



# Convention on the Rights of the Child

Distr.: General  
23 July 2009  
English  
Original: Spanish

---

Committee on the Rights of the Child

## Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Initial reports of States parties due in 2006

**El Salvador\* \*\***

[3 April 2008]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annex to the present report is circulated as received, in the language of submission only.

## Contents

|   | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| I. Introduction.....  | 1–4               | 3           |
| II. General aspects.....                                    | 5–7               | 3           |
| III. Implementation of the Optional Protocol.....           | 8–147             | 3           |
| A. Article 3.....   | 8–41              | 3           |
| B. Article 4.....   | 42–43             | 14          |
| C. Article 5.....   | 44–52             | 14          |
| D. Article 6.....   | 53–54             | 16          |
| E. Article 7.....   | 55                | 17          |
| F. Article 8.....   | 56–96             | 18          |
| G. Article 9.....   | 97–132            | 24          |
| H. Article 10.....  | 133–147           | 31          |
| Annex   |                   |             |
| Ley Especial para la Protección de Víctimas y Testigos..... |                   | 34          |

## **I. Introduction**

1. The Government of El Salvador hereby submits to the Committee on the Rights of the Child the initial report of El Salvador on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
2. This report has been prepared in line with the guidelines regarding reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol (CRC/OP/SA/1).
3. This initial report of El Salvador on its compliance with the Optional Protocol shows that steps have been taken by government agencies to achieve the aims of the Convention and to improve the implementation of its provisions, especially articles 1, 11, 21 and 32 to 36.
4. The information presented here is the result of the work of a team of 15 agencies coordinated by the Ministry of Foreign Affairs and made up of the following institutions: the Ministry of Public Security and Justice; the Ministry of the Interior; the Directorate General for Migration and Alien Affairs; the Ministry of Labour and Social Security; the Ministry of Health and Social Welfare; the Ministry of Education; the National Civil Police; the National Institute for the Comprehensive Development of Children; the National Institute for the Advancement of Women; the National Council for Culture and the Arts; the National Social Insurance Institute; the Prisons Directorate; the Office of the Procurator-General; and the Office of the Attorney-General.

## **II. General aspects**

5. The sale of children, child prostitution and child pornography are a growing problem worldwide and involve children of ever younger ages, including in El Salvador and elsewhere in Central America.
6. The people committing such offences use coercion and blackmail to assert and maintain power over the victims. Frequently, when the victims are foreign, they threaten to report them to the police for allegedly stealing or not having the correct papers.
7. In view of its clandestine nature and the lack of an appropriate methodology, the real extent of the problem is not known. What is known is that most victims come from the poorest social classes and are between 10 and 18 years of age. Given the lack of opportunities, many families hand their daughters over to strangers who make false promises to find them jobs. Servitude is another mechanism used to enslave victims.

## **III. Implementation of the Optional Protocol**

### **A. Article 3**

#### **1. Paragraph 1**

8. El Salvador has ratified the core international instruments in the area covered by the Optional Protocol, including:

(a) Convention on the Rights of the Child, signed on 26 June 1990 (Legislative Decree No. 487, dated 27 April 1990, published in the Official Gazette, No. 108, vol. 307, of 9 May 1990; instrument of ratification deposited on 10 July 1990);

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, signed on 18 September 2000 (Legislative Decree No. 609, dated 15 November 2001, published in the Official Gazette, No. 238, vol. 353, of 17 December 2001; instrument of ratification deposited on 18 April 2002);

(c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed on 13 September 2002 (Legislative Decree No. 280, dated 25 November 2004, published in the Official Gazette, No. 57, vol. 362, of 23 March 2004; instrument of ratification deposited on 28 April 2004);

(d) International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) (Legislative Decree No. 28, dated 15 June 2000, published in the Official Gazette, No. 134, vol. 348, of 18 July 2000; instrument of ratification deposited on 12 October 2000);

(e) United Nations Convention against Transnational Organized Crime, signed in 2004 (Legislative Decree No. 164, dated 16 October 2003, published in the Official Gazette, No. 211, vol. 361, of 12 November 2003; instrument of ratification deposited on 8 March 2004);

(f) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Legislative Decree No. 238, dated 18 December 2003, published in the Official Gazette, No. 240, vol. 361, of 23 December 2003; instrument of ratification deposited on 8 March 2004);

(g) Inter-American Convention on International Traffic in Minors (Legislative Decree No. 651, dated 17 March 2005, published in the Official Gazette, No. 77, vol. 367, of 26 April 2005; instrument of ratification deposited on 22 December 2005).

9. At the national level, legislation has been amended to introduce new offences related to the commercial sexual exploitation of children and to increase punishments.

10. In late 2003, the Commission on the Family, Women and Children of the Legislative Assembly proposed reforms to the chapter of the Criminal Code dealing with sexual offences, to cover behaviour constituting forms of commercial sexual exploitation of children.

11. In addition, in July 2004, criminal legislation and procedure were reformed in order to harmonize national legislation with the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, resulting in the introduction of the offence of trafficking in persons in article 367-B and of the related aggravating circumstances in article 367-C. Likewise, the offences of pornography and the use of minors in pornography were introduced (Criminal Code, arts. 172 and 173).

12. Measures have subsequently been taken to disseminate information on the amended legislation. The Office of the Attorney-General, for example, organized eight workshops to discuss these issues and the new legislation, providing training for a total of 150 prosecutors and officials from other institutions involved in this area.

- (a) *Subparagraph (a) (i) a: Offering, delivering or accepting, by whatever means, a child for the purposes of sexual exploitation of the child*

13. In 2004, amendments were made to all articles of the Criminal Code connected with ill-treatment and erotic sexual acts, including pornography and trafficking in persons.<sup>1</sup>

14. In the context of the sale of children, offering, delivering or accepting, by whatever means, a child for the following purposes is an offence:

(a) *Sexual exploitation of the child*: punishable as an aggravated form of trafficking in persons, regulated by articles 367-B and 367-C of the Criminal Code; may also be classified as incitement to prostitution, as set out in article 170 of the Criminal Code, or coercion, as established in article 153 of the Criminal Code, or in other articles depending on the particular circumstances;

(b) *Transfer of organs of the child for profit*: punishable as an aggravated form of trafficking in persons, regulated by articles 367-B and 367-C of the Criminal Code; may also be classified as trafficking and illegal possession of human organs and tissues, as provided for in article 147-B of the Criminal Code;

(c) *Engagement of the child in forced labour*: punishable as an aggravated form of trafficking in persons, regulated by articles 367-B and 367-C of the Criminal Code; may also be classified as coercion, as provided for in article 153 of the Criminal Code.

15. With regard to the application of appropriate penalties under criminal law, it should be noted that the reforms of the Criminal Code and the Code of Criminal Procedure have introduced penalties for offences related to commercial sexual exploitation such as coercion, the sale of persons, people-smuggling and trafficking in persons, as described below:

#### **Trafficking and illegal possession of human organs and tissues**

**Art. 147-B.** Anyone who extracts or transplants human organs or tissues without due authorization as required by the Health Code shall be liable to imprisonment for a term of four to eight years.

The same punishment shall be applicable to anyone who trades in human organs or tissues.

Anyone who is in possession of organs or tissues from a human being without the authorization required by the Health Code shall be liable to imprisonment for a term of three to five years.

...

#### **Coercion**

**Art. 153.** Anyone who, by means of force, compels another person to perform, tolerate or omit some action shall be liable to imprisonment for a term of one to three years.

Where the coercion exerted is intended to impede the exercise of a fundamental right, the prison term shall be two to four years.

...

<sup>1</sup> Legislative decrees No. 210 and No. 457, November 2003, published in January 2004.

**Corruption of minors and persons without legal capacity**

**Art. 167.** Anyone who promotes or facilitates the corruption of a person under 18 years of age or a mentally deficient person through diverse acts of sexual intercourse, even if the victim consents to participate in them, shall be liable to imprisonment for a term of two to six years.

...

**Inducement to engage in, and the promotion and encouragement of, prostitution**

**Art. 169.** Anyone who induces a person under 18 years of age to engage in prostitution or who facilitates, promotes or encourages the prostitution of such a person shall be liable to imprisonment for a term of two to four years.

Where any of these practices is carried out by exploiting a position of superiority conferred by any relationship, an additional fine of 50 to 100 days' wages shall be imposed.

**Art. 169-A.** Anyone who pays or promises to pay in cash or kind a person under 18 years of age or a third party to have the minor perform sexual or erotic acts shall be liable to imprisonment for a term of three to eight years.

**Incitement to prostitution**

**Art. 170.** Anyone who, by coercion or by taking advantage of a situation of need, incites a person to engage in or continue to practise prostitution shall be liable to imprisonment for a term of one to three years.

Where any of these practices is carried out by exploiting a position of superiority conferred by any relationship, an additional fine of 50 to 100 days' wages shall be imposed.

The prison term shall be two to four years if the victim is under 18 years of age.

...

**Pornography**

**Art. 172.** Anyone who, by any direct means, disseminates, sells or exhibits pornographic material to children under 18 years of age or to mentally deficient persons shall be liable to imprisonment for a term of six months to two years.

...

**Use of minors for pornographic or exhibitionistic purposes**

**Art. 173.** Anyone who uses a child under 18 years of age for exhibitionistic or pornographic purposes or shows shall be liable to imprisonment for a term of six months to two years and a fine of 30 to 60 days' wages.

**Possession of pornography**

**Art. 173-A.** Anyone in possession of pornographic material featuring images of children under 18 years of age, persons without legal capacity or mentally deficient persons engaging in pornographic or erotic acts shall be liable to imprisonment for a term of two to four years.

**Art. 173-B.** The offences referred to in articles 169 to 173 of the present Code shall be punishable by the maximum applicable penalty increased by up to one third of

this maximum and by disqualification from the exercise of one's profession for the duration of the sentence if any of the aforementioned actions were performed by:

- (a) Relatives in the ascending or descending line, brothers or sisters, adoptive parents or children, spouses, live-in partners or relatives to the fourth degree of consanguinity or second degree of affinity;
- (b) All persons mentioned in article 39 of this Code;
- (c) The person entrusted with the guardianship, protection or care of the victim; or
- (d) Any person exploiting a position of superiority conferred by a relationship of trust or by a domestic, educational, work-related or any other relationship.

...

### **Sale of persons**

**Art. 367.** Anyone who, on their own behalf or on behalf of an international organization, engages in the sale of persons for any purpose whatsoever shall be liable to imprisonment for a term of four to eight years.

If the sale involves Salvadoran women or children, the sentence may be increased by up to one third of the maximum applicable penalty.

### **People-smuggling**

**Art. 367-A.** Any person who themselves or by means of some other person or persons, in breach of the law, attempts to introduce or introduces foreigners into national territory, or shelters, transports or guides them for the purposes of evading the migration controls of El Salvador or other countries, shall be liable to imprisonment for a term of four to eight years.

The same penalty shall be applicable to any person who shelters, transports or guides Salvadorans for the purposes of evading the migration controls of El Salvador or other countries.

The same punishment shall be applicable to individuals who, using false or fraudulent documents, try to move, or succeed in moving, Salvadorans or citizens of any other nationality out of the country, or who use genuine documents that are in another person's name.

If, as a consequence of the perpetration of this offence, the victims are deprived of their liberty while abroad, are the victims of any crime whatsoever, or die violently or as the result of a criminal act, the penalty shall be increased by two thirds.

### **Trafficking in persons**

**Art. 367-B.** Anyone who, of their own initiative or as a member of a national or international organization, for the purposes of obtaining some financial benefit, recruits, transports, transfers, shelters or harbours persons, within or outside national territory, in order to engage in any activity related to sexual exploitation or to keep them in forced labour or service or practices similar to slavery, or for the purposes of organ removal, fraudulent adoption or forced marriage, shall be liable to imprisonment for a term of four to eight years.

When the actions described above are carried out on commercial or any other premises that require a permit from the relevant authority, the latter shall rescind the permit and close down the premises immediately.

**Aggravating circumstances for the offence of trafficking in persons**

**Art. 367-C.** The offence referred to in article 367-B of the present Code shall be punishable by the maximum applicable penalty increased by up to one third of this maximum and by disqualification from the exercise of one's profession for the duration of the sentence in the following cases:

- (1) Where the offence is committed by civil servants, public or municipal employees, officials, persons in authority or officers of the National Civil Police;
- (2) Where the victim is under 18 years of age or without legal capacity;
- (3) Where the offence is committed by persons exploiting a position of superiority conferred by a relationship of trust or by a domestic, educational, work-related or any other relationship;
- (4) Where, as a consequence of the perpetration of the aforementioned offence, the victims are deprived of their liberty while abroad, are the victims of any crime whatsoever, or die violently or as the result of a malicious or criminal act.

