts.

In spite of the efforts to continue presenting complaints in Chalatenango, which as previously pointed out was the area mostly affected by forced separation of children and families, *"in no case the proceedings before the courts have led to the localization of the youth"*. The cases have not gone beyond the phase of preliminary investigation. Further more, even though Pro-

Búsqueda was concerned with contributing facts to the trials, there has been a lack of diligence and a delay in the process of justice in every one of the cases (Pro Búsqueda, 2003).

The same has happened in the cases presented before the Republic General Prosecutor's Office: the assigned prosecutors have not shown major interest in expanding the proof. As for the Supreme Court of Justice, for the presented cases that have requested habeas corpus, the resolutions issued by the Constitutional Court argues that the resource of personal exhibition is not appropriate for forced disappearances, contradicting with this the Inter-American Court of Human Rights, which lays down that "personal exhibition or Habeas Corpus would normally be appropriate to find a person presumed to be arrested by authorities, to find out is the person is legally detained, and given the case, attain his or her freedom"<sup>11</sup>.

The Republic General Attorney's Office has not given due importance to these investigations; on the contrary, it has subjected the process to slow, bothersome, and bureaucratic administrative processes to offer the requested service. This has made it difficult to treat these cases with the celerity they should have, to get down to the real and procedural truth. There is an agreement established with the General Attorney's Office to facilitate the recovery of the legal identity of missing children.

The same has happened with cases presented before the Republic General Attorney's Office, since the assigned prosecutors have not show major interest in expanding the proof of the denounces cases, neither have they presented the respective requirements for new cases.

Regarding the Legislative Congress, on October 20, 1999 a piece of correspondence sent by Pro-Búsqueda to create the National Committee of Search was accepted. The family, woman, and child committee started a consultation process that lasted several months and was expanded to a new legislation. At the end, the committee concluded that there was not consensus to create the Search Committee, because the parties of ARENA and PCN did not agree.

On its part, the Armed Forces categorically denied the existence of facts related to the disappearance of children, which pointed to members of that institution. According to Pro-Búsqueda reports, the Armed Forces have not provided support as an institution; instead, some officials have collaborated in some cases, on personal basis.

Pro-Búsqueda coordinates efforts with various Human Rights institutions. It is member of the Latin American Federation of Relatives of Detained Missing (Federación Latinoamericana de Familiares de Detenidos Desaparecidos , FEDEFAM), the Committee for the Defense of Human Rights in Central America (Comisión para la Defensa de los Derechos Humanos en Centroamérica , CODEHUCA), it receives legal consultation from the Center for International Justice and Law (Centro por la Justicia y Derecho Internacional, CEJIL) to pursue exemplary cases of missing children before the Inter-American System of Human Rights of the Organization of American States (Organización de Estados Americanos, OEA).

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<sup>11</sup>Idem

Within this context, on June 18, 2003, the Salvadoran State was sued for the first time before the Inter-American Court of Human Rights because of the forced disappearance of the girls Ernestina and Erlinda Serrano Cruz (ages seven and three). Pro-Búsqueda and the Center for International Justice and Law (CEJIL), in representation of relatives, gave notice of this case before the Committee of Human Rights (CIDH) on February 16, 1999. The disappearance of the Serrano Cruz sisters is not an isolated incident, but is part of a pattern of forced disappearances perpetrated or tolerated by the Salvadoran State.

To overcome these difficulties, Pro Búsqueda sets forth the need to constitute a National Committee, through a legislative decree and with all the support and participation of State entities that would comprise it, and establish a Genetic Data Base to keep samples of DNA of the relatives of missing children.

### **7.2. Right of children not to be subjected to torture or cruel, inhuman, or degrading treatment (section “a” of article 37)**

Given the current national context, it is convenient to analyze the situation of the right of children and adolescents not to be subjected to torture, or cruel, inhuman or degrading treatment. Article 37, section c, lays down that *"all children deprived of freedom shall be treated with humanity and respect deserved by the inherent dignity of the human person, and in this way the needs of people of that age shall be considered."*

The government report regarding the CRC (2002) highlights that the Constitution of the Republic (article 2) establishes the protection of the rights to personal integrity and that it is precisely the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH) who has the mandate to be vigilant of the situation of people deprived of their freedom (article 194.1).

In regards to the PDDH, it is worth noting that the monitoring of human rights has been fulfilled in great deal through the elaboration of complaining reports and the opening of files. Nevertheless, in the past two years this same institution has been subjected to disinformation and discrediting campaigns by other government institutions, including the executive body.

The investigations carried out by NGOs and universities show situations that can be considered violations of the rights of child and adolescent population in conflict with the law, who are under the internment measure (Laínez and Muñoz, 2003, Díaz, Martínez and Vaquerano, 2003). In these studies, youth who claim they receive an inhuman treatment by staff from the internment centers are identified. The PDDH has played an important role in the monitoring of the conditions of the internment centers for adolescents in conflict with the law in the country.

In 2003, the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH), in file 01-0289-03 points out the repetitive aggressive behavior and maltreatment on the part of the police against detained adolescents. The file adds that this reflects the lack of suitability of the selected staff to provide public safety and shows a clear violation of the human right and the physical integrity through violating acts of disproportionate use of power and maltreatment on the part of the police institution.



Similar types of files have been opened at the PDDH. The PDDH has investigated complaints of searches and massive unjustified captures of youth members of gangs. In these complaints, the youth claim they are photographed and their pictures are published in the newspapers, charging them with major offenses such as homicide and aggravated sexual assaults, when in reality they have been arrested only with charges of "illicit associations". In some occasions the youth have been forced and subjected by police officers to load another person on their shoulders, while they stand under the sun for a long time, receiving beatings if they are unable to resist this physical effort. Furthermore, it is added that police officers spray pepper gas when the youth are asleep inside of the police cells. This appears to qualify as an offense of "torture" performed by PNC (National Civil Police, Policia Nacional Civil) officers.

### **7.3. Rights of children under situation of economic exploitation, including child labor (article 32)**

Attention to the situation of child labor is not specifically focused on those types of activities children and adolescents perform in some social contexts as part of their socialization process, under the guidance of their parents or guardians. Under certain conditions, this type of activities can be enriching and desirable. On the contrary, Jason and colleagues (1997) explain that it is more about the premature and limiting inclusion of children and adolescents to the labor world, mainly due to conditions of vulnerability and social disadvantage that forces them to seek ways to subsist that endanger their bio-psycho-social development. To this are summed the conditions of legal unprotection, unsafety, limitation or deprivation of access to education and to a life as a child or adolescent. In other words, a "*premature adulthood*".

Many Salvadoran families that live in conditions of poverty, with little access to basic services and under precarious living conditions, find themselves forced to include their children, at a very early age, in labor activities for subsistence.

Twelve years after the ratification of the CRC, there are three point of analysis that can help clarify the advances and areas of concern regarding the rights of children in situation of economic exploitation. First, issues related to legislative measures. Second, the area of research and administration of indicators that give an account of the big or little advances. Third, the actions aimed at prevention and attention.

#### *7.3.1. Legal framework and Committee's concerns about minimum age for employment*

In 1993, the Committee for the Rights of the Child expressed its preoccupation regarding the need to seriously consider issues related to the minimum age to allow employment, given that at that point in time there did not seem to be appropriate consideration of the principles of best interest of the child and no-discrimination.

In this context, one of the significant legislative advances was the ratification by El Salvador of the ILO 138 Agreement, related to "The Minimum Age for Admission to Employment", by

Legislative Decree No. 82, dated July 14, 1994. This meant that our country set age 14 as the minimum for children's admission to employment (Cardona and Díaz, 2003).

The other significant advance was the ratification of the ILO 182 Agreement, related to the "Prohibition of the Worst Types of Child Labor and the Immediate Action for their Elimination", ratified by Legislative Decree No. 28, dated June 15, 2000. This Agreement is consistent with the CRC and El Salvador was one of the first countries to ratify it. With this, it undertakes the commitment to promote immediate actions on behalf of the working children.

Likewise, in the frame of secondary legislation in our country, particularly the Labor Code, some dispositions have been reformed so as to be consistent with the ratified ILO Agreements, and therefore, with the CRC. There are four aspects that are worth noting in the Labor Code. First, the one related to the minimum age for the admission to employment. The Code establishes that the work carried out by minors under age 18 and above age 12 must be specially suited to their age, physical condition, and development. Second, there are specific prohibitions for the hiring of children in jobs considered as unhealthy and dangerous. Third, the one related to carrying out previous medical exams. Fourth, the related to more precise execution of the dispositions that regulate the work of children under age 18. For example, it is established that the working day for minors under age 16 cannot be more than 6 hours a day and 34 hours a week, in any type of job (article 116). Minors under age 18 shall not work night shifts.

*Problems in the harmonization of the laws.* In spite of the advances pointed out for 2001, Meléndez and Varela (in Molina and colleagues, 2003) conducted a juridical analysis of the national laws that show concrete problems in the harmonization of secondary laws and the Magna Carta regarding the minimum age to work, taking into account that the 1983 Constitution already has had some reforms in 1996.

These juridical analysts indicate that article 38, section 10, of the Constitution allows differing interpretations. One possible interpretation would lead to point out that "the spirit of the Magna Carta" is that of not allowing child labor in the country, and, on the contrary, there will be a provision of the necessary means to guarantee compulsory education for all minors, with no exceptions, according to what is established in the law that rules this matter.

"Minors under age fourteen and those that have reached that age and continue subjected to compulsory education by virtue of the law, shall not be occupied in any other type of work" (article 10 of the 1983 Constitution of the Republic).

