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Translation and Analysis of the Procedures and Methods Used to Translate the Documents El Salvador from Spanish into English for Fundación Acceso and Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System from English into Spanish for DNI Costa Rica

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Abstract

This research was done to find out the effect of the translation procedures and methods used to translate two documents *El Salvador* from Spanish into English for Fundación Acceso and *Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System* from English into Spanish for DNI Costa Rica? The first document refers to cyber-crimes, e-commerce, and the way in which these crimes are penalized in El Salvador, and the second one is about the rights that children have as part of a society. This document trains people who are in contact with children who have problems with law.

To do this research, and consequently to get the results, the researcher read both texts to understand both of them, and also to find some difficult or unknown words that must be investigated in order to achieve precision and naturalness when translating. Finally, the translator applied the translation techniques and procedures to analyze why a specific technique is the best to achieve the sense of the text.

After the application of these techniques, the researcher found out that because of the documents are so technical, it was difficult to find examples of some procedures, such as modulations and explicitations, while literal translations and transpositions, for instance, were found without any problem.

Resumen

Esta investigación se realizó con el fin de conocer el efecto que tienen los procedimientos y métodos de traducción utilizados para traducir los documentos *El Salvador* del español a inglés para la Fundación Acceso y *Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System* de inglés al español para DNI Costa Rica. El primer texto habla sobre delitos informáticos, el comercio virtual y también sobre la manera en que estos crímenes son penalizados en el Salvador, y el segundo documento versa sobre los derechos que tienen los niños como miembros de la sociedad, y a su vez sirve para capacitar a aquellas personas que tienen contacto con niños que tienen problemas con la ley.

Para poder llevar a cabo esta investigación, y con el objetivo de obtener resultados, el investigador leyó ambos textos con el fin de entender el tema de cada uno, y además para localizar palabras difíciles o desconocidas para él, para así poder investigarlas y a su vez lograr la precisión y naturalidad al traducir. Finalmente, el traductor aplicó las técnicas y procedimientos para analizar por qué una técnica específica es la ideal para lograr darle sentido al texto.

Después de aplicar esas técnicas, el investigador encontró que debido a que los documentos eran muy técnicos, resultaba difícil encontrar ejemplos de algunos procedimientos de traducción, tales como modulación y explicitación, mientras que, por ejemplo, traducciones literales y transposiciones fueron encontradas sin dificultad.

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Chapter I

Introductory Framework

The introduction is the part of the text where the researcher makes a presentation about the investigation. The purpose of this explanation is that the reader could have an idea of what the investigation is about. This first chapter of the present research will help the reader to understand the topic that will be developed, because it is going to explain the kind of documents that will be translated, the background of study, the purpose and significance of study, the objectives of this research and the delimitation of study. Furthermore, this chapter is going to support the research with essential information and also, here is where the researcher makes a brainstorm of ideas to define the general and specific objectives.

The introduction establishes the issue or concern leading to the research by conveying information about a problem. Because it is the initial passage in a study or proposal, special care must be given to writing it (Creswell, 2009). In other words, the introduction gives the basis of the problem, the purpose of doing the research, and the objectives that the researcher wants to achieve with the investigation.

In few words, the first chapter is like trying to predetermine the future and putting in a concrete way all the researcher thoughts. This is the reason why this chapter is one of the most difficult ones, because it is where the information is collected, and the objectives are formed from many isolated ideas.

1.1 Background of the Study

The main purpose of this research is to apply translation techniques and procedures during the execution of the translation of the documents given previously to the investigator (“El Salvador”,

and “Experiences, models and perspectives on the right to participation in the Juvenile Justice System”). Translation is rendering the meaning of a text into another language in the way that the author intended the text (Newmark, 2008). The process of translating a text is of great importance to human beings, because in that way a great number of people can know some information related to different cultures, can understand the intention of several authors, why they wanted to write a certain text in a specific period of time, and thus people can use those texts in order to study and acquire knowledge related to a concrete area of interest.

Translation has been important since early times. The first time where translation was necessary is mentioned in the Bible, specifically in the story of the Babel Tower included in Genesis 11:1-9. Here it is explained that all the people that were building the tower had a problem to communicate to each other because they began to speak in different languages. The importance of the task of translators is analyzed in this case, since if a translator had existed in that time, the communication issue had been easily solved. This person had been in charge of understanding both languages and exchanging messages from one person to another one.

Some years later, with the born of writing, the people felt the necessity of translating documents, because the information that was written only could be understood by persons who know the language that was employed. The first book that was translated was the Bible, and then some important works and investigations were translated, as well. It was very helpful because with the translation of this information more people could understand the message that the information wanted to give and also they could learn about different topics that was researched. The impact of translating information was positive because there was advancements in technology and science, due to people that could understand the information felt the curiosity of learn more and, in that way, they specialized themselves in areas that was interesting for them.

There is also the existence of many software or programs that can be used to make translations, for instance the Omega T, Trados, and Wordfast. The objective of such software is to help the translators in their job. Many people use Google Translator as a tool to translate, but the results that this program gives do not work.

It is important to mention that even though the investigator does not have experience translating documents, he knows that there exist different kinds of papers, for example: medical texts, juridical texts, procedure manuals, books, newspaper articles, magazines, and depending on the kind of the document the researcher must have to do a previous reading of the topic to familiarize him with some technical terms.

Moreover as the investigator explained, translation has been very important since early times due to different situations. Consequently, due to the experience of taking the English-Spanish and Spanish-English translation courses at the UIA where some methods used to translate were explained, the researcher took the decision of conducting this research, since he thinks that is useful to know and understand the methods and procedures to render a good translation.

When people learn how to speak a second language, they will not only learn the literal phrases but also many social elements of the target language, like the traditions and customs. Some examples of the first things that they learn when they find new languages are the different phrases to introduce themselves, leave takings, and to express their likes or dislikes; the idea of learning all of this is to develop the skill of communicate among them.

Translation is a profession that requires a lot of details. The main objective of this career is to communicate people different information without losing its original sense and intention. The difficulty of each text will depend on the type of text and the audience to whom the translator will direct his work. For instance, some texts do not require a detailed explanation of the vocabulary because they use normal and easy words like newspaper articles and magazines.

However, there are other texts that have many technical definitions and need a higher level of concentration and importance, also it is normal for these cases that the translator needs some hours to make a study of the words that he consider that are difficult, to give a more precise sense of the message like medical, legal, and political texts. For this reason, it is so important to know how to translate correctly, because the translator will translate important texts to other cultures that should have the information available for their population.

Nida (2006) states that translating is essentially a skill that depends largely on a series of disciplines, for example, linguistics, cultural anthropology, philology, psychology, and theories of communication (p.11). When people think of translation, they might think about word for word translation or a profession strictly tied to language, however, as Nida mentions, it involves other areas that help the translator to understand the behavior and culture of both the target and source language.

The role of the translator is to communicate strictly in an objective way, so that his personal beliefs and thoughts do not affect the message. Sometimes it happens that a translator affects the message with his own beliefs, which at the end he will not communicate the same message from the original text and the main purpose of the translation is lost. This is the importance of being careful when choosing texts that are against the translator beliefs or moral, especially because generally people do a job they feel proud of and not a translation a text that goes against their ethic.

Translation is a very old profession that has been evolving over the years, and as in most professions technology has helped to complete the task easier; however there are some rumors that technology will take the place of the translators, which this will not be true because besides the aspects mentioned above, culture is one of the most difficult facts to take into account in a translation. As Nida (2006) highlights, one difficulty for the presentation of a theory of translation is the fact that all languages reflect the culture of which they form part (p.13). For

this reason, technology cannot replace translators, because learning behaviors and customs from a specific language and put them into practice in any translation is only a human skill.

1.2 Research Question

What is the effect of the procedures and methods used to translate the documents “El Salvador” from Spanish into English for Fundación Acceso and “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” from English into Spanish for DNI Costa Rica?

1.3 Purpose and Significance of the Study

One of the main reasons this research is so convenient is that it helps two nonprofit organizations that require documentation in both languages (Spanish and English) to be able to transmit and share a determined message to a specific audience. In the case of Fundación Acceso it is an institution which works with defenders of Human Rights in risk.

They need their document in English because they want to give an international view related to the digital privacy in Central America, putting the digital security as a fundamental element of the integral security and presenting the reality of the region. With this information they will be able to prepare presentations to instruct people about this topic, and they could focus on people who do not understand the Spanish language to give them advice about the digital privacy.

It explains a little bit some information related to web crimes, the penalization that exists nowadays in El Salvador, and it mentions a thesis exposed by Benavides et al. (2005), which gives some ways of penalization that could be adopted by the Salvadorian government in case of web crimes. It also highlights a law project named Special Law Related to Web Crimes, which is actually in discussion.

On the other hand, DNI Costa Rica is an institution that works hand to hand with the convention of Human Rights related to children. They worked since 22 years with children, giving them trainings and making programs dedicated to support childhood, teaching them about their rights as children. With the document that they gave to the researcher to be translated, they pretend to train people to have contact with children who have problems with the law, in order to help them to understand the rights and the obligations that they have in the society as citizens. The idea is that those people could help these children to be part of a community exercising their rights. The document is a kind of manual that works as a guide to the trainer, with dynamics and topics that can be developed during the training.

1.4 Objectives of the Investigation

1.4.1 General objective

To evaluate the procedures and methods used to translate “Experiences, models and perspectives on the right to participation in the Juvenile Justice System” into Spanish for DNI Costa Rica and “El Salvador” into English for Fundación Acceso.

1.4.2 Specific objectives

- To translate the documents “Experiences, models and perspectives on the right to participation in the Juvenile Justice System” into Spanish for DNI Costa Rica and “El Salvador” into English for Fundación Acceso.
- To apply various translation procedures to the documents in order to achieve communicative texts.
- To design a glossary with the most relevant terminology found in both texts.

1.5 Limitations of the Study

During the investigation, the researcher will find different situations that can be catalogued as limitations. Limitations are defined as events that turn the investigation hard to do. One of them

is obtaining the texts, because it is difficult to find companies that need to translate documents, as sometimes they prefer to pay for a professional translation than giving the texts to students. Also many of the companies have their own translator, so obviously they are not going to need the services of a third person. As a solution, the researcher talked to a UIA translation teacher in order to ask for possible contacts to ask for texts to translate. In that way, it could be easier for the researcher to get the information because the companies can talk to the teacher to ask for references about the investigator, to feel more confident to give him the papers.

Another limitation is time, the researcher does not have enough time to search the documents because he works full time, so during his free time he went and contacted different institutions, he had to ask for permission in his work to get more time to search places and documentation and it was complicated. The researcher does not know that he was to be in charge of looking for institutions and documents; he was informed of that during the enrollment of the course, so he only had like 3 weeks to obtain all the material that he needed. In addition, time also plays a role of limitation during the execution of the translations, because as the researcher explained before, he works full time and he could advance in the translations only during the night and on weekends. As a result, because he needs to do all the work that he can, he asks for vacations in his work but they were rejected. It is difficult to translate the texts and write the chapters of the investigation at the same time. It is not possible to compare the quality and speed of the work if the researcher just dedicates time to do this research with a person that can only work at nights.

The third limitation is the vocabulary, because the papers have technical terms that the researcher does not know, he needs to take more time to read about those words and understand the meaning and the context. Besides, he needs to create a glossary to keep the vocabulary consistent throughout the documents, and it consumes a lot of time.

The same companies that decided to share the texts with the investigator are another limitation, since they require time to study which documents they want to translate, so it is time that the investigator is losing due to he cannot begin to work in the investigation until he will be sure that he has the papers.

Money is another limitation, since it is necessary to afford some expenses that are presented during the investigation. The high cost of life makes that everything will be so expensive and the low salaries does not allow that the investigator can pay for whatever he needs.

The access to the virtual library of the university is another limitation. In the case of the OPAC library, it is not useful for investigators that live far from San Jose because it is necessary to go to the library to get the book of their preference, as they cannot see the documents in the web.

Chapter II

Theoretical Framework

The theoretical framework is the part of the investigation where relevant terms and information are explained. This chapter is focused on exposing different methods, techniques and kinds of translation. The main objective of this part of the research is to give the reader basic data to understand the work of translators and to facilitate useful definitions in order to acquire knowledge related to the topic.

Many people think that every person who knows a foreign language can translate, but they do not take into account that when a translator is doing its job, he has to follow certain rules, techniques, and methods in order to achieve the main objective: to transmit a message from the source language to the target language without losing the original meaning and sense. Therefore, in this chapter the investigator is going to clarify various terms related to translation in order to understand better, how the techniques and methods play their role during the process of producing the new text in the target language.

2.1 Text Analysis

A text analysis has to be done before translate any document. It is essential to read the text first in order to know the content of the information, to identify possible difficulties and technical vocabulary and to get the main idea of the whole papers. With the analysis the translator will be able to give a point of view of the text, and also to select the better method to make the translation. The process of analyzing a text is helpful for the translator to establish the intention that the author wanted to give.

