



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Thirty-fifth session

#### Summary record of the 949th meeting\*

Held at the Palais Wilson, Geneva, on Tuesday, 18 May 2004, at 10 a.m.

*Chairperson:* Mr. Doek

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\* No summary record was prepared for the 948th meeting.

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports of States parties (continued)**

*Second periodic report of El Salvador (CRC/C/65/Add.25; CRC/C/Q/SLV/2; CRC/C/RESP/54)*

1. *At the invitation of the Chairperson, Ms. Argueta de Barillas, Mr. Avelar, Mr. Betancourt, Ms. Bonilla de Avelar, Ms. Guerrero, Ms. de Quintana, Mr. Recinos, Ms. Rivas, Mr. Rodríguez Batres, Mr. Rodríguez Cruz and Mr. Sánchez Trejo (El Salvador) took places at the Committee table.*

2. **Ms. Argueta de Barillas** (El Salvador) said that the multidisciplinary nature of its delegation was proof of the importance that El Salvador attached to the protection and full development of the child. Since the signing of the Peace Accords in 1992, the Salvadoran people and Government had been working, with particular concern for minors, who constituted 42 per cent of the population, to build a peaceful society and a modern, democratic State.

3. Salvadoran law reflected all the general principles of the Convention, particularly those of the best interests of the child and non-discrimination, and it was that spirit which lay behind the adoption of the Equality of Opportunity for Persons with Disabilities Act and the technical regulations on access for persons with disabilities to buildings, transport and means of communication.

4. Minors, as well as non-governmental and intergovernmental organizations such as the Pan American Health Organization and UNICEF, had been closely involved in the elaboration of the new National Policy for the Integrated Development of Children and Adolescents which had been in effect since 2001.

5. In recent years, El Salvador had ratified several instruments relating to the rights of the child, including the Hague Convention on the Civil Aspects of International Child Abduction, the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), the Optional Protocol on the involvement of children in armed conflict, the United Nations Convention against Transnational Organized Crime and the three Protocols thereto, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and very recently the Optional Protocol on the sale of children, child prostitution and child pornography. It had also amended its Criminal Code to combat the practices concerned.

6. In addition, the Family Code had been amended to strengthen children's right to an identity and ensure compliance with maintenance obligations. Adoption law had been brought into line with the Hague Convention, and the Domestic Violence Act had been amended to improve protection and support for victims and facilitate action by the police and the Office of the Public Prosecutor. In 2003, a handbook on the application of the Domestic Violence Act had been drawn up with the assistance of all the competent legislative, judicial and police bodies.

7. Extensive consultations were being held on the preliminary draft of a children's and young people's code. The definitive instrument would group together all the legal provisions concerning the child, which would have been brought into line with the provisions of the Convention.

8. Numerous administrative measures had been taken to facilitate application of the principle of the best interests of the child, the integrated development of the child, the respect of children's rights and the reintegration of minors in conflict with the law and to prevent and eliminate the worst forms of child labour.

9. Minors' rights and civil liberties were enshrined in the Constitution and legal instruments such as the Family Code, the Domestic Violence Act, the Criminal Code and the Juvenile Offenders Act and were protected by various specially created institutions.

10. In addition, a variety of measures had been taken to improve psychological and social assistance to families, simplify the payment of child maintenance, establish mediation centres to resolve child custody disputes otherwise than by law, reduce the number of children placed in institutions, resort to adoption only in exceptional cases and aid street children. In the latter regard, the Office of the Procurator-General had in 2002 concluded with national and international NGOs an agreement on coordination of action to care for street children.

11. Of the 703 cases of the disappearance of children during the armed conflict, 256 had been cleared up. Parliament was currently studying a bill for the establishment of a commission to search for missing children.

12. As health indicators showed, the considerable efforts to improve the health system had borne fruit. Child mortality had fallen from 35 per 1,000 live births in 1998 to 25 in 2003. Child malnutrition, maternal mortality and the adolescent fertility rate had also declined appreciably. Transmissible diseases such as poliomyelitis, neonatal tetanus, diphtheria and cholera had been eliminated and cases of malaria, measles and tuberculosis were markedly fewer.

13. Numerous measures, including the adoption of the AIDS Prevention Act, had been taken to combat HIV/AIDS and to assist persons living with HIV/AIDS. For example, pregnant women could, if they wished, have a free screening test and, if the result was positive, receive therapeutic care, including antiretroviral treatment.

