



**Convention on the  
Rights of the Child**

Distr.  
GENERAL

CRC/C/65/Add.25  
22 October 2003

ENGLISH  
Original: SPANISH

**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 44 OF THE CONVENTION**

**Second periodic reports of States parties due in 1997**

**EL SALVADOR \***

[10 July 2002]

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## **SECOND PERIODIC REPORT OF THE REPUBLIC OF EL SALVADOR**

### **CONVENTION ON THE RIGHTS OF THE CHILD**

#### **I. INTRODUCTION**

1. In fulfilment of the obligation it assumed on ratifying the Convention on the Rights of the Child, El Salvador hereby submits to the Committee on the Rights of the Child its second periodic report covering the period from 1993 to 2000.
2. The delay in El Salvador's submission of its second periodic report to the Committee is basically due to: the circumstances that have prevailed in the country during the past decade, characterized by the armed conflict that ended in January 1992, followed by a process of verification and gradual implementation of the Peace Accords that lasted until 1997; the establishment, development and strengthening of new institutions to protect the rights of the child, and the process of adoption of various legal instruments for the protection of children; and the adverse impact of natural disasters such as hurricane Mitch and the earthquakes of January and February 2001, which had a major impact on the day-to-day functioning and coordination of Salvadoran institutions.
3. El Salvador takes the opportunity of the submission of its second periodic report to inform the Committee of its broad compliance with the concluding observations issued by the Committee in October 1993 on its initial report,<sup>1</sup> which are reflected in this report and will be addressed in due course before the Committee.
4. The Government of El Salvador takes this opportunity to reaffirm to the Committee its undertaking to take all possible and necessary steps to implement the Convention on the Rights of the Child and to submit its future reports on time.

#### **II. DEFINITION OF THE CHILD**

5. El Salvador's internal legal system has been brought into conformity with the Convention on the Rights of the Child in terms of the child's status as a subject of rights and in terms of the special protection that must as a consequence be accorded to all children below the age of 18 years within the territorial jurisdiction of El Salvador.
6. The Constitution of the Republic currently in force (1983) does not set a specific age limit for regarding a person as a minor but merely requires the State to protect and safeguard the rights of minors. It further stipulates that antisocial behaviour by minors constituting an offence shall be subject to a special legal regime.
7. With the entry into force of the Convention, secondary legislation in the form of the Family Code (art. 345) stipulated that, for the purposes of protection and safeguarding of the rights set forth in the Constitution and the Convention, a minor is "any natural person under 18 years of age. In case of doubt, a person shall be presumed to be a minor barring proof to the contrary."

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<sup>1</sup> See CRC/C/15/Add.9.

8. It may be noted that the Constitution – which dates from before the Convention – and the country's secondary legislation use the term "minor" to refer to persons under 18 years of age rather than the term "child". However, the 1993 National Child Welfare Policy contained a clarification and recommendation in that regard, the purpose of which was to replace the term "minor" by that of "child", notwithstanding the fact that the Constitution itself used the term "minor", which should on no account be considered to have any pejorative connotation.

9. The Constitution of the Republic (art. 1, para. 2) states:

"It also recognizes every human being as a person from the moment of conception."

10. The Constitution and secondary legislation contain certain regulations governing age in specific areas of relevance to minors. Some of these provisions are described below.

11. With regard to work, the Constitution lays down a minimum age for admission to employment and prohibits the employment of minors in hazardous or unhealthy work. Thus, article 38, paragraph 10, stipulates that:

"Persons under 14 years of age, and those who are older but subject by law to compulsory education, may not be employed in any type of work.

Their employment may be authorized where it is deemed indispensable for their own or their family's subsistence, provided that it does not prevent them from meeting the minimum requirement of compulsory education.

Working hours for persons under 16 years shall not exceed 6 hours a day and 34 hours a week in any category of work.

The employment of persons under 18 years and of women in unhealthy and hazardous work is prohibited. Night work is also prohibited for persons under 18 years. The law shall determine which types of work are hazardous and unhealthy."

12. The Labour Code (1972), as amended in 1994, contains a number of regulations and prohibitions relating to minors. Article 105 reads as follows:

"The employment of persons under 18 years in hazardous or unhealthy work is prohibited.

However, the employment of persons over 16 years may be authorized provided that their health, safety and morals are fully safeguarded and that they have received appropriate and specific education or vocational training in the relevant branch of activity.

The types of employment to which the present article is applicable shall be determined by the implementing regulations for this Code, following consultation of the Higher Council on Employment.

Prohibitions and restrictions in respect of the employment of minors shall not be applicable to work performed in general, vocational or technical schools or in other training institutions."

13. In addition, article 107 of the Labour Code regards work in bars, cantinas, billiard halls and other similar establishments as hazardous for persons under 18.

14. With regard to the minimum age for admission to employment, article 114 of the Labour Code establishes 12 years as the minimum age for minors, provided that the work is light and is not liable to harm their health or development or to interfere with their school attendance, their participation in vocational guidance or training programmes approved by a competent authority, or their ability to benefit from the education received.

15. With regard to criminal matters, article 35 of the Constitution of the Republic stipulates: "Antisocial behaviour by minors constituting a crime or misdemeanour shall be subject to a special legal regime." This provision was incorporated, in the light of the Convention on the Rights of the Child, in the 1994 Juvenile Offenders Act, article 2 of which expressly states that:

"This Act shall be applicable to persons of between 12 and 18 years of age.

The measures envisaged in the present Act shall be applicable to minors aged between 16 and 18 years, whose responsibility as principals in or accessories to a criminal offence has been alleged or proved.

Antisocial behaviour constituting a crime or misdemeanour by minors aged between 12 and 16 years shall be subject to the procedure set forth in this Act. Once the acts constituting antisocial behaviour have been proved, the juvenile judge shall decide to apply to the minor any of the measures laid down in the Act establishing the Salvadoran Institute for the Protection of Children or the measures contemplated in this Act, provided that they serve the interests of the child.

Minors under 12 years of age who exhibit antisocial behaviour shall not be subject to this special legal regime or to the ordinary regime; they shall be exempt from responsibility and, where appropriate, their cases shall be reported immediately to the Salvadoran Institute for the Protection of Children with a view to ensuring their full protection."

16. Ordinary criminal law also establishes a minimum age of sexual consent. Thus, to be convicted of the crime of statutory rape, a person must be over 14 years of age (art. 163 of the Criminal Code); and to commit the offence classified as "other sexual act", the offender must be over 14 years of age (art. 166 of the Criminal Code).

17. With regard to family matters, the Family Code (art. 216, para. 3) contains other provisions regarding the age of minors from the point of view of agreement between parents on their personal custody. Thus, the Code stipulates that in such cases: "Children over 12 years of age shall be given a hearing."

18. The Code contains provisions governing the determination of age for the purpose of being heard in proceedings for the appointment of a guardian. Article 280 stipulates that: "Minors over 12 years of age shall be heard prior to the appointment of a statutory or court-appointed guardian or prior to the appointment of a testamentary guardian."

19. The Code (art. 14) regulates the minimum age for marriage. It stipulates that, as a rule, persons under 18 years of age may not enter into marriage, save in exceptional circumstances. The last paragraph of the article stipulates that:

"Notwithstanding the provision of paragraph 1 of this article, persons under 18 years may marry if they have reached the age of puberty, if they have had a child together, or if the woman is pregnant."

20. In the military field, article 351, paragraph 23, of the Code fully incorporates the rights of the child, in line with the Convention on the Rights of the Child, establishing a minimum age, 18 years, for compulsory military service. Thus, it recognizes the right "to be protected from all forms of physical, mental and moral harm or abuse, neglect and negligence, ill-treatment, torture, cruel, inhuman or degrading penalties or punishments" and the right "not to perform military service".

21. The Constitution of the Republic (art. 215, para. 1) also stipulates that:

"Military service shall be compulsory for all Salvadorans between the ages of 18 and 30 years."

Notwithstanding this provision, the same article of the Constitution stipulates that, where the military situation so requires, "all Salvadorans who are fit for military services" shall be conscripted.

22. This provision has been incorporated in the Armed Forces Military and Reserve Service Act (1992) adopted in the context of the Peace Accords, which establishes 18 as the age limit for performing military service but leaves open the possibility of voluntary military service from the age of 16 years, provided that it does not interfere with a person's education.

### **III. GENERAL PRINCIPLES**

#### **A. Principle of non-discrimination (art. 2)**

23. The principle of non-discrimination for children has been adopted and incorporated in the domestic legal system, both in the Constitution and in secondary legislation.

24. The Constitution (art. 3) establishes the principle of equality before the law as follows:

"All persons are equal before the law. The enjoyment of civil rights shall not be subject to restrictions based on differences of nationality, race, sex or religion."

25. The Constitution recognizes the equality in legal terms of children born within and out of wedlock. Article 36 reads as follows:

"Children born within or out of wedlock and adopted children shall have equal rights vis-à-vis their parents. Parents have an obligation to provide their children with protection, assistance, education and security."

26. It should be noted that the Constitution (art. 38, para. 10) also provides for positive discrimination on behalf of children: it regulates the minimum age for employment and working hours for teenagers, and prohibits night work and hazardous work for children. These principles and provisions have been fully incorporated in the Labour Code (arts. 106 to 108 and art. 114), in keeping with the International Labour Organization's Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182).

27. The entry into force of the new family legislation – the Family Code – in 1994 was accompanied by the abrogation of certain provisions of the 1860 Civil Code that were grossly discriminatory, especially as regards filiation, since children were classified as legitimate, illegitimate, natural and incestuous. Children's equality before the law, regardless of the nature of the union between their parents, is now recognized.

28. The amendments to the Civil Code,<sup>2</sup> especially to article 988 which regulates intestate succession, make children equal before the law, irrespective of their filiation, bringing the Code into line with the Constitution, the new family legislation and the Convention on the Rights of the Child.

29. Article 349 of the Family Code expressly incorporates the principle of non-discrimination. It reads as follows:

"Minors shall enjoy the rights set forth in this Code without distinction as to sex, race, language, religion, nationality or disability or handicap. Neither shall they be discriminated against by reason of the family, social, economic, political and religious status of their parents, guardians or custodians."

Article 202 of the Code establishes the equality of children before the law as follows:

"All children, regardless of their filiation, shall enjoy the same family rights and duties."

30. In addition, the Equality of Opportunity for Persons with Disabilities Act adopted in 2000 promotes the elimination of all forms of discrimination and the accessibility of basic services for all persons – adults and children alike – with disabilities.

31. The National Policy of Equality of Opportunity for Persons with Disabilities (2000) seeks to change the tendency to view disability as the exclusive concern of the Government and the health sector and to promote involvement of the whole of society, making provision for prevention, appropriate care, full rehabilitation and equality of opportunity to ensure the integration of all persons with disabilities. Although the Policy does not refer specifically to children, the Act does, guaranteeing protection through the National Council on Integrated Care for Persons with Disabilities (CONAIPD), established in 1993.

32. The National Policy on Women, adopted officially by the Government in 2000, also provides for activities aimed at ensuring equality of opportunity and gender equity for children, which have been implemented by the Salvadoran Institute for the Advancement of Women (ISDEMU) in coordination with the Ministry of Education, the National Secretariat for the Family, the Salvadoran Institute for the Protection of Children (ISPM) and other governmental and non-governmental institutions.

33. With regard to criminal matters, the Criminal Code (art. 292) introduces a new offence characterized as "infringements of the right to equality", which is also applicable to discrimination against children.

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<sup>2</sup> The amendments are set forth in Legislative Decree No. 689 of 22 October 1993, published in *Diario Oficial* No. 231 of 13 December 1993.



34. The principle of non-discrimination, recognized by the Convention on the Rights of the Child, has been recognized and incorporated in the domestic legal system, so that the protection of children against all forms of discrimination is now legally guaranteed in El Salvador.

### **B. Principle of the best interests of the child (art. 3)**

35. In Section I of its Social Rights chapter, the Constitution establishes the principle of State protection for the family – as the foundation stone of Salvadoran society – and requires it to enact the necessary legislation and to establish appropriate organizations and services to ensure the family's cohesion, well-being and social, cultural and economic development (art. 32).

36. The Constitution states that marriage is the basis of the family and rests on the legal equality of the spouses. It further stipulates that the absence of marriage shall not affect the enjoyment of the rights established on behalf of the family.

37. The Constitution stipulates that secondary legislation shall regulate personal and property relations between spouses, and between spouses and their children, establishing reciprocal rights and duties on an equitable basis. It also guarantees equal rights for children vis-à-vis their parents, irrespective of their filiation (art. 33).

38. It expressly recognizes the right of every minor to live in family and environmental conditions that permit his or her full development, for which purpose the minor shall enjoy the protection of the State. It further stipulates that the law shall determine the duties of the State and shall create institutions for the protection of mothers and children (art. 34).

39. The Constitution stipulates that the State shall protect the physical, mental and moral health of minors, and shall guarantee their right to education and assistance (art. 35).

40. In the light of the provisions of the Constitution and the international obligations incurred by El Salvador under the Convention on the Rights of the Child, which has been in force since May 1990,<sup>3</sup> a number of legislative and other measures have been adopted with a view to incorporating the principle of the best interests of the child in the Salvadoran legal system as a guiding principle for child protection, and diverse activities have been undertaken, resulting in substantial progress and results. In particular, Salvadoran legislation expressly recognizes the principle of the best interests of the child in the Family Code, article 350 of which reads as follows:

"In the interpretation and implementation of these provisions, the best interests of the child shall prevail.

By the best interests of the child is meant everything that promotes the child's physical, psychological, moral and social development with a view to ensuring the full and harmonious development of his or her personality.

Based on his or her best interests, the child shall have priority in receiving protection and help in all circumstances."

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<sup>3</sup> The Convention on the Rights of the Child was ratified by the Legislative Assembly by Decree No. 487 of 27 April 1990 and published in *Diario Oficial* No. 108 of 9 May 1990.

### **C. Other principles**

41. The following are some other guiding principles for child protection that are recognized by Salvadoran legislation:

- (a) The child enjoys integrated protection from the prenatal period (Family Code, art. 346);
- (b) The family bears primary responsibility for protection of the child, and society and the State bear subsidiary responsibility (Family Code, art. 347);
- (c) The State bears responsibility for providing special protection for children whose rights are at risk and have been violated, juvenile offenders, children with disabilities, abandoned children, children in armed conflicts, displaced and repatriated children, and, in general, all children without protection (Family Code, art. 348).

## **IV. GENERAL MEASURES OF IMPLEMENTATION**

42. The following section describes various judicial, legislative, administrative and other measures of a general nature that the Salvadoran State has implemented to give effect to the rights recognized in the Convention on the Rights of the Child (arts. 4 and 42 and art. 44, paragraph 6).

### **A. Legislative measures<sup>4</sup>**

43. Family relations between parents and children, and the custody and guardianship of minors were dealt with in Book One of the Civil Code, which had been in force since 1860 without any substantial modification for the benefit of children and adolescents<sup>5</sup> but was amended with the entry into force of the new family legislation.

44. The Civil Code contained a series of provisions that discriminated against women and children. Its classification of children was stigmatizing and non-egalitarian, since it restricted their basic rights vis-à-vis their parents on grounds of filiation.

45. Following its ratification of the Convention on the Rights of the Child in 1990, El Salvador initiated a major review of domestic legislation, chiefly with a view to elaborating and incorporating in secondary legislation the principles and tenets of the doctrine of protection of the child's best interests contained in the Convention, rendering outdated legislation null and void, introducing amendments and enacting new laws. The process of amending existing legislation and enacting new legislation, especially in the area of criminal law, to guarantee the rights of the child and to ensure that secondary legislation fully corresponds to the Convention has not yet been completed.

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<sup>4</sup> See annex 1 for the fundamental children's rights and guarantees recognized in Salvadoran legislation.

<sup>5</sup> Book I of the Civil Code and all provisions thereof that were incompatible with the Constitution of the Republic and the Convention on the Rights of the Child were rendered null and void by the Family Code, which entered into force on 1 October 1994.

46. Adoption was regulated by a law in force since 1950, which referred only to simple adoption and made no arrangements for protecting and monitoring adopted children or for ensuring that they were genuinely integrated into the adoptive family.<sup>6</sup>

47. In criminal matters too, Salvadoran law was to some extent inconsistent with the Convention and other applicable international norms.

48. Following ratification of the Convention, the Republic of El Salvador initiated a major review of domestic laws dealing with children and adolescents, chiefly in order to ensure the integrated protection of the rights of the child. This resulted in the abrogation and substantial amendment of obsolete laws that fell short of new international standards and, as a consequence, the enactment of a number of legal instruments that incorporated and elaborated the principles and tenets of the doctrine of integrated protection, including the principle of the child's best interests as a guiding principle of child protection in all circumstances.

49. In addition, in the early 1990s, a Committee on the Family, Women and Children was created in the Legislative Assembly to study preliminary draft legislation on matters pertaining to children.

50. The following laws have been enacted since the entry into force of the Convention with a view to bringing domestic legislation into line with international treaty law:

- (a) Drug-related Activities Regulation Act (1991);
- (b) Office of the Procurator for the Protection of Human Rights Act (1992);
- (c) Salvadoran Institute for the Protection of Children Act (1993);
- (d) Family Code (1994);
- (e) Family Court Procedure Act (1994);
- (f) Amendments to the Labour Code (1994);
- (g) Juvenile Offenders Act (1995);
- (h) Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgments) Act (1995);
- (i) Register of Family Status and Marital Property Regimes (Transitional) Act (1995);
- (j) General Education Act (1996);
- (k) Domestic Violence Act (1996);
- (l) Salvadoran Institute for the Advancement of Women Act (1996);
- (m) Labour and Social Security (Organization and Functions) Act (1996);

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<sup>6</sup> The Adoption Act was rendered null and void by the Family Code.

- (n) National Register of Natural Persons Organization Act (1997);
- (o) Criminal Code (1998);
- (p) Code of Criminal Procedure (1998).

It should be noted, in addition, that the Natural Persons (Names) Act (1990) was adopted prior to the entry into force of the Convention.

51. Special mention should be made of the amendment to article 1 of the Constitution of the Republic ratified by the Legislative Assembly in 1999, whereby every human being is recognized as a human person from the moment of conception. The amendment was adopted in response to the letter and spirit of the preamble to the Convention on the Rights of the Child.<sup>7</sup>

52. Various actors representing civil society, non-governmental organizations (NGOs) and State entities with responsibility for the protection of children and adolescents participated in and contributed to the process of amending the Constitution and secondary legislation. International agencies, including the United Nations Children's Fund (UNICEF) and the Agence internationale pour le développement (AIDE), provided technical cooperation.

53. The adoption by the Legislative Assembly of El Salvador of the Family Code<sup>8</sup> constituted a major achievement in terms of the updating of Salvadoran legislation. The Code adopts and incorporates the doctrine of the integrated protection of the child and brings secondary legislation into conformity with the Constitution of the Republic.

54. The Family Code is based on Section I of the Social Rights chapter of the Constitution of the Republic (arts. 32 to 36), which recognizes the family as the foundation stone of Salvadoran society, but it is also based on the principles and provisions of the Convention on the Rights of the Child and on other international instruments pertaining to the protection of women and the family.

55. The Constitution imposes a clear-cut obligation on the State to legislate and establish the necessary organizations for the protection, cohesion, well-being and social, cultural and economic development of the family.

56. Moreover, by amending family law, the Salvadoran State was discharging its obligation to bring domestic legislation into conformity with existing international treaty law, as set forth in the Convention and other international treaties ratified by El Salvador.

57. The Family Code establishes the legal regime governing the family, minors and older persons. It regulates the constitution, organization and termination of family relations, and hence also relations among family members and between them and society and State entities, taking into account the rights and duties conferred and imposed by other laws relating to specific matters and family unity.

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<sup>7</sup> The amendment to the Constitution was ratified by the Legislative Assembly by Decree No. 541 of 3 February 1999, published in *Diario Oficial* No. 32 of 16 February 1999.

<sup>8</sup> The Family Code was adopted by Legislative Decree No. 677 of 11 October 1993 and was published in *Diario Oficial* No. 231 of 13 December 1993.

58. Book Five of the Family Code contains the provisions governing child protection; it incorporates the principles on which the integrated protection of minors is based; recognizes and regulates the rights of children and their special protection from conception until the age of 18; incorporates a set of obligations for children depending on the stage of physical and mental development they have reached; and regulates the responsibility of the family, society and the State for ensuring the integrated protection of the child.

59. The principle of the best interests of the child is to be given precedence in the interpretation and implementation of this regime of integrated protection for the child, in accordance with article 350 of the Family Code which states that the best interests of the child means "everything that promotes the child's physical, psychological, moral and social development with a view to ensuring the full and harmonious development of his or her personality" and that, based on his or her best interests, "the child shall have priority in receiving protection and help in all circumstances." In addition to the best interests of the child, the Code is based on the following guiding principles: family unity; equal rights for men and women; equal rights for children; integrated protection for minors and other persons without legal capacity, for older persons and for the mother when she has sole responsibility for the household. The Code also contains an article guaranteeing the correct interpretation and application of family norms in keeping with its guiding principles and the general principles of family law "in the manner that best guarantees the effectiveness of the rights set forth in the Constitution of the Republic and the international treaties ratified by El Salvador" (arts. 4 and 8).

60. Substantive family legislation needs to be backed up by a flexible procedural instrument in order to guarantee in practice the implementation and enforceability of family and children's rights. The Legislative Assembly therefore enacted the Family Court Procedure Act,<sup>9</sup> the main objective of which is to establish procedural regulations through the application of modern principles of procedural doctrine to enforce the rights and duties set forth in the Family Code and in other relevant legislation.

61. The Family Court Procedure Act fulfils the constitutional requirement (arts. 32 and 36) to enact the necessary legislation and to establish appropriate organizations and services to ensure the Salvadoran family's cohesion and well-being. In practice, the Family Code regulates the mutual rights and obligations of family members and the Family Court Procedure Act establishes the procedure for ensuring its speedy and effective implementation.<sup>10</sup>

## **B. Judicial measures<sup>11</sup>**

62. The administration of juvenile justice was formerly the responsibility of judges and magistrates handling civil matters in cases pertaining to family relations between parents and children, and to the application of limited measures of protection for children in the areas of personal custody, guardianship, parental authority, child support rates, filiation proceedings, appointment of guardians and guardians *ad litem*, and other areas, in accordance with the

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<sup>9</sup> The Family Court Procedure Act was adopted by Legislative Decree No. 133 of 14 September 1994.

<sup>10</sup> See the note submitting the Family Court Procedure Bill to the Legislative Assembly in February 1994, which summarizes the content of the Act and is used as an explanatory introduction.

<sup>11</sup> See annex 2 for the judicial procedures relating to the administration of juvenile justice.

common procedure for adjudicating civil cases laid down in the Code of Civil Procedure of El Salvador.<sup>12</sup>

63. Children in situations of vulnerability and children in conflict with criminal law were formerly subject in substantive and procedural terms to the Juvenile Code in force since 1974, a body of law based on the irregular situation doctrine, which stipulated, *inter alia*, that:

"all minors and, in particular, orphans, the maladjusted, the mentally handicapped, those whose conduct is irregular, those who are physically or physiologically abnormal, those who are abandoned or at risk, and those with limited economic resources shall be entitled to the protection of this Code".

The Code also stipulated that:

"Minors under 18 years of age, who have been materially or morally abandoned, who are in danger or at risk, and those aged 16 or less of irregular conduct, who have committed offences regarded as crimes or misdemeanours under criminal legislation, shall enjoy the benefits accorded by this Code."

64. The minors referred to in the Code as "minors in an irregular situation" came under the jurisdiction of the juvenile courts, which had exclusive authority to hear cases concerning: (a) offences regarded as crimes or misdemeanours under ordinary law allegedly committed by minors not above 16 years of age, so that children aged 0 to 16 were subject to the relevant laws and jurisdiction; and (b) appropriate measures for the treatment, rehabilitation, placement, care, monitoring and education of minors subject to the Code.<sup>13</sup>

65. The juvenile courts, in accordance with the Juvenile Code, applied the same procedure to children whose rights were threatened or violated as to children in conflict with the criminal law. They had broad discretionary authority to investigate acts or omissions which, by their nature, were punishable acts allegedly committed by minors, without having to observe ordinary procedural rules. They examined the nature of the act and the personal characteristics – social, medical, psychological, psychiatric and pedagogical – of the minor concerned in order to ascertain his or her physical state and state of mind, educational status and degree of physical or moral abandonment, with a view to determining in each case the appropriate remedial measures or measures of rehabilitation.

66. Moreover, defence and prosecution lawyers and prosecutors were not permitted to participate in the proceedings in the juvenile courts. Only the minor's legal representative or, in the absence of a legal representative, the procurator for juveniles assigned to the juvenile court concerned was allowed to take part.

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<sup>12</sup> The Family Court Procedure Act, which entered into force in October 1994, rendered null and void the titles and chapters of Book II of the Code of Civil Procedure pertaining to procedures applicable in family matters.

<sup>13</sup> The Act establishing the Salvadoran Institute for the Protection of Children rendered the Juvenile Code null and void in March 1993 with respect to the Salvadoran Juvenile Council – the body previously responsible for the protection of minors. The Juvenile Code was rendered null and void by the Family Code with respect to children whose rights are at risk or have been violated; and it was rendered null and void with respect to young people in conflict with the criminal law by the Juvenile Offenders Act, which has been in force since March 1995.

67. The measures that juvenile judges could apply to children at risk had no specific duration; and although the maximum duration of measures applicable to young people in conflict with the criminal law was judicially determined, it could be extended, at the discretion of the judicial authority, if it was considered that the minor's behaviour had not been corrected.

68. Minors aged between 16 and 18 who committed offences characterized as crimes or misdemeanours in the criminal legislation were subject to the ordinary criminal law and jurisdiction applicable to adults.

69. Under the new legislation – the Juvenile Offenders Act and the Family Code – the irregular situation doctrine was discarded in favour of protection-oriented substantive and procedural provisions in keeping with the Convention on the Rights of the Child and other applicable international norms.

70. Far-reaching judicial measures have been introduced in recent years, including the establishment of new national courts with competence in this regard. In particular, mention may be made of:

- (a) Family courts;
- (b) Juvenile offender courts; and
- (c) Courts for enforcement of sentences imposed on juvenile offenders.