According to Newmark (1988), "It is necessary to understand the text a general and a close reading. The general reading to get the gist and the closing reading is required, in any challenging text, of the words both out of and in context" (p.11). As Newmark explained, it is necessary to do two readings before translate any document, because the translator needs to

understand what the text is about and to identify some elements that could act as difficulties during the translation process.

Reading the text is important to make a deep analysis of its content, because the translator must know some key words and technical terminology in order to give the message in a precise way and using the most adequate words and sentences. To make a translation without doing the previous reading is like teaching about science for example, without knowing about the topic. It has not sense.

An advantage of making a text analysis before translating is that when the translator understands the content of the documents and learns the meanings of technical words, he has to investigate less because he already knows some key words that facilitate his job. Therefore, making a text analysis also helps to calculate how much time the investigator is going to need to complete the whole translation, because in that way it is easy to know if it is necessary to invest so much time reading about difficult terms and definitions and how easy is to acquire a book or relevant information that could be useful during the process of translation.

On the other hand, Nord (2005) mentions more details about text analysis and internal factors. Regarding the subject matter or main topic, if the main topic dominates a text, then the whole text is coherent. Then, if the subject matter is focused on a cultural context and indicates some of the readers' presuppositions, the translator has to make a balance in the level of explicitness and can take advantage of the translations procedures of expansion or reduction.

Third, the content and terminology are those who tell the translator the level of research that is needed to complete the translation, and if the translator has enough skills to do the job. Fourth, after analyzing the main topic, the translator can take some time to study the structure and the function of titles or heading and subheadings. The translation of these two will depend on the main topic and how it can be adapted to the target culture. If they indicate the subject matter of

the text like in scientific documents, they can be translated literally in accordance to syntactic conversions.

The fifth factor are the non-verbal elements such as photos, illustrations, emblems or special types of print that are used by the author to illustrate or intensify the message of the text. The translator should find the best way to transmit the same message that the author of the original text wanted to give, when he or she puts them into the document. Finally, the translator must pay attention to everything related to the lexis and sentence structure. It deals with rhetorical figures of speech (metaphors, similes), parts of speech (suffixes, prefixes, abbreviations, and acronyms), collocations, idioms, rhetorical questions, word formation, degree of originality, levels of style and text-type convections.

2.1.1 Text styles

It is important for translators to know the style of the text that they are going to translate, because in that way they can know what kind of audience is going to receive the message and what kind of words they must choose in order to make the message more understandable to the audience. Always taking into account the main purpose of translation: to translate a text from the source language to the target language accurately and without losing its sense. According to Newmark (1988, p.13), there exist the Nida's four points of view related to text styles, those are the narrative, the description, the discussion and the dialogue.

In the case of the narrative style, it is a dynamic sequence of events in which the verbs and phrasal verbs are the main characters of the text. Readers can find this style in fables, novels, stories and tales, because they talk about a series of events using verbs to describe the actions that the characters do during the plot. The narrative style can include a plot and a setting to make the story more interactive, and to create an environment in which the characters can develop their actions. As examples of this style can be mentioned: "He bought some fruits," "she walks to her house."

Another kind of text style is the description. It makes emphasis on using adjectives and adjectival nouns in order to qualify a person or an object to make the story more interesting. By using these words, people can imagine how the characters are, how are they dressed, how do they feel, and helps the readers to stimulate their senses. For instance, if the writer says that an apple is big, red and delicious, the readers immediately can see in their minds head a great apple, also can imagine the accurate color of it, and finally by saying that it is delicious, the readers can imagine or remember previous experiences that they had when they ate an apple, and as a consequence they stimulate the taste sense remembering the flavor of an apple. The idea of this text style is to help the writer to give more details about people or things in order to create an image of them.

The third text style is the discussion, which makes emphasis on abstract concepts, arguments, thoughts, ideas and connectives. The discussion style is related to two or more people talking about a specific topic and the points of view that each person gives about it.

Verbs and adjectives play a role in this style, because when people talk they have to defend their point of view using verbs like argue, emphasize, consider, think, among others, and adjectives to describe their point of view or their opinion about the topic. For instance: if a person is defending its opinion about get married, he or she can say that it could be a great responsibility and commitment, a beautiful stage of the life, to mention some examples.

Finally, the last text style is the dialogue. It includes colloquialisms and phaticisms. It is not referred to a specific object. It can describe the kind of conversation that two or more people can have in different situations. It could be a formal conversation that can happen in meetings and job interviews, where the usage of formal treatments and sometimes, technical vocabulary is required. On the other hand, the informal conversation can occur between friends or with family. The vocabulary that people uses during this kind of speech are words that people listen every day. Asking for food, talking with the parents, and asking for an address of a specific place are examples of informal conversations.

2.1.2 Stylistic scales

The stylistic scale provides insight of what type of content the text has. If one person decides to make a study, using as reference a group of at least 15 people, the researcher can conclude that not all the people speak in the same way. Many factors like the place where they live, the people with whom they interact every day, the level of scholarship, etc., can help to establish the style in which each person speaks.

Newmark (1988) establishes that stylistic scales can be evaluated under various aspects, for instance: vocabulary, grammar structure, the use of words, the environment of the speech, etc. Based on these facts, the translator will be able to evaluate the source text and recognize the type of readers, which the text is aimed to. According to Newmark (1988), these are the stylistic scales:

2.1.2.1 Scale of formality.

This kind of scale determines how formal the people speak. According to Newmark (1988, p.14), it can be divided in different categories: the first one is the officialese, which is spoken mainly by people who work in the government or institutions from the State. The ordinary people hardly understand the content and the meaning of the message. According to Garner (2009), officialese is a pompous language that intends to elevate the social status and projects an air of authority that can be used by a professional. An example of this scale of formality can be: “The consumption of any nutrients whatsoever is categorically prohibited in this establishment”. (Newmark 1988, p.14).

The second category is formal and it is used as the correct style of speaking and writing. People speak in this way in official activities, meetings, and discourses and a great number of persons can understand the meaning and sense of the message without problem. An example of this can be “The consumption of nutrients is prohibited” (Newmark, 1988, p.14).

The next category is the neutral, in which the vocabulary that is used to speak or write is neither formal nor informal; it could be seen as a standard way because all the people can understand everything without problem. "Eating is not allowed here" is a perfect example for this case (Newmark, 1988, p.14). Another category is the informal, which is employed when people talk with family or friends while the occasion can be propitious to do it in that way. It is the most common of all the manners because the society communicates among each other using this kind of vocabulary for daily situations like in the supermarket, giving directions, asking for something in a store, telling something to a friend, etc. An example to explain the previous definition could be "Please don't eat here" (Newmark, 1988, p.14).

The colloquial is another style that tends to be used in informal conversations, but it is rarely employed in writing or formal situations. It makes usage of simple and ordinary words. For example "You can't feed your face here".

The following category is the slang. According to Camden (1859), slang is the language spoken in the street by people with high, fast and low lives. Most of the time is used in a vulgar way. An example provided by Newmark (1988, p.14) is "Lay off the nosh"

The last category is the taboo. Those are words that are prohibited to use because some people feel alarmed when they heard them, due to the meaning or the sense that people gave to them. For instance: "Lay off the fucking nosh" (Newmark, 1988, p.14).

2.1.2.2 Scale of generality or difficulty

Newmark (1988) classifies the scales of generality or difficulty in simple, which is understandable and yet polite. It uses non-complicated words, for example "The floor of the sea is covered with rows of big mountains and deep pits". (p.14). The popular employs colloquial and common words, in order to give everyone a good explanation of the meaning and the sense of

the message. A good example of this is “The floor of the oceans is covered with great mountain chains and deep trenches” (Newmark, 1988, p.14).

The neutral uses only basic vocabulary, which means words that everybody hear every day, so people can get the message and its meaning easily. “A graveyard of animal and plants remains lied buried in the earth’s crust” is an example of this scale. (Newmark, 1988, p.14).

The educated is directed to an audience with more education; it expresses a formal sense used commonly in certain documents and books. For instance “The latest step in vertebrate evolution was the tool-making man”.(Newmark, 1988, p.14).Finally, there is the technical scale,which is intended for scholars in a specific subject matter, and opaquely technical, that is comprehensible only by an expert in the topic. Some examples of them are the following: Technical, “Critical path analysis is an operational research technique in management”. (Newmark, 1988, p.14), and opaquely technical “Neuraminic acid in the form of its alkali- stable methoxy derivative, was first isolated by Klenk from gangliosides” (asquoted in Kirk, 1984).

2.1.2.3 Scale of Emotional Tone

Newmark (1988, p.14) points out that there are four kinds of emotional tone: **Intense**, which employs a profuse use of intensifiers, such as hot! Absolutely wonderful! Ideally dark bass! Enormously successful! Superbly controlled! **Warm** can be found in expressions such as gentle, soft, heart-warming melodies! **Factual** (“cool”) such as, significant, exceptionally well judge, personal, presentable, and considerable, and finally **Understatement** (“cold”), like “not... undignified”.

2.1.3 Text function

The function of the text means is related to what the author or the text wants to transmit to the readers; in other words, it is the main objective of the text; for example a newspaper or a research are texts that what are looking for is to inform about a specific topic, which it means the function of those specific texts, is informative. Another example is when an author composes a poem and what he is looking for is expressing his thoughts or feelings to the audience.

It is very important for translators to determine the function of the text they are working on. They have to understand what the text is about, what the author wants to transmit, what the purpose of that translation is, etc. The translator has to remain faithful to the source language text, so that it causes the same impact in the target language. To understand the function of the text helps the translator to choose the correct words when he or she has to prepare the translation of a specific text. The researcher is not going to use the same words in an informative text and in an expressive one, because he needs to make different emphasis in his work while doing the translation.

According to Newmark (1988), Bühler divides the main functions of the language into three: expressive, informative, and vocative.

2.1.3.1 Informative

In the words of Newmark (1988), “The core of the informative function of language is external situation, the facts of a topic, reality outside language, including reported ideas or theories” (p.40.)

According to Nida & Taber (1969, p.24), “The translated version of a text should be thoroughly understandable.” The reader must be capable of understand the message of the text without losing the sense that the author wanted to give. If the translation of an informative text leads into misinterpretation, the translator has to change the expression. According to Reiss (quoted from Munday, 2012), an informative text communicates facts, information, knowledge,

and opinions. The language used is logical or referential and the topic is the focus of the communication. In the translation process, the translator cannot omit words that could change the precise sense, and it is recommendable for him to insert some additional notes when they are necessary in order to clarify different terms that can be presented in the text.

Those notes can include all the information that the translator thinks can be helpful to give the reader a more precise message. For instance, when the translator is using a word that was popular in a certain or period, he can write a note explaining why he is using this concept, the meaning of that word or just making a comment talking about the period in which that word began to be heard.

What moves this type of texts is the external and objective situations like facts, reality, and even proves theories. The intention of the author is just to share information of a specific topic to certain group of people, to give them knowledge that can be useful in the different situations of their life using words that everybody knows.

Newmark (1988, p.39) mentions that there exist four points on a scale of language varieties: The first one is the formal non- emotive, which is a technical style for academic papers, characterized in English by passives, present and perfect tenses, literal language, Latinized vocabulary, jargon, multi-noun compounds with empty verbs, and no metaphors. The second one is a neutral or informal style with defined technical terms for textbooks, characterized by first person plurals, present tenses, dynamic active verbs, and basic conceptual metaphors.

Another point is an informal, warm style for popular science or art books (e.g., coffee-table books) characterized by simple grammatical structures, a wide range of vocabulary to accommodate definitions and numerous illustrations, and stock metaphors and a simple vocabulary. In addition, the last one is a familiar, racy, non-technical style for popular

journalism, characterized by surprising metaphors, short sentences, unconventional punctuation, and adjectives before proper names and colloquialisms.

Newmark (1988) adds that these types of texts are usually found in textbooks, technical reports, articles in a newspaper, a scientific paper, a thesis and in minutes or agenda of a meeting (p.40).

2.1.3.2 Expressive

According to Newmark (1988), an expressive text is related to the feelings of the author. The text is merely focused on the feelings that the author wanted to express in that precise moment, the reasons that make him write about a specific topic. Newmark divided the expressive function into three different aspects. The first one is the serious imaginative literature, which is composed of lyrical poetry, short stories, novels, and plays. With these texts, the author expresses feelings like peace, love, fear, which makes the reader to understand better the role of each character.

Then, authoritative statements have the personal stamp of their authors even though they are denotative and not connotative. These are texts of any nature that derive their authority from the high status or the reliability and linguistic competence of their authors. For instance political speeches, documents by ministers or party leaders, statutes and legal documents, scientific, philosophical and academic works written by acknowledged authorities. These documents express the authority of the author, and inspire seriousness from them. The last one is autobiography, essays and personal correspondence. They are expressive when they are personal effusions, when the readers are remote background. Feelings like melancholy, happiness and sadness are always present in these kinds of texts as the imaginative ones.

