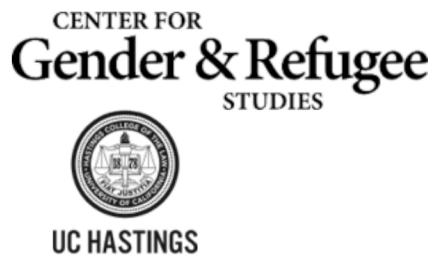


Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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Chapter 4 El Salvador

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This chapter is translated from the original Spanish version.

I. Introduction

Over the last three years, the number of children and adolescents from the Northern Triangle countries of Honduras, Guatemala, and El Salvador attempting to reach the United States border by irregular means has increased dramatically. Of these, approximately four out of five children and adolescents who have been detained at the U.S. border were unaccompanied.²

The current irregular migration of Salvadoran children and adolescents to the United States is a historical phenomenon. To explain this phenomenon, we examine the structural and systemic factors that result in children facing social exclusion and other risks, which prevent them from receiving the protection and opportunities needed to fully develop—free from violence—in El Salvador. Violence on the part of gangs, the community at large, and within the home—coupled with a lack of state protection—is a primary factor driving migration of children. El Salvador has one of the highest murder rates in the world, including high rates of femicide/feminicide, with 1 in 4 female victims between the ages of 0 to 19. Adolescents as a group comprise more than 90% of all homicide victims.³ Children, especially girls, are also particularly vulnerable to sexual violence in El Salvador.⁴ Cultural and family issues also come in to play, especially when a child or adolescent has a parent living in the United States,⁵ a circumstance that amplifies the child’s desire or need to reunite with family and instigates a lifelong migrant identity. (Chapter 1 of this book contains an additional discussion of migration causes.)

¹ We would especially like to thank Georgina Villalta, former Deputy Inspector General for the Defense of the Rights of Children and Young People in El Salvador (sections II and III), and Juan José García, former Vice-Minister for Salvadorans Living Abroad (section III), for their contributions.

² The term “unaccompanied children” is defined by the UN Committee on the Rights of the Child General Comment 6, Article III.7. as “children . . . who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.” Comm. on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, 39th Sess., 2005, May 17 – June 3, U.N. Doc. CRC/GC/2005/6 (2005, Sept. 1), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>. See also Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

³ Small Arms Survey (2012, February). Femicide: A Global Problem. *Research Notes*, 14. Retrieved from http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf; Procuraduría la Defensa de los Derechos Humanos (“PDDH”). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

⁴ Procuraduría la Defensa de los Derechos Humanos (“PDDH”). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

⁵ Villacorta, A.E., Loya, N., Tablas, V., Moreno, M.E., & Sáenz, C. (2011, October). Migración internacional, niñez y adolescencia en El Salvador. Retrieved from <http://www.fundaungo.org.sv/pdf/2012/migracioninternacional.pdf>.

We obtained and analyzed information and statistics from reports from governmental institutions, international organizations, civil society groups, and academic research, among other sources. We also conducted extensive, in-depth interviews with 83 Salvadoran children and adolescents repatriated from Mexico upon their arrival in El Salvador; 13 relatives who had come to receive children and/or adolescents; and 14 children and adolescents during their detention at the Century XXI Migration Station in Tapachula, Mexico (an immigration detention center). In addition, we held focus groups with potential migrant children and adolescents throughout El Salvador (in Suchitoto, La Unión, San Pablo Tacachico, and San Miguel).⁶

This chapter begins by analyzing two key aspects of the relation between children and migration in El Salvador: migratory flows, their characteristics, and related statistical data, particularly from recent years; and structural causes (i.e., political, social, economic, and labor policies) behind the growing phenomenon of Salvadoran children migrating, alone or unaccompanied, to Mexico and the United States. The denial of basic rights, such as healthcare or education and the increasing and diverse forms of violence that affect children and adolescents play a decisive role in the migration of Salvadoran children and adolescents.

Then we examine the legal and institutional framework currently in place to protect the rights of children and adolescents in the country, in particular migrant children, closely evaluating migration legislation, including laws concerning the rights of Salvadorans living abroad. We also review the creation of bodies and institutional spaces for dialogue about migration and children's issues, including consular assistance and protection provided to Salvadoran children and adolescents in both transit and destination countries.

Finally, we briefly examine the situation of another category of children and adolescents affected by migration: migrant children and adolescents and the children of migrants residing either temporarily or permanently in El Salvador. This final section looks at policies geared toward these children and the principal threats to their fundamental rights.

II. Migration in El Salvador: migrant children and adolescents

The international migration of Salvadorans is not a recent phenomenon. Its history can be divided into phases, each with its own contextual factors. In its 2005 Human Development Report,⁷ the United Nations Development Program (UNDP) in El Salvador identified at least four phases: the first between 1920 and 1969; the second between 1970 and 1979; the third between 1980 and 1991, ending along with the country's civil war; and the fourth beginning in 1992 following the end of the civil war. The final phase formally ends in 2005 and coincides with the year the UNDP report was published. However, this phase in effect continues, as predominant structural factors have not varied substantially.

⁶ Among other sources, interviews with key actors were also carried out by the University of California Hastings College of Law Refugee and Human Rights Clinic in collaboration with the Center for Gender and Refugee Studies. UC Hastings interviewed, among others, Aracely Bautista Bayona, Roberto Rodriguez Melendez, Maria Teresa Delgado de Mejia, Marlon Montoya, and Ana Georgina Ramos de Villalta.

⁷ Programa de las Naciones Unidas para el Desarrollo ("PNUD"). (2005). *Informe sobre desarrollo humano El Salvador 2005, Una mirada al nuevo nosotros: el impacto de las migraciones, Sinopsis*. Retrieved from <http://www.pnud.org/sv/migraciones/content/view/9/105/>.

The first period (1920-1969) was characterized by the migration of Salvadorans to United Fruit Company banana plantations in northern Honduras, where they sought employment. Previously, Salvadorans had migrated to Panama to work on the construction of the Panama Canal, forming part of a contingent of approximately 2,113 Central Americans, according to Panamanian immigration records.⁸ García Cuadra calculates that by the end of the 1960's, approximately 350,000 Salvadorans had left the country looking for work.

The second period (1970-1979) saw a substantial increase in migration to the United States. This growth was due to the closure of migration routes to Honduras as a result of the armed conflict between the two countries, and the worsening of the socioeconomic situation following the break-up of the Central American Common Market. The UNDP report states that migration increased 73% during this decade. According to the report, this migratory flow led to the formation of the first migration networks. These networks were vitally important in subsequent years, because many Salvadorans regularized their migration status, enabling the regular and irregular migration of relatives, friends, and neighbors.

The third phase corresponds with the country's civil war. Migration to the United States was much greater during this phase, reaching an increase of 307%. This increase was also stimulated by modifications to migration law in the United States, such as the Immigration Reform and Control Act (IRCA) in 1986. IRCA allowed for the regularization of many immigrants' status, in turn facilitating family reunification processes.

The fourth phase began in 1992 with the signing of the Peace Accords. This phase was characterized mainly by flows of returning political refugees, ex-combatants, and members of the middle and upper classes who had fled the war. It was also characterized by a large flow of migrants leaving the country beginning in 1996 as a result of an economic slowdown. It is estimated that between 1996 and 2005, the net international migration of Salvadorans reached 100,000 per year, the largest migratory flow in comparison with earlier phases. The effects of Hurricane Mitch and two large earthquakes one month apart in 2001 also contributed to this migration. Growing violence in the country, particularly violence perpetrated by gangs and common criminals, has also spurred migration.

In response to the earthquakes in January and February 2001, the United States government granted Temporary Protected Status (TPS) to approximately 250,000 Salvadorans in March 2001 (Salvadorans were initially designated for TPS in 1990 due to the civil war). TPS has been renewed every 18 months since then for these individuals, most recently in May 2013 until March 2015. The concession and extension of TPS over the past decade has resulted in a continuous flow of migration related to desires for family reunification and the configuration of transnational networks of Salvadorans who have, in turn, encouraged and supported the migration of thousands of relatives, friends, and neighbors.

However, TPS does not include provisions that permit those who have the status to confer it on other family members who do not qualify for temporary protection. In other words, Salvadoran

⁸ García Cuadra, R. & Guillén, E. (2002). Panamá. En *Seminario y conferencias, Informes nacionales sobre migración internacional en países de Centroamérica, Taller de capacitación para el análisis de información censal sobre migración internacional en América Central*, 24.

parents who received protection cannot request the same status or any other regular migratory status for their children, unless the children themselves qualify for temporary protection. Salvadoran children and adolescents arriving in the United States to reunite with parents holding TPS are subject to deportation. Government authorities can use their discretionary power to not charge and punish these children and adolescents. Even if that occurs, however, it does not grant them the right to remain in the United States based on their parents' status.⁹

Although estimates vary, it is clear that the population of Salvadorans in the U.S. is significant. U.S. immigration officials estimated that the population of Salvadorans living in the United States with different migratory statuses, regular or irregular, in 2002 was 1,271,703.¹⁰ The Ministry of Foreign Relations of El Salvador (*Ministerio de Relaciones Exteriores de El Salvador*) calculated that the population of Salvadorans living in the United States in 2002 was 2,510,000. More recently, the UNDP estimated that close to 2.2 million Salvadorans were living outside of El Salvador, with 85% (1,870,000) in the United States, and 5% in Canada.¹¹

These disparities in calculations reflect the fact that figures on the migration of Salvadorans to the United States are approximate, because the information and calculation methods used differ. Furthermore, customs exit records do not include irregular migrants, and there are no records for those who die in transit. Therefore, it is difficult to know the precise number of Salvadorans migrating irregularly to the United States. The U.S. Department of Homeland Security's (DHS) Office of Statistics reports that in January 2010, there were 620,000 undocumented Salvadorans in the United States.

Salvadoran children and adolescents were part of each phase of migration to the United States described above, but the particular characteristics of these young migrants were not studied in detail until recently. Factors contributing to this increased attention and visibility are, among others: the growing number of children and adolescents migrating to Mexico and the United States from all Central American countries; the new risks facing unaccompanied children and adolescents while in transit; their vulnerability and the lack of respect for children's fundamental human rights while in transit; inhumane institutional treatment during detention and deportation processes in Mexico and the United States (as described in chapters 6 and 14 of this book); and the difficulty of reintegrating into their communities upon the children's return.

Most Salvadoran children and adolescents migrating irregularly are unaccompanied males between the ages of 12 and 17, although the number of even younger migrant children has increased. According to data from 2013, 67.9% of the 1,327 Salvadoran children and adolescents deported from Mexico between January and September of that year were male, and 7 in 10 were unaccompanied. In the case of migrant girls, 6 in 10 were travelling accompanied. This is a relatively small difference considering the increased risks and the vulnerability facing girls and adolescent women in transit.

⁹ For a more in-depth analysis, see chapter 10.

¹⁰ Andrade-Eekhoff, K. (2003, December). *Mitos y realidades. El impacto económico de la migración en los hogares rurales*. San Salvador: FLACSO El Salvador.

¹¹ Programa de las Naciones Unidas para el Desarrollo ("PNUD"). (2005). *Informe sobre desarrollo humano El Salvador 2005, Una mirada al nuevo nosotros: el impacto de las migraciones, Sinopsis*. Retrieved from <http://www.pnud.org/sv/migraciones/content/view/9/105/>.

Official records on the irregular migration of Salvadoran children and adolescents to the United States are mainly documented by three different sources. Some records relate to apprehensions of children in the United States made by U.S. Border Patrol. Others record the detention of children and adolescents in different Mexican National Migration Institute (*Instituto Nacional de Migración de México* or INM) migration stations—the colloquial term for immigration detention facilities in Mexico—and deportations from these migration stations to El Salvador. The Salvadoran General Directorate of Migration (*Dirección General de Migración y Extranjería*) also keeps records of entry into the country. This information is far from an accurate reflection of the magnitude of the irregular migration of Salvadoran children for two fundamental reasons: (1) children and adolescents apprehended while migrating irregularly to the United States represent only a subset of all migrant children, as many reach their destinations or disappear along the way, among other possible outcomes; and (2) some unaccompanied children and adolescents stop along the way in Mexico and obtain temporary work, as do some migrant adults.

Migrants who successfully cross the border and reach their destination, as well as children and adolescents who die or “disappear” along the way, are not included in these records. Nor are victims of the diverse forms of human trafficking: kidnapping for extortion or sexual exploitation, child prostitution, drug trafficking, and forced recruitment by organized criminal groups. In addition, some migrant children and adolescents work informally or engage in begging in Mexico along the way in order to pay for continuing their journey, among other reasons. Nevertheless, the data we have enables us to approximate a characterization of the irregular migration of Salvadorans under the age of 18.