71. For the purpose of interpreting and applying substantive family law, a special family jurisdiction has been established in the form of courts of first and second instance with exclusive authority in family matters, although the indivisible character of the judiciary has been preserved.<sup>14</sup>

72. The Family Court Procedure Act (art. 4) stipulates that family courts and divisions shall have the territorial jurisdiction assigned to them by the Judiciary Organization Act. To that end, some provisions of the Organization Act (arts. 6, 7, 8, 15, 20 and 146) were amended with a view to establishing and apportioning territorial jurisdiction throughout the country. Thus, the Act stipulates that family jurisdiction at first instance shall be exercised by family courts, four in the city of San Salvador, two each in the cities of Santa Ana and San Miguel, and one in each of the remaining departmental administrative centres.<sup>15</sup>

73. To exercise family jurisdiction at second instance, divisions of second instance known as "Family Division of the Centre Section", "Family Division of the Western Section" or "Family Division of the Eastern Section" have been established in the municipalities of San Salvador, Santa Ana and San Miguel respectively. The territorial jurisdiction of the family divisions is also determined by the Judiciary Organization Act.<sup>16</sup>

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<sup>14</sup> The special family jurisdiction was established by Legislative Decrees Nos. 134 and 136 of 14 September 1994.

<sup>15</sup> Article 20, paragraph 2, of the Judiciary Organization Act.

<sup>16</sup> The amendments to the Judiciary Organization Act are contained in Legislative Decree No. 136 of 14 September 1994 and Legislative Decree No. 729 of 21 June 1996.

74. The Family Court Procedure Act (art. 5) also stipulates that, in order to serve as a family judge or magistrate in a family division, a person must meet the requirements set forth in the Constitution of the Republic for service as a judge in a court of first instance or a magistrate in a court of second instance,<sup>17</sup> in addition to having recognized competence in family law. Responsibility for the selection and appointment of family judges and magistrates is assigned by the Constitution to two institutions: (a) the National Judicial Service Council and (b) the Supreme Court of Justice. The Council runs a training and selection procedure for candidates for the office of judge or magistrate, assessing competence in family matters with a view to compiling lists of lawyers who meet the requirements of the law and sending them to the Supreme Court of Justice, which is responsible for appointing judges of courts of first instance, justices of the peace and magistrates of courts of second instance.<sup>18</sup>

75. To assist family courts in performing their work, in forming an objective opinion of the social environment, psychological state and other characteristics of the members of a family involved in a family dispute, and in effectively safeguarding the right to education of children who may be affected by the family dispute, the judicial personnel of the courts is supplemented by a multidisciplinary staff composed of teams of specialists, including social workers, psychologists and educators, whose psycho-social and educational studies support the judge in the administration of family justice. Moreover, if a family court considers it necessary, it may draw on the services of specialists attached to the Institute of Forensic Medicine, the Salvadoran Institute for the Protection of Children or the Office of the Procurator-General of the Republic, or it may use other specialists if those institutions do not possess the requisite expertise (arts. 4 and 93 of the Family Court Procedure Act).

76. There are currently 22 first-instance family courts and 3 second-instance family courts which have exclusive jurisdiction in family matters and whose territorial jurisdiction is spread throughout the Republic of El Salvador. The Supreme Court of Justice is in the process of extending the territorial coverage of the family courts and divisions to all parts of the country.

77. The judicial personnel assigned to these 22 courts of first instance with jurisdiction in family matters consists of 196 staff members, including judges and court clerks and assistants. The multidisciplinary personnel (social workers, psychologists and educators) consists of 132 staff members. The judicial personnel assigned to the three second-instance courts consists of 19 staff members, including two magistrates for each court, court clerks and legal assistants.

78. To ensure better territorial coverage and access for the population to family justice, justices of the peace have limited jurisdiction in family matters. They may act only in the following cases: (a) to conduct conciliatory hearings regarding custody of children, contact visit regimes, child support rates and liquidation of marital property regimes; and (b) to order protective measures on behalf of any family member, in which case the justice of the peace automatically refers the proceedings to the family court with a report on the measures adopted (arts. 206 and 207 of the Family Court Procedure Act). This limited jurisdiction in family matters is assigned to justices of the peace because of the existence of justice of the peace courts in the country's 262 municipalities.

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<sup>17</sup> Articles 177 and 179 of the Constitution of the Republic of El Salvador.

<sup>18</sup> Articles 182 (9) and 187 of the Constitution of the Republic of El Salvador; Judicial Organization Act and National Judicial Service Council Act.



79. The Family Court Procedure Act (art. 147) stipulates that judicial review proceedings shall be held before the Civil Division of the Supreme Court of Justice, which shall proceed in accordance with the rules governing civil judicial review. To establish the legal basis for review proceedings in family matters, it was necessary to amend the Judicial Organization Act (art. 54, para. 1), which regulates jurisdiction in respect of judicial review proceedings before the Civil Division of the Supreme Court of Justice. The amendment authorizes the Civil Division to hear judicial review proceedings in family matters.<sup>19</sup>

80. Judicial review proceedings in family matters are hampered by the fact that such proceedings are regulated by the Civil Judicial Review Act because there is no review legislation dealing exclusively with family matters. This makes it difficult for the parties to the proceedings to present their case to the Civil Division and hence to secure a satisfactory remedy.

81. The Family Court Procedure Act and the judicial proceedings it establishes are based on guiding principles that constitute standard-setting norms for the new legal system, which are accepted as right reason and as being imbued with a spirit of equity. Some of these guiding principles, which reflect the extent of the change in the procedural system introduced by the Family Court Procedure Act, are described below:<sup>20</sup>

- (a) The judge must be present at all stages of the proceedings and must try to keep them as short as possible, which means that the office of family judge cannot be delegated. Hence, the judge cannot commission anyone to carry out a procedural act that is deemed to be part of his or her own functions, since such delegation would render the procedural act carried out by a person other than the family judge null and void, even if that person was the court clerk or another legal assistant. In other words, such an act entails mandatory nullity (art. 8).
- (b) Hearings are oral and public. The judge may, on his or her own motion or at the request of a party, order a closed hearing. This principle is based on the public trial principle laid down in the Constitution of the Republic (art. 12, para. 1) and also on the provision for closed hearings, which may be ordered by the judge, on his or her own motion or at the request of a party, in order to safeguard the right to personal and family privacy and self-image, which is also enshrined in the Constitution (art. 2, para. 2). With a view to protecting the privacy of children, the closed and confidential nature of proceedings is backed up in the case of minors by the guarantee of discretion contained in the Family Code (art. 375), which requires all authorities or other persons participating in investigations and decision-making in judicial or administrative proceedings involving minors to maintain secrecy regarding the cases they hear, which are deemed to be confidential and closed.
- (c) The judge must ensure equal treatment of the parties throughout the proceedings. This guiding principle is the reflection in secondary legislation of the principle of equality laid down in the Constitution (art. 3) and ensures mandatory respect for the equality and adversarial principles in all proceedings under the Family Court Procedure Act.

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<sup>19</sup> The amendments to the Judicial Organization Act are contained in Legislative Decree No. 134, published in the *Diario Oficial* of 20 September 1994.

<sup>20</sup> Article 3 of the Family Court Procedure Act.

82. The Family Court Procedure Act also establishes the powers and obligations of the family judge. It should be noted in this connection that, with a view to guaranteeing children's right to be heard and express their views in all proceedings affecting them, as recognized in article 12 of the Convention on the Rights of the Child and article 7(j) of the Family Court Procedure Act, the judge is required to "hear a minor over 12 years of age in all actions and proceedings affecting him or her; below that age, the judge shall have contact with the minor and, if possible, engage in a dialogue with him or her."

83. The Family Court Procedure Act (art. 6(d)) authorizes family judges to order preventive measures before and during the proceedings. Such measures are based on the constitutional obligation to protect all family members and on the fact that it may not be possible to prevent irreparable damage if action is delayed until the end of the proceedings. The preventive measures may relate to property or they may be of a personal character. Their purpose is to safeguard the life of family members, to protect them from physical and mental injury and to protect property rights stemming from family relations and ties. Preventive measures are limited by the principle of equality of the parties and the right to a fair hearing, which must be respected by the judge during family proceedings (art. 6(d) and arts. 75 to 77).

84. The Family Court Procedure Act expressly authorizes the judge to order preventive measures in proceedings instituted for the purpose of protecting minors (art. 144).

85. The family judge also exercises judicial control over protective measures of an administrative nature ordered or implemented by the Salvadoran Institute for the Protection of Children, and may confirm, modify, annul or terminate such measures (art. 146 of the Family Court Procedure Act).

86. The following principles of due process that have constitutional status are strictly applied in family proceedings: the principle of equality before the law and the adversarial principle. The law also requires respect for the procedural principles enshrined in modern procedural doctrine such as the principles of oral, immediate, public, speedy, focused and economical proceedings and the principles of consistency, probity, preclusion and others, with a view to streamlining proceedings and giving effect to family rights and obligations.

87. The Family Court Procedure Act provides for two categories of proceedings to address family disputes or to obtain a statement of rights stemming from family relations and ties: (a) contentious proceedings, which are resorted to in all cases in which there is a dispute between the parties; and (b) voluntary jurisdiction proceedings, which occur in situations where the outcome sought is recognition of a right or determination of family status, that is to say non-contentious cases.

88. Family proceedings are mixed in that they combine written and oral proceedings. It should be noted, however, that the main steps in the proceedings are conducted through oral hearings, in which the principle of immediacy is strictly applied.

89. Family proceedings also combine the principle of control by the parties and the inquisitorial principle, since the parties usually institute the proceedings but the judge directs their course by virtue of his office.

90. The Family Code recognizes a number of exceptional cases in which the judge can institute proceedings on his or her own motion. This kind of action can be taken only in cases of loss or

suspension of parental authority in order to exercise judicial control over guardianship and to initiate proceedings for the protection of children whose rights are at risk or have been violated. Proceedings may also be instituted in this manner on the basis of an oral statement by the person concerned in cases that are deemed by the judge to be extremely urgent in order to protect the interests of the family. However, since the establishment of the Salvadoran Institute for the Protection of Children, family judges have taken such action only in exceptional circumstances in view of the provision for official endorsement by the judge of the Institute's opinion (art. 41 of the Family Court Procedure Act).

91. Contentious family proceedings are generally conducted in two stages: the preliminary hearing and the judgement hearing. At the preliminary hearing, the conciliatory stage of the proceedings is conducted. The desirability of an amicable settlement of family disputes through a judicially approved agreement between the parties is recognized, provided that the nature of the claim and the law so permit. The preliminary hearing also involves a "clearance" stage, the purpose of which is to control the evidence and clear the proceedings of any defects and interlocutory matter so as to be able to move on to the next stage in the proceedings, which is the judgement hearing.

92. At the judgement hearing, the evidence of conformity with the rules of sound criticism is presented and assessed and the judgement is handed down. The family judge then has five days to pass sentence, stating the reasons on which the sentence is based, unless this was done during the hearing.

93. In voluntary jurisdiction proceedings, once the application is admitted, a date and time are set for the judgement hearing, at which the evidence is received and the judgement is handed down. Voluntary jurisdiction proceedings are conducted, for example, in cases of divorce by mutual consent, declaration of family status and appointment of a guardian. In addition, family judges in the place of habitual residence of adopted children have jurisdiction to decide cases of adoption through voluntary jurisdiction proceedings, at which the judge authorizes the adoption provided that all legal requirements have been met and the administrative procedure for adoption, which is the responsibility of two institutions (the Office of the Procurator-General of the Republic and the Salvadoran Institute for the Protection of Children), has been completed.

94. A basic and characteristic principle of family proceedings is that nobody may enjoy special privileges by virtue of his or her office.

95. The third legal instrument of major importance enacted in El Salvador is the Juvenile Offenders Act,<sup>21</sup> the purpose of which is: to regulate the rights of minors who are alleged or declared to be principals in or accessories to a criminal offence; to determine the guiding principles to be observed in applying and interpreting the Act and the normative changes and institutions required to give it effect; to specify the measures applicable to minors who have committed a criminal offence; and to establish procedures for safeguarding the rights of minors subject to the Act.

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<sup>21</sup> The Juvenile Offenders Act was adopted by Legislative Decree No. 863 of 27 April 1994 and entered into force on 1 March 1995.

96. The Juvenile Offenders Act is applicable to persons aged between 12 and 18 years and rests on the following basic principles: integrated protection of the child, the best interests of the child, respect for the child's human rights, integrated education of the child and reintegration into family and society.

97. As in the case of the Family Court Procedure Act, juvenile courts are organized in accordance with the provisions of the Judicial Organization Act and other applicable norms. Pursuant to the Act, the staff of the courts must be specially qualified and include a psychologist, a social worker and an educator. They may also draw on the services of experts from the Institute of Forensic Medicine and the Salvadoran Institute for the Protection of Children, or other experts if these institutions lack the requisite expertise. The services must be provided free of charge.

98. The special regime for children in conflict with the criminal law is implemented by 21 first-instance juvenile courts, five courts for enforcement of judgements imposed on juvenile offenders and three second-instance juvenile courts.

99. The purpose of juvenile proceedings is to establish the existence of a juvenile offence and to determine the principal or accessory so that an order can be made for enforcement of the requisite sentence. The permissible duration of sentences imposed on minors may not exceed five years, except where the minor was above 16 years of age at the time of commission of the offence. In addition, the court responsible for the enforcement of judgements is required in all cases to review the sentences imposed on minors every three months with a view to ensuring that they are pursuing an education and training programme and that the sentence and the circumstances in which it is being served are not affecting the process of reintegration of the child into society.

100. The Juvenile Offenders Act stipulates that criminal proceedings shall be extinguished five years after commission of the alleged offence in the case of a minor above 16 years of age, where the offence is punishable by a maximum prison term of 15 or more years; in most cases the punishment is time-barred after three years. In the case of children aged between 12 and 16 years at the time of commission of the offence, the action is time-barred after three years.

101. To be valid, the hearings prescribed by the Act and the examination of evidence must take place orally. Moreover, the administrative and judicial proceedings are confidential and administrative bodies with police functions are prohibited from referring to a criminal record in respect of alleged offences by minors. A special characteristic of the proceedings is that in all cases the Act requires psycho-social studies of the minors, which must be taken into account when the judgement is handed down.

102. Civil proceedings for damages occasioned by the offence committed by a minor must be conducted before the competent judge and be based on the norms governing civil proceedings, independently of the juvenile judge's disposition of the case. Where civil responsibility is incurred in a traffic accident, the proceedings are based on the Traffic Accidents (Special Procedures) Act.

103. The Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act supplements the Juvenile Offenders Act, so that the guiding principles, the rules of interpretation and application, and all the rights set forth in the Juvenile Offenders Act are also applicable thereto.

104. The purpose of the Act is to regulate the proceedings of the court for the enforcement of sentences imposed on juveniles and the appeals that may be filed against the court's rulings.

105. As in the case of the courts mentioned above, courts for enforcement of sentences imposed on juveniles are organized in accordance with the provisions of the Judicial Organization Act and other applicable legal norms. Their staff must be specially qualified and include at least a psychologist, a sociologist, a social worker and an educator; they may draw on the services of experts from the Salvadoran Institute for the Protection of Children and the Institute of Forensic Medicine; and they may also request the collaboration, free of charge, of other experts who do not form part of their staff.

106. The Domestic Violence Act is a preventive law enacted for the purpose of punishing acts of violence within the family, independently of any criminal responsibility relating thereto; the concept of domestic violence is defined as "any direct or indirect act or omission that causes injury or physical, sexual or psychological suffering to or the death of a family member". Family courts and justices of the peace exercise jurisdiction for the application of this Act.

107. The Act stipulates that any person who has knowledge of an act constituting domestic violence may report it or bring it to the attention of the National Civil Police, the competent courts and the Office of the Procurator-General of the Republic. Aside from the foregoing, public officials who, in the performance of their official duties, become aware of such acts, and doctors, chemists, nurses and other persons exercising professions related to health and social assistance who become aware of such acts through their work are bound to report them.

108. The duration of preventive, precautionary or protective measures ordered by the judge against assailants depends on the circumstances, on recidivism and on the regulations laid down in the Family Court Procedure Act.

109. In the case of serious acts, the judge, when passing sentence, shall impose penalties on the person found guilty of those acts over and above the preventive, precautionary or protective measures envisaged in the Act.

110. It should be mentioned that in matters relating to domestic violence no rights or privileges of any kind are legally permissible on the basis of a person's office.

111. The following principles are applicable to proceedings conducted under the Domestic Violence Act: they must be oral, immediate, focused and speedy, and they must respect the principles of equality, economy, probity and informality; moreover, the principle of sound criticism must be observed in assessing the evidence.

112. The proceedings and formalities conducted under this Act are confidential and closed to everyone apart from the parties, lawyers, procurators, prosecutors and experts.

### **C. Administrative and other measures**

113. In administrative matters, two institutions were formerly responsible for child protection: (a) the Office of the Procurator-General of the Republic, which is required, under article 194.II, paragraph 1, of the Constitution, to protect the family as well as the persons and interests of minors and other persons without legal capacity, and is responsible for legal representation of minors, orphans, abandoned children, children of unknown parentage and other persons without

legal capacity in conformity with the legislation in force; and (b) the Salvadoran Minors Council, which was responsible for the protection of abandoned children and children in danger or at risk; the administration of centres for institutional placement of children who were materially or morally abandoned, in danger or at risk; and the administration of rehabilitation centres for children in conflict with the criminal law and children at risk under the repealed Juvenile Code. Other institutions engaged in the protection of children such as the Child Protection Department and juvenile courts were also involved in administrative matters.

114. During the period covered by this report, a number of important institutions were established whose mandate and functions are directly related to the promotion and protection of the rights of the child. They include the following:

- (a) The Salvadoran Institute for the Protection of Children (ISPM);
- (b) The Office of the Deputy Procurator for the Rights of the Child, Office of the Procurator for the Protection of Human Rights;
- (c) The Juvenile Criminal Advocacy Department, Office of the Procurator-General of the Republic;
- (d) The Offences against Women and Children Department, Office of the Attorney-General of the Republic;
- (e) The Women and Children Department, Directorate-General of Social Security, Ministry of Labour and Social Security;
- (f) The Family Division of the National Civil Police.

115. The ISPM is currently the institution legally mandated to provide integrated protection for children in all kinds of circumstances.

116. The ISPM<sup>22</sup> began operating in the country in May 1993 as the main body responsible for implementing the National Child Welfare Policy adopted by the executive. The ISPM Act is based on the constitutional mandate to ensure special protection for children and reflects the doctrine of integrated protection based on the Convention on the Rights of the Child.

117. The ISPM is the body responsible for ordering and implementing measures of protection for children whose rights have been threatened or violated and for providing technical assistance to the judicial authorities through experts on its staff. It is also responsible for the administration, design and execution of programmes for children in conflict with the criminal law, both during detention and during the implementation of alternative measures.

118. The ISPM is the institution that coordinates the National Child Protection System, which was set up to implement the National Child Welfare Policy. It designs, adopts and monitors the implementation of preventive programmes and programmes for the welfare of children and adolescents carried out by public or private bodies.

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<sup>22</sup> The ISPM was established by Legislative Decree No. 482 of 11 March 1993.

119. To enhance their effectiveness, welfare and preventive programmes are implemented in coordination with both national and international governmental and non-governmental organizations.

120. The Office of the Procurator-General of the Republic<sup>23</sup> is responsible, under the law, for ensuring legal representation for minors, orphans, children of unknown parentage, abandoned children, children who for legal reasons have been withdrawn from parental control, and children who for one reason or another lack a legal representative, while also being without a guardian.

121. The Office of the Procurator-General is required by law to assume responsibility for the technical defence of minors subject to the Juvenile Offenders Act when they have no defence counsel. The defence is conducted by an official guardian, who is required to be present throughout the administrative and judicial proceedings and to submit relevant evidence; to participate in conciliatory proceedings; to apply, where appropriate, for the suspension or modification of the sentences handed down; to file appeals on behalf of juvenile offenders; and to ensure that children's basic rights and guarantees are not violated or threatened during the proceedings or during enforcement of the sentences.

122. The Office of the Procurator-General is required under law to guarantee the presence in each of the courts concerned of a government procurator for juveniles, who attends to the interests of the family, minors and persons without legal capacity. The procurator can also authorize the adoption of children. In addition, the ISPM must issue a declaration of suitability for the adoption of children and issue, jointly with the Procurator-General of the Republic, an assessment of adoptive parents who are not resident in El Salvador. The government procurator for juveniles acts as counsel for the defence in cases specified in the relevant legislation and also in respect of the authorization to be given in cases of adoption.

123. The Office of the Procurator-General is authorized to receive reports of acts constituting domestic violence, also in cases in which children or adolescents may be affected. It must then take action on behalf of the victims, ensuring that proceedings are instituted before the relevant court. It may also request precautionary, preventive or protective measures for the victims.

124. The National Secretariat for the Family is headed by the First Lady of the Republic, who is also President of the ISPM and the Salvadoran Institute for the Advancement of Women (ISDEMU). It is mandated by the Salvadoran Institute for the Protection of Children Act to manage the National Child Welfare Policy and it has authority under the Family Code to coordinate the National System for Protection of the Family and Older Persons.

125. The Office of the Attorney-General of the Republic<sup>24</sup> is the State body with responsibility for investigating criminal offences allegedly committed by minors; receiving reports of the alleged commission of criminal offences by minors; promoting the initiation of criminal proceedings; requesting, where appropriate, the suspension, modification or substitution of sentences imposed on minors and filing the relevant applications; deciding whether or not a

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<sup>23</sup> For the mandate of the Office of the Procurator-General of the Republic, see article 194.II of the Constitution and its Organization Act. See also article 224 of the Family Code.

<sup>24</sup> For the mandate of the Office of the Attorney-General of the Republic, see article 193 of the Constitution and its Organization Act.

minor detained *in flagrante delicto* should be released; ordering the transfer of a minor to an appropriate centre when he or she has been taken into police custody; and ensuring that the rights of minors are not violated or threatened during proceedings and during enforcement of sentences, taking appropriate action where such violations or threats occur.

126. It is important to mention that the Office of the Attorney-General is required by law to guarantee the presence of a juvenile prosecutor in every court where his or her services may be required.

127. The Office of the Procurator for the Protection of Human Rights<sup>25</sup> is the institution with overall responsibility for the promotion and protection of human rights in the country and is a product of the 1992 Peace Accords. It monitors the situation of children's rights in the country and has been assisted from the outset by the Office of the Deputy Procurator for the Rights of the Child.

128. The Office of the Procurator is authorized by law to receive notifications from the authority concerned of all cases in which minors under 18 years of age have been deprived of their liberty through either judicial or administrative proceedings.

130. The Office of the Procurator is authorized to intervene in all kinds of administrative or judicial proceedings that have a bearing on the protection of the rights of children, either as victims or as juvenile offenders, with a view to ensuring compliance with the norms governing the protection of and respect for children's rights and guarantees. It may also investigate the situation of children in State institutions and issue recommendations in all such cases.

131. The National Civil Police<sup>26</sup> also perform functions that have a direct bearing on the protection of children. They adopt the necessary measures to prevent victims of domestic violence – both adults and minors – from being ill-treated and they take action such as the following when they receive reports of such situations: helping the victims, ensuring that they receive medical treatment, providing them with transport to a centre where they will be looked after, conveying victims and their children to an appropriate refuge when they are concerned for their safety, offering advice to victims regarding the preservation of evidence and their rights, informing them of available public and private services, and, in addition, notifying the courts and the Office of the Procurator-General of the Republic so that proceedings may be instituted, and testifying as witnesses in legal proceedings. The National Civil Police also assist the competent authorities in ensuring enforcement of the sentences imposed on juveniles and locate minors when so ordered by the judicial authorities, conveying them, where appropriate, to special centres.

132. The institutional measures adopted to ensure that the rights of male and female children are fulfilled and respected on a basis of equality include the establishment of the Salvadoran Institute for the Advancement of Women (ISDEMU), whose mandate is not exclusively concerned with the protection of children but has a bearing on the availability of protection and support for girls and young women.

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<sup>25</sup> For the mandate of the Office of the Procurator for the Protection of Human Rights, see article 194.I of the Constitution and the Act establishing the Office.

<sup>26</sup> For the mandate of the National Civil Police, see article 159 of the Constitution and its Organization Act.



133. ISDEMU has promoted the adoption of legislative and other measures under its Family Relations Improvement Programme such as: enactment of the Domestic Violence Act, which provides protection for girls and young women; coordination of joint activities with governmental and non-governmental organizations, private companies and the country's universities aimed at publicizing and promoting the rights of the child among the general public and in Salvadoran institutions; participation in the inter-agency team to revise the *Handbook for Adolescents on Sexual and Reproductive Health* in order to obtain technical input, inter alia from a gender perspective, for the updating process; participation in the Inter-Agency Team convened by the Ministry of Education to implement the Open Schools Project under the "Young Country, Today is Your Future" Programme; organization of awareness-raising discussions on the subject of gender to promote a culture of non-violence, self-esteem, human rights, including the rights of the child and the right to non-violence, in conjunction with the Salvadoran Institute for the Protection of Children and the Ministry of Education.

134. One of ISDEMU's main achievements has been the establishment and implementation of the Family Relations Improvement Programme, under which it has organized awareness-raising and training days on human rights-related topics, focusing on women's and children's rights. Since 1997, it has organized 16,546 educational days with groups involved in child care, reaching out to a total of 219,465 participants.

135. It should be noted that the National Systems for the Protection of the Family, Older Persons and the Child are composed of the following institutions: (a) the Office of the Procurator-General of the Republic; (b) the Office of the Procurator for the Protection of Human Rights; (c) the Ministry of Public Security and Justice; (d) the Ministry of Education; (e) the Ministry of Public Health and Social Welfare; (f) The Ministry of Labour and Social Security; (g) the Vice-Ministry of Housing and Urban Development; (h) the National Secretariat for the Family; (i) the Salvadoran Institute for the Protection of Children; and (j) community and service associations as well as NGOs engaged in related activities.

136. Other administrative measures have been introduced such as the adoption of regulations aimed at the enactment of secondary legislation consistent with the Convention on the Rights of the Child. These regulations include:

- (a) The General Regulations governing Detention Centres for Juvenile Offenders (1955); and
- (b) The Regulations governing Narcotic Drugs, Psychotropic Substances, Precursors, Chemical Substances and Products and Aggregates (1998).

137. In the context of public policies relating to children's rights, the first National Child Welfare Policy was adopted in March 1993 by a resolution of the Council of Ministers.

138. A new National Policy for the Integrated Development of Children and Adolescents was approved and published in November 2001. It represents a response to the challenge of establishing strategic guidelines for ensuring full implementation of the rights recognized in the Convention on the Rights of the Child. The new policy adopts a rights-based approach, embraces a philosophy of joint social responsibility for giving effect to the rights of the child and involving children and adolescents in matters that affect them, and provides for a range of activities on behalf of young people and adolescents. In its third periodic report to the Committee, El Salvador will provide further information on the country's new policy in this area.

139. The policy document has recently undergone a process of review and consultation with a view to updating it and bringing it into line with the Convention. To that end, the National Secretariat for the Family organized a nationwide participatory consultation process involving various governmental and non-governmental actors. A group representing young Salvadorans also collaborated in the process. A new version of the document setting forth the National Policy for the Integrated Development of Children and Adolescents has now been drafted and will shortly be implemented.