For Nida & Taber (1969), the target readers should not only understand it, but also feel the author's message in an expressive text. It is important to take into account that is if the readers get impacted by, the message is not the main objective; the most relevant accomplishment is that

the author communicates a feeling, opinion or personal discomfort. Furthermore, Reiss (as quoted in Munday, 2012) states that both the author and the form of the message are foregrounded in this text type, the translator should aim to recreate the effect that the author of the source text is striving to achieve, Reiss says that the poetic function determines the whole text.

2.1.3.3 Vocative.

Newmark (1988) explains that there are two factors when it comes to the vocative function: the first one deals with the relationship between the writer and the readership using “*you*,” infinitives, imperatives, subjunctives, indicatives, impersonal, passives, titles, hypocoristic names, tags (like please); all of them play an important role in the asymmetrical or symmetrical relationship. The second factor is the language used when translations are made to be comprehensible to the readership.

For the purpose of translation, the cultural level of the source text has to be reviewed in detail before it is given a pragmatic impact. Some examples of vocative texts are notices, instructions, publicity, propaganda, persuasive writing, popular fiction whose main objective is to sell the book or entertain the reader and discourses given by presidential candidates to persuade people to vote.

Not all translation authors know this function as “vocative.” For Reiss (as quoted in Munday, 2012), this kind of function is called operative, it induces behavioral responses from the reader or receiver, the type of language is dialogic and the focus is appellative. It can be found in advertising in which the authors select very carefully the words and sentences to attract the audience, make them think they need a product or service and this is something the translator should analyze and maintain in the target language. For Nida & Taber (1969), this function is called imperative, it urges, persuades and commands the reader.

2.1.4 Type of translation

According to Newmark (1988), the main problem a translator always has to deal with is to translate literally or freely. There are different techniques and methods that they use to translate, but the most important is to keep faithful to the source text. For research purposes, only semantic and communicative translation will be mentioned, since such methods as said by Newmark (1988), accomplish the two goals of translation, which are accuracy and economy.

2.1.4.1 Semantic translation

This type of translation is related to the semantic and syntactic structures of the target language. It pretends to present the exact meaning keeping the culture of the original source text. The translated version of the text using this method is more likely to be more complex, awkward, detailed, and concentrated. It is author-centered, that means that what matter the most are the author's thoughts as an individual, the author's idiolect and peculiar form of expression. As it follows as much as possible the semantic rules and norms, sometimes there could be loss of meaning resulting in an inferior version of the original text (Newmark, 1988, p.46).

One example of a text that can be translated using this method is legal documents, because the translator is more restricted when transferring terminology. In general, this method can be applied in an expressive text where the original contains paragraphs that are more descriptive. Nida & Taber (1969) call it formal equivalence.

2.1.4.2 Communicative translation.

Newmark (1988) states that the communicative translation reproduces the exact contextual meaning of the original text, in a way that content and language would be acceptable and comprehensible to the readership. Communicative translation as explained by Newmark (1988), allows translators to write freely instead of semantic, it also tends to be simple, clear, and brief.

These are some of the reasons why it is more suitable for a translator to use communicative translation.

The communicative translation deals with the reproduction of the original effect on readers from the target language. The translator's vocabulary is used in order to improve the original text in a way that it gets to be more logic, elegant and functional; ambiguity, repetition and obscurities are removed. It is smoother, simpler, clearer, more direct, and conventional and tends to under translate.

2.2 Translation Techniques

According to Molina & Hurtado (2002), a translation technique is applied in a smaller area of the text and it is used with the purpose of obtaining an equivalent from the source language into the target language. For Nida & Taber (1969), a technique aims to produce correct equivalents and their functions are to adjust the message to the structural requirements of the target language, to create equivalent semantic structures, to provide adequate stylistic equivalents, and to allow a communicative equivalent.

2.2.1 Transposition

This technique consists on a translation procedure that involves a modification of the words category, grammatical structure, words that can be changed and will not modify the meaning of the target text (Newmark 1988). Also, Vázquez-Ayora (1977) states that literal translation and the beginning of oblique translation are replaced by transposition as the first step to avoid those techniques. Transposition attempts to make the target text seem less literal since it goes beyond than using homologous lexemes and synonyms.

The purpose of transposition is to achieve naturalness for the target text, at all levels including lexical, structure, and the context and it can be recognized as the procedure in which parts of speech of the source text are substituted in the target language (Vázquez-Ayora 1977).

Newmark (1988) shows different kind of examples of transposition, such as:

Change from singular to plural: *Furniture* to *muebles*

Change of the position of the adjective: *La casa blanca* to *The white house* (This kind of transposition is automatic and provides the translator no choice) When a source language grammatical structure does not exist in the target language (neutral adjective as subject): *Lo interesante es que* to *What is interesting is that* Change of gerund to a verb-noun: *Working with you is a pleasure* to *El trabajo contigo es un placer*.

Vázquez Ayora (1977) also explains that there are different kinds of transpositions according to what Newmark exemplified, for example:

Adverb to verb: *He was never bothered again* to *Nadie volvió a molestarlo*

Adverb to noun: *Early last year* to *A principios del año pasado*

Adverb to adjective: *Which hid the distant valley of Las Vegas* to *Que ocultaba a lo lejos el valle de Las Vegas*

Verb or past participle to noun: *Organization has been made by man* to *La organización es obra del hombre*

Verb to adjective: *We will attempt to be brief, relying on subsequent discussion to clarify points which...* *Trataremos de ser breves, confiados en que las discusiones subsiguientes podremos esclarecer...*

Verb to adverb: *As you may have observed* to *Como ustedes tal vez lo han observado*

Noun to verb or past participle: *Without the slightest hesitation* to *Sin vacilar en lo más mínimo*

Adjective to noun: *A medical student to Un estudiante de medicina*

Adjective to verb: *It seems to be incompatible with to No parece armonizar con*

Past participle to adjective: *Continued aid to Ayuda continua*

2.2.2 Modulation

Another type of technique is modulation, and as the word says, it is related to modulate, to change the form of the message. Molina & Hurtado (2002) explain that modulation is a shift in cognitive categories in order to convey meaning (p.499). This technique is usually used when there are linguistic and cultural interference among two texts, for instance when someone sneeze, people say “God bless him”, but in Spanish I can say “Dios lo bendiga;” however, that is not the same message the author wants to transmit, what he really meant was “Salud” in Spanish.

Vinay & Darbelnet (1977) postulate eleven types of modulation: abstract for concrete, cause for effect, means for result, a part for the whole, geographical change, among others (quoted by Molina & Hurtado, p.500). What modulation is looking for is to find equivalence in both texts that is if the source text has a specific idiom, the translator will have to find an equivalent phrase, which means the same or wants to refer the same point.

2.2.3 Omission and Amplification

These two techniques consist on a deletion or addition of words in the translated version of the text. Newmark (1988) states that these two procedures are practiced intuitively by the translator and they vary according to syntactical and grammatical structures of the target language.

In the case of omission, important scholars have taken the same description but have assigned it a different name, for example subtraction, reduction, or economy. Molina & Hurtado

(2002) state that a reduction suppresses information from the source text in the target text. The original message remains the same but with fewer words to go straight to the point. Even though the translator applies this technique in both languages, it is very common when translating from Spanish into English. Some examples of omission are the following:

Omission of abusive redundancies:

The discussion was of a violent and sensitive character

La discusión fue violenta y sensible.

Omission of repletion:

He wrote a novel, and it was not really such a bad novel as the critics called it, although it was a very poor novel.

Escribió una novela que en realidad no era tan mala como después los críticos la juzgaron, aunque era una obra muy deficiente.

Omission of auxiliary can:

This problem can be solved in two days.

Este problema se resolvió en dos días.

Omission of prepositions in idioms

Hurry up

Apresúrate

Omission of articles and other determiners

He has a secretary

Tiene secretaria

On the other hand, amplification attempts to add more words to make the message clear, while omission deletes specific words in a sentence. Adding words will not modify the meaning of the source text. Vázquez-Ayora (1977) claims that amplification employs more lexemes and morphemes

in the target language than in the source language to express the same idea. Some of the parts of the source texts that can be added in the target text are verbs, prepositions, and adverbs.

There are some examples of amplification:

Adverb addition:

The boys there don't like sports

A los chicos que viven allí no les gusta los deportes

Verb addition:

They do work in the embassy

Trabajan efectivamente en la embajada

Adjective addition:

The combination made him conspicuous

El conjunto le daba aspecto notorio

2.2.4 Explicitation

The fourth kind of translation technique is the explicitation, which clarifies the meaning of a specific phrase or word. Molina & Hurtado (2002) explain that explicitation is to introduce information from the source text that is implicit from the context or the situation (p.500). For instance, the sentence “they have seen great art” and in Spanish it is “Ellos han visto buenas obras de arte” so even though says just art, in Spanish they say “obras” to clarify the meaning.

2.2.5 Literal Translation

It is also known as word for word translation. It can sometimes be effective, but in other cases, it is necessary to use another method. Newmark (1988) considers literal translation as a technique and the best choice when translating the content of great speeches, autobiographies

and literary works. Vázquez-Ayora (1977) also points out that literal translation is a procedure in which the translator needs to include a parallel structure and concept. Some examples are:

She is reading

Ella está leyendo

John hit Paul

Juan pegó a Pablo

He always says he's a good teacher

Siempre dice que es un buen profesor

2.2.6 False cognates

Based on what Jones (2014) describes, false cognates or false friends are words that look and sound similar, they share the same etymology and have had the same meaning at some point. This normally happens with words that derived from a common Latin, ancient Greek or old French source. With time, most of these words experimented historic, political, social or even cultural interactions that made their meaning change; what used to be the same is now completely different.

The use of glossaries, dictionaries, the analysis of context, and the translator's background knowledge are vital in order to avoid mistakes in the translation when false cognates are found in the source text. Some examples between Spanish and English are “*atender*” (prestar atención) which can be mistakenly translated into “*attend*” (asistir), but the correct translation is “*pay attention.*” Another example is “*campo*” into “*camp,*” but it is “*countryside*” in English.

2.3 Glossaries

Sometimes translators will not know all vocabulary or specific terms about an specific area, this because this profession is focus in all areas or professions that exists and that want to

convert a text from one language to another to communicate, express or look for a reaction. To manage this limitation the translator will have to be in constant learning and the creation of glossaries can be helpful to list the words that were more different, difficult or that just catch the translator attention.

According to Longman Dictionary (2014), a glossary is a list of special words and explanation of their meanings, often located at the end of a book. In the case of this research, it is a list of words, in the source language, the target language, and the definition of the word just make it clear. For example, there is the word “preview,” as the dictionary mentioned, it means giving a general description of something that will happen in the future, and it is translate into Spanish as an “avance” but it vary from context to context depending on the authors wants to transmit.

2.3.1 Relevance for the translator

Glossaries are very important for translators because, they learn while doing it, and after as long as they have it; at the end they will have a summary of concepts or terms to look for them when they want. Scott (2010) says that when translators are working on a text, it is important to a have a tool to facilitate and ensure the final text, in this case the glossaries, which enhance the consistency of the text (para.1-2). For instance, if the translator has a huge text with many technical terminology or just difficult terminology, the glossaries will include those terms in both languages and the definition of the word to keep the concept clear, and the translator can also include synonyms part, where she can look for different ways to say the same term to avoid redundancy.

2.3.2 Relevance for the Translation Process

If there is no glossary, it will be difficult to carry out the translation process because the different meanings might lead the translator to understand different terminologies and specific words. For this reason, the process would not be possible if there is a lack of the precise steps and knowledge to elaborate a glossary.

Glossaries are also very helpful when the company the translators are working for, provides a glossary to their translators so they can familiarize with the terminology. Rigby (2014) mentions that a glossary will help translators easily immerse themselves into the company and provide translations that accurately reflect the company's voice (para.2). This means that even though when translators does not know an specific term or concept, they will have the chance to clarify the concepts before converting the text from one language to another with all the confidence that they are using the correct terminology, according to the field they are working, or at least to know the types of vocabulary the company want translators to use.

2.3.3 How to create a glossary?

According to Gapper (2008), in order to create a glossary, it is important to define the content and format of the glossary. When considering these aspects, the translator has to analyze the macrostructure (aspects referred to general structure of the glossary) and the microstructure (aspects referred to the organization of each input).

The macrostructure is the general structure of the desired product. It is important to make decisions about the general organization of the glossary and specify if it is necessary to include a preface, user instructions, used abbreviations chart or an appendix. It is also important to consider if it is necessary to split the glossary into different sections such as Spanish to English / English to Spanish, or in sections of different topics. In addition, the microstructure is the design of the structure of each input or article (understood here as the term itself and the information attached).

Gapper (2008) points out that there are some steps to create a glossary: First, the translators have to determine the particular needs that will be covered in the project. Second, it is important to choose an instrument to collect and analyze information that defines these needs. It will provide the profile of the users with different information such as age, sex, and level of education.

Third, it will be necessary to make a preliminary design based on the needs, which provides a general view of the final product that will be modified according to the requirements of the users. Fourth, organize the work according to the situation in order to distribute the tasks by taking into account the complexity and size of the project. This organization attempts to assign roles for avoiding repetitions. Fifth, the creation of a chronogram will help to establish a period from the beginning to the end to see how the project is developed and see every stage of the project and unexpected situations that may emerge. Sixth, choose the collaborators and assign their responsibilities. Seventh, create a plan of activities that will be developed, and finally to make a preliminary selection of the terms is the most important step during the first stage, since the criteria for selecting is essential to the final product.