Between 2008 and 2012, the U.S. Border Patrol apprehended 7,926 unaccompanied Salvadoran children of both sexes between the ages of 0 and 17 migrating irregularly at the border. The percentage increase in apprehensions of Salvadoran children during that period of 2008 to 2012 was 44%, compared to an average of 39% for all Central American countries during the same timeframe. The sharp rise in apprehensions of Salvadoran children at the U.S. border in this time period suggests that the overall number of Salvadoran child and adolescent migrants to the United States similarly increased. The apprehensions of children increased yet again in 2013, reaching apprehensions of 5,990 Salvadoran children in just one year alone.¹² In 2014, that figure jumped to 16,404 apprehensions of unaccompanied Salvadoran children.¹³

The growth in the rate of Salvadoran children apprehended between 2008 and 2010 was 5 times higher than that of all Salvadorans apprehended during the same period (37.3% and 8%, respectively). Apprehension of children, due to the nature of detention processes, increases the vulnerability of children to violations of their fundamental rights. The deprivation of liberty and other rights afforded to children associated with detention have been documented and reported by the United Nations and human rights organizations.¹⁴

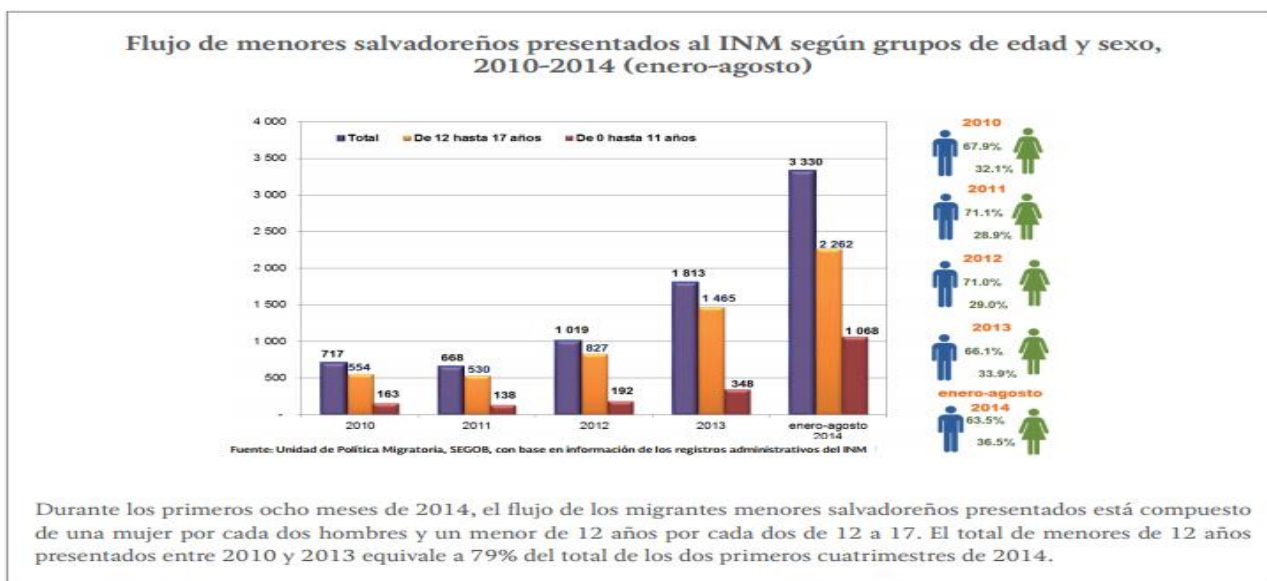
¹² U.S. Customs and Border Protection. (2015). Southwest Border Unaccompanied Alien Children. Retrieved from <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

¹³ U.S. Customs and Border Protection. (2015). Southwest Border Unaccompanied Alien Children. Retrieved from <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

¹⁴ Amnesty International. (2012). *Informe Anual. El estado de los Derechos Humanos en el mundo*. Madrid: Amnistía Internacional. Retrieved from <http://www.amnesty.org/es/annual-report/2012>. See also Comm. on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside*

Many migrants, therefore, in particular children and adolescents from Central America, prolong their transit through Mexico for extended and undefined periods in search of the necessary means to continue their journeys. There are no precise statistics on the number of migrant Salvadoran children and adolescents working in Mexico. However, in the case of Chiapas, for example, a large percentage of the 200,198 children between the ages of 5 and 17 working in the state in 2007 were migrant Central American children and adolescents.¹⁵ Chapter 6 of this book, exploring the Mexico-Guatemala border, demonstrates in detail the vulnerability of these children and adolescents.

An examination of the data will enrich the understanding of the irregular migration of Salvadoran children and adolescents through Mexico. Data on detention and deportation by Mexican authorities are particularly relevant. These detentions and deportations have been growing in number each year, as the following graphic illustrates:



Source: Secretaría de Gobernación, México, August 2014

their country of origin, 39th Sess., 2005, May 17 – June 3, U.N. Doc. CRC/GC/2005/6 (2005, Sept. 1). Retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>.

¹⁵ Consejo Nacional para Prevenir la Discriminación (“Conapred”). (2007). Retrieved from http://www.conapred.org.mx/documentos_cedoc/DocumentoInformativo-TrabajoInfantil.pdf.

Explanation/Translation of Graphic

Title: Number of Salvadoran children appearing before the INM by age and sex, 2010-2014 (January-August)

Color-coded key:

Total

Age 12 to 17

Age 0 to 11

Source: Migration Policy Unit, SEGOR, based on information from INM administrative records.

During the first eight months of 2014, the number of migrant Salvadoran children processed by the INM was comprised of one girl for every two boys and one child under 12 for every two aged 12 to 17. The total number of children under 12 processed between 2010 and 2013 is equivalent to 79% of the total number in the first two quarters of 2014.

Source: Secretary of Government (*Secretaría de Gobernación*)
Mexico, August 2014

This information shows a noticeable rise in Salvadoran children and adolescents migrating in an attempt to reach the United States. It also shows some of the characteristics of that migration, including the gender and age of the migrants and the types of transportation they employ. Other studies have described the migratory process in general, emphasizing the fact that migration (including that of children and adolescents) should be understood as a process that goes well beyond the journey itself. These studies characterize migration as a complex and subjective process with various identifiable phases (consultation, deliberation, and reaction), as well as a number of defining elements such as: processes and mechanisms of socialization; the formation of the image and idea of migration; the construction of migrant identities and plans; the objective and subjective process of calculating risks and how to confront them according to gender; and the definition and redefinition of meaningful concepts. Some of these occur before and/or after the actual decision to migrate, the migration journey, and return.¹⁶

Other studies have shown how the so-called security (“aseguramiento”) and repatriation measures applied to children and adolescents are actually deprivations of liberty and arbitrary deportations that deny their best interests and violate their basic human rights—including rights to due process, liberty, identity, family unit, and asylum, among others.¹⁷ This occurs because migration policies are grounded in a focus on national security rather than on the comprehensive protection

¹⁶ Gaborit, M., Zetino Duarte, M., Brioso, L., & Portillo, N. (2012). La esperanza viaja sin visa: Jóvenes y migración documentada de El Salvador. Retrieved from http://www.unfpa.org.sv/index.php?option=com_content&view=article&id=545:la-esperanza-viaja-sin-visa&catid=37:nacionales.

¹⁷ Ceriani Cernadas, P. (2011). Luces y sombras en la legislación migratoria latinoamericana. *Nueva Sociedad*, 233, pp. 68-86. Retrieved from http://www.nuso.org/upload/articulos/3775_1.pdf; Ceriani Cernadas, P. (Coord.). (2013). *Niñez detenida: los derechos de los niños, niñas y adolescentes migrantes en la frontera México-Guatemala*. Ciudad de México: Distribuciones Fontamara).

of the child (also referred to as “integral” protection).¹⁸ These focalized, partial, and inadequate perspectives omit the consideration of, among other things, the complex and deeply rooted structural causes driving the migration of thousands of children and adolescents.

III. Causes for the migration of Salvadoran children and adolescents

Access to social rights, such as basic services, greatly influences the decision to migrate for children and adolescents. Community, family, and institutional factors that intersect with and affect their civil rights, such as the right to life and physical integrity, also contribute to their decision. Among the salient factors that prompt the decision to leave one’s country are the existence of different forms of violence against children—including in the home—the need to contribute economically to meet their family’s basic needs, and the intention to reunite with family members who have already migrated.

According to the 2007 census, 40.4% (2,231,631) of the Salvadoran population was under the age of 18. This figure demonstrates the significance of this population for the present and future of the country. The geographic distribution of the under-18 population shows a greater concentration in urban areas (57.7%) than in rural areas (42.3%), consistent with the geographic distribution of the total population. In general, the population of boys and adolescent men (54.39%) is larger than that of girls and adolescent women (48.61%). In adulthood, the figures reverse, with women comprising the majority of the over-20 population.¹⁹

According to the 2012 Multi-Purpose Housing Survey (*Encuesta de Hogares de Propósitos Múltiples* or EHPM), 34.5% of households were living in poverty, of which 8.9% were living in extreme poverty and 25.6% were living in relative poverty. 29.9% of urban households were living in poverty, with 6.5% in extreme poverty and 23.4% in relative poverty. 43.3% of rural households were living in poverty, with 13.6% in extreme poverty and 29.8% in relative poverty.²⁰

According to the Ministry of Health (*Ministerio de Salud* or MINSAL), the poverty rate fell 11% between 2009 (40%) and October 2013 (28.9%). This represents the lowest poverty rate in the country’s recent history (MINSAL, 2014).²¹ In spite of these improvements, it is clear that almost one in three households remains in poverty.

Of households living at poverty levels, 32.4% reported receiving remittances from relatives residing in the United States; of these, 22.7% were living in extreme poverty. Notably, households with lower poverty levels reported receiving a greater proportion of remittances (67.6%). The majority of remittances were spent on consumption (food, clothing, and other necessities), followed by education, housing, and healthcare. Children and adolescents working irregularly in the United States also contributed to these remittances. According to the Central

¹⁸ Integral or comprehensive protection refers to ensuring all rights are respected to ensure adequate development.

¹⁹ Dirección General de Estadísticas y Censos (DIGESYC). (2013, May). Encuesta de Hogares de Propósitos Múltiples 2012. Retrieved from <http://www.digestyc.gob.sv/EHPM2012/digestyc/resultado.pdf>.

²⁰ Dirección General de Estadísticas y Censos (DIGESYC). (2013, May). Encuesta de Hogares de Propósitos Múltiples 2012. Retrieved from <http://www.digestyc.gob.sv/EHPM2012/digestyc/resultado.pdf>.

²¹ Ministerio de Salud de El Salvador. (2014, May 13). Boletín epidemiológico de situación de dengue por la Comisión Especial de análisis para la Determinación Social de la Salud (CDSS).

Reserve Bank of El Salvador (*Banco Central de Reserva de El Salvador*), family remittances reached nearly 4 billion dollars in 2013 and accounted for nearly 16% of Gross Domestic Product (GDP); remittances from the U.S. continue to be the country's most dynamic source of income. As a consequence, recent government administrations have tended not to discourage illegal emigration in spite of the dangers and human rights vulnerabilities faced by Salvadoran migrants.

As reported by the National Council on Children and Adolescents (*Consejo Nacional de la Niñez y de la Adolescencia* or CONNA), people living in poverty do not all experience their situation in the same manner.²² Not every impoverished person is equally vulnerable; nor do all poor people have the same opportunities to overcome their poverty. In particular, in the case of children and adolescents, conditions that diminish health, opportunities to attend school, and their physical, social, psychological, and moral development, can have limiting effects for the rest of their lives. Hence, together with other factors, the deprivation of fundamental rights such as these cause children and adolescents to migrate.

A. The deprivation of social rights: housing, healthcare, and education—the problem of child labor

Children and adolescents identify the lack of access to social rights as a push factor for migration; this is a reflection of the greater, more complex problem of the social exclusion and deprivation of rights they face in El Salvador. The children and adolescents we interviewed stated that the migration of their parents or siblings had remedied their lack of basic resources, even if their reality does not adequately reflect this assertion. Thus, the departure of their parents to the United States, and the remittances parents send home, have allowed Salvadoran children who have stayed behind in the care of other family members to extricate themselves from poverty and cover their most basic needs.²³

Nevertheless, children and adolescents continue to face social exclusion (or marginalization) in El Salvador, which denies them their right as children and adolescents to participate fully in economic, social, and political life and to achieve their full development and welfare.²⁴ The unfolding drama of child migration demonstrates that, while poverty and exclusion share common social elements, they are two different phenomena. It is not only poverty that propels children and adolescents toward the United States, but also the structural social exclusion confronting them, especially those residing in rural areas. Among the major difficulties Salvadoran children and adolescents face are the fragmentation and lack of coordination throughout the child protection system; the absence of measures geared toward remedying the exclusion of children and the disparities in guaranteeing of their rights; current cultural and

²² Consejo Nacional de la Niñez y la Adolescencia (“CONNA”). (2013, December). Estado de situación de los derechos de las niñas, niños y adolescencia en El Salvador.

