

## **ACCESS TO JUSTICE FOR CHILDREN: EL SALVADOR**

*This report was produced by White & Case LLP in June 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

### **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

El Salvador signed the CRC on 26 January 1990<sup>1</sup> and subsequently ratified it on 10 July 1990 without any reservations.<sup>2</sup>

According to the Constitution of El Salvador<sup>3</sup>, international treaties signed by El Salvador with other States or international organizations, will be considered part of the nation's laws once entered into force.<sup>4</sup>

#### **B. Does the CRC take precedence over national law?**

Pursuant to article 144 of the Constitution of El Salvador, if there is a conflict between international treaties and national law, the treaty is to take precedence. Therefore the CRC would take precedence in such a case.

#### **C. Has the CRC been incorporated into national law?**

The CRC has been incorporated into national law by virtue of the process of ratification (see part I.A above).

Since ratification, the Salvadoran Government has taken steps to bring national legislation into conformity with the CRC. Some examples of this have been the adoption of the Law for the Integral Protection of Children (LEPINA) and the implementation of a National Plan of Action for Children developed by the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA).

Although efforts have been made, the Committee on the Rights of the Child remains concerned that “national legislation is not yet in full conformity with the Convention in some areas, for instance, with respect to corporal punishment, the minimum age for marriage, the adoption regime and the administration of juvenile justice”.<sup>5</sup>

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<sup>1</sup> Published in the official gazette number 108 volume 307, dated 9 May 1990.

<sup>2</sup> See at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=55&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=55&Lang=en)

<sup>3</sup> Constitution of El Salvador (*Constitución de la República de El Salvador*) available in Spanish at: [http://www.asamblea.gob.sv/asamblea-legislativa/constitucion/Constitucion\\_Actualizada\\_Republica\\_El\\_Salvador.pdf](http://www.asamblea.gob.sv/asamblea-legislativa/constitucion/Constitucion_Actualizada_Republica_El_Salvador.pdf)

<sup>4</sup> Ibid, Article 144.

<sup>5</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of El Salvador (CRC/C/SLV/3-4)*, 17 February 2010, para. 9. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSLV%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSLV%2fCO%2f3-4&Lang=en)

**D. Can the CRC be directly enforced in the courts?**

International treaties such as the CRC are considered part of the laws of El Salvador, therefore they can be directly enforced in courts. In effect, the CRC has been directly invoked in the courts and cited, in particular, in cases of family law.

**E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?**

The CRC has been applied and cited in many cases by family court judges and juvenile criminal court judges of El Salvador, and has been used by judges in their judicial reasoning, particularly by the Constitutional Chamber of the Supreme Court.<sup>6</sup>

Examples of sentences that have referred to or quoted provisions of the CRC can be found on the web site of El Salvador's Supreme Court<sup>7</sup>. One such example is ruling number HC 25-G-94, dated 6 February 1995, which refers to a father who illegally forbade the relationship between the mother and her son.<sup>8</sup> In said case, *Habeas Corpus* was granted because the father's conduct was violating the child's right to live in a family environment as stated in the CRC.

**II. What is the legal status of the child?**

**A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?**

With independence of subject matter jurisdiction (constitutional, local or other), children may, directly or through a representative, bring cases in domestic court to challenge violations of their rights.<sup>9</sup>

**B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?**

Children and adolescents younger than 14 years of age may participate in any judicial or administrative processes established by the LEPINA Law through their mother, father and other representatives, and, if applicable, by the Attorney General's Office or its duly authorized agents for it.<sup>10</sup>

Adolescents above this age are entitled to bring cases to court by themselves in their own name or with the assistance of a representative. As stated in article 219 of the Law for the Integral Protection of Children, judicial protection of children's rights may be requested by the children or adolescents whose rights have been violated or

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<sup>6</sup> Ibid.

<sup>7</sup> See at: <http://www.jurisprudencia.gob.sv/> search for children's rights.

<sup>8</sup> <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/1990-1999/1995/02/CFA.PDF>, (accessed 20 May 2014).

<sup>9</sup> Law for the Integral Protection of Children (Ley de Proteccion Integral de la Niñez y Adolescencia) (LEPINA) Article 50 and 219, available in Spanish at: <http://www.pgr.gob.sv/documentos/LEPINA.pdf>

<sup>10</sup> Ibid, Article 218.

threatened, by the mother, father or any other legal representative, the Attorney General of the Republic and the Human Rights Procurator.