140. To promote the rights of children and adolescents, a number of promotional projects and educational programmes have been developed, with international cooperation, through various governmental and non-governmental institutions. They have been implemented through radio and television programmes and the press; public information campaigns; prevention campaigns; awareness-raising activities; forums and seminars for public officials, public authorities, teachers and members of civil society; competitions and cultural and recreational activities; development and reproduction of informational and educational material; reproduction of the Convention; mass-circulation booklets on the rights of the child; incorporation of material on the rights of the child in Ministry of Education curricula; development and reproduction of school textbook material and material for the general public – adults, children and teenagers. Special mention should be made of the important work being done by the country's media, some of which have ongoing programmes on the rights of the child.

141. The institutions involved in promoting the rights of the child include governmental and non-governmental bodies and international organizations such as UNICEF, the Office of the United Nations High Commissioner for Human Rights (Technical Cooperation Project for El Salvador), the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Organization (ILO), Save the Children and others.

142. The following is a selection of local non-governmental institutions and other bodies actively engaged in promoting and protecting the rights of the child: Olof Palme, Defence for Children International, Red para la Infancia y la Adolescencia, SOS-Children's Villages, Hogar del Niño Minusválido, Hogar de Niñas "Natalia de Simán", Hogar de Niños la Divina Providencia and Hogar de Niños con Sida.

## **V. CIVIL RIGHTS AND FREEDOMS**

### **A. The right to life, survival and development (art. 6)**

143. The Constitution of the Republic of El Salvador (art. 1) recognizes the human being, from the moment of conception, as the source and purpose of the State's activity; it also recognizes the individual's right to life and the right to State protection in its preservation and defense (art. 2).

144. The Family Code expressly recognizes the child's fundamental right to life and to protection from the moment of conception; and the right to be born in family, environmental and other circumstances that are conducive to the child's full and normal bio-psycho-social development (art. 353). The article stipulates that:

"The life and health of the child shall be protected by means of a range of legal, social, preventive and support measures that guarantee his or her integrated development from conception until majority."

145. In addition, the Family Code requires the State to ensure that every child has access to food, vaccination and nutrition programmes, preventive health care education and rehabilitation in the event of physical disability or impairment, and to guarantee protection for pregnant mothers during the prenatal and postnatal periods and free medical care for children who are unable to afford it (art. 354).

146. Under the Criminal Code, the death of a child under 12 is punishable as the crime of aggravated homicide (arts. 129 and 30), since the law presumes the existence of premeditation in such cases. The death of a child aged between 12 and 18 is treated as simple homicide (art. 128).

147. All types of conduct constituting abortion are punishable under the Criminal Code (arts. 133 and ff.) in order to protect life from conception. In addition, conduct violating family rights and obligations, including the offences of abandonment and neglect (art. 199), failure to fulfil child support obligations (art. 201), undue separation of a child or person with a disability (art. 201) and other similar offences are punishable under the Code.

**B. The right not to be subjected to torture or to cruel, inhuman  
or degrading treatment (art. 37 (a))**

148. The Constitution of the Republic (art. 2) stipulates that everyone has the right to physical and moral integrity, and to be protected in its preservation and defense. It follows that integrity of the person is recognized as a fundamental human right.

149. The Constitution (art. 11) also enshrines the right of all detained persons to file a habeas corpus application when their dignity or their physical, mental or moral integrity has been assaulted under those circumstances by any authority.<sup>27</sup>

150. In addition, the Constitution (art. 194.I, para. 5) requires the Office of the Procurator for the Protection of Human Rights:

"To monitor the situation of persons deprived of their liberty. It shall be notified of any arrest and shall ensure that the statutory limits applicable to administrative detention are respected."<sup>28</sup>

151. The Family Code (art. 351, para. 10) stipulates that every child has the right:

"To be protected from all forms of physical, mental and moral harm or abuse, neglect or negligence, ill-treatment, torture and cruel, inhuman or degrading treatment or punishment."

152. Article 23, paragraph 3, of the Salvadoran Institute for the Protection of Children Act requires the Institute's Child Protection Corps to protect minors who are abandoned or lost, who engage in vagrancy or begging or who are hired for begging, or who are victims of ill-treatment,

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<sup>27</sup> Amendment to article 11, paragraph 2, of the Constitution ratified by Legislative Decree No. 743 of 27 June 1996 and published in *Diario Oficial* No. 128 of 10 July 1996.

<sup>28</sup> Amendment to article 194 of the Constitution ratified by Legislative Decree No. 64 of 31 October 1991 and published on 20 November 1991.

and, in general, to intervene when the rights of minors are at risk or have been violated, in which case they should be conveyed, where appropriate, to the ISPM or its delegations.

153. The Juvenile Offenders Act (art. 5) recognizes that the fundamental rights and guarantees of juveniles who have committed a criminal offence include the right to be treated in all circumstances with due respect for the inherent dignity of the human person and the right to protection of the integrity of the person.

154. The Act (art. 118) also recognizes that juvenile offenders have the right, in the context of enforcement of judgements, to be informed of any disciplinary measures that may be applicable to them, and the right not to be held incommunicado or in solitary confinement or to be subjected to corporal punishment under any circumstances. The Act further expressly prohibits under all circumstances the application of inhuman or degrading disciplinary measures, including corporal punishment, detention in dark cells or solitary confinement, reduction of food, denial of contact with relatives, collective punishment and punishment more than once for the same disciplinary offence.

155. The Act (art. 124) requires minors to undergo a medical examination immediately on arrival in a detention centre in order to ascertain whether they have been subjected to ill-treatment and to check their physical and mental condition so as to determine whether they require any kind of treatment.

156. The Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act (art. 4, para. 1) regulates the powers of sentence enforcement courts, which include the authority "to monitor and guarantee enforcement of all judgements handed down by juvenile courts, particularly measures of detention", and to ensure respect for the rights of minors, including the punishment of officials who fail to respect or implement those rights. Under the Act, the sentence enforcement judge is empowered to impose a fine equivalent to between one and ten days' salary on public officials who, by an act or omission, violate or threaten the rights of minors.

157. The powers conferred on these judges under the Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act (arts. 12 and 13) include: monitoring and supervising the sentences imposed to ensure that minors' rights are safeguarded; fining officials who violate or threaten the rights of minors by an act or omission, without prejudice to their criminal or disciplinary responsibility, as the case may be; and handling and taking decisions on complaints and interlocutory matters related directly to a breach of minors' fundamental rights or in cases where they have been subjected to an unlawful act or disciplinary sanction.

158. Moreover, both the juvenile prosecutor and the government procurator for juveniles assigned to the sentence enforcement court are required under the Act to ensure that the rights of minors are not violated or threatened during enforcement of the sentences.

159. According to the Domestic Violence Act, "domestic violence is any direct or indirect act or omission resulting in injury, physical, sexual or psychological suffering or the death of family members"; psychological violence, physical violence and sexual violence are forms of domestic violence.

160. With a view to preventing and eradicating such acts, the law provides for a number of measures to be taken by court order. They include: requiring the assailant to refrain from

harassing, intimidating, threatening or otherwise ill-treating the victim or any other family member, whether or not they share the same dwelling; ordering the assailant to leave the family home; directing the victim of an assault, at the latter's request, to a place of residence other than the family home where he or she will be protected from further assault; ordering a house search to prevent serious risk to the physical, sexual and psychological integrity or property of any of the residents; temporarily suspending assailants' responsibility for the custody, guardianship, upbringing and education of their children and visiting rights in cases of sexual assault; and issuing a court order for protection and police assistance.

161. In addition, the Act requires public officials to report acts constituting domestic violence that come to their notice in the performance of their duties; this requirement also applies to doctors, chemists, nurses and other persons exercising professions related to health and social welfare who become aware of such acts in the course of their work.

162. Moreover, the Act stipulates that in the event of non-compliance with an order for preventive, precautionary or protective measures, the judge shall certify the order and finding of non-compliance and refer the case to the criminal court for the institution of criminal proceedings. Where the person subject to the order fails to comply with the measures imposed or the agreements concluded in conciliatory proceedings, he or she incurs criminal responsibility and is answerable for the offence of contempt of court.

163. The Criminal Code recognizes premeditation as a circumstance aggravating criminal responsibility. It is deemed to occur when, in offences against human life and the person, the accused, without personal risk, causes or takes advantage of a victim's inability to prevent the attack or to defend himself or herself against the assault. There is a legal presumption of premeditation where the victim is below 12 years of age; in cases of homicide preceded by kidnapping; and in cases of abuse of authority, which also occurs where the accused takes advantage of the victim's weakness due to his or her age or other similar factor, or employs means that weaken the victim's powers of self-defence.

164. In cases of abduction and deprivation of liberty, the Code imposes an aggravated penalty, involving an increase of up to one third of the maximum penalty, when the victim is under 18 or over 60 years of age, or is a person with a disability or a pregnant woman; this provision also applies to cases where, under the rules of international law, El Salvador is required to provide the victim with special protection.

165. In addition, to ensure that the crimes of torture, genocide and forced disappearance do not go unpunished, the Criminal Code establishes the imprescriptibility of criminal action and of the penalties resulting from the commission of such crimes, provided that their commission was initiated after the entry into force of the Code.<sup>29</sup>

166. Furthermore, the Code establishes the offence of abuse of the right of correction, which is punishable by a prison sentence of between three and six months. A similar sentence may be imposed on persons who, through abusive use of means of correction, cause injury to a minor who is subject to their authority, educational or personal care or supervision, or who is under their control by virtue of their profession or office.

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<sup>29</sup> The Criminal Code entered into force on 20 January 1998.

167. Lastly, the Code establishes the crime of torture, which is punishable by a prison sentence of between three and six years where the perpetrator is a public official or employee, the agent of an authority or a public authority, who, in the performance of his or her duties, subjects a person to physical or mental torture or fails to prevent or impede such acts despite being in a position to do so.

168. The National Civil Police have a legal mandate<sup>30</sup> to prevent and fight all kinds of crimes, including those committed against minors, and have created a Family Division to protect the rights of children in police custody.

169. In addition to legislative measures adopted to protect children and adolescents, the State has introduced a large number of administrative and other measures to prevent and punish torture, including the following:

- (a) Establishment of the Women's and Children's Unit of the Office of the Attorney-General of the Republic in December 1992;
- (b) Establishment of the Family Department of the National Civil Police in 1997 and the Juvenile Services Division in 2000;
- (c) Celebration of National Children's Day of Broadcasting, approved by Legislative Decree No. 198 of 16 November 2000. As part of this initiative, publicity material was recorded by children and adolescents for regular dissemination throughout the media with a view to preventing ill-treatment of children and teenagers. The Salvador Association of Broadcasters (ASDER), UNICEF and a number of governmental and non-governmental organizations supported the initiative.

### **C. The right to a name and nationality (art. 7)**

170. Article 7 of the Convention on the Rights of the Child provides for the child's right to a name and nationality. In accordance with its obligations under the Convention, Salvadoran legislation has expressly recognized this right and has established protection mechanisms.

171. The Constitution of the Republic (art. 36) stipulates that "every person has the right to a name by which he or she is identified", and since the word "person" encompasses both adults and children, everyone has the right to an identifying name from birth.

172. The Constitution also recognizes the right of children to know their parents and to be looked after by them (arts. 33, 34 and 36).

173. The Family Code (art. 203) establishes the right of children to know who their parents are, to be legally recognized by them and to bear their family names. This provision is consistent with another provision of the same Code concerning the fundamental rights of minors. Article 351, paragraph 3, of the Family Code stipulates that every child shall be entitled:

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<sup>30</sup> See article 23, paragraph 4, of the National Civil Police Organization Act, Legislative Decree No. 269 of 25 June 1992.

"from birth and at all times, to have and to maintain a name, a nationality, legal representation and family relations, and to enjoy the benefit of a system of identification that certifies his or her true maternal and paternal filiation".

174. The Family Code (art. 203, paras. 2 and 3, and art. 351, paras. 4 and 5) also establishes the right of children "to live with their family and not to be separated from their parents save on legal grounds"; "to be brought up by their parents and to receive from them an education, protection, support and security"; "to know their parents, to be recognized by them and to have their parents assume responsibility for them"; and to receive "education, care and attention under the family's protection and responsibility, and not to be separated from the family except when such separation is deemed, by an administrative or judicial authority, to be necessary in the best interests of the child".

175. The Code recognizes the child's right to ascertain who are his or her parents. This right is transmitted to the child's descendants and is imprescriptible. It also provides (in arts. 187 and ff.) for Family Status Registers, in which records are kept of births, marriages, divorces, deaths, adoptions and other facts or legal transactions relating to natural persons.

176. The Natural Persons (Names) Act, adopted in 1990, addresses various aspects of names such as form, acquisition, elements, changes, use and protection.

177. It is important to mention that the law safeguards a person's dignity in terms of assignment of a name. It stipulates that a first name may not be assigned if it offends human dignity, is unsuitable for humans or is ambiguous in terms of gender, except in the latter case where the name is preceded by another name establishing the person's gender.

178. Mention may also be made of the Register of Family Status and Marital Property Regimes (Transitional) Act, the aim of which is to establish a system for registering, preserving and facilitating the location and consultation of information relating to facts and legal transactions constituting, modifying or terminating the family status of natural persons, and relating to marital property regimes and other legally specified acts or legal transactions. Thus, the entries in the Register include: (a) births; (b) marriages; (c) non-marital unions; (d) divorces; (e) deaths; and (f) other legally specified acts or legal transactions relating to natural persons.

179. The authority and obligation to assign a first name to a child born in wedlock resides with the father and mother and, in the absence of either, with the other parent. In the absence of both parents, a first name may be assigned by the child's siblings, grandparents and uncles/aunts in that order, provided that they have legal capacity. Children born in wedlock and those recognized by the father bear the latter's first family name followed by the first family name of the mother.

180. In the case of a child born out of wedlock, this authority is vested in the mother and, in the absence of the mother, in the child's maternal relatives in the aforementioned order. If the child is recognized on the birth certificate by the father, authority to assign a first name resides with the father and mother. Where children are not recognized by their father, they bear the mother's two family names, and if she has only one, the Civil Register official assigns a common family name to the child unless the mother selects one from among the names of her closest ancestors.

181. Where all of the above-mentioned persons are absent, authority to assign a first name is vested with the Procurator-General of the Republic or his or her Delegate or Representative.

182. Adoptive children may, personally or through their representatives, take the family name or names of the adoptive parent or parents. In this case, the lawful descendants of the adoptive child may also continue to use the family name or names of the adoptive parent or parents.

183. The right to acquire a nationality is protected by the Constitution of the Republic (arts. 90 and ff.). The constitutional categories of national by birth are governed basically by the criteria of *jus soli* and *jus sanguinis* and the sociological criterion of "Central American nation", by virtue of which minors are entitled to a nationality from birth and are at no time left stateless. It should be noted that, to prevent statelessness, Salvadorans by birth have the right to dual or multiple nationality. Under the Constitution, Salvadorans born abroad to a Salvadoran father or mother are Salvadorans.

#### **D. The right to an identity (art. 8)**

184. El Salvador has undertaken to preserve the child's personal identity in accordance with the provisions of the Convention on the Rights of the Child. To that end, the Salvadoran State has adopted key constitutional and legislative measures, chiefly the provisions enshrined in the Constitution of the Republic (art. 36, paras. 3 and 4), which recognize that every person has the right to a name by which he or she is identified, and has further developed and regulated the matter in secondary legislation, including ways of investigating and establishing paternity.

185. The Family Code (art. 351, para. 3) expressly recognizes the right of every child:

"from birth and at all times, to have and to maintain a name, a nationality, legal representation and family relations, and to enjoy the benefit of a system of identification that certifies his or her true maternal and paternal filiation".

186. The Code (art. 367) further stipulates that:

"Where a child is temporarily or permanently deprived of his or her identity, name or nationality and lacks legal representation, the Office of the Procurator-General of the Republic, having been informed of the fact by whatever means, shall automatically initiate the requisite proceedings for restoration of identity."

187. In conformity with the Convention, the Code (art. 373) also establishes a number of prohibitions in order to protect children's identity in circumstances that are particularly injurious to their basic rights. It thus stipulates that:

"It is prohibited to disseminate by any means the names, photographs or identifying characteristics of minors who are the perpetrators or victims of a criminal offence."

188. The Code (art. 375) contains a guarantee of confidentiality with a view to protecting the child's identity. To that end it stipulates that:

"All authorities or individuals involved in investigations and decision-making related to judicial or administrative matters concerning minors, and in the enforcement of judgements, shall maintain secrecy regarding the matters they are dealing with, which shall be deemed private and confidential, and they may not divulge them under any circumstances. However, parents, legal representatives, the Office of the Public Prosecutor



and delegates of the Salvadoran Institute for the Protection of Children shall have access to proceedings and files relating to minors."

189. In Book Two, the Code contains detailed provisions regarding filiation and family status (arts. 133 and ff.). It stipulates, for example, that paternity shall be established by judicial decision, by voluntary recognition or by court declaration; and maternity shall be established, even without express recognition, through proof of birth and the identity of the child, without prejudice to the mother's right to challenge maternity in the event of false registration and by a court declaration.

190. Pursuant to the Code, paternity is established by presumption or by determination in the following cases: (a) children are presumed to be the husband's during marriage and for 300 days after its dissolution or after the issue of a decree of nullity. This presumption holds good, moreover, in the case of nullity of the marriage, even in the absence of good faith on the part of the spouses. It should be noted, however, that this presumption is not applicable when the spouses have been separated for more than one year and the child has been recognized by a person other than the male spouse; and (b) where the mother marries again immediately after enforcement of the judgement without establishing that she was pregnant. The child born after the new marriage will be presumed to be the child of the first husband if he or she is born within 180 days of the conclusion of the second marriage, and will be presumed to be the child of the second husband if he or she is born more than 180 days after the second marriage.

191. Under Salvadoran law, a father may voluntarily recognize his child: (a) on the birth certificate, by providing particulars for registration as the father; the certificate indicates his identity number and other particulars and should be signed by the father if he is in a position to do so; (b) on the marriage certificate or a deed executed before officials of the Departmental Political Governors, the Procurator-General of the Republic and the mayors of municipalities; (c) in a deed before the Procurator-General of the Republic or Departmental Assistant Procurators; (d) in a public instrument, even where recognition is not the primary purpose of the instrument; (e) in wills; and (f) in statements and other legal transactions. In such cases, the court must grant the certification requested by the persons concerned.

192. The same Code provides for involuntary recognition, where a child who has not been recognized is entitled to take steps to have the alleged father summoned before a court in order to declare whether he believes he is the father. A pregnant woman is also entitled to have the man from whom she has conceived summoned before a court in order to state whether he admits to being the father of the child who is about to be born. It is important to note that paternity is declared by the court when it is established through the express or tacit admission of the presumed father, through his sexual relationship with the mother at the time of conception, or through possession of status of the child or other similar facts from which paternity can be unequivocally inferred. Once paternity has been declared, the mother and child have the right to claim compensation from the father for any moral and material damages to which they are legally entitled.

193. It should be mentioned that, during the husband's lifetime, nobody apart from the husband himself can challenge his legally recognized paternity. The opportunity to do so lapses 90 days from the date on which he is informed of the paternity attributed to him by law. If the husband dies either within the period legally accorded to him to disown the child or before the child is born, his paternity may be challenged by the husband's heirs, his ascendants and any other person

who could suffer damage as a result of the alleged paternity. However, this right does not exist if the husband has recognized the child as his own by any legally approved means.

194. The rules governing voluntary recognition of paternity are also applicable to voluntary recognition of maternity. It is assumed that a mother has recognized a child as her own when her name is recorded as mother on the birth certificate. In the absence of voluntary recognition on the part of the mother, the child is always entitled to request that it be legally recorded. Maternity is declared by the court when childbirth and the identity of the child are proved in the proceedings, when the mother expressly or tacitly admits maternity, or on the basis of possession of status.

195. Maternity may be challenged on grounds of false birth or replacement of the true child by the alleged child. This right may be exercised by the child, the real father or mother, or both, in order to confer family rights on the child or his or her descendants; by the alleged mother in order to disown a child that is supposed to be hers; by the spouse of the alleged mother in order to disown a child that is supposed to be his; and by any person whose rights to testamentary or intestate succession to the presumed father or mother are harmed by the alleged maternity.

196. In the case of the child and the true parents, the action to challenge maternity is imprescriptible. The alleged mother and her spouse must exercise their legal right within a year of the date on which they discover that a child has claimed to be theirs; and all other parties are accorded a period of 90 days from the date on which they are informed of the death of the parents or from the date of their return if they were absent.

197. In the event of a violation of the aforementioned rights or their unlawful denial, the law permits the requisite action to be taken to restore the rights concerned in the appropriate courts.

198. As judicial proceedings may be instituted to protect or restore any of the above-mentioned rights that have been violated, the law stipulates that such action may be taken by persons who are legally entitled to act as the representatives of minors. They are: (a) the father and mother, who may act on behalf of their minor children or children without legal capacity; where custody of the child has been judicially awarded to the father or the mother, the former or the latter are exclusively entitled to act as legal representative of the child; (b) the Procurator-General of the Republic, who is entitled to act on behalf of orphans, children of unknown parents, abandoned children, children who have been withdrawn from parental control on legal grounds and children who, for whatever reason, lack a legal representative, while also being without a guardian; (c) persons appointed to administer the child's property, who are entitled to act solely in proceedings related to the property; and (d) persons appointed as guardians or awarded custody of minors or persons without legal capacity who are not subject to parental control.

199. Pursuant to the Office of the Procurator-General Organization Act, the Procurator-General's mandate broadly consists in safeguarding the family and the persons and interests of minors, persons without legal capacity and older persons; in making available preventive legal assistance and psycho-social care; in representing persons judicially and extrajudicially in cases involving the defence of individual liberty and employment rights; and in representing persons judicially and extrajudicially, especially the needy, in family matters and cases involving property and personal rights.

200. As far as minors are concerned, the Procurator-General is required to safeguard the family and the persons and interests of minors and other persons without legal capacity; to provide legal

assistance to needy persons and to represent them judicially in cases involving the defence of individual liberty and employment rights; to act as legal and extrajudicial representative of persons who request the services of the Office of the Procurator-General, where the law so requires; to ensure compliance with obligations arising from family relations and to promote family integration; to issue instruments certifying the voluntary recognition of paternity/maternity and marriage certificates; to act as legal representative of minors and adults without legal capacity, in accordance with family legislation; and to issue certificates addressed to the Office of the Attorney-General of the Republic with a view to instituting criminal proceedings for failure to fulfil obligations of financial maintenance.

201. The Family and Child Protection Unit of the Office of the Procurator-General acts in accordance with the following guiding principles of family law: family unity, equal rights for men and women, equal rights for male and female children, and integrated protection of minors and other persons without legal capacity, older persons, and the mother or father when either has sole responsibility for the household.

202. The functions of the Unit include the following: (a) to ensure compliance with obligations arising from family relations, executing the requisite administrative and judicial procedures; (b) to ensure that, during the administrative stage, conciliation and mediation procedures are used to complete the process of recognition of minors, to determine child support rates, to rule on the departure of minors from the country and to undertake all the other formalities that can be completed at this stage; (c) to promote, as required, voluntary or contentious jurisdiction proceedings or formalities before the family courts, taking the requisite action in respect of judicial applications and court orders; and (d) to provide notarial services where necessary in order to safeguard the family and the child.

203. Lastly, guardianship is governed, according to Salvadoran law, by the principle of subsidiarity and the extended family; in other words, relatives with full legal capacity are required to act as guardians of children or persons without legal capacity and this duty may only be performed by other persons who meet the judicial requirements and who consent to act as guardians in the absence of relatives of the child or person without legal capacity. Under the law, the following persons, in the order in which they are listed, are entitled to act as legal guardians: grandparents, brothers/sisters, aunts/uncles, and first cousins. The law gives the courts discretion to change this order or to dispense with it where there are justified grounds to do so.

### **E. Freedom of expression (art. 13)**

204. The Constitution (art. 6) guarantees everyone's right to express and disseminate his or her thoughts freely, provided that they do not subvert public order or harm the morals, honour or private lives of other persons. Moreover, the article stipulates that this right shall not be subject to prior examination, censorship or surety.

205. It should be mentioned that the Drafting Committee that drew up the 1983 Constitution referred in its final report to the right to freedom of expression as follows: "The very concept of democracy presupposes that those who do not agree with its basic assumptions should be free to oppose them in a peaceful way by disseminating their ideas by lawful means. The strength of democracy lies in leaving its basic assumptions open to discussion and to all forms of opposing ideas expressed in writing. Lack of freedom to disseminate contrary ideas is in fact one of the characteristics of totalitarianism. A democratic regime cannot behave in this manner; on the contrary, it must always be strong enough to withstand opposition of any kind." The Drafting

Committee's report, in accordance with article 268 of the Constitution, has the status of an authoritative source for the purpose of interpreting the Constitution.

206. The Family Code (art. 351, para. 9) recognizes the right of every child:

"To be heard by his or her parents, guardians or other persons in a position of responsibility, and to express his or her views freely on all matters affecting him or her; the views thus expressed shall be taken into account in family decisions and in administrative and judicial proceedings."

207. With regard to adoption, the Code (art. 174) expressly recognizes that:

"A child over 12 years of age shall also give his or her consent to the adoption, even where the child attains that age in the course of the proceedings."

208. With regard to guardianship, moreover, the Code stipulates that children over 12 years of age shall be heard before the appointment of a legal or court-appointed guardian and also before the appointment of a testamentary guardian; moreover, the family judge is required by law to hear children over 12 years of age in all proceedings and formalities affecting them; below that age, the judge is required to have contact with the child and, if possible, to engage in a dialogue with him or her.

209. The Juvenile Offenders Act (art. 93) stipulates the following with regard to oral participation by juvenile offenders in judicial proceedings:

"Having received the evidence, the judge shall give the opportunity to speak for not more than 30 minutes to the juvenile prosecutor, counsel for the defence if there is one, and the juvenile procurator, in that order, so that they may present their conclusions, except where they should be allowed a longer period of time on account of the nature of the facts, the evidence received and the issues to be resolved. The parties shall each be allowed 15 minutes to reply, provided that they confine their remarks to a refutation of arguments by the adverse party that have not been discussed; if the victim or defendant wishes to speak, he or she shall be given the opportunity to do so. In the event of manifest abuse of the right to speak, the judge shall call the speaker to order. The child shall have the right to the last word, and immediately afterwards the judge shall declare the proceedings closed and shall announce his or her final ruling at the same hearing."

210. To ensure that this right is safeguarded, both the Government and private enterprise have taken a number of initiatives, including the following:

- (a) By Legislative Decree No. 198 of 16 November 2000, 10 December each year was declared National Children's and Teenagers' Day of Broadcasting, UNICEF having already established an International Children's Day of Broadcasting;
- (b) The media represented in the Salvadoran Association of Broadcasters (ASDER), including most of El Salvador's radio and television channels, which also operate Internet sites, have launched an initiative that gives children and teenagers the opportunity to express their views and to promote their rights and obligations. The children and teenagers taking part in the initiative are aged between 7 and 18, may come from any part of the country and belong to a variety of organizations.