²³ Programa de las Naciones Unidas para el Desarrollo (“PNUD”). (2005). *Informe sobre desarrollo humano El Salvador 2005, Una mirada al nuevo nosotros: el impacto de las migraciones, Sinopsis*. Retrieved from <http://www.pnud.org.sv/migraciones/content/view/9/105/>.

²⁴ For a discussion of social exclusion/marginalization of children and adolescents in El Salvador, see, e.g., Stinchcomb, D. & Hershberg, E. (2014, November). Unaccompanied Migrant Children from Central America: Context, Causes, and Responses. *Center for Latin American & Latino Studies Working Paper Series, 7*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001; Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf.

family frameworks that threaten their integral development; social tolerance vis-à-vis violations of the rights of children; a lack of relevant laws; and scant application of existing laws.²⁵

In terms of health indicators, MINSAL correlates the situation facing children and adolescents with living conditions and access to basic services. Housing insecurity resulting from the poorest families migrating from rural areas to marginalized urban settlements that lack basic services, proper nutrition, and citizen safety is one of the key contributors to the growing vulnerability of Salvadorans. Information gathered from the 2011 EHPM demonstrates that households that receive remittances generally rent rather than own their homes.²⁶ Only 30% of recipient households reported using remittances to pay a mortgage, purchase land, or build a house.

Statistics indicate that children and adolescents are highly vulnerable to illness in El Salvador. In the last decade, the passage of the General Medicine Law, the creation of the General Directorate of Medicines (*Dirección Nacional de Medicamentos*), and the creation of the National Institute of Health (*Instituto Nacional de Salud*) in November 2010, have been fundamental for healthcare management. The Office of the Human Rights Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos* or PDDH)²⁷ recognizes that, while there have been state efforts to guarantee the right to healthcare for Salvadoran children and adolescents, advances have been slow to materialize. According to the PDDH, the healthcare system has been characterized by an inadequate budget, a lack of resources and personnel, high segmentation, inequality, fragmentation, significant limitations in geographic reach, and serious problems with service and overall quality.

Since 2000, education levels have increased; each year more children and adolescents enroll in grade levels that correspond with their age. However, net coverage rates for primary (54%) and secondary (35%) education remain low. El Salvador has struggled to fulfill its international commitment to Education for All (EFA) and the Millennium Development Goals. The educational system's structure is pyramidal, as basic education (through 9th grade) is prioritized over other educational levels, such that many fewer Salvadorans continue beyond basic grades.

The rate of students reaching fifth grade is 89%, and 11% of students do not finish sixth grade. The rate of students reaching sixth grade (the final year of primary school) has increased significantly to 84% in 2012, with 82% of boys and 86.3% of girls successfully completing sixth grade. Rural areas have the lowest levels of completion, at 77.1%. The opportunities for finishing primary school are limited by poverty and the low social value placed on education in rural areas. In spite of this, there has been progress. However, a lack of coverage and opportunities is also related to the quality of schools. The massive enrollment of students in primary school has affected the quality and equality of educational services. According to the Ministry of Education's (*Ministerio de Educación* or MINED) 2010 School Census, demand in rural areas surpasses the education system's capacity and ability to function.

²⁵ Rivas Villatoros, 2012.

²⁶ DIGESYC. (2012, June). Encuesta de Hogares de Propósitos Múltiples 2011. Retrieved from http://www.digestyc.gob.sv/phocadownload/DIVISION_DE_ESTADISTICAS_SOCIALES/Publicacion_EHPM_2011.pdf.

²⁷ Procuraduría la Defensa de los Derechos Humanos ("PDDH"). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

Part of the student population aged 5 to 17 works in addition to attending school, another important factor affecting how long children and adolescents continue their education. The need to work burdens many children and adolescents in El Salvador. According to the EHPM, in 2013, El Salvador's population included nearly 1.7 million children/adolescents ages 5 to 17. Of these, 11.1% reported working. A significant number worked in conditions considered dangerous (84,029) or were under the legal age to work (60,139). A higher proportion of boys report that they work (15.7%) than girls (6.3%). However, girls tend to do domestic work, both inside and outside their own homes, that is largely invisible.

CONNA considers that the precarious economic situation facing many families leads children and adolescents to formal or informal work at increasing rates.²⁸ This, in turn, prevents them from fully exercising their rights to education, recreation, and relaxation, as well as other rights and principles that support the comprehensive development of the child.

At the same time, the high youth unemployment rate (twice the national rate), presents challenges for adolescents without work and drives adolescents and children who see no work opportunities in their future to migrate.²⁹ Young people have a higher propensity to emigrate at the beginning of their work lives. They are also more likely to be involved in violent activities, particularly young people with low education levels and a lack of contacts in the labor market. Irregular migration appears as a “solution” vis-à-vis this panorama of exclusion and the growing levels of violence—to be discussed later on—that are so difficult to escape for the majority of children and adolescents. Importantly, this makes it especially difficult for many young people and adolescents to imagine themselves as self-reliant members of the workforce.

Changes in the modes of consumption and access to services in their municipalities of origin also reaffirm the exclusion facing children and adolescents. In municipalities that have generated some level of investment in tourism, recreation, or the promotion of arts and culture geared toward children and adolescents, the desire to migrate continues to prevail. In recent years, the Salvadoran Ministry of Tourism (*Ministerio de Turismo*) has developed and promoted tourist routes and identified municipalities—referred to as *pueblos vivos*—with the potential to attract foreign tourists with the purchasing power to stimulate local economies. However, the lifestyle created in *pueblos vivos* that have succeeded in attracting foreign tourists produces the opposite of the intended effect on children and adolescents. Instead of motivating young people to stay in their communities or municipalities, it reaffirms their desire to leave, as they see themselves excluded from the new social, commercial, and recreational dynamic. They desire to leave and then return as tourists with more purchasing power, wanting to achieve the affluence promoted in their municipalities of origin.

The educational level of returning children and adolescents is in many cases higher than that possessed by the majority of Salvadorans. Interviews with migrants repatriated to El Salvador suggest that these child migrants tend to undervalue the education they received in El Salvador

²⁸ Consejo Nacional de la Niñez y la Adolescencia (“CONNA”). (2013, December). Estado de situación de los derechos de las niñas, niños y adolescencia en El Salvador.

²⁹ PNUD. (2013). Informe sobre desarrollo humano El Salvador 2013. Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

and overvalue the educational quality and opportunities they experienced in the United States. Approximately 8 out of 10 returning children and adolescents who were interviewed reported that they had completed an average of 8 years of schooling and had an educational level corresponding to their age. As a point of comparison, the average number of years of schooling is 5 in the returning children and adolescents' municipalities of origin.³⁰ Our data also reveals that children and adolescents migrating from their communities spend a higher average number of years in school than children who remain. This contradicts the popular perception that the children and adolescents who migrate are those who have abandoned the educational system, have achieved below their grade level, or have fewer years of schooling.

B. Forms of violence against children and adolescents

The levels of insecurity, violence, and delinquency in El Salvador are alarming, making El Salvador one of the most violent countries in the world, along with Guatemala and Honduras. The homicide rate per 100,000 residents is three times the global average.

Children and adolescents identify violence and insecurity as important push factors.³¹ Indeed, most of them recognize that the generalized violence throughout the country is one of the factors motivating their migration. The direct violence carried out against them by gangs, in a context where the state is perceived as incapable of protecting them and their families, makes the decision to migrate even more urgent. The forced migration of many Salvadoran children and adolescents in recent years results from threats they receive from criminal organizations, particularly street gangs. In practice, this direct violence not only triggers the migration process, but also makes it irreversible. Given this panorama, neither the family nor the child or adolescent will abandon their attempt to reach the United States or seek asylum in Mexico.

A 2014 report revealed that 59% of Salvadoran boys and 61% of Salvadoran girls interviewed identified crime, threats from gangs, and violence as primary push factors of migration. "Men fear being assaulted and killed for not joining gangs or for interacting with corrupt government officials, while women fear the possibility of being raped or disappeared by gangs."³² "More than 85% of children and adolescents interviewed from Cuscatlán and Usulután stated that they were

³⁰ Programa de las Naciones Unidas para el Desarrollo ("PNUD") & Fundación Dr. Guillermo Manuel Ungo ("FUNDAUNGO"). (2009). *Almanaque 262. El estado del desarrollo humano en los municipios de El Salvador*. Retrieved from <http://www.revistahumanum.org/revista/almanaque-262-el-estado-del-desarrollo-humano-en-los-municipios-de-el-salvador/>.

³¹ See Consejo Nacional de la Niñez y la Adolescencia ("CONNA"). (2013, December). *Estado de situación de los derechos de las niñas, niños y adolescencia en El Salvador*. See also Camargo M., Abdel con Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados ("ACNUR"). (2014, August). *Arrancados de Raíz*. Retrieved from

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9828;>

Kennedy, E. (2014). *No Childhood Here, Why Central American Children are Fleeing their Homes*. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf; Stinchcomb, D. & Hershberg, E. (2014, November). *Unaccompanied Migrant Children from Central America: Context, Causes, and Responses*. Center for Latin American & Latino Studies Working Paper Series, 7. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001.

³² Kennedy, E. (2014). *No Childhood Here, Why Central American Children are Fleeing their Homes*. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

fleeing violence. More than 50% of children and adolescents interviewed in the following departments identified violence as a primary push factor: La Libertad (53.8%), La Paz (64.7%), La Unión (67.6%), Morazán (52.6%), San Miguel (67.6%), San Salvador (65.9%), San Vicente (61.1%), Santa Ana (58.8%), and Sonsonate (67.7%),” according to the same report.³³ Under these circumstances, “parents and guardians expressed much anxiety when weighing the risks of travelling to the United States against the extremely dangerous climate for children and adolescents in El Salvador.”³⁴

1. The growing gang phenomenon and its impact on children and adolescents

Adolescent boys run a high risk of being homicide victims given their participation—many times forced—in street crime, gangs, weapons possession, and other violent activities. They also run a high risk of being direct victims of these crimes in their communities. The culture of impunity for crime in El Salvador leads to higher levels of violence. A lack of security puts human development at risk and is associated with higher levels of poverty and lower rates of school enrollment and attendance. Insecurity also affects access to healthcare, education, and other social services, which, in turn, exacerbates the vulnerability of children and adolescents.

Violence and crime directly impede the human development and safety of children and adolescents. Between 2005 and 2013, approximately 6,300 Salvadoran children and adolescents were murdered, with 984 killed in 2012 alone. The graph below presents statistics on murders and disappearances of children and adolescents in 2013. This situation has not changed in 2014; during the first two months of 2014, there were 326 homicides and 322 reported disappearances.

Homicides and Disappearances of Children and Young People in 2013

Age	Homicides	Disappearances*
0-12	14	45
13-17	251	447
18-30	1,123	378
Total	1,388	870

*Reported to the National Police

Source. National Police (*Policía Nacional Civil*), Statistics, 2013

In addition to homicide, other types of violence are committed against children and adolescents. UNICEF reports that in 2012 and 2013, the Departmental Councils for the Protection of Children and Adolescents (*Juntas Departamentales de Protección de la Niñez y Adolescencia*)—established as a focal part of the Law, Policy, and Integral Protection System for Children and

³³ Kennedy, E. (2014). No Childhood Here, Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

³⁴ Kennedy, E. (2014). No Childhood Here, Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

Adolescents (*Ley, Política y Sistema de Protección Integral de la Niñez y Adolescencia*)—received 18,754 cases of violations of the rights of children and adolescents. Of these, 8,627 were violations of the right to personal integrity (or physical integrity, to wit, the right to be free from physical harm), representing a 159% increase from 2012 to 2013. There was also a 78% increase in reported violations of the right to protection from mistreatment, and a 38% increase in reported violations of the right to protection from sexual abuse and exploitation.³⁵

Violent deaths, high levels of crime victimization, and systematic impunity have affected the lives, integrity, and economic well-being of people throughout El Salvador and particularly harms children, adolescents, and young people. Many analyses confirm this situation; in recent years, crime and violence have been identified as the principle problems facing the country, in large part because 67% of Salvadorans live in areas controlled by local gangs.³⁶ Gangs violate human liberties, beginning with the rights to life and physical integrity. Violence perpetrated by these groups not only causes the premature deaths of many children, adolescents, and young people, but also affects the daily life of communities and restricts individual behavior due to concrete threats and general fear.