However, in cases of loss or suspension of parental authority and deprivation of the administration of their property, they must act represented by the Attorney General's Office or its duly authorized agents.

C. In the case of infants and young children, how would cases typically be brought?

As stated in the response above (part II.B) cases may be brought forward by the child's parents, legal representative, the Attorney General<sup>11</sup> or the Human Rights Procurator.

There are judicial processes and administrative procedures established for defending the rights of children and adolescents in El Salvador. The competent authorities may, ex officio or upon request, order measures and collect evidence necessary to determine the existence of the circumstances leading to violations of children's rights.<sup>12</sup>

Firstly, the administrative procedure will start with a complaint that must be filed before a competent authority. This notice or complaint may be given orally or written. Once it has been filed, within three days, the competent authority shall order the opening of or, if appropriate, declare the inadmissibility of the petitions.

D. Would children or their representatives be eligible to receive free or subsidized legal assistance in bringing these kinds of cases?

According to article 51 of the LEPINA Law, children and teenagers are guaranteed free access to justice, which includes the advice and specialized attention for the protection of their rights as well as the availability of educational material, information and guidance in the judicial processes and administrative procedures.

Pursuant to said Law, there are the Promotion and Assistance Associations, which can be public or private, and which among others may provide the following services:

- a) apply alternative dispute resolutions;
- b) counsel children and adolescents or their families to exercise their rights;
- c) advocate on behalf of children and adolescents;
- d) report violations or threats to the rights of children and adolescents; and
- e) assist in cases of complaints of violations or threats of rights of children and adolescents.

When the representation of children and adolescents does not correspond to the Attorney General of the Republic, the Promotion and Assistance Associations may engage the services of lawyers to provide legal advice and representation to children and adolescents.<sup>13</sup> And pursuant to Article 197 of the above mentioned law, all

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<sup>11</sup> As per Article 224 of the Family Code, the Attorney General's Office shall have legal representation of orphans, abandoned children, and other children without a legal representative.

<sup>12</sup> Law for the Integral Protection of Children, Article 204.

<sup>13</sup> Ibid, Article 195.

services provided by the Promotion and Assistance Associations shall be free.

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

No; if there are conflicting interests between one or both parents and the child, the Attorney General of the Republic shall have the legal representation of the child in such matter.<sup>14</sup>

### III. How can children's rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Through the *Amparo* process any person may bring to the attention of the Constitutional Chamber the violation of, or threat to, their constitutional rights (other than freedom) by a public official, authority or body of the state.

The *Habeas Corpus* process is the protection mechanism by which a person can argue against a judicial or administrative authority (in particular, when their fundamental right to physical liberty is subject to unlawful or arbitrary restriction, when the restriction does not exist but is imminent, or in case of disturbances, to the extent that they cause detriment to such right; provided, that the restrictions, threats or disturbances must directly violate provisions of a constitutional nature). To initiate the *Habeas Corpus* process, the person directly aggrieved or another on his/her behalf, either personally or by mail, must submit the lawsuit to the Constitutional Chamber of the Supreme Court or, if residing outside of San Salvador, in the appellate courts.

In case a law, decree or regulation is contrary to or inconsistent with the provisions of the Constitution, any citizen may file a writ of unconstitutionality against it before the Constitutional Chamber of the Supreme Court.<sup>15</sup>

Also, according to the Code of Criminal Procedures, any citizen or association of citizens may sue in cases of offenses involving diffuse interests or community interests.

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>16</sup> on their

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<sup>14</sup> Family Code, Article 224 available in Spanish at:

<http://www.pgr.gob.sv/documentos/CodigoDeFamilia.pdf>

<sup>15</sup> [http://www.csj.gob.sv/constitu/CONSTITUCIONAL\\_01.html](http://www.csj.gob.sv/constitu/CONSTITUCIONAL_01.html) accessed on 28 May 2014.

<sup>16</sup> The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm); American

behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights<sup>17</sup>. A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>18</sup> The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.<sup>19</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>20</sup> When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).<sup>21</sup> Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.<sup>22</sup> The Court’s judgments are legally binding on the State against which they are made.