14. Regarding education, 95 per cent of the educational infrastructure destroyed by earthquakes in 2001 had been rebuilt. Measures had been taken to improve vocational education and teacher training, introduce new teaching methods and modernize the systems for managing and financing educational establishments. The enrolment rate had risen considerably at all levels of education; for children aged from 4 to 6, it had gone from 11 per cent in 1989 to nearly 50 per cent in 2003. Over 750,000 marginalized children were benefiting from a programme combining measures in the spheres of education, health and nutrition and there were campaigns to inform teachers, children and their parents about the prevention of sexually transmissible diseases and domestic violence.

15. **Mr. Liwski**, rapporteur for El Salvador, observing that the indicators for school enrolment, availability of piped drinking water, mean monthly household income, chronic malnutrition, mortality and poverty were far worse in rural areas than in urban zones, asked what the State party intended to do to remedy the disparities.

16. The Committee wondered why El Salvador had not ratified the Inter-American Convention on Forced Disappearance of Persons. It was known that during the armed conflict there between 1980 and 1991, which had caused more than 75,000 fatalities, many people, including children, had "disappeared" and it was therefore incumbent on the country to find out what had happened to them.

17. The Committee recognized that the natural disasters which had badly affected El Salvador in recent years had hindered economic development and complicated the exercise of economic and social rights. It took note with appreciation of the measures taken by the State party since the submission of the initial report, particularly the ratification of the Optional Protocol on the involvement of children in armed conflict, the entry into force of the Family Code and the abolition of the discriminatory distinction between children born out of wedlock and legitimate children.

18. Regarding education, it would be interesting to know why only 40 per cent of children continued studying beyond the school leaving age of 14–15 and what happened to the other 60 per cent, particularly children from disadvantaged backgrounds.

19. The Committee noted that, at 12, the age of criminal responsibility was very low. That was also the case of the minimum working age, which, pursuant to the Labour Code, was also 12 and therefore apparently in contradiction with the relevant provision of the Constitution.

20. While he welcomed the willingness to undertake extensive legal reform, he was concerned at the promulgation of the Anti-Gang Act in October 2003 and its extension in April 2004. The Constitutional Court had declared the Act, which introduced the concept of a competent adult, unconstitutional and it would therefore be interesting to know how it was intended to reconcile its presence in the legal system with that of the apparently contradictory Juvenile Offenders Act.

21. While it was understandable that, in a context of violence and insecurity, public opinion should favour the introduction of tougher legislation, the adolescents in question were above all the victims of social exclusion, with no real chance of integration or viable prospects. That being so, some figures needed explanation: it seemed that approximately 6,660 adolescents had been arrested since the entry into force of the Anti-Gang Act and the Iron Hand plan and that only 5 per cent of them had been brought before a judge. In that complex situation, it would be helpful to know whether enforcement of the new law had improved matters and confirmed the State in its attitude towards the punishment of young offenders.

22. It would also be good to know whether the preliminary draft of the proposed children's and young people's code was the result of wide consensus reached through extensive consultation and discussion in civil society.

23. Concerning administrative measures, he wished to know whether the National Secretariat for the Family, the body responsible for laying down the guiding principles of national child policy, fully discharged its functions in that regard or whether reform was needed, whether that Secretariat's powers were clearly defined, and whether the Salvadoran Institute for the Protection of Children, the body responsible for implementing national child policy, had sufficient freedom of action. It would also be good to know whether coordination between the Government and those institutions and between the various territorial-level departments was guaranteed and to hear more about the relationship between the national action plan, which was drawn up every year, and the National Policy for the Integrated Development of Children and Adolescents.

24. The delegation should explain the reasons for the reduction in budget allocations to the Salvadoran Institute for the Protection of Children and the education sector between 2001 and 2003 and give figures for the health budget.

25. **Ms. Khattab** wished to know the reasons for the delay in the adoption of the children's and young people's code by the Legislative Assembly and to have information about any public or parliamentary discussion regarding that matter. It was essential that the Government should transform its political undertakings into concrete action, especially regarding the budget for children.

26. The First Lady of the Republic played a significant and laudable role in mobilizing the various parts of society in support of the realization of child rights, but her action must not be politicized. It would be interesting in that regard to know what links there were between that prominent person and the other bodies responsible for child protection, how the First Lady's efforts were translated into action and how her activities and their efficacy were monitored.

27. The statistics provided by the State party were not coherent, analytical or precise enough. That was especially so regarding school enrolment. She wished in particular to know whether, as well as the Ministry of Education, the private sector and international donors provided education services, how any contribution from them was taken into account in fixing the budget and what plans the authorities had for coping with the continuing decline in participation by international organizations such as UNICEF in the funding of education programmes.