However, the deprivation of liberties began before the upsurge of gang activity as a consequence of diverse forms of violence. Gangs arose from a context characterized by the convergence of fragile family structures; scarce parental control; an insufficient presence of social protection institutions; deficient public policies to guarantee social rights; corruption; obstacles in accessing justice; poor interaction between primary socializing agents (such as family and school); serious economic and social disadvantages; and the rise of underground or illegal markets as a response to a socioeconomic structure incapable of formally meeting the basic needs of the population. These factors, among others, lead young people to participate in gangs, either of their own volition or by force.

Thus, gangs threaten the present and future of thousands of children and adolescents who live in precarious conditions. They also affect the present and future of society in general, as they undermine the effectiveness of institutions geared toward developing and strengthening human capacities. Consequently, efforts to reverse the growing gang phenomenon must be multidimensional and include, in addition to the State, a broad spectrum of social actors, particularly those most affected, such as communities, families, and schools.

High levels of violence and youth deaths reveal the gravity of the gang problem. Before the gang truce brokered in March 2012,³⁷ El Salvador had one of the highest murder rates in the world,

³⁵ UNICEF. (2014). The State of the World's Children 2014 In Numbers, Every Child Counts, Revealing disparities in advancing children's rights. Retrieved from http://www.unicef.org/gambia/SOWC_report_2014.pdf.

³⁶ IUDOP. (2010) *Los salvadoreños y salvadoreñas evalúan la situación del país en 2010*. Boletín de prensa, año XXV. Retrieved from http://www.uca.edu.sv/publica/iudop/Web/2010/boletin2_2010.pdf.

³⁷ Although there was a decline in the number of homicides, many question whether the truce made El Salvador safer; benefits afforded to gang leaders by the government may have actually increased power of the gangs and rates of other forms of violence. See, e.g., Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf; Stinchcomb, D. & Hershberg, E. (2014, November). Unaccompanied Migrant Children from Central America: Context, Causes, and Responses. Center for Latin American & Latino Studies Working Paper Series, 7. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001.

with an average of 63 of every 100,000 inhabitants killed between 2007 and 2011. That rate reached 70 of every 100,000 inhabitants in 2011, the second highest murder rate in the world. The murder rate grew steadily between 1999 and 2011, with a few exceptions. The ceasefire produced an important shift, as the murder rate fell from 70 to 41 of every 100,000 inhabitants between 2011 and 2012.³⁸ However, since the truce ended in 2014, the daily murder rate has returned to pre-truce levels.³⁹

The murder rate in El Salvador evinces a pattern differentiated by age and sex. Over the past 10 years, the murder rate for young people between 18 and 30 has been twice the national level, and the murder rate for men has been 9 times higher than that for women, documenting that violence principally affects young men whose profile is similar to those involved in gangs. According to UNDP reports, those most affected by violence are 15 to 19 years old.⁴⁰

Estimates of the number of gang members vary by source and year. The lowest estimates are approximately 10,500 gang members, while the highest are approximately 80,000 gang members.⁴¹ The profile of gang members has changed very little since the 1990's. They are mostly young men, although their average age has decreased. In 1996, the average age of entry into gangs was estimated between 17 and 24, while in 2006, that age had fallen to approximately 15. This is especially important for children pressured or forced to join gangs. Additionally, the presence of gangs throughout the country has increased quantitatively and qualitatively. Thus, their so-called "territorial dominion" transcends geography and encompasses social complicity, the substitution of the State, power through intimidation, global interconnection, and the reinforcement of delinquent culture. These factors consolidate the control of criminal groups, to the detriment of the liberties of those not involved with them.

As underscored by the UNDP, not even schools are exempt from threats. The effectiveness of schools to develop the capacities of children and adolescents is decreasing due to gang activities. The presence of gang members in the classroom has diminished the authority of teachers. The territorial control exercised by gangs in areas surrounding schools is another important factor leading children and adolescents to drop out of school. The UNDP also indicated the decay of merit-based structures within schools overrun by gangs, and that public schools are no longer perceived as protective spaces, but rather as dangerous places.⁴²

³⁸ Procuraduría la Defensa de los Derechos Humanos ("PDDH"). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

³⁹ Kennedy, E. (2014). No Childhood Here, Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

⁴⁰ PNUD. (2013). Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

⁴¹ Procuraduría la Defensa de los Derechos Humanos ("PDDH"). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

⁴² PNUD. (2013). Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta, p. 14. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

The same report cites a recent study⁴³ that identifies the following municipalities in El Salvador as high risk zones with large numbers of victims fleeing organized crime: La Libertad, Ciudad Arce, Sacacoyo, Colón, Soyapango, Mejicanos, Panchimalco, Aytuxtepeque, Ilopango, Juquilsco, Santa María, Santiago de María, San Miguel, El Tránsito, Ciudad Barrios, Carolina, La Unión, Conchagua, Santa Rosa, San Alejo, and Intipucá. Other sources have cited massive migrations of girls under the age of 12 from certain areas of Colón where they are “taken” by gang members beginning at that age.⁴⁴

Direct violence perpetrated by gangs is a key push factor for children and adolescents to leave El Salvador; this violence makes the decision to migrate even more urgent for them. Threats against and attacks on children and adolescents occur during daily interactions, in school, and in the community.⁴⁵ A threat made by or an altercation with gang members hastens the journey, and can lead to sudden departures. In addition, indirect violence and the perception of insecurity and feelings of being constantly at risk instilled in Salvadoran children are in themselves powerful push factors for migration. As signaled in other studies, the climate of generalized violence in El Salvador motivates children and adolescents to minimize exposure to the risks they are told they will face in the future.⁴⁶

2. Gender violence

There is a body of law in El Salvador aimed at guaranteeing the right to a life free from violence for women. Notable among these laws are: the Law Against Intra-Family Violence; the Penal Code; the Procedural Penal Code; the Special and Comprehensive Law for a Life Free from Violence for Women; the Law for the Integral Protection of Children and Adolescents; the Law to Establish the Salvadoran Institute for the Development of Women; and the Law for Equality, Equity and the Eradication of Discrimination Against Women.

According to reports by the Salvadoran Institute for the Advancement of Women (*Instituto Salvadoreño para el Desarrollo de la Mujer* or ISDEMU),⁴⁷ in 2010, almost half (44.6%) of women victims of domestic violence were between the ages of 26 and 37. The most common forms of violence against women were psychological (38.2%), physical (22%), and economic. This trend was similar in 2009 and 2012.

⁴³ Centro Internacional para los Derechos Humanos de los Migrantes. (“CIDEHUM”). (2012, May). Desplazamiento Forzado y Necesidades de Protección, generados por nuevas formas de Violencia y Criminalidad en Centroamérica. Retrieved from <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8932.pdf?view=1>.

⁴⁴ PNUD. (2013). Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta, p. 212. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

⁴⁵ Procuraduría la Defensa de los Derechos Humanos (“PDDH”). (2013, March). Informe especial sobre el impacto de la violencia en los derechos de las niñas, niños y adolescentes en El Salvador. Retrieved from http://www.redlamyc.info/images/stories/INFORME_ESPECIAL-2.pdf.

⁴⁶ Gaborit, M., Zetino Duarte, M., Brioso, L., & Portillo, N. (2012). La esperanza viaja sin visa: Jóvenes y migración indocumentada de El Salvador. Retrieved from http://www.unfpa.org.sv/index.php?option=com_content&view=article&id=545:la-esperanza-viaja-sin-visa&catid=37:nacionales.

⁴⁷ Instituto Salvadoreño para el Desarrollo de la Mujer (“ISDEMU”). (2011). Segundo informe nacional sobre la situación de violencia contra las mujeres. Retrieved from http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&Itemid=0&lang=es.

Homicides of women have increased at an alarming rate over the last decade. In 2000, there were 193 reported murders of women. This number reached 580 in 2010.⁴⁸ In 2000, femicides/feminicides accounted for 5.4% of all homicides in El Salvador. In 2010, that number had risen to 14.5%. The Small Arms Survey (2012)⁴⁹ identified El Salvador as the country with the highest femicide/feminicide rate, with 12 per 100,000 women. Alarmingly, 1 in 4 women killed in El Salvador are between the ages of 0 and 19; that is, girls or adolescent women. This age group represented 27.9% of all homicides committed in 2009, and 26.6% of those committed in 2010.⁵⁰

According to ISDEMU, between January and December 2011, there were 1,552 reported crimes of sexual abuse against women (*delitos contra la libertad sexual de mujeres*), consisting of rapes, other sexual assaults, statutory rape, and sexual harassment.⁵¹ Of these reported crimes, 42.46% were rapes; 23.39% were other sexual assaults; 22.81% were sexual harassment; and 11.34% were statutory rapes. National Civil Police (*Policía Nacional Civil* or PNC) figures on rapes of women in 2011 show that most rapes were committed against 12 to 18 year olds, followed by 27.64% committed against 18 to 25 year olds, 14.26% against 25 to 35 year olds, and 12.68% against women 35 to 60 years old. Although the numbers and percentages vary for 2012 and 2013, the same pattern continues; during these years, most rapes were committed against 12 to 18 year olds, followed by 18 to 25 year olds. This has been the situation for over a decade.⁵²

Discrimination and femicide/feminicide

Declaration of Aracely Bautista Bayona

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April 2013

Patriarchal norms define the fundamental sociopolitical structure of El Salvador and disadvantage women in every aspect of Salvadoran society. Among the most entrenched characteristics of Salvadoran society is machismo[.] . . . Society accepts and tolerates men who violently punish women for violating these gender

⁴⁸ ISDEMU. (2011). Segundo informe nacional sobre la situación de violencia contra las mujeres. Retrieved from http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&Itemid=0&lang=es.

⁴⁹ Small Arms Survey (2012, February). Femicide: A Global Problem. *Research Notes*, 14. Retrieved from http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf.

⁵⁰ ISDEMU. (2011). Segundo informe nacional sobre la situación de violencia contra las mujeres. Retrieved from http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&Itemid=0&lang=es.

⁵¹ ISDEMU. (2012). Informe Nacional, 2012. Estado y situación de la violencia contra las mujeres. Retrieved from http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&Itemid=0&lang=es.

⁵² Gaborit, M., Rodríguez Burgos, M., Santori, A., y Paz Narváez, C. (2003). Más allá de la invisibilidad. Disparidad de género en El Salvador.

roles or disobeying male relatives. . . . [These grave punishments] include emotional abuse, deprivation of personal autonomy [financial as well as] physical as well as sexual violence. . . .

The persistence of feminicides is intrinsically linked to the social norms that condone or permit violence against women and the impunity that results when the existent laws are not enforced or when the opinions of officials within the justice system are biased. In my professional opinion, approximately 40% of feminicide victims were also victims of domestic violence who the system had failed to protect. . . . The police and the media regularly refer to feminicides as “crimes of passion,” “crimes of jealousy” and “crimes related to social violence generated by gangs” – failing to recognize that these are killings motivated by visceral hate towards women, and justified by social norms which accept the use of violence against women. . . .

El Salvador is a source and transit point in the international trafficking of girls and women. Traffickers target women – especially girls and young women who are vulnerable to kidnapping and disappearance – simply because they are women. Organized criminal networks engaged in drug and human trafficking control vast territorial regions in El Salvador. In these areas, traffickers can easily kidnap, hide and transport women without police interference

The Law Against Intrafamilial Violence (LVI), which has been the primary law addressing domestic violence against women since its enactment in 1996, has largely been . . . ineffective. . . . [While the] LVI created special administrative and civil judicial procedures to prevent domestic violence and help women seek protection from abusive partners. . . . Nonetheless, judicial officials . . . value family unity over the needs of victims . . . , and judges exert pressure on women victims to reconcile with their partners before adjudicating their legal claims [for protection]. . . . Judges generally lack gender sensitivity training. . . .⁵³

Within this context of gender violence and deficient healthcare policies—particularly concerning sexual health and reproductive rights—there is a high rate of child and teen pregnancy and a large number of single mothers. Currently, gang violence is one of the causes of the deaths of pregnant adolescents.

Another consequence of teen pregnancy is suicide. In 2013, there were 12 deaths of mothers under the age of 18; of these, six were suicides. Between January and April 30, 2013, MINSAL reported the suicides of three adolescent mothers. The suicide rate among adolescent mothers between the ages of 15 and 19 rose from 14% of all deaths in that demographic in 2006 to 50% in 2013.

⁵³ Bautista Bayona, A. (2013, April 12). Declaration of Legal Expert on the Situation of Violence Against Women In El Salvador, Aracely Bautista Bayona. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Aracely_Bautista_Bayona_Affidavit.pdf.