The General Law of Education, in its article 5, like the Constitution, establishes that elementary education in the country is compulsory. This normally includes minors between the ages of seven and fifteen. That is, it is based on the assumption that children over age 15 would have finished the ninth grade and could choose to work. However, this assumption greatly contrasts with reality. Frequently, children start working between the ages of 6 and 12. Furthermore, a good proportion of children are over school age and others fall into repeating grades, as has been already pointed out in the section on the right to education in this report.

A second interpretation of the same article 38, section 10, of the Constitution arises when examining the exceptions to the rule. In this same article, work for minors under age 14 is authorized when it is considered indispensable for the subsistence, as long as it does not impede the fulfillment of the compulsory minimum education. In other words, it can be noted that the Constitution has not explicitly set a minimum legal age for child labor.

In this sense, it is essential to carry out a reform to harmonize the Constitution with ILO 138 Agreement. The same is true for the General Law of Education and the 1994 Labor Code. This latter one explicitly points out age 12 as the minimum for child labor.

In addition, ILO has pointed out that El Salvador, as other countries -not all of them- has discrepancies between the dispositions that regulate the maximum legal age to finish compulsory education and the minimum legal age to start working.

Likewise, the Constitution lays down, in absolute terms, the prohibition to work for minors under age 18 in unhealthy and dangerous jobs. This concept was adopted since 1950. Nevertheless, the constitutional text still needs to be updated and harmonized with international law regarding what has been prescribed as the worst types of child labor (Agreement 182). That is, all forms of slavery and analogous practices, child prostitution and pornography, illicit activities, and dangerous jobs must be explicitly prohibited as soon as possible (ILO, 2002).

Regarding the Labor Code, there are also some ambiguities related to child labor. That is the case of article 105 regarding the work of minors under age 18 in dangerous and unhealthy jobs, as it contemplates exceptions for minors over age sixteen to carry out such activities.

### *7.3.2. Current situation of the rights of working children*

It is convenient to start this section by pointing out that reality is a long way from what the national legislation establishes. It is important to reflect on the thought that the creation of a legal framework is a starting point, not the ending point. Molina and colleagues (2003) argue that it is not enough to formally formulate the legislation; it is necessary to define the mechanisms for the measures to be efficiently applied.

The study by Molina and colleagues (2003), carried out in the framework of ILO/IPEC, informs that the measures for control and supervision have had a short reach impact. Particularly, it points out, in the informal sector of the economy, where one can find a good proportion of the working children, whom for various reasons find themselves in the need to work since a very early age.

It is still necessary to pay more attention, to monitor, and to systematize the degree of progress in the application of this legislative measure, with particular emphasis on areas where the majority of children work: agricultural activities, informal trade, and domestic work, which are precisely areas without legal protection. The presence of child labor in the family and non-remunerated

informal sector falls beyond the jurisdiction of the majority of the governmental institutions. This is one of the greatest obstacles that should have attention.

Juvenile child labor has barely been analyzed in depth in terms of its dimensions and characteristics. Documentary sources are scarce and lack information. Rodríguez, Escoto and Orellana (2001) mentioned there were no official figures until recently, and the estimates of different organizations in the nineties varied. UNICEF report on the Conditions for Children in El Salvador estimated that by 1991, the population of working children between the ages of 6 and 18 was 100,000.

On its part, the Managerial Foundation for the Educational Development (Fundación Empresarial para el Desarrollo Educativo, FEPADE- in Rodríguez, Escoto and Orellana, 2001), estimated that by 1996 the population of working children between the ages of 7 and 17 was 350,000, which represented 22.25 percent of the total population in that age range. In contrast, the Multiple Purposes Homes Poll of the same year estimated that the Economically Active Population, between ages 10 and 17, was 231,852 (20.61 percent of the total population in that age range). It is believed that the differences can be explained because FEPADE incorporated other factors as economic activity in the calculation, such as the inclusion of children between ages 7 and 9, children thought to be living in the street, and domestic work.

An important step forward is the incorporation of the module on child labor in the 2001 Multiple Purposes Homes Poll (Encuesta de Hogares de Propósitos Múltiples, EHPM), because it presents a perspective of child work. This has been carried out as a coordinated effort between ILO and the Ministry of Labor and the General Office of Statistics and Census.

The data collected in the 2001 EHPM estimates there is a smaller proportion than the one identified during the nineties. According to this source, the population of children and adolescents between the ages of 5 and 17 is about 1,936,987, which constitutes 30% of the total population in the country. It is estimated that 222,479 of these are working children and adolescents.

The aforementioned differences in the registry make it difficult to establish parameters to compare the progress in the pursuance of the elimination of child labor. Nevertheless, these results can be considered the base line to characterize the situation of working children, so as to have a mechanism for the monitoring of the advance in the elimination of child labor, especially the worst types. Likewise, it can be the source for decision making regarding intervention strategies. With these indicators, the government report can provide answers about how the collected information is used in the decision making.

One of the issues of concern is related to the feasibility of producing registries of the worst types of child labor, which is related to the difficulties to collect the information, because in many cases these are illegal activities.

The little results attained twelve years after the ratification of the Convention reflect an official indifference to investigate and diagnose the situation. This includes state organizations linked to the guarantee of the right to work and the municipalities. Currently, the worst types of child labor have not been completely tracked down yet.

Based on the 2001 EHPP results, Molina and colleagues (2003) highlight the following indicators, in the framework of the international cooperation of the ILO:

- The percentage of poor households with working children is 10.8 percent points higher than the households without working children. Likewise, the data reveals that households with minors who work have a higher number of children as members of the home.
- It has been found that in 20 percent of the households with working children, their economic contribution amounts to 20 percent or more of the total home income. That is, their contribution is essential for the support of the family.
- Child labor doubles the proportion in the rural area, when compared to the urban population. It is estimated that close to 70 percent of child labor is carried out in the rural area.
- Gender is another relevant indicator. According to available data, the percentage of boys that work is more than double the percentage of girls. When this is examined with gender criteria, it can be noted there are socio-cultural patterns that keep a gender distribution of labor. The resulting findings have a relationship with the type of economic activity carried out by children in the rural area, mainly the one related to agricultural work. It is more likely for boys to earn a salary. In contrast, the girls are more likely to work as domestic aids and on their own.

The CRC acknowledges the right of the child to be protected from all types of work that may be dangerous, may interfere with their education, may be damaging to their physical, mental, spiritual, or moral health, or go against their social development. The EHPP was not able to provide sufficient information regarding the chores and working conditions in sectors such as the industrial, and information about the worst types of child work. Nevertheless, it is estimated that there is a total of 32,122 working children between the ages of 5 and 11, which infringes the national legislation. In addition, 92,184 children between the ages of 12 and 17 are working more hours than allowed for their age or in activities that are forbidden for them.

It is estimated that 124,306 children out of the total of working juvenile children (222,479) work under exploitive conditions. That is, more than 50% of the population of working children. If one added the percentage that is engaged in dangerous jobs and in the worst types of work, this figure would increase significantly (Molina and colleagues, 2003, p. 36).

### *7.3.3. State preventive actions*

The Salvadoran State, through the Ministry of Labor and Social Prevision, has been carrying out, since 1996, activities to promote and defend the rights of children who work. Towards the end of

2000, two projects were started to serve more than 5000 working children in the fishing, coffee harvesting, and pyrotechnic production sectors. There have been six studies, in the framework of this intervention, to make a rapid appraisal of the worst types of child labor.

Likewise, the Government of El Salvador has requested the technical assistance of the International Program for the Eradication of Child Labor IPEC/ILO. This is how the country was designated by ILO/IPEC as one of the three pilot countries in the world to develop an integral program, with a determined duration, aiming at having a favorable impact and eradicate the worst types of child labor. In 2003, the National Plan for the Elimination of Child Work was approved. This plan will directly serve almost 10,000 children and adolescents performing the worst types of work (Cardona and Díaz, 2003)

The Ministry of Labor reports some pilot and initial "rescue" experiences targeting children in dangerous jobs (Ministry of Labor, Labor Gazette, 2003). In addition, it points out that in the past years there has been a decrease in the authorization for minors under age 18 to work.

There are also steps forward in coordinating and concerting governmental and non-governmental efforts, through the constitution of the National Committee for the Eradication of Child Labor, coordinated by the Ministry of Labor. The National Plan was elaborated within this framework. The plan identifies the five priority sectors for intervention.

#### *7.3.4. Issues of concern*

The opinion shared by different representatives of organizations linked to the topic of child labor and members of the Network for Childhood and Adolescence (Red para la Infancia y Adolescencia, RIA) is that in spite of the progress, there is a lack of integral strategies for intervention. According to Barrientos (2004), a representative of Olof Palme Foundation, the Salvadoran State has focus solely on the attention to the worst types of child labor, remaining indifferent to the rest of the population that work. There is not follow up to child labor as a right that, performed under decent conditions, regulated, and under supervision and accompaniment, turns out to be an enriching experience.

The total of 222,479 working children and adolescents represents 10 percent of the total population of that age. This figure must be of concern because it represents the visible part of child labor. However, it must be argued that the figure is probably higher, because, as Barrientos (2004) points out, there are doubts regarding the reliability of the results produced by the EHPM regarding the report of children working dangerous jobs. In addition, there is a good proportion of children that report they do not work nor study. It is paradoxical to consider that the population of working children has decreased, when the public opinion is that it is a constantly growing population, especially due to the worsening of the conditions for the population at greater social disadvantage.