*(b) Subparagraph (a) (i) b: Transfer of organs of the child for profit*

16. This activity is punishable as an aggravated form of trafficking in persons, as regulated in articles 367-B and 367-C of the Criminal Code (see above), and also as the offence of trafficking and illegal possession of human organs and tissues, as provided for in article 147-B of the Criminal Code.

**Trafficking and illegal possession of organs and human tissues**

**Art. 147-B.** Anyone who extracts or transplants human organs or tissue without due authorization as required by the Health Code shall be liable to imprisonment for a term of four to eight years.

The same punishment shall be applicable to anyone who trades in human organs or tissues.

Anyone who is in possession of organs and tissue from a human being without the authorization required by the Health Code shall be liable to imprisonment for a term of three to five years.

*(c) Subparagraph (a) (i) c: Engagement of the child in forced labour*

17. The following articles of the Constitution regulate forced labour:

**Art. 38.** Labour shall be regulated by a Code, the main purpose of which shall be to harmonize relations between employers and workers by establishing their rights and duties. It shall be based on general principles aimed at improving workers' living conditions and shall include the following rights in particular:

...

(10) Children under 14 years of age and those over this age who are still by law in compulsory education may not engage in any type of work.

They may be authorized to work if this is deemed indispensable for their or their family's subsistence, provided that this does not prevent them from completing the minimum compulsory schooling.



The working day of children under 16 years of age may not be more than 6 hours and they may not work for more than 34 hours a week in any kind of work.

Children under 18 years of age and women are prohibited from performing hazardous or unhealthy work. Children under 18 years of age are also prohibited from working at night. Hazardous or unhealthy work shall be defined by law.

18. The following articles of the Labour Code may be cited here:

**Art. 13.** No one may prevent others from working without a decision of the competent authority aimed at protecting the rights of workers, employers and society, in the cases prescribed by law.

No recourse may be had to any form of forced or compulsory labour, that is, any work or service performed under threat of any sort of punishment and for which the worker has not volunteered.

19. Article 107 of the Labour Code establishes that work in bars, saloons, billiard halls and similar establishments is considered as hazardous work for persons under 18 years of age.

**Art. 105.** The employment of persons under 18 years in hazardous or unhealthy work is prohibited.

The employment of minors over 16 years of age may be authorized provided that their health, safety and morals are fully guaranteed and that they have received appropriate and specific vocational training in the relevant branch of activity.

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

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.

20. In line with the commitments undertaken by El Salvador, Executive Decree No. 66 (Official Gazette, 22 June 2005) established the National Committee on the Elimination of the Worst Forms of Child Labour, which reports to the Ministry of Labour and Social Security. The Committee's task is to eliminate child labour, especially in its worst forms. The 14 institutions represented on it include: the ministries of labour and social security, education, health and social welfare, the interior, agriculture and livestock, foreign affairs, tourism and economic affairs; the National Secretariat for the Family and the Secretariat for Youth; and the National Institute for the Comprehensive Development of Children (represented by its executive director). The vice-presidents of the workers' and employers' sectors at the Higher Labour Council, a representative of civil society and a former executive director for micro and small enterprises also sit on the Committee.

21. In terms of reducing participation in the worst forms of child labour, as of September 2007, 46,657 children had been withdrawn from such activities.

(d) *Subparagraph (a) (ii): Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption*

22. Article 194, II (1), of the Constitution stipulates that the Procurator-General is required to protect the family as well as the persons and interests of minors and other persons without legal capacity. Within this constitutional framework and in order to safeguard the best interests of the child and ensure respect for the child's fundamental rights, the Procurator-General is responsible for:

- (a) Authorizing the adoption of children;
- (b) Authorizing adoptions when called on to exercise parental authority in the case of minors who have no legal representative;
- (c) Assessing the results of psychological and social tests undergone by foreign adopters;
- (d) Assessing the suitability of adopters, whether national or foreign.

23. In May 2007, the Procurator-General and the Chair of the Executive Board of the National Institute for the Comprehensive Development of Children (ISNA) took further action to ensure the full protection of children and adolescents in the intercountry adoption process. A preliminary document was prepared, outlining amendments to the Family Code, the Family Court Procedure Act, the Office of the Procurator-General Organization Act and the Act establishing the National Institute for the Comprehensive Development of Children. These amendments were introduced to ensure that the relevant institutions base adoption procedures on the best interests of the child; emphasize the right of the child to remain in his or her family of origin; give preference to national adoptions over intercountry adoptions; provide accurate information and advice on adoption and its effects to those whose consent and agreement are required, and provide thorough pre- and post-adoption support; and spell out the responsibilities of the officials involved in the process and establish an office to handle the administrative proceedings related to the adoption process.

24. Applications for adoption are dealt with by the Adoptions Office in the Office of the Procurator-General and by branches of the latter in each of the country's departments. When the parents are living, they must give their consent for the child to be adopted. They are summoned to appear before ISNA and the Adoptions Office and questioned about their intention to give their child up for adoption, so as to determine whether there is any suggestion of fraud of any kind. If there is evidence of fraud, the Procurator-General must immediately refer the case to the Attorney-General for investigation and thereafter takes no further part in the adoption process.

25. Over the last three years, in accordance with article 21 of the Convention on the Rights of the Child, the family courts have given priority to the adoption of children by Salvadoran nationals. A rights-based legal framework guarantees the adoption process, which is regulated by the following instruments: the Family Code, the Family Court Procedure Act, the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and the Convention on the Rights of the Child.

26. The adoption process consists of two stages: the administrative stage and the judicial stage. In the administrative stage, ISNA is responsible for assessing the child's adaptability and, together with the Office of the Procurator-General, the suitability of foreign nationals to adopt in El Salvador. Only the Office of the Procurator-General can determine whether Salvadoran families are fit to adopt, and its placement committee is responsible for selecting the adoptive family for a child whose suitability for adoption has been established. The Procurator-General is responsible for authorizing an adoption, and this authorization sets in motion the judicial stage of the process, which ends with a final ruling by a judge. Thanks to the protective measure of foster homes, it has been possible in recent years to give preference to national adoptions. Ninety per cent of children in foster care are adopted by their carers. The Adoptions Office, which includes specialist staff from ISNA and the Office of the Procurator-General, ensures that the procedures required by law are followed. In terms of the 1993 Hague Convention, ISNA and the Office of the Procurator-General are the central authority in respect of adoption.

Table 1  
**Adoption of children: origin of adopters (2004–2006)**

|              | <i>Total</i> |                 |                | <i>2004</i>     |                | <i>2005</i>     |                | <i>2006</i>     |                |
|--------------|--------------|-----------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|----------------|
|              | <i>Total</i> | <i>National</i> | <i>Foreign</i> | <i>National</i> | <i>Foreign</i> | <i>National</i> | <i>Foreign</i> | <i>National</i> | <i>Foreign</i> |
| <b>Total</b> | <b>1 924</b> | <b>1 637</b>    | <b>287</b>     | <b>461</b>      | <b>77</b>      | <b>511</b>      | <b>82</b>      | <b>665</b>      | <b>128</b>     |

(e) *Subparagraph (b): Offering, obtaining, procuring or providing a child for child prostitution*

27. Offering, obtaining, procuring or providing a child for child prostitution is punishable under the Criminal Code as an offence of trafficking in persons or incitement to prostitution, as provided for in the above-mentioned articles 367-B, 367-C and 170 of the Criminal Code.

(f) *Subparagraph (c): Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography*

28. Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography is classified as the offence of pornography, the use of minors for pornographic or exhibitionistic purposes or possession of pornography, as provided for in the above-mentioned articles 172, 173, 173-A and 173-B of the Criminal Code.

## 2. Paragraph 2

29. An attempt to commit, and complicity in, these offences are acts covered by articles 62 and 66, respectively, of the Salvadoran Criminal Code.

### **Applicable penalties and sentencing**

**Art. 62.** Completed or attempted offences are punishable. Petty offences are punished only once committed.

The judge shall set the punishment within the limits prescribed by law for each offence and, on delivering judgement, explain the reasoning used to set the punishment; otherwise the judge shall incur criminal liability. In cases expressly provided for in this Code, punishments may be greater than the maximum prescribed by law for each offence. In no case may the punishment exceed the maximum prison sentence determined by law.

...

### **Penalties for accomplices**

**Art. 66.** The punishment for an accomplice, as defined in article 36, paragraph 1, of this Code, shall be no less than the minimum, and no more than two thirds of the maximum applicable to the offence and, as defined in paragraph 2 of the same article, no less than the minimum, and no higher than half of the maximum, but in no case shall exceed two thirds of the punishment imposed on the perpetrator.

## 3. Paragraphs 3 and 4

30. Criminal, administrative and civil liability are covered by article 13, paragraph 9, of the Code of Criminal Procedure and the final subparagraph of the above-mentioned article 367-B of the Criminal Code:

**Victim's rights**

**Art. 13.** The victim has a right to:

...

(9) Compensation for loss resulting from the punishable act, reparation of the injury caused by it or restitution of the object in question.

31. Corporations implicated in these or other offences have special, secondary civil liability, as provided for by article 121 of the Criminal Code.<sup>2</sup>

**4. Paragraph 5**

32. On 21 November 1996 in The Hague, El Salvador signed the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, the object of which is to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law, and which prohibits the removal, sale or trafficking of children.

33. On 2 December 1997, the Ministry of Foreign Affairs, acting on behalf of the Executive, fully approved the Convention in decision No. 1287; consequently, the Legislative Assembly ratified the Convention by Legislative Decree No. 339 of 2 July 1998, published in the Official Gazette, No. 140, vol. 340 of 27 July 1998.

34. The Convention states that it shall apply where a child habitually resident in one contracting State ("the State of origin") has been, is being, or is to be moved to another contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

35. The Convention also stipulates that an adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin:

(a) Have established that the child is adoptable;

(b) Have determined, after giving due consideration to the possibilities for placement of the child within the State of origin, that an intercountry adoption is in the child's best interests.

36. Article 6 states that a contracting State shall designate a central authority to discharge the duties which are imposed by the Convention. In fulfilment of the provisions of the Convention, El Salvador, by Executive Decision No. 1287, designated as central authorities the Office of the Procurator-General and what was then the National Institute for the Protection of Children (now ISNA). The Adoptions Office was established in 1998, by

---

<sup>2</sup> **Special secondary civil liability**

**Art. 121 [of the Criminal Code].** Secondary civil liability is special when the liability for the damage caused by the punishable act committed by the accused is incurred by a corporation or the State or any of its autonomous agencies. In the first case, the following have secondary liability: (1) corporations that own companies or establishments within which a punishable act was committed by its directors, employees or any worker in its service, or outside which the act took place in the course of an employment-related activity; (2) corporations whose managers, directors or legal representatives are responsible for punishable acts; and (3) those specified by special legislation.

In the second case, the State has secondary liability for the damage caused by its public officials or employees in the performance of their duties; likewise, autonomous public agencies and municipalities are liable in those instances stipulated by law.

agreement between the previously mentioned bodies, to handle adoption authorization proceedings.

37. The role of ISNA in the adoption process is to assess a child's suitability for adoption. In its concern to provide a quality service, it quickly set up a special team of psychologists, social workers and lawyers. In addition, it has in place an administrative procedure to assess the child's adaptability. The procedure aims to investigate, assess and evaluate children declared to have been physically or emotionally abandoned by their biological families, or children who are considered suitable for adoption because their families are not able to assure their welfare. Another fundamental part of the work of ISNA is to investigate, assess and carry out a social evaluation of the father and mother, and to interview those legally responsible for the child. Likewise, the team is required to intervene in cases of children who are up for adoption and under the guardianship of the Procurator-General in order to match them with an adoptive family and to support them through the judicial stage until the adoption decree is signed.

38. Where necessary, the ISNA child protection unit is responsible for the placement of children, in coordination with the adoption team, except in cases where the Adoptions Office requests a report, as required by subparagraph (a) of article 16 of the Convention.

39. Applications to determine the suitability of children for adoption may be made through: the Adoptions Office, in the case of both Salvadoran and foreign nationals; legal professionals, acting mainly as legal representatives for foreign families; and ISNA (both for children placed in foster homes and for those in children's centres).

#### Requirements for adoption

40. The Adoptions Office requires the following documents:

- (a) Letter of referral;
- (b) Birth certificate of the child;
- (c) Single identity documents of the adoptive and biological parents;
- (d) Consent to adoption, signed by the biological parents or the child's legal representatives;
- (e) Death certificates of the parents (if applicable).