3. Violence against children and adolescents

In addition to violence perpetrated by gangs and other organized criminal groups, and other community violence, household violence—in particular rape, incest, and other sexual abuse against girls and adolescent females—also motivates migration.⁵⁴

According to María Teresa Delgado de Mejía, a protection official with the UNICEF office in El Salvador, violence in the country has reached endemic proportions, and one of its most prominent forms is violence in the home: 7 out of 10 children are subject to physical violence at the hands of their parents. Severe physical punishment, including the use of blunt objects, is a common and accepted practice. Additionally, the number of sexually abused children and adolescents is very high, according to Marlon Montoya, National Protection Advisor for World Vision in El Salvador. The majority of sexual violence against girls (and boys) occurs in their own homes at the hands of fathers or stepfathers.⁵⁵ There is also a high level of psychological abuse in households and schools.⁵⁶

According to Ana Georgina Ramos de Villata, Deputy Inspector General for the Rights of Children and Adolescents, families, and society in general, perceive children and adolescents as objects. As such, physical punishment is widely accepted. The drafting of the Law for the Comprehensive Protection of Childhood and Adolescence (*Ley de Protección Integral de la Niñez y Adolescencia* or LEPINA) demonstrates this acceptance; the original language of LEPINA Article 38 prohibited any form of physical violence, but the final version permits “moderate physical punishment.” However, Article 38 does not define what constitutes “moderate physical punishment.”

⁵⁴ See, e.g., Camargo M., Abbdel con Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (“ACNUR”). (2014, August). Arrancados de Raíz. Retrieved from

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9828>; Stinchcomb, D. & Hershberg, E. (2014, November). Unaccompanied Migrant Children from Central America: Context, Causes, and Responses. *Center for Latin American & Latino Studies Working Paper Series*, 7. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001; Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf (report addressing factors that motivate migration including household violence, sexual violence, abandonment).

⁵⁵ See Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf.

⁵⁶ Interviews with Nori Flores and Viviana Bonilla, Office of the Attorney General of the Republic (Unit for Minors and Women).

The impact of violence on children and adolescents

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November 2014

El Salvador is among the most dangerous places in the world for a child or adolescent to live. El Salvador is known internationally for its very high level of violence, and recently for having the highest rate of murder of children in the world. This violence disproportionately impacts El Salvador's youth and children. According to a recent report by the Office for the Defense of Human Rights, adolescents make up the vast majority (92%) of all homicide victims in the country, and female adolescents and female children are twice as likely to become victims of rape, as compared to adult women.

The strong patriarchal norms in El Salvador are another detrimental factor for children, especially female adolescents and girls. Because women are seen as subservient to men, and children as subservient to adults, young girls are particularly vulnerable to abuse, which is often sexual in nature. In a country with a high rate of sexual abuse against women generally, female children and adolescents face twice the rate of sexual abuse as do adult women.

...

In El Salvador, rape mostly takes place within the home. And, the vast majority of the sexual aggressors (90%, according to the PDDH Report) are close male relatives of the child or youth – uncles, godparents, stepfathers, fathers, and grandfathers. Because these rapes happen at home, by family members, sexual abuse of children regularly goes unreported to keep family members from facing any prospect – however unlikely – of prosecution. Often, sexual abuse is made visible only once the child or adolescent becomes pregnant. The pregnant youth could face serious criminal consequences for terminating a pregnancy because abortion is criminalized in El Salvador.⁵⁷

⁵⁷ Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf.

C. In search of family reunification

In many cases, Salvadoran children and adolescents decide to leave the country within a context of family and community migration.⁵⁸ They make this decision within a relational dynamic involving different actors: family in the United States, family in El Salvador, friends, and community members, among others.⁵⁹ The decision to migrate is rarely made exclusively by children and adolescents, and underlying motives are complex and multi-faceted. Thus, in many cases family reunification should be added to the list of motivators for migrating (poverty, lack of basic rights, and the various forms of growing violence). That is, the migration of children and adolescents is spurred by, among other factors, the need to reunite with a parent or parents who have previously migrated.

Salvadoran children are involved in a relational dynamic moving in two directions: toward El Salvador (for children repatriated from the United States and Mexico) and towards the United States. This section focuses on the movement of Salvadoran children and adolescents towards the United States. In some cases, the characteristics of migration and the decision to migrate vary from the established trend. However, the migration of children and adolescents is generally a part of a family's life plan when leaving the country appears superior to any potential personal or collective life plan in El Salvador. For families, migration is part of an exodus that does not end until it has touched all or the majority of family members. Proof of this is the generalized perception held by children that, with time, more members of their community will be living in the United States than in their municipalities of origin. Migration is not only part of how they imagine a personal or nuclear family life plan; rather, it possesses a clear logic: to be with family. In this context, the socialization of children and adolescents instills in them a migrant identity and image.⁶⁰

Children and adolescents discover that they are already part of life plans involving migration, and they take on this project as their own primary life plan--or at least the one that is most within their reach. This identification affects how they think about every other aspect of their life. Slightly more than 70% of children and adolescents repatriated from Mexico have at least one member of their nuclear family in the United States, so family reunification is an important pull factor. Memories of their mother or father and long-distance family ties imbue the image with family reunification. In some cases, it has fantasy-like qualities and, in others, the image is filled with significant inaccuracies and mixed emotions. A 15-year-old girl we interviewed at the Century XXI Migration Station (Tapachula, Mexico) indicated that her father left when she was 7 and her mother when she was 8. She said that she did not remember what it was like to live with them and that (living together as a family) would be new for her, her mother, and her father.

⁵⁸ Gaborit, M., Zetino Duarte, M., Brioso, L., & Portillo, N. (2012). La esperanza viaja sin visa: Jóvenes y migración documentada de El Salvador. Retrieved from http://www.unfpa.org.sv/index.php?option=com_content&view=article&id=545:la-esperanza-viaja-sin-visa&catid=37:nacionales.

⁵⁹ Anson, J., Mujica, L., Piras, G. y Villacorta, A.M. (2013). *Redes y maletas. Capital social en familias de migrantes*. Lima: FIUC-PUCP.

⁶⁰ Anson, J., Mujica, L., Piras, G. y Villacorta, A.M. (2013). *Redes y maletas. Capital social en familias de migrantes*. Lima: FIUC-PUCP. Martín-Baró, 1983.

It is especially worrisome that while in transit, Salvadoran children increasingly migrate accompanied by coyotes or within a system of guides who are unknown to their parents. Parents do not know who the people accompanying their children are or how they operate. The increasing use of coyotes among migrant Salvadoran children elevates their vulnerability, because the coyote could, in reality, be part of a complex organized criminal network involved in human trafficking, sexual slavery, and other crimes.⁶¹

The social representation of the coyote has changed in recent years from an image of the “community” or “family” coyote to a system with different actors and roles. A “family coyote” is someone who has accompanied various family or community members, has demonstrated their trustworthiness during successful journeys, and accompanies the migrant from the beginning to the end of their journey. Currently, the individual coyote is no longer spoken of and has been supplanted by a “system of coyotes,” the characteristics of which are precisely those increasing the vulnerability of children and adolescents. In many cases, children and adolescents enter a system of human trafficking where they are passed along from guide to guide and perceived as “merchandise.” In turn, they are dehumanized and lack protection. Within this system, human trafficking is tied in with other organized criminal activities, among them sexual slavery, kidnapping, drug trafficking, and organ trafficking.

The cost of hiring a coyote in El Salvador is high. Children and adolescents we interviewed reported that their relatives had paid between \$7,000 and \$11,000 (USD) to reach the United States. The cost of the journey depends on the conditions under which it is carried out: journeys during which children and adolescents do not have to walk or walk very little, sleep in hotels as opposed to sleeping outside, and travel in automobiles cost more. This kind of journey is called a “special journey.” However the “special” aspects of the journey often do not materialize. This idea of the “special journey” remains in the imaginations of Salvadoran parents and family members who can only hope for the well-being of migrant children and adolescents. Family members in the United States and El Salvador are often aware of the risks implicit in the coyote system.

Because the person hired to protect the physical integrity of children and adolescents is a potential aggressor, families may try to send their children in the company of another relative in an attempt to guarantee their physical and emotional well-being. However, this protection is illusory, as some of these accompanying family members are other children and adolescents. Half of the returning children and adolescents we interviewed were traveling in the company of a relative. However, in half of these cases, that relative was another child or adolescent, so these children cannot be considered as accompanied.⁶²

Salvadoran children and adolescents migrating within the coyote system also risk being kidnapped by other criminal groups involved in human trafficking and ransomed to their families in El Salvador or the United States for exorbitant prices. Again, children in transit are objectified

⁶¹ Gaborit, M., Zetino Duarte, M., Brioso, L., & Portillo, N. (2012). *La esperanza viaja sin visa: Jóvenes y migración indocumentada de El Salvador*. Retrieved from http://www.unfpa.org.sv/index.php?option=com_content&view=article&id=545:la-esperanza-viaja-sin-visa&catid=37:nacionales.

⁶² See definition of unaccompanied child, note 2, *supra*.

and treated as merchandise by these groups. While there are no exact numbers on how many children and adolescents travel with coyotes, girls are more likely to migrate within the coyote system. This increases their vulnerability compared to that of boys, as the highest risks for girls are clearly sexual harassment and sexual abuse.

Journeys undertaken within the coyote system also take on an irreversible nature. Contracts with coyotes include a number—usually three—of agreed upon attempts. That is, if the child is detained by migration authorities while in transit to the United States, the coyote agrees to accompany him or her at least twice more. These children and adolescents find themselves trapped by contractual agreements that, in most cases, they did not negotiate themselves.

This modality of migration increases the vulnerability of children and adolescents vis-à-vis violence and other crimes to which they were already exposed before migrating. The irregularity of their migration is associated with increasing migration controls in Mexico and the United States, and the lack of avenues for regular migration to the United States for purposes of family reunification. Therefore, irregularity is a key factor for understanding the increasing risks and violence confronting child and adolescent migrants.

IV. Legal and institutional framework for children and migration

The objective of this section is twofold: to analyze the legal, institutional, and political framework in place for the protection of children and adolescents in El Salvador; and to determine the framework's effectiveness in protecting children and adolescents in general, as well as those migrating alone or accompanied by relatives, and those whose parents have emigrated.

A. Legislation

El Salvador has ratified the principal treaties of the United Nations and Inter-American systems, including the Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. It has also ratified other important treaties and conventions regarding the protection of children and adolescents and migrants such as: International Labor Organization (ILO) Conventions No. 97 (the Migration for Employment Convention), and No. 143 (the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers); and the International Convention for the Protection of All Persons from Enforced Disappearance. However, the non-ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Third Optional Protocol to the Convention on the Rights of the Child (CRC) is particularly worrisome. Both instruments establish processes for submitting individual cases to the Committees that monitor compliance with both conventions.

Domestically, the Salvadoran legal framework contains several instruments for the protection of the rights of children and adolescents. Title II of the 1983 Constitution lays out fundamental individual rights, as well as social and civil guarantees, such as the right to life and liberty (Articles 2 and 70). In particular, Articles 24 and 35 refer to the right to special protection, the right for children to live in conditions that promote their comprehensive development, and the right to State protection.

An ample body of national law advocates for the protection of Salvadoran children in different ways and capacities, among them: The General Education Law (1996); the Law Against Intrafamilial Violence (1996); the Penal Code (2007); the Juvenile Penal Code (1994); the Law for Access to Public Information (2010); the General Medicine Law (2012); the Vaccine Law (2012); the General Youth Law (2012); the Special and Comprehensive Law for a Life Free from Violence (2010); the Law for Equality, Equity and the Eradication of Discrimination Against Women (2011); the Organic Laws of the PGR (*Procuraduría General de la República*, Procurator General of the Republic), FGR (*Fiscal General de la República*, General Prosecutor of the Republic), and PNC (*Policía Nacional Civil*, National Civil Police); the PDDH Law; the Organic Judicial Law; and the Law on Breastfeeding (2013). The LEPINA should also be included in this list. In addition, regulations of the protection system were established in 2012 for CONNA, the courts for the Protection of Children and Adolescents, and the Shared Protection Network (*Red de Atención Compartida* or RAC).

The LEPINA is the fundamental Salvadoran legal framework for the protection and promotion of the rights of children and adolescents, because it attempts to bring El Salvador into compliance with its obligations as a signatory of the Convention on the Rights of the Child. According to LEPINA, all children and adolescents within Salvadoran territory are individuals with full rights, regardless of nationality (Articles 5 and 6). The law extensively lays out the rights of children and adolescents. Title I includes the rights to survival and full development, including the rights to life, healthcare, social security, and the environment; Title II includes rights to protection, including the rights to personal integrity, freedom, and the protection of adolescent workers; Title III includes further rights to full development, such as the rights to personality, education and culture; and Title IV includes the right to participation.

The LEPINA mandates that national policy for the protection of children and adolescents be in accordance with the following principles (Art. 112):

- The best interests of children and adolescents
- Absolute priority
- The full protection of rights
- Social participation of children and adolescents
- Equality and non-discrimination
- Gender equity

Current migration legislation is profoundly out of date; the Migration Law (Legislative Decree No. 2272) was passed in 1958, and its language bears little relevance to the reality and challenges of migration in the modern era. The law does not include a host of human rights that the state is obligated to guarantee based on national and international laws in effect in El Salvador, such as the Convention of the Rights of the Child.