An issue of concern is the high proportion of working children and adolescents that labor under exploitive conditions, more than 50% of the population. If the percentage of children that perform dangerous jobs and the worst types were added, the figure would dramatically increase.

Another issue of concern is the nonfulfilment of the principle of no-discrimination, survival, and development of the CRC by the Salvadoran State. The gaps across population sector and gender are evident.

Furthermore, it is important to fill in gaps in knowledge about child labor, especially in its worst forms. It is necessary to research and monitor the work safety and health conditions. Also, it is important to gather quantitative and qualitative information regarding risks, conditions and consequences of the different types of work that the child population performs, such as the Matrix of Risk Qualification utilized in other countries.

Given the complexity of factors related to child labor, the execution of specific, focused programs of short duration is insufficient. An example of this assertion is the fact that one third of the working child population does not study and there has not been an adoption of specific measures to serve this population. There are pilot experiences developed by institutions such as Olof Palme, which has ample trajectory intervening in this problem. An example is its solidarity program with working children, with the perspective of a more communal, close, and with human quality school, which can serve as a referent points.

The State must incorporate a broader frame of policy, including strategies of sustainability for the projects, proposals to generate income for the economy of the family, strategies to increase access and endurance of working children in school, increase of incentives to create jobs, especially in the rural area, reduction of social inequities, and proposals. The current situation of the rights of working children shows the lack of substantial and specific governmental actions and measures aiming at reducing the multiple vulnerabilities faced by rural children.

#### **7.4. Situation of children's rights regarding commercial sexual exploitation (article 34)**

*“Help children and adolescents to get out of social exploitation because prostitution because there are many girls and the government can give a measure to get on”  
(Opinion of an adolescent participating in focus groups)*

*“The government should focus more on education, so there is not so much prostitution here, in our country and the NGOs should help”  
(Opinion of an adolescent participating in focus groups)*

The work addressing the situation of the rights of children in conditions of Child Commercial Sexual Exploitation (Explotación Sexual Comercial Infantil , ESCI) is still an incipient area, especially in the frame of intervention. Because of this, this section aims at focusing on three aspects. First, what refers to legislative measures. Second, the situation of the rights of ESCI children and adolescents. And third, the actions of prevention and intervention by the State.

#### 7.4.1. *Legislative measures*

The legal framework of each country constitutes one of the expressions of the conceptualization of commercial sexual exploitation, which leads us to comment on some of the results from the analyses of the *current national and international* juridical ordinance *in effect*.

Although in the past years there has been a formulation and passing of important laws to eliminate ESCI, juridical analyses tend to conclude that there are disperse and not well articulated dispositions linked to ESCI in the national ordinance. In addition, the laws do not reflect the magnitude of the problem of commercial sexual exploitation of the child population.

As an example, the approach to prostitution in Salvadoran legislation is still contradictory, as pointed out by a study conducted by Domínguez (2000). In the study, the author specifies that the Penal Code tolerates and regulates at the same time, establishing sanctions for those who promote prostitution among minors. On the contrary, the Police Law and Decree 709 declare prostitution an illicit activity, which has led to repressive actions against prostituted women and adolescents. This type of laws, far from protecting prostituted adolescents, put them under conditions of greater vulnerability.

In the light of the Constitution of the Republic, there are no dispositions that directly prohibit, regulate, or deny the existence of ESCI (Portillo, n.d.). In general, article 4 alludes to the regulation of slavery and servitude. This can help infer the ignorance regarding the various expressions of ESCI. There are gaps to address the problem in the legal frame, because it is not clearly typified as an offense.

No direct repressive actions against women, girls, and boys subjected to commercial sexual exploitation can be derived from the reformed 1998 Penal Code, because it tends to target the promoters of such practice.

In the second place, there have been actions that disrespect the best interest of the child, when the media overexposes and shows videos that exhibit girls and adolescents, with no protection of their identity. This situation transgresses their right to integrity and personal intimacy, their honor and reputation, laid down in article 16 of the CRC.

Carvajal and Navarrete (1998, as cited in Domínguez, 2000) have identified situation where it is expected that the child population may be utilized as sexual object, but that the legislation has classified under the title of offenses against freedom. According to analysts, this category is wrong, because the sworn good that is intended to be safeguarded is the moral integrity and dignity of the child population, not the sexual freedom. With this type of dispositions, the sexually exploited children are victims of those who benefit from them.

Some gaps in the national laws can be rectified when article 144 of the CRC lays down that the international treaties ratified by the Legislative Congress become Law, and in case of a conflict between the Treaty and the law, the Treaty will prevail. In this sense, the CRC binds the State to protect the children; specifically, article 19 of the CRC lays down that legislative, administrative,



social, and educational measures will be adopted to protect the child against all forms of harm, abuse, and exploitation.

It is still necessary to harmonize internal legislation with international treaties. Stands out the need to carry out substantial reforms that somehow succeed in making effective the prevention and sanction of ESCI, on the basis of the international treaties and agreements ratified by the country (such as Agreement 182). This recommendation implies reforms to the Constitution of the Republic, the Family Code, and the Municipal Codes.

Currently, the Legislative Congress has two bills: one special bill against ESCI and other bill with a series of penal reforms. The Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH) and non-governmental entities participated in designing this bill.

#### *7.4.2. Current situation*

The first research records date back to 1992, with a study conducted by the Olof Palme Foundation (Quiñónez and Escobar, as cited in Domínguez, 2000) of girls prostituted in Central America, the case of El Salvador. Nevertheless, according to Portillo (2003), it was with the development of the First World Congress in Stockholm (1996) about commercial sexual exploitation of children, and with the pronouncement of diverse international organizations, that the government and NGOs that work on behalf of the rights of the child started having the first meetings to increase awareness on this issue.

This is how in 1997 a more conscious mobilization to eradicate the problem of ESCI started. Its first effort was the creation of a coordination called Red Ecpat-El Salvador (El Salvador Ecpat Network). Later, in 1998, a process to create the 2001-2004 National Plan against Commercial Sexual Exploitation started, which was presented by the Salvadoran State in the Second World Congress in Yokohama in 2000.

Later on, between 1998 and 2002, there have been various studies focused on three main guidelines. The first oriented to facilitate greater conceptual clarity of the different expressions and magnitude of ESCI. This is how it becomes evident that in El Salvador there are different modalities and mechanisms of ESCI, such as child prostitution, selling and trafficking of children with sexual purposes and sexual tourism goals.

A second line of study and institutional intervention has allowed to identify the geographical areas where ESCI occurs and the risk factors associated to this problem. These results suggest that the greater proportion of children and adolescents subjected to sexual exploitation are in the capital city, San Salvador, in the main departmental county towns, borders, and maritime ports. In addition, they can be found in public places as well as private places of difficult access (PDDH, 1998)

The third line of research work has allowed to identify the socio-demographic profile of the child population subjected to ESCI (González and Innocenti, 2002; ISNA, 2003). ISNA reports it

conducted a study of the profile of girls that passed out from the only center for the care of girls, Virginia Pelletier, because of ESCI. In addition, it adds that psychosocial services were provided, in an integral manner, with specialized staff, for the minors who were victims

Nevertheless, in spite of all these research efforts, there are still some important limitations related to the situation of ESCI that are worth noting:

- First, there are no *quantitative* data in the country to reflect the magnitude of the problem. Little is known about the *quantification* of the problem. The information that has been collected tends to agree that ESCI mainly involves female population, although it is acknowledged that male ESCI is becoming more visible.
- Second, studies have focused their attention on the phenomenon of prostitution of girls and adolescents, from low socioeconomic status, and from specific regions from the country, so it is hard to make generalizations. The methodology has relied on case studies and testimonials. Generally, they have also been appendixes of other areas of analysis, such as child labor, gender equity, abuse and violence, among others.
- In addition to the aforementioned, there has not been an effort to address in depth the aspects related to the prostituting network of clients and intermediaries. There have not been either efforts to seriously address the organized networks of traffic, which have mechanisms of operation that are classified as organized crime (Portillo, n.d.). The study carried out by the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH) concludes that in El Salvador one can deduce the existence of networks for the traffic of children with purposes of sexual exploitation. This problem has been pointed out by different media reports.

Recently conducted studies conclude that the situation of ignorance and the lack of awareness regarding ESCI (Domínguez, 2000; González and Inocenti, 2002) have been barely explored. This is attributed to different reasons that range, according to González and Inocenti (2002), from the denial of the problem to the lack of resources and institutional will to analyze and look for strategies to eliminate it.

The previous conclusions catch one's attention when one reviews the report presented by the Government, both in 1992 and the one presented about the fulfillment of the CRC for 1993-2000. The report does not address the complex problem of commercial sexual exploitation of children. Instead, the problem seems to go unnoticed in the report.

Another serious problem reflects how in Salvadoran society there is no *social awareness* condemning ESCI, since it is viewed as something normal. There are no exact figures, but in 2000, the Body of Municipal Officers from San Salvador City reported 130 children and adolescents were found in conditions of ESCI. In addition, there is a tendency to blame the child and adolescent for the commercial sexual abuse and exploitation, leaving them in total vulnerability.

Likewise, some organizations of the civil society linked to RIA point out that it should not be allowed for the different expressions of sexual exploitation to be considered as worst types of child labor, because in that way a regulating and tolerant mentality is developed towards that violation of human rights (Portillo, n.d.).

Recently, the Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH), looking at an exemplary case of sexual abuse of girls and adolescents performed by a famous lawyer in the country, established that there have been violations against the right to honor, personal and family intimacy, and self-image (PDDH, 2003).