Finally, once all domestic remedies have been exhausted, complaints against violations of children’s rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>23</sup> which El Salvador has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>24</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>25</sup> and must have occurred after the entry into force of the Protocol on 9 May 2015.<sup>26</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>27</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>28</sup> After examining the complaint, the Committee can make

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Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>17</sup>American Convention on Human Rights, Article 44.

<sup>18</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>19</sup> Ibid., Article 28.

<sup>20</sup> Ibid., Article 23.

<sup>21</sup> Ibid., Article 45.

<sup>22</sup> American Convention on Human Rights, Article 63.

<sup>23</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>24</sup> Ibid., Article 5.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., Article 7(g).

<sup>27</sup> Ibid.

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, ‘23 FAQ about Treaty Body complaints procedures’, available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

recommendations to the State, which are not legally binding.<sup>29</sup>

**B. What powers would courts have to review these violations, and what remedies could they offer?**

Different judicial bodies are involved in the review of cases pertaining to violations to children's rights, such as:

The Constitutional Chamber of the Supreme Court of Justice – This chamber is formed by five justices. The Constitution establishes two types of procedures that all individuals can exert and which are heard before the Constitutional Chamber: one primarily concerned with the protection of constitutional supremacy through the process of unconstitutionality of laws, executive orders and regulations; and the other type is concerned with the protection of the individual rights from arbitrary acts of authority, through two processes: the *Habeas Corpus*, which intends to protect personal integrity and freedom; and the *Amparo*, which protects the rest of the constitutional rights.

Courts of Appeals – The Courts of Appeals are specialized courts, with jurisdiction over the appeals to the rulings of inferior courts and other claims filed before First Instance Courts. The Courts of Appeals are the second stage of the judicial process, prior to accessing the Chambers of the Supreme Court of Justice. Among their attributions, the Courts of Appeals are also granted jurisdiction over the claims against the state, working as First Instance Courts in such processes.

First Instance Courts - There is one First Instance Court for the main areas of the law, such as labor, family, traffic, tenancy, criminal, commercial, minors, etc.<sup>30</sup>

When rendering a judgement in cases of *Amparo*, *Habeas Corpus* or Unconstitutionality, the court will order the defendant authority that things return to the condition they were in before the act in question. There can also be civil action in compensation for the damages against the person responsible and alternatively against the state.<sup>31</sup>

**C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?**

Pursuant to article 96 of the Code of Criminal Procedures, the filing or writ must include the name and general information of the complainant and in case of associations, its name, address and representative's name.

**D. Is any form of collective action or group litigation possible, with or without naming individual victims?**

Pursuant to the Code of Criminal Procedures, any citizen or legally constituted

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<sup>29</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

<sup>30</sup> [http://www.nyulawglobal.org/globalex/El\\_Salvador.htm#\\_3.2\\_Judicial\\_Branch](http://www.nyulawglobal.org/globalex/El_Salvador.htm#_3.2_Judicial_Branch)

<sup>31</sup> Law for Constitutional Procedures (Ley de Procedimientos Constitucionales), Article 35. Available in Spanish at: [http://www.csj.gob.sv/constitu/images/pdf/pro\\_cons.pdf](http://www.csj.gob.sv/constitu/images/pdf/pro_cons.pdf)

association of citizens may sue in cases of official crimes and offenses committed by public servants, agents of authority and public authority that may pose a serious and direct violation to their fundamental human rights, diffuse interests or community interests.<sup>32</sup> As stated in part III.C, according to article 96 of such Code, the filing or writ must include the name and general information of the complainant(s) and in case of associations, their name(s), address and representative's name(s).

- E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Yes, both in the Code of Criminal Procedures<sup>33</sup> and in the Civil and Commercial Procedural Code<sup>34</sup> it is stated that an association or legal person shall have legal standing to pursue judicial processes as long as they have been constituted under the requirements and conditions established in the law.

As for their capability to intervene in a case once it has begun, the Law for Constitutional Procedures<sup>35</sup> states that in cases of *Amparo*, a third party who may benefit from the execution of the challenged act may join the proceedings in whichever phase, as long as it keeps going forward and does not go back in the process.

- IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

See the Administrative Procedure<sup>36</sup> for the adoption of protective measures and administrative sanctions. The administrative procedure shall be initiated by notice or complaint of any rights violation before the competent authority.