Efforts to reform the law have so far been unsuccessful. In 2014, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (UN Committee on Migrant Workers) advised the State to adopt the necessary measures to ensure that the draft bill on migration and foreigners complies with the Convention. The UN Committee on Migrants

also urged the State to submit this draft bill to the Legislative Assembly for approval as soon as possible.⁶³

B. Institutions responsible for the protection of children and adolescents

The LEPINA established the National System for the Protection of Children and Adolescents (*Sistema Nacional de Protección de la Niñez y la Adolescencia*), which is comprised of the following institutions, in accordance with Article 105: CONNA; Local Committees for Children's and Adolescents' Rights (*Comités Locales de Derechos de la Niñez y la Adolescencia*); Protection Boards for Children and Adolescents (*Juntas de Protección de la Niñez y la Adolescencia*); Promotion and Assistance Associations (*Asociaciones de Promoción y Asistencia*); the Salvadoran Institute for the Integral Development of Children and Adolescents (*Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia* or ISNA); the Judicial Branch; the PGR; the PDDH; and members of the RAC.

Other government bodies involved in the Protection System are: Family Courts (*Juzgados y Cámaras de la Familia*); Children's Courts and Courts for Enforcement Measures (*Juzgados y Cámaras de Menores y de Ejecución de Medidas*); the Family and Juvenile Divisions of the PNC (*Divisiones de la Familia de Asuntos Juveniles*); and the PDDH's Office of the Associate Procurator for Children and Youth (*Procuraduría Adjunta de la Niñez y la Juventud*).

The CONNA Executive Committee is comprised of a high level individual from each of these executive branch agencies: (1) the Ministers of Public Security and Justice, Housing, Education, Labor and Social Services, and Public Health and Social Assistance (*Seguridad Pública y Justicia, Hacienda, Educación, Trabajo y Previsión Social, Salud Pública y Asistencia Social*); (2) The PGR; (3) the organization of municipalities of the Republic of El Salvador (*Corporación de Municipalidades de la República de El Salvador*); and (4) four civil society representatives selected by the RAC, two of whom must belong to non-governmental human rights organizations.

The LEPINA represents a serious step forward in terms of child law in El Salvador. However, the Comprehensive Protection System (*Sistema de Protección Integral* or SPI), designed to protect the rights enshrined in the law, has suffered serious delays in implementation. These delays have resulted in a lack of efficiency and confidence, as well as an inadequate budget. The Legislative Assembly issued transitory legislative decree No. 581 (January 6, 2011), which gave ISNA the authority to grant administrative protective measures until January 1, 2012, because the Protection Boards had not yet been created. In 2012, the process of implementing the LEPINA was accelerated; in May, the Executive Director of CONNA took office and new civil society representatives were elected to the Executive Board.⁶⁴

⁶³ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

⁶⁴ Morlachetti, A. (2013, January). *Sistemas Nacionales de protección integral de la infancia: fundamentos jurídicos y estado de aplicación en América Latina y el Caribe*. Retrieved from http://repositorio.cepal.org/bitstream/handle/11362/4040/S2012958_es.pdf?sequence=1.

Other difficulties include a lack of capacity building and best practices for properly addressing claims. For example, in general, police do not have the capacity to attend to children and adolescents. Additionally, there are many reports of human rights abuses carried out by the police. Members of the Children's Courts have traditional backgrounds in civil and family law, and generally hold outdated attitudes towards children that prevent them from acting with a perspective truly rooted in the best interests of the child.

In addition to implementation inadequacies, there are other troublesome aspects of LEPINA's framework. One of the greatest challenges is consolidating the relationship between CONNA—as the body that guides national policy and has authority over the system—and ISNA—which is part of the Protection System and is charged with providing attention by means of the RAC. There are different visions regarding the roles that these two autonomous institutions should play. Furthermore, ISNA is perceived as an institution that represents the entrenched system, holds outdated attitudes towards children, and maintains practices that are not consistent with LEPINA's integral protection perspective.⁶⁵

Ana Georgina Ramos de Villalta, Deputy Inspector General for the Rights of Children and Adolescents, stated that none of the 262 local committees, charged with providing local enforcement of children's rights, have been launched. The absence of local committees, in conjunction with the distance and overflow of the Protection Boards, results in the invisibility of human rights violations and violence perpetrated against children and adolescents, and leaves children with no recourse to state protection mechanisms.

According to Roberto Rodríguez Melendez:

Severe fiscal limitations and institutional weakness have hampered the effective implementation of the LEPINA. The law has gone into effect slowly and in stages, with substantial portions of the Comprehensive System of Protection still not in place today. Even with its limited implementation, it has served to make visible the enormity of the harms El Salvador's children face. Unfortunately, it is also having substantial unintended negative consequences, which diminish public trust in the law, and put at risk the advances that have been made, and the likelihood that the many remaining gaps to ensuring children's rights will be filled.

...

... the LEPINA only requires at least one Board per department, although more than one can be established in a department. This compromise significantly undercuts the central premise of the LEPINA, which is to give children access to protection regardless of where they live. Even with one Board per department (and two in San Salvador), it is often difficult for children to reach the Boards on their own. Despite [this], the Boards have been flooded with many more cases than they can effectively handle. In 2012, with only 8 of a planned 15 Child

⁶⁵Morlachetti, A. (2013, January). *Sistemas Nacionales de protección integral de la infancia: fundamentos jurídicos y estado de aplicación en América Latina y el Caribe*, p. 61. Retrieved from http://repositorio.cepal.org/bitstream/handle/11362/4040/S2012958_es.pdf?sequence=1.

Protection Boards in place, over 7,000 reports of children's rights violations were received, most of which described very serious harms to children. This caseload far exceeded the capacity of the system, even though at the time a study showed that most Salvadorans had not yet even heard of the LEPINA because CONNA had no budget to promote the law. In 2013, as of October, 8,000 reports of violations had already been received. This flood of cases leads to very slow processing which diminishes public trust in the system.⁶⁶

Rodríguez Melendez continues:

The Local Committees are to be established in each of El Salvador's 262 municipalities; as such, they represent the Comprehensive System of Protection at its most local level. The Local Committees are charged with implementing and making known the National Policy on Children and Adolescents at the municipal level. The Local Committees also are meant to advise CONNA on the status of children's rights in the municipality, and provide guidance to municipal governments on how best to safeguard children's rights locally. The Local Committees, however, cannot resolve any cases themselves, and can only report any rights violations to the Child Protection Boards, the Specialized Courts, or to the police. . . . [In any case], the Local Committees have not been established in more than a small number of municipalities. Since the [RAC] is insufficient and does not exist in many areas of the country, at the local level there is no legal authority to establish the Local Committees.⁶⁷

This represents a substantial deficiency of LEPINA's implementation.

Efficiently implementing the Comprehensive Protection System would give life to the LEPINA. However, barriers to implementation seriously impede the promotion and protection of the rights of children and adolescents, as well as the prevention of rights violations. As a consequence, there is a failure of protection for children's and adolescents' basic rights to healthcare, education, and adequate living conditions; measures for preventing violence or addressing violence committed; and punishment for those carrying out violent acts. This situation leads many children and adolescents to develop their own survival strategies, including migration.

These serious limitations harm migrant children and adolescents in many ways. In order to successfully overcome these challenges, the government must institute comprehensive, adequate, and timely policies that acknowledge the causes of migration; provide attention to children and adolescents whose parents have migrated; and implement effective reintegration programs with a focus on basic rights and human development.

⁶⁶ Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf.

⁶⁷ Rodríguez Meléndez, R. (2014, November 26). Declaration of Dr. Roberto Rodríguez Meléndez, Legal Expert on the Situation of Violence Against Children in El Salvador. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Roberto_Rodriguez_Melendez_Affidavit.pdf.

The migration of children and adolescents should be addressed from a perspective of rights and gender, and in a coordinated manner that grapples with root causes and key effects. For example, if responses to child migration focus only on family reunification, leaving aside issues such as social exclusion and violence, improved prevention of irregular migration is highly unlikely.

Rather than implementing a coordinated effort, however, CONNA has developed counterproductive policies. These include threatening parents with fines between \$6,000 and \$12,000 (USD) if they send their children on subsequent migration attempts after being deported from the United States and/or Mexico. Blaming families for the irregular migration of their children is a repressive, rather than protective, state measure. This demonstrates that CONNA is still seriously unaware of the dynamic of irregular child and adolescent migration and its causes. CONNA should prioritize structural issues—such as the true reasons for migration, reintegration processes for repatriated children, and the development of short- and medium-term measures to ensure the best interests of the child.

C. Protection for migrant children: the Council for the Protection of Migrants

The 2011 Special Law for the Protection and Development of Salvadoran Migrants and their Families specifically addresses the protection of migrant children and adolescents, based on the following principles:

- Respect for the human rights of migrants regardless of their migratory status
- Non-discrimination
- The obligation to protect the human rights of Salvadorans abroad, regardless of their migratory status
- Special protection for vulnerable groups, including children, adolescents, and women
- The best interests of children and adolescents

The law applies to returning migrants and the reintegration process. To that end, the National Council for the Protection and Development of Migrants and their Families (*Consejo Nacional para la Protección y Desarrollo de la Persona Migrante y su Familia* or CONMIGRANTES) was created as an inter-agency body with participation from civil society and migrants. CONMIGRANTES is a public, non-profit, autonomous, and decentralized legal institution whose goal is to develop, propose, channel, and verify compliance with comprehensive protection policies, as well as policies related to ties between migration and development.

CONMIGRANTES is an inter-agency and cross-sectorial body that coordinates between the State and migrants. In spite of budget shortages, CONMIGRANTES has successfully placed the issue of assistance for returning migrants and their families on the government's agenda. Even though it was not fully formed until September 2012, its actions have filled the vacuum resulting from inaction on the part of CONNA regarding migration. However, shortcomings persist in the implementation of the LEPINA framework and the Special Law for the Protection and Development of Salvadoran Migrants and their Families.

The UN Committee on Migrant Workers evaluated measures adopted by El Salvador in 2014 to protect Salvadoran nationals in Mexico and the United States, particularly children and

adolescents.⁶⁸ The Committee expressed its concern over a lack of information on current measures to adequately identify and protect children and adolescents in transit, who are at a higher risk of being abused or attacked during their journey. To address this concern, the Committee submitted the following recommendations to the State:

- Strengthen cooperation with transit and destination countries in order to ensure that unaccompanied migrant children are not detained for having entered these countries in an irregular fashion, that minors who are accompanied by family members are not separated from them, and that families are housed in protection centers.
- Strengthen cooperation with transit and destination countries in order to ensure that unaccompanied migrant children who have been the victims of crime receive proper protection and individual care tailored to the specific needs of each case.
- Strengthen cooperation with transit and destination countries to ensure that unaccompanied minors are repatriated only if it is in their best interests and it has been established that the child, upon his or her return, will be safe and receive proper care and custody, under a procedure with appropriate safeguards.
- Take the necessary steps to guarantee that repatriated minors are taken in by family members and ensure their lasting resettlement and reintegration into their communities of origin.
- Develop policies for attending to, protecting, and facilitating family reunification for Salvadoran children whose parents have emigrated⁶⁹

For many years, Salvadoran consulates almost exclusively provided “traditional” consular services for the Salvadoran community living or traveling abroad. “Traditional” consular services refer to three principal functions: providing identification documents (passports, national identification cards, and other documents); processing family registries (registering changes in Salvadoran families living abroad); and notarizing personal documents vis-à-vis authorities in countries of origin and destination. Consuls are also obligated to formally and officially represent Salvadorans in their countries of destination. Consuls and their administrative staffs have become specialized in these areas and have, to a certain extent, become efficient and innovative.

The massive migration of Salvadorans over the past three decades and the intense flow of migrants toward the United States—especially in an irregular fashion—have complicated the migration phenomenon. Compounding these complications are the numerous and frequent dangers facing migrants along the way. For example, the 2010 massacre of 72 migrants in Tamaulipas, Mexico acutely highlights the dangers migrants confront. More effective consular attention is needed to protect the rights of migrants in transit, respond to the current challenges

⁶⁸ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

⁶⁹ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

presented by migration, and provide expanded humanitarian services. In fact, the Tamaulipas' massive murder led to El Salvador's decision to strengthen their Consulate network in Mexico and create new Consular representatives throughout the country—e.g., in Arriaga, the city where the train “La Bestia” (“The Beast”) departs.