The preliminary report on sexual abuse of children and adolescents highlights two situations that affect victims' human rights. In the first place, it reports failures in the coordination between government agencies (Republic General Prosecutor's Office, National Civil Police, and the Court), which can result in impunity for the responsible parties, not only because it contributes to prevent the arrest of the alleged suspect, but because it also prevents a real discovery of the protecting networks from where these offenses are committed.

#### *7.4.3. Programs, actions, and other measures*

Important progress that can be noted includes the elaboration of the Operational Plan for the elimination of the worst types of child labor and the elaboration of the National Plan against Commercial Sexual Exploitation of Children and Adolescents in El Salvador, for the period between 2001 and 2004. This latter was presented in the Second World Congress. However, there are no records of advances accomplished with this plan.

Actions from the Policy for the Integral Care of Children and Adolescents (2000) more closely related to this topic involve the care for child population subjected to sexual violence. There are no specific actions against the exercise of commercial sexual exploitation of children. The Policy places the main responsibility on the family; therefore, the actions of the State to protect the children are limited. In any case, it would seem as if the actions to intervene and prevent reflect the Doctrine of Irregular Situation, as it seems that the victims tend to be treated as objects for the protection more than subjects of rights.

It is necessary to design policies and programs with a three-fold perspective: the inclusion of a gender approach, a focus on rights (integral protection), and integral care. The results of a quick appraisal insist there should be programs of integral care including measures for protection, recovery, and life project. It can be asserted that there are still no institutional responses for this problem in the country. Children subjected to commercial sexual exploitation are doubly violated in their rights. Gonzalez and Innocenti (2002) assert that in El Salvador, at least until 2002, there was not an articulated public policy against ESCI. There are no options for the protection and care of the population victim of exploitation. On the contrary, sometimes it would appear they are treated as guilty, when they are interned in inappropriate institutions.

In the past years there have been national operatives to carry out searches in establishments and businesses where there are girls in situation of ESCI. These are carried out with the inter-institutional coordination between the National Civil Police, the Republic General Attorney's Office, ISNA, and the Body of Metropolitan Officers. Next, this population is referred to ISNA, so they can be protected by the State.

In addition to the preceding procedures, according to the Attorney's Office for the Defense of Human Rights, ISNA's centralizing practice of placing the prostituted minors in centers along with adolescents in conflict with the law and under the jurisdiction of family judges, does not help the provision of effective treatment and follow up for these cases. It tends to worsen the problem, because it is equivalent to punishing the minors with the deprivation of their freedom because they were sexually exploited (Guzmán and others, 1998, p. 14).

Within the frame of direct action programs, NGOs have limited innovative initiatives that can be adopted, such as the Angel Footprints Program, by World Doctors from Spain. The program provides psychosocial, health, and legal services for children and adolescents in situation of ESCI in San Salvador. Nevertheless, it can be argued that the majority of institutions that deal with children issues have other priorities. This is reflected in the lack of specific programs to care for children who are subjected to commercial sexual exploitation. It also seems that the topic is not a priority for the majority of international agencies of cooperation.

## **7.5. Children and adolescents in conflict with the justice (article 40)**

Juvenile penal justice is one of the topics that has gained relevance in El Salvador, due to the coming into force of the Law of the Offending Minor (Ley del Menor infractor, LMI). With this, it is considered that the country started a new system for the protection of children and adolescents between the ages of 12 and 18 who are in conflict with the penal law. With this law, it is expected to guarantee the rights of children and adolescents.

The aforementioned law came into force in the midst of criticism and questioning from ample sectors of the population, since its educational nature differs from the repressive nature and the authoritarian regime the population is used to. This was evident in expressed positions of inconformity due to the lack of severity and rigor in the application of juvenile justice (Santos, 1998).

Throughout the whole country, the percentage of adolescents under age 18 participating in incidents of delinquent violence represents, according to official figures, only 10 to 15 percent of the totality of registered cases. During 1996, of the total number of detentions carried out by the National Civil Police, 13 percent were youth under age 18. In that period, the majority of detentions of minors were due to offenses that affected the economic patrimony (Rivera, 1998).

Article 8 of the Law for the Offending Minor (Ley del Menor Infractor, LMI), establishes that a minor that executes an action typified as an offense or a fault based on the penal legislation, can

only be subjected to one of six measures: orientation and socio-family support, reprimand, imposition of behavioral rules, community services, assisted freedom, and internment.

It can be noted that five of these six measures are based on predominantly socio-educational goals, and each specific case applies the most appropriate measure. It is prescribed, consistent with international and national legislation, that the measure of privation of freedom must be applied only in exceptional circumstances, as a last resource, for the least possible duration<sup>12</sup> and in the case of grave offenses (Bonilla, 2000), given the impact that internment has over the person, whether it is provisional or definite. To do this, judges have a range of measures to guarantee their efficacy, before they opt for internment (Santos, 1998).

Nevertheless, when one examines the data from the application of the set of measures to adolescents in conflict with the Penal Law, one can still find some dissonance, especially with the legal prescription of *exceptionality* for the application of the internment measure. According to Varela (2000), this measure was applied in 42.28 percent of the cases, between March, 1995 and May, 1998. It is also noted that this measure has been applied in the first place to the offense of robbery; followed by qualified theft, dolose homicide, aggravated rape, and finally the illicit trading, traffic, and storage of drugs. In other words, data indicates that at least until 1998, severe measures such as internment have been used to penalize a major percentage of offenses that did not deserve such application, according to what the law lays down.

Under the current penal justice system, based on the Law of the Offending Minor, there has been a consolidation of data that allows an approximation to the incidence of offenses committed by minors. Courts for the Execution of Sentences in charge of following up the sentences imposed by the Judges of Minors report that between 1995 and 2000, there were 2,383 cases seen in 5 Courts for the Execution of Sentences (Mejía and Torres, 2003). From the cases heard, internment was applied in 49 percent of the cases judged, with alternative measures in 39.7 percent of the cases. There is no information about the sentence for the remaining 11.3 percent.

Likewise, the Court for the Execution of Sentences in San Salvador presented data that reflects the type of offense committed by offending minors, without specifying the period. The classification of offenses is distributed in the following way: 42.6 percent offenses against patrimony, 18.1 percent against sexual freedom, 15.9 percent offenses relative to life, 12.4 percent offenses against public peace, and 11 percent related to drugs (*ibid*).

In practice, the contrast of ruling principles in the Law of the Offending Minor and the process of implementation of this law in an adverse social context shows that there are still some gaps. There is a disparity between what is formally ruled and the application of the measure of privation of freedom as an exceptional resource. There are judges that acknowledge the inapplicability of the law, but at the moment of sentencing, they tend to impose internment for the youth, faced with the insufficiency of alternative programs in the open social context (Díaz, et al. 2002). However, this situation does not justify the application of the internment measure

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<sup>12</sup> This is how it is established in article 37, section "b" and "c" of the Convention on the Rights of the Child, rules 19 and 19.1 of the United Nations Minimum Rules for the administration of justice to minors- Beijing Rules and Salvadoran legislation lay this down in article 15 of the Law for the Offending Minor.

and the decree of more laws to address the problem of juvenile delinquency. The measures of preventive nature must prevail above all.

**Table No. 1**  
**Statistics of offenses committed by minors, by age range and gender,**  
**between January 1st and April 30, 2003.**

Seven categories of the most frequent detentions carried out by the PNC are presented.

OFFENSE	AGE RANGE				AMOUNT	
	12-16 years old		16-18 years old		Total	
	Male	Female	Male	Female	M	F
Illicit associations	88	11	255	39	<b>343</b>	<b>50</b>
Lesions	51	21	144	19	<b>195</b>	<b>40</b>
Robbery	40	11	142	21	<b>182</b>	<b>32</b>
Theft	66	7	101	13	<b>167</b>	<b>20</b>
Others	51	4	111	12	<b>162</b>	<b>16</b>
Rape	12	1	18	0	<b>30</b>	<b>1</b>
Homicide	3	1	24	1	<b>27</b>	<b>2</b>
Total	311	56	795	105	<b>1106</b>	<b>161</b>

Source: Unit of Operations and Statistics, PNC

### 7.5.1. The phenomenon of gangs and internment centers

In order to make effective the sentence of privation of freedom for adolescents in conflict with the Penal Law, there were five internment centers under the Institute for the Integral Development of Children and Adolescents (Instituto de Desarrollo Integral de la Niñez y Adolescencia, ISNA). Four of these were destined to provide services for the male population and one for the female population. However, in 2003 the center Rosa Virginia Pelletier was closed and the interns were moved to the Center for the Internment in Ilobasco. This decision implied a violation of their rights, because they were deprived of a specific space for female population.

The re-educational centers had a significant proportion of youth from gangs, specially the center in Tonacatepeque, where almost 98 percent belong to Mara Salvatrucha. Towards the end of 2000, the then ISPM made the decision of carrying out changes in the male internment centers, opting to separate and relocate the interns in different centers, depending on the gang they belonged to. These changes were supported by the fact that "(...) *gangs in society are ideologically irreconcilable; that social rivalry is reflected in the Internment Centers, so we have constant symbolic, verbal, and physical aggressions...*" (Díaz, et al. 2002, p. 19)

This decision acknowledged and legitimized the power of the gangs, since the management and mediation of the conflict between rival gangs was not promoted, but it contributed to further mark the differences between them. The presence of gangs constitutes a risk factor not only for the rest of the interns, but probably for the gang members themselves (See table 2).