41. Legal professionals require the following documents:

- (a) Application addressed to the Executive Director of ISNA, to include: reasons for the application; exact address of the biological parents; whereabouts of the child; and contact details (address and telephone number);
- (b) General power of attorney, including a special clause, granted to the lawyer;
- (c) Birth certificate of the child;
- (d) Certified photocopy of the child's footprint at birth;
- (e) Certified photocopies of the single identity documents of the biological parents;
- (f) Birth certificates and/or death certificates of the biological parents;
- (g) Medical certificate for the child, preferably issued by a public institution, giving full details (history, immunizations, height, weight, etc.);
- (h) Photograph (10 x 15 cm) of the child;

- (i) Notarized consent of the biological parents (Family Code, art. 174, subparas. 1 and 2);
- (j) Notarized consent of the child (Family Code, art. 174, subpara. 4).<sup>3</sup>

## **B. Article 4**

42. El Salvador has taken the necessary measures referred to in article 4 of the Optional Protocol. Article 8 of the Criminal Code, on the principle of territoriality, establishes that Salvadoran criminal law is applicable to punishable acts committed wholly or partially in the territory of El Salvador, or in places subject to its jurisdiction. It has therefore established its jurisdiction over offences committed in its territory or on board a ship or aircraft registered in El Salvador.

43. El Salvador has also taken measures to establish its jurisdiction when the alleged offender is a Salvadoran national or a person whose habitual residence is in its territory, or when the victim is a Salvadoran national. Such cases are provided for in article 8 (see above) and article 9 of the Criminal Code:

### **Personal or nationality principle**

**Art. 9.** Salvadoran criminal law shall also apply to:

- (1) Offences committed abroad by a person in the service of the State, when that person has not been tried in the place where the offence was committed on account of the privileges inherent in their position;
- (2) Offences committed by a Salvadoran abroad or in a place not subject to the jurisdiction of a particular State, when such offences infringe upon the legal rights of another Salvadoran; and
- (3) Offences committed abroad by Salvadorans when extradition is requested and denied on account of their nationality, or by foreigners when such offences infringe upon the legal rights of Salvadorans.

## **C. Article 5**

### **1. Paragraph 1**

44. Salvadoran legislation basically deals with such offences in articles 367, 169-A and 173 of the Criminal Code, which refer to, respectively: the sale of persons, payment for erotic sexual acts, and the use in pornography of persons under 18 years of age and persons

---

<sup>3</sup> **Consent and agreement**

**Art. 174 [of the Family Code].** Adoption requires the express consent of the parents, who exercise parental authority over the child. When parental authority is exercised by minors, consent shall be given by them with the consent of their legal representative, or in the absence of a legal representative, by the Procurator-General. The power to give consent is non-transferable. In the case of persons under guardianship or orphaned children, abandoned children, children of unknown parentage or children of parents whose whereabouts are unknown, consent must be given by the Procurator-General, in person or through a delegate authorized in each case. A child over 12 years of age shall also give his or her consent, even where the child attains that age in the course of the proceedings. Once the adoption decree has been made final, consent given is irrevocable; however, prior to that, consent may be withdrawn if the reasons given are accepted by the judge, who shall rule in accordance with the fundamental principles of adoption.

lacking legal capacity or mentally deficient persons. These offences are punishable with prison terms of, respectively, 4 to 8 years, 3 to 8 years, and 6 to 12 years (see articles cited above).

45. In general, extradition treaties contain a provision stipulating that offences giving rise to extradition must be punishable with at least one year of imprisonment. As the offences in question meet this requirement, they are extraditable.

## **2. Paragraph 2**

46. With regard to article 5, paragraph 2, of the Optional Protocol, it should be noted that El Salvador is one of the States that makes extradition conditional upon the existence of a treaty, as is clear from article 28 of the Constitution:

El Salvador grants asylum to foreigners wishing to reside in its territory except in the cases provided for in national and international law. No exception may be made for persons persecuted solely on political grounds.

Extradition shall be regulated in accordance with international treaties and, when Salvadorans are involved, shall only proceed if specifically provided for in the relevant treaty, and if the said treaty has been approved by the legislative branch of the signatory countries. In every case, the treaty's provisions shall enshrine the principle of reciprocity and shall provide Salvadorans with all the criminal and procedural guarantees established by this Constitution.

The extradition shall proceed when the crime has been perpetrated in the territorial jurisdiction of the requesting country, except in the case of crimes of international significance, and shall never proceed in cases involving political crimes, even when these give rise to ordinary offences.

The ratification of extradition treaties shall require the affirmative vote of two thirds of the elected deputies.

47. It should be noted that El Salvador does not have one specific law that regulates extradition. This issue is addressed only in the Constitution, which stipulates, in article 182, paragraph 3, that the Supreme Court of Justice has the following tasks, among others: "... to try the cases of detainees and cases not assigned to another authority; to order letters of request or letters rogatory to be issued for the taking of evidence abroad and to ensure compliance with those from other countries, without prejudice to treaty provisions; and to grant extradition".

## **3. Paragraph 3**

48. Paragraph 3 is not applicable since, as has already been explained, the Salvadoran Constitution makes extradition conditional upon the existence of an extradition treaty between the parties.

## **4. Paragraphs 4 and 5**

49. With regard to paragraphs 4 and 5 of article 5 of the Optional Protocol, the Constitution provides for the handover of nationals to a requesting State, provided that El Salvador has a treaty with that State, the treaty expressly provides for this procedure and has been approved by the legislative bodies of the signatory countries, and the procedure is reciprocal.

50. If there is no specific provision in the treaty, the Criminal Code contains a provision on the "personal or nationality principle" (art. 9) whereby Salvadoran criminal law applies: "(1) To offences committed abroad by a person in the service of the State, when that person

has not been tried in the place where the offence was committed on account of the privileges inherent in their position; (2) To offences committed by a Salvadoran abroad or in a place not subject to the jurisdiction of a particular State, when such offences infringe upon the legal rights of another Salvadoran; and (3) To offences committed abroad by Salvadorans when extradition is requested and denied on account of their nationality, or by foreigners when such offences infringe upon the legal rights of Salvadorans.”

51. The same piece of legislation also includes an article (art. 10) on the principle of universality, whereby “Salvadoran criminal legislation shall also apply to offences committed by any person in a place not subject to Salvadoran jurisdiction, provided that they affect property internationally protected by specific agreements or rules of international law or seriously undermine universally recognized human rights”.

52. El Salvador also has legislative measures in place, in article 9 of the Criminal Code, to extend its jurisdiction to Salvadorans who have committed offences abroad and whose extradition is denied on account of their nationality.

#### **D. Article 6**

53. The agreements ratified by El Salvador that include the offences referred to in this article of the Optional Protocol concern:

- (a) Enforcement of criminal sentences;
- (b) Mutual legal assistance;
- (c) Judicial assistance in criminal proceedings;
- (d) Cooperation in prison matters;
- (e) Judicial cooperation in criminal matters;
- (f) The transfer of sentenced persons.

54. The following instruments are in effect:

- (a) Memorandum of understanding on judicial cooperation with Colombia (Official Gazette, No. 84, vol. 315, of 11 May 1992);
- (b) Treaty on the enforcement of criminal sentences between El Salvador and the United Mexican States (Official Gazette, No. 224, vol. 321, of 2 December 1993);
- (c) Treaty on mutual legal assistance in criminal matters with the countries of Central America (Official Gazette, No. 156, vol. 324, of 25 August 1994);
- (d) Treaty on the transfer of sentenced persons between El Salvador and Spain (Official Gazette, No. 139, vol. 328, of 27 July 1995);
- (e) Agreement on judicial assistance in criminal matters between El Salvador and Peru (Official Gazette, No. 192, vol. 333, of 14 October 1996);
- (f) Agreement on judicial assistance in criminal matters between El Salvador and Spain (Official Gazette, No. 124, vol. 336, of 7 July 1997);
- (g) Agreement on cooperation in prison matters between the ministries of foreign affairs of El Salvador and Spain (Official Gazette, No. 124, vol. 336, of 7 July 1997);
- (h) Treaty on mutual legal assistance in criminal matters between El Salvador and the United Mexican States (Official Gazette, No. 215, vol. 337, of 18 November 1997);
- (i) Agreement on judicial assistance in criminal matters between El Salvador and Ecuador (Official Gazette, No. 72, vol. 355, of 22 April 2002);



- (j) Agreement on judicial assistance in criminal matters between El Salvador and Argentina (Official Gazette, No. 148, vol. 360, of 14 August 2003);
- (k) Inter-American Convention on Mutual Assistance in Criminal Matters (Official Gazette, No. 56, vol. 362, of 22 March 2004);
- (l) Agreement between the Government of El Salvador and the Government of the United States of America on the transfer of persons to the International Criminal Court (Official Gazette, No. 94, vol. 363, of 24 May 2004);
- (m) Agreement on the enforcement of criminal sentences between El Salvador and Ecuador (Official Gazette, No. 78, vol. 371, of 28 April 2006);
- (n) Treaty on the transfer of sentenced persons between El Salvador and Panama, signed on 19 February 2004 (Legislative Decree No. 207, of 11 January 2007; Official Gazette, No. 27, vol. 374, of 9 February 2007);
- (o) Inter-American Convention on Serving Criminal Sentences Abroad (Legislative Decree No. 273, of 24 April 2007; Official Gazette, No. 186, vol. 377, of 8 October 2007).

## E. Article 7

55. With regard to article 7, subparagraph (c), of the Optional Protocol, articles 126 and 127 of the Criminal Code provide for the forfeiture of the proceeds, profits and benefits derived from an offence, and also for the confiscation of objects and instruments used in the perpetration of the offence, including, of course, those referred to in the Optional Protocol and in the applicable criminal laws.

### **Forfeiture of profits derived from the act**

**Art. 126.** Without prejudice to repayments and damages arising from the act, the judge or court shall order the forfeiture of the proceeds, profits and benefits obtained by the offender in connection with the act, in favour of the State.

Forfeiture shall cover assets, fees and goods howsoever obtained in connection with or as a result of the act by the offender or by any other natural or legal person on whose behalf the offender acted. Assets, fees and goods shall also be forfeited by third parties when such parties acquired them, even as a gift, knowing that they resulted from a criminal activity, for the purpose of concealing the illicit origin of the said assets, fees and goods or of assisting someone involved in such an activity.

### **Confiscation**

**Art. 127.** Without prejudice to the rights of purchasers acting in good faith and making payment, or to any improvements or gifts made by them, the judge or court shall order the confiscation or forfeiture, in favour of the State, of the objects or instruments used by the offender to prepare for or facilitate the act. Confiscation shall not be applicable in the case of culpable acts.

Confiscation shall proceed only when the objects or instruments are the property of the offender or are in the offender's possession and are not claimed by third parties. Where forfeiture would be disproportionate to the seriousness of the act for which the offender was convicted, the judge or court may refrain from enforcing it, restrict it to part of the good or order a reasonable alternative payment to the State.

**F. Article 8**

**1. Paragraph 1**

*(a) Subparagraph (a)*

56. Article 348 of the Family Code establishes the following:

The State assumes responsibility for protecting all children ... and, in general, all children without protection.

57. Article 351, also establishes the following:

Every child has the right:

...

(10) 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;

(11) To be protected from economic exploitation and employment in any occupation that might be dangerous or harmful to their health or their physical, mental, spiritual, emotional or social development, or that might hinder or delay their education;

(12) To be protected against incitement or coercion to engage in any sexual activity, including prostitution or other sexual practices; or to appear in pornographic performances or material, and against any kind of immoral report or material;

...

(19) To receive the full protection of the laws, courts, authorities and specialized institutions;

...

(21) To receive free legal assistance in all administrative or judicial proceedings, and to have their parents participate in such proceedings, so as to guarantee the effective exercise of the child's rights;

...

(25) To be protected and assisted by the State when they are temporarily or permanently deprived of their family environment;

(26) To receive material, emotional and psychological support if they are the victim of a sexual offence.

58. Article 366 establishes the duty of every person to safeguard children's dignity and to spare them from any inhuman, violent, frightening or humiliating treatment that might undermine their self-esteem.

59. The Office of the Attorney-General conducts criminal investigations and brings criminal proceedings in cooperation with the National Civil Police. In 1992, the Office of the Attorney-General established a unit to deal with offences against women and children, including sexual offences, trafficking in persons and offences relating to criminal organizations and domestic violence. At present, the unit has 19 prosecutors' offices working on such offences.

60. In 2003, the Office of the Attorney-General established a special unit to combat all forms of people-smuggling and trafficking in persons. The unit is represented on the National Committee against Trafficking in Persons, established in 2005 to take a comprehensive approach to the problem of trafficking.

61. Investigations into sexual offences — such as the corruption of minors and persons without legal capacity (Criminal Code, art. 167), pornography (art. 172) or the use in pornography of persons under 18 years of age, persons lacking legal capacity or mentally deficient persons (art. 173) — are initiated ex officio by the Office of the Attorney-General and are publicly actionable offences.

62. Likewise, offences covered by title XIX of the Criminal Code, on crimes against humanity such as people-smuggling (Criminal Code, art. 367-A), trafficking in persons (art. 367-B) and aggravating circumstances for the offence of trafficking in persons (art. 367-C), are publicly actionable offences.