Children and teenagers' rights are considered family law and, pursuant to the Law for the Integral Protection of Children, the competent courts to solve these matters are the Specialized Courts and Specialized Chambers of Childhood and Adolescence. The Family Code and the abovementioned law shall be applicable.

Regarding crimes of public action, the complainant shall present a writ containing information such as: a description of the facts, the identity of the suspects, indication of the proceedings for the investigation of the facts or the evidence, request of what is considered relevant for the effective exercise of civil action, name and general information of the complainant and the lawyers who represent him or her, address of the place to receive citations and notifications, the document of identification and in the case of associations, the name, address and the name of its legal representative. The complainant's request may reserve data pertaining to his or her address, or that

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<sup>32</sup> Code of Criminal Procedures (Codigo Procesal Penal), Article 95. Available in Spanish at: <http://www.pgr.gob.sv/documentos/CodigoProcesalPenal.pdf>

<sup>33</sup> Ibid, Articles 96 and 97.

<sup>34</sup> Civil and Commercial Procedural Code (Codigo Procesal Civil y Mercantil), Article 61.

<sup>35</sup> Law for Constitutional Procedures, Article 16.

<sup>36</sup> Law for the Integral Protection of Children, Title VII Administrative Procedure.

of his representative, provided that it entails any threat or danger; but said information must be delivered to the judge, who will keep it undisclosed.<sup>37</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Article 181 of the Constitution and Article 16 of the Code of Civil Procedure establish the principle of free access to justice.

According to Article 51 of the Law for the Integral Protection of Children, children and adolescents are guaranteed free access to justice, which includes, among others:

- a) advice and specialized attention for the protection of the rights of children and teenagers;
- b) priority attention in court and auxiliary institutions of the administration of justice;
- e) follow up of ongoing actions and enforcement of decisions for the protection of childhood and adolescence;
- f) information regarding judicial and administrative procedures;
- i) availability of educational material, information and guidance regarding judicial processes and administrative procedures for the defense of their rights;
- j) clear and simple writing of judicial and administrative resolutions; and
- l) agile and timely resolution of the administrative and judicial processes.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

The Pro Bono Declaration for the Americas (“PBDA”) is a statement of principles and a plan of action for expanding the commitment of lawyers to provide legal services to the poor and underprivileged in the Americas. It calls for all sponsoring firms and departments to make a specific commitment of 20 pro bono hours per lawyer per year. Certain law firms that have signed the PBDA may provide legal assistance to children and adolescents without receiving a payment.

Additionally, the following Non-Governmental Organizations (“NGO”) can be contacted to protect children’s rights:

- SOS Children’s Villages: Thanks to its system for sponsoring children, this NGO has become the largest charitable association dedicated to the cause of orphaned and abandoned children. They work in the spirit of the CRC and base their work on the principles outlined in the UN Guidelines for the Alternative Care of Children. They want children to be heard and to be able to claim their rights themselves, instead of being objects of care or victims of circumstance.
- Asociación de Capacitación, Atención y Prevención del Maltrato Infantojuvenil (ACAP): Performs work related to community mental health, legal

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<sup>37</sup> Code of Criminal Procedures, Article 96.



services for community organization and for victims of family violence and abuse, defense of human rights, promotion of women and children citizen participation, among others.

Pursuant to the Law for the Integral Protection of Children, there are Promotion and Assistance Associations for the rights of children and adolescents which, among others may provide the following services:

- a) apply alternative dispute resolutions;
- b) counseling of children and adolescents and their families;
- c) advocacy on behalf of children and adolescents;
- d) report violations or threats to the rights of children and adolescents; and
- e) assist in cases of complaints of violations or threats of rights of children and adolescents.