211. The National Secretariat for the Family has supported the initiative and encouraged children and teenagers to take part, the aim being to broaden the scope of action to ensure that Salvadoran society recognizes and respects children's and teenagers' legal right to freedom of expression. The following bodies are involved in this effort: the Legislative Assembly, UNICEF, the Salvadoran Institute for the Protection of Children, the Ministry of Education and the Ministry of Public Health and Social Welfare, the offices of the ombudsman for children and teenagers, and NGOs.

#### **F. Respect for the views of the child (art. 12)**

212. The new National Policy for the Integrated Development of Children and Adolescents took into account the views of children, who were actively involved in its formulation as beneficiaries of the policy. Three consultative workshops were organized in the eastern, central and western regions of the country, as well as two national forums whose conclusions constituted a vital input for the formulation of the new policy. This illustrates the existence of public interest and the political will to take account of the views of children and adolescents in structuring the national policy.

#### **G. The right of access to appropriate information (art. 17)**

213. The Family Code (art. 372) expressly prohibits the sale of immoral material in order to protect all children from material likely to have a harmful influence on their upbringing. It stipulates the following:

"It is prohibited to sell or supply to minors books, illustrations, videos, magazines, objects and any other articles that contain writings, recordings, drawings or photographs that may be regarded as incompatible with the child's morals and dignity.

Magazines, publications and films for children may not contain illustrations, photographs, articles or advertisements featuring alcoholic drinks, tobacco, narcotic drugs or hallucinogenic substances that generate physical or psychological dependency, weapons and ammunition, or any other material that has a harmful influence on their moral development."

214. With regard to access to information, the Salvadoran Institute for the Protection of Children has established a Child and Family Information Centre (CINFA), which maintains a database containing 90,000 documents. The Centre, which forms part of a network with other focal points throughout Latin America, is a programme sponsored by the Inter-American Children's Institute of the Organization of American States (OAS). The Centre deals each year with an average of 2,800 enquiries for specialized information about children, adolescents and the family, some 65 per cent of which come from children and adolescents.

#### **H. Freedom of thought, conscience and religion (art. 14)**

215. The Constitution of the Republic (art. 25) guarantees the free exercise of all religions in the country, subject to no other limitation than the requirements of morals and public order.

216. The Family Code (art. 349) includes among the principles on which the protection of children is based non-discrimination on grounds of religion and the religious status or practices of children's parents, guardians or custodians.

217. The same Code (art. 351, para. 18) recognizes the child's right to freedom of thought, conscience and religion. It stipulates that every child has the right:

"Not to be subjected to religious practices or teachings other than those followed in the child's home, and the right to freedom of thought, conscience and religion consistent with his or her evolving capacities and subject to the limitations prescribed by law."

218. With a view to ensuring respect for the right and obligation of parents and, where appropriate, legal guardians to provide guidance to children in the exercise of their rights in a manner consistent with their evolving capacities, the State has included among the norms governing custody of children the duty of the father and mother to bring up their children to observe the precepts of morality, solidarity and respect for their fellow human beings, fostering family unity and a sense of their responsibility as children, future parents and citizens; a further requirement is that the children's religious education should be determined by both parents. It should be noted that the guardian has the same rights and duties with respect to his or her ward as are granted to or imposed on parents with respect to their children, with such modifications and limitations as are prescribed by law.

219. In addition, the General Regulations governing Detention Centres for Juvenile Offenders (art. 3) stipulate that juvenile detainees shall have the right to receive spiritual guidance, without prejudice to the rights recognized in the Constitution, the international treaties, conventions, agreements and other instruments signed and ratified by El Salvador, and other secondary legislation.

### **I. Freedom of association and peaceful assembly (art. 15)**

220. The Constitution of the Republic (art. 7) states that the inhabitants of El Salvador have the right to associate freely and to assembly peacefully and without weapons for any lawful purpose, and that nobody may be obliged to belong to an association.

221. This constitutional guarantee may be suspended (art. 29) only in the event of war, invasion of the territory, rebellion, sedition, a disaster, epidemic or other catastrophe, or a serious disturbance of public order, except in the case of meetings or assemblies for religious, cultural, economic or sporting purposes. This suspension may apply to the whole or part of the territory of the Republic and its duration may not exceed 30 days. Once this period has elapsed, the suspension may be extended for a similar period by a new decree if the circumstances giving rise to the suspension persist; if no such decree is issued, the suspended guarantees are fully restored.

222. With regard to this fundamental right, the Supreme Court of Justice issued the following ruling on 30 June 1999 on *amparo* application No. 143-98:

"With regard to the right to freedom of association ... legal opinion holds that freedom of association embraces, within a single term, a number of different components: (a) first, it means freedom for individuals to establish or join associations *without being prevented from doing so by the authorities*; hence, it is an individual freedom that is exercised collectively; (b) second, it means freedom for associations, once established, to carry out activities and to increase their resources; this right is exercised not by the association's individual members but by the group as a legal person separate from its components; in other words, it is not a right enjoyed by the members viewed as individuals but a freedom enjoyed by the group; (c) lastly, it means the freedom of the members of an

association to oppose decisions taken internally by the group. This relates to the conflict of freedoms that arises between the natural persons who are members of the group and the collective legal person that is constituted by the association. It follows ... that the right of association is twofold: on the one hand, it is a subjective right exercised by individuals and, on the other, it may only be exercised if there are other individuals who are also willing to exercise that right."

223. Furthermore, this guarantee has also been included among the fundamental rights of minors set forth in the Family Code (art. 351, para. 24). The article recognizes the right of every child "to associate and assemble peacefully in accordance with the law".

224. To give effect to this provision, which is contained in both domestic and international instruments, action has been taken at a number of levels, including the following: the National Secretariat for the Family has made provision, in formulating the public policies for which it is responsible, for the involvement of organizations whose members are children and adolescents; it has promoted, in cooperation with the Pan American Health Organization (PAHO), a Follow-up Committee on the current policy for children and adolescents, composed of teenagers and young leaders representing various organizations throughout the country and from different departments of the national territory, who are elected in a direct and public ballot each year by those attending the various consultations, meetings and forums. During the period from 1996 to 1999, the Salvadoran Institute for the Protection of Children organized National Congresses of Children and Adolescents with an average attendance of 1,500. In a democratic and representative ballot, the participants elected a National Committee of 22 members and alternates who represented them in meetings with the Government and various governmental bodies. The congresses and the elected committees were representative of religious, ecological, student, cultural and labour groups as well as juvenile offenders, young people with disabilities and others. They had interviews with officials of the central Government and municipal governments and with representatives of international agencies, and took part in forums and conferences on children, adolescents and democracy. The congresses provided input for the "Young Country" programme, a pilot version of which was launched in 2000 in seven municipalities, involving 7,000 direct participants to date. The project is expected to achieve nationwide coverage in 2001, with branches in 141 (53.8 per cent) of the country's 262 municipalities. The programme's offices are based in the Houses of Culture of the National Council for the Arts and Culture (CONCULTURA) and its aim is to encourage children and adolescents to play a prominent role in public decision-making at the local (municipal) level, and to contribute to their development through recreational and educational activities, including art, and vocational training from the age of 16, above all providing opportunities for leadership, not only for the young people themselves but for the future of the country.

#### **J. Protection of privacy (art. 16)**

225. The Constitution of the Republic (art. 2, para. 2) safeguards the right to honour, personal and family privacy and self-image. It also recognizes (arts. 20 and 24) the right of everyone to inviolability of the home, correspondence and communications.

226. With regard to the right to honour, the Supreme Court of Justice issued the following ruling on 16 June 1999 in response to *amparo* application No. 12-D-96: "The right to honour, that is to say the deference and esteem that an individual enjoys in the society in which he or she lives, is a fundamental right that directly affects the person's dignity; this right is composed of two closely

related aspects or activities: (a) immanence, representing the esteem in which we hold ourselves, that is to say the value we place on our own moral dignity; and (b) transcendence or externality, consisting of the recognition of our dignity by others. It is therefore commonly affirmed that honour, or the sense of our own dignity as well as its appreciation or reputation, is a good to which the individual has a right by virtue of his or her status and should be universally respected. ... It is thus a right linked to one's personality, inasmuch as it is derived from a person's dignity, and as such it must be regarded as unwaivable, inalienable and imprescriptible; it implies, in and of itself, the existence of a personal and exclusive space vis-à-vis the action and scrutiny of others; that is to say, it is a right pertaining to privacy."

227. El Salvador has succeeded, in general terms, in enforcing the principle set forth in article 16 of the Convention on the Rights of the Child concerning protection of children's privacy. To that end, it has incorporated the following guiding principles in its secondary legislation to ensure compliance with the principle: the Family Code (art. 351, para. 7) stipulates that every child has the right to recognition and protection of his or her dignity and personal and family privacy. The Code (art. 365) regulates the protection of children's moral integrity as follows:

"The child's moral integrity shall be respected; this shall include preservation of his or her image, identity, independence, values, ideas, beliefs, environment and personal effects."

228. The Family Court Procedure Act (art. 215) lays down a general principle governing the publication of family court case law, stipulating that the names of parties and any circumstances that might permit their identification shall not be made public in order to protect children's honour and privacy.

229. The Act also contains a specific provision (art. 203) concerning adoption, which stipulates that, upon enforcement of the court's decision regarding adoption of a minor, a certified copy must be sent to the Family Status Register in the place of habitual residence of the adoptive child so that a new birth certificate may be entered in the appropriate register which does not mention the adoptive child's ties with his or her biological parents. In addition, a copy must be sent to the Family Status Register in the place where the original birth certificate of the adoptive child is registered so that it may be annulled and removed without stating the grounds for such annulment. The Register is nevertheless required to keep a record of the grounds in question in a confidential register; it is furthermore prohibited to issue certified copies of the cancelled birth certificate or of the entries in the confidential register except in response to a court order.

230. The Juvenile Offenders Act (art. 5) recognizes the child's right to respect for his or her privacy and not to have any information published that might make it possible, directly or indirectly, to establish his or her identity.

231. In accordance with this article, administrative and judicial proceedings are confidential, and no certificates or records of the proceedings may be issued unless one of the parties so requests; it is particularly important, when such documents have to be copied, that this is done with discretion and that publicity is avoided. When cases are heard in juvenile courts, the law requires the hearings to be held in closed session, without a jury.

232. The Salvadoran Institute for the Protection of Children Act (art. 4(d)) provides for an investigative procedure aimed at completing the prior formalities for the conduct of an inquiry and the adoption of interim measures to protect minors whose rights are at risk or have been



violated, or who are orphans; where applicable, this procedure also protects minors whose right to privacy is threatened or has been violated.

233. Although the Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act contains no specific provision relating to this issue, it establishes as a general principle (art. 2) that the Juvenile Offenders Act should be referred to in matters relating to guiding principles, rules of interpretation and application, and all rights enjoyed by minors. It also includes a provision to the effect that the provisions of both the Criminal Code and the Juvenile Offenders Act may be applied, as a supplementary frame of reference, in all matters that are not expressly regulated.

234. The Domestic Violence Act (art. 19) requires the Procurator-General of the Republic, the Attorney-General of the Republic and the Procurator for the Defence of Human Rights to publish a statistical report on domestic violence every three months. In compiling the report, they are required to respect the privacy of victims and assailants, and it is prohibited to publish any information that may be used, directly or indirectly, to identify the victims.

235. The Act establishes the principle of confidentiality of proceedings and formalities conducted under the Act, making an exception, however, for the parties and for lawyers, procurators, prosecutors and experts involved in the proceedings.

236. The Code of Criminal Procedure (art. 272) also contains general provisions aimed at protecting the privacy of individuals in criminal proceedings. The Code establishes the principle, as a general rule, that criminal proceedings should take place in public. However, it recognizes as an exception to the rule the possibility of total or partial confidentiality in cases where morals, the public interest or national security so require or where it is specifically provided for by law. In addition, the Code stipulates that only parties to the proceedings and persons authorized to participate may have access to the preliminary investigations, so that they are in fact confidential; the court may thus require the parties to maintain discretion regarding facts that they witness or of which they are aware, preserving, where applicable, the privacy of minors cited in the judicial proceedings.

## **VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **A. Parental direction and guidance (art. 5)**

237. With regard to parental direction and guidance, the Constitution (art. 33) stipulates the following:

"The law shall regulate personal and property relations between spouses, and between spouses and their children, establishing reciprocal rights and duties on an equitable basis, and shall establish such institutions as are necessary to guarantee their applicability. It shall also regulate family relations resulting from a stable union between a man and woman."

238. The Constitution (art. 36) requires parents to provide their children, whether born in or out of wedlock, with protection, support, education and security. The Constitution also stipulates (art. 34) that:

"Every minor shall have the right to live in family and environmental conditions conducive to his or her integrated development, and to that end he or she shall enjoy the protection of the State."

239. With regard to parental authority, Book Three of the Family Code, entitled "Parental Authority" is devoted exclusively to parent-child relations, and Book Four, Title II, lays down rules governing guardianship or custody of minors and persons without legal capacity who are not subject to parental authority.

240. As stated in the note submitting the Family Code to the Legislative Assembly, the aim of the Code's provisions regulating parent-child relations, in accordance with article 5 of the Convention on the Rights of the Child, is "that there should be balanced, stable relations, imbued with affection; that the children should benefit, at the different stages of their development, from loving, firm and stable treatment that meets both their material and spiritual needs."<sup>31</sup>

241. In Book Three, Title I (arts. 202 and ff.), the Code establishes the principle of equal rights of children vis-à-vis their parents regardless of their filiation; it thus abolishes the stigmatizing classification of children as legitimate and illegitimate and other types of classification that affect their rights vis-à-vis their parents. It also sets forth the rights and obligations of children.

242. Title I recognizes that children have rights of their own that must be respected by their parents, family and community and by the State, but it also states that children have obligations that they must fulfil as active subjects within the parent-child relationship.

243. The Family Code (art. 203) recognizes, *inter alia*, the following rights: the right of children to know who are their parents; the right to be recognized by them and to bear their family name, which makes it necessary to establish ways and means of investigating and establishing paternity; the right to live in their family and not to be separated from their parents save on legal grounds; the right to receive from their parents care, education, protection, support and security; the right to inherit from their parents, on an equal basis, regardless of filiation. All these rights are recognized, with special emphasis being placed on the parents' obligation to look after their children and to assume responsibility for their well-being, and the need for children to live together with their parents and family, since this is the natural environment for the bio-psycho-social development of a child's personality.

244. The rights of children enshrined in Book Three of the Family Code are reaffirmed in Book Five, Title I of which sets forth children's fundamental rights and obligations.

245. The exercise of parental authority is also addressed in the Code (art. 206), which treats it as a social function assigned to parents and not as a right of parents vis-à-vis their children. The State is therefore also required to ensure that this function is performed and to guarantee the higher interests of the child when his or her rights are at risk or have been violated.

246. Parental authority is perceived as a social function and as consisting of a set of instrumental powers whose purpose is fulfilment of the duties and obligations imposed on parents by the law. The social function attributed to parental authority in the Code ensures that it serves as a guarantee of the integrated protection of the child and that its exercise does not depend on the parents' discretion but on the interests of the child. Parental authority is unwaivable, cannot be delegated and is temporary and subject to judicial control.

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<sup>31</sup> Note submitting the Family Code to the Legislative Assembly, dated 3 September 1992. The note contains a summary of the Code.

247. In accordance with family legislation, parental authority imposes a series of obligations on parents vis-à-vis their children, and to ensure fulfilment of these obligations the legal system confers on them certain powers, which are denoted by the term parental authority. But this authority is not perceived as a right of parents over their children but as a function assigned to them. The parent has powers that do not strictly constitute a subjective right, since such a right is freely exercised and is conferred in the interest of its possessor, while parental authority consists of instrumental powers exercised in the interests of the child and closely linked to the fulfilment of obligations.

248. It follows that, in accordance with the Convention on the Rights of the Child (art. 5), the purpose of parental authority is to ensure that children receive direction and guidance from their parents in the exercise of their rights.

249. The institution of guardianship is regulated by Book Four of the Family Code (family support and guardianship) in Title II (arts. 272 and ff.), the basic premise being that guardianship generates relations similar to those resulting from family ties and operates to some extent as a substitute for parent-child relations. Salvadoran legislation therefore defines guardianship as "a responsibility imposed on certain individuals for the benefit of minors or persons without legal capacity who are not subject to parental authority, in order to ensure protection or care of their person and property and their representation in legal matters".

250. It is regarded as an institution whose purpose is to ensure representation of and support for adults with disabilities and minors who are not subject to parental authority. It performs a function that replaces parental authority and is also subject to judicial control and supervision to ensure that minors and persons without legal capacity can exercise and enjoy their rights.

#### **B. Parental responsibilities (art. 18, paras. 1 and 2)**

251. With regard to the State's obligation under article 18, paragraph 2, of the Convention to render assistance to parents and legal guardians in the performance of their responsibilities, the Constitution of the Republic (art. 34) requires the State to provide protection with a view to safeguarding the right of every child to live in family and environmental conditions conducive to his or her integrated development. It also stipulates that the law shall determine the duties of the State and shall create the institutions for the protection of mothers and children.

252. According to the Family Code (art. 207), parental authority should be exercised by both parents jointly or by only one if the other is absent.

253. The legislation emphasizes that the obligations inherent in parental authority are incumbent on both parents and that the higher interests of the child is a guiding principle of family law laid down in the Code itself (arts. 3 and 350), so that parents or guardians should always be mindful of the higher interests of the child or ward in exercising parental authority.

254. Book Five of the Family Code (arts. 344 and ff.) establishes a special child protection regime, laying down the principles on which child protection is based, and setting forth the duties of the family, society and the State in ensuring his or her integrated protection. This protection regime is applicable both to minors and to their parents, guardians and custodians, as well as to the authorities, organizations and individuals involved in their education.

255. In compliance with its constitutional mandate and with the provisions of the Convention, the Family Code (art. 348) expressly provides for special State protection for minors; and Book Five, Title III, of the Code specifies the duties of the State and the National System for Protection of the Family, Children and Older Persons. It establishes, *inter alia*, the obligation to formulate policies to protect children, the family and older persons, and to promote care, protection and rehabilitation programmes on behalf of the family, children and older persons.

### **C. Separation from parents (art. 9)**

256. Salvadoran legislation gives effect to the Convention provision (art. 9) that a child shall not be separated from his or her parents, except when such separation is found by a court to be necessary for the best interests of the child. Under Salvadoran legislation, the separation of a child from his or her parents may be authorized only when a family judge orders the suspension or loss of parental authority on grounds prescribed by law.<sup>32</sup>

257. The procedure for separating a child from his or her parents takes the form of judicial proceedings pertaining to loss or suspension of parental authority. These are oral proceedings in which all interested parties participate and specific evidence must be provided in support of the application for suspension or loss of parental authority.

258. The grounds for both loss and suspension are serious facts and circumstances attributable to the parents, by act or omission, which place the child at risk of psychological and physical harm and seriously impair his or her integrated development. In such cases, the family judge is authorized to order, as a measure of protection for the child, the exclusion of the father or mother from the family environment which gave rise to the application for suspension or loss of parental authority.

259. El Salvador's family legislation contains a number of provisions designed to safeguard the right of a child who has been separated from one or both parents to maintain personal relations and direct contact with both. The Family Code (art. 351, para. 8) stipulates that every child has the right to maintain personal relations and direct contact with both parents on a regular basis when he or she has been separated from one or both of them, except where this would be contrary to the best interests of the child. This right includes members of the extended family, especially grandparents.

260. The Code (arts. 216 and 217) addresses the issue of who should be given custody of the child when the parents live apart, stipulating that both parents should have custody and, in the absence of agreement, that the family judge should decide the matter in the light of the child's interests after consulting the Procurator-General of the Republic. The Code also requires both parents to maintain an affectionate relationship and personal contact with the child, even though they live apart, in order to promote the normal development of his or her personality.

261. In the event of divorce, the Code (art. 111) requires parents who intend to divorce, where they have children subject to parental authority, to agree on who should be given custody of the children, how much support each should contribute to the upkeep of the children, and the regime for visits, contacts and longer stays, to ensure that they stay in touch with both parents. Where

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<sup>32</sup> See articles 240 to 242 of the Family Code.

agreement cannot be reached between the parents, or where the agreement is contrary to the interests of the child, the judge decides the matter, after consulting the Procurator-General of the Republic, in the light of the Family Code.

#### **D. Family reunification (art. 10)**

262. Fulfilment of the obligations contained in the Convention on the Rights of the Child (art. 10) is backed by Salvadoran family legislation set forth in the Family Code (art. 351, para. 8), which recognizes the right of every child:

"To maintain relations and contact with both parents on a regular basis when he or she has been separated from one or both of them, except where this would be contrary to the best interests of the child; this right includes members of the extended family, especially grandparents."

263. The Code (art. 350) expressly states that the best interests of the child means everything that promotes the child's physical, psychological, moral and social development with a view to ensuring the full and harmonious development of his or her personality, and that, based on those interests, the child shall have priority in receiving protection and help in all circumstances.

#### **E. Illicit transfer and non-return (art. 11)**

264. To counter the illicit transfer of children abroad, Salvadoran legislation in the Family Code (art. 208, last paragraph) stipulates that every child requires the authorization of both parents in order to leave the country. The authorization must be submitted in certified form to the migration offices when the child is not travelling in the company of his or her parents; and when the child is leaving the country alone or in the company of one parent, the other parent's authorization must be presented.

265. There is no up-to-date information on the phenomenon of illicit transfer abroad or non-return, although such information is necessary. The Salvadoran Institute for the Protection of Children is aware of an average of 30 cases of illicit transfer or non-return each year, but according to NGO investigations this number is exceeded by the number of illicit transfers for prostitution.

#### **F. Recovery of maintenance for the child (art. 27, para. 4)**

266. With regard to the payment of maintenance as a guarantee of the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development, the Family Code (arts. 203, 206 and 221) stipulates that every child has the right to receive from his or her parents care, education, protection, support and security; it also imposes a corresponding obligation on both parents in accordance with their means.

267. Moreover, the Code stipulates (arts. 108, 111 and 115) that when a divorce is granted, agreement must be reached on the maintenance payments to be contributed by each parent to the upkeep of the children. In the absence of agreement between the parents, the family judge decides on the amount of maintenance to be paid by each parent.

268. To ensure payment of child support by a father or mother who intends to leave the country, the Code (art. 258) provides for restrictions on migration as a precautionary measure, authorizing

the judge to issue a court order whereby a person who has been ordered to pay provisional or final maintenance is prohibited from leaving the country until prior and sufficient security for the fulfilment of that obligation has been provided.

269. With regard to the right of every child to financial support, mention should be made of the provision of the Family Code (art. 249) which establishes a pregnant woman's right to demand maintenance from the father throughout pregnancy and for three months after delivery, including costs pertaining to childbirth.

270. Where parents fail to comply with the obligation to provide child support, the child may institute maintenance proceedings under the Family Court Procedure Act and this may give rise to an order of precautionary measures to guarantee payment of the support. The court may order the determination of a sum of provisional support pending completion of the proceedings and registration of the application for support in the relevant registers.

### **G. Children deprived of their family environment (art. 20)**

271. With regard to the State's obligation to provide special protection and assistance to children who are temporarily or permanently deprived of their family environment, the Constitution of the Republic (arts. 34 and 35) requires the State to render such assistance and to create the necessary institutions for the provision of special protection and assistance to children.

272. Pursuant to this mandate, the Salvadoran Institute for the Protection of Children (ISPM) was established in 1993 to implement and monitor compliance with the National Child Welfare Policy. Its powers include assessing threats to and violations of the rights of minors and the circumstances of orphan children, investigating and appraising their situation and taking any measures needed to protect the child. Such measures include family placement and placement in alternative care. They may be challenged or contested in the family courts by any party with a legitimate interest in the case.

273. The ISPM runs 15 hostels accommodating, on average, 2,200 children whose rights have been violated. There is a hostel for children with disabilities and one for children living with HIV.

274. Moreover, to ensure that no arbitrary measures are taken, the Family Law Procedure Act empowers family judges to exercise judicial control over all protective measures ordered or implemented by the ISPM. They may be confirmed, modified, revoked or terminated, depending on the higher interests of the child.

### **H. Adoption (art. 21)**

275. In conformity with the Convention on the Rights of the Child, the chapter in the Family Code on adoption clearly specifies its purpose:

"Adoption is a family and social protection institution, established specifically with the higher interests of the child in mind, its purpose being to provide the child with a family that ensures his or her integrated development."

276. The Code (art. 165) states that the whole body of legislation is framed in such a way as to give priority to the higher interests of the child over the interests of the adoptive parents or any other party, including the biological parents.

277. In addition, the Code (art. 168) contains a special guarantee which stipulates that, in order to safeguard the best interests of the child and ensure respect for his or her fundamental rights, adoption must in all cases be authorized by the Procurator-General of the Republic and the ISPM, the aim being to collect all relevant information pertaining both to the child to be adopted and to the adoptive parents.<sup>33</sup>

278. Moreover, to ensure that priority is given to the higher interests of the child, the consent of the biological parents must be ratified at a hearing before the family judge. The adoptive parents are also required to attend the hearings in person and once the adoption has been authorized by a judicial decision, the court convenes a hearing to hand over the child to the adoptive parents. The adoptive parents are again required to attend this hearing in person, since its purpose is to give the judge an opportunity to inform them of their obligations and rights.<sup>34</sup>

279. The Code (arts. 174 and 182) stipulates, in the light of article 21 of the Convention on the Rights of the Child, that adoption is only permissible in view of the child's status concerning parents, relatives and legal guardians, and it expressly states that children are subjects of adoption and that the informed consent of the parents who will exercise parental authority is necessary for the adoption of a child. The Family Code also regulates cases in which the Procurator-General of the Republic must give his or her consent, as in the case of orphans, children of unknown parentage or children in guardianship. The Code (art. 174) stipulates that children over 12 years of age must give their consent to an adoption.

280. Again with the aim of safeguarding the best interests of the child, Salvadoran family legislation lays down general requirements in the Family Code (arts. 171 and 184) for all adoptive parents and additional requirements for foreign adoptive parents, since the child will be leaving his or her country of origin and monitoring will be more difficult. The purpose of these additional requirements for foreigners is to enable the court to satisfy itself that an intercountry adoption is the best option for the child in terms of his or her higher interests.

281. The adoption procedure takes place in two stages: the administrative stage involving the ISPM and the Office of the Procurator-General of the Republic, and the judicial stage involving the family court. Their roles have been clearly defined since the entry into force of the Family Code in 1994. The adoption procedure has safeguarded the rights of children and of their family and has been implemented as a measure of last resort following the exhaustion of family remedies. The ISPM and the Office of the Procurator-General have been designated as the central authority.