**Table 2**  
**Type of population served by the Internment Center**

Center	Population
Rosa Virginia Pelletier	Girls ages 12 to 18 or more
Tonacatepeque	Boys ages 12 to 18 or more, members of Mara Salvatrucha and related groups.
El Espino, Ahuachapán	Boys ages 12 to 18 or more, members of the Barrio 18 and related groups.
Sendero de Libertad, Ilobasco	Boys ages 12 to 18 or more, whose membership into a specific gang is not proven.
Section 1, Center for Execution of Sentences, Ciudad Barrios, San Miguel.	Boys ages 12 to 18 or more, members of the Barrio 18 and related groups.

Source: Alternative proposal for the social insertion of youth deprived of freedom, 2001

The "sensationalistic" treatment of the information in the media, especially the written media, seemed to suggest an attempt to make the general public believe that gang members commit the greatest number of offenses and that they are the main responsible for the crisis of violence currently lived in El Salvador, when in fact they constitute only part of the problem. A second reading reflects, for example that during the period from September, 2001 to May, 2003, out of 24,052 registered offenses, 1,031 were attributed to gang members, which constitutes only 4 percent. Out of these, 57 percent were homicide among rival gangs<sup>13</sup>.

The problem of gangs or maras has been pointed out through different studies and research conducted by UNICEF, FLACSO, IUDOP, AND UNDP.

In August, 2003, the forum on juvenile gangs, right to inclusion, and opportunities for children, adolescents, and youth took place. It was promoted by the Network for Childhood and Adolescence (Red para la Infancia y la Adolescencia, RIA), Attorney's Office for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH), and National Counsel of Churches. It was carried out before the passing of the Anti-gang Law. NGOs, youth members of gangs, and government institutions participated. Important reflections took place in this meeting, some worth noting include reflections agreed among presenters and participants:

- The phenomenon is not a new or recent problem, it dates back more than 20 years. However, the civil war in El Salvador, from 1980 to 1992, occupied the attention in the national and international scopes. After the signing of the Peace Agreements, the phenomenon of the gangs gained more relevance and became visible as such.

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<sup>13</sup> La Prensa Gráfica, June 25, 2002

- A culture of violence ingrained in Salvadoran society during the war is one of the causes for the youth who grew up in that context to favor the use of violence as means to address conflict.
- Likewise, some media had a role because far from objectively informing, they disorient and misguide with an inadequate management, by putting incidents of violence before other news, showing an exaggerated and skewed picture of events and manipulating for the population the perception of the truth of the facts. They also can be attributed with the role of distracters, as they raise smoke curtains to deflect attention away from incidents of corruption and impunity performed by government officials.
- Entities in charge of public safety were criticized because they make a rather explicitly descriptive display of the delinquency but not of what they do to combat it.
- The Prosecutor for the Defense of Human Rights alluded to the public acknowledgment of the total failure of the system, related to institutional entities of the State. This was added to an acknowledgment of the tendency to highlight delinquent actions, when the State is incapable of defending the population. As expressed by the Prosecutor, "this acknowledgment is a proof of the weakness of the system in our country, which is very dangerous, and is open to any consequence". The Prosecutor specified that it is the State's responsibility to take care of this problem, not the civil society's, not the NGO's, who can accompany the process as a moral obligation, but are not legally mandated to resolve problems for the State.
- Another of the pointed out factors is related to the use and possession of fire arms and the easiness of access to these. This situation increases the rate of lethal violence.
- Limitation of space for recreation and constructive use of the spare time, is a situation that limits the potential of youth.
- The levels of violence executed and received have increased, and have changed qualitatively. There have been, in the past months, a series of homicides aggravated with barbaric acts, such as the mutilation of victims.
- Finally, participants pointed out that the efforts should not focus exclusively on repressive measures, but they should bet on prevention and social inclusion. Therefore, there should be policies oriented to the integral protection of children and youth. However, other participants expressed that a strategy centered in prevention is not enough anymore, but there should be viable and concrete alternatives for integral interventions to treat the problem of gangs and maras, and decrease the consequences it generates.



### 7.5.2. Current situation of internment centers

In recent years, there have been diverse studies about the situation of youth in conflict with the law that have been sentenced to internment: Topics on the Law of the Offending Minor (Díaz, Martínez and Vaquerano, 2002); Ten years after the Convention of the Rights of the Child. Updating of the research, thesis work to fulfill requirements for the Master's degree, about the perception of the situation of violence, risk factors, and protective factors in the internment centers (Laínez and Muñoz, 2003).

These studies have contributed important elements to reflect and assess the application of the law in this specific field. Their appraisals and conclusions must be taken into account, so as to improve the services provided for this sector of the population.

The internment centers of the whole country have a population of offending adolescents that amounts to 979 youth. Out of these, 68.1 percent, that is 667 youth, enjoy assisted freedom. The Judge of the First for the Execution of Sentences to the Minor informed that in spite of not having official statistics, the number of relapsing minors is minimal, contrary to what happens with adult cases. In addition, the courts for minors have greater capacity to control and follow up the youth<sup>14</sup>.

A research carried out by Díaz X; Martínez, J and Vaquerano, N (2002), *Temas sobre la ley del menor infractor (Topics regarding the law of the offending minor)*, describes the different internment centers and at the same time presents some problems or common aspects within these centers, which are described in the following paragraphs.

In the first place, the study points out that there is an inappropriate implementation of programs. These are not executed due to the deterioration of the equipment, which results from the disturbances that take place in the centers. This adds up to the fact that idleness is one of the factors that sparks off situations of violence.

A second element is the separation that has taken place in the centers that receive male population, which does not follow criteria laid down by law, in terms of age or sentence. The only criteria that ruled until 2003 was the separation based on gender. However, when female youth were moved from Rosa Virginia Center to the internment center in Ilobasco, this criterion has been ignored.

A third issue refers to homosexual practices. In male centers some of these practices result from sexual abuse, generally older inmates abusing younger inmates.

The fourth aspect identified suggests that the internment centers of El Espino, Sendero de Libertad in Ilobasco, and the Provisional Center of Cojutepeque do not meet the conditions of special structural design to accommodate offending minors. Tonacatepeque Center is an exception, as it was designed for this specific goal.

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<sup>14</sup> Interview published in La Prensa Gráfica, January 9, 03, Pag. 12

A fifth element refers to the disturbances and fights that take place in the centers, which have witnessed several uprisings that have been qualified as riots. There have been physical aggressions among interns and between interns and staff in these incidents. As a consequence, there have been people with varying degrees of injury, from light blows to homicide.

From these observations, the seriousness of the situation in the internment centers is evident. These situations contravene the national and international normative that rule the administration of these centers, which aims at guaranteeing the respect to the rights of this population. However, the study reflects a violation of the fundamental rights, such as life, safety, and dignity of the person.

- *Special report about the conditions for children and youth serving the internment sentence, both definite and provisional, in the interment centers throughout the country.*

In November of the current year, the Attorney's Office for the Defense of Human Rights issued a special report about the conditions for children and youth serving internment sentence, both definite and provisional, at the internment centers throughout the country.

To produce this report, there was a review of files opened after complaints. Four instruments were designed to collect data from the population of interns and the staff working at the centers. The instruments were administered to authorities of the institution, population of interns that serve definite sentence, population of interns serving provisional sentence, and a fourth instrument was used to collect the direct verification of representatives of the Attorney's Office in all the buildings of each center.

The report from the Attorney's Office for the Defense of Human Rights expressed a deep preoccupation because the results suggest "*a generalized practice of disrespect of the fundamental rights within the Internment Centers, which according to the national and international norms, should be places where children and youth receive appropriate and necessary care and protection to accomplish their reeducation and social and family insertion; and on the other hand, the state is incapable of accomplishing the goals of the internment, resorting to repressive actions such as physical aggression, psychological coercion, and even torture, to mask this incompetence.*"

According to an investigation conducted by the Attorney's Office, there was a violation of the following rights of children who were deprived of freedom and accommodated in the different internment centers of the country by the responsible authorities:

- Right to life, product of the indifference displayed by authorities from the Center for the Reeducation of Minors in Tonacatepeque regarding the case of a youth that died after being beaten up by his own mates. An aggravating factor was that the mother of the minor had noticed the situation of abuse and had warned authorities at the center. Likewise, it was established that the obligation of guaranteeing timely medical attention to the intern youth was neglected.

- Right to personal integrity, because of the practices of torture and physical and psychological maltreatment observed at the Center for Reeducation of Minors at Tonacatepeque and the Juvenile Center "Senderos de Libertad".
- Right to education, to social and labor insertion, and personal development, due to the absence or inefficiency of educational, social, and occupational quality programs, and to the lack of staff specialized in the areas of education and counseling for children and youth in conflict with the law.
- Right to physical and moral integrity of females who visit their relatives or friends at the Center for Reeducation of Minors at Tonacatepeque, due to the search practice called vaginal touching, conducted by people not trained for the procedure. In addition, the procedure is carried out without wearing gloves to guarantee immunization and hygiene required in such practice if it were legally established.
- Right to privacy for interns in all the internment centers of the country, disrespected by the authorities in all the Centers by failure to obey the constitutional prohibition to force the mail.
- Right to confidentiality of the information of the people deprived of freedom, violated by the authorities of the Centers who do not guarantee this right.
- Right to keep family members informed about the place and date of transfers from one center to another, ordered by the appropriate judge. The administration of the Centers should help this happen.
- Right to an effective legal guardianship, due to obstruction to justice by the Republic General Prosecutor's Office, Sub-regional in Apopa, in the case of the intern that was sexually raped by his roommates at the Center for Reeducation of Minors at Tonacatepeque. The Office ordered the anal exam three days after having received the complaint.
- In this same report, it is informed that the majority of intern youth who were interviewed expressed their satisfaction regarding the quality and quantity of food they received. Although this is one of the few positive aspects identified in the report, the data contradicts the research conducted by Díaz, Martínez and Vaquerano (2002), who report that there was a unanimous response of disgust regarding the food they were given. On their part, the research conducted by Laínez and Muñoz (2003) indicated that 84.2 percent of the interviewed youth reported their dissatisfaction with the food they received.