Chapter III

Methodological Framework

This chapter consists on the development of the methods and procedures that the translator is going to follow in order to achieve the objectives of this research. It also explains comprehensively the subject of the investigation, and a sample of the procedures that will be applied to the translations, thus, the translator will be able to acquire the necessary data to answer the research question of this project. Furthermore, a description of the research subjects, institution, and participants will be provided.

Finally, the translator will explain the procedures that are going to be used, how he is going to collect the necessary information with instruments that will help him to analyze the texts, and how the implementation of these instruments helps on this research. For Creswell J. (2009), the methodological framework is the most concrete and specific part of a research, for this reason it is important to create accurate methods and procedures to obtain the expected results.

3.1 Research Method

There exist different ways to reach the main objective of an investigation; therefore each researcher has to choose a method according to the type of research he wants to carry out. According to Merriam-Webster Dictionary (2015), the word “method” is related to a careful or organized plan that controls the way something is done. In other words, a method is to follow different steps in a certain way to reach a specific objective, that is why it is so important to be sure about the main goal of the investigation, and keep in mind the general question that needs to be answered at the end of the research. First of all, the investigator is going to explain the different types of methods that an investigation may have, if it is qualitative, quantitative, or mixed, and how each one is focused on different aspects.

Hernández et al. (2010) explains that the quantitative method uses data collection to test hypotheses, based on numerical measurement and statistical analysis to establish patterns of behavior and test theories (p.4). For example, this type of investigation can be used in a laboratory or social experiment where the investigator needs to check the number of times a phenomenon happens, and to do this the researcher needs to create an effective and reliable instrument that fits to the objectives of the investigation.

The other method is the qualitative one, which is more focused on studying the nature of the phenomenon itself. Hernández et al. (2010) mentions that the qualitative method uses data collection without numerical measurement to discover research questions in the interpretation process (p.7). Most of the time, this method is used when the researcher starts the investigation and tries to find a main research question or the type of phenomenon he wants to investigate. Then it comes the measurable part (quantitative) when the researcher uses statistics or charts to measure how constant the phenomenon occurs.

The third type of method is the mixed one. It combines the qualitative and quantitative methods and involves philosophical assumptions as well. Measuring data and subjective interpretations are part of this method, they reinforce each other and the data is normally collected through observation, interviews, and surveys, among others. Throughout time, researches have given different names to this method, such as: multimethod, convergence, integrated, and combined.

For the purpose of this research paper, the method applied is the qualitative method, which means that translation procedures and techniques are analyzed based on observation. The scope of the investigation is descriptive, as the researcher will explain why a method or procedure is being used. The proposed solution for the study will be the translated texts for Fundación Acceso and DNI Costa Rica.

3.2 Selection and Description of the Population and Sample

For this investigation, two different companies were requested for documents to be translated for this purpose. The first institution is Fundación Acceso, which is a non-profit organization with head quarter in Costa Rica with 20 years of existence. This company has worked with defenders of Human Rights in risk in the Central American area since 2007, giving them support in processes related to its data and communication security. The mission of this foundation is to help to reduce the permanent and increased violation of the rights linked to the physical, technological, and psycho-social security of populations in vulnerability and risk situations in Central America.

Its external vision is that the companies and people who are in vulnerability and risky situations because of the places in which they work on must be empowered, and also those who have more capacity and resources to defend their rights linked to the physical, technological, and psycho-social security. Its internal vision is that it is a strong organization in which all the areas developed a compromised and an innovative and sustainable work, which help to put it as a referential organization at regional level in the defense of the rights linked to the physical, technological, and psycho-social security.

The document that belongs to such foundation is called *El Salvador* and it is part of a research called *Digital Privacy for Rights Defenders: a Study about How the Salvadorian, Guatemalan, Honduran and Nicaraguan Legal Frameworks can be Used for the Protection, Criminalization and/or Digital Surveillance of the Human Rights Defenders*. The organization need the document in English because they want to give an international view related to the digital privacy in Central America, putting the digital security as a fundamental element of the integral security and presenting the reality of the region. With this information, it will be able to prepare

presentations to instruct people about this topic, and may focus on people who do not understand the Spanish language and give them advice about the digital privacy.

It explains a little bit some information related to web crimes, the penalization that exists nowadays in El Salvador, and it mentions a thesis exposed by Benavides et al. (2005), which establishes some ways of penalization that can be adopted by the Salvadorian government in case of web crimes. It also highlights a law project named Special Law Related to Web Crimes, which is actually in discussion.

On the other hand, DNI Costa Rica is an institution that works hand to hand with the convention of Human Rights related to children. They have been working for 22 years with children, giving them trainings and making programs dedicated to support childhood and teaching them about their rights as children. The mission of this organization is to demand the recognition, respect, and guarantee of the joyful and exercising of the children and youth human rights to Central American states with efficiency. Also, to contribute to make them visible in all areas while accompanying under age people in the generation of effective propositions for the construction of a democratic, equitable, and supportive cohabitation. Its vision is to be a consolidated and recognized organization in the Central American region that gives innovative, effective, and relevant propositions and accompanies the under- age people in the joyful and exercising of their human rights, and works in synergy with other public and private actors from the region.

The document that belongs to this foundation is called *Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System*. With the document that they gave the researcher to be translated, they pretend to train people who are in contact with children who have problems with law, in order to help them to understand the rights and the obligations that they have as citizens in the society. The idea is that those people can help these children to be

part of a community exercising their rights. The document is a kind of manual that works as a guide to the trainer with dynamics and topics that can be developed during the training.

3.3 Implemented Strategies

As explained in Chapter II, a good translator should have a strategy to achieve transferring ideas from one language to another in a precise and concise way. First of all, it is essential to read the source text to fully understand what it is about. Close attention must be paid on the text's intention and the way it is written to help the translator to choose the appropriate methods, and finally, to detect the issues that require attention.

There are two types of reading: the general and the close reading. The first one is the general reading, that is the one in which the translator may need to consult other resources such as specialized textbooks or encyclopedias in order to comprehend the subject and key concepts. The second one is the close reading; this one pays particular attention to words in and out of context. In technical documents, there may be specific words to be used according to the context, that is words that a person does not use in a common context.

During the translation of the texts the translator will investigate further about the culture or idiomatic expressions used in the target language to transmit the message the most natural and exact as possible. Fortunately, nowadays the Internet is an effective tool to learn more about the second language cultural background. This means that the translator will have to read many different articles including the texts he will have to translate at different speeds.

There are two types of reading speed, the first one is skimming that is the one in which the person reads the text rapidly selecting main ideas to discover the general overview or main idea of the whole text in a short time. The second one is the scanning reading technique which is more focus on details. For instance, skimming is a top-down comprehension strategy that helps

to stimulate prior knowledge, while in scanning the reader goes straight to the point, looks for what he wants to know, and just selects one part of the reading.

The most difficult aspect a translator deal with is the cultural interference, which happens when a person translates the idea in the wrong way because he does not understand well the expression or does not find an idiomatic expression that transmits the same idea of the author in the target language. For this reason, people say that it is better for translators to translate from the target language to the native one because they will know all the expressions that fit better to the author's idea.

Once the two texts are translated, a thorough revision is needed in order to verify style, formality, tone, coherence, and make sure the intention of the author and text content have been transmitted. After this, the 15 paragraphs from the sample will be used to analyze and identify the translation procedures with the color-coding designed for this study. The color coding allows identifying incidences, trends, and lack of procedures.

3.4 Data Collection Instruments

The data collection instrument is a measurement device that allows the investigator to put the findings together for a proper observation and evaluation. The instruments that will be used in this paper will help the researcher to achieve the objectives and provide substantial conclusions about the usage of methods and procedures in the selected texts. The two instruments to be used are the text analysis chart and the glossary.

The text analysis chart is an important tool because it comprises Newmark's elements of analysis for a text prior and after the translation (reviewed in Chapter II) and helps, the translators review the target text to make sure all of these aspects are considered in it. Both source texts are included in the following table:

Table 1

Text analysis element	El Salvador	Experiences, Models, and Perspectives on the Right to Participation in the Juvenile Justice System
Text Style		
Stylistic Scale of Formality		
Stylistic Scale of Generality		
Stylistic Scale of Emotional Tone		
Text Function		
Type of Translation		

Table 1 shows the instrument that the researcher will use to analyze the texts under study.
Source: Researcher's own creation.

The second instrument is the glossary, as explained in Chapter II, it is an alphabetic list of words or phrases with their meaning in the target language. Its use is essential in this type of translation analysis because it helps keeping track of unknown terms for the translator, it is a database for current and future translations, it helps maintain consistency throughout the text and can add much more value for a customer that likes to keep a glossary of terminology for a specific department. The words to be used are difficult or technical terms that may appear frequently in the text and that are important for the translator in order to convey meaning.

For the purpose of this research paper, there will be two glossaries; one from English into Spanish, and one from Spanish into English with a column for the English term, the Spanish term, the grammatical category (to specify if it is used as a verb, noun, and so forth in the text) and a definition to have a better understanding of the word. The table to be used is the following:

Table 2

English term	Spanish term	Grammatical Category	Definition

Table 2 shows the instrument that the researcher will use to create the glossary from English into Spanish. Source: Researcher's own creation.

An additional instrument that the researcher will use is the color coding chart that is focused on the translation techniques. This table will register the number of times a specific technique appears in the text from Spanish to English and from English to Spanish; and it will also specify the translation techniques this research will focus on.

In translation, there are many different techniques; however, for this research only six will be highlighted. The first technique is called modulation and it is used when the translator uses a different phrase from the source language to convey the same meaning, the second technique is transposition which is used when the phrases change their order, such as pretty woman, mujer bonita.

The third and fourth techniques are omission and amplification. The first one omits parts of the text and the second one adds more information, then the fifth technique is explicitation; it consists in explaining terms when there is no way to translate them into the target language. The sixth and last technique is literal translation; in this case the text does not change its sequence, what it does is to translate in the same sequence as the source language.

Now, that translation techniques that are going to be used in this research are summarized, it is important to mention that this color coding chart will have the six techniques with six different colors per each, for instance in this case modulation is purple, transposition is green, then omission is red, amplification is dark blue, explicitation is light blue and literal translation is orange. These colors were chose to take into account that the translator will use each color on the texts to highlight the translation technique used, this facilitate the translation process and the process of recollecting the data for the research.

The color coding chart will also have two columns with the number of occurrences of each technique, in this way at the end of the research the results will show which translation technique prevail in the texts.

Table 3

Technique	Color
Modulation	Purple
Transposition	Green
Omission	Red
Amplification	Dark blue
Explicitation	Light blue
Literal translation	Orange

Table 3 shows and describes how each translation procedure will be identified in the color-coding. Source: Researcher's own creation.

Chapter IV

Translated texts

El Salvador

Marlon Hernández Anzora

1. Antecedentes

1.1. Estado de la discusión nacional

Las principales reflexiones sobre el impacto del internet y las tecnologías de la información en El Salvador comienzan a darse a principios de la primera década del siglo XXI, principalmente en las Facultades de Jurisprudencia del país. Las discusiones iniciales fueron generadas, en buena parte, por los primeros casos sobre protección de datos que fueron judicializados.

Las tesis de grado para la Licenciatura en Ciencias Jurídicas de varias universidades, sobretodo enfocadas en las materias penal y mercantil, son los principales aportes académicos. En menor cantidad se identifican algunos blogs personales o institucionales que se dedican a discutir sobre las tecnologías de la información y comunicación y sus implicaciones en la realidad nacional, y -en menor proporción- se identifican informes, documentos institucionales, artículos académicos o libros.

Las primeras tesis y monografías de Licenciatura en Ciencias Jurídicas sobre comercio electrónico, *habeas data* y delitos informáticos se registran entre 2002 y 2003. A continuación se listan algunas de ellas:

Tabla I

Producción de tesis nacionales

Nombre	Año	Universidad	Autores
El Habeas Data en la Constitución	2002	Francisco Gavidia	Castro, Jorge et al.
Análisis jurídico del comercio electrónico	2003	Francisco Gavidia	Alcántara, Milton.
Las intervenciones telefónicas	2003	de El Salvador	Morán, Carolina et al.
Aspectos generales del delito informático	2004	Francisco Gavidia	Gómez, Luis.
El Habeas Data como garantía de protección de la persona frente al tratamiento de sus datos personales	2004	de El Salvador	Alvarado, Karla et al.
Penalización de los delitos informáticos en El Salvador	2005	de El Salvador	Benavides, Leo et al.
Habeas Data como mecanismo de protección de derechos relacionados con la autodeterminación informativa ante el tratamiento automatizado de datos personales	2006	de El Salvador	Hernández, María et al.