282. Moreover, the Family Court Procedure Act (art. 193) stipulates that, where the adoptive parents are foreigners living outside the country, they must present an officially authorized certificate from a public or state-run child or family protection agency stating that they meet the adoption requirements laid down by law in their home country and giving an undertaking to monitor the situation of the child in the country of residence of the adoptive parents.

283. In addition, the foreign adoptive parents must present a certificate of the results of the technical studies conducted by experts abroad, so that the judge can verify the authenticity of all information contained in the studies.

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<sup>33</sup> See articles 191 and 192 of the Family Court Procedure Act.

<sup>34</sup> See articles 195 and 202 of the Family Court Procedure Act.

284. To ensure that the child enjoys the full range of rights and to ensure effective observance of the principle of equality of children, the Family Code (art. 167) provides for full adoption, which is defined as "adoption whereby the adoptive child, to all intents and purposes, becomes part of the adoptive family as a child of the adoptive parents, and is completely detached from his or her biological family, vis-à-vis which the child has no further rights or obligations". This type of adoption makes the adoptive ties more secure and promotes the child's integration into his or her new family. Moreover, to protect the future interests of the child, Salvadoran legislation stipulates that, in cases of full adoption, the legal impediments to marriage on account of kinship remain in force.

285. Adoption may be effected jointly by the two spouses or it may be effected on an individual basis, in which case the adoptive child takes the adoptive parent's two family names.

286. Salvadoran legislation recognizes certain special circumstances arising from family relations. Thus, it also provides for adoption of the spouse's child and for adoption of a specific child, which occurs in cases where the child has lived in the adoptive parent's family for at least one year and where the adoption is a voluntary act. Salvadoran legislation also provides for the adoption of adults.

287. The Republic of El Salvador recognizes and permits both domestic and intercountry adoption. Under the Family Code (art. 184), adoption by foreigners occurs when local adoption possibilities have been exhausted and preferably when the adoptive parents are citizens of States with which adoption treaties have been ratified.

288. In the 1990s, El Salvador began to participate as an ad hoc member in the negotiations of the Hague Conference on Private International Law that culminated in May 1993 in the adoption and signing of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, an event that marked the centenary of the founding of the Hague Academy of International Law.

289. El Salvador did not sign the Hague Convention at the time but acceded to it in 1996 and ratified it in 1998. The negotiations on the Convention and the final text were actually based on article 21 of the Convention on the Rights of the Child.

290. The Hague Convention contains a similar provision stipulating that children may be placed in adoption when it has been established that placement is not feasible in their country of origin, a provision that is binding on the central authorities of El Salvador, since the Convention became part of Salvadoran law on ratification and prevails over secondary legislation in the event of a conflict between the two.

291. This was a major step forward in the relevant legislation, since there was no provision previously for full adoption – the basis of intercountry adoption – but only simple adoption, which meant that the ties of consanguinity with the family of origin were maintained.<sup>35</sup> Intercountry adoptions presuppose the severance of such ties.

292. It should be mentioned that there was lively discussion during the negotiations on the Convention about the fact that persons involved in adoption procedures reaped excessive

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<sup>35</sup> See the 1955 Adoption Act.



financial rewards, since it was common knowledge that very high professional fees were paid in some cases to those who arranged adoptions: the cost of an adoption was somewhere in the region of US \$15,000. It was therefore decided to include a provision clearly prohibiting the payment of excessively high fees and the reaping of undue profits from adoptions. Compliance with this provision was to be controlled by the central authorities.

293. The Family Code states that El Salvador may sign bilateral and multilateral agreements concerning intercountry adoption. Such agreements are also permissible under the Hague Convention, which clearly stipulates that it does not affect existing or future bilateral agreements concluded by the contracting States. The Convention also states that children should be placed through the competent authorities, that is to say the central authority designated by each State.

294. To date El Salvador has not succeeded in establishing effective coordination arrangements with the central authorities of other countries, although such coordination is necessary to draw on their experience and ensure effective compliance with the obligations incurred under the Hague Convention.

### **I. Periodic review of placement (art. 25)**

295. In accordance with the constitutional obligation imposed on the State to create institutions for the protection of mothers and children, the ISPM was established in El Salvador in 1993 to implement and monitor compliance with the National Child Welfare Policy and to provide children with integrated protection. This protection is based on the rights of the child set forth in the Constitution of the Republic and the Convention on the Rights of the Child. The powers conferred on the ISPM under the Act establishing the Institute (art. 4) include the preparation of welfare plans and programmes for children in state-run and municipal centres and supervision of the institutions that look after children. In administrative terms, therefore, the ISPM is responsible for supervising and reviewing the treatment provided to children.

296. All the ISPM's activities are subject to judicial control by the family courts, in accordance with the provisions of the Family Court Procedure Act (art. 146).

297. Judicially ordered protection measures applicable to children in state-run child-care institutions are subject to periodic review by the family courts every six months with a view to their maintenance, replacement, modification or termination.<sup>36</sup>

298. The ISPM's Registry and Supervision Division reviews the operating conditions and the quality of care offered by 39 NGOs, which provide residential services for children and adolescents throughout the country. The residential centres run by the ISPM are continually supervised by the Institutionalized Care Division.

### **J. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)**

299. Under the Family Code (art. 242), the exercise of parental authority is subject to judicial control precisely in order to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, ill-treatment, exploitation or sexual abuse while in the care of parents, legal guardians or any other person who has the care of the child.

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<sup>36</sup> See article 83 of the Family Court Procedure Act.

300. Salvadoran law spells out the circumstances that give rise to suspension and loss of parental authority, including all forms of physical or mental injury or abuse of children by persons responsible for their care. The procedure for suspension or loss of parental authority may be initiated automatically by the court, by the Procurator-General of the Republic or by any blood relative of the child.

301. Guardianship is also subject to judicial control. The family court may separate the child from a statutory or court-appointed guardian who subjects him or her to any form of injury.<sup>37</sup>

302. The Code (art. 369) also prohibits the sale of harmful products to minors.

303. Lastly, the Code (art. 351, para. 26) stipulates that the fundamental rights of children include the right of a child who has been the victim of an offence against sexual freedom to receive material, moral and psychological support.

304. Under the Family Court Procedure Act (art. 144), proceedings for protection of the rights of a child may be instituted before a family court when the child is at risk or has been subjected to violence, with a view to halting the abuse, ordering any measures of protection deemed necessary in the light of his or her higher interests, and compensating the child for any harm or injury inflicted.

305. The purpose of the Salvadoran Institute for the Protection of Children Act (art. 23, para. 3) is to protect children who are abandoned or lost, who engage in vagrancy or begging or who are hired for begging, who are victims of ill-treatment, and, in general, whose rights are at risk or have been violated.

306. The Domestic Violence Act (art. 3) defines domestic violence as any direct or indirect act or omission that causes injury or physical, sexual or psychological suffering to or the death of a family member. The Act is specifically designed to play a preventive role and it also provides for measures of protection.

307. The Criminal Code (arts. 199 and ff.) punishes violations of family rights and obligations, establishing the offences of abandonment and neglect, domestic violence, abuse of the duty of correction and others. Title IV (arts. 390 and 391) also defines offences against sexual freedom and refers to the misdemeanours committed by persons who wrongfully supply alcoholic drinks and industrial or pharmaceutical products to minors under 18 years of age.

308. Concerned by violations of children's rights, the Office of the Attorney-General of the Republic sought to eradicate such abuse, even before the entry into force of the new criminal and criminal procedure legislation, by establishing the Department of Children and Women, which was subsequently renamed the Unit on Offences against Children and Women in their Domestic Relations. The Office of the Attorney-General has a team of prosecutors, a coordinator and a chief, who are fully trained and specialized in all legal norms related to protection of the rights of the child. It also has a small but highly effective team of multidisciplinary staff (psychologists and social workers), who provide psychological assistance to victims and also in cases where home visits must be made to their families because the children's rights are being violated. The

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<sup>37</sup> See article 283 of the Family Code.

institution has deemed it necessary to set up nationwide units of this kind and there are now 18 in all.<sup>38</sup>

309. With a view to protecting children, an inter-agency Family Relations Improvement Programme was set up in 1995 in the National Secretariat for the Family. It is currently coordinated by the Salvadoran Institute for the Advancement of Women (ISDEMU). The participant agencies include the Office of the Attorney-General of the Republic, the National Civil Police and the Ministry of Public Health and Social Welfare.

310. The Programme provides services in the country's main cities (Santa Ana, San Salvador and San Miguel), in response to reports of domestic violence, under a project known as the "Family-Friendly Telephone Line", to which everyone has access 24 hours a day, every day of the year. However, it has not yet achieved nationwide coverage. The wide-ranging services available under the Programme include temporary accommodation where necessary in the city of San Salvador.

311. Since 1996 the Programme has attended to the needs of 19,575 children under 18 who had been subjected to physical and psychological violence; 54.6 per cent of the total were girl children. Six open-ended groups of children have been created to address their problems, and multidisciplinary care is provided. This initiative led to an increased demand for awareness and training services on the rights of the child, so that national coverage of the awareness and training services was expanded.

312. Salvadoran society is still characterized by high levels of violence and children are also affected by this situation. Comparative data for 1998-1999 show increases in the different types of cases dealt with by the ISPM. Cases of domestic violence increased by 434 per cent, of sexual abuse by 15.7 per cent, of abandonment by 23.3 per cent and of ill-treatment by 207.5 per cent. Girl children accounted for 54 per cent of the cases dealt with and boys for 46 per cent.

313. It should be noted in this context that the ISPM has addressed 100 per cent of the cases reported. By means of coordinated action with NGOs and private enterprise, 50 per cent of street children in San Salvador were enrolled in various recreational and educational activities in 1999. Measures are now being taken to reintegrate the children into their homes.

314. In 1998, 75 per cent of child beggars were enrolled in school and 85 per cent of the children's families stopped sending them out to beg. On average, 6,200 cases each year require psychological consultations and socio-economic studies in circumstances where the children's rights are at risk or have been violated. In most of these cases, monitoring continues to be necessary for up to a year.

315. The ISPM's Immediate Child Protection Centre operates 24 hours a day, 365 days a year, for male children aged from 0 to 6 and for female children aged from 0 to 18. The ISPM's Temporary Youth Refuge also operates on behalf of children and adolescents aged from 6 to 18 years.

316. In the context of implementation of the ISPM Act, cases of institutional placement declined between 1997 and 1998 from 29 per cent to 25 per cent, while social and family guidance and support measures and home reintegration initiatives increased from 54 per cent to 69 per cent.

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<sup>38</sup> See offences committed against minors in annex 3.

317. In recent years, the ISPM has mounted publicity campaigns in the media with a view to generating awareness in Salvadoran society of children's problems and of society's obligations to ensure that they can exercise their rights. The themes of the campaigns have been, inter alia, elimination of the worst forms of child labour (1995), protection of children living with HIV (1997), protection of children from drug consumption and trafficking (1998-1999) and protection of children from ill-treatment (2000).

318. The domestic legal provisions designed to protect the rights of the child that have been mentioned throughout this section of the report are supplemented by the provisions of international treaties in force in El Salvador: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social and Cultural Rights. Under the Constitution (art. 144), these instruments have primacy over secondary legislation.

## **VII. BASIC HEALTH AND WELFARE**

### **A. Disabled children (art. 23)**

319. El Salvador has no reliable quantitative or qualitative information reflecting the precise circumstances of persons with disabilities, still less their educational needs and the care that they receive or should receive; however, there have been a number of surveys and estimates from which approximate figures may be deduced.<sup>39</sup>

320. Some progress has been made in the area of legislation, the most important step being the adoption of the Equality of Opportunity Act and Policy. The purpose of the Act is to establish an equality of opportunity regime for persons with either congenital or acquired physical, mental, psychological and sensory disabilities. The rights it recognizes include the right to receive an education by means of an appropriate methodology that facilitates learning.

321. The General Education Act also establishes principles of equality and guarantees educational facilities for persons with special educational needs. On the aforementioned legal basis, the State is considered to have an obligation to guarantee educational facilities with equality of opportunity at the different levels of the national education system. To that end, the Ministry of Education formulates educational access policies for people with special educational needs pertaining to:

- Equality of educational opportunity for students with special educational needs;
- Educational administration;
- Provision for student diversity in ordinary classes;
- Integration of students with special educational needs into the regular education system;
- Curriculum content and assessment;

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<sup>39</sup> See annex 3.

- Basic, advanced and refresher training;
- Family participation;
- Prevention, detection and handling of special educational needs;
- Launching of the integration process in pre-school, basic and intermediate educational establishments;
- Education in preparation for employment.

322. The national education system has special programmes for children with disabilities. The special curricula developed by the Ministry of Education are based on the following approach: curriculum design and development in national education have shown that educational action focusing essentially on the individual child through a curriculum that differs from that of his or her fellow students of the same age is an inadequate way of achieving the necessary balance between maximum capacity development and active participation in school and social life; hence, this special group should be integrated into ordinary classes in the different categories of educational institution.

323. This procedure is based on the differential learning approach. It presupposes two levels of learning: functional and contextual. Moreover, it promotes a harmonious combination of knowledge, skills, experience and attitudes.

324. Tuition at each level of education is formative and instrumental and promotes effective progress in daily life; it is based on scientific and technological subjects, the humanities, art-related subjects and physical education. Depending on the learner's character and disposition, prevocational counselling is introduced gradually and systematically.

325. The functional level is based on the idea that all learning processes should have a practical dimension related to the needs of daily life or prospective future needs. To that end, provision needs to be made in curriculum design for the development of capacities and basic skills and the applicability of the material learned, with a view to harmonizing knowledge, skills and attitudes.

326. The contextual level relates to the meaningfulness of the learning process in the light of the learner's immediate experience and capacities. Emphasis is placed on the development of learning processes related to basic areas of the curriculum, bearing in mind learners' educational needs and distinctive characteristics. This approach, based on the general curriculum at different levels of education, provides for flexible adjustment to common educational needs and seeks to promote the integrated cognitive, socio-emotional and psychomotor development of the learner, taking his or her capacities as a frame of reference.

327. Special education is structured around the content of the general curriculum of initial education, early childhood education and basic education, and is based on the following postulates: it is designed to meet learners' needs in their areas of development so as to ensure successful completion of the schooling process; it focuses on enhancing basic intellectual and psychomotor skills, self-esteem and creativity; it seeks to impart ethical, moral and civic values.

328. To broaden educational action and provide support for diversity, the concept of education for diversity has been introduced in El Salvador.

329. The Ministry of Education offers persons with disabilities the following alternatives and supplementary options to meet their needs.

330. The first option is traditional education, which means attending one of the country's 30 special education schools, which have been catering for several years for some 2,000 students.

331. The second option is schooling in the context of the educational reform project. This project is based on inclusive education as an alternative, that is to say incorporation of children with disabilities in ordinary classes so that their schooling is provided by the educational centre catering for their community. To date, this second option has led to the establishment of inclusive classes in 210 schools in the country.

332. The third option consists in the strengthening of educational support classes so that they promote social awareness of the importance of inclusive education and offer guidance for that type of schooling. To date, measures have been taken to strengthen 510 support classes throughout the country.

333. The fourth option consists in providing basic and intermediate education for deaf students, based on the Ministry of Education's general curriculum, using Salvadoran Sign Language as the primary teaching medium. Educational services for deaf students include 4 educational centres and 28 multigrade classes in special education schools, which have so far catered for 700 students throughout the country.

334. The fifth option consists of a strategy of providing access to education for persons with severe cognitive and sensory learning problems and persons with multiple disabilities in rural areas. This strategy has resulted in the establishment of 20 branches catering for 400 students.

335. With regard to coverage, the Ministry of Education is currently operating a considerable range of educational services at the national level to cater for persons with special educational needs.<sup>40</sup>

336. The expansion of coverage has been reflected in recent years in the introduction of special education services that guarantee education for target groups in two new schools for deaf students and two new special education schools.

337. The main problems faced by the education system in providing services for children with disabilities are lack of awareness of the rights of persons with disabilities, lack of resources to meet the overall needs of children with disabilities, and lack of census data on disability problems and specifically on the demand for education.

338. The establishment of the Salvadoran Institute for Rehabilitation of Persons with Disabilities (ISRI) constituted a major advance in the provision of services for persons with disabilities, since it marked the beginning of a process of development of rehabilitation facilities in El Salvador. ISRI has evolved over time and in recent years has begun operating nine rehabilitation centres specializing in different kinds of disabilities as well as an assessment and diagnostic unit. Its promotional work has had a nationwide impact in the areas of education, employment and above all medical care.

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<sup>40</sup> See annex 4.

339. At present ISRI, as the standard-setting body on functional rehabilitation in El Salvador, provides its services through centres specializing in different kinds of disabilities. For example, the "Tomás Regalado González" Hearing and Language Centre caters from birth for persons with hearing and language problems without a mental or motor component; the Locomotive Device Centre rehabilitates or teaches children who have lost their motor skills; the Special Education Centre caters for children with moderate or severe mental disabilities and for children with Down's syndrome; the Multiple Disability Centre looks after children in the 0 to 7 age group at high biological risk, with delayed psychomotor development, with more than one disability not included in cerebral palsy, and with chromosomal abnormalities; the Cerebral Palsy Centre provides services for children with manifest cerebral palsy or at high risk of contracting it; blind and partially sighted persons are offered rehabilitation or habilitation services in the "Eugenia de Dueñas" Rehabilitation Centre for Blind People, which also provides accommodation for users living at a distance who are unable to travel every day to take advantage of the Centre's services.

340. As soon as users have acquired functional skills, they are given vocational training in the Vocational Rehabilitation Centre. Persons with disabilities living in the western and eastern regions of the country are catered for by the Western Integrated Rehabilitation Centre (CRIO) and the Eastern Integrated Rehabilitation Centre (CRIOR), which are equipped to deal with all kinds of disabilities. Specialized medical treatment, assessment and diagnostic services are concentrated in the External Consultancy Centre, which provides supplementary support to all centres for child rehabilitation, since the most appropriate rehabilitation programme for each user is determined on the basis of the Centre's assessment and diagnosis.

341. Within the last four years, the Multiple Disability Centre has launched a special programme for autistic children, since no institution previously had the facilities for treating this kind of disability. The Rehabilitation Centre for Blind People has been trained in looking after blind or partially sighted children with another disability. The Special Education Centre has changed its care programme, enrolling all children with mild and moderate mental disabilities who had previously attended the Centre in regular schools, and introducing care for children with severe mental disabilities who had no access to institutional care in the past.

342. Rehabilitation services have been integrated over the past five years and one of the components of this integrated service was the launching in 1996 of a technical university course in prosthetics. ISRI was responsible for setting up the course and Don Bosco University provides the theoretical and practical training. Graduates from the course receive accreditation from the International Society for Prosthetics and Orthotics (ISPO).

343. ISRI has also launched a major promotional campaign for the prevention, detection and early treatment of disabilities with a view to reducing the incidence of preventable disabilities and reducing the after-effects of a disabling condition through detection and early treatment.

344. To narrow the technological gap between El Salvador and developed countries in the provision of care for persons with disabilities, ISRI has taken advantage of all specialized and refresher training opportunities offered by Governments of friendly countries and by other organizations. A training plan has been drawn up to ensure continual updating of expertise in all areas of care.

345. ISRI has begun organizing social awareness days to highlight the problems encountered by people with disabilities. For example, work days have been organized with community leaders, municipal governments, health promoters and educational establishments to make them aware of

the specific requirements of people with disabilities and of the urgent need to provide facilities for them and to integrate them into society. In the area of education, teachers in ordinary schools are being trained to give proper attention to children with special needs.<sup>41</sup>

346. Visits to universities with medical faculties have been arranged to ensure that they include the subjects of rehabilitation and the prevention, detection and early treatment of disabilities in their academic programme.

347. The National Accessibility Committee is composed of different sectors involved in introducing architectural improvements to ensure the mobility of persons with disabilities. The Vice-Ministry of Transport, the Planning Office of the San Salvador Metropolitan Area, ISRI, associations of persons with disabilities and other bodies are represented on the Committee.

348. Advances and achievements promoted by ISRI in other areas are described below.

### ***Employment***

349. The integration of people with disabilities into employment was assisted by the adoption of the Equality of Opportunity for Persons with Disabilities Act, which requires all private employers as well as the State to recruit one person with a disability for every 25 employees on their staff. By virtue of the legal protection it affords, the Act facilitates the work of organizations that promote the integration of people with disabilities into employment.

350. State support for employment integration led to the establishment of an Employment Integration Unit at the Ministry of Labour and Social Security and of a Vocational Rehabilitation Centre at ISRI, whose function is to provide job training and to develop the attitude needed to carry out the activity in which training has been provided.

### ***Culture***

351. ISRI promotes culture by organizing activities that preserve national traditions and by celebrating all anniversaries of major events in El Salvador's history. A "Very Special Art" festival, coordinated with the Foundation for Special Education, is held each year. Children with all kinds of disabilities take part in this song, dance and theatre festival.

### ***Social activities***

352. To promote the involvement of children with disabilities in social activities, mother's day and family day celebrations are organized for users of ISRI, who also take part in other festivals and cultural events in general. A "Festival of Hope" – a whole day devoted to recreational activities involving the entire family – is held once a year.

### ***Transport***

353. At present, El Salvador's public transport system does not cater appropriately for persons with mobility problems. ISRI has therefore taken steps to acquire transport equipment with lifts in order to provide transport facilities for people who cannot move around without help, thus

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<sup>41</sup> See annex 5.



ensuring that they continue to receive rehabilitation treatment. The Vice-Ministry of Transport has also been approached through the National Accessibility Committee to seek the incorporation of units with an appropriate system for ensuring the mobility of persons with disabilities.

### *Home*

354. ISRI is taking integrated action in this area, offering advice on how to look after persons with disabilities by removing barriers within the home, setting up schools for parents and organizing family group psychotherapy, all with a view to promoting the integration of children with disabilities into their family and community.

### *Sport*

355. ISRI views sport as a key component of rehabilitation and has encouraged broad participation in the annual Special Olympics coordinated by El Salvador's National Sports Institute.

356. With a view to involving all people with disabilities in sport, ISRI has trained specialized sports staff for persons with cerebral palsy and people who are blind and visually impaired. Each year it holds a sports championship for users of its services.

357. In 2001, El Salvador will be the venue for the First School Games for Blind and Partially Sighted People in Central America, Puerto Rico and the Dominican Republic. ISRI's Rehabilitation Centre for Blind People played a very prominent role as an advisory body and in coordinating the event.

358. An obstacle encountered in providing care for children with disabilities has been the lack of reliable statistical data that would provide a full picture of the scale of the problem so that targeted remedial action can be taken. According to census data on people with disabilities from the Fifth National Population Census and the Fourth Housing Census conducted in September 1992 by the Statistics and Censuses Department of the Ministry of the Economy, there were 81,721 persons with one or more disabilities in El Salvador in that year.

359. According to the census, only 1.6 per cent of the population has at least one type of disability, an extremely low percentage compared with the figure of 10 per cent estimated by the World Health Organization (WHO) for Latin American countries that have not been affected by wars or natural disasters and do not have a high crime rate; on that basis, a figure of 13 per cent has been estimated for El Salvador.

360. The low level of the results and estimated census data is due both to cultural factors and to health and educational coverage. From a cultural point of view, people with any kind of disability have not been easily accepted in the family and society, and as a result they are often socially concealed. Other factors include denial by individuals and families that they are affected by any kind of physical or sensory disability, since the individual concerned has never been diagnosed owing to lack of medical attention, and the fact that problems of mental disability may not have been detected because of shortcomings in educational coverage. Moreover, the census did not cover disabilities such as: locomotor disabilities (in addition to loss of a limb, injuries, fractures, sprains, contusions, lesions of peripheral nerves, bone-marrow lesions and other conditions, cerebrovascular disorders, Guillain-Barré syndrome, polyarthropathies, cerebral palsy, malignant cartilage and bone tumours, lower limb malformations, etc.); communication

disabilities (in addition to blindness, mutism and deafness, aphasia, dyslexia, dyslalia and stammering); dexterity disabilities (upper limb traumatism, carpal tunnel syndrome, upper limb and hand burns, neonatal cerebral ischaemia, syndactilia, etc.); body disposition disabilities (facial paralysis, congenital foot, facial and cranial malformations, congenital osteomuscular deformities, achondroplasia, Down's syndrome, etc.); behaviour disabilities (in addition to mental retardation, behavioural disorders, hyperkinetic disorders, encephalomyelitis, meningitis, meningoencephalitis, convulsive syndromes, etc.).<sup>42</sup>

361. Given the percentage that has been used to estimate the number of people with disabilities (13 per cent) and the figure for El Salvador's population in 2,000 (6,276,000), the most accurate projection for that year is 815,880 persons with disabilities.

362. It is important to mention that WHO has used 10 per cent to calculate the number of people with some kind of disability but the proportion has now increased to 34 per cent.<sup>43</sup> This percentage has not yet been used to estimate the number of persons with disabilities in El Salvador. If it were, it would give a figure of 2,133,840 persons, a very alarming result.

363. In recent years ISRI has provided care for an average of 30,000 persons a year, representing 3.7 per cent of the 815,880 persons suffering from some kind of disability in El Salvador.

364. Although action has been taken at the institutional level to respond to the scale of the problem so that people with disabilities enjoy the rights, opportunities and assistance that are indispensable for their full participation in society, ISRI considers it necessary to adopt measures aimed at integrated rehabilitation, including prevention, early detection and timely referral programmes at the three levels of care.

365. The number of children with disabilities in the 1992 census was put at 16,009, of which 7,429 were in urban areas and 8,580 in rural areas. Girl children represented 44 per cent of the total and boys 56 per cent. The Statistics and Censuses Department has not made projections for this population group; but applying the 13 per cent figure, it may be estimated that in 2000 the number of children under 18 years of age suffering from some kind of disability was 358,573.

366. Another obstacle is that the health services cannot manage to meet the needs of the whole population group requiring rehabilitation facilities. Most of ISRI's budget is used to pay salaries, so that there is very little left over to invest in infrastructure, purchases of equipment and training of personnel.

367. A campaign for prevention, detection and early treatment of disabilities launched in 1996 has failed to reach the planned target because it lacks the financial resources needed to develop its full potential.<sup>44</sup>

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<sup>42</sup> Source: International Classification of Impairments, Disabilities and Handicaps, WHO, 1980.

<sup>43</sup> Source: Módulo de Información de Discapacidades HIS-DIS, Oficina General de Epidemiología, Peru, April 1997.

<sup>44</sup> See annex 6 for details of ISRI's work, the number of persons served and its budget.