63. To safeguard the best interests of the child, the Office of the Attorney-General, acting through its unit dealing with offences against women and children, is required to put in place mechanisms to protect children from “double victimization”. The measures include:

(a) Taking evidence in advance of judicial proceedings;

(b) Not calling victims to appear in court, in compliance with the Witness Protection Regime Act.

64. During the period under review, the Office of the Attorney-General initiated the following investigations into offences related to trafficking in persons and people-smuggling.

Table 2

**Investigations into trafficking in persons and people-smuggling involving children**

(2004–2006)

| <i>Year</i>                  | <i>Age of victim and number of offences</i> |                    | <i>Total</i> |
|------------------------------|---|--------------------|--------------|
|                              | <i>0-10 years</i>                           | <i>11-18 years</i> |              |
| <i>2004</i>                  |   |                    |              |
| People-smuggling             | 40  | 48                 | <b>88</b>    |
| <b>Total</b>                 | <b>42</b>                                   | <b>51</b>          | <b>93</b>    |
| <i>2005</i>                  |   |                    |              |
| People smuggling             | 7   | 21                 | <b>28</b>    |
| Trafficking in persons       | 5   | 10                 | <b>15</b>    |
| <b>Total</b>                 | <b>12</b>                                   | <b>35</b>          | <b>47</b>    |
| <i>2006 (January-August)</i> |   |                    |              |
| Sale of persons              | 0   | 0                  | <b>0</b>     |
| People-smuggling             | 9   | 27                 | <b>36</b>    |
| Trafficking in persons       | 2   | 18                 | <b>20</b>    |
| <b>Total</b>                 | <b>11</b>                                   | <b>49</b>          | <b>60</b>    |

(b) *Subparagraph (b)*

65. In accordance with article 351 (9) of the Family Code, children are entitled “to be heard by their parents, guardians or carers and to express their opinion freely on all matters that affect them, and to have their opinion taken into account in both family decisions and administrative and judicial proceedings”.

66. When child victims are interviewed, the children’s attorney explains their rights and the proceedings to them, with the help of psychologists from ISNA. The latter then accompany the child to the court hearings.

(c) *Subparagraph (c)*

67. The above-mentioned article 351 (9) of the Family Code applies to this provision too.

(d) *Subparagraph (d)*

68. Article 351 (21) of the Family Code establishes that every child has the right “to receive free legal assistance in all administrative or judicial proceedings, and to have their parents participate in such proceedings, so as to guarantee the effective exercise of their rights”.

69. The Office of the Procurator-General thus provides free legal services to child victims who have no legal representative; assistance is provided in judicial proceedings at the request of the prosecution or judge, as appropriate.

(e) *Subparagraph (e)*

70. The duty of confidentiality is enshrined in article 61 of the Act establishing ISNA:

**Art. 61.** In administrative proceedings, every investigation carried out, decision taken and measure applied shall be confidential; civil servants, officials, employees or individuals involved in the proceedings or who learn about them in any way shall be bound to secrecy regarding them.

Failure to comply with this obligation shall render the wrongdoer criminally liable.

71. In addition, article 375 of the Family Code stipulates the following:

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 representatives of the Salvadoran Institute for the Protection of Children<sup>4</sup> shall have access to proceedings and files relating to minors.

The judicial and administrative authorities may also allow access to files by accredited institutions carrying out research for scientific purposes, provided that the identities of individuals are kept secret.

Pursuant to this article, the total or partial reproduction of minors’ files is prohibited, except where this would be in the minor’s interest, either for the purpose

---

<sup>4</sup> Now the National Institute for the Comprehensive Development of Children (ISNA).

of initiating judicial or administrative proceedings or disclosing the legal principles set out therein, without, in the latter case, making it possible for the minors to be identified.

(f) *Subparagraph (f)*

72. As has already been mentioned, article 351 (10) of the Family Code establishes 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”.

73. In El Salvador, the victims, witnesses and other individuals involved in criminal investigations or judicial proceedings, as well as members of their families and acquaintances, can be protected; this is to prevent any violations of their rights and guarantee the effectiveness of judicial proceedings.

74. Measures need to be taken to protect and support persons at risk as a result of their involvement in criminal investigations or judicial proceedings.

75. Accordingly, El Salvador enacted the Victim and Witness Protection Act by Legislative Decree No. 1029, dated 26 April 2006 and subsequently published in the Official Gazette, No. 95, vol. 371, of 25 May 2006 (see annex).

76. The Act has facilitated the introduction of a legal framework for the implementation of a comprehensive protection programme to ensure that victims and witnesses enjoy all the rights granted to every person by the Constitution.

**Purpose**

77. The purpose of this piece of legislation is to regulate measures for the protection and support of victims, witnesses and any other person at risk or in danger as a result of their involvement in a criminal investigation or judicial proceeding (art. 1).

**Application**

78. The Act applies to victims, witnesses and any other person at risk or in danger as a result of their direct or indirect involvement in a criminal investigation or judicial proceeding, or because they are related to someone involved in one (art. 2).

**Principles**

79. The following principles underpin the Act:

(a) *Principle of protection*: every judicial or administrative authority must consider the protection of the life, physical and moral integrity, freedom, property and safety of the persons referred to in the Act as being of fundamental importance;

(b) *Principle of proportionality and necessity*: the protection and support measures required by the Act must correspond to the level of risk or danger facing the person benefiting from them, and may only be applied when necessary to guarantee their safety;

(c) *Principle of confidentiality*: all administrative and judicial information and activities related to the protection of the individuals covered by the Act must be kept confidential for the purposes of the investigation or proceedings, except where the Act stipulates otherwise.

80. The Act defines several concepts that are essential to its effective application, including: (a) a situation of risk or danger; (b) ordinary protection measures; (c)

extraordinary protection measures; (d) emergency protection measures; and (e) support measures.

(g) *Subparagraph (g)*

81. Article 182, paragraph 5, of the Constitution establishes that one of the tasks of the Supreme Court of Justice is to “ensure the full and expeditious administration of justice, for which purpose the measures deemed necessary shall be adopted”.

82. The Family Code sets out the rights of child victims, while article 13, paragraph 9, of the Code of Criminal Procedure establishes that the victim shall be entitled to “compensation for the loss resulting from the punishable act, reparation for the injury caused by it or restitution of the object in question”.

**2. Paragraph 2**

83. Article 350 of the Family Code stipulates the following:

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 the child’s personality.

84. On the basis of the best interests of the child, priority shall be given to children in the provision of protection and help in all circumstances. Where there is any doubt about the child’s age, it will be assumed that the child is a minor, so as not to hold up the investigations.

**3. Paragraph 4**

85. The International Labour Organization (ILO), together with the Directorate General for Migration and Alien Affairs, organized a workshop on trafficking for the purposes of the commercial sexual exploitation of children. The workshop came up with ideas for awareness-raising and effective communication, and addressed the differences between the smuggling and trafficking of persons. A total of 80 officials were trained — 50 from the Directorate General, 15 from the Office of the Attorney-General and 15 from the National Civil Police — in dealing with the issues surrounding the smuggling of migrants and trafficking in persons.

86. As far as institution-building is concerned, the Juvenile and Family Services Division of the National Civil Police has a programme of action (supported by the ILO International Programme on the Elimination of Child Labour, ILO/IPEC) that basically aims to improve the way the police address and deal with the problem. This involves training police chiefs and officers from the 21 regional police headquarters in the country. So far, 120 officers have been trained. Another important step has been the training of officers from specialized units and divisions in the different forms of commercial sexual exploitation of children. In addition, a manual on police procedures for dealing with the commercial sexual exploitation of children was produced in 2006. The manual and the issues it covers have been included in the training curriculum for police at the National Public Security Academy.

87. At the same time, the Juvenile and Family Services Division has introduced a zero-tolerance policy on the commercial sexual exploitation of children which is being implemented nationwide.

88. The National Civil Police is working with 100 schools around the country to prevent such exploitation, and has produced information materials for children with a view to preventing their commercial sexual exploitation.

#### 4. Paragraph 5

89. There is in El Salvador a shelter for the victims of trafficking which was run by the Directorate General for Migration and Alien Affairs from 2006 to the end of 2007 and which is now managed jointly by ISNA and the relevant bodies of the National Committee against Trafficking in Persons.

90. From April 2006 to December 2007, shelter was provided for 100 minors and 8 victims who were readmissions, mostly females of Salvadoran nationality and all of them the victims of commercial sexual exploitation.

91. The shelter provides the following care:

(a) *Medical care*: treatment of victims' health problems, and referral to governmental and non-governmental health organizations for specialized treatment;

(b) *Psychological care*: help in firming up and acting on the person's plans for the future. Dealing with specific situations so as to overcome conflicts and depression and build up self-esteem. Focusing on risk assessment and risk-taking, taking care of oneself, handling individual situations, educational and vocational alternatives, returning home and social reintegration;

(c) *Social care*: socio-economic analysis of every case where the victim is Salvadoran, and collection of as much information as possible on foreign victims; informs the overall approach to victims;

(d) *Legal assistance and advice*: preparing victims for court proceedings, teaching them about their rights and duties, and following up on every case;

(e) *Education*: individualized plan for formal or informal education (vocational workshops offering various alternatives);

(f) *Spiritual care*: victims can seek comfort in their own religion;

(g) *Other care*: assistance with leisure activities, family visits and various other pursuits.

92. ISNA has also implemented special protection and support programmes for children whose rights have been violated or who have special needs, and for their families. The programmes aim to:

(a) Restore the rights of children and their families when their rights have been violated or denied;

(b) Address the needs arising from the particular problems and living conditions pertaining at the time of violation of an enforceable right;

(c) Provide protection and comprehensive and specialized, temporary or permanent, support in government-run or private centres for children who have been victims of commercial sexual exploitation, trafficking in persons, people-smuggling, child labour, sexual abuse, abandonment, ill-treatment, addiction, HIV, special circumstances or disasters, by supporting the child's extended family and relatives through inter-agency cooperation and intervention in zones at risk, and working with civil society on advice, support and information to help restore their rights.

93. ISNA has set up special support services to protect child victims of crime and their families. The services provide, among other things:

(a) Psychological assistance aimed at supporting the victims of physical, psychological or sexual violence, and their families, in order to minimize the after-effects of the trauma in the short and long term;

(b) Social assistance aimed at finding alternative care and protection measures for the victims of physical, psychological or sexual violence, on the basis of an analysis of the victim's social and family environment and in coordination with other child-protection institutions;

(c) Legal assistance throughout criminal proceedings: when the accused are adults, the process begins with the submission of an indictment, or summons, which may include an application to the justice of the peace.

94. ISNA and non-governmental organizations authorized by ISNA have provided specialized care to more than 10,500 children during their recuperation.

Table 3

**Number of children receiving special care during recuperation**

| <i>Population of centres and shelters run by NGOs and ISNA</i> |              |              |              |
|--|--------------|--------------|--------------|
|  | <i>2004</i>  | <i>2005</i>  | <i>2006</i>  |
| NGOs   | 2 520        | 2 464        | 2 765        |
| ISNA   | 939          | 955          | 930          |
| <b>Total</b>   | <b>3 459</b> | <b>3 419</b> | <b>3 695</b> |

*Source:* Children's Information System and reports from ISNA regional offices.

95. In order to meet the educational needs of all children, especially those in socially and educationally disadvantaged situations, the Ministry of Education has set out, in the National Education Plan 2021, four strategic policies that address the needs of teachers, students and parents, offering them support and guidance with a view to providing educational opportunities for girls who have been the victims of commercial sexual exploitation.

96. The measures being taken in schools and among teaching staff to help children who have been sexually abused or exploited include: coordination between institutions; the use of teaching materials to make the curriculum more accessible; the implementation, through a network of psychologists, of preventive programmes in schools; the implementation of strategies and action to guarantee access to education, especially for children at risk; the design and implementation of guidelines for teachers; and information and awareness programmes aimed at both the educational community and the general public. These programmes have been broadcast on the State television channel Canal 10, in the education slot. Representatives of the various institutions that comprise the working group on the commercial sexual exploitation of children have taken part in these programmes.

## **G. Article 9**

### **1. Paragraph 1**

(a) *Working group on the eradication and prevention of, and protection from, the commercial sexual exploitation of children in El Salvador*

97. In 2004, a working group on commercial sexual exploitation was established, consisting of 11 government institutions and civil society organizations working in the area



of commercial sexual exploitation of children. This step was taken to improve the way institutions address the issue and to finalize the action plan for the period 2005–2010, taking into account the recommendations and agreements made at regional and international meetings in Stockholm (1996), Uruguay (2001), Yokohama (2001) and San José (2004).