Regarding the service provided by operators to the intern youth, the “José Simeón Cañas” Central American University, UCA, conducted a research in 2002 looking at the conditions at the internment centers by consulting with operators and intern youth at the centers. Based on the results, a training program was designed, with a focus on the provision of services and reinsertion of youth in conflict with the law. The program was implemented in the period of

August to December, 2003, with the financial support of Save the Children of Sweden, in the framework of the agreement established with the Institute for the Integral Development of Children and Adolescents (ISNA). Sixty-eight employees of different specialties from the internment center of Tonacatepeque participated in the process; in addition, there is a plan to conduct the same program at the internment center of Ilobasco in 2004.

Based on these results, it is important to reflect on the applicability of internment measures. There should be an appraisal, in practice, if the centers really fulfill their goal of reeducating, which was the reason for their creation, or, on the contrary, if the placement of these offending youth in these centers becomes a risk factor, that far from helping the youth, increases the vulnerability of their rights.

## **VIII. THE RIGHTS OF CHILDREN AND ADOLESCENTS SUBJECTED TO ABUSE AND VIOLENCE**

The existence of numerous cases of abuse of children and violence against children in the home was pointed out as a concern by the Committee for the Rights of the Child, in 1993. To check how this situation is still an issue of concern, it is important to review studies conducted on the topic.

Historically, violence has been a constituent factor of Salvadoran reality. There are a series of facilitating factors. The phenomenon of violence is not an inheritance from the war. It is part of the national history, characterized by exclusion, domination, poverty, militarism, authoritarianism, intolerance, social polarization, patriarchal sexism, and institutional weakness (Gaborit, 2002).

According to the same author, in the concrete case of violence against children, the most usual forms have been child maltreatment and abandonment. This problem is serious not only because of its recurrence, but also because of its effects. Some factors that directly and indirectly influence the problem include family stress, social isolation of the family, social acceptance of violence, drug use, intergenerational transmission of abuse, social cognition, and rearing practices. To this it must be added the strong influence of sexist patterns that mainly influence violence against girls.

In 1996, the Attorney's Office for the Defense of Human Rights conducted a national diagnosis of child maltreatment. The study included a total sample of 1129, conformed by severely maltreated children, to the point of being admitted to the hospital (clinical sample) and children in other contexts such as school and street, with no knowledge whether these children experienced a situation of maltreatment (non clinical sample).

According to Pocasangre and Villalta (2003), the result of the diagnosis reflect the following discouraging advances of the CRC in this area: 8 out of every 10 children are subjected to maltreatment, 79% are exposed to physical abuse, 67% suffer psychological abuse, 31% are subjected to sexual abuse, 27% are subjected to negligence or abandonment. The study also indicated that the main responsible executants of the abuse are those people in charge of the education and protection of the children, in order of importance those are the mother, father, and teachers. That is, the ones who exercise the violence against children are those adult persons that take care of them or have emotional links to them.

The aforementioned research makes it evident that the person that most frequently abuses the children is the mother (40.6%). No doubt this has an evident relationship with the context of patriarchal culture and paternal abandonment, where the fathers are physically absent (irresponsible fatherhood) or may be psychologically absent, in terms of marked deficiency of time and quality of attention they provide to the children, so the major responsibility falls mainly on the mother.

In general, the same researchers (Pocasangre and Villalta, *ibid*) point out that the studies based on clinical samples report more cases of maltreatment by negligence and the mother as the main

abuser. In contrast, the studies with non-clinical samples report more physical and emotional maltreatment, not so much negligence, and also identify the father as the main abuser. A limitation of these studies is that they do not specify what type of abuse is performed by the father and what type by the mother.

There have been efforts to increase awareness in the framework of no violence against children, through the work of NGOs and governmental organizations, with international support from Save the Children from Sweden, UNDP, and others. The actions have consisted of campaigns, fairs, and parades advocating for no violence against children.

The increment in the reporting is related to the incorporation of new normative in the national juridical framework (ISDEMU, 2003).

In spite of all this, there are still no substantial advances. There is still little culture for the reporting of abuse and children lack means to report. According to records from the PDDH, the differences between the total of reports received at the Attorney's Office and the total percentage of reports of child abuse and violence against children are abysmal. This is also the case when the latter is compared with reports of domestic violence against women.

Another issue of concern is always related to the comparison broken down in terms of rural and urban sector, and gender comparisons. Regarding sector, a study looking at the results of the revision of files where child abuse was suspected, conducted at the San Rafael National Hospital in Santa Tecla, in the metropolitan area (Aparicio, Menjivar and Vides, 2000, as cited in Pocasangre and Villalta, 2003) concluded that children in the rural area have greater probability of suffering abuse than urban children.

These results could be due to the fact that the population from the rural area has less access to health services, due to the economic cost these imply and because these services are centralized in the urban area. Likewise, it becomes evident that in spite of the magnitude and gravity of the problem of child abuse, there are cases of suspicious situations of child abuse in the emergency services of this hospital that are left under-registered.

Regarding the variable of gender, there is a growing and sustained tendency to sexual abuse. This includes all sorts of social status and family types. The biggest proportion of victims is constituted by girls. Many of the cases of sexual abuse and rape are committed against girls within their own homes (ISDEMU, 2003). This shows that the Salvadoran State has a strong institutional weakness to seriously address this issue and a resistance to work with clarity and political will from an approach on the rights of women and girls. There are obstacles from government institutions with positions that oppose this approach to work.

Furthermore, there is still a need to more carefully examine the factors that contribute to decrease violence against children. An important element is the building of a culture of peace. It is necessary to promote an education that responds to this need, based on principles of solidarity, with an approach on human rights and on the rights of girls and women.

## **IX- CONCLUSIONS AND RECOMMENDATIONS**

Although accessibility of basic social services has increased in the past 12 years, the fact that the deficit in matters of human rights of children and adolescents continue to be significant in terms of education and health, as evident in this report, is still an issue of concern. There is still plenty to do to overcome the educational and health gaps, so it becomes apparent that the child and adolescent population are approached as subjects of rights. The lack of substantial measures to have incidence in integral approaches and emphasize the prevention of this problem is an issue of concern. This includes budgetary measures to invest in services, as part of the priorities of a state policy.

In 1993, the Committee for the Rights of the Child pointed out in its comments to the report presented by the Salvadoran government, that it regretted the lack of consideration to the dispositions of article 4 of the Convention, and that the budgetary restrictions that affected the social programs had turned against the protection of the rights of the child. This observation is still valid, specially when there are intentions to reduce the budget this current year.

The acknowledgment of the difficult economic and social situation of the country was one of the problems highlighted by the Committee for the Rights of the Child, in 1993. It added comments about the importance for the Salvadoran State to make effort to guarantee the full observance of the dispositions in the Convention. However, the little priority expressed in the low profile of the adopted measures, more than twelve years after the ratification of the Conventions, particularly regarding the social and economic rights of child and adolescent population, is an issue of concern.

In relation to the policies and measures for national reconciliation, it can be asserted that it is one of the areas that the governmental policies have neglected the most in the past years. Although the governmental report lists a series of programs aimed at promoting a space for reinsertion and to fully serve victims of the armed conflict, in practice it can be noted that the spaces for psychosocial reparation have not been enough to address the consequences left by the war among a significant percentage of the Salvadoran population, especially the children who were more affected. The joint impact of traumatic events lived in a country because of war, earthquakes, hurricanes, and social violence, can have long term repercussions, even in the next generations.

In order to be able to fulfill the right to integral health in El Salvador, it is necessary to also conduct an integral analysis, including an inquiry of the real conditions where the majority of the population exercises this right. The integral view of health indicates that factors of availability in terms of health establishments, trained staff, and existence of basic medicine must be taken into account.

Likewise, these services must be accessible to all without discrimination (rural, urban, gender, people with disabilities) and must be geographically and physically available for the appropriate mobility of groups under greater vulnerability of conditions, such as people with disabilities, older adults, and children and adolescence. This factor is not observed, in the sense that the existing hospital network is not able to cover the demand of services.

One of the issues of concern refers to the accessibility and right to gratuity of health, since not all the families have the capacity to pay the so called *voluntary fees*. It must be taken into account that the rural population has to travel in order to attend to the health establishments, mobilization that implies an economic expense. Added to this is the fact that the need to buy the medication may constitute a limitation for the fulfillment of a specific health treatment, since the degree of poverty is such that other needs, such as food, are prioritized over the acquisition of medication.

On the other hand, the increase in the incidence and prevalence of cases of HIV and AIDS in El Salvador is another issue that deserves reflection, especially among adolescent population. According to figures reported by the UNDP (2003), AIDS has become the tenth cause of hospital death from the general total. Along with the incidence of this disease, the increase in accidents and violent incidents has produced a change in the epidemiologic profile in El Salvador.

When the incidence of HIV/AIDS is analyzed, along with other diseases among children and adolescents, it can be asserted that there is a relationship with the insufficient emphasis on preventions programs, as prescribed in the Convention. The second and third levels of attention have greater budgetary allocation, which implies a predominance of curative methods over preventive ones.