## **B. Health and health services (art. 24)**

368. Fulfilment of the obligations incurred at the World Summit for Children was given high priority by the actors responsible for implementing them during the past decade. The new millennium calls for a renewed effective commitment to early childhood in El Salvador, and to that end we have learned from experience and developed better examples of measures that exert the greatest impact on children's lives. We have become aware of the need for a holistic vision of childhood and the need to make integrated growth and development the cornerstone of all actions to promote children's well-being and to ensure optimum development of their potential. In this way, we hope to bring forth generations of children who are healthier, more forward-looking and more peace-loving and who cherish new values conducive to peace, democracy and freedom in our country.

369. This vision of health calls for the formation of highly committed multidisciplinary and interdisciplinary teams to design and implement programmes and projects in support of child health and family and community participation and responsibility with a view to achieving growth and development from the earliest age, since it has been shown that this kind of positive intervention is desirable throughout an individual's life cycle.

370. The infant mortality rate is one of the main indicators of economic and social development in particular countries or regions. In our country the rate has declined over the past ten years. The estimated rate for the period 1993-1998 was 35 per thousand live births and 43 per thousand for children under 5 years of age. The infant mortality rate for institutional births was 17.99 per thousand live births in 1999, a rate that has been declining in recent years.<sup>45</sup>

371. Clearly, this national average fails to reflect extreme cases. We are aware that there are departments in the country with worse indicators of child health and within those departments municipalities where child health conditions are critical. Moreover, we are fully aware that any reduction in the current infant mortality rate of 35 per thousand live births will require a substantial improvement in basic health conditions and that new care practices will enhance children's survival rate and their integrated development.

372. A total of 1.6 million child consultations have been provided, representing 80 per cent health care coverage for infants under 1 year of age. This reduced the institutional infant mortality rate from 41 per thousand live births in 1993 to 18 in 1999.

373. The provision of medical care in the country has improved in line with the development of primary health care. Among the ten main reasons for external consultations, the rank of healthy child care, which is primarily preventive, has been steadily rising – from eighth place in 1990 to fourth place in 1994, second place in 1997 and first place in 1998 and 1999. The quantity of consultations has also increased.<sup>46</sup>

374. During the past decade, we have given priority to preventive health care and this is reflected in the national profile of external consultations. Child check-ups rank in first place and

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<sup>45</sup> See annex 7.

<sup>46</sup> See annex 8.

pregnancy check-ups in third place, reflecting the priority given in health policies to mothers and children.

375. The number of full child health check-ups has also been rising: from 847,746 in 1996 to 1,355,617 in 1997, 1,552,064 in 1998 and 2,435,730 in 1999. These data include medical consultations, preventive care (enrolment and check-ups) and nursing care.

376. According to the data available in 1998, growth and development check-ups were undertaken in respect of all but 10 per cent of live births. Forty-three per cent of children had their first check-up in the first month of life.<sup>47</sup>

377. It should be noted that medical consultations have also been increasing: from 2.4 million during the period 1994-1995 to 7.6 million during the period 1999-2000.<sup>48</sup> During the latter period, some 7.6 million medical consultations were provided nationwide, which represents an average of 1.5 consultations per inhabitant at the institutional level. In 1994 the average had been 0.6 consultations per inhabitant.

378. The following achievements may be mentioned with respect to the coverage of the child-care establishment network:<sup>49</sup>

- We have expanded our child-care capacity to ensure that we reach the most remote parts of the country;
- We are implementing major social programmes with community participation such as the Healthy School Programme and the Health in the Community Programme, which is of special benefit to the mother-child nucleus in all communities;
- We are extending the working hours of 88 healthcare units, which are open from 7 a.m. to 7 p.m. on weekdays and some also on Saturdays, Sundays and public holidays to provide children with medical and emergency care; we thus offer parents the opportunity to take children to the units outside working hours;
- We offer specialized medical consultations in dermatology, paediatrics, gynaecology, otorhinolaryngology and pneumology in 31 healthcare units;
- We have increased the number of medical consultations from 2.4 million in 1994 to 6.9 million in 1999;
- We now have 217 new healthcare establishments;
- We have greatly expanded our network of health services from 378 in 1994 to 595 in 1999;
- In 1994 we had 11 healthcare dispensaries; now we have 151;

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<sup>47</sup> See annex 9.

<sup>48</sup> See annex 10.

<sup>49</sup> See annex 11.

- There were previously 20 rural nutrition centres; now there are 58, providing better care for children with any kind of weight disorder;
- We have 45 new fully equipped healthcare units;
- We now have 126 healthcare units with a laboratory and dental clinic;
- Since 1995 we have boosted the equipment and human resources of 15 healthcare centres in the areas of general medicine, surgery, paediatrics and gynaecology-obstetrics, converting them into general hospitals;
- We have streamlined services and increased coverage, purchasing 138 new vehicles that have been distributed throughout the departments at a cost of 65.3 million colones;
- Priority has been given to first-level care in rural areas through health-care houses, the establishment of rural nutrition centres and improvement of the nationwide network of healthcare units;
- In 1994 the Ministry had 378 healthcare establishments; there are now 610 establishments consisting of 30 hospitals, 357 healthcare units, 171 healthcare houses and 52 rural nutrition centres;
- We have eradicated vitamin A deficiencies among children under 5 years of age and women of childbearing age and iodine deficiencies among schoolchildren;
- 100 per cent of wheat flour contains minerals and vitamins;
- 99 per cent of salt produced in the country is iodized;
- 91 per cent of sugar is fortified with vitamin A.

379. This extensive network of services enables us to improve access and thus enhance the equity of health care, especially for children, thanks to the valuable assistance of 1,729 health promoters, 3,500 midwives and 3,843 voluntary malaria workers, and the participation of over 3,500 doctors, 400 dentists, 5,000 nurses, 5,000 paramedics and 6,000 administrative assistants, who provide direct healthcare services to our people throughout the length and breadth of the country.

380. In 1997 the Integrated Care Strategy for Prevalent Child Diseases (AIEPI) was adopted. The AIEPI strategy was launched by means of an operational plan and the training of 239 professionals, who represent 42.8 per cent of the planned total and 14.7 per cent of the total number of professionals in the seven priority departments.

381. Eighty-four of the 178 healthcare units in the priority departments, representing 47 per cent of the total, have at least one professional who has attended an 11-day AIEPI clinical training course. Eighty-four per cent of hospitals have at least one trained professional, reflecting the emphasis placed at the beginning of the implementation process on providing facilitators to promote training in the country's departments.

382. The Inter-Agency Committee for Implementation of the AIEPI strategy, which began operating in 1998, is composed of the Ministry of Public Health and Social Welfare, OPS, Basic Support for Institutionalizing Child Survival (BASICS), the Salvadoran Social Security Institute (ISSS), the Catholic Relief Service, the Salvadoran Red Cross and the priority departments (Cabañas, Cuscatlán and Morazán).

383. The Committee's most important achievements have been in the area of training, through coordinated activities involving the Ministry of Health, ISSS, external cooperation agencies and NGOs. Its work has included adaptation of the six-day methodology, the planned use of this new methodology for the validation course and its introduction into the thematic content of the perinatal component. Moreover, progress has been made in producing educational material for health promoters.

384. A major achievement in preventive child care has been the implementation of the Healthy School Programme, which came into being in 1995. During the last operating year we provided 600,000 children with integrated health care, including specialized medical care, dental care, health education and vaccinations. The conditions in over 3,500 schools have been improved through basic sanitation work and a total sum of 275 million colones has been invested during the five-year period.<sup>50</sup>

385. With regard to vaccination coverage, over 90 per cent of children are now protected by the whole range of vaccines. There have been no reported cases of poliomyelitis since 1990, of measles since 1996 and of neonatal tetanus since 1998.<sup>51</sup> The following are some other achievements in this area:

386. In 1998 the National Biologicals Centre was built. It helps to maintain the cold chain of biologicals (vaccinations) to ensure their quality and effectiveness.

387. In 1999 the hepatitis B and rubella vaccines were incorporated in the national vaccination schedule in order to control those diseases.

388. It is planned to introduce the five-in-one vaccine in 2002 to protect Salvadoran children from five illnesses: diphtheria, tetanus, pertussis, hepatitis B (already included as a separate vaccine in the vaccination schedule) and *Haemophilus influenza* (a new vaccine in the schedule). The advantage is that all the vaccines are contained in a single biological.

389. Available data indicate that immunization levels, meaning full vaccination schedules, have increased in the past five years for four vaccines. Following the increases recorded in rural areas, coverage of the four vaccines in those areas is now very similar to coverage in urban areas.

390. The coverage rate for the full immunization schedule among children under 5 years of age has reached 85.6 per cent, with an overall coverage rate of 78.5 per cent. Since 1995, vaccination coverage rates have been maintained at over 90 per cent and in 2000 even exceeded 95 per cent.

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<sup>50</sup> See annex 12.

<sup>51</sup> See annex 13.

391. With regard to breastfeeding,<sup>52</sup> the data indicate that during the period 1993-1998 there was a slight increase in the duration of all kinds of breastfeeding from 15.5 months to 17.7 months. Exclusive breastfeeding (time spent feeding only with breastmilk) increased from 0.8 months in 1993 to 0.9 in 1998 and full breastfeeding (time spent feeding with breastmilk or with breastmilk and water or other liquids but not with another type of milk) declined slightly from 2.8 months in 1993 to 2.7 in 1998.

392. Only 21.2 per cent of babies aged 0 to 3 months were fed breastmilk only in 1998, compared with 20.4 per cent in 1993. The exclusive breastfeeding figure for babies aged 4 to 6 months is almost nil (2.8 per cent).

393. It is also important to mention the Baby-Friendly Hospital Programme. In 2000, UNICEF classified 23 of the 28 hospitals with maternity wards as "baby-friendly".

394. An improvement in the nutritional status of children occurred between 1988 and 1993 but no major change occurred between 1993 and 1998.<sup>53</sup> In 2000 the Second National Height Census was conducted among first-grade schoolchildren. It yielded very important data concerning an improvement in the prevalence of growth retardation in the public sector, which dropped from 29.8 per cent (according to the first census) in 1988 to 21 per cent in 2000.<sup>54</sup>

395. Children in rural areas have also benefited from the following achievements under the Rural Environment Programme:

- More than 27,000 latrines have been installed in rural areas, serving more than 100,000 inhabitants and helping to improve hygiene conditions in the communities concerned;
- Seventy water purification systems have been installed in rural communities, serving 700,000 persons with access to water for human consumption;
- We have increased the output of human anti-rabies vaccines to 357,000 doses and canine anti-rabies vaccines to 1,450,000 doses, thereby reducing the incidence of canine and human rabies in the country;
- There are now 58 rural centres serving the poorest communities;
- Mothers in these communities receive training and participate in child health care.

### **C. Social security and child care services and facilities (art. 26 and art. 18, para. 3)**

396. The Salvadoran Institute for the Protection of Children is currently running an Early Childhood Centre Programme, with 213 child welfare centres and 16 integrated development centres, covering 47.3 per cent of the country's municipalities, including the most densely

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<sup>52</sup> See annex 14.

<sup>53</sup> See annex 15.

<sup>54</sup> See annex 16.

populated. Since their establishment in 1992, these centres have broken with the traditional system in which children were simply deposited in a crèche so that someone could keep an eye on them. Instead they function as centres of stimulation and development, applying the methodology of early childhood education. They serve children in the 0 to 6 age group, mostly in rural and marginal urban areas. The annual average rate of direct coverage is 7,000 children and their family groups, who are mostly working mothers. By 1997 they were already providing 85 per cent health coverage for the beneficiary population, including 100 per cent immunization. The programme involves working together with the family, which helps to apply the centre's "psycho-pedagogical" model through educational activities aimed at fostering the child's socio-emotional and psychomotor development and promoting values such as respect, solidarity and comradeship.

397. There is also a Nutritional Programme, which provides children with food based on a menu designed to boost their health and maintain a sound nutritional status. Their weight and height are checked on a monthly basis and at the same time the family is made aware of the need for continuity of the regime at home; 100 per cent application of the balanced diet was achieved in 1997. The Programme enhances the educational continuity of children at the basic education levels. In addition, community organization has been strengthened through the establishment of centre support committees that bring together municipal authorities, youth organizations, community boards, parent councils, NGOs and central government institutions with delegations in the area. The community is responsible for running the centre and takes part in the selection, supervision and control of the children's teachers and also for the whole operational side, including refuse collection, food for the children and basic services such as the water and electricity supply and the construction of latrines. The community organization is also involved in financial administration.

398. In the area of employment, the measures adopted to ensure that all minors enjoy the right to social security, including social insurance, are set forth in Chapter II of the Family Code entitled "Protection of the Child" (art. 353) concerning protection of life and health, which reads:

"The life and health of the child shall be protected by means of a range of legal, social, preventive and support measures that guarantee his or her integrated development from conception until majority."

399. To protect the physical and mental health of minors, the State is required to ensure:

- Access to food, vaccination and nutrition programmes;
- Preventive health education; and
- Rehabilitation in the case of physical disability or impairment.

400. Under the Family Code (art. 354), the State's protection must extend to pregnant women during the prenatal and postnatal periods. Free medical care must also be provided to needy children.

401. In addition, the Code (art. 455) requires state-funded hospitals and clinics to ensure that any minor admitted for emergency medical care is given immediate treatment. No ground may be adduced for denying such treatment, not even the absence of legal guardians, lack of resources or any other ground.



402. Educational protection for children under the Code (arts. 356 and 357) is the responsibility of the Ministry of Education, acting in coordination with the Salvadoran Institute for the Protection of Children (ISPM) and in collaboration with the media and institutions involved in child protection.

403. Social insurance for minors is compulsory when the minor is employed or when one of the parents is an employee and has been enrolled by the employer in the social insurance scheme. It should be noted that children who are beneficiaries of the services provided by the Salvadoran Social Security Institute (ISSS) through an ascendant are entitled to benefit from medical care and hospital services from birth until the age of 6.

404. The ISSS is required to provide immediate medical care when, owing to the employer's omission, a child employee is not enrolled. The parents, guardians or custodians must provide evidence of the employer-employee relationship within 72 hours. This provision is contained in the Family Code (art. 381).

405. Moreover, the Ministry of Labour and Social Security, in collaboration with the ISPM and the Salvadoran Vocational Education Institute, run special training programmes for minors.

406. Social security benefits are awarded on the basis of the following criteria:

- The beneficiary is an active policyholder;
- The spouse or female partner of the active policyholder is enrolled;
- The spouse or male partner of the active policyholder is enrolled;
- Retired widow or widower;
- Partner with pension rights;
- Children of the insured or retired persons up to the age established and in accordance with the conditions, procedures and duration laid down by the Board of Directors of the ISSS;
- Unemployed persons in accordance with the conditions laid down by the ISSS Regulations;
- Persons receiving a full or partial invalidity pension, in accordance with the ISSS Regulations (arts. 14, 33 and 34).

407. With regard to sickness, common accident and maternity benefits payable under the social insurance scheme to minor employee policyholders, the benefit awarded is equivalent to 75 per cent of the average basic wage. In the case of maternity benefits, the financial benefit is payable for a period of 84 days.

#### **D. Standard of living (art. 27, paras. 1 to 3)**

408. The Constitution and secondary legislation concerning children's fundamental rights and freedoms recognize the right to enjoy the highest possible standard of living. As has already been

indicated in this report, action has been taken to ensure that the children of El Salvador enjoy a decent standard of living.

409. The National Secretariat for the Family and the ISPM have been the main State institutions responsible for addressing issues related to the rights of the child. The following figures show how the ISPM budget has evolved:

	<i>Colones</i>	<i>\$</i>
1993	11 million	1.26 million)
1994	43.8 million	5.03 million)
1995	76.7 million	8.8 million)
1996	95.8 million	11.01 million)
1997	91.9 million	10.56 million)
1998	110.6 million	12.7 million)
1999	114.8 million	13.19 million)
2000	111.2 million	12.78 million)

410. Most staff expenditure goes to operational personnel. As may be seen from the figures, the ISPM's budget has been growing slowly but surely, and the Institute has therefore been stepping up its activities and increasing the number of persons served.<sup>55</sup>

411. During the period 1996-2000 the ISPM provided direct training for, on average, 7,000 persons each year, 60 per cent of whom were adults – fathers, mothers and schoolteachers – and 40 per cent children and adolescents, both students and community members. The topics addressed were directly related to the Convention on the Rights of the Child, which was viewed in terms of its content and as an instrument that sets forth the new approach to working with children. The training methods used were not only participatory in the sense that they were based in large measure on the experience and/or advice of the participants, but were also educational since guidance was offered on the use of legal instruments in order to exercise the rights of the child.

412. Enforcement of the Convention has made it necessary to provide ongoing training for all personnel involved in or linked to the process of facilitating and implementing the rights of the child. Training courses have not been centralized but have been arranged and provided in all areas. As a result, the ISPM has not been able to obtain quantitative data. Although staff training courses have been held by cooperating agencies, including the Office of the United Nations High Commissioner for Human Rights, UNICEF, UNDP and others, there is a need for continued reinforcement of the doctrine and message underlying the Convention and of the new concept of the child as a subject of law and not an object of protection, a perception that still persists.

413. A programme sponsored by UNDP and implemented until 1998 by the National Secretariat for the Family now covers 17 municipalities in the departments with the largest adolescent population (San Salvador and La Libertad). A procedure was developed to train 650 adolescents as facilitators, who then trained a further 25 adolescents each, giving a total of 10,250 trained

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<sup>55</sup> See annex 17.

adolescents. In the case of adults, the procedure involved training an average of 60 persons each year, including nurses, doctors, health promoters and even mayors.

414. The above data show that there has been an increase in the funds devoted to preventive programmes between 1995, when 25 per cent was invested in such programmes, and 2000, when 29 per cent was invested. The budget for 2001 provides for 30 per cent expenditure on preventive programmes.

415. The measures taken have been coordinated with all public authorities, local non-governmental organizations, private companies and international organizations. Support for the implementation of activities and projects has also been obtained.

## **VIII. EDUCATION AND CULTURE**

### **A. Education, including vocational training and guidance (art. 28)**

416. The Ministry of Education, responding to social demand and the circumstances in which children, young people and adults live in rural and marginal urban areas in the different departments of El Salvador, has included among its policies and priorities educational services for working children, street children, socially at risk and socially disadvantaged children, and, in general, children who for different reasons do not enjoy the benefits of the child-oriented education system. Measures have been taken to promote and strengthen recognition of children's rights in general and enforcement of their right to education in particular.

417. The following are some of the measures taken:

(a) With regard to coverage:

- Inclusion of educational services for children in rural and marginal urban areas in literacy and continuing education programmes for teenagers and adults;
- Assignment of priority to vocational training for children – adults in social terms – who for different reasons have assumed economic responsibilities on behalf of their families;
- Allowing children without any other means of access to education to enrol in literacy and/or continuing education groups for adolescents and adults.

(b) With regard to the design and output of teaching aids and educational materials:<sup>56</sup>

- Mainstreaming of human rights in curricula, teaching aids and educational materials for adult literacy education and basic education;
- Preparation, reproduction and distribution of a booklet on the "promotion and protection of our duties and rights". Emphasis is placed in the booklet on the Declaration on the Rights of the Child;

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<sup>56</sup> See annex 18.

- Reproduction of the Domestic Violence Act and distribution of the adult literacy and basic education programmes among the technical and operational staff.

(c) With regard to promotion and expansion of services for children:

- Measures aimed at the development of joint projects and the transfer of educational technology for children with special educational needs have been coordinated with other branches of the Ministry of Education, governmental agencies, NGOs and universities;
- These measures have served 4,990 children with special educational needs in remedial education classes using materials and methods initially designed for the education of adolescents and adults.

418. This approach has had legal implications such as the following:

- Institutional flexibility in interpreting and applying the constitutional precept laid down in the General Education Act to the effect that adult education facilities should normally be made available to persons who are not in the compulsory education age group;
- Incorporation in the General Education Act of a provision (art. 33) stating that literacy education plays a supplementary role in the education process and is a component of basic adult education equivalent to the second grade of basic education in the formal system.

419. The constitutional mandate offers children who acquire literacy skills in adult education programmes the opportunity to enrol in the third grade of the regular education system.

420. It is important to mention that the mainstreaming of human rights in the adult literacy education and basic education curriculum has been a source of dissemination, promotion and motivation that has encouraged adolescents and adults to respect, monitor, implement and safeguard the rights of the child, without discrimination.

421. In general, coverage of the adolescent and adult population gradually increased during the 1990s, leading to a concurrent gradual increase in the coverage of children who are not enrolled in the regular education system for various reasons such as family neglect, poverty, employment and so forth. The following table shows the decline in the illiteracy rate resulting from this gradual increase in coverage:

<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
24.5%	24.2%	23.9%	23.2%	22.5%	21.01%	19.83%	18.9%	18%	17.2%	16%

422. Coverage is a priority of educational reform, especially education for disadvantaged groups; however, the General Education Act (art. 5) stipulates that early childhood and basic

education are compulsory and, together with special education, must be free of charge when provided by the State.

423. Education is regarded as the most basic opportunity to which all the country's children must have access. In general, however, coverage programmes focus on ensuring that all children, adolescents and adults have the opportunity to enrol in the different services offered by the national education system. Steps are currently being taken to ensure the continuation of a series of programmes that offer a wider range of educational opportunities, such as the Community Participation in Education Programme (EDUCO), the Alternative Classrooms Programme, the Accelerated Education Programme and the Healthy School Programme.

424. The EDUCO Programme provides educational services for infant to ninth-grade pupils and operates in the country's rural areas. Following its establishment in 1991, it led to the introduction of infant and first-grade facilities in communities without educational services. The Programme's services were expanded in 1997 to reach the sixth grade and in 1999 to reach the ninth grade. The ages of the student population served range from 4 to 20.

425. The following are the Programme's main achievements, which have a direct impact on Salvadoran children:

- Access to education in the most remote rural areas;
- Voluntary participation by parents in response to their children's education;
- Action against dropping out and repetition;
- Management capability of the educational community;
- Institutionalized citizen participation mechanism;
- Better and increased teacher-community relations;
- Increased teacher presence in the classroom;
- Supply of appropriate educational materials to rural areas;
- In-service training for rural teachers;
- Implementation of educational strategies aimed at supporting students with special needs in rural areas;
- Implementation of Schools for Parents in 100 per cent of rural communities.

426. The following lessons have been learned from the EDUCO programme:

- Generating confidence is of vital importance;
- Previous organizational experience should be turned to account;
- Selection of leaders;

- Promoting regular supervision and monitoring;
- Providing the correct incentives;
- Communication is extremely important;
- Promotion of a sense of belonging;
- Integrated solutions.

427. The School for Parents strategy was launched under the EDUCO programme in 1991. It promotes parent participation through local meetings and exchanges of experience at which community self-management projects are developed. The family's ability to promote the integrated development of the child is thus enhanced. The strategy has been institutionalized in all educational establishments under the EDUCO Programme.

428. The Alternative Classrooms Programme was launched in late 1995 with a view to offering children the opportunity to continue their formal education. Under the Programme, teachers attend to groups of children in different grades of basic education in a single classroom.

429. The Alternative Classroom is an educational strategy whereby the teacher attends to the needs of students in two or more grades of basic education jointly, simultaneously and yet separately. The strategy was devised to respond to indicators such as low enrolment ratios, over-age students, absenteeism, dropping out and repetition. The age of the schoolgoing population that has benefited from this strategy ranges from 9 to 20.

430. In the Alternative Classroom children can:

- Interact with their schoolmates;
- Take part in educational committees;
- Play a direct role in their own schooling;
- Contribute to community development;
- Assume responsibility for organization and maintenance within and outside the classroom.

431. The main student-oriented component of the strategy is student organization and participation, which leads to involvement of the child in his or her education in the interests of personal and community development.

432. The achievements of the strategy may be listed as follows:

- Implementation of an active, participatory and consultative methodology;
- Production of targeted material for the exclusive use of students;
- Organization of in-service training courses for teachers;

- Increase in student assistance and involvement in the school;
- Increase in the level of community management;
- Enhancement of the quality of students' schooling;
- Encouragement of student leadership in the school and community.

433. The following lessons have been learned from the Alternative Classrooms Programme:

- Community awareness is vital for promoting participation and commitment;
- In-service training for teachers and school principals ensures application of the methodology;
- The design of educational materials and their distribution to students and teachers play an important role in ensuring implementation of the strategy.

434. The Alternative Classrooms strategy provides for the use of educational material called "learning units". From the second to the sixth grade, the material for the subjects "science", "health and environment", and "social science" is designed to promote respect for the child's personality, aptitudes and mental capacity and respect for human rights and values, which are fostered in all school activities. The material has been designed for and distributed to 80 per cent of communities and has benefited 100 per cent of students.

435. The Accelerated Education Programme is a transitional educational strategy that seeks to provide over-age children and adolescents with educational opportunities that enhance their prospects and living conditions. Its objectives include enhancement of the quality of education and reduction of over-age ratios in the first and second cycles of basic education, promotion of self-esteem and independence among beneficiaries, and encouragement of family and community participation.

436. In 2000, the strategy served a school population of 5,290 children and adolescents between the ages of 9 and 16 in urban, marginal urban and rural educational establishments. The Programme has achieved the following results:

- Enhancement of self-esteem;
- Improved assistance to pupils;
- Greater participation by pupils;
- Closer links between the educational institution and the community.

437. The methods used have had the following results:

- Promotion of a sense of responsibility;
- Individual attention to pupils with learning problems;

- Cultivation of an interest in reading;
- Application of projects and sub-projects.

438. The following lessons have been learned from the Programme:

- Linkage between the processes of design and distribution of educational materials, training of teachers and school principals, and educational monitoring;
- An interdisciplinary approach by technical teams from the strategy design phase through to strategy implementation.<sup>57</sup>

439. The Healthy School Programme has helped to improve the quality of life of the country's schoolchildren in rural areas, improving their prospects, coordinating integrated activities with different sectors and promoting effective citizen participation. Support has been provided for the healthy school approach in rural schools throughout the country in order to consolidate early detection of disability, improve implementation of the food programme and provide the schools with more teaching aids.

440. The following are some of the Programme's main achievements:

- Provision of food to 384,359 pupils in nursery schools and the first and second cycle of basic education in rural and marginal urban areas throughout the country;
- Organization of workshops focusing on health, food and nutrition, attended by 1,171 teachers in departments of the country's eastern region (four departments);
- Provision of training courses in health, food and nutrition for 88 per cent of schools covered by the Programme;
- Supply of crockery and cleaning and cooking equipment to 106 educational establishments with adequate facilities for the storage, conservation and cooking of food;
- Distribution to 1,159 educational establishments of a cyclical menu and cookery book to assist mothers who cook school snacks in preparing a varied menu;
- Talks with 3,500 educational communities about school health content;
- Training of 13,500 teachers in detecting and dealing with learning, reading and basic arithmetic problems;
- Haircutting and pediculosis campaigns for 33,000 children in healthy schools in the department of San Salvador;
- Delivery of gardening tools to 150 healthy schools to assist in tending school gardens;

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<sup>57</sup> See annex 19 for data on the EDUCO, Alternative Classrooms and Accelerated Education programmes.