98. The working group currently consists of 11 institutions: the Legislative Assembly, the Office of the Attorney-General, the Office of the Procurator for the Protection of Human Rights, the National Civil Police, the Ministry of Labour and Social Security, the National Council of the Judiciary, the Ministry of Education, the Ministry of Foreign Affairs, the Ministry of Health and Social Welfare, the Directorate General for Migration and Alien Affairs, the National Institute for the Comprehensive Development of Children, the National Institute for the Advancement of Women, the National Coordinating Committee for Salvadoran Women (CONAMUS), the Council for Development of the Communities of Morazán and San Miguel, the Huellas Foundation, the “Huellas de Angel” programme (Médecins du Monde), the Project for the Prevention of Trafficking in Persons, the International Organization for Migration (IOM), the United Nations Children’s Fund (UNICEF) and ILO. A letter of understanding was signed committing the parties to making the working group more effective and to working on the action plan. The working group reports to the National Committee on the Elimination of the Worst Forms of Child Labour, which brings together both public sector agencies and non-governmental organizations working to eradicate this scourge.

99. From 2005 to 2006, the Legislative Assembly’s Commission on the Prevention of Commercial Sexual Exploitation of Children was also active in this area. It was made up of representatives of the Ministry of Education, the Ministry of Health and Social Welfare, the Office of the Attorney-General, the National Civil Police, the Ministry of Foreign Affairs, the Directorate General for Migration and Alien Affairs, and the Ministry of Labour.

100. The main task of the working group was to plan and coordinate action aimed at preventing, combating and eradicating this form of exploitation, as well as ensuring the physical, psychological, moral and social rehabilitation of victims.

*(b) National Committee on the Elimination of the Worst Forms of Child Labour*

101. The National Committee on the Elimination of the Worst Forms of Child Labour was established by Executive Decree No. 66 of 16 June 2005 and has 14 members. It was responsible for implementing a programme to rescue and care for 75 child victims of commercial sexual exploitation in the city of San Miguel. The programme got under way on 11 November 2004 with an induction course for the implementation team and with preparations for drafting a white paper within the framework of the free trade agreement in San Miguel.

*(c) National Committee on Trafficking in Persons*

102. The National Committee on Trafficking in Persons was established by Executive Decree No. 114, published in the Official Gazette, No. 224, vol. 369, of 1 December 2005.

103. The Committee was set up to prevent and combat trafficking in persons, as well as to take care of victims, on the basis of a comprehensive national policy and plan to eradicate this unlawful activity, in accordance with El Salvador’s international obligations.

104. The following institutions are represented on the Committee:

- (a) Ministry of Foreign Affairs;
- (b) Ministry of the Interior;

- (c) Ministry of Finance;
- (d) Ministry of Education;
- (e) Ministry of Labour and Social Security;
- (f) Ministry of Health and Social Welfare;
- (g) Ministry of Tourism;
- (h) National Secretariat for the Family;
- (i) National Civil Police;
- (j) Directorate General for Migration and Alien Affairs;
- (k) National Institute for the Comprehensive Development of Children;
- (l) National Institute for the Advancement of Women;
- (m) Legislative Assembly;
- (n) Supreme Court of Justice;
- (o) Office of the Procurator-General;
- (p) Office of the Attorney-General.

105. The Committee receives advice and technical cooperation from IOM, ILO/IPEC, UNICEF, the Inter-American Commission of Women and the USAID (United States Agency for International Development) Programme for Strengthening the Central American Response to HIV/AIDS (PASCA).

106. The Ministry of Foreign Affairs provides the chair and permanent secretariat.

107. The Committee seeks to achieve its goals by:

- (a) Directing efforts toward preventing and combating trafficking in persons, and rescuing and caring for victims;
- (b) Integrating and coordinating efforts to investigate and prevent this offence, and caring for victims through national agencies and international organizations;
- (c) Providing training activities which take into account the different forms of trafficking in persons;
- (d) Publicizing efforts to combat the scourge of trafficking in persons;
- (e) Proposing legislation where appropriate, through any member of the Committee, and with the approval of the President of the Republic;
- (f) Recommending appropriate action or projects to the representatives of government bodies on the Committee;
- (g) Promoting action to strengthen and facilitate participation by public and private bodies in preventing and combating trafficking in persons, and in caring for victims;
- (h) Collaborating, at the request of the Ministry of Foreign Affairs, in the preparation of any reports requested by international bodies;
- (i) Proposing initiatives to the Chair of the Committee aimed at strengthening El Salvador's participation in relevant international forums.

(d) *National Institute for the Comprehensive Development of Children*

108. One of the objectives of the National Institute for the Comprehensive Development of Children (ISNA) is to eradicate commercial sexual exploitation and other forms of sexual exploitation of children under the age of 18. It carries out this work through a network of 3 regional and 10 local offices and provides shelter and care for victims. Table 4 sets out the number of victims of sexual abuse cared for in the last three years and the proportion they represent of the total number of children protected by ISNA.

Table 4  
**Assistance for victims of sexual abuse (2004–2006)**

| <i>Reason for assistance</i> | <i>2004</i>     |                      | <i>2005</i>     |                      | <i>2006</i>     |                      |
|------------------------------|-----------------|----------------------|-----------------|----------------------|-----------------|----------------------|
|                              | <i>Children</i> | <i>%<sup>a</sup></i> | <i>Children</i> | <i>%<sup>a</sup></i> | <i>Children</i> | <i>%<sup>a</sup></i> |
| Sexual abuse                 | 207             | 6.2                  | 231             | 4.7                  | 257             | 5                    |

<sup>a</sup> As a percentage of the total number of cases of rights violations.

109. Tables 5 and 6 set out the age, sex and nationality of the victims of trafficking in persons for the purposes of commercial sexual exploitation who received assistance from ISNA in 2005 and 2006.

Table 5  
**Number of children who received assistance (2005)**

| <i>Age (years)</i> | <i>Female</i> | <i>Male</i> | <i>Total</i> | <i>Country of nationality</i> | <i>Total</i> |
|--------------------|---------------|-------------|--------------|-------------------------------|--------------|
| 3–5                | 1             | 1           | 2            | Belize                        | 1            |
| 9–11               | 4             |             | 4            | Guatemala                     | 1            |
| 12–14              | 29            |             | 29           | Honduras                      | 2            |
| 15–17              | 38            | 2           | 40           | Nicaragua                     | 4            |
| 18 and over        | 3             |             | 3            | El Salvador                   | 70           |
| <b>Total</b>       | <b>75</b>     | <b>3</b>    | <b>78</b>    | <b>Total</b>                  | <b>78</b>    |

Table 6  
**Number of children who received assistance (2006)**

| <i>Age (years)</i> | <i>Female</i> | <i>Male</i> | <i>Total</i> | <i>Country of nationality</i> | <i>Total</i> |
|--------------------|---------------|-------------|--------------|-------------------------------|--------------|
| 0–2                | 1             |             | 1            | Guatemala                     | 6            |
| 9–11               | 6             |             | 6            | Honduras                      | 2            |
| 12–14              | 30            |             | 30           | Nicaragua                     | 4            |
| 15–17              | 43            |             | 43           | El Salvador                   | 70           |
| 18 and over        | 2             |             | 2            |                               |              |
| <b>Total</b>       | <b>82</b>     |             | <b>82</b>    | <b>Total</b>                  | <b>82</b>    |

110. ISNA focuses its efforts on assistance and recovery programmes for child victims of commercial sexual exploitation in order to restore their rights. It does this by involving their families and local networks, and by conducting local campaigns to prevent commercial sexual exploitation and trafficking in persons. The campaigns involve the use of educational materials, posters, billboards and advertising on buses. ILO/IPEC has funded

and carried out projects to prevent commercial sexual exploitation and to support victims on behalf of the National Civil Police, the Office of the Attorney-General and non-governmental organizations.

(e) *National Institute for the Advancement of Women*

111. The National Institute for the Advancement of Women (ISDEMU) was established by Legislative Decree No. 644 in February 1996 in accordance with the international standards ratified by El Salvador, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Platform for Action.

112. ISDEMU is mandated to design, assess and monitor compliance with the National Policy on Women, which was developed through a national consultation process and approved by the Council of Ministers. The Healthy Family Relations Programme operates within this framework, and one of its objectives is to carry out continuing education programmes with a gender perspective to raise awareness of, and prevent, domestic violence, sexual assault, ill-treatment and sexual exploitation of children, and trafficking in persons. These programmes target those at risk, and are run in coordination with government agencies, local government, civil society organizations and private businesses.

113. The Institute has a temporary shelter for women and children who have been victims of domestic violence, sexual assault and commercial sexual exploitation.

Table 7

**Admissions by age**

| <i>Age</i>   | <i>2005</i> | <i>2006</i> | <i>2007</i> |
|--------------|-------------|-------------|-------------|
| 12           | 2           | 7           | 1           |
| 13           | 1           | 2           | 1           |
| 14           | 3           | 12          | 10          |
| 15           | 2           | 8           | 5           |
| 16           | 2           | 5           | 4           |
| 17           | –           | 5           | 3           |
| <b>Total</b> | <b>10</b>   | <b>39</b>   | <b>24</b>   |

The total number of children admitted during this period was 73.

114. ISDEMU operates a number of assistance and reintegration programmes for child victims of sexual exploitation and trafficking in persons. In particular, since 2004 it has run a programme aimed at children who have been the victims of commercial sexual exploitation, which provides psychological and social support, assistance during legal proceedings, medical care under the national health system and vocational training in, for example, baking or cosmetology, to help them become productive members of society.

115. ISDEMU allocates funds for the care of victims out of its own budget (to cover technical resources, infrastructure, human resources training, food, materials, transport, basic goods, medicines, training for victims and the issuance of identity documents). Likewise, ISDEMU allocates funds to combat trafficking in persons and to carry out awareness-raising campaigns in cooperation with agencies such as the Resource Foundation, ILO/IPEC, UNICEF and the Spanish Agency for International Cooperation. ISNA also has a specialist team of lawyers, social workers and psychologists who provide direct assistance to victims and who are supported in their work by nurses, doctors and trainers. In addition, ISNA has a shelter for victims. The assistance programme consists of a medical assessment, psychosocial interventions, provision of clothing, personal toiletries and food, leisure, contact with the family and help in arranging repatriation.

*(f) Directorate General for Migration and Alien Affairs*

116. Within the framework of the National Committee on Trafficking in Persons, the Directorate General for Migration and Alien Affairs is responsible for running the shelter for the victims of trafficking in persons.

Table 8

**Victims of trafficking in persons admitted to the shelter run by the Directorate General for Migration and Alien Affairs (May to November 2007)**

| <i>Country of nationality</i> | <i>Number</i> | <i>Sex</i> | <i>Number</i> | <i>Age range</i> | <i>Number</i> |
|-------------------------------|---------------|------------|---------------|------------------|---------------|
| El Salvador                   | 58            | Male       | 5             | 0–3              | 11            |
| Nicaragua                     | 12            | Female     | 94            | 4–6              | 2             |
| Mexico                        | 9             |            |               | 7–9              | 3             |
| Guatemala                     | 9             |            |               | 10–12            | 6             |
| Honduras                      | 7             |            |               | 13–15            | 21            |
| Colombia                      | 4             |            |               | 16–18            | 42            |
|                               |               |            |               | 19–21            | 4             |
|                               |               |            |               | 22–24            | 4             |
|                               |               |            |               | 25–27            | 3             |
|                               |               |            |               | 28–30            | 3             |
|                               |               |            |               | Over 30          | 0             |
| <b>Total</b>                  | <b>99</b>     |            |               |                  |               |

117. As part of the training it provides for new staff, the Directorate General for Migration and Alien Affairs requires that they take a module dealing with legal and procedural aspects of trafficking in persons.

118. Likewise, as part of the migration agenda adopted in 2004, it is the agency's policy to provide continuous training, gather feedback and assess knowledge concerning national and international rules and procedures.

*(g) Ministry of Education*

119. The Ministry of Education has a variety of measures in place aimed at preventing the offences referred to in the Optional Protocol, since this is an issue that cuts across all levels of education. In 2006 and 2007, these measures were strengthened by the implementation of a project to prevent trafficking in children and increase awareness of sexual health and reproduction.

120. Thanks to this project, over 28,000 pupils and 700 teachers have received training on the prevention of these problems. In addition, 11 plays dealing with the prevention of trafficking were staged before different audiences and one was selected for the quality of its script, production and acting to be broadcast on television.

121. A book and three comic strips have been published covering the basic facts of trafficking in persons to help students understand the subject. Likewise, a teacher-training module has been produced covering the key issues of trafficking in persons and is delivered through teacher-training workshops.

122. Press conferences, interviews and other activities involving the media have been organized to familiarize society at large with these issues.

## 2. Paragraph 2

123. The question of raising awareness of these issues among the general public has been addressed by the National Committee on Trafficking in Persons, the National Committee on the Elimination of the Worst Forms of Child Labour and the working group on the commercial sexual exploitation of children, as well as by their different member agencies.