La Firma Electrónica, tecnología del siglo XXI en la legislación salvadoreña	2007	de El Salvador	López Flores, Sarbelio Enrique
La seguridad jurídica de los contratos en el comercio electrónico de El Salvador	2009	de El Salvador	Amaya, José et. al.
El derecho a la intimidad, su limitabilidad y protección en el marco normativo de la ley especial para la intervención de las telecomunicaciones	2010	de El Salvador	Olivares, Erick
Aplicación legal práctica para la realización de actividades económicas en el comercio electrónico	2011	Dr. José Matías Delgado	Álvarez, Katia et al
El ejercicio notarial frente a los avances tecnológicos, tales como la firma digital y la seguridad jurídica en el tráfico de bienes y servicios	2011	de El Salvador	Chámul, Flor et al.
La necesidad de crear una ley que regule el Habeas Data como mecanismo de protección de datos personales en El Salvador	2011	de El Salvador	Gavidia, María Magdalena et al.
El derecho a la intimidad, su limitabilidad y protección en el marco normativo de la ley especial para la intervención de las telecomunicaciones	2011	de El Salvador	Miranda, Verónica et al.
Respeto al derecho de intimidad en la estructura de la Ley Especial de Intervención de Telecomunicaciones	2012	de El Salvador	Amaya, Tomás et al.

Fuente: Elaboración propia, con datos de las universidades mencionadas.

Los temas que aparecen con más frecuencia en la discusión académica en El Salvador son la protección de datos, los delitos informáticos, el comercio electrónico y la gobernanza de internet.

Temas como vigilancia electrónica, censura en internet, software libre, cifrado o anonimato, entre otros, aparecen en menor proporción o simplemente no se identifica producción y discusión académica al respecto.

1.1.1. Delitos informáticos

En cuanto a la penalización de los delitos informáticos, las tesis mencionadas en el cuadro anterior¹ se concentran principalmente en las definiciones de delito informático, así como los tipos penales surgidos del derecho comparado, las penas aplicadas a los delitos informáticos en el derecho comparado y los países que actualmente cuentan con legislación sobre delitos informáticos.

Las tesis producidas ponen énfasis en hechos históricos (jurídicos y tecnológicos) y perspectivas de futuro que justifican la necesidad de su tipificación en la legislación salvadoreña, sugiriendo incluso en la tesis de Benavides et al.(2005) algunas propuestas de tipos penales a adoptarse en el derecho penal salvadoreño.

En el ámbito político, en los primeros meses de 2015 se inició una discusión legislativa y mediática sobre un anteproyecto de ley denominado como Ley Especial sobre Delitos Informáticos y Conexos, sin embargo, ha existido poca divulgación del contenido de la iniciativa y la discusión se centró en la posibilidad de que, a través de dicha iniciativa de ley, se criminalice a los opositores políticos y activistas que hacen sus denuncias y críticas a través de las redes sociales. El anteproyecto resultó tan problemático que los legisladores decidieron no seguir el trámite de formación de ley, por lo que actualmente se encuentra detenido.

1.1.2. Protección de datos

¹ Nos referimos a las tesis de Luis Alfredo Gómez Molina, “Aspectos generales del delito informático” (monografía de Licenciatura, Universidad Francisco Gavidia, 2004), y Leo Benavides et al., “Penalización de los delitos informáticos en El Salvador” (tesis de Licenciatura, Facultad de Jurisprudencia y Ciencias Sociales, Universidad de El Salvador, 2005).

Una de las primeras obras, muy completa, sobre protección de datos en El Salvador es la de Ayala, José María et al (2005), en donde puede verse claramente la predominancia de juristas españoles. Cuatro de los cinco autores son de ese país, mientras que solo Henry Campos, un reconocido jurista salvadoreño escribe en ella. Sin embargo, dicha obra contiene una importante reflexión sobre la situación del país, dejando clara la poca deliberación académica y producción jurídica en el tema.

Vale mencionar que de casi 40 fuentes bibliográficas utilizadas en esta investigación, ninguna es de origen salvadoreña. Para 2005, en El Salvador, sobre protección de datos las únicas fuentes que encontraron estos investigadores fueron una sentencia de amparo y algunos artículos dispersos en distintos cuerpos legales nacionales o convenios internacionales.

Debe destacarse que la protección de datos es muy probablemente el tema que más se ha profundizado desde la academia. Para el caso de las tesis mencionadas en el cuadro anterior, profundizan en los elementos doctrinarios sobre el derecho a la intimidad, así como en el derecho a la autodeterminación informativa y la protección de datos personales. La figura del *habeas data* es ampliamente desarrollada y vista desde el derecho comparado, haciendo énfasis en la necesidad de una legislación de *habeas data* para proteger de manera más integral los datos de las personas en El Salvador.

1.1.3. Comercio electrónico

Uno de los aspectos que se ha desarrollado bastante en la producción académica salvadoreña, a menos a nivel de tesis, es la de comercio electrónico. Actualmente, se reconocen dos formas de promoción de los negocios por medio de las nuevas tecnologías: el negocio electrónico y el comercio electrónico, los cuales se encuentran relacionados pero no significan lo mismo.

Negocio electrónico es un intercambio de información ya sea con el público externo, interno o con ambos públicos de una compañía; mientras que el comercio electrónico abarca los procesos de compra y venta apoyados por medios electrónicos, principalmente internet².

El comercio electrónico es un concepto que engloba cualquier forma de transacción comercial o de negocios que se transmite electrónicamente, utilizando las redes de la telecomunicación y empleando como moneda de cambio el dinero electrónico. La Organización Mundial del Comercio (OMC) define comercio electrónico como “la producción, publicidad, venta y distribución de productos a través de las redes de telecomunicaciones”³.

En cuanto a comercio electrónico, la primera tesis producida en El Salvador data de 2003. Sin embargo, guarda mucha similitud con las últimas producidas, ya que fundamentalmente trata sobre la definición del término, las diferentes formas, y el derecho comparado⁴. A pesar de haber un período mayor a 10 años, la iniciativa de ley que se analiza en las últimas tesis es la misma elaborada por el abogado Ricardo Cevallos a solicitud del Gobierno, un anteproyecto de Ley de Comercio Electrónico⁵.

Lo que sí cambió entre las primeras y las últimas tesis es la cantidad de comercio electrónico que surgió en ese lapso de tiempo. Para 2011, se identificaban en el país, por lo menos, diez empresas con un fuerte comercio electrónico o cuyo comercio era solamente electrónico⁶; nuevamente la realidad superó por mucho tiempo a los instrumentos jurídicos necesarios para proteger, en este caso, el derecho de los consumidores.

² Gary Armstrong y Philip Kotler, *Marketing: versión para Latinoamérica*, (México D.F.: Pearson Educación, 2007), 18.

³ Milton Leónidas Alcántara Quintanilla, et al., “Análisis jurídico del comercio electrónico”, (monografía de Licenciatura, Universidad Francisco Gavidía, 2003), 11-2.

⁴ Las tesis a que nos referimos son las de Milton Leónidas Alcántara, et al., “Análisis jurídico del comercio electrónico” (monografía de Licenciatura, Universidad Francisco Gavidía, 2003) y la de Katia Susana Álvarez Hernández, et al., “Aplicación legal práctica para la realización de actividades económicas en el comercio electrónico” (monografía de Licenciatura, Universidad Dr. José Matías Delgado, 2011).

⁵ Katia Susana Álvarez Hernández, et al., “Aplicación legal práctica para la realización de actividades económicas en el comercio electrónico”

⁶ Katia Susana Álvarez Hernández, “Aplicación legal práctica para la realización de actividades”.

1.1.4. Gobierno de internet

Otra reflexión reciente, principalmente a nivel de blogs y medios de comunicación oficial, ha sido sobre el gobierno o gobernanza de internet, en buena manera estimulada por la realización del Foro *NetMundial* en julio de 2014, en el que reunió a buena parte de la comunidad de internet de la región para establecer una hoja de ruta de la nueva gobernanza de internet.

En el marco de dicho evento, representantes de la sociedad civil, gobiernos, academia y organizaciones empresariales debatieron los pasos a seguir en temas controversiales y urgentes referentes a la gobernanza en internet, tales como la privacidad, el acceso a datos privados, la seguridad nacional e informática, la vigilancia digital, entre otros⁷.

En el marco de *NetMundial*, la Viceministra de Ciencia y Tecnología Erlinda Hándal aseguró que estaba trabajando en una plataforma de gobierno electrónico y que esta discusión ayudaría a dimensionar mejor los temas de seguridad y privacidad de cara a la protección de la sociedad y la soberanía nacional:

Cada individuo que visita y navega en la red, tiene derecho a su privacidad y a su seguridad, ahora que se intentará masificar el internet en las escuelas públicas, esto es mucho más importante [...] todos los materiales relacionados con violencia deben ser regulados y controlados de forma consensuada entre distintos sectores de la sociedad para no vernos afectados desde la red por este problema⁸.

⁷ Foro de Gobernanza de Internet, “LACIGF: El Salvador en la hoja de ruta de la gobernanza de internet”, http://prensa.lacnic.net/news/14junio_es/lacigf-el-salvador-en-la-hoja-de-ruta-de-la-gobernanza-de-internet (consultado: 25 marzo, 2015).

⁸ Foro de Gobernanza de Internet, “LACIGF: El Salvador en la hoja de ruta de la Gobernanza de Internet”.

En El Salvador aún no existe una política de gobierno que aborde el tema de la gobernanza de internet⁹. Sin embargo, sí existe alguna discusión alrededor de estos temas aunque el debate aún no es relevante ante la opinión pública salvadoreña.

1.1.5. Documentos e informes

Entre algunos informes y documentos reconocidos que trataron temas relacionados con las nuevas tecnologías y protección de datos, se identificaron los siguientes:

Tabla 2

Producción de documentos e informes nacionales

Nombre	Año	Organismo	Autores
El SABER MAS III: Informe Regional sobre Acceso a la Información Pública y la Protección de Datos Personales.	.f.	La Alianza Regional por la Libre Expresión e Información	Asociación de Periodistas de El Salvador <i>et Al.</i>
Informe de coyuntura legal e institucional	2014	Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES)	Departamento de Estudios Legales

Fuente: Elaboración propia.

La Alianza Regional por la Libre Expresión e Información realizó un informe regional en el cual la Asociación de Periodistas de El Salvador (APES) y la Fundación Salvadoreña para El

⁹ José Mejía, “¿Quién gobierna internet en El Salvador?”, <http://www.transparenciaactiva.gob.sv/quien-gobierna-internet-en-el-salvador/> (consultado: 25 marzo, 2015).

Desarrollo Económico y Social (FUSADES)¹⁰ dieron sus valoraciones sobre la situación de la protección de datos y el acceso a la información en el país.

Por otra parte, un Informe de coyuntura presentado por el Departamento de Estudios Legales de FUSADES destacó y analizó la sentencia de amparo 142- 2012, emitida por la Sala de lo Constitucional en octubre de 2014 que estableció la violación al derecho a la autodeterminación informativa por parte de una sociedad privada, evidenciando la necesidad de aprobar en el país una ley de protección de datos personales. El informe subraya que en dicha sentencia se reiteró el asidero constitucional del derecho a la autodeterminación informativa y el derecho a ser protegido en su goce¹¹.

1.1.6. Blogs

En El Salvador existen algunos blogs que se dedican principalmente al desarrollo del tema de protección de datos personales y las TIC, los principales se encuentran en la siguiente tabla:

Tabla 3

Blogs y webs especializadas

Nombre del blog	Año	URL	Autor
El Economista	2005	http://blogs.eleconomista.net/author/ricardo-cevallos/	Ricardo Cevallos
Asociación Salvadoreña para la Protección de Datos e Internet (INDATA)	2011	http://indatasv.blogspot.com/	INDATA

¹⁰ Alianza Regional por la Libre Expresión e Información, El SABER MAS III Informe Regional sobre Acceso a la Información Pública y la Protección de Datos Personales, (s.l., s.f), 66-7.

¹¹ Fundación Salvadoreña para el Desarrollo Económico y Social, Informe de coyuntura legal e institucional (El Salvador: FUSADES, 2014), 95-6.

Conversaciones en Línea con Lito Ibarra.	2011	http://blogs.laprensagrafica.com/litoibarra/	Rafael Ibarra
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Fuente: Elaboración propia.

En el blog del abogado Ricardo Cevallos se analiza la jurisprudencia emitida por la Sala de lo Constitucional de la Corte Suprema de Justicia, específicamente sobre amparos sobre la figura del *habeas data*; asimismo, realiza un pequeño abordaje de los cuerpos normativos en donde la protección de datos personales ha tenido alguna regulación, como por ejemplo la Ley de Protección al Consumidor¹².

Por su parte, INDATA es una asociación sin fines de lucro, la cual muestra interés en temas como protección de datos, *habeas data*, autodeterminación informativa y derecho informático. En su blog se pueden encontrar diversos artículos relacionados a los temas citados. Uno de los aportes más significativos de INDATA fue la presentación de la demanda de inconstitucionalidad contra la empresa EQUIFAX-DICOM¹³ por el procesamiento arbitrario e ilegal de datos personales de miles de personas, la cual fue resuelta a favor de INDATA¹⁴.