28. In view of the recent conclusion between the United States of America and Central American countries of the Central America Free Trade Agreement, which included provisions on respect of intellectual property rights, she asked whether the Salvadoran Government intended, in order to reconcile its obligations under the Convention and the Agreement, to offer children free or subsidized access to medicines, particularly those against AIDS, and how far such arrangements could be incorporated in the proposed children's and young people's code.

29. As the Family Code permitted persons under 18 to marry if they had reached the age of puberty or the woman was pregnant, it would be helpful to know what measures El Salvador had taken to prevent child marriage. The delegation should also provide more information about how family courts operated, how their judges were trained, whether social workers were present and what mandate such courts had regarding children in difficulty.

30. **Mr. Citarella**, noting that, while the Convention could in theory be invoked directly before the courts, there had as yet been no recorded instance of that, requested more information concerning the operation of the legislative system and the status of international treaties, including the Convention, in domestic law. He shared the concern about the Anti-Gang Act and the fact that the justice system could treat children like adults. However understandable the popularity of such a law in a context of poverty and widespread insecurity, the delegation should contribute towards that understanding. The provisions of the Convention could shed fresh light on the question and help to improve Salvadoran law.

31. **Ms. Chutikul** asked what was the role of the Office of the Deputy Procurator for the Rights of the Child and, since all three bodies were competent to receive complaints from children, how the powers of the Office related to those of the Salvadoran Institute for the Protection of Children and the Salvadoran Institute for the Advancement of Women. It would also be helpful to have information about the types of complaint filed, the lessons drawn from them, practical examples of enforcement of the relevant legislation, and the presence or otherwise of such bodies at the local level.

32. She would like more information about the arrangements for coordinating child rights policy and programmes, particularly coordination between the competent agencies, departments and ministries and coordination between the central and local levels, and about the efforts to increase public awareness of the Convention and to train and inform professionals working with children about the Convention and about human rights in general. In that regard, it would be interesting to know how far police forces were involved in training courses and in decisions by the management of the Salvadoran Institute for the Protection of Children.

33. The delegation should supply information on the differences between the 2001–2010 national plan for children and the National Policy for the Integrated Development Of Children and Adolescents, explain how the National Policy drew on the document entitled "A world fit for children" adopted at the General Assembly's Special Session on Children and give information about the practices, structures and agreements for cooperation

between the Government and the non-governmental organizations working to promote and protect children's rights and about children's participation in all processes concerning them.

34. **Mr. Krappmann** requested further information on the application in practice of the principle of the best interests of the child enshrined in article 350 of the Family Code and on respect for children's views. As it was apparently generally agreed that parents were best placed to say what was best for their children, it would be interesting to know if there were specific procedures for deciding what was the child's best interest and if children could share in, and appeal against the decision.

35. **Ms. Vuckovic-Sahovic** asked whether the Government intended to offer training and awareness-raising regarding the rights of the child to private security forces, which had almost twice as many employees as there were national police officers. It would also be helpful to know how the State party viewed children's participation.

36. **Ms. Smith** wished to know if the Office of the Procurator for the Protection of Human Rights had sufficient resources and was respected by the authorities and the population at large. She drew the Government's attention to cooperation with non-governmental organizations, an area concerning which information was lacking but where strengthening and improvement seemed necessary.

37. **Mr. Kotrane** urged El Salvador to establish a national human rights training plan that would ensure consistent training for all professionals working with and for children. Noting with surprise that the country was only a party to one Hague Convention, he invited it to ratify the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and the Convention on the Law Applicable to Maintenance Obligations and asked what means it had of safeguarding children's exercise of their economic and social rights, of which the right to maintenance was only one example.

38. **Ms. Sardenberg** regretted that 12 years after the signing of the Peace Accords a culture of peace had yet to replace a culture of violence, impunity, torture and other brutality. The mediator had received death threats, there was criticism of the Amnesty Law and the conflict was, on the whole, still very much present in people's minds. The special rapporteurs who had been to the country had said just that. The question was therefore what the State party was doing to promote national reconciliation.

39. **Mr. Filali** pointed out that the report said little about any practical improvement in Salvadorans' lives as a result of the measures that had been taken. It would be helpful, therefore, if the delegation provided more information concerning, in particular: the relationships and perhaps the hierarchy between the institutions established to protect human rights; the channels and the procedures for appeal open to children wishing to complain about infringements of their rights; budget allocations; the dissemination of the texts of the Convention, the country's initial report and the concluding observations concerning it, and the participation of civil society in the drafting of the report under consideration.

40. With respect to the Anti-Gang Act, he wondered whether the State party had not opted for repression instead of analysis and prevention of the gang problem. Whatever the case, emergency legislation of the kind must be temporary and respect the fundamental principle of non-discrimination.