- Delivery of infant teaching aids such as cardboard lunch boxes, pompoms and finger paints to 1,338 educational establishments;
- Distribution of 1,834 classroom and school libraries;
- Supply of a teaching basket containing curricular documents on educational reform;
- Supply of a basket of basic sports equipment to 42 schools that joined the Programme in 1999.

441. There are other vocational training and guidance programmes for young people without access to the education system. Action to reform intermediate education has begun. Activities aimed at quality enhancement and institutional modernization at this level have been implemented under the Intermediate Education Reform Project and the Programme of Support for the Process of Reform of Intermediate Education in the Technical Field (APREMAT) sponsored by the European Union.

442. This project involves the creation of a system to ensure the effective linkage of technical education courses at the intermediate and higher levels of education and vocational training courses in the non-formal education system. The aim is to enhance the quality of technical education and vocational training by improving both the learning environment and professional expertise, and to develop capacity to meet the demand for specialized human resources at various levels of technical training in order to support the country's economic and social development.

443. The following are some of the main activities undertaken under this project:

- Securing international and local funding for technical education at the intermediate and higher levels, and ensuring effective use of existing funds;
- Revising the curricula of intermediate and higher technical education;
- Establishing appropriate infrastructure for the provision of training courses to meet technical requirements and equipping the facilities concerned with appropriate technology and bibliographic material;
- Expanding the educational supply of higher-level training courses outside the main cities;
- Training teaching staff at that level;
- Enhancing the overall student capacity of technical institutes;
- Establishing mechanisms for integration into working life with the support of private enterprise.

444. With regard to the promotion of the right to education of the girl child, the Salvadoran Institute for the Advancement of Women (ISDEMU) has helped to prepare studies with gender indicators that are used as a basis and frame of reference for measures aimed at achieving equality of opportunity for boys and girls and for women and men at the different levels of education.

445. Among the main results, mention may be made of a study of difficulties encountered by ninth-grade girl pupils in gaining access to intermediate technical education.

446. ISDEMU has set itself the objective of promoting continued schooling for pregnant adolescents and mothers in the country's formal education system, encouraging girls to participate on a par with boys in student organizations and local school administrations. Another Institute objective is to increase the supply of high-quality education up to the ninth grade in rural areas, especially for girls and women.

447. Moreover, institutions that award scholarships are being encouraged to apply gender criteria, focusing on the children of women heads of household and of domestic employees, and children with disabilities, and to promote equality of opportunity for boys, girls, adolescents, women and men with special educational needs.

448. ISDEMU has assisted in developing gender criteria, which are updated each year, for awarding scholarships under the "Señor Presidente y Doctor Rodríguez Porth" programme to ensure equality of access for girls and boys.

449. Workshops for intermediate-level school principals, in both the public and private sectors, have been held to promote awareness of the importance of sex and reproductive health education in preventing teenage pregnancies and to familiarize principals with international and domestic legal instruments on the protection of children's rights with a view to changing the regulations of educational establishments that require the expulsion of pregnant girls.

450. Under the Educational Reform under Way programme, equality of opportunity for girls and boys has been mainstreamed in the curricula of all levels and branches of the education system.

451. Training courses have been provided for 365 female and 105 male special education teachers in methods conducive to equality of opportunity in the classroom for boys and girls with special educational needs.

### **B. The aims of education (art. 29)**

452. A priority aim of educational reform is safeguarding the right of children to education in deference to the principle that the entire population must be given the opportunity to acquire an education. Coverage and quality-enhancement programmes have been developed with this end in view.

453. Education is perceived in El Salvador, in accordance with the Constitution of the Republic (art. 53) as a right inherent in the human person:

"The right to education and culture is inherent in the human person and their preservation, promotion and dissemination are therefore a fundamental obligation and objective of the State."

454. The Constitution also stipulates (arts. 56, 57 and 60) that all inhabitants of the Republic have the right and the duty to receive early childhood and basic education that trains them to become useful citizens; that the State shall promote the establishment of special education establishments; that early childhood, basic and special education shall be free when provided by the State; that the education provided in official educational establishments shall be

fundamentally democratic; that private educational establishments shall be subject to State regulation and inspection and may be subsidized if they are non-profit-making; that the teaching of national history, civics, morals, the Constitution of the Republic, human rights and the conservation of natural resources shall be compulsory in all public or private, civilian or military educational establishments.

455. According to the Constitution (art. 55), the aims of education in El Salvador are as follows:

- To ensure the integrated development of the spiritual, moral and social dimensions of the personality;
- To contribute to the building of a democratic society that is more prosperous, more just and more humane;
- To inculcate respect for human rights and to promote fulfilment of the corresponding obligations;
- To oppose all forms of intolerance and hatred;
- To promote knowledge of Salvadoran society;
- To identify with the values of Salvadoran nationality;
- To foster the unity of the people of Central America.

456. To ensure compliance with the above-mentioned constitutional provisions, the General Education Act (art. 3) defines the aims of education as follows:

- To develop to the full the physical, intellectual and spiritual potential of Salvadorans, thereby preventing the imposition of restrictions on those who are capable of attaining a higher level of excellence;
- To develop balanced study plans and programmes based on units of knowledge so as to forge a fitting image of the human person in the context of the country's economic and social development;
- To design teaching sequences in such a way as to ensure that all cognitive information promotes the development of mental functions and encourages sound habits and commendable feelings;
- To cultivate a creative imagination, habits of thinking and planning, persistence in the pursuit of objectives, the establishment of priorities, and the development of a critical capacity;
- To systematize the learner's acquisition of knowledge, abilities, skills, habits and attitudes through work efficiency with a view to enhancing the quality of life of Salvadorans;
- To foster individual and social relations, striking an equitable balance between human rights and duties, and cultivating civic loyalties, the natural family relationship,

citizens' relationship with their country and the relationship of the individual with culture;

- To improve the relationship between the individual and the environment, using types of education and educational approaches that explain the processes implicit in that relationship based on the precepts of rationality and conscience;
- To cultivate relations that are conducive to a sense of solidarity, justice, mutual assistance, freedom and peace in the context of the democratic order, which recognizes the human person as the source and object of the State's activity.

457. The following are the general aims of the curriculum, as set forth in the Curricular Foundations of National Education adopted by the Ministry of Education:

- (a) To ensure uniformity of the principles and basic guidelines applicable to curriculum design and development;
- (b) To ensure consistency and continuity of curriculum development at the different levels and in the different branches of the national education system;
- (c) To enhance the quality of basic curriculum management in educational establishments and in the classroom in order to guarantee high-quality education;
- (d) To support and reinforce an improvement in the performance of teachers and other human resources by means of training and further training in keeping with educational policy and the national curriculum;
- (e) To promote the use of local and community resources in educational processes and activities;
- (f) To encourage organized participation by members of the educational community in improvement and innovation projects for educational establishments;
- (g) To set in motion the decentralization machinery needed to adapt educational processes to specific educational contexts.

458. Educational reform at the curricular level has been pursued on the basis of the following principles:

- The curriculum is structured around the special educational needs of learners, bearing in mind the areas contributing to their bio-psycho-motor, cognitive and socio-emotional development;
- Emphasis is placed on full development of learners' bio-psycho-social capacities and potential for integration into their environment and community;
- Account is taken of learners' personal and social identity;
- Attention is given to every aspect of the learner's personality, with special emphasis on personal and social development.

*Focus on the individual*

- The curriculum is designed to develop learners' potential and to cater for their educational needs in different areas;
- It is recognized that learning is a personal process that involves interaction with others and with the environment.

*Experience, activity and work*

- Educational activity is aimed at developing conditions conducive to productive and creative work;
- Analysis of experience in the light of the learner's educational needs is encouraged;
- The family is offered the opportunity to take part in the learner's education on the basis of the principle of equality of opportunity.

*Flexibility, relevance and suitability*

- The curriculum is adapted to learners' educational needs so as to guide their development along educationally beneficial lines;
- The learner's characteristics and assessed needs are the basic criterion applied;
- Relevant and useful learning processes are promoted to ensure the integrated education of learners.

*Interdisciplinary approach*

- The curriculum seeks to integrate different branches of knowledge as a source of guidance on the educational needs of the beneficiaries;
- The content is structured around the areas of cognitive, socio-emotional and psychomotor development.

*Integration and participation*

- The organized involvement of different institutions in educational activities is promoted;
- Curricular components are integrated in the light of their theoretical, methodological and didactic approach to take account of individual differences;
- Educational technology and various kinds of educational resources are incorporated in the teaching-learning process.

*Social commitment*

- The sociocultural and economic background of learners is taken into account as basic elements in their education;
- A better quality of life for the beneficiaries of education is promoted through socialization and practical application of values in different contexts;
- The Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and Salvadoran legislation constitute part of the frame of reference for establishing indicators of educational standards.

*Graduality, continuity and coordination*

- Educational processes are developed with the aim of ensuring that learners assimilate material gradually and continuously in accordance with their educational needs;
- Continuity and sequential methods are promoted to ensure full development of the learner's individual capacities and abilities;
- Educational assistance is provided with the support of different kinds of specialists depending on the special circumstances of the learner.

459. In the context of the educational reform process, syllabuses for early childhood, basic and intermediate education have been designed, evaluated and redesigned; methodological guides on human, ethical and civic values have been prepared for early childhood education and the first, second and third levels of basic education in order to support the mainstreaming of these values in syllabuses from early childhood up to higher education, and to promote integrated education designed to develop critical awareness and moral, civic, ethical and spiritual values.

460. Work has also begun on implementing projects to support teachers and students in addressing subjects related to human rights education such as the "Yo Tengo Valor" self-esteem project, under which a sample of 500 teachers were trained to organize activities aimed at promoting respect, solidarity, self-esteem, tolerance and democracy. Methodological guides have also been developed to support human rights education at the intermediate level.

461. In the area of teacher training, courses have been held to train teachers in implementing the School for Parents project from the pre-school to the intermediate education level, with a view to incorporating values and human rights in the content of integrated education at school and in the family.

462. At the early childhood and basic education levels, the education system provides textbooks and libraries so that children have access to educational materials to back up the teaching-learning process. Intermediate educational establishments also have educational materials such as textbooks or manuals as aids to the teaching-learning process, the purpose in all cases being to facilitate achievement of the goals of education in the country.

463. Since 1987 a Value Education Calendar imbued with human rights principles has been designed and distributed to educational establishments. The Calendar promotes the teaching and

practical application of values such as service, solidarity, cooperation and dignity to ensure that present and future generations of students share services and values with the community and that the community, in turn, identifies with and contributes to educational activities.

464. With regard to the teaching of human rights and fundamental freedoms, and in the context of undertakings related to the United Nations Decade for Human Rights Education, a National Education Plan for Human Rights Education has been prepared and provides for activities at all levels ranging from early childhood to university education. A number of national governmental and non-governmental organizations were involved in drawing up the National Plan with the support of UNICEF, UNESCO and the Office of the United Nations High Commissioner for Human Rights in El Salvador. An intersectoral National Committee composed of the following institutions was set up for the purpose: the Office of the Procurator for the Protection of Human Rights, the Ministry of Foreign Affairs, the Ministry of Education, the Human Rights Department of the University of El Salvador, the Consortium of Human Rights NGOs, the "Norma Virginia Guirola de Herrera" Women's Studies Centre (CEMUJER), Defence for Children International and the Executive Technical Unit of the Justice Sector. As the National Plan has not yet been officially adopted, its implementation has not yet begun. The closure of the Office of the United Nations High Commissioner for Human Rights in the country in October 2000 had an adverse impact on the completion of preparatory work on the National Plan since the Office had provided substantive assistance for the preparation and implementation of the Plan.

465. Furthermore, in the interests of quality enhancement and modernization, educational services are being decentralized as part of the Ministry of Education's educational reform process.

466. El Salvador has undertaken a number of initiatives aimed at the decentralization and devolution of technical and administrative services, applying strategies of regionalization and departmentalization of services and institutionalizing local school administration procedures.

467. Regionalization was introduced by Agreement No. 2736 of 9 August 1982, which established three regions and six subregional offices. Services for educational establishments are provided through the school district strategy, with the number of districts equalling that of the country's municipalities.

468. With effect from January 1996, 14 departmental education directorates began to operate, the aim being to bring the administration of educational services closer to the users, thus ensuring an immediate response to the needs of educational establishments.

469. Since the 1990s, when the EDUCO Programme was implemented, the decentralization process set in motion by the Ministry of Education has played a role in enhancing the quality of education and of the services provided, strengthening the Ministry's standard-setting, regulatory and service-providing capacity at the central level and its technical and administrative operations at the departmental level.

470. At the local level, decentralization has promoted participation by the educational community through the organization of different kinds of local school administration procedures such as the following in educational establishments:

- The purpose of the Community Association for Education (ACE), which is composed of parents, is to administer educational services and hire teachers to promote educational support strategies for children in the rural communities they represent.

There are 1,709 ACEs in the country, each with a five-member board of directors elected by the community for a two-year term. Together with 9,035 full members, they administer 7,470 branches and just over 5,341 teachers, with coverage of about 239,040 students throughout the country.

- School Boards of Directors (CDEs) were established in 1996. They are composed of 16 members (8 full members and 8 alternates) elected by the teaching staff, parents and students for a two-year term. They are responsible for administration of the human, financial and physical resources of official educational establishments. At present there are 2,975 CDEs with about 20,565 full members and an equal number of alternates.
- Catholic School Education Boards (CECEs) are composed of nine members elected by the administrative director of Catholic educational establishments, which are subsidized by the Ministry of Education under the Administrative Cooperation Agreement between the Government of El Salvador, represented by the Ministry of Education, and the Catholic Church, represented by the country's Episcopal Conference. To date 123 CECEs have been established with 738 members.

471. In pursuance of its mandate as standard-setter, regulator and facilitator, the Ministry of Education is carrying out the following activities through the Departmental Directorates of Education:

- (a) Establishment and dissemination of regulations and procedures for the administration of human, financial and physical resources, of directives for the use of funds transferred to educational establishments and, in general, of rules and regulations governing the education sector;
- (b) Encouragement of participation by the educational community through training courses and technical assistance for the running of local administrative bodies;
- (c) Transfer of funds in the form of bonds to support administrative management.

472. The decentralization process is subject to a number of constraints such as the following:

- The limited budget appropriation in terms of the overall needs of educational establishments;
- The time available to the members of the bodies concerned, especially parents, to attend meetings and training courses;
- The limited academic training of some parents for tasks such as planning, administration and keeping account of the resources of the educational establishment;
- The limited operational capacity of the Ministry of Education when it comes to providing technical assistance and ensuring continuous monitoring of local school administration bodies;



- The academic and sports performance of students. Scholarships are awarded with a view to promoting the development of skills, abilities and attitudes of the kind needed by Salvadoran society.

473. The following are some of the country's scholarship programmes:

- Prizes for academic excellence. These prizes are awarded to the best students in the first to the ninth grades in each department of the public sector; they are students who have distinguished themselves throughout the year in terms of conduct and academic performance;
- The Dr. Rodríguez Porth prizes, which are awarded to students who display high creativity and skill in art;
- Scholarships for sports performance sponsored by the National Sports Institute.

### **C. Leisure, recreation and cultural activities (art. 31)**

474. The Ministry of Education, motivated by the desire to provide a range of cultural and recreational activities and sports conducive to the promotion of human, ethical and civic values, and keen to offer sound recreational opportunities for children and adolescents, has structured, organized, planned and implemented recreational and cultural activities, promoting the participation in such activities of most of the student population. The following are some of the activities promoted:

- School games are held at all educational establishments in the national education system, serving 25 per cent of the school population;
- Support has been provided for the holding of different stages of student games in 22 kinds of sports throughout the country;
- Arrangements have been made for coordination with different sports federations, which provide the necessary support for child and adolescent players.

475. Steps have been taken to improve the quality of physical education through the following activities:

- Educational Reform Days have been organized for teachers of physical education;
- Training days have been organized for class teachers to assist them in running physical education programmes at the basic education level;
- The technical delivery of physical education syllabuses at the intermediate level has been completed.

476. With regard to recreation, the Ministry of Education has organized a number of events such as the following:

- Involvement of student members of the School Education Boards in organizing the "First Youth Leadership Workshop" designed specially for their benefit at the national level;

- National and Central American student band festivals. The aim of this activity is to promote civic values and a sense of belonging, to encourage sound competitive practices and to develop musical skills;
- National choir festivals, which contribute to community social integration by promoting cultural identity, patriotism and respect for the environment;
- Folk and contemporary dance festivals;
- Pre-school education recreational mornings, the purpose of which is to develop fine and gross psychomotor skills and to promote social contacts among teachers, students, parents and the community in general;
- Pre-school education arts festivals, the purpose of which is to develop responses, abilities and skills and to promote cultural identity and different branches of the arts;
- Physical education festivals;
- National mathematics contests, which are held in even years and are open to students at all levels from basic education up to the final year of high school;
- National spelling contests to promote grammar, spelling and writing skills from basic education up to the final year of high school;
- Student forums dealing with subjects related to childhood and adolescence;
- Camps for students at the second and third levels of basic education;
- During school holidays sports activities have been organized for students in different departments of the country;
- Preventive activities relating to sports and social, civic, cultural and vocational matters have been organized jointly with a range of public and private institutions.

477. The National Sports Institute (INDES) spent some 47 million colones between 1993 and 1999 on building and repairing the country's sports infrastructure with a view to providing children and adolescents, and the population in general, with well-appointed and safe sports facilities. A further aim of this investment was to ensure that sports facilities were properly laid out and equipped for the Fifth Central American Games. Funds are currently being invested in the facilities to be used for the Nineteenth Central American and Caribbean Games in 2002, not just to respond to this national challenge but also to provide sports facilities for future generations.

478. The creation of other recreational and amusement centres for children has also been encouraged, for example the "Tin Marín" Children's Museum, located in a public park in the central district of the capital city, which is supported by private enterprise, and the Family Park, located in the suburbs of the capital, which is supported by the National Secretariat for the Family.

## **IX. SPECIAL PROTECTION MEASURES**

### **A. Children in situations of emergency**

#### **1. Refugee children (art. 22)**

479. Refugee children in El Salvador are the children of Nicaraguan refugees who arrived in El Salvador during the 1980s.

480. It is estimated that 29 children, of whom 48 per cent are girls, enjoy refugee status with the Office of the United Nations High Commissioner for Refugees (UNHCR).

481. In El Salvador, minor children of persons recognized as refugees enjoy the same status as their parents. Hence, the minor children of refugees have the same legal status as their parents. As a result, and in view of the fact that there have been no cases of unaccompanied minors requesting recognition of their status as refugees, no formal or ad hoc mechanism has been established to determine the status of unaccompanied minor refugees.<sup>58</sup>

482. Problems arose in some cases in connection with registration of the birth of refugee children. This was due to the fact that many Nicaraguan refugees in El Salvador arrived without identity papers and were unable to meet the requirements laid down in Salvadoran legislation for registration of their children born in El Salvador. The problem was solved by UNHCR and the Government of El Salvador who worked out procedures and arrangements for addressing the problem of undocumented refugees.

483. The number of cases of unaccompanied refugee minors returning to El Salvador is insignificant. In the few cases that arose, UNHCR accompanied the returning minors until they were handed over to their relatives. There was only one instance in which a minor's family refused to accept him. In that case the Government of El Salvador assumed responsibility for the minor through its child protection institutions.

484. UNHCR has no knowledge of any cases in El Salvador of detention or deprivation of liberty of refugee minors. There is no record either of circumstances during the past six years in which the safety of refugee minors was at risk.

485. Under Salvadoran legislation, refugee minors have the right of access to education. They also have access to basic health services. The enrolment of these children in school gave rise to some problems in the past owing to their parents' lack of identity papers. However, the problem was resolved as soon as their parents were issued with papers.

486. It should be noted that the Government set up a pension fund after the signing of the Peace Accords in El Salvador to protect persons who were wounded or acquired a disability as a result of the armed conflict. UNHCR, in agreement with the Salvadoran Government, established a

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<sup>58</sup> A bill concerning determination of the status of refugees is currently before the Legislative Assembly. It applies at the national level the provisions of the 1951 Convention and the 1967 New York Protocol relating to the Status of Refugees, which were ratified by El Salvador in 1983. An ad hoc procedure for determining refugee status has also been introduced and is set forth in the above-mentioned bill.

legal counselling project for child returnees to El Salvador to assist them in completing the requisite documentary formalities to receive benefits from the fund.

487. In 1998, UNHCR and the Scout Movement organized a meeting for 169 child returnees to El Salvador. The participants were aged between 11 and 14. The event was organized on the basis of the recommendations contained in the Machel study on the impact of armed conflict on children. Before closing its office in El Salvador, UNHCR established contact with UNICEF, UNDP and the Salvadoran Government to ensure that this programme was continued.

**2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)**

488. In connection with the supplementary peace accords of December 1992, a special programme was negotiated on behalf of the leaders and middle-level commanders of the Frente Farabundo Martí para la Liberación Nacional (FMLN), incorporating the Fund for the Protection of War Wounded and the so-called Rural and Urban Settlements.

489. The Government of El Salvador provided opportunities for ex-combatants through the Programme for the Reintegration of Former Combatants into Civilian Life. Eighty per cent are considered to have been satisfactorily reintegrated and the Programme achieved wide coverage of those directly involved in the conflict.

490. The National Reconstruction Plan focused on demobilized and displaced persons, on returnees and on highly vulnerable persons living in the areas worst affected by the conflict, including children in 115 municipalities in the northern part of the country.

491. The 115 local governments affected by the armed conflict participated in the implementation of the National Reconstruction Plan together with 16 governmental organizations and 192 NGOs, which took part in various programmes on behalf of former combatants and demobilized persons and in social and economic development programmes. Mention may be made, for example, of the Welfare Programme for War Wounded and the Welfare Programme for FMLN Children.

492. Legislative Decree No. 416 containing the Benefit Act for Persons Wounded and Disabled as a Result of the Armed Conflict served as the basis for the establishment of services for the war wounded.

493. The institution responsible for monitoring implementation of this Act is the Fund for the Protection of Persons Wounded and Disabled as a Result of the Armed Conflict, which was established in June 1993. It gave priority in the initial stages to persons with disabilities for humanitarian reasons. In December 1994 a number of amendments to Decree No. 416 were adopted; a table of disabilities was drawn up with a view to conducting technical assessments of beneficiaries.

494. In September 1995, the Fund initiated the process of validation of persons registered in the census with a view to granting benefits to minor children of deceased former combatants and parents of pensionable age. The benefit policy on behalf of this category of beneficiaries was adopted unanimously by the Board of Directors of the Fund in Agreement No. 34 of June 1994.

495. The Welfare Programme for FMLN Children was adopted to facilitate the educational reintegration and technical training of minors demobilized from the FMLN, aged between 15 and 16 on 16 January 1992, who had not had access to the Land Programme under the Supplementary Agreement between the Government of El Salvador and the FMLN.

496. The National Secretariat for the Family conducted a national survey to identify child beneficiaries of the project and the reintegration option they wished to choose, either technical training or education at Ministry of Education establishments. Among the children identified, 152 opted to attend public educational establishments and 97 to enrol for technical training. The National Educational Supervision Directorate of the Ministry of Education took the requisite steps to have them enrolled, giving them priority access to baskets of basic educational materials and priority for exemption from the corresponding enrolment quota.

497. Only nine of the children who opted for enrolment in educational establishments were successfully incorporated in the system. The National Secretariat for the Family, with support from the World Food Programme, supplied them with a basic food basket for a period of six months. Only one of the nine children completed the course of studies.

498. The Vocational Training Programme funded by the European Economic Community, and the Programme for Integration and Promotion of Employment of Demobilized Persons financed by the German corporation for international cooperation GTZ and the National Secretariat for the Family, attended to the needs of the target group and to those of a further 25 children for whom no provision had been made in the Programme.

499. With regard to children who disappeared as a result of the armed conflict, some were evacuated from the conflict zones to ensure their physical safety; however, no specific record was kept of their movements or of whether they were handed over to humanitarian, governmental or non-governmental organizations.

500. The Association for the Tracing of Children who Disappeared as a Result of the Armed Conflict (Pro-Búsqueda) is a humanitarian non-governmental organization set up in 1994 to trace disappeared children and reunite them with their families.

501. To date some 100 children have been traced in eight different countries, although the majority were found in El Salvador. A large proportion of the children who had been adopted in Europe and the United States were traced through adoption procedures. In all cases where there was a reasonable doubt regarding the identity of the children, a DNA test was carried out to confirm the existence of blood ties with the possible biological family.

502. In addition, the United States non-governmental organization Physicians for Human Rights assisted in reunifying the children with their families.

503. Cases of children who were captured during military operations and subsequently became the victims of child trafficking are currently being investigated. The fact that the children's identity and origin have been changed has made the investigations long and complex.

504. In this connection, the Ministry of National Defence has compiled reports through operational units of the Armed Forces, where they exist, with a view to providing clues to the whereabouts of the children.

505. The courts have made available official copies of documents relating to specific cases to facilitate a review of the registers in order to ascertain the whereabouts of the children.

506. By 1996 a total of 323 children had been recorded as having disappeared as a result of the armed conflict. Of the 29 children who had been traced, 22 had been reunited with their families.

507. With regard to children who suffered direct physical injury as a result of the armed conflict, there are no exact figures for the number of children treated by the country's rehabilitation centres. There are various reasons for this, including the following: fear of revealing the exact cause of the injury immediately after the ending of hostilities; moreover, the precise nature of the injury was not specified in the records of the treatment provided; lastly, it should be noted that some persons who received treatment (amputation, rehabilitation) as children are now adults.

508. One of the special projects established for children who were physically injured and needed amputations and treatment during the armed conflict was the Roberto Callejas Montalvo Temporary Home project, which provided treatment for 110 wounded children. The children were provided with the necessary prostheses and orthoses, physiotherapy and psychotherapy to overcome trauma, and accommodation during the rehabilitation treatment.

509. The Salvadoran Institute for Rehabilitation of Persons with Disabilities (ISRI) implemented two projects in the post-war period for all people, including children, who had acquired a disability during the armed conflict in the eastern and central region of the country.

510. One of the projects consisted in providing support for the Eastern Rehabilitation Centre established under the National Reconstruction Plan (PRN) from March 1992 to September 1993. Services were provided to one thousand people of all ages. It is estimated that 20 per cent were under 18 years of age.

511. Another project, financed by the European Economic Community, was executed through the Programme for War Wounded (PROLIS) and provided services for war wounded from the country's central and eastern region during the period 1993-1997. Under this project a First- and Second-level Rehabilitation Centre with mobile units was established. Two centres were established in the department of Usulután, seven centres in San Miguel, six in Morazán, two in La Unión, one in San Vicente and one in Suchitoto in Cuscatlán department. It should be noted that both civilians and former combatants were treated in the rehabilitation centres.