En el blog de Rafael Antonio Ibarra se abordan temas sobre las tecnologías de la información y la comunicación e internet y protección de datos, entre otros temas relacionados. Todos los artículos son escritos por el ingeniero Ibarra, a quien se le reconoce como “**el padre de**

¹² Ricardo Cevallos, “La protección de datos”, <http://blogs.economista.net/marketing/2008/06/la-proteccion-de-datos/> (consultado: 25 marzo, 2015).

¹³ Equifax ofrece a empresas y consumidores información de los consumidores, principalmente la relacionada con el récord crediticio en el sistema financiero de El Salvador. Dotamos a los consumidores individuales para gestionar su información de crédito personal, proteger su identidad y maximizar su bienestar financiero.

¹⁴ Asociación Salvadoreña para la Protección de Datos e Internet (INDATA), <http://indatasv.blogspot.com/> (consultado: 25 marzo, 2015).

internet” en El Salvador por haber sido la persona que lideró y concretó la conexión del país con internet en 1995¹⁵.

En resumen, la discusión académica, legislativa y jurisprudencial sobre lo relacionado con las nuevas tecnologías y la denominada sociedad de control en El Salvador es aún mínima o prácticamente nula. A propósito **de las revelaciones del caso Snowden, el gobierno de El Salvador expresó su preocupación ante la denuncia internacional sobre la existencia de espionaje cibernético sobre países latinoamericanos por parte del gobierno de los Estados Unidos, en los cuales estaba incluido El Salvador:** “Nuestro gobierno está dando seguimiento a esta situación para verificar la veracidad de la misma, pues riñe con el principio de soberanía y violenta los derechos a la privacidad de los salvadoreños y salvadoreñas¹⁶”.

La sociedad salvadoreña, como la mayoría de sociedades en el mundo, parece haber abrazado los avances de las nuevas tecnologías de la información y la comunicación sin mayor conciencia ni discusión sobre los riesgos y efectos contraproducentes en la intimidad y la libertad que estos avances tecnológicos podrían afectar.

1.2. Brecha digital

El Salvador es un país de grandes contrastes sociales y económicos. Una parte de su sociedad tiene la capacidad de acceder a los servicios tecnológicos de primer mundo, mientras que otro importante porcentaje aún vive una realidad sin internet¹⁷, de analfabetismo digital, siendo probablemente solo el acceso a la telefonía celular lo único que ambas realidades comparten.

¹⁵ Rafael Ibarra, “Gobernanza de internet”, <http://blogs.laprensagrafica.com/litoibarra/?p=1205> (consultado: 10 marzo, 2015)

¹⁶ “El Salvador expresa preocupación por posible espionaje de EEUU en América Latina”, *DiarioDigitalVoces, 11 de julio, 2013*, <http://voces.org.sv/2013/07/11/el-salvador-expresa-preocupacion-por-posible-espionaje-de-eeuu-en-america-latina/> (consultado: 25 marzo, 2015)

¹⁷ Para 2014 se estimaba que solo el 29.7% de la población salvadoreña era usuaria de internet, de acuerdo con el Organismo Especializado de las Naciones Unidas para las Tecnologías de la Información y la Comunicación (UIT). Informe accesible en: <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

Para el año 2007, el 65% de los hogares salvadoreños tenía al menos un teléfono móvil, el 9% tenía computadora y solo un 3% tenía acceso a internet¹⁸. Siete años después, en 2014, se calculaba que cerca del 30% de la población salvadoreña era usuaria de internet, según el Organismo Especializado de las Naciones Unidas para las Tecnologías de la Información y la Comunicación, conocido por sus siglas en inglés como UIT¹⁹.

En 2011 se estimaba que había cerca de 500 mil *smartphones* activos²⁰, cifra que para 2014 aumentó a 1.8 millones de un total de suscripciones de teléfonos móviles que rondaba los 9 millones (superando la población del país, que ronda los 6 millones de habitantes), según datos contrastados de la UIT²¹ y del director país de la empresa Telefónica²². Los *smartphones* han posibilitado que, a pesar que la posesión de computadora y acceso al servicio de internet residencial sean aún bastante bajas, muchas personas en el país estén accediendo a internet desde sus dispositivos móviles²³.

No obstante su histórico bajo crecimiento económico y sus graves problemas sociales, las tecnologías digitales de la comunicación como internet, los teléfonos inteligentes y los dispositivos con acceso a *Wi-Fi* ya forman parte de la vida cotidiana de buena parte de las personas e instituciones del país. Cada vez son más las personas cuya información se encuentra

¹⁸ Ana Marcela Lemus y César Villatoro Canales, “La brecha digital en El Salvador: causas y manifestaciones” (tesis de Licenciatura, Universidad Centroamericana José Simeón Cañas, 2009), 38-40.

¹⁹ Organismo Especializado de las Naciones Unidas para las Tecnologías de la Información y la Comunicación (UIT), *Informe sobre estadísticas de individuos que usan Internet en El Salvador*. (Washington, D.C.: UIT, 2014), <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx> (consultado: 4 noviembre, 2015)

²⁰ Luis Figueroa, “SmartPhones: una revolución en las comunicaciones”, *Realidad y Reflexión* (septiembre-diciembre 2011): 33, 21-2.

²¹ Para 2014 se calculaba que había cerca de 9, 194,242 suscripciones a teléfonos celulares en El Salvador, según el Organismo Especializado de las Naciones Unidas para las Tecnologías de la Información y la Comunicación (UIT). Informe accesible en: <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

²² “Circulan 1.8 millones de smartphones en el país”, *El Diario de Hoy*, 4 de noviembre, 2014, bajo “sección Negocios”, http://www.elsalvador.com/mwedd/nota/nota_completa.asp?idCat=47861&idArt=9218924 (consultado: 8 abril, 2015).

²³ En 14 años El Salvador pasó de tener solo un 1.8% de su población como usuaria de internet (en el año 2000) a cerca del 30% en 2014, según la UIT. Informe accesible en: <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

en los registros electrónicos del Centro Nacional de Registros (CNR) o del registro tributario del Ministerio de Hacienda, generando que estas modernas herramientas de comunicación incidan cada vez más en la vida diaria de la ciudadanía, del Estado y el mercado.

Las nuevas dinámicas generadas por las tecnologías de la información y las telecomunicaciones han provocado que derechos como acceso a la información, libertad de expresión, libertad de prensa, derecho a la protección de datos y la privacidad, entre otros, se vuelven cada vez más importantes de discutir y legislar. En el Salvador, en particular, urge la necesidad de poner en la agenda pública los temas derivados de la presencia cada vez más extensa de internet en la economía y política doméstica²⁴.

Dicha urgencia queda en evidencia cuando el escenario planteado hace diez años por José María Ayala en cuanto legislación sobre protección de datos, continúa siendo prácticamente el mismo:

En El Salvador existen casos conflictivos, en donde las empresas manejan datos de cualquier persona sin su consentimiento e incluso con su desconocimiento sobre la existencia del mismo fichero. Ante esta situación, la incertidumbre gana terreno. La ciudadanía salvadoreña no sabe quién y para qué se están almacenando, gestionando o utilizando sus datos personales; ignora a quién tiene que dirigirse para solicitar la cancelación de informaciones erróneas o incluso desconoce si puede exigirlo jurídicamente, porque no existe, en el país, un marco jurídico que lo proteja contra el uso abusivo de sus datos personales²⁵.

²⁴ Rafael Ibarra, “Gobernanza de internet”, La Prensa Gráfica, <http://blogs.laprensagrafica.com/litoibarra/?p=1205> (consultado: 10 marzo, 2015)

²⁵ José Ma. Ayala et al. *La protección de datos personales en El Salvador*. (El Salvador: UCA Editores, 2005), 21.

Tantos años después en El Salvador, a pesar de la trascendencia de tales realidades, existe escasa discusión académica y política al respecto con una grave ausencia de normativas que regulen el inmenso mundo de internet y sus derivados²⁶. En un país abatido por la violencia, la inseguridad y el alto costo de la vida, las preocupaciones por la seguridad de sus datos o la vigilancia que organismos públicos o privados puedan realizar a través de las nuevas tecnologías parece no solo no ser prioritario, sino estar poco presente en la agenda pública. Sin embargo, “no es admisible, al menos para juristas, políticos y tecnólogos, aducir sorpresa o desconocimiento de los eventuales peligros implícitos en el uso de las nuevas tecnologías”²⁷.

En la era digital, las tecnologías de la comunicación también han aumentado la capacidad de los gobiernos, las empresas y los particulares para realizar actividades de vigilancia, interceptación y recopilación de datos. El incremento de tecnología disponible, tanto para los delincuentes como las víctimas, combinado con el escaso conocimiento o información sobre cómo proteger sus datos personales y sus comunicaciones, así como de los posibles delitos que se pueden sufrir a través de las nuevas tecnologías, otorga a los delincuentes un campo fértil de potenciales víctimas²⁸.

1.3. Criminalización de defensoras y defensores de derechos humanos

A continuación un marco de la historia reciente y la situación actual de los derechos humanos de los y las defensores de derechos humanos en El Salvador. A su vez, también se realiza un acercamiento preliminar entre el marco jurídico nacional sobre nuevas tecnologías y telecomunicaciones y la posibilidad de que este pueda dejar espacios para la criminalización de las personas defensoras de derechos humanos.

²⁶ Rafael Ibarra, “Gobernanza de internet”, <http://blogs.laprensagrafica.com/litoibarra/?p=1205> (consultado: 10 marzo, 2015)

²⁷ Antonio Enrique Pérez Luño, “Internet y los derechos humanos”, *Derecho y Conocimiento*, (s.f.), 2:27.

²⁸ Marcelo Gabriel Ignacio Temperini, “Delitos informáticos en Latinoamérica: un estudio de derecho comparado. 1ra. Parte”, <http://conaiisi.unsl.edu.ar/2013/82-553-1-DR.pdf> (consultado: 9 marzo, 2015).

1.3.1. Derechos humanos: durante y después de los militares

Los gobiernos militares (1931 a 1979) y el conflicto armado (1980 a 1991) que experimentó El Salvador en el siglo XX dejaron como saldo una amplia práctica institucional de persecución política, violaciones de derechos humanos y persecución de defensores y defensoras de derechos humanos. Dentro del largo y oscuro historial de leyes que fueron utilizadas para reprimir políticamente y que sirvieron para violar derechos humanos se encuentran, por ejemplo, el Código Penal de 1904 que ordenaba el internamiento –en hospital o cárcel- de los locos y dementes. En 1940 la ley represiva de vagos y maleantes se estableció como un medio de defensa social. Más adelante, en 1953, fue promulgada la ley del estado peligroso, la cual se mantuvo vigente hasta 1997²⁹.

También se crearon instituciones como ORDEN (Organización Democrática Nacionalista), que funcionó de 1961 a 1979 como el instrumento del ejército salvadoreño para recoger información para los servicios de inteligencia, siendo clave para la persecución y represión política. El Ejército y los cuerpos de seguridad como la Policía Nacional, la Guardia Nacional y la Policía de Hacienda, fueron instituciones estatales encargadas de reprimir y perseguir políticamente durante buena parte del siglo XX. A ellas les acompañaron organizaciones paramilitares como los Escuadrones de la Muerte, responsables de torturas y asesinatos, y también algunas células guerrilleras que cometieron secuestros y asesinatos en objetivos no militares³⁰.

De la época del conflicto armado sobresale como caso paradigmático el asesinato de Herbert Anaya Sanabria en 1987, quien fuera director de la Comisión Nacional de Derechos Humanos (CDHES), organización no gubernamental dedicada a la defensa de los derechos humanos. Un

²⁹ Juan Duarte Torres et al., “La efectividad de la función de prevención especial en la aplicación de las medidas de seguridad a los inimputables” (tesis de Licenciatura, Universidad de El Salvador, 2013).

³⁰ Comisión de la Verdad para El Salvador y Organización de las Naciones Unidas, “Informe de la Comisión de la Verdad para El Salvador. De la locura a la esperanza: la guerra de 12 años en El Salvador”, (San Salvador-Nueva York, 1992-1993).

año antes de su asesinato, Herbert ya había sido apresado por la ahora extinta Policía de Hacienda, entre otras formas de hostigamiento de las cuales él y todas las personas defensoras de derechos humanos de la época eran víctimas. Y, en general, todo aquel que manifestara su oposición al régimen o emitiera posición política que fuera considerada como subversiva.

La defensa de los derechos humanos en El Salvador también estuvo muy ligada con los esfuerzos de una parte de la Iglesia católica, que se dedicó a documentar violaciones de derechos humanos, así como a judicializar algunos casos. En 1982, la Arquidiócesis de San Salvador como iniciativa de Monseñor Arturo Rivera Damas creó la oficina de Tutela Legal del Arzobispado, como instancia encargada de la promoción y defensa de los derechos humanos, nombrando para ello a la doctora María Julia Hernández como su directora, quien se convertiría en un referente importante por la defensa de los derechos humanos en el país. Tutela Legal surgió para "desarrollar una pastoral de derechos humanos según la doctrina social de la Iglesia, para promover y defender la dignidad de la persona como imagen de Dios, instaurando así una cultura de reconciliación, justicia y paz"³¹.