Furthermore, the low State budgetary allocation that greatly hinders the exercise of the right to health is joined by a strong dependency of the funding; specifically, on the international cooperation that economically supports a series of prevention and intervention programs, contributing in this way to cover part of the demand in the different services.

Indicators for the right to health identified by sources with high credibility, such as the 2003 Report on Human Development of the UNDP, the 1998 and 2003 FESAL Poll, and similar ones help identify the severity of conditions lived by the infant population in the country regarding malnutrition among mothers, newborns, and children under age 5, mainly in the rural areas. This situation led to an exhaustive investigation by the vigilant entity of the Attorney's Office for the Defense of Human Rights.

Since 1993 up to date, the country has shown a significant advance in terms of the appropriateness of the national legislation to the Doctrine of integral protection, in order to ensure the fulfillment of the rights of children and adolescents. Regarding juvenile penal justice, the passing and entering into force of the Law of the Offending Minor has been one of the main accomplishments of the Justice System. However, in practice, a set of limitations for its application is still pointed out. The application of the measure of internment over other measures of alternative nature constitute an issue of concern, because it has been described as excessive and it has been argued it does not follow the national and international normative, which establish it should be used as an *exceptional measure*. Joining this, there are still questions regarding the effectiveness of reinsertion programs executed by reeducational centers for minors.

In the same line, the passing of the Anti-gang Law is considered a violation of the Constitution of the Republic and deemed as contrary to the agreements subscribed in the Convention. This appraisal has been expressed by famous jurists, by institutions members of the Network for Children that guard for the protection of the rights of children and adolescents, and even by



government officials, including judges for minors and execution judges. It is considered unconstitutional because it violates the rights of adolescents and because it shows regressions, when measures oriented to an approach of the Doctrine of Irregular Situation become evident.

An additional point of concern is comprised by governmental obstacles for the process laid down by the law, and also for the measures implemented to exercise the right to identity. This is of great concern because a good proportion of children lack a registration of their identity and because the governments attending the last Summit of the Americas, that took place in Toronto, agreed to carry out everything that was necessary to eliminate all these obstacles. In the Salvadoran case, the process has been slow, showing again a lack of political interest in investing on children and adolescents.

An analysis of the Bill for the Children and Adolescent Code leads to believe again that there is a regression to the Doctrine of Irregular Situation, under the concept of "the good father of the family". Without another entity different from that of ISNA, the process becomes vulnerable. Furthermore, basic conceptions of Modern Law are also violated, along with constitutional guarantees such as Due Process of the claimant, and of the denounced.

The Constitution of the Republic (article 53) lays down education as a right inherent to the human person. It also establishes that pre-school and elementary education will be *gratuitous* when offered by the State (articles 56, 57, and 60). However, this Constitutional juridical frame has been violated by the Salvadoran government itself. For many years, school centers have established the so called *voluntary fees*, which are stipulated for families as an obligatory requirement to enroll any children or adolescent. These fees are justified based on the insufficiency of resources allocated by the Ministry of Education. Although recently, by Legislative Decree, these fees have been eliminated, the preoccupation subsists because there are still no integral responses by the State to address the needs that were met with these voluntary fees.

The non-governmental organizations point out that in spite of efforts carried out in the country in the matter of education, there are still gaps between rural-urban sectors and gender, which require substantial measures of attention. In the area of education, the main goals foreseen in the World Conference on Education, in Dakar, 2000, are still pending and postponed topics. This signaling is joined by questions regarding the right to quality and gratuitous education.

Regarding the right to education, one of the main problems is that the work of the government focuses on coverage, with limited results in terms of quality and efficiency of the system. This in spite of having implemented a process of educational reform for over 10 year and of having as axes of this reform in the past years the quality, coverage, and efficiency of the system. However, there are still serious gaps in the quality.

The alternative educational programs implemented by the Ministry of Education to expand coverage, mainly in rural areas, run the risk of turning into means of inattention to the obligations of the State. Therefore, it is necessary to specify the limitations to participation (Cardona and Díaz, 2003). Second, it is necessary to conduct exhaustive research to examine the quality of education offered to the beneficiary population, so as to discard the risk for it to turn

into second class educational offers and therefore discriminatory, as they have an impact on the poorest rural sectors, where they are mainly implemented.

During the past five years, there has been a tendency of increased financing for education. However, it is important to review the history of public investment in the past decades, which helps detect a serious stagnation. In the seventies, the allocation ranged between 20% and 30%. Later, during the eighties, it decreased. After the cease of the civil war, in the nineties, an ascending process begins. In 1992, investment in education as a percentage of the GIP went from 1.8 to 3.2 in 2003. In spite of improvements, the level of current investment does not match the levels observed at the end of the seventies, and is still low when compared to the average in Latin America.

There is a need to increase public investment by 4% of the GIP, in order to attain universal access of the population to education, not only to elementary. However, far from increasing, the government presented at the Legislative Congress a budget for 2004 that would mean an allocation of 2.9 percent of the GIP. Decreasing investment in education has repercussions on the fulfillment of the right to education.

An area of great concern is the absence of measures targeting adolescent population. A situation that illustrates this concern is the fact that at least 60% of the adolescent population is prevented from accessing high school education. This indicator reflects the evident indifference of policies and lack of measures clearly directed towards adolescent population. However, it is asserted that managing to finish high school seems to constitute a threshold for education to play a preponderant role in improving the options for occupational mobility and avoid the probability of falling into poverty.

Access of the adolescent population to high school has a close relationship to the phenomenon of juvenile social violence in the country. El Salvador is considered one of the most violent countries of Latin America. Studies carried out suggest that the lack of educational opportunities constitute one of the main risk factors for juvenile social violence. The data shows that a great proportion of youth that join "juvenile gangs" have quit studying and have an average education of 8th grade.

Non-governmental organizations point out that in spite of efforts carried out in the matter of education in the country, there are still gaps in terms of rural-urban areas and gender, which require substantial measures of attention. For planning purposes, it is recommended to include the measures adopted to fulfill the CRC in the plans and five-year and annual reports of the MINED, since the last report of work by MINED, 2003, does not explicitly allude to the CRC.

Regarding the situation of working children, in spite of advances, members of the Network for Childhood and Adolescence, RIA, set forth as an issue of concern the fact that the Salvadoran State has not addressed the causes that generate child labor and focus instead only on the attention to the worst types of child labor, ignoring the rest of the population that work with their family as a strategy to survive. There is no follow up for the work of children who view child labor as a right, and that if carried out under decent conditions, regulated, under supervision, and accompanied, could turn into an enriching experience.

Likewise, there is a lack of information and credible sources of updated information regarding the worst types of child labor. This situation is related to the difficulties for obtaining information, because in many cases it is about illegal activities, that people tend to keep hidden, which is joined by the official indifference to investigate and diagnose the situation. It is important to point out there is little interest in or attention to the topic, particularly among organizations linked to labor and municipalities. It is still necessary to modify the methods for the collection of statistical information about the situation of human rights of working children, even of those under age 7.

In spite of these advances related to the ratification of the Agreements 138 and 182, there are still concrete problems in the national laws to harmonize secondary laws and Magna Carta regarding the minimum legal age to work, taking into account that the 1983 Constitution already includes reforms incorporated in 1996. Juridical analyses prepared by non-governmental institutions reveal that it is indispensable to conduct a reform to harmonize the Constitution with ILO Agreement 138. The same is true for the General Law of Education and the 1994 Labor Code, which expressly sets age twelve as the minimum legal age for child labor.

Likewise, the Constitution lays down, in absolute terms, the prohibition of employment for minors under age 18 in unhealthy and dangerous jobs. This conception was adopted since 1950. Nevertheless, the constitutional text still needs to be updated and harmonized with international law regarding what has been prescribed as the worst types of child labor (Agreement 182). That is, all forms of slavery and analogous practices, child prostitution and pornography, illicit activities, and dangerous jobs must be explicitly prohibited as soon as possible (ILO, 2002). It is important to reflect on the thought that the creation of a legal framework is a starting point, not the ending point. It is not enough to formally formulate the legislation; it is necessary to define the mechanisms for the measures to be efficiently applied.

The measures for control and supervision have had a short reach impact; particularly, in the informal sector of the economy, where one can find a good proportion of the working children, whom for various reasons find themselves in the need to work since a very early age. It is still necessary to pay more attention, to monitor, and to systematize the degree of progress in the application of this legislative measure, with particular emphasis on areas where the majority of children work: agricultural activities, informal trade, and domestic work, which are precisely areas without legal protection. In general, monitoring the type of child labor that occurs in the family and non-remunerated informal sector (close to 60%) tends to fall beyond the jurisdiction of the majority of the governmental institutions. This is one of the greatest obstacles that should have attention.

Regarding the rights of infant-juvenile population subjected to commercial sexual exploitation, there is a need for more training and awareness among governmental institutions in the processes of reporting, caring, and effectively investigating all forms of sexual exploitation. This problem has also been pointed out by the Committee for the Rights of the Child, in 1993.

Although in the past years there has been a formulation and passing of important laws to eliminate ESCI, juridical analyses tend to conclude that there are disperse and not well articulated dispositions linked to ESCI in the national ordinance. In addition, the laws do not reflect the magnitude of the problem of commercial sexual exploitation of the child population.

Likewise, it is necessary for El Salvador to ratify the CRC Facultative Protocol regarding the selling of children, child prostitution, and utilization of children in pornography, which has been repeatedly recommended by the Attorney's Office for the Defense of Human Rights.