41. **The Chairperson**, speaking as a member of the Committee, said that the Committee on the Elimination of Racial Discrimination's criticism in 1995 of the paucity of information provided by the State party on indigenous populations remained valid.

42. There was also a lack of statistics concerning children born out of wedlock. He wondered whether the fact that the mother could apparently recognize a child born out of

wedlock meant that the legal relationship between mother and child did not arise *de facto* at birth.

43. Stressing that the Working Group on Enforced or Involuntary Disappearances put the number of disappeared children in El Salvador at close to 2,600, he requested information on the contents of, and progress with the plan that was to be drawn up by the working group to investigate the fate of disappeared children.

*The meeting was suspended at 11.40 a.m. and resumed at noon.*

44. **Mr. Avelar** (El Salvador) said that article 38, paragraph 10, of the Constitution authorized the employment of minors aged 14 only in the exceptional cases where employment was indispensable for the minors' or their families' survival and on the strict condition that there was no harm to the minors' health or education. The same article also prohibited the employment of minors under 18 in night or unhealthy work. There was therefore no contradiction between the Constitution and the new Labour Code. Furthermore, the national coordinating office for the ILO International Programme on the Elimination of Child Labour had worked together with some 10 non-governmental organizations to define five major categories of types of work that could no longer be tolerated under any pretext.

45. **Mr. Rodriguez Batres** (El Salvador) said that he had taken note of the concerns expressed at the reduction in budget allocations for the Salvadoran Institute for the Protection of Children. The reduction was, however, mostly the logical consequence of a policy of giving preference to fostering that had, in three years, lowered the number of children placed in institutions from 3,000 to approximately 900 and that, in addition to other advantages, was less costly. The money saved had been allocated to other social sectors and used, for example, to fund programmes to prevent violence.

46. With regard to the independence of the Salvadoran Institute for the Protection of Children, the First Lady and a number of ministries, including the Ministry of the Interior and, through it, the police services, were represented in the Institute, as were the Office of the Procurator-General and various non-governmental organizations. The Institute was the principal channel of appeal for children who felt their rights had been infringed, but complaints could also be filed with the national police or the Salvadoran Institute for the Advancement of Women.

47. His country had always attached great importance to international cooperation. It owed much to organizations such as UNICEF, the Inter-American Children's Institute, the Inter-American Development Bank, the United States International Development Agency and the International Labour Organisation. According to a recent survey, there were around 250 non-governmental organizations in El Salvador and many of them had concluded technical cooperation agreements with the authorities.

48. The National Policy for the Integrated Development of Children and Adolescents had been established in 2001 to lay down guidelines for the country as a whole; the purpose of the national action plan, a later instrument, was to spell out specific measures for implementation of the Policy, set targets ministry by ministry and provide for monitoring and follow-up. The plan, which was strongly supported by UNICEF, was still under study, a phase that would be followed by consultation of civil society before the plan was formally approved. The information system established in 1997 to collect statistical data for all indicators concerning children and for all children would be used to ensure thorough monitoring of its application.

49. **Ms. Argueta de Barillas** (El Salvador) said that the reason for the delay in adopting the plan was that it had been drawn up in a pre-electoral period, a time when, to prevent

their exploitation for political purposes, the Electoral Code prohibited putting such plans into effect.

50. **Ms. Ortiz** said that El Salvador's accession to numerous international instruments was welcome, but that it was surprising how little effect the reforms had had. She wished to know at what levels and why the reforms were resisted.

51. **Ms. Bonilla de Avelar** (El Salvador) said that after domestic law had been harmonized with international standards there would remain the long and arduous task of teaching and winning over the public, whose receptivity could vary from group to group. Preparation of the preliminary draft of the children's and young people's code had given rise to a truly national debate that was still ongoing as, after nearly two years, the Legislative Assembly had not completed its study of the text. One of the most controversial rights of the child was unquestionably the right to information, and more specifically the right to sexual education, which some families saw as a constraint upon their traditional right to control the information to which their children had access.

52. **Ms. Khattab** requested more information about measures to promote the idea of rights associated with procreation, especially among religious leaders, who were likely to be very influential and to bolster conservative attitudes in part of the population.

53. **Ms. Bonilla de Avelar** (El Salvador) said that the right to sex education was one of the innovations in the draft children's and young people's code. Considerable efforts were being made to promote it, not only among religious leaders, to whom it had to be explained that the right to information did not constitute a threat, but above all among young people, who were the main targets of warnings against the dangers of sexually transmissible diseases, early pregnancy and sexual exploitation.