1.3.2. Los Acuerdos de Paz

Los Acuerdos de Paz de 1992 son un parte aguas en la historia de represión y persecución política de El Salvador. Estos acuerdos buscaban conseguir cuatro grandes objetivos: terminar el conflicto armado por la vía política; impulsar la democratización del país; garantizar el irrestricto respeto a los derechos humanos y reunificar la sociedad salvadoreña. Desde la perspectiva de los derechos humanos, los Acuerdos de Paz significaron importantes avances entre los cuales se pueden mencionar la disolución de tres cuerpos de seguridad íntimamente ligados con la sistemática violación de derechos humanos (Policía de Hacienda, Policía Nacional y Guardia Nacional), sustituyéndolas por una nueva Policía Nacional Civil (PNC); la creación de

³¹ Arzobispado de San Salvador, Tutela Legal Arzobispado de San Salvador, (San Salvador, El Arzobispado, 2012), <http://www.arzobispadosansalvador.org/index.php/medios-de-comunicacion/radio-paz/11-nosotros/15-tutela-legal> (consultado: 20 mayo, 2015).

la Procuraduría para la Defensa de los Derechos Humanos (PDDH) y la Academia Nacional de Seguridad Pública (ANSP); así como la reforma a la doctrina del Ejército y su exclusión de toda actividad política y de seguridad pública, limitándola a la defensa nacional.

Pero más allá de evaluar el cumplimiento o avance de los Acuerdos de Paz, es importante remarcar que la persecución y la violación de derechos humanos por motivos políticos fue bastante superada. Posterior a 1992 hubo mucha sensibilidad por proteger jurídica y políticamente la libertad de expresión, de organización y participación política. Esto en contraste con el pasado reciente significó un gran avance. Sin embargo, esto no implica que la realidad salvadoreña de pobreza, corrupción e impunidad fuera superada totalmente. En 2013, el entonces Procurador para la Defensa de los Derechos Humanos lo resumía de la siguiente manera:

[...] Se terminó el conflicto armado, pero las causas estructurales que lo originaron no se han resuelto totalmente: como pobreza, impunidad, crisis económica, inseguridad, entre otras [...] En este sentido debe destacarse que no obstante se ha avanzado en un proceso democratizador del país, el impulso que se le ha dado ha sido lento, y en algunos momentos más que avanzar hacia una sólida democracia, parecería que retrocedemos, esto como resultado de medidas o acciones públicas de parte de los gobiernos anteriores; medidas como dolarización, privatización de servicios públicos, políticas neoliberales, permisividad de la impunidad, justicia tardía, corrupción, ausencia de políticas públicas a favor de la población, crisis política y financiera, entre otras³².

Luego de los Acuerdos de Paz no se registran denuncias sobre persecución de defensores ni defensoras de derechos humanos en El Salvador, al menos no sistemáticamente y no bajo las

³² Procuraduría para la Defensa de los Derechos Humanos, “Balance sobre la situación de los derechos humanos a 21 años de los Acuerdos de Paz”, (San Salvador, La Procuraduría, 2013), <http://www.pddh.gob.sv/menupress/menuprensa/457-pddh-brinda-balance-sobre-la-situacion-de-los-derechos-humanos-a-21-anos-de-los-acuerdos-de-paz>(consultado: 20 mayo, 2015).

mismas modalidades del pasado. Por el contrario, las organizaciones salvadoreñas de derechos humanos en la actualidad se han enfocado en la defensa de otros derechos fundamentales como el acceso al agua, el medio ambiente, el acceso a la información pública, derechos de la mujer y derechos de salud sexual reproductiva y diversidad. Incluso, han denunciado desde El Salvador la persecución que sufren sus colegas en la región: “Estamos acá frente a la embajada de Honduras en El Salvador, con el objetivo de hacer un acto de presencia, denunciando la represión, la persecución, la amenaza que están viviendo mujeres Defensoras de los Derechos en Honduras³³”.

1.3.3. La actualidad: la defensa de los derechos humanos en el auge de la violencia social y el crimen organizado

El marco jurídico que puede ser utilizado para el control, vigilancia o persecución de defensoras y defensores de derechos humanos debe ser examinado desde este nuevo contexto de violencia social, en el que el accionar de las maras y el crimen organizado está siendo utilizada como justificación para realizar una serie de reformas y crear legislaciones que restringen derechos humanos fundamentales, ya que buena parte de la opinión pública, los medios y las élites políticas etiquetan la leyes que establecen garantías y derechos fundamentales como “protectoras de delincuentes” o diseñadas “para Suiza”.

En ese sentido, tanto el Estado como la sociedad salvadoreña, ante la desesperación por frenar el aumento de la delincuencia y la violencia, han propiciado un franco retroceso en la aprobación de legislaciones penales menos garantistas y fragmentadas, que probablemente ayudan a responder a las ansias de la coyuntura pero que cuya efectividad es francamente cuestionable. La actitud predominante es la de ceder o rebajar derechos fundamentales en pos de alcanzar mayor

³³ Omar Fernández, "Organizaciones de Derechos Humanos denuncian represión y persecución del Estado hondureño a la coordinadora de Las Chonas Gladys Lanza" *Diario Co Latino*, 6 de febrero de 2015, bajo *sección Nacionales*, <http://www.diariocolatino.com/organizaciones-de-derechos-humanos-denuncian-represion-y-persecucion-del-estado-hondureno-a-la-coordinadora-de-las-chonas-gladys-lanza/> (consultado: 5 noviembre, 2015)

seguridad, sin detenerse a reflexionar en la efectividad y conveniencia a largo plazo. En palabras de Luigi Ferrajoli:

Tal crisis se manifiesta en la inflación legislativa provocada por la presión de los intereses sectoriales y corporativos, la pérdida de generalidad y abstracción de las leyes, la creciente producción de leyes-acto, el proceso de descodificación y el desarrollo de una legislación fragmentaria, incluso en materia penal, habitualmente bajo el signo de la emergencia y la excepción [...] Precisamente, el deterioro de la forma de la ley, la falta de certeza generalizada a causa de la incoherencia y la inflación normativa y, sobre todo, la falta de elaboración de un sistema de garantías de los derechos sociales equiparable, por su capacidad de regulación y de control, al sistema de las garantías tradicionalmente predisuestas para la propiedad y la libertad, representan, en efecto, no sólo un factor de ineficacia de los derechos, sino el terreno más fecundo para la corrupción y el arbitrio³⁴.

Por otra parte, en este nuevo contexto político salvadoreño debe tenerse en consideración que la persecución a defensoras y defensores de derechos humanos probablemente ya no solo deba ser examinada desde el Estado, sino que deben agregarse otros actores no menos relevantes como pueden ser las organizaciones criminales, tal como ha sucedido ya en otros países donde las redes de narcotráfico han comenzado a silenciar a todas aquellas personas que han denunciado su accionar.

Un reciente caso paradigmático sobre la persecución de defensoras y defensores de derechos humanos en el actual contexto político salvadoreño fue el asesinato de tres ambientalistas que se oponían a la explotación minera de la empresa internacional *Pacific Rim* en Cabañas. Este caso despertó muchas sospechas y aún no ha sido debidamente investigado, ya que algunas organizaciones y lugareños ligan los asesinatos con la postura y acción de los ambientalistas en

³⁴ Luigi Ferrajoli, *Derechos y garantías: el derecho del más débil* (Madrid: Editorial Trotta, 2004), 15-16.

contra de los proyectos de la empresa internacional, incluso llegando a implicar de manera directa a quien en esos tiempos fuera su representante y vicepresidente en El Salvador³⁵.

La posibilidad de la utilización de las nuevas tecnologías de la información y la comunicación, y del derecho respectivo, para la persecución u hostigamiento de defensores y defensoras de derechos humanos es algo que debe ser investigado no solo desde el Estado como ente persecutor, sino también desde otras organizaciones con los intereses y recursos para llevar a cabo estas acciones.

1.4. Conclusiones preliminares

La discusión con respecto a internet, telecomunicaciones y nuevas tecnologías en El Salvador ha sido guiada, en importante proporción, por las necesidades e intereses del mercado antes que por un afán de proteger los derechos fundamentales de la ciudadanía.

A pesar de encontrar una importante producción académica en algunos temas relacionados, sobre todo a nivel de tesis universitarias, en El Salvador existe una fuerte desvinculación entre la academia y las élites políticas, e incluso con los medios de comunicación. En ese sentido, el impacto de dicha producción, aunque pueda ser académicamente significativo y relevante, tiene poco impacto en la discusión de las élites políticas y los medios de comunicación.

En un país abatido por la violencia, la inseguridad y el alto costo de la vida, las preocupaciones por la seguridad de sus datos o la vigilancia que organismos públicos o privados puedan realizar a través de las nuevas tecnologías, parece no solo no ser prioritario sino estar poco presente en la agenda pública.

³⁵Saúl Monge, "Piden investigar a ex vicepresidente de *Pacific Rim*, por muerte de ambientalistas", *Periódico Verdad Digital*, 22 de septiembre de 2014, bajo *sección Social*, <http://verdaddigital.com/archivo/index.php/32-social/12831-piden-investigar-a-ex-vicepresidente-de-pacific-rim-en-el-salvador-por-muertes-de-ambientalistas> (consultado: 5 noviembre, 2015)

La mayoría de los temas de esta investigación son sumamente novedosos para el país y, apenas cuentan con incipientes trabajos periodísticos y académicos. Aspectos que fueron legislados y discutidos hace bastante tiempo en América del Sur, Europa y Estados Unidos, en El Salvador se encuentran apenas en ciernes en la discusión mediática y legislativa. Además, muy pocas personas en el país han sido formadas y cuentan con experiencia, tanto desde lo tecnológico como desde las ciencias sociales y el derecho, en estos temas.

2. Marco legal nacional

El presente capítulo desarrolla las protecciones y las limitaciones constitucionales, jurisprudenciales y de legislación secundaria del derecho a la privacidad en los contextos de la vigilancia del Estado y del sector privado cuando actúa en colaboración con el Estado. Este marco jurídico es el que podría ser utilizado para la criminalización de defensores y defensoras de derechos humanos, pero también el que podría ser usado para la defensa de sus derechos.

Los conceptos privacidad e intimidad están íntimamente vinculados, ya que integran una zona de reserva personal que es propia de la autonomía del ser humano, en donde se limita la intromisión de terceras personas³⁶. El Salvador reconoce y protege el derecho a la intimidad de las personas como un derecho fundamental mediante el cual se debe propiciar el libre desarrollo de la personalidad, así como la protección de datos personales, actividades personales, documentos y medios de comunicación.

El derecho a la intimidad guarda relación con el libre desarrollo a la personalidad, con la toma de decisiones personalísimas y con la autorrealización personal, pues supone una determinada calidad de relación con los demás³⁷. Por otra parte, la protección de datos personales es una de las manifestaciones del derecho a la intimidad y, aunque en El Salvador no existe una ley

³⁶ Germán, Bidart Campos, *Manual de la Constitución Reformada*, Tomo I, (Buenos Aires: Ediar, 1998).

³⁷ Santiago Velásquez Velásquez, y María Isabel Nuques, *El derecho a la intimidad y la competencia desleal*, (Ecuador: Facultad de Derecho de la Universidad Católica de Guayaquil; s.f.), 9.

especial dirigida a brindar protección a los datos personales, en el ordenamiento jurídico se encuentran normas y mecanismos que pueden utilizarse para hacer valer este derecho.

2.1. Tratados internacionales

Es importante iniciar aclarando la relación entre el derecho internacional y el derecho interno en el ordenamiento jurídico salvadoreño, debido a que los avances tecnológicos en materia de vigilancia han provocado que desde hace algunos años expertos y organismos internacionales se encuentren realizando esfuerzos para mostrar cómo el derecho internacional de los derechos humanos se aplica en el contexto de la vigilancia³⁸.

En ese sentido, según el orden constitucional salvadoreño ningún instrumento internacional estará sobre la Constitución de la República. En caso de darse un conflicto entre una disposición del derecho internacional y una constitucional, primará esta última. Sin embargo, los tratados internacionales debidamente ratificados son considerados leyes de la República y en caso de entrar en contradicción con una legislación secundaria interna, prevalecerá el tratado internacional (Arts. 144-149 Cn).

2.2. Constitución de la República de El Salvador

2.2.1. Vigilancia

2.2.1.1. Salvaguardas constitucionales del derecho a la privacidad en el contexto de la vigilancia a las comunicaciones

Debe destacarse que la Constitución salvadoreña garantiza el derecho a la intimidad personal y familiar y a la propia imagen en su artículo 2, estableciendo la indemnización por daños de carácter moral. Posteriormente señala que solo podrá practicarse el registro o la pesquisa de una persona para prevenir o averiguar delitos o faltas, y que la morada es inviolable, pudiendo ingresarse a ella únicamente por consentimiento de la persona que la habita, por mandato

³⁸ Ver: Principios Internacionales sobre la Aplicación de los Derechos Humanos a la Vigilancia de las Comunicaciones: <https://es.necessaryandproportionate.org/text>

judicial, por flagrante delito o peligro inminente de su perpetración, o por grave riesgo de las personas. (Arts. 19 y 20).