The Convention explains that "the child must grow within a family, an environment of happiness, love, and understanding, in order to fully and harmoniously develop his or her personality". This useful tool warns about the need to support the family, so it counts on the necessary conditions to exercise its functions, before it is awarded with the first responsibility in the fulfillment of the rights of the child. In our reality, on the contrary, this commitment has been imposed, through public policies of social support, on the family, who is deemed as mainly responsible. Therefore, the causes of grave problems of health, violence, and juvenile gangs that affect the country in the past decade are attributed to the family,

It is an issue of concern that judicial responses occupy a privileged place in the resolution of many of the social problems affecting children and adolescents. Particularly, the approach to intra-familial violence and child abuse go beyond judicial measures. The policies for the prevention of child abuse and sexual abuse, mainly of girls, must be part of public policies of social support to the family. The State forgets that what is innovative about the principles in the Convention is not the judicial measures, but the building of a new way of relating between child and adult populations, within a culture of respect for human rights.

The aforementioned vision makes it necessary to design policies and programs with a three-fold perspective: prevention, the inclusion of a gender approach, and a focus on rights, that highlights the importance of integral protection of the child. The results of a quick appraisal insist there should be programs of integral care including measures for protection, recovery, and life project. It can be asserted that there are still no institutional responses for this problem in the country. Children subjected to commercial sexual exploitation are doubly violated in their rights. In El Salvador, at least until 2002, there was not an articulated public policy against commercial sexual exploitation of children. There are no options for the protection and care of the population victim of exploitation. On the contrary, sometimes it would appear they are treated as guilty, when they are interned in inappropriate institutions.

Likewise, there do not seem to be substantial advances in terms of coordination efforts between and within public and non-governmental organizations linked to the human rights of children and adolescents. With some exceptions, the coordination has been limited to specific projects that start with international initiatives and commitments, that later dissolve. On occasions, there is a confusion of roles and responsibilities.

The reports prepared by the government on the matter of the rights of the child are unknown to government and non-government institutions. This kind of behavior limits inter-institutional participation. It is urgent to establish a strategy for the timely dissemination of reports to the civil society. It is important to remember that it is an obligation of the Salvadoran State to establish inter-institutional coordination. On its part, non-governmental organizations must exercise their function of vigilance and monitoring.

Last, but not least important, is the fact that because of the little political value granted to children and adolescents as producers, there is a lack of political movements representing them as subjects of rights. It is the responsibility of some state institutions and even non-governmental organizations to promote the progress towards the acknowledgment of their rights. It is necessary to create spaces, methodologies, and strategies to make progress in the real participation of children and adolescents in the reforms and proposal of bills, as well as in those aspects of the decision making process related to the problems that affect them.

The Salvadoran State must show more political will to make public investment on behalf of children. This will shall be reflected in the distribution of the annual national budget, showing an improvement over the public investment allocated during the seventies, particularly in the areas of education and health. This will result in a significant impact on the variation of indicators of the situation of the rights of children and adolescents.

It is recommended that the Committee for the Rights of the Child requests from the Salvadoran State a clarification of what have been the main positive measures undertaken on behalf of the child in the past five years. Likewise, it would be convenient to request from the country an identification of the set of positive measures that will be adopted in the following five-year period, under a focus on the rights, especially in those situations where there has been a greater degree of vulnerability of the human rights of children and adolescents, especially referred to juvenile social violence, access of the preadolescent and adolescent population to equal health services and high school education services, child labor, child maltreatment and sexual child abuse, and the situations of commercial sexual exploitation.

It is necessary to remark that the Salvadoran State should adopt measures to include the content of the Convention on the Rights of the Child and the National Policy for the Child in the processes of planning, monitoring, and systematization of the different Ministries. This would help integrate the Convention as a transversal axis and working tool, not only for government institutions that guard the rights of the child, but also for key decision making actors, so in the medium run, there is a successful real institutionalization of the focus on rights as a daily practice of State and civil society organizations, having clear view of the commitments and roles needed for their applicability.

It is convenient to ensure that the resolutions set forth by the Committee on the Rights of the Child turn into a starting point for the work of the Committee, so there is periodical follow up to the liability of each country. Currently, there is a series of violations of the rights of children and adolescents in El Salvador. These require not only a moral sanction, but specially a strategy to monitor the fulfillment of advances, able to show indicators that can be compared with a base line and with national plans for action, based on the comments provided in this document.

It is also important that the Committee on the Rights of the Child specifies and extends methodological parameters for the elaboration of state reports, so the States, as is the case for El Salvador, not only provide account of legislative measures adopted, but also include in their reports indicators of human development of the child on the basis of the Convention. These measures can facilitate the appraisal of the degree of progress or regression in the guaranteeing of the rights of children and adolescents.

It is necessary to demand from the Executive Body of the Salvadoran State to make decisions that show greater coherence with the general principles and contents of the Convention on the Rights of the Child, and even the rules of the Constitution of the Republic, so legislative decrees on behalf of the child are not veto.

The Salvadoran State must respectfully undertake, before the public opinion, the observations offered by the Attorney's Office for the Defense of Human Rights to the various governmental entities regarding reports of abuse of power and violations of the human rights committed by governmental institutions.

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## **XI. APPENDIX**

### ***PARTICIPANTS IN THE CONSULTATION WORKSHOP TO UPDATE THE REPORT ON THE FULFILLMENT OF THE CONVENTION***

There were 40 participants in the consultation workshop to update the report on the fulfillment of the rights of the child. The participants represented 30 institutions, mainly from the non-governmental sector, that work on behalf of children and adolescents.

The workshop was organized in various working tables by specialty or areas of interest, so as to facilitate the contributions to update the report on the fulfillment of the CRC.

The consultation was carried out on October 15, at FESPAD. Working tables and an assembly were organized. The working tables included:

***TABLE: DEFINITION OF CHILD AND PRINCIPLES***  
***TABLES: RIGHTS AND CIVIL LIBERTIES (2 TABLES)***  
***TABLE: FAMILY ENVIRONMENT AND OTHER TYPE OF GUARDIANSHIP***  
***TABLE: EDUCATION AND CULTURE***  
***TABLES: SPECIAL MEASURES OF PROTECTION (2)***

#### **PARTICIPANTS BY INSTITUTION:**

- |                               |  |
|-------------------------------|--|
| 1. Damaris Contreras,         | ANAES  |
| 2. Cecilia Reyes,             | Fe y alegría                                 |
| 3. Doris Escobar,             | CIDEP  |
| 4. Cifredo Alexander Osorio,  | Asociación Demográfica Salvadoreña.          |
| 5. Ana Delmy R de Martínez,   | Complejo educativo Católico San José         |
| 6. Nelson Navarrete,          | CE Roque Saltón, Aguijares                   |
| 7. Celsa Antonia Martínez,    | Centro Escolar Roque Dalton                  |
| 8. Carlos Tito López.         | Asociación, Ayuda en Acción                  |
| 9. Gladis E. Miranda          | ASAFOCAIS                                    |
| 10. Jorge Adalberto Ramírez   | CAPI   |
| 11. Fernando A. Morán         | Policia Nacional Civil - Quezaltepeque       |
| 12. Armando Morán Aguilar     | PNC Quezaltepeque                            |
| 13. Miguel Ángel Dueñas       | ASAFOCAIS                                    |
| 14. Ana Flor Lemus,           | Visión Mundial                               |
| 15. Cecilia Marlene de Denys, | Fundación Nueva Vida                         |
| 16. Henry Vladimir Sosa,      | Journalism student, Universidad Tecnológica. |

- |                                 |  |
|---------------------------------|--|
| 17. Julio Sosa,                 | Instituto de Derechos Humanos de la UCA.   |
| 18. Patricia del Carmen Coreas, | PNC Comunitaria  |
| 19. Dalton Viskel               |  |
| 20. Ismael Méndez Salinas,      | Policía Comunitaria  |
| 21. Gloria de los Á. Calixto    | Fiscalía General de la República. U.de Política Criminal                           |
| 22. Zuleyma Patricia Castillo   | FGR UPC  |
| 23. William Navarrete           | Comité Tecleño   |
| 24. Cecilia de Miranda          | Juzgado Primero de Menores, Santa Ana  |
| 25. Edihit de Ávalos            | Juzgado 1° de Menores de Santa Ana   |
| 26. Luis Salazar                | Procuraduría de Derechos Humanos.  |
| 27. Roger Rufino Paz Rivas      | Procuraduría General de la República.  |
| 28. María Teresa Delgado        | Of.apoyo a la justicia juvenil.Corte Suprema de Justicia.                          |
| 29. Sandra Maribel Lovo         | Asociación Pro-búsqueda  |
| 30. Karla de Varela,            | UNICEF   |
| 31. Sara Berríos,               | Médicos del Mundo  |
| 32. María Luisa Salazar         | Fundación Amor   |
| 33. Yolanda Barrientos          | Fundación Olof Palme   |
| 34. José Armando Nolasco,       | Cuerpo de agentes metropolitanos.  |
| 35. Fidelina Rivera             | Fusanmidj  |
| 36. Rosa Hilda Rivas,           | AMSS   |
| 37. María marta Portillo        | Fundación Dolores Medina   |
| 38. Isolina de Marin            | Diputada de la comisión de la familia, mujer y niñez de la<br>asamblea Legislativa |
| 39. Georgina Villalta           | RIA  |
| 40. Xochill Marchelli           | FESPAD   |
| 41. Antonio Mejia               | PNC  |