512. The Plan for the Expansion of Rehabilitation Services, which included child care, was launched in the second half of 1996 and became fully operational in 1998, six years after the signing of the Peace Accords.

513. The Plan consists of the following programmes: (a) enhancement of rehabilitation and habilitation services for persons with disabilities; (b) promotion of nationwide measures to prevent and detect disabilities; (c) increased social participation; (d) promotion of institutional development and (e) the inter-agency cooperation and coordination programme.

514. It should be mentioned that some children who acquired a disability either during the armed conflict or after the conflict because of the failure to remove mines were able to benefit from the Plan even as adults, since children aged between 12 and 17 in 1992 had become adults by 1998, the year in which the Plan for the Expansion of Rehabilitation Services became fully operational.

515. To ensure motor recovery, children have been provided, as appropriate, with a prosthesis and/or an orthosis; in addition, they have been given all kinds of physiotherapy and occupational therapy to develop fine and gross motor ability of the upper limbs; they have further been encouraged to participate in sports to develop muscles and balance and to build the self-confidence needed to move about in open areas.

516. With a view to social reintegration, families have been given advice on how to remove architectural barriers in the home, and awareness days have been organized for community representatives and leaders to alert them to the need to integrate children with disabilities into the community. They have also been given advice on removing barriers to facilitate integration.

517. In the area of education, awareness days have been organized for school teaching staff to ensure that they accept children with disabilities. They have also been trained in looking after children with disabilities and given advice on how to remove architectural barriers in educational establishments.

518. The State of El Salvador has taken steps to prevent children from participating in future armed conflicts. Pursuant to the new doctrine of the Armed Forces, an outcome of the Peace Accords, which emphasizes that military training should respect the rule of law and human rights, it was agreed to suspend all forms of forced recruitment and to enact a new Military and Reserve Service Act based on the principles of universality, compulsion, equity and non-discrimination of military service.

519. The Constitution (art. 215) stipulates that military service is compulsory for all Salvadorans aged between 18 and 30 years of age. The article reads as follows:

"Military service is compulsory for all Salvadorans between the ages of eighteen and thirty.

In case of necessity, all Salvadorans who are fit for military service shall be conscripted.

This matter shall be regulated by special legislation."

520. The Legislative Assembly therefore adopted the Armed Forces Military and Reserve Service Act<sup>59</sup> to regulate the matters addressed in the Constitution.

521. The Military Service Act thus stipulates that its provisions apply to all Salvadorans aged between 18 and 30, without distinction as to sex or social, economic or religious status, and, in case of necessity, to all Salvadorans who are fit for military service. The Act also applies to minors aged between 16 and 18 who enlist voluntarily for military service in accordance with the provisions of the Act (art. 2).

522. With regard to the participation of children in future armed conflicts, it may be inferred that such participation is prohibited by law, except where the country's own needs so require, in which case it must be voluntary. In this connection, the Act (arts. 6 and 11) requires all Salvadorans,

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<sup>59</sup> The Armed Forces Military and Reserve Service Act was adopted by Legislative Decree No. 298 of 30 July 1992.

within one month of reaching the age of 17, to present themselves at the recruitment and reserve centres of their place of residence and, where appropriate, at the respective offices, in order to be enrolled in the Military Register. However, the Act states that only persons who have reached the age of 18 may be called up, unless persons over 16 years of age present themselves voluntarily. In such cases, they may be accepted in the light of the needs of the service.

523. The Regulations pertaining to the Armed Forces Military and Reserve Service Act<sup>60</sup> regulate recruitment in accordance with the aforementioned terms.

524. In El Salvador, compulsory recruitment occurs with effect from the age of 18. Since the signing of the Peace Accords recruitment has been conducted on a voluntary basis, giving priority to persons over 18 years of age.

525. Moreover, El Salvador signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 18 September 2000. Ratification of this instrument is currently pending before the Legislative Assembly.

### **3. Children in conflict with the law. The administration of juvenile justice (art. 40)**

526. Children in conflict with the criminal law were formerly subject, in terms of substance and procedure, to the Juvenile Code which had been in force since 1974. Such children were subject to the jurisdiction of juvenile courts, which had exclusive authority to hear cases concerning: (a) offences regarded as crimes or misdemeanours under ordinary law allegedly committed by minors not above 16 years of age, so that children in the 0 to 16 age group were subject to the relevant laws and jurisdiction; and (b) appropriate measures for the treatment, rehabilitation, care, placement, monitoring and education of minors subject to the Juvenile Code.

527. Children aged between 16 and 18 who committed offences classified as crimes or misdemeanours in criminal legislation were subject to adult criminal legislation and jurisdiction.

528. The Juvenile Offenders Act subsequently rendered the Juvenile Code null and void. The Act is applicable to persons aged between 12 and 18 years and rests on the following basic principles: integrated protection of the child, the best interests of the child, respect for the child's human rights, integrated education of the child and reintegration into family and society.

529. The Act stipulates, among other provisions already mentioned, that civil proceedings for damages occasioned by the offence committed by a minor must be conducted before the competent judge and be based on the norms governing civil proceedings, independently of the juvenile judge's disposition of the case. Where civil responsibility is incurred in a traffic accident, the proceedings are based on the Traffic Accidents (Special Procedures) Act.

530. With regard to administrative measures, departments and units established in different institutions assume prime responsibility for addressing the legal situation of minors who have committed offences. They include the Juvenile Offenders Department (Office of the Attorney-General of the Republic), the Juvenile Services Section (National Civil Police), the Juvenile Prosecutors Unit (Office of the Prosecutor-General of the Republic) and the Office of the Deputy

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<sup>60</sup> The Regulations were adopted by Executive Decree No. 96 of 16 October 1992.



Procurator for the Rights of the Child (Office of the Procurator for the Protection of Human Rights).

531. With regard to measures adopted in accordance with article 40, paragraph 3, of the Convention on the Rights of the Child to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, mention may be made of the following:

- Periodic meetings of the Inter-Agency Steering Committee to Monitor and Implement the Juvenile Offenders Act, composed of the agencies involved in the Administration of Juvenile Criminal Justice, based in the Executive Technical Unit of the Justice Sector;
- Establishment of the Working Group at the Office of the Attorney-General of the Republic to draft amendments to the Juvenile Offenders Act and the Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act;
- Working meetings of prosecutors with officials of the Family and Minors Section of the National Civil Police;
- Specialized training courses for persons involved in running the system, sponsored by UNDP in the premises of the Judicial Training College of the National Judicial Service Council;
- Inter-agency consultations promoted by the Legislative Assembly with technical support from the Office of the United Nations High Commissioner for Human Rights and UNICEF, with a view to reviewing and amending the Juvenile Offenders Act.

532. The legally established procedures and safeguards applicable to children in conflict with the criminal law are being implemented in accordance with the provisions of the Convention on the Rights of the Child, since the legislation in question is that most closely aligned with the Convention.

#### **4. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b) – (d))**

533. The Juvenile Offenders (Monitoring and Supervision of Enforcement of Judgements) Act and the Juvenile Offenders Act assign responsibility for monitoring and supervising measures applicable to juvenile offenders to courts for the enforcement of sentences against juveniles and therefore regulate the functions of such courts and the appeals that may be lodged against their decisions.

534. The Act empowers the court to monitor and supervise such measures as may be imposed by the juvenile courts in the manner best calculated to safeguard the juvenile's rights, to ensure compliance with the norms governing enforcement of judgements and to fine officials who violate or threaten the rights of minors in enforcing sentences.

535. In addition, provision is made for a three-monthly review of sentences with the assistance of the specialists and technical experts available to each court in order to ascertain whether they are fulfilling the aims for which they were imposed. The sentences may also be modified,

replaced and revoked, automatically or on application by a party, where they fail to meet the aims for which they were imposed or where they impede the process of reintegration of the minor, following consultations, where appropriate, with the persons responsible for supporting the minor during enforcement of the sentence.

536. The Act stipulates that a worsening of the minor's situation cannot be allowed under any circumstances. Moreover, special vigilance is required to ensure that no minor is unlawfully or arbitrarily deprived of his or her liberty in a correctional institution.

537. Custody under the Salvadoran legal system constitutes lawful deprivation of liberty ordered by a court in exceptional cases, as a "last resort", for the shortest time possible, and in no circumstances for more than seven years, where the prerequisites established by law for deprivation of liberty exist.

538. Notwithstanding the foregoing, activities outside a correctional institution may be authorized in the context of enforcement of a custodial sentence or a sentence of deprivation of liberty. Furthermore, custody may be replaced by freedom subject to supervision, that is to say subject to rules of conduct or community service.

539. Where a minor subject to detention is a person with a mental or physical disability, the law requires that that person be given appropriate protection and assistance from specialists with a view to receiving treatment in a suitable establishment.

540. Minors may be deprived of their liberty only when caught *in flagrante delicto* or on the basis of a written order by a judge. Where they are caught *in flagrante delicto*, certain procedures laid down by law must be followed, and when deprivation of liberty occurs on the basis of a judge's order, the order is enforced by locating the minor at his or her home or in some other place.

541. The Act stipulates that when minors are deprived of their liberty on the basis of a written order by a judge or when caught *in flagrante delicto*, their parents, guardians or custodians, the Office of the Prosecutor-General of the Republic, the Office of the Attorney-General of the Republic and the Office of the Procurator for the Protection of Human Rights must be immediately informed of the grounds for their detention, the place where they are being held or the place to which they will be taken.

542. The Juvenile Offenders Act requires each correctional institution to have its own regulations, which should respect the rights and safeguards set forth in the Act and make minimum provision for matters such as the following: a regime spelling out the rights and duties of juvenile inmates and specific regulations governing the penalties that may be imposed on the minor during enforcement of the sentence.

543. Disciplinary measures that are inhuman or degrading, including corporal punishment, confinement in dark cells or solitary confinement, may not be applied under any circumstances. The Act furthermore prohibits reduction of food, denial of contact with relatives, collective punishment and punishment on more than one occasion for the same disciplinary offence.

544. In addition, restrictions are imposed on the use of coercive measures and physical force, unless such measures are strictly necessary to achieve a legitimate aim. The Act regulates the procedure to be followed for the imposition of disciplinary penalties, specifies the arrangements

to be made to ensure that the rights of minors deprived of their liberty are fully respected, and provides for the establishment of educational, training, employment, health, cultural, religious and recreational programmes.

545. On entering a correctional institution, all minors receive a copy of the institution's regulations and a leaflet explaining their rights and obligations in clear and simple terms. In the case of minors who are unable to read, the information is provided in an easily understandable way. These formalities are recorded in the relevant file.

546. With regard to remedies against judicial decisions, the Code of Criminal Procedure provides for reconsideration, special appeal and judicial review, subject to some amendments in juvenile legislation, especially in the Juvenile Offenders Act.

547. An application for reconsideration of any decision concerning a minor may be filed with the court for enforcement of judgements that handed down the decision. The purpose of this remedy is to have the decision revoked or modified.

548. The remedy of appeal is applicable only to certain decisions such as those replacing or revoking a sentence and those modifying the content of the custodial sentence; those infringing or unduly restricting the minor's fundamental rights; and those providing for the imposition of penalties on officials who have violated or threatened the rights of the minor. Applications for this remedy are filed with the court that handed down the judgement.

549. The remedy of judicial review is available to a minor against a final enforceable judicial decision at any time where the assessment of the facts that formed the basis for the decision is incompatible with an assessment of the same facts in another final decision pertaining to juvenile proceedings or an enforceable criminal sentence; where the disputed decision is based on documentary evidence or evidence of witnesses that has been declared false in a subsequent enforceable judgement; where new facts or evidence come to light after delivery of the judgement which make it clear that the offence did not take place, that the minor did not commit it, or that a more favourable provision is applicable; and where a more favourable law should be applied retroactively.

550. An application for the remedy of judicial review is filed with the court that handed down the disputed decision and heard by the Juvenile Division on the basis of supporting arguments and the applicable legal provisions. Once an application has been filed, the proceedings are conducted in the manner set forth in the Act.

551. On conclusion of the proceedings before the Division, the court may decide to annul the disputed decision and order a new hearing where the case so requires, or it may pronounce judgement in the case directly. Subsequently, and during the judicial review proceedings, the Division may suspend enforcement of the disputed sentence and order the release of the minor. In the decision ordering the minor's release the court rules on compensation for the damage or injury caused by the annulled sentence. The compensation is paid to the minor or to his or her heirs and must be paid by the State, unless the minor or his or her legal guardians contributed wilfully or culpably to the judicial error.

552. Rejection of an application for judicial review does not preclude the submission of another application provided that it is based on different grounds.

553. With regard to judicial supervision of the sentences imposed and application of the safeguards enshrined in the Act, minors are entitled to receive information on their rights vis-à-vis the persons or officials under whose responsibility they have been placed; on the measures and stages of social reintegration envisaged; on the internal regime of the custodial institution, especially any disciplinary measures applicable; on the right to be maintained, as a matter of preference, in their family environment and on the fact that detention should be ordered only as an exceptional measure and should take place in conditions that are deemed to be most conducive to their integrated education.

554. Moreover, minors are entitled to health care and social and educational services corresponding to their age and circumstances and provided by professionally trained personnel; to communicate confidentially with their defence counsel, the juvenile procurator, the juvenile prosecutor and the judge; to submit petitions to any authority with a guaranteed response, in particular to appeal on interlocutory matters to the court for the enforcement of judgements; to have their family informed of its rights and of their own circumstances and rights; not to be transferred arbitrarily from the institution in which they are serving the custodial sentence; and never to be placed in incommunicado detention or solitary confinement or to be subjected to corporal punishment.

555. Provision is made in the Act for a juvenile procurator to be directly assigned to the court for the enforcement of judgements. The powers attributed to the procurator include looking after the minor's interests; requesting the modification, replacement, revocation or termination of measures where necessary; seeking a judicial remedy where appropriate; and ensuring that minors' rights are not violated or threatened during the enforcement of sentences by taking the requisite action.

556. The Act provides for a periodic review of the measures imposed on the minor, without prejudice to any prior appeal on an interlocutory matter filed by the minor or other persons empowered to do so. The relevant court for the enforcement of judgements must ascertain whether the measures imposed are achieving the aims set forth in the Juvenile Offenders Act. The review takes the form of an oral hearing that all parties are summoned to attend.

557. Moreover, the legal actions and other possibilities offered to minors include the option of filing a complaint, whereby a minor and his or her defence counsel, parents, guardians or custodians, the Office of the Procurator for the Protection of Human Rights, the juvenile procurator and the juvenile prosecutor may complain to the competent court for the enforcement of judgements when the fundamental rights of a minor subjected to any measure have been infringed, or when he or she has been subjected to any activity or disciplinary penalty that is not permitted or is prohibited by the Juvenile Offenders Act or the regulations of correctional institutions.

558. It should be mentioned that custody sentences are served in four institutions run by the Salvadoran Institute for the Protection of Children. One institution was specially built and equipped for the purpose; the other three have been converted in recent years. The average number of inmates is 425, of whom 400 are male and 25 female, the latter being housed separately from the male inmates. The institutions have been equipped with workshops where inmates receive technical training to prepare them for reintegration into society and the family.

**5. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37 (a))**

559. The Constitution stipulates (art. 27) that the death penalty may be imposed only in the cases prescribed by military law during a state of international war; imprisonment for debt, life imprisonment, defamatory penalties, exile and all forms of torture are also prohibited.

560. At the international level, El Salvador is a State party to the American Convention on Human Rights or Pact of San José, and to the International Covenant on Civil and Political Rights and has thus incurred a number of international obligations, including the obligation to protect the right to life, which comprises specific obligations relating to prohibition of the death penalty or of its restoration in respect of crimes for which it has been abolished.

561. In the light of the foregoing and on the basis of the fundamental rights and safeguards to which minors are entitled, juveniles may be institutionalized only on the basis of a written order from the competent court, as an exceptional measure and for the shortest time possible, and under no circumstances may they be sentenced to death or life imprisonment.

562. The duration of the custodial sentence may not exceed five years, except where the minor was at least 16 years of age at the time of commission of the act. In such cases, custody may be ordered for a term the minimum and maximum duration of which is equivalent to one half of the term prescribed by criminal legislation as the penalty of deprivation of liberty for each offence. In no circumstances, however, may the custodial sentence exceed seven years.

**B. Physical and psychological recovery and social reintegration (art. 39)**

563. The State of El Salvador has taken ample steps to ensure that children who have been the victims of neglect, exploitation or abuse, torture or any other cruel treatment or punishment are reintegrated into society.

564. A special feature of the protection proceedings is that psychosocial studies of young people must be ordered in all cases in order to ensure that their findings are taken into account when the relevant decision is handed down.

565. In addition, Book Three, Title I, of the Family Code sets forth the rights and duties of children, which include their right to be brought up by their parents and to receive from them an education, protection, support and security. The law also provides for the extension of assistance and protection to abandoned minors.

566. The Juvenile Offenders Act recognizes minors' right to health care and to social and educational services corresponding to their age, as well as to conditions compatible with their dignity, and requires such services to be provided by properly qualified personnel.

567. The courts for enforcement of sentences imposed on minors are organized in accordance with the provisions of the Judiciary Organization Act and other applicable legal norms; their staff must be specially qualified and include at least a psychologist, a sociologist, a social worker and an educator. They may also draw on the services of experts from the Salvadoran Institute for the Protection of Children and the Institute of Forensic Medicine and request the collaboration, free of charge, of other specialists who are not on their staff. There are currently five courts for the enforcement of judgements in the country.

568. Where a minor subject to detention is a person with a mental or physical disability, he or she is entitled to full protection and assistance from specialists with a view to receiving treatment in a suitable establishment.

569. Correctional institutions must meet certain legal requirements: they must be located in decent premises and their staff must include persons with pedagogical, legal and social training; schooling, vocational training and recreation are compulsory in such institutions; and special attention must be given to the minor's family group with a view to preserving and promoting family ties and reintegrating him or her into the family and ultimately into society.

570. The institutions' internal regulations also require the establishment of educational, training, employment, health, cultural, religious and recreational programmes.

571. The Domestic Violence Act is based on the premise that violence committed against any member of the family constitutes an ongoing assault on the right to live a life free from fear, on the physical, psychological, moral and sexual integrity of the human person and on his or her dignity and safety.

572. The aim of the Act is to apply preventive measures and to punish acts of domestic violence, without prejudice to any criminal responsibility to which they may give rise. It also regulates specific cases in which the victim is a minor, a person without legal capacity or a person with a disability, requiring, inter alia, that such persons receive an academic education and tuition in ethical, civic and social values, respect for the dignity of the human person and for the rights and duties of members of the family as well as persons with disabilities and older persons, in accordance with the provisions of the legislation in force and the international instruments ratified by El Salvador.

573. The Preventive Care Division of the Salvadoran Institute for the Protection of Children has been responsible for the enforcement of sentences in open institutions. By 1999 it was dealing with an annual average of 310 cases. Social reintegration has been achieved through study grants, based on psychosocial studies, both for formal schooling and for technical vocational training.

574. The beneficiaries enrolled in formal schooling accounted for 5 per cent of the total and those enrolled in technical vocational training for 95 per cent. However, only 53 per cent of those enrolled in the two areas completed their course of studies. Employment was found for only 8 per cent of those with technical vocational training.

575. All of these young people took part in discussion groups on the problems encountered by children and adolescents, such as drugs and violence, and on their rights and duties, as well as in recreational and educational get-togethers and in art, painting, puppet and pantomime workshops.

576. Families have been involved through the "Family Strengthening" subprogramme, which consists of meetings of parents or guardians, at which subjects such as family communication, self-esteem and sexual and reproductive health are introduced and discussed. This work has required close coordination with local networks involving town councils, NGOs and municipal courts.

577. However, the reintegration of juvenile offenders into society is still a complex process, partly because of the major stigma from which they suffer, since as soon as people hear that they

have tattoos and a record of involvement in judicial proceedings, they tend to bar them from education and employment. Work with families needs to be stepped up, because they continue to be rejectionist, and communities must be encouraged to accept them and to open up facilities for their social reintegration.

### **C. Economic exploitation of children, including child labour (art. 32)**

578. Since 1992, El Salvador has attached great importance to protecting the rights of the child and has sought, in particular, to prevent the economic exploitation of children and to abolish child labour, especially its worst forms. For example, the Ministry of Labour and Social Security has adopted measures such as the following designed to create a legal framework for protection of the rights of the child:

- The Labour Code, adopted by Legislative Decree No. 15 of 19 April 1996 and amended and updated to ensure protection of children in 1994;
- The Labour and Social Organization and Functions Act, adopted by Legislative Decree No. 682 of 19 April 1996;
- The ILO Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), ratified by Legislative Decree No. 73 of 14 July 1994;
- The ILO Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78), ratified by Legislative Decree No. 74 of 14 July 1994;
- The ILO Minimum Age Convention, 1973 (No. 138), ratified by Legislative Decree No. 82 of 14 July 1994;
- The ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ratified by Legislative Decree No. 28 of 15 June 2000;
- Ratification of the Memorandum of Understanding between El Salvador and the ILO on the elimination of child labour and immediate action for its elimination, ratified on 15 June 2000.

579. The country has established a legal framework to ensure that the worst forms of child labour are eliminated and this will help to minimize the economic exploitation of children.

580. The Labour Code stipulates that work performed by persons under 18 and over 12 years of age must be specially adapted to their age, physical condition and development. Companies are prohibited from hiring minors for work regarded as unhealthy and hazardous, and the recruitment of minors may be authorized only on condition that their health, safety and morals are fully protected and that they have received appropriate and specific tuition or vocational training for the work they will be required to perform.

581. The Code also stipulates (art. 116) that the hours worked by children under 16 may not exceed 6 hours a day and 34 hours a week in any type of employment. Children under 18 may not do night work.

582. Before authorizing the recruitment of a minor in accordance with the terms and conditions laid down by the law, the Ministry of Labour provides for an examination of the minor, free of charge, by an authorized physician at the clinic attached to the Ministry. The doctor determines the minor's state of health and fitness for the prospective employment.

583. Moreover, in the light of its international obligations and its determination to implement a national strategy for the gradual elimination of the worst forms of child labour identified, El Salvador was designated by the ILO's International Programme on the Elimination of Child Labour (IPEC) as one of three pilot countries for an integrated programme designed to have a beneficial impact on the situation of children who have no choice but to work.

584. One of the first steps to be taken, at the express request of the Ministry of Labour and Social Security in coordination with the National Secretariat for the Family, was the opening of an IPEC National Coordination Office. In addition, a number of projects aimed at eliminating child labour have been launched or are being negotiated.

585. The Salvadoran Institute for the Protection of Children has also addressed the issue of child labour, promoting its gradual elimination in the case of children under 12 years of age and elimination of its worst forms in the case of all children under 18. It monitors the conditions of employment of adolescents to ensure that they have continued access to formal education and to training courses that allow them to improve their employment qualifications. To that end, studies entitled "Child Labour and Education in El Salvador" and "Study of Refuse Scavengers" are being undertaken in coordination with UNICEF. The findings of this research will be used to develop appropriate projects. Aside from child employment in prostitution and drug trafficking, the following types of work have been identified as hazardous: firework production, refuse scavenging, the extraction of molluscs from salt marshes, and street work, especially "flame-throwing". Six projects dealing with each of these types of work and also targeting children working in coffee production have been developed and are being implemented in different parts of the country in coordination with the Ministry of Labour, the IPEC office in the country, healthcare units, private companies, municipalities, universities, schools, community boards and NGOs; the latter are directly involved in project implementation. Moreover, from 2001 the Child Labour Module will be implemented through the ILO, in coordination with the Ministry of Labour and the Statistics and Censuses Department, in the country's annual Multipurpose Household Survey. The aim of this project is to compile more reliable data on the scale and characteristics of this phenomenon in El Salvador.<sup>61</sup>

#### **D. Drug abuse (art. 33)**

586. El Salvador has taken legislative steps to protect society and children against drug consumption and trafficking. It adopted the Drug-related Activities Regulation Act<sup>62</sup> containing applicable provisions (arts. 49-51 and art. 55) and the Act to Control the Sale of Substances and Products for Use in Industry or Trade that Contain Liquid Solvents and Inhalants, in October 1998.

587. The legal provisions that protect children's fundamental right to mental and physical health include the Act to Control the Sale of Substances and Products for Use in Industry or Trade that Contain Liquid Solvents and Inhalants (arts. 6, 8(1), 2, 4, 11, 13, 16 and 17), the Family Code (arts. 369 and 370), and the Drug-related Activities Regulation Act (arts. 44, 51, 55 and 60(a) and (b)).

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<sup>61</sup> See annex 20 for available data on child labour.

<sup>62</sup> Act adopted by Legislative Decree No. 728 of 5 March 1991.



588. An Inter-Agency Anti-Drug Committee has been established. It operates in the areas of prevention of consumption, eradication and the fight against drug trafficking. The following institutions are represented on the Committee: the Anti-Drug Foundation (FUNDASALVA), the Ministry of Education, the Ministry of Public Health and Social Welfare, the National Civil Police and the Office of the Procurator-General of the Republic.

589. A National Anti-Drug Plan is currently being developed. To that end, the National Secretariat for the Family plans to hold a National Forum with broad civil society participation, which will be attended by young people.

#### **E. Sexual exploitation and sexual abuse (art. 34)<sup>63</sup>**

590. The Domestic Violence Act and the Criminal Code, which have been commented on in this report, contain important provisions aimed at preventing and punishing sexual violence against children.

591. Administrative and other measures have been taken to prevent sexual violence and to provide multidisciplinary individual and group assistance to its victims. Between 1996 and October 2000, care was provided to 1,207 children under 18 who had been the victims of sexual assault; 83 per cent of these children were female. This type of violence has been defined as a separate offence and the Institute of Forensic Medicine and the Office of the Prosecutor-General of the Republic are thus involved.

#### **F. Sale, trafficking and abduction (art. 35)**

592. The Family Code (art. 348) prescribes special measures of protection to be adopted by the State in such cases, entrusting it with responsibility for protecting all children, especially those whose rights are at risk or have been violated.

593. The Salvadoran Institute for the Protection of Children Act (art. 23, para. 3) and the Criminal Code (arts. 149 and 367) establish procedures for dealing with offences against individual liberty, the crime of abduction and the crime of trafficking in persons.

#### **G. Children belonging to a minority or an indigenous group (art. 30)**

594. The National Council for the Arts and Culture (CONCULTURA) established the Indigenous Affairs Unit in 1995. It is currently implementing an Intercultural Education Programme with indigenous children and adolescents in the Sonsonate and Ahuachapán region and with non-indigenous children and adolescents from Chalatenango and Sonsonate.

595. The Programme includes an awareness-raising project for authorities from the Ministry of Education and universities with a teacher training department. The Programme is funded by UNICEF.

596. Research is currently being conducted on the present status of indigenous groups in El Salvador and Central America with support from the World Bank and UNDP.

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<sup>63</sup> See annex 21.