124. Detailed below are some of the campaigns conducted with the support of international organizations such as UNICEF, IOM and ILO:

- (a) Prevention of commercial sexual exploitation;
- (b) ILO programmes for 2003–2006;
- (c) Direct assistance to victims of commercial sexual exploitation in San Miguel, 2004–2006 (Council for Development of the Communities of Morazán and San Miguel);
- (d) Prevention of commercial sexual exploitation in San Miguel;
- (e) Prevention of commercial sexual exploitation in San Salvador (National Coordinating Committee for Salvadoran Women);
- (f) Institution-building (National Civil Police);
- (g) Care for victims of commercial sexual exploitation in San Salvador (ISDEMU).

125. The Office of the Attorney-General's multidisciplinary team ran a programme on the prevention of sexual commercial exploitation and peer-to-peer training (for young people) in five schools in Puerto de La Libertad in 2006. In addition, materials on the issue of commercial sexual exploitation were produced for children to work with.

126. The National Committee on the Elimination of the Worst Forms of Child Labour approved two programmes on the prevention of commercial sexual exploitation, aimed at preventing and reducing the factors that might lead to children being ensnared in this activity. Thanks to direct action by ISNA and the National Coordinating Committee for Salvadoran Women, 200 children (75 in San Miguel and 125 in San Salvador) were assisted. These programmes ended in 2006.

127. Several of the above-mentioned programmes have included materials providing information about the commercial sexual exploitation of children. These include posters, leaflets, pins, pencils and folders used in training for officials from the Directorate General for Migration and Alien Affairs. The following have also been distributed: approximately 1,200 compendiums of international standards relating to the commercial sexual exploitation of children; 100 information packs on the basic facts and current state of commercial sexual exploitation of children in Central America; and 100 documents outlining the criminal law relating to the commercial sexual exploitation of children. The information packs were distributed to representatives from the member bodies of the working group and to key institutions, such as the Office of the Attorney-General, the National Civil Police and the Directorate General for Migration and Alien Affairs. The various documents produced were distributed to agencies according to their subject matter and the particular areas of competence of each institution, including health, education and security.

128. Presentations were also made on research into masculinity and commercial sexual exploitation carried out by ILO/IPEC as part of its subregional project on combating commercial sexual exploitation. Two forums were held, attended by 160 people, and

approximately 280 research reports were distributed nationally. This research makes a significant contribution to the debate from a demand-based perspective, that is, from the point of view of the people who pay for sex with children.

### **3. Paragraph 3**

129. As previously mentioned, a shelter exists for victims of trafficking in persons. It opened on 29 April 2006 and provides assistance in accordance with the protocol established by ISNA, ISDEMU and the National Civil Police.

130. So far, 99 victims have been admitted and 8 readmitted. The shelter provides medical, psychological and social assistance to victims of trafficking in persons, as set out in paragraphs 89–96 of this document.

### **4. Paragraph 4**

131. When a trafficker is convicted of a criminal offence, he or she is also convicted of a civil offence, for injury or loss caused to the victim, thus enabling the victim to bring a civil action in the civil courts.

### **5. Paragraph 5**

132. As previously mentioned, the Criminal Code establishes the offences of obscenity (art. 171), pornographic (art. 172) and the use of minors for pornographic or exhibitionistic purposes (art. 173).

## **H. Article 10**

### **1. Paragraph 1**

133. El Salvador has signed two bilateral memorandums of understanding on trafficking in persons:

(a) Memorandum of understanding between El Salvador and the Ministry of the Interior of the United Mexican States on the protection of persons, especially women and children, who are victims of trafficking or smuggling (17 May 2005);

(b) Memorandum of understanding between El Salvador and Guatemala on the protection of victims of trafficking in persons and migrant-smuggling (18 August 2005).

134. Pursuant to a number of regional agreements, every child requires a passport to travel, as set out in the Manual on Rules and Procedures for Free Movement in the Region (chap. III, “Exit of minors who are nationals of the CA4 countries [Guatemala, Honduras, El Salvador and Nicaragua]”).

135. The manual stipulates that, as from 1 August 2006, minors who are nationals of these four countries and who are travelling without their parents must have a valid passport, a special passport or a special travel document permitting the movement of such minors. In the case of Nicaragua, a safe-conduct valid for a single trip will be accepted instead of a passport. In all cases, the document must contain a photograph of the minor.

136. Since July 2006, every authorization for a child to travel without a parent or alone must bear the signature of the migration official who authorizes the trip abroad.

137. The requirements for children wishing to leave El Salvador are: a passport, or special passport, and authorization to leave the country signed by the child’s father or mother (if not present), duly certified by the competent authority. A copy of the authorization is kept with the child’s passport file.

**2. Paragraph 2**

138. In cooperation with international organizations such as ILO and UNICEF, research has been conducted into trafficking in persons, making it possible to identify risk areas.

139. ISNA, together with UNICEF, has conducted awareness-raising and information campaigns to prevent trafficking, and spends about US\$ 196,328 a year on victim care and the restoration of victims' rights. ISNA has provided training for the relevant authorities on trafficking in persons and commercial sexual exploitation. Judicial staff, police officers, prosecutors and officials involved in protection and migration have also been trained, and information materials have been distributed in the country's consulates and among Salvadoran communities abroad on the different forms of trafficking in persons and commercial sexual exploitation of children.

140. In 2006, ISDEMU and ILO ran a joint media campaign against trafficking in persons for the purposes of commercial sexual exploitation, broadcasting 2,570 radio spots on five national radio stations and making use of billboards in the main streets of San Salvador, adverts on public transport in the metropolitan area, and posters and information leaflets.

141. The working group on the commercial sexual exploitation of children has also carried out activities in this area, with ILO support: during the period under review, workshops on commercial sexual exploitation and basic courses on domestic violence were attended by 2,514 officers from the National Civil Police.

142. IOM supports the Salvadoran Government in the running of the shelter for victims of trafficking in persons, and has also provided specialized technical assistance in this area.

**3. Paragraph 3**

143. El Salvador and UNICEF are currently implementing their cooperation programme for 2007–2011.

144. This cooperation programme takes a rights- and gender-based approach; its main goal is to support national efforts to give effect to children's rights to survival, development, protection and participation, with an emphasis on the prevention of violence in the family, schools and society. The programme has three main components: (a) legal and institutional reform and social spending that targets children; (b) capacity-building and the creation of opportunities at the local level to ensure respect for the rights of the child; and (c) the promotion of a culture based on rights and the prevention of violence, which includes issues related to the commercial sexual exploitation of children and trafficking in persons.

145. The cooperation programme also addresses the most pressing problems facing children according to the common country assessment (CCA). Its main objectives are: (a) to strengthen the people's and institutions' capacity to mobilize the national Government, local governments and civil society in the promotion of investment policies and laws that guarantee respect for the rights of children in El Salvador; (b) to strengthen the role of the family, schools and communities so that they provide safe spaces for the observance of children's rights to survival, development, protection and participation; (c) to make these spaces into genuinely safe havens, with a view to transforming the current culture of violence into one of respect and peaceful coexistence; and (d) to strengthen national and local capacities to respond efficiently to emergencies.

146. El Salvador also has cooperation programmes with the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the Pan-American Health Organization (PAHO) and organizations dealing with migration, which involve combating trafficking in persons.



**4. Paragraph 4**

147. El Salvador has not yet engaged in the kind of cooperation with other States parties envisaged in article 10, paragraph 4, of the Optional Protocol.

## Anexo

[Español solamente]

Nombre: **Ley Especial para la Protección de Víctimas y Testigos**

Materia: **Derecho Penal**

Categoría: **Derecho Penal**

Origen: **Organo Legislativo**

Estado: **Vigente**

Naturaleza: **Decreto Legislativo**

Nº: **1029**

Fecha: **26/04/2006**

D. Oficial: **95**

Tomo: **371**

Publicación DO: **05/25/2006**

Reformas: **S/R**

Comentarios: **La presente Ley tiene por objeto regular las medidas de protección y atención que se proporcionarán a las víctimas, testigos y cualquier otra persona que se encuentre en situación de riesgo, como consecuencia de su intervención en la investigación de un delito o en un proceso judicial.**

---

Contenido;

### **Decreto N.º 1029.-**

#### **La Asamblea Legislativa de la República de El Salvador,**

##### **Considerando:**

I. Que la Constitución reconoce que la persona humana es el origen y el fin de la actividad del Estado y, además, que todas las personas son titulares de una esfera jurídica individual que se conforma, entre otros, por los derechos a la vida, a la integridad física y moral, a la libertad, a la propiedad, a la seguridad y a ser protegida en la conservación y defensa de los mismos.

II. Que la realidad salvadoreña actual evidencia la necesidad que las víctimas, testigos y otras personas que intervienen en la investigación del delito o en procesos judiciales, así como sus familiares y otras que se encuentran vinculadas con ellas, deben ser protegidas para evitar que sean vulneradas en sus derechos y garantizar la eficacia del juzgamiento.

III. Que para los efectos anteriores es necesario establecer las medidas de protección y atención a las personas a que se refiere el considerando precedente, así como las entidades públicas encargadas de otorgar, dar seguimiento, modificar y suprimir tales medidas, en un marco jurídico que posibilite la implementación de un programa integral de protección para dichas personas, a fin de garantizarles los derechos que a todos los individuos otorga la Constitución.

##### **Por tanto:**

en uso de sus facultades constitucionales y a iniciativa del Presidente de la República, por medio del Ministro de Gobernación y de los Diputados **Ciro Cruz Zepeda Peña**, José

Antonio Almendáriz Rivas, René Napoleón Aguiluz Carranza, Carlos Mauricio Arias, Elizardo González Lovo, Salomé Roberto Alvarado Flores, Rolando Alvarenga Argueta, Luis Roberto Angulo Samayoa, José Orlando Arévalo Pineda, Efrén Arnoldo Bernal Chévez, Juan Miguel Bolaños Torres, Noel Abilio Bonilla Bonilla, Isidro Antonio Caballero Caballero. José Ernesto Castellanos Campos, Héctor David Córdova Arteaga, Héctor Miguel Antonio Dada Iréis, Agustín Díaz Saravia, Roberto José D'Aubuisson Murguía, Jorge Antonio Escobar Rosa, Guillermo Antonio Gallegos, Julio Antonio Gómero Quintanilla, Vilma García Gallegos de Monterrosa, César Humberto García Aguilera, Nicolás Antonio García Alfaro, Noé Orlando González, Carlos Walter Guzmán Coto, Mariela Peña Pinto, Mauricio Hernández Pérez, José Rafael Machuca Zelaya, Mario Marroquín Mejía, Alejandro Dagoberto Marroquín, Manuel Vicente Menjívar Esquivel, Miguel Ángel Navarrete Navarrete, Rubén Orellana, Rodolfo Antonio Parker Soto, Salvador Rafael Morales, Teodoro Pineda Osorio, Francisco Antonio Prudencio, Norman Noel Quijano González, José Mauricio Quinteros Cubías, Carlos Armando Reyes Ramos, Dolores Alberto Rivas Echeverría, Ileana Argentina Rogel Cruz, Federico Guillermo Ávila Quehl, Héctor Ricardo Silva Argüello, Juan de Jesús Sorto Espinoza, Enrique Alberto Luis Valdés Soto, Donato Eugenio Vaquerano Rivas, María Patricia Vásquez de Amaya, Oscar Abraham Kattan Milla, José Máximo Madriz Serrano, Alberto Armando Romero Rodríguez, Alba Teresa González de Dueñas, Mario Alberto Tenorio, Rigoberto Trinidad Aguilar, Alexander Higinio Melchor López, Manuel de Jesús Aguilar Sosa, Hipólito Baltazar Rodríguez, Saúl Alfonso Monzón, Oiga Elizabeth Ortiz.

**Decreta**, la siguiente:

## **Ley Especial para la Protección de Víctimas y Testigos**

### **Capítulo I**

#### **Ámbito de aplicación**

##### *Objeto de la Ley*

Art. 1.- La presente Ley tiene por objeto regular las medidas de protección y atención que se proporcionarán a las víctimas, testigos y cualquier otra persona que se encuentre en situación de riesgo o peligro, como consecuencia de su intervención en la investigación de un delito o en un proceso judicial.

##### *Sujetos*

Art. 2.- Las medidas de protección y atención previstas en la presente Ley, se aplicarán a las víctimas, testigos u otras personas que se encuentren en riesgo o peligro por su intervención directa o indirecta con la investigación de un delito, en un proceso judicial o por su relación familiar, con la persona que interviene en éstos.