Consular Protection Agencies (*Agencias Consulares de Protección*) in southern Mexico were established just months before the Tamaulipas massacre. The first agencies opened in the most dangerous areas, closer to routes traversed by migrants. These agencies serve four main functions, in addition to providing traditional consular services: (1) defending and promoting the rights of migrants in transit; (2) providing humanitarian services; (3) facilitating a dignified repatriation process respectful of the rights of those apprehended by Mexican authorities; and (4) gathering information on serious crimes and human rights violations committed against migrants. These agencies are small, flexible, and efficient, and can adapt to changes in migration flows.

The functions and goals of Consular Agencies not only developed in response to factors that migrants encounter in transit, but were also legally mandated. Articles 5 and 36 of the Vienna Convention on Consular Relations require consulates to safeguard the rights of nationals abroad. Additionally, the Salvadoran Constitution and the Consular Services Law establish the state's obligation to protect the rights of Salvadoran citizens abroad. To this end, consular officials must have the management tools necessary to operate adequately and efficiently.

At first, the implementation of these new functions was largely improvised and based on the intuition, goodwill, and personal commitment of consuls. Thus, results varied and were difficult to measure and use for planning and evaluation. Each consul developed its own style and process, which resulted in responses that were, to a certain extent, ad hoc. Personal case-by-case considerations superseded institutional criteria; indeed, there was no institutional framework in place with clearly established criteria for guiding consular protection of migrants' human rights.

To address this situation, standardized procedures were established in order to make consular work more efficient, predictable, measurable, and regularized. Every consulate designed and adopted management tools defining appropriate steps, criteria, relationships and coordination, instruments to use, and desired results.

In 2012 the following consular protocols were developed:

- Protocol for Attending to Victims of Human Rights Violations
- Protocol for Attending to Victims of Serious Crimes
- Protocol for Locating Salvadorans Lost in Transit and in Destination Countries (additionally, a guide for using a gene bank to identify the bodies of dead migrants was developed)
- Protocol for Attending to Salvadorans Detained in the Penal System
- Protocol for Carrying Out Humanitarian Actions
- Protocol for Attending to Salvadorans Facing Deportation
- Protocol for the Repatriation of Unaccompanied Children and Adolescents

These instruments contain information for identifying the Salvadoran victim or individuals requesting consular services; the person submitting the claim (if applicable); the location where

the incident or claim occurred; identifying the perpetrators (if applicable); locating contact information for relatives in El Salvador; defining the proper procedures to follow according to each case; establishing relationships with relevant local and/or national authorities and civil society organizations; and documenting results. Additionally, the Ministry of Foreign Relations has been developing an information system for monitoring all registered cases of consular protection.

The protection and defense of the rights of migrants is clearly the centerpiece of this new consular model. These areas are new and unknown to most consuls, and not consistent with the traditional bureaucratic and administrative work of consular officials. The design and development of new management tools (protocols, manuals, database systems, guidelines, etc.) is key for improving efficiency. Consuls and administrative assistants at Consular Protection Agencies now have a clearer framework and more thorough guidelines. They possess a clearly defined roadmap defining the steps necessary for providing more systematic and efficient services, useful for all parties involved in the process.

The current challenge is to ensure that these tools effectuate consular protection, and that consuls perceive them as facilitating their work and provision of services. There is a lack of awareness and capacity building for consular personnel regarding these new tools. As a consequence, resistance to implementation remains. The UN Committee on Migrant Workers recommended that the State adopt the necessary measures to effectively respond to the needs of Salvadoran migrant workers and members of their families vis-à-vis the protection of their human rights and access to services. Among these measures are the sufficient allocation of human and financial resources, and the design and implementation of on-going capacity-building programs for consular officials on the Migrant Workers' Convention and other human rights conventions.⁷⁰

These reforms should include specific tools and mechanisms for protecting the rights of migrant children and adolescents vis-à-vis migration proceedings in Mexico and the United States. Reforms should take into account the prevention or termination of detentions of children and adolescents and members of their families, and should state that deportations are not in the best interests of the child.⁷¹

V. Difficulties and limitations in the reintegration of migrant children and adolescents

The circumstances associated with the irregular migration of children and adolescents, and the legal and institutional deficiencies we have discussed, affect the efforts of many children and adolescents to reintegrate into their families and communities once they have been deported or repatriated. This difficulty of reintegration influences their decision to embark anew or stay. Many repatriated children and adolescents do not view social reintegration as their best option. This view is influenced by strong emotions, including the hope of reuniting with members of their families, the dream of living a life full of possibilities and free from violence, and the fear of returning to the very place they fled because of violence, among other factors. In this regard, the

⁷⁰ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

⁷¹ There may be situations where it is better for a child to be reunified with family in another country, which could result in return of the child consistent with the best interests of the child.

UN Committee also expressed its concern over the increasing number of unaccompanied Salvadoran migrant children and adolescents repatriated to El Salvador, and a lack of effective measures to guarantee their successful and lasting social reintegration.⁷²

Factors that cause child and adolescent migrants to place greater value on the notion of a second or third migration attempt (or beyond) include: the impact of having already left the school system in their country of origin; the perception their community has of them; the persistence of structural causes of migration, violence, and other dangers experienced in transit; and the risks of returning to a context of violence. In reality, after they are returned to El Salvador, only a few child or adolescent migrants actually consider abandoning their efforts or intent to migrate without documents. New elements that affect their decision-making processes include pressure to repay debt incurred to make the initial journey. Additionally, the impact of prior factors may shift in subjective and relative importance; for example, children will know more about the risks of the journey, and their fears associated with migration, or their perceptions of their coyotes or other relevant actors, may have changed.

The changes upon the return of children and adolescents to their communities and families may not be apparent. However, under the surface, the decision to migrate once again becomes more complex. These difficulties occur on three levels—personal, family, and community—that, as concentric circles, expand their influence dynamically, bi-directionally, and recursively.

A. *Personal difficulties of reintegration*

While in transit, children and adolescents experience the migration process differently than they anticipated they would, as the reality differs substantially from what they had imagined.⁷³ This discrepancy between the expectations and reality of migration is based on two interrelated psychological processes: the fact that expectations are based on representations of reality—which inevitably involve one’s emotional reactions to their experiences (i.e., the “affective component”)—and the fact that expectations tend to be optimistic.⁷⁴

While this discrepancy is inherent in all decision-making processes, it is particularly problematic in the case of undocumented migration. Negative experiences frequently include traumatic events and conflict with the optimism with which many decided to migrate to achieve family reunification, better living conditions, the opportunity to attend school, and flight from violence. Reality can be grim compared to the expectations of children and adolescents beginning their journeys. Consequently, many children and adolescents must process these events, sometimes with the assistance of professionals, in order to absorb them in a balanced and prudent fashion.

⁷² Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

⁷³ Klaaren, K. J., Hodges, S. & Wilson, T. D. (1994). Expectation Whirls Me Round: The Role of Affective Expectations on Affective Experiences. In M. S. Clark (Ed.), *Review of Personality and Social Psychology: Emotion and Social Behavior*, 14, pp. 1-31. Newbury Park: Sage.

⁷⁴ Geers, A. L., and Lassiter, G. D. (2002). Effects of Affective Expectations on Affective Experience: The Moderating Role of Optimism-Pessimism. *Personality and Social Psychology Bulletin*, 28, pp. 1026-1039.

Regrettably, the role of the Salvadoran State in the reintegration process is limited to registering repatriated nationals and facilitating the return of children and adolescents to their families and communities. The state registers children and adolescents deported from the United States, or by land from Mexico following detention at the Century XXI Migration Station, upon reentry into El Salvador. Prior to their arrival, consular authorities notify and verify the identity of relatives or guardians claiming responsibility for the child or adolescent (in the United States and/or El Salvador).

In the case of recidivism—that is, being deported more than once—children and adolescents are transferred to ISNA to be safeguarded and returned to their families. Following the entry into force of the LEPINA, ISNA—which previously received repatriated children at El Salvadoran reception centers for migrants—ceased to receive children and adolescents at the reception centers. CONNA did not begin meeting repatriated NNA at reception centers until July 2014 during the “humanitarian crisis”⁷⁵ involving migrant children.⁷⁶

There is no program in El Salvador for proposing new relevant public policies and/or supporting the reintegration of returning children. The Vice-Ministry’s 2009 strategic plan for Salvadorans Living Abroad (*Vice-Ministerio para Salvadoreños en el Exterior*) created the Program for the Reintegration of Returning Migrants, tasked with raising support for returning Salvadoran migrants and facilitating their social and productive reintegration. But by July 2014, this program, which was aimed at adult migrants, had ceased to function. Upon its inception, CONNA did not take into account the fact that, between 2008 and 2010, irregular migrants were one of the largest groups receiving care from ISNA. In light of the increase in unaccompanied children returning from the United States, CONNA has recently been forced to include migration on its agenda, something they had previously expressly resisted.

No programs, laws, or guidelines exist in El Salvador to establish a clear vision for adequately and sustainably supporting the reintegration of returning irregular migrants. Rather, a purely legalistic and problematic decision has been made to leave this to parents or guardians who have already authorized or supported the irregular migration of children and adolescents in their care.⁷⁷

⁷⁵ In the introduction of this report, we indicated our objections to the United States’ interpretation vis-a-vis this concept. We have also explained why we are facing a regional crisis regarding human rights, humanitarian law, human development, and the rights of refugees.

⁷⁶ According to Kennedy, no one from ISNA or CONNA interviewed returning children between 2009 and July 2014. Kennedy also described the lack of training for migration officials, and the absence of procedures for detecting any risks or abuse children or adolescents may have suffered, both before and during their journey. This results in children and adolescents automatically being returned to some member of their family. CONNA began carrying out interviews with repatriated children in 2014. However, this task has been mostly focused on dissuading children and adolescents from migrating again and threatening their parents with fines if they did. Children and adolescents were not asked whether they had been victims of violence or abuse, or if they had been subjected to human trafficking. Kennedy, E. (2014). No Childhood Here, Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

⁷⁷ Aguilar, J. (2014, August 22). Padres de menores migrantes pueden ser sancionados. *La Prensa Gráfica*. Retrieved from <http://www.laprensagrafica.com/2014/08/22/padres-de-menores-migrantes-pueden-ser-sancionados>.

B. Family difficulties in the reintegration process

One of the most challenging aspects of reintegration is reinsertion in the family. While returning children and adolescents detained in transit may at first be apprehensive to reattempt the journey, the environment in their communities soon motivates many to do so. It is difficult for children and adolescents, as well as members of their families, to abandon plans that have taken much time to formulate because of a failed first attempt at reaching the United States. Moreover, the possibility of an unsuccessful first attempt is taken into account in the initial decision to migrate undocumented. Thus, within the dynamic of families with returning children and/or adolescents, there already exists the idea of reattempting the journey.

There are two particularly worrisome consequences of this situation that prevent children and adolescents from returning to a family dynamic favorable to their reintegration. On the one hand, children and adolescents are often subject to family pressure to reattempt the journey, even when the child does not want to do so. These efforts at persuasion very often downplay the potential dangers facing migrants. Families with debt acquired from high-interest loans and mortgages will urge the child or adolescent to leave again as soon as possible. The possibility of not being able to pay off family debt, and the persistence of the structural factors leading to migration, put pressure on children and adolescents to migrate once again. This makes the decision-making process less than thorough, and inadequate attention is given to the potential dangers along the way.

On the other hand, this dynamic results in families reestablishing contact with coyotes in order to reattempt the journey, regardless of whether or not more attempts are stipulated in their contracts. Family pressure on children and adolescents to migrate once again can create tension between the family and the child at a time when positive family support is key in making the repatriation process as painless as possible. Any contact children and adolescents have with persons involved in organized crime puts their security and well-being at risk. This includes coyotes and guides who, as evidence increasingly demonstrates, indeed comprise a criminal network.⁷⁸ Migrants and members of their families within different cultural contexts will often refuse to mentally acknowledge the negative role of coyotes, even considering them as good, trustworthy people helping the family in a time of need.⁷⁹

Some children and adolescents leave the country to escape violence, and, in particular, to avoid recruitment by gangs operating within schools or to avoid extortion of their families, which gangs may offer in exchange for non-recruitment. In these cases, families have two choices for protecting children and adolescents from violence: sending them to live with relatives in other parts of the country, or facilitating another migration attempt as quickly as possible. This decision is made quasi-automatically and carried out urgently in light of the extreme forms of violence that motivated the child or adolescent to migrate in the first place.⁸⁰

⁷⁸ García Vásquez, Gaxiola Baquero, & Guajardo. (2007).

⁷⁹ Gaborit, M., Zetino Duarte, M., Brioso, L., & Portillo, N. (2012). *La esperanza viaja sin visa: Jóvenes y migración indocumentada de El Salvador*. Retrieved from http://www.unfpa.org/sv/index.php?option=com_content&view=article&id=545:la-esperanza-viaja-sin-visa&catid=37:nacionales; Salt, J. (2002). Trafficking and human smuggling: A European perspective. *Internacional Migration*, 38, 31-56.