54. **Ms. Sardenberg** inquired whether there was also resistance to other issues raised by the draft children's and young people's code, such as participation by children in family life, school life or society.

55. **Ms. Bonilla de Avelar** (El Salvador) said that sex education, which some feared would no longer be under parental control, remained the main stumbling block.

56. **Mr. Liwski** asked whether certain sectors of society had complained about the absence of discussion of other aspects of the draft code, particularly the excessive centralization that its application might entail. He wished to know whether it was planned to open up the debate.

57. **Ms. Bonilla de Avelar** (El Salvador) said that no kind of concern was excluded from the debate.

58. **Ms. Sardenberg** said that the debate was crucial because a profound change in Salvadoran society was at issue, but the discussion could not go on for ever. It was high time to apply the code.

59. **Mr. Rodríguez Cruz** (El Salvador) said that, while the age of criminal responsibility was 12, it was the Juvenile Offenders Act that applied to minors aged between 12 and 18. The Penal Code only applied to persons aged over 18.

60. A survey had found that 74 per cent of the country's inhabitants considered themselves to have been victims of youth gangs. In July 2003, the President of the Republic had launched the Iron Hand plan against gang violence, which was by no means confined to minors: fewer than 20 per cent of the persons prosecuted for acts committed as gang members were under 18. Associated with the Plan were rehabilitation efforts and a programme aimed at helping the population to feel safe through measures including, for example, the removal of graffiti, which had literally covered the walls in some towns. The Anti-Gang Act was temporary; the first version had been promulgated for 180 days and the

second for 90 days. The provision allowing minors to be tried as adults had been deleted from the second version because it had been declared unconstitutional.

61. It was true that the private security forces were larger than the national police, but their members were required by law to take a training course taught by the National Public Security Academy that covered topics including human rights and the rights of the child. The competent authorities would be informed of the Committee's concerns so that they could ensure that the members of private security forces were better trained.

62. **Ms Khattab** requested more information concerning the "offences against sexual freedom" mentioned in the written responses and wished to know why offences against constitutional order and public peace and offences against private property were so common among young people.

63. **Mr. Liwski** called upon the delegation to provide concrete examples of the application of the laws banning torture and cruel, inhuman or degrading treatment or punishment.

64. Noting that many births in rural areas were not registered and that registration fees and bureaucracy were deterrents to registration, he asked whether the Government had plans to make registration easier. He also wished to know whether the national committee to search for disappeared children would be established soon and whether the families of disappeared children were offered support and assistance.

65. He requested an explanation of the sharp rise in foreign adoptions from 30 in 2000 to 117 in 2003. He asked whether all necessary steps had been taken to ensure the transparency of such adoptions.

66. He requested further information on the privatization of the health system, on the anaemia among under-fives and on vitamin A and iodine deficiencies. As girls under 19 years of age accounted for 30 per cent of births in hospital, he asked what was done to combat early pregnancy. He would also welcome information on measures to promote breast-feeding.

67. Observing that only 40 per cent of children completing primary school went on to secondary education, he asked what training there was for the other 60 per cent. Regarding child labour, he requested details of the situation of young girls employed as domestic servants or in the textile sector.

68. **Ms. Al-Thani** welcomed the new terminology employed in referring to persons with disabilities, which betokened a change of attitude, but regretted the discrimination against children with disabilities in sporting and cultural activities. Noting that the campaign for the prevention, detection and early treatment of disabilities launched in 1996 had ended because of a shortage of funds, she asked whether there were plans for any fresh initiative of the kind. She wished to know why the project for the rehabilitation of victims of anti-personnel mines had ended and to have details of the number of children with disabilities placed in institutions.

69. She wished to know whether health care was free and observed that there was a contradiction between the high number of baby-friendly hospitals and the very low breast-feeding rate. She inquired what was done to promote breast-feeding and whether working mothers' working hours were adjusted to enable them to breast-feed.

70. She wished to know the rates of adolescent suicide and to have details about the number of children orphaned as a result of HIV/AIDS and the measures to assist them.

71. **Ms. Lee**, noting that the illiteracy rate, while declining, was still very high in rural areas, particularly among girls, asked what measures there were to remedy the situation. As

some children were refused schooling because they had no uniform, she wished to know what had been done to guarantee access for all to education.

72. **Ms. Khattab** wondered why it was that, according to the figures in the written replies, there were many more boys than girls with disabilities.

73. In view of the alarming figures for domestic violence, she wondered whether anything had been done to combat that phenomenon.

74. Observing that adolescents were increasingly affected by HIV/AIDS, she asked what was the relevant Government strategy and what treatment was available and at what price.

*The meeting rose at 1 p.m.*