##### *Principios*

Art. 3.- En la aplicación de la presente Ley, se tendrán en cuenta especialmente los principios siguientes:

- a) Principio de Protección: Toda autoridad, judicial o administrativa deberá considerar primordial la protección de la vida, integridad física y moral, libertad, propiedad y seguridad de las personas a que se refiera la presente Ley.
- b) Principio de Proporcionalidad y Necesidad: Las medidas de protección y atención que se ordenen en virtud de la presente Ley, deberán responder al nivel de riesgo o

peligro en que se encuentre la persona destinataria de las mismas, y sólo podrán ser aplicadas en cuanto fueren necesarias para garantizar su seguridad.

c) Principio de Confidencialidad: Toda la información y actividad administrativa o jurisdiccional relacionada con el ámbito de protección de las personas a que se refiere esta Ley deberá ser reservada para los fines de la investigación o del proceso respectivo, salvo los casos exceptuados por la presente Ley.

### *Definiciones*

Art. 4.- Para los efectos de la presente Ley, se entenderá por:

a) **Situación de riesgo o peligro.** Consiste en la existencia razonable de una amenaza o daño para la vida, integridad personal, libertad, patrimonio y demás derechos de las personas mencionadas en el artículo 2 de esta Ley.

b) **Medidas de protección.** Son las acciones o mecanismos tendentes a salvaguardar la vida, la integridad personal, la libertad, el patrimonio y demás derechos de la persona protegida. Estas medidas pueden ser: Ordinarias, extraordinarias y urgentes.

1) **Medidas de protección ordinarias.** Son las acciones encaminadas a preservar la identidad y localización de las personas protegidas.

2) **Medidas de protección extraordinarias.** Son las acciones que brindan seguridad integral a las personas protegidas, de manera temporal o definitiva, por condiciones de extremo peligro o riesgo.

3) **Medidas de protección urgentes.** Son las medidas ordinarias y extraordinarias que se aplican de manera inmediata y provisional, de acuerdo al riesgo o peligro, y que se brindan mientras se resuelve sobre la aplicación definitiva de las mismas.

c) **Medidas de atención.** Son aquellas acciones complementarias destinadas a preservar la **salud** física o mental de las personas protegidas, a satisfacer sus necesidades básicas y a proporcionarles asesoría jurídica oportuna.

## **Capítulo II**

### **Organismos y sus competencias**

#### *Comisión Coordinadora del Sector de Justicia*

Art. 5.- La Comisión Coordinadora del Sector de Justicia, en adelante la Comisión, además de las funciones y atribuciones que le señala su Ley Orgánica será el ente rector del Programa de Protección de Víctimas y Testigos.

#### *Unidad Técnica Ejecutiva del Sector de Justicia*

Art. 6.- La Unidad Técnica Ejecutiva del Sector de Justicia, en adelante la Unidad Técnica, además de las funciones y atribuciones que le señala su Ley Orgánica, será el organismo administrador del Programa de Protección de Víctimas y Testigos.

#### *Atribuciones de la Comisión*

Art. 7.- La Comisión, en el marco de la presente Ley, tendrá las atribuciones siguientes:

a) Aprobar, brindarle seguimiento y evaluar el Programa de Protección de Víctimas y Testigos, en adelante el Programa.

b) Evaluar el desempeño de los organismos intervinientes en el Programa de Protección de Víctimas y Testigos.

- c) Organizar la Unidad Técnica Ejecutiva para garantizar la aplicación de la presente Ley.
- d) Crear los Equipos Técnicos Evaluadores que fueren necesarios por razones del servicio.
- e) Someter a la aprobación del Presidente de la República los reglamentos que fueren necesarios para facilitar la ejecución de la presente Ley.
- f) Conocer y resolver de los Recursos de Revisión que se interpongan en contra de resoluciones de la Unidad Técnica.
- g) Las demás que esta Ley y su Reglamento le señalen.

*Atribuciones de la Unidad Técnica*

Art. 8.- La Unidad Técnica, en el marco de la presente Ley, tendrá las atribuciones siguientes:

- a) Elaborar el Programa de Protección de Víctimas y Testigos, en adelante el Programa y someterlo a la aprobación de la Comisión.
- b) Conocer las solicitudes de medidas de protección y atención formuladas por el Órgano Judicial, la Fiscalía General de la República, Procuraduría General de la República, Policía Nacional Civil, y el interesado.
- c) Identificar, autorizar, implementar, modificar y suprimir las medidas de protección y atención destinadas a las personas que califiquen para recibir los beneficios del Programa, debiendo considerar para ello el dictamen de los Equipos Técnicos Evaluadores.
- d) Organizar, dirigir y administrar los albergues o casas de seguridad, para brindar las medidas a que se refiere la presente Ley.
- e) Encomendar, cuando fuere procedente, la ejecución material de las medidas de protección a la Unidad o Departamento correspondiente de la Policía Nacional Civil y, cuando se tratare de testigos privados de libertad, a la Dirección General de Centros Penales.
- f) Requerir, cuando el caso lo amerite, a otras instituciones públicas los servicios para el cumplimiento de sus atribuciones, quienes deberán atenderlas en tiempo y forma, guardando la reserva que el caso requiera, so pena de responsabilidad.
- g) Informar a las autoridades que hubieren solicitado la protección, sobre la modificación o supresión de todas o algunas de las medidas autorizadas.
- h) Realizar pagos, celebrar contrataciones y autorizar erogaciones para el cumplimiento de sus funciones.
- i) Proponer la creación de los Equipos Técnicos Evaluadores que fueren necesarios por razones del servicio.
- j) Proponer la celebración de convenios de consulta y cooperación y mantener las relaciones a nivel nacional e internacional con organismos e instituciones públicas o privadas, para facilitar el cumplimiento de esta Ley. La Unidad Técnica coordinará con el Ministerio de Relaciones Exteriores lo que fuere pertinente.
- k) Las demás que la Comisión, esta Ley y su Reglamento le señalen.

*Equipos Técnicos Evaluadores*

Art. 9.- La Unidad Técnica estará apoyada por Equipos Técnicos Evaluadores, en adelante Equipos Técnicos, integrados por un miembro representante de la Policía Nacional Civil del nivel ejecutivo, un abogado, un psicólogo y un trabajador social.

*A dichos equipos les corresponderá:*

- a) Emitir dictamen para el otorgamiento, modificación o supresión de las medidas de protección y de atención solicitadas.
- b) Recomendar a la Unidad Técnica las medidas de protección y atención que considere técnicamente convenientes para cada caso.
- c) Solicitar a las instituciones públicas o privadas la información necesaria para fundamentar con mayor acierto su dictamen.
- d) Gestionar la asistencia necesaria para las personas sujetas a protección.
- e) Cumplir con las demás actividades que la Unidad Técnica le encomiende.

### **Capítulo III**

#### **Clases y medidas de protección**

*Medidas de protección ordinarias*

Art. 10.- Son medidas de protección ordinarias:

- a) Que en las diligencias de investigación administrativas o de carácter judicial, no consten los datos generales de la persona protegida, ni cualquier otro que pueda servir para su identificación, pudiéndose utilizar para referirse a ellas un número o cualquier otra clave.
- b) Que se fije la sede que designe la Unidad Técnica como domicilio de las personas protegidas, para efectos de citaciones y notificaciones.
- c) Que las personas protegidas sean conducidas a cualquier lugar donde hubiere de practicarse alguna diligencia o a su domicilio, de la manera que disponga la Unidad Técnica.
- d) Que durante el tiempo que las personas protegidas permanezcan en los lugares en que se lleve a cabo la diligencia, se les facilite un sitio reservado y custodiado.
- e) Que las personas protegidas comparezcan para la práctica de cualquier diligencia, utilizando las formas o medios necesarios para imposibilitar su identificación visual.
- f) Que la persona protegida rinda su testimonio en ambientes no formales, ni hostiles, y que se grabe su testimonio por medios audiovisuales para facilitar su reproducción en la vista pública cuando sea necesario o la persona no pudiere comparecer.
- g) Que se cambie el número telefónico de la persona protegida.
- h) Que se impida que la persona protegida sea fotografiada o se capte su imagen por cualquier otro medio.
- i) Que se prohíba que cualquier persona revele datos que permitan identificar al protegido.
- j) Cualquier otra que estuviere acorde a los principios establecidos en la presente Ley.

*Medidas de protección extraordinarias*

Art. 11.- Son medidas de protección extraordinarias las siguientes:

- a) Brindar seguridad policial mientras se mantengan las circunstancias de peligro.
- b) Proporcionar residencia temporal en albergues o lugares reservados.
- c) Facilitar el cambio de residencia, lugar de trabajo o centro de estudios.
- d) Facilitar la salida del país y residencia en el extranjero de las personas protegidas, cuando las medidas antes señaladas sean insuficientes para garantizar su seguridad. En este caso se podrá considerar la expedición de documentos para una nueva identidad, lo cual será sujeto de un régimen especial.
- e) Cualquier otra que estuviere acorde a los principios establecidos en la presente Ley.

*Medidas de atención*

Art. 12.- Son medidas de atención las siguientes:

- a) Proveer atención médica y psicológica de urgencia.
- b) Brindar tratamiento médico o psicológico, cuando por sus condiciones socioeconómicas no los pudiere sufragar el protegido. En este caso, podrá gestionarse la atención en las redes hospitalarias públicas o privadas, conservándose rigurosamente las medidas de seguridad y confidencialidad que se consideren pertinentes.
- c) Proporcionar los recursos necesarios para el alojamiento, alimentación y manutención en general en los casos de los literales b) y c) del artículo anterior, durante el plazo que la Unidad Técnica estime conveniente, siempre que tales recursos no consistan en dinero en efectivo.
- d) Brindar apoyo para la reinserción laboral o escolar.
- e) Otorgar asesoría jurídica gratuita.
- f) Cualquier otra que estuviere acorde a los principios establecidos en la presente Ley.

**Capítulo IV****Derechos, obligaciones y procedimiento****Sección primera****Derechos y obligaciones***Derechos*

Art. 13.- La persona sujeta a medidas de atención o protección tendrá los siguientes derechos:

- a) A ser informada de manera directa, inmediata y oportuna de los derechos y obligaciones contenidos en la presente Ley.
- b) A recibir un trato digno, con estricto respeto a sus derechos fundamentales.
- c) A que se reserve su identidad en los casos establecidos en esta Ley.

- d) A recibir asistencia psicológica, psiquiátrica o médica cuando sea necesario.
- e) A ser informada sobre el trámite del caso en el cual interviene, ya sea en la fase administrativa o judicial, y especialmente del resultado del mismo.
- f) A comunicarse con personas de su grupo familiar o amistades de su confianza, siempre que no se arriesgue su seguridad.
- g) A recibir asesoría y asistencia profesional gratuita en todo trámite relacionado con las medidas de protección y atención.
- h) A que se gestione una ocupación laboral cuando la medida de protección otorgada implique la separación de su actividad laboral anterior.
- i) A que se facilite su permanencia en el sistema educativo, en los casos que se trate de estudiantes.
- j) A ser escuchada previo al otorgamiento, modificación o supresión de la medida de protección que se le hubiere conferido.
- k) A impugnar las decisiones que a su juicio le ocasionen agravio y que se encuentren relacionadas con las medidas de protección.
- l) A prescindir o renunciar de los beneficios del Programa que le hayan sido asignados, en el momento que lo estime conveniente.

#### *Obligaciones*

Art. 14.- La persona sujeta a medidas de protección y atención, tendrá las siguientes obligaciones:

- a) Mantener absoluta confidencialidad respecto de su situación de protección y de las medidas que se le otorguen.
- b) No divulgar información sobre los lugares de atención o protección de su persona o de otras que están en la misma condición, aun cuando ya no estuviere sujeta al Programa.
- c) No revelar ni utilizar información relativa al caso o al Programa para obtener ventajas en su provecho o de terceros.
- d) Someterse a las pruebas psicológicas y estudios socio ambientales que permitan evaluar la clase de medida a otorgarle y su capacidad de adaptación a la misma.
- e) Someterse al examen y tratamiento respectivo, cuando se trate de prevenir la diseminación de una enfermedad transmisible.
- f) Autorizar cuando sea necesario la práctica de pruebas psicológicas a los menores e incapaces que se encuentren bajo su representación legal o guarda.
- g) Atender las recomendaciones que le sean formuladas en materia de seguridad.
- h) Abstenerse de concurrir a lugares que impliquen riesgo para la persona protegida.
- i) Abstenerse de frecuentar o comunicarse con personas que puedan poner en situación de riesgo su propia seguridad o la de su familia.
- j) Respetar los límites impuestos en las medidas de protección y las instrucciones que para tal efecto se impartan.
- k) Cumplir las normas establecidas en las medidas de protección y atención que se le han otorgado.



- l) Respetar a las autoridades y demás personal encargado de velar por su protección, así como tratarlas con decoro y dignidad.
- m) Proporcionar a las autoridades la información que le sea requerida sobre el hecho investigado.