⁸⁰ Bodenhausen & Todd. (2010).

C. Community difficulties in the reintegration process

Community difficulties affecting the reintegration process of children and adolescents occur on two levels: (1) the disconnect between the return of children and adolescents and the migrant image held by many members of their communities; and (2) difficulties in resuming schooling and accessing the right to education for all children. These two factors make repatriation an inconvenience or minor delay, given the insistence of children and adolescents to once again set out for the United States.

Upon returning to their communities, children and adolescents tell of their journey, which serves two important social functions. First, the child or adolescent recounts what happened along the way and what they will do in order to develop life plans tied to their communities. This narrative can create difficulties for returning children and adolescents. To a certain extent, their plan to re-migrate eliminates the option of remaining in their communities, as their stay would be imbued with the social perception of failure, or create pressure to leave again. The return process, in particular the recounting of their experience, strengthens their migrant identity. Furthermore, once a person's public identity has been consolidated—in this case the migrant identity—a process of personal choreography begins whereby the migrant searches for consistency between the future and the way he or she is viewed by others. Each time the migrant identity is even slightly confirmed, the option of breaking with it becomes more complicated and difficult.

Second, the accounts of returning children and adolescents idealize the “American dream” for members of their communities. Other children and adolescents obtain information from these accounts on how to confront similar situations. Potential migrants in different focus groups reported that they received some of their information about the difficulties of the journey from returning migrants. In addition to piquing the curiosity of others, discussing what happened in transit in different groups and in different contexts serves two interrelated functions: (1) other children and adolescents idealize the migrant identity; and (2) the teller unconsciously strengthens his or her migrant identity as a returning child or adolescent.

Some children and adolescents have said that they spoke to their teachers before leaving about “holding their place” in case of their return. When their absence is relatively short, returning children and adolescents may attribute it to a family emergency in another part of the country. In the case of short absences, the increasing awareness of teachers and faculty provides children and adolescents the opportunity to effectively reintegrate and access necessary psychological and emotional support. Problems arise when there is a prolonged absence; in this case, it may not be feasible for children and adolescents to resume school where they left off, either because too much time has elapsed or they have returned at the end of the school year.

Finally, community and/or school reintegration for returning children and adolescents is extremely difficult when their primary push factor was violence or extortion by gangs operating in their communities and within their schools.

VI. The situation of migrant children and adolescents and children of migrants living in El Salvador

While El Salvador is primarily a sending country, it has also increasingly become a receiving country for migrants—mostly irregular migrants—traveling to communities located along the border with Honduras. Most of these children and adolescents enter El Salvador in search of short-term agricultural work due to poverty in their communities of origin, or in order to receive emergency medical care at Salvadoran public health centers located along the border. Many of these children are accompanying their parents to assist them with agricultural work or retail, especially in La Unión. Until now, El Salvador has not been considered a destination country for many migrant children. However, there are Honduran and Nicaraguan children and adolescents living and working in towns along the border for short periods of time, after which they voluntarily return to their countries of origin by their own means.

Non-Salvadoran children and adolescents (mostly Central and South Americans) also pass through El Salvador accompanied by coyotes on their way to the United States. However, the General Directorate of Migration does not have precise data on these non-Salvadoran migrants. The UN Committee on Migrant Workers has lamented the lack of information necessary for evaluating the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families—especially data regarding unaccompanied migrant children and adolescents, and temporary workers along the border.⁸¹

There is also a dearth of information on the integration of these migrant children and adolescents into Salvadoran society, and on respect for their rights. Although LEPINA guarantees the rights to identity and to education for the children of immigrants, its fulfillment has been difficult given the unknown number of these children, their geographic location, and the length of their stay in El Salvador. The UN Committee on Migrant Workers advised the State to intensify efforts to ensure that the rights enshrined in the Convention of migrant workers and members of their families living in El Salvador are respected. Among these efforts are raising awareness among local authorities, migration officials, and the general public about the rights of migrants and members of their families, and the importance of eliminating discrimination against them; as well as developing programs to guarantee access to healthcare and education for the children of irregular migrant workers.⁸²

In short, non-Salvadoran children and adolescents living in the country find themselves almost invisible, with virtually no information or studies concerning the situation of migrants whose destination country is El Salvador. Current migration legislation is out of date and does not include specific provisions for the protection of the rights of migrant adults, children, and adolescents. There are no mechanisms or programs geared toward ensuring the rights of these children.

⁸¹ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

⁸² Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the second periodic report of El Salvador*, 2014, April 2, U.N. Doc. CMW/C/SLV/CO/2 (2014, May 2).

VII. Conclusions

The prevalence of adverse living conditions in countries of origin provides a general explanation of migratory processes. The predominant argument made in migration studies is that economic and other objective conditions lead to migration. However, the relationship between risk factors and migration is never mechanical or linear, especially with regard to the irregular migration of children and adolescents. Other motivating factors aside from employment and educational opportunities are the diverse and growing forms of violence in Central America, and the desire to reunite with parents who have already migrated to the United States. A labyrinth of complex motivators intertwine vital psychological aspirations of children and adolescents with their legitimate desire to improve their planned life trajectory relative to those around them, free from violence and with the possibility of exercising their fundamental rights.

Factors that motivate children and adolescents to leave their country, such as family reunification, complicate the phenomenon of migration. Risk factors add to this complexity. Findings in recent studies⁸³ and research conducted by our work group demonstrate the need to take into account both objective factors (root causes including the economy, violence, poverty, etc.) and subjective factors (personal aspects including agency, family connections, psychological aspects, etc.). The dynamic, ever-changing nature of Salvadoran society indeed pushes migration. This is particularly true with regard to the development of migratory routes and the threats made by the gangs.

The nature and combination of risk factors superimpose themselves to instill a more intense desire to migrate, with complex influences of age and gender. The fact that the majority of migrants are children and adolescents transcends demographics in two key ways. First, it supposes that migration occurs during a formative time in the development of personal identity, which consolidates a migrant identity influenced by the risks encountered while in transit. Second, it means that those who stay behind to take care of the home or who are protected and sheltered from “leaving with just anyone,” are often girls and young women. Consequently, irregular migration redefines and reproduces dynamics of male hegemony.

Evidence shows that the following are fundamental factors for children migrating irregularly: elaborate planning for the journey; underplaying potential risks along the way and believing that one will not succumb to these risks while in transit; the perception of a violent and unsafe environment at home; having a migrant community or family network; possessing a migrant identity; and aspiring to achieve the “American dream.” The personal equation motivating children and adolescents to migrate irregularly persists because of the difficult realities surrounding them. At the very least, child migrants are usually drawn to reunite with their family members abroad, and are already socialized as migrants. But the fact that they are experiencing a difficult and changing reality also weighs heavily, as does the interplay of a number of subjective processes with structural conditions that push them to leave the country.

⁸³ Gaborit, M., Orellana, C. I., Orellana Sibrián, R. (2014). Migración infantil irregular salvadoreña: reflexiones desde la psicología social. *Estudios Centroamericanos (ECA)*, 69 (736), pp. 55-59. Retrieved from http://www.uca.edu.sv/upload_w/20/file/736/3-Mauricio-Gaborit.pdf.

The role played by irregular migration in the lives of many children and adolescents becomes larger as the impacts of social exclusion and the aforementioned complex psychosocial dynamic are increasingly felt. Social exclusion, which is now endemic in El Salvador, especially in rural and marginalized urban areas, will continue pushing many children and adolescents to leave the country.

While many children and adolescents contemplate migrating, forced gang recruitment leads some to depart suddenly for the United States. In the end, threats expel children and adolescents from their communities. These threats, however, do not disappear when the child departs; when children and adolescents are repatriated, the threats reactivate. Under these conditions, some children and adolescents and members of their families report that returning to one's community of origin is very dangerous. As a consequence, migrating again becomes imperative and urgent, even if it is undesired.

It is difficult to imagine a substantial reduction of gang violence in El Salvador given the growing political importance of gangs in recent years due to failed state policies. Gangs have become primary social actors. They almost unilaterally determine the homicide rate—the most extreme expression of social violence—and the crime rate in general. As long as they continue operating within schools freely and with impunity, the number of children and adolescents migrating irregularly will increase. A concerted effort by the state to reduce gang violence in schools and communities is needed to reverse this situation. This effort should be grounded in a comprehensive and transversal focus on human rights and human development.

The fundamental problem with the Salvadoran legal framework is its lack of effectiveness. This has worsened along with the general situation of insecurity caused by gangs. The social problem demonstrates that, as is often the case, the ineffectiveness of legal tools is not due to an absence of laws—which do exist, although they can be improved. Their ineffectiveness is due to the ineptitude of operators, the length of processes, the weakening of institutional responsibility, and a lack of foresight. Moreover, migration law has not been adjusted to meet international human rights standards, as previously explained.

In spite of the existence of international conventions and domestic laws for attending to children and adolescents, the institutional and legal framework most useful for and specific to attending to migrant children in El Salvador is extremely recent. Among other examples, LEPINA has existed for only five years, including one year in moratorium; the National System for the Protection of Children and Adolescents in El Salvador began operating in 2011; the National Policy for the Protection of Children and Adolescents was implemented in 2013; and CONMIGRANTES was established at the end of 2012. All of these initiatives remain in the implementation phase. In some cases, conflicting competencies between different government bodies are still being resolved. Unfortunately, the tragic and dramatic phenomenon of child migration once again demonstrates that the country is slow to react to its most pressing problems, which, in effect, become chronic and insurmountable for even the most well-crafted initiatives.

The most recent domestic laws—and, naturally, international legal instruments—for attending to children and adolescents are grounded in the philosophy of the best interests of the child. However, the social, political, and economic situation in the country neutralizes this focus. CONNA has heavily resisted playing an important role in all the issues affecting the irregular

migration of children, demonstrating a lack of understanding of migration as occurring within a framework that affects human rights and the best interests of the child. For example, blaming parents for the irregular migration of their children and threatening parents with heavy fines removes responsibility from the state for the social exclusion and violence at the core of this migratory phenomenon. It also erodes the right to family reunification, and fails to recognize the agency of children beyond the influence of parents on their lives, even though they play an important role.

While the irregular migration of Salvadoran children and adolescents to the United States dates back many years, attention to this phenomenon is recent. Records of apprehensions at the United States border and deportations from Mexico demonstrate the growing number and increasing vulnerability of Salvadoran migrant children. These records, however, do not accurately reflect the magnitude of the migration; they do not take into account those children and adolescents who travel with family members, successfully reach their destination, or remain trapped in Mexico while in transit.

The difficulties of reintegration for repatriated children and adolescents arise from different yet interrelated spheres. First, when children and adolescents are deported, oftentimes their immediate plan is to reattempt the journey. This is due to several factors, among them: a strong desire to reunite with family in the United States, increasingly serious threats from gangs in El Salvador, a situation of social exclusion that prevents building a dignified life in their home community, the fact that contracts with coyotes often include second or third attempts to migrate for the same price, and the debt incurred from these contracts. In contrast, the dangers associated with irregular migration do not weigh heavily on the decision to reattempt the journey.

Second, Salvadoran institutions are so pervasively weak that there are no programs to facilitate the successful reintegration of children and adolescents and guarantee their basic rights to health, education, security, work, and protection. Third, CONNA—the body responsible for guiding the protection of children and adolescents in the country—appears unwilling to improve its system for reintegrating deported children due to budget limitations, delays in its institutional consolidation, and a legalistic view of the irregular migration of Salvadoran children that is just now beginning to evolve. Finally, the impact of violence as a push factor is so great that children cannot return to their communities of origin because their physical security is put at risk by gangs and other organized criminal groups. As a consequence, migration is longer as optional, but necessary for survival.

Consular protection has improved with the passage of new laws to protect Salvadoran migrants and the design of protocols for attending to victims, which have a clear focus on rights. However, no specific programs for preventing abuses contrary to the rights of the child in destination countries, such as arbitrary detention and deportation, have been created.

There is little information on, and specific mechanisms for, providing assistance to children, adolescents, and migrant families living in the country—either temporarily or permanently—as well as migrants traveling through the country en route to the United States. This lack, along with a completely outdated legal framework in El Salvador, leads to a dearth of programs for protecting the rights of migrant children and adolescents and the children of migrants.

As long as migration policies in the United States and Mexico are based on national and regional security doctrines, it will be difficult for irregular migration—especially that of children and adolescents—to be framed within a human rights context. Furthermore, human smuggling carried out by organized criminal elements will continue. The criminalization of irregular migration, and its institutional influence on migration authorities in both transit and destination countries, ignores its structural causes, reinforces the control of organized crime, and reduces opportunities for regular migration. As a result, the dangers facing migrants will increase, especially for the ever-growing number of children and adolescents migrating irregularly every year.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>.