When the representation of children and adolescents does not correspond to the Attorney General of the Republic under the law, the Promotion and Assistance Associations may engage the services of lawyers to provide legal advice and representation to said children and adolescents. In which case, pursuant to article 197 of the above mentioned law, all services provided by the Promotion and Assistance Associations shall be free of charge.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Pursuant to the Code of Criminal Procedures, criminal actions prescribe after 10 years for crimes punishable with imprisonment, after three years for offenses punishable only with non-custodial sentences, and after one year for misdemeanors. There is no prescription in criminal actions pertaining to torture, terrorism, kidnapping, genocide, violation of the laws or customs of war, forced disappearance, political, ideological, racial, gender or religious persecution, provided that the acts in question were committed after the entry into force of said Code.<sup>38</sup>

- E. Evidence. What sort of evidence is admissible / required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Legal hearings and proceedings are generally public, but a court may order them to be partially or totally private where child victims of crimes are involved. The Code of Criminal Procedure states that when the victim is under 18 years of age, he or she is entitled to facilities for testifying in informal and non-hostile environments, and their testimony is recorded to facilitate its reproduction in public where necessary. The law establishes that the identity of minors and their families must not be disclosed.<sup>39</sup>

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<sup>38</sup> Code of Criminal Procedures, Article 34.

<sup>39</sup> Ibid, Article 13.

The Office of the Attorney General of the Republic, through the Unit for Minors and Women, is required to implement mechanisms for protecting children and prevent them of being doubly victimized. These measures include:

- a) Giving evidence in advance of court proceedings;
- b) Not exposing victims in court hearings, applying the Special Regime for the Protection Act;
- c) Arranging shelter for child victims where necessary;
- d) Arranging NGO support;
- e) Guaranteeing psychological and social care by the Institutional Multidisciplinary Team;
- f) Requesting the immediate protection measures provided for in the Domestic Violence Act.

In addition to this, UNICEF has helped the Supreme Court to install a Gesell Chamber and to train prosecutors in its use in order to ensure that children are not doubly victimized in the process of giving evidence.<sup>40</sup>

According to the Civil and Commercial Procedural Code, children under 12 years of age can act as witnesses if they have enough discernment to know and testify about the facts.<sup>41</sup>

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

In accordance with El Salvador's Civil and Commercial Procedural Code, oral arguments have become the rule and few litigator-drafted documents become part of the record. As a result of oral hearings, the length of time for cases has been shortened. Before the entry into force of the stated code on 01 July 2010, a case averaged between 12 and 18 months. Under the new code, a case might take only around six months.<sup>42</sup>

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Rulings from First Instance Courts can be challenged before the Courts of Appeals. They are headed by two justices who are appointed by the Supreme Court of Justice. The Courts of Appeals are called "Second Instance Chambers" (*Cámaras de Segunda Instancia*), because they are the second stage of the judicial process, prior to accessing the Chambers of the Supreme Court of Justice.<sup>43</sup>

However, rulings on constitutional proceedings in the Constitutional Chamber of the Supreme Courts of Justice do not admit further appeals.<sup>44</sup>

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<sup>40</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of El Salvador (CRC/C/SLV/3-4)*, 17 February 2010, para. 89.

<sup>41</sup> Civil and Commercial Procedural Code, Article 355.

<sup>42</sup> Accessed on 09 June 2014 at :

<http://www.lexisnexis.com/legalnewsroom/international-law/b/commentary/archive/2012/11/20/the-new-civil-and-commercial-procedure-code-in-el-salvador.aspx>

<sup>43</sup> [http://www.nyulawglobal.org/globalex/El\\_Salvador.htm#\\_3.2\\_Judicial\\_Branch](http://www.nyulawglobal.org/globalex/El_Salvador.htm#_3.2_Judicial_Branch)

<sup>44</sup> Law for Constitutional Procedures, Article 86.

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Supreme Court will always have the power to determine a matter, within its jurisdiction. Because higher courts have directives over lower courts, if a bad decision is issued by a higher court, it will be more far-reaching than a bad decision issued by a lower court. The Human Rights Act is also under threat of repeal following a series of unpopular judgments.<sup>45</sup>

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

In 1992 the office of the Procurator for the Defense of Human Rights (PDDH), or Ombudsman was founded. The goal was to establish a Truth commission so that justice can be rendered reliably. The PDDH also has oversight over judicial compliance with due process guarantees and is charged with educating the citizenry about their rights and the role human rights play in a democracy. However, the PDDH relies on education and advocacy because it has no enforcement authority.<sup>46</sup>

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Unknown.

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>45</sup> <http://www.amnesty.org/en/region/el-salvador?page=1>,

<sup>46</sup> <http://projects.essex.ac.uk/ehrr/V3N1/Dodson.pdf>