#### *Causales de exclusión del Programa*

Art. 15.- Las personas protegidas podrán ser excluidas del Programa, previo dictamen de los Equipos Técnicos Evaluadores por los motivos siguientes:

- a) Incumplir cualquiera de las obligaciones que establece la presente Ley.
- b) Negarse a colaborar con la administración de justicia.
- c) Realizar conductas que contravengan las decisiones emitidas por la Unidad Técnica.
- d) Proporcionar deliberadamente información falsa a los funcionarios o empleados de la Unidad Técnica a fin de ser incluido en el Programa, sin perjuicio de la responsabilidad penal correspondiente.

La resolución de exclusión del Programa debe fundamentarse y será precedida de un procedimiento ante la Unidad Técnica, en el que se garanticen los derechos de audiencia y defensa de la persona, dicho procedimiento será desarrollado en el reglamento respectivo. Contra la decisión de exclusión del Programa se podrán interponer los recursos previstos en la presente Ley.

### **Sección segunda**

#### **Procedimiento**

##### *Formas de iniciación del procedimiento*

Art. 16.- El procedimiento para la aplicación de medidas de protección y atención, podrá iniciarse ante la Unidad Técnica por medio del informe de medidas urgentes a que se refiere el siguiente artículo o mediante solicitud.

##### *Aplicación de medidas de protección urgentes*

Art. 17.- Los jueces y tribunales, la Fiscalía General de la República, la Procuraduría General de la República, la Policía Nacional Civil y la Unidad Técnica Ejecutiva, deberán adoptar una o varias medidas de protección urgentes; de acuerdo con el literal b número 3 del Art. 4 de esta ley, en su caso, se informará inmediatamente a la Unidad Técnica.

La Unidad Técnica, dentro del plazo de diez días y previo dictamen de los Equipos Técnicos Evaluadores, confirmará, modificará o suprimirá las medidas de protección urgentes que se hubieren adoptado, notificándolo a la persona interesada y a las autoridades correspondientes.

##### *Solicitud, forma y contenido*

Art. 18.- Los jueces y tribunales, la Fiscalía General de la República, la Procuraduría General de la República, la Policía Nacional Civil y el propio interesado podrán solicitar a la Unidad Técnica en forma verbal o escrita, la aplicación de cualquiera de las medidas ordinarias y extraordinarias y de atención establecidas en la presente Ley.

La solicitud contendrá, en cuanto fuere posible, los datos generales de la persona, la relación sucinta de los hechos, una breve exposición de la situación de peligro que motiva la solicitud, así como cualquier otro elemento que pueda orientar a la Unidad Técnica.

Cuando la solicitud sea verbal, la Unidad Técnica deberá hacerla constar por escrito.

Cuando la persona protegida sea menor de edad, la solicitud podrá ser presentada por su representante legal, la persona que lo tenga bajo su cuidado o por la Procuraduría General de la República, en su caso.

#### *Procedencia de la solicitud*

Art. 19.- Presentada la solicitud, la Unidad Técnica deberá analizar y calificar la procedencia de la misma, debiendo ordenar en su caso a los Equipos Técnicos emitir el dictamen correspondiente.

La resolución que declare improcedente la solicitud, deberá notificarse al peticionario y al propio interesado.

#### *Evaluación*

Art. 20.- Los Equipos Técnicos analizarán y evaluarán las condiciones y demás circunstancias de la solicitud o del informe y deberá considerar, para determinar el riesgo o peligro de la persona cuya protección se solicita, entre otros, los aspectos siguientes:

- a) El conocimiento o la relación personal existente entre el imputado y la víctima o testigo.
- b) Las condiciones de inseguridad del domicilio, lugar de trabajo o de estudio de la persona a proteger.
- c) La existencia de amenazas, actos de hostigamiento, seguimiento o intimidación hacia la víctima o testigo.
- d) Los demás que pudieren evidenciar la situación de riesgo alegada.

Cuando los Equipos Técnicos hayan realizado los estudios e investigaciones pertinentes, dictaminarán inmediatamente sobre el otorgamiento, modificación o supresión de las medidas de protección.

#### *Aplicación de medidas de protección ordinarias y extraordinarias*

Art. 21.- Recibido el dictamen de los Equipos Técnicos, la Unidad Técnica deberá analizar su contenido, resolver sobre la aplicación o no de una o varias de las medidas de protección recomendadas e informar sobre la decisión adoptada.

En todo caso, la resolución que emita la Unidad Técnica será suficientemente motivada.

#### *Duración y revisión de las medidas*

Art. 22.- Las medidas de protección y atención aplicadas se mantendrán durante el tiempo que persista la situación que las motiva.

La Unidad Técnica ordenará a los Equipos Técnicos, cuando lo considere pertinente, la revisión de las medidas de protección y atención.

#### *Finalización de las medidas de protección y atención*

Art. 23.- Las medidas de protección y atención finalizarán por medio de resolución fundada de la Unidad Técnica, previo dictamen de los Equipos Técnicos que determine la extinción del riesgo o peligro.

Las medidas también finalizarán por renuncia expresa de la persona protegida, presentada de forma oral o escrita. En cualquier caso se dejará constancia de las razones que motivan la solicitud.

Cuando la Unidad Técnica resuelva finalizar las medidas de protección y atención, girará las órdenes pertinentes a quienes corresponda para dejarlas sin efecto.

#### *Archivo de diligencias*

Art. 24.- Cuando la Unidad Técnica deniegue las medidas de protección y atención, y no se hubiere interpuesto recurso alguno, ordenará el archivo de las diligencias.

También se ordenará el archivo cuando finalicen las medidas o se excluya del Programa a la persona protegida.

#### *Reserva*

Art. 25.- Las diligencias para la aplicación del Programa son confidenciales y únicamente tendrán acceso a ellas las personas que autorice la Unidad Técnica y el juez de la causa, en su caso.

Por consiguiente, queda prohibido difundir o facilitar información que afecte la aplicación y ejecución de las medidas de protección y atención, so pena de incurrir en responsabilidad Administrativa y/o penal según sea el caso.

### **Sección tercera**

#### **Recursos**

##### *Revocatoria*

Art. 26.- El recurso de revocatoria procederá contra la resolución que otorgue, modifique, deniegue, suprima o finalice las medidas de protección y atención, así como contra la decisión que excluya del Programa a la persona protegida.

El recurso deberá ser interpuesto por los jueces y tribunales, la Fiscalía General de la República, la Procuraduría General de la República, la Policía Nacional Civil o la persona agraviada, mediante escrito dirigido a la Unidad Técnica en el plazo de tres días, contados a partir del siguiente al de la notificación respectiva.

La Unidad Técnica deberá resolver dentro de los tres días siguientes a la presentación del recurso.

##### *Revisión*

Art. 27.- Denegada la revocatoria, sólo será admisible el recurso de revisión para ante la Comisión, el cual deberá interponerse en el término de tres días a partir del siguiente al de la notificación de la denegatoria.

El recurso deberá ser resuelto en el plazo de ocho días. Dicha resolución no admitirá otro recurso en sede administrativa.

## **Sección cuarta**

### **Actividad jurisdiccional**

#### *Identidad y declaración de la persona protegida*

Art. 28.- En el caso de la medida de protección a que se refiere la letra a) del artículo 10 de la presente Ley, la Unidad Técnica informará de manera confidencial al juez de la causa la identidad de la persona protegida, quien deberá mantener los datos en archivo confidencial.

No obstante lo dispuesto en el inciso precedente, el juez podrá, excepcionalmente, dar a conocer a las partes la identidad de la persona protegida, previa petición debidamente razonada, sólo para efectos del interrogatorio y en circunstancias que no sea observado por el imputado.

La resolución judicial que permita conocer la identidad de la persona protegida, deberá estar fundamentada considerando cualquiera de los aspectos siguientes:

- a) Que sea indispensable conocer las circunstancias personales del protegido.
- b) Que existan relaciones precedentes entre el testigo y los autores o partícipes del hecho delictivo que hagan innecesaria la medida.
- c) Que sea la única prueba existente en el proceso.

Cuando no se revele la identidad del testigo deben propiciarse las condiciones que garanticen la contradicción del testimonio.

#### *Declaración de persona protegida menor de edad*

Art. 29.- Cuando se trate de víctimas menores de edad protegidos por la presente Ley y el imputado sea ascendiente o su tutor, pariente dentro del cuarto grado de consanguinidad o segundo de afinidad, persona que hubiere actuado prevaliéndose de la superioridad originada por cualquier relación, el Juez impedirá que el menor declare en presencia del imputado, debiendo éste ser custodiado en una sala próxima y representado por su defensor, a efecto de garantizar la contradicción del testimonio.

## **Capítulo V**

### **Disposiciones generales**

#### *Presupuesto*

Art. 30.- De acuerdo a la naturaleza e importancia de sus funciones, la Unidad Técnica, tendrá y ejecutará su propio presupuesto dentro del Ramo de Gobernación. Además, podrá utilizar fondos provenientes de patrimonios creados por leyes especiales, así como otros ingresos o bienes que obtuviere a cualquier título.

#### *Suscripción de acuerdos o convenios*

Art. 31.- Para cumplir con sus atribuciones, la Unidad Técnica podrá celebrar toda clase de acuerdos y convenios en los que se establezcan mecanismos de coordinación, colaboración y concertación con entidades públicas, sociales y privadas, guardándose en todo caso la debida confidencialidad.

*Colaboración del órgano auxiliar*

Art. 32.- Para el cumplimiento y aplicación de la presente Ley, la Unidad Técnica podrá solicitar, cuando sea necesario, el apoyo de la Unidad o Departamento que la Policía Nacional Civil designe.

*Deber de colaboración y coordinación con otras instituciones*

Art. 33.- Todo funcionario, organismo, institución o dependencia del Estado o de las Municipalidades, están obligados a prestar colaboración y auxilio a la Unidad Técnica en las providencias que ésta dictare para el cumplimiento de la presente Ley, así como suministrarle la información que solicite. Asimismo, dentro del ámbito de sus respectivas competencias, deberán actuar en forma coordinada con la Unidad Técnica para garantizar una efectiva ejecución del Programa.

Para cumplir con sus atribuciones, la Unidad Técnica podrá contar con la colaboración de grupos de trabajo integrados por representantes de instituciones públicas y, en lo posible, de organizaciones privadas que apoyen el cumplimiento de la presente Ley.

Los grupos de trabajo tendrán carácter consultivo; darán opiniones y sugerencias en los aspectos específicos que les fueren solicitados.

*Días y horas hábiles*

Art. 34.- Para la práctica de las diligencias que en esta Ley se atribuyen a la Unidad Técnica y sus dependencias, todos los días y horas son hábiles, exceptuándose lo relativo a la interposición y trámite de los recursos establecidos.

*Albergues o casas de seguridad*

Art. 35.- La Unidad Técnica deberá contar con albergues o casas de seguridad para cumplir con lo dispuesto en la presente Ley. Un reglamento desarrollará el funcionamiento de estos lugares.

También podrá gestionar con otras instituciones públicas o privadas la utilización de casas, albergues o locales adecuados para los fines de esta Ley.

*Aplicación supletoria*

Art. 36.- En lo no previsto en la presente Ley, se aplicarán las reglas procesales comunes en lo que fuere compatible con la naturaleza del procedimiento administrativo que por esta Ley se establece.

*Derogatoria*

Art. 37.- A partir de la vigencia de esta Ley, queda derogado el Capítulo **VI-bis "Régimen de Protección para Testigos y Peritos"** del **Título V "Medios de Prueba"** del **Libro Primero "Disposiciones Generales"** del Código Procesal Penal, emitido mediante Decreto Legislativo N.º 904, de fecha 4 de diciembre de 1996, publicado en el Diario Oficial N.º 11, Tomo 334, del 20 de enero de 1997, y demás preceptos legales contenidos en otros ordenamientos que contradigan o se opongan a lo dispuesto en la presente Ley.

*Vigencia*

Art. 38.- El presente Decreto entrará en vigencia ciento veinte días después de su publicación en el Diario Oficial.

**Dado en el Salón Azul del Palacio Legislativo.** San Salvador, a los veintiséis días del mes de abril del año dos mil seis.

Ciro Cruz Zepeda Peña,  
Presidente.

José Manuel Melgar Henríquez,  
Primer Vicepresidente.

José Francisco Merino López,  
Tercer Vicepresidente.

Marta Lilian Coto Vda. De Cuéllar,  
Primera Secretaria.

José Antonio Almendáriz Rivas,  
Tercer Secretario.

Elvia Violeta Menjívar,  
Cuarta Secretaria.

**Casa Presidencial:** San Salvador, a los once días del mes de mayo del año dos mil seis.

**Publiquese,**

Elias Antonio Saca Gonzalez,  
Presidente de la Republica.

Rene Mario Figueroa Figueroa,  
Ministro de Gobernacion.

---