Además, el artículo 24 establece que la correspondencia de toda clase es inviolable, prohibiendo la interferencia y la intervención de las telecomunicaciones, salvo algunas excepciones, las cuales serán desarrolladas posteriormente.

A criterio de la Sala de lo Constitucional de la Corte Suprema de Justicia, el derecho a la intimidad es:

Un derecho fundamental estatuido directamente en el artículo dos inciso segundo de la Constitución, del que son titulares todas las personas, consistente en la preservación de la esfera estrictamente interna y de la privada (que incluye a la familia) frente a intromisiones no consentidas del Estado o de otros particulares. Por tanto, la violación por excelencia – no única-, en la dinámica de las sociedades actuales, al derecho a la intimidad, es la obtención y/o revelación indeseada por parte de terceros, de datos o informaciones comprendidas en dichas esferas³⁹.

Las formas a través de las cuales pueden realizarse intromisiones a la esfera protegida por el derecho de intimidad son muchas, así por ejemplo: la apertura de la correspondencia, interceptación de comunicaciones telefónicas y electrónicas, divulgación de información bancaria, divulgación de historias clínicas, allanamientos ilegítimos de domicilio, secuestro de computadoras, acceso a los datos en manos de terceros, etc. El Código Penal tipifica algunas conductas que atentan contra el derecho a la intimidad de las comunicaciones, las cuales se mencionarán y explicarán adelante.

³⁹ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucionalidad 91- 2007 del 24 de septiembre de 2010.

Según la Constitución, todas las personas son titulares de este derecho y gozan de protección en toda circunstancia; lo cual implica que tienen derecho a estar protegidas contra cualquier ataque innecesario y desproporcional, y solo en caso de extrema necesidad y cuando exista un legítimo interés público -o para proteger y garantizar otros derechos fundamentales-, puede limitarse este derecho por disposición de ley. La Constitución sí establece las premisas para proteger y evitar toda clase de intromisión en la vida privada, reconociendo la protección a la intimidad personal en el artículo 2, la protección a la morada (domicilio) en el artículo 20; y la protección (inviolabilidad) a la correspondencia y telecomunicaciones en el artículo 24⁴⁰.

Para proteger este derecho, la jurisprudencia constitucional ha constituido al recurso de amparo como la garantía para la protección de los derechos fundamentales en general, y por lo tanto, del derecho a la intimidad. En algunos casos, la Sala de lo Constitucional también ha utilizado como garantía el *habeas corpus*, por medio del cual han surgido importantes líneas y criterios jurisprudenciales para proteger el derecho a la intimidad de las personas. A continuación algunos ejemplos:

Sentencia 255-2000⁴¹, en la que el peticionario fundaba su petición en grabaciones telefónicas obtenidas contrariando lo dispuesto en el artículo 24 de la Constitución. Sentencia 249-2002⁴², en la que el peticionario fundamentó su pretensión constitucional en la vulneración a su derecho a la inviolabilidad del domicilio, por no haberse motivado la orden que autorizó el registro y allanamiento.

⁴⁰ Se establece que por ningún motivo se puede violentar la privacidad en la correspondencia de todo tipo; asimismo, prohíbe la interferencia e intervención de las telecomunicaciones, salvo excepciones, que puede provenir de una investigación o proceso judicial; punto desde el cual se garantiza el secreto a la correspondencia y de las telecomunicaciones.

⁴¹ Sala de lo Constitucional. Sentencia de Habeas Corpus 255-2000 del 14 de septiembre de 2000, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2000-2009/2000/09/11B4.PDF> (consultado: 5 noviembre, 2015)

⁴² Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Habeas Corpus 249- 2002 del 24 de febrero de 2003, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2000-2009/2003/02/1D94.PDF> (consultado: 5 noviembre, 2015)

Sentencia 35–2005/32–2007⁴³, en la que el peticionario fundamentó su pretensión constitucional en la violación a su correspondencia, por lo cual no debió ser valorada en juicio para configurar la culpabilidad del imputado.

La protección de los datos es un derecho de reciente consagración y se refiere al “derecho de los individuos, grupos e instituciones para determinar por sí mismos cuándo, cómo y con qué extensión la información acerca de ellos es comunicada a otros”⁴⁴. En ese orden de ideas, el derecho a la protección de datos se entiende como la suma de principios, derechos y garantías establecidos a favor de las personas que pudieran verse perjudicadas por el tratamiento de los datos personales.

La autodeterminación informativa, por su parte, es el derecho que tiene por objeto garantizar la facultad de las personas para conocer y acceder a las informaciones archivadas en bancos de datos que les conciernen, así como controlar su calidad, lo cual implica la posibilidad de corregir o cancelar los datos inexactos o indebidamente procesados, y disponer sobre su transmisión⁴⁵. La autodeterminación informativa es entonces un aspecto del derecho a la protección de datos, mientras que el *habeas data* es una garantía -un instrumento procesal-, que no alcanzaría como medio a tutelar todo el derecho a la protección de datos, pues este incluye aspectos que exceden a las posibilidades del accionar judicial por la vía sumarísima y contradictoria del *habeas data*⁴⁶. Por otra parte, la libertad informática se entiende como “la facultad de la persona para controlar la información personal que le concierne, la cual está contenida en registros públicos o privados”⁴⁷.

⁴³ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Amparo 135 – 2005/32 – 2007 del 16 de mayo de 2008, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2000-2009/2008/05/30F7.PDF> (consultado: 5 noviembre, 2015)

⁴⁴ María Elena Hernández León, et al., “Habeas Data como mecanismo de protección de derechos relacionados con la autodeterminación informativa ante el tratamiento automatizado de datos personales” (tesis de Licenciatura, Facultad de Jurisprudencia, Universidad de El Salvador, 2006), 95-6.

⁴⁵ Oscar Puccinelli, *El Hábeas Data* (Santa Fe de Bogotá, Colombia: Temis, S.A, 1999), 66.

⁴⁶ María Elena Hernández León et al., “Habeas Data como mecanismo de protección s”, 99.

⁴⁷ Ayala, J.M. et al. *La protección de datos personales en El Salvador*. (El Salvador: UCA Editores, s.f.), 53.

En El Salvador el derecho a la autodeterminación informativa no está regulado expresamente ni en la Constitución ni en la legislación secundaria. Para ejercer tal derecho debe recurrirse de manera supletoria al derecho a la intimidad regulado en el artículo 2 de la Constitución, ya que se considera a la autodeterminación informativa como una manifestación del derecho de intimidad. A la fecha, el desarrollo jurídico de la autodeterminación informativa se ha dado a través de criterios jurisprudenciales, emitidos por la Sala de lo Constitucional de la Corte Suprema de Justicia en sentencias provenientes de recursos de amparo.

La jurisprudencia constitucional salvadoreña ha establecido que el derecho a la autodeterminación informativa es la aplicación de la intimidad al ámbito informático y que tal derecho implica la protección de todo individuo frente a la posibilidad de acceso a la información personal que se encuentre contenida en bancos informatizados⁴⁸. La jurisprudencia sostiene que el derecho a la autodeterminación informativa posee dos facetas:“(i) una material —preventiva—, relacionada con la libertad y la autonomía del individuo con relación a sus datos personales; y (ii) otra instrumental —de protección y reparación—, referida al control que la resguarda y restablece ante restricciones arbitrarias”⁴⁹.

La Sala de lo Constitucional ha establecido que la dimensión material del derecho a la autodeterminación informativa pretende “satisfacer la necesidad de las personas de preservar su identidad ante la revelación y el uso de los datos que les conciernen y los protege frente a la ilimitada capacidad de archivarlos, relacionarlos y transmitirlos”⁵⁰. En esta faceta se destacan los siguientes derechos: “i) La facultad de conocer, en el momento específico de la recolección de los datos, el tipo de información personal que se va a almacenar; ii) la potestad de conocer la existencia de bancos de datos automatizados; iii) la libertad de acceso a la información; iv) la

⁴⁸ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Amparo 934-2007 del 4 de marzo de 2011, parte III, 1 A.

⁴⁹ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Amparo 142-2012 del 20 de octubre de 2014.

⁵⁰ Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 142-2012.

facultad de rectificación, integración o cancelación de los datos para asegurar su calidad y el acceso a ellos; y, v) la potestad de conocer la transmisión de los datos personales hacia terceros”⁵¹.

Respecto a la dimensión instrumental, la Sala de lo Constitucional sostiene que

la autodeterminación informativa constituye un derecho al control de la información personal sistematizada o contenida en bancos de datos informáticos o ficheros. De ahí que, ante esa necesidad de vigilancia, este derecho posea un contenido múltiple e incluya algunas facultades relacionadas con esa finalidad controladora, las cuales se manifiestan, básicamente, en aquellas medidas estatales de tipo organizativo y procedimental indispensables para la protección del ámbito material del derecho asegurado constitucionalmente⁵².

En Sentencia de Inconstitucionalidad con referencia 58-2007, se reafirmó que el ámbito de protección del derecho a la autodeterminación informativa implica diferentes facultades a favor de la persona, las cuales se reconocen para controlar el uso de la información personal que le atañe, tanto en su recolección como en su tratamiento, conservación y transmisión. Sin embargo, esa protección no es ilimitada, pues las personas carecen de derechos constitucionales absolutos sobre sus datos. De ahí que la persona haya de tolerar ciertos límites a su derecho de autodeterminación informativa, por razón de un interés general⁵³.

⁵¹ Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 142-2012.

⁵² Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 142-2012.

⁵³ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucional 58-2007 del fecha 8 de marzo de 2013.

2.2.1.2. Limitaciones constitucionales al derecho a la privacidad en el contexto de la vigilancia

El derecho a la intimidad no es un derecho absoluto, tiene alcances y límites como la protección de la seguridad nacional y del orden público, y la protección de derechos y libertades de las demás personas. La Constitución establece que el Estado puede restringir este derecho, siempre y cuando se encuentre en peligro el goce de derechos fundamentales de terceros, o se esté en el marco de una investigación judicial de ciertos ilícitos penales.

La Constitución de la República no regula expresamente cuáles son los criterios legítimos que el legislador tiene para restringir o limitar los derechos fundamentales. Al respecto la Sala de lo Constitucional ha establecido que:

[...] Él puede tomar en cuenta el sustrato ético-ideológico que le da unidad y sentido al ordenamiento jurídico (los valores constitucionales), pero no puede exigírsele que lo haga, ya que su margen de acción (en la elección de fines, medios y ponderaciones) le permite perseguir cualquier fin que no esté proscrito constitucionalmente o que no sea manifiestamente incongruente con su trasfondo axiológico⁵⁴.

En el artículo 24, la Constitución establece que solo de manera excepcional podrá autorizarse judicialmente, de forma escrita y motivada, la intervención temporal de cualquier tipo de telecomunicaciones, preservándose en todo caso el secreto de lo privado que no guarde relación con el proceso. Según la Constitución, la información proveniente de una intervención ilegal carecerá de valor. Una ley secundaria regula lo establecido en dicha disposición constitucional, por lo que será analizada con mayor profundidad más adelante.

⁵⁴ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucional 84-2006 del 20 de enero de 2009.

Por otra parte, a criterio de la Sala de lo Constitucional, el derecho a la autodeterminación informativa puede verse restringido por la finalidad que persigue la recolección y administración de los datos personales, la cual debe ser legítima (constitucional o legal), explícita y determinada. Para tal efecto, el legislador debe tener en cuenta no sólo el principio de proporcionalidad, sino también el derecho general del ciudadano a la libertad frente al Estado, que sólo puede ser restringida por el poder público cuando sea indispensable para la protección del interés general⁵⁵.

En ese sentido, la necesidad de reconocer el derecho a la autodeterminación informativa, así como la necesidad de una legislación secundaria que regule el *habeas data* o su inclusión en alguna ya existente, como podría ser en la Ley de Procedimientos Constitucionales, es de fundamental importancia para no generar situaciones de indefensión.

2.2.1.3. Mecanismo de acceso a la justicia en el contexto de vigilancia

En virtud de la jurisprudencia emitida por la Sala de lo Constitucional, se distingue la naturaleza dual del derecho a la autodeterminación informativa. A partir de dicha dualidad la Sala establece que

[...] se desprende que su garantía no puede limitarse a la posibilidad del ejercicio de pretensiones por parte de los individuos, sino que ha de ser asumida por el Estado mediante la creación de un ámbito de protección mucho más operativo en las medidas legislativas que lo desarrollan. En efecto, es el legislador quien se encuentra obligado a llevar a cabo las delimitaciones de las esferas individuales requeridas por la faceta instrumental —de protección y reparación— y, de tal manera, configurar una parte sustancial del derecho a la autodeterminación informativa⁵⁶.

⁵⁵ Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 142-2012.

⁵⁶ Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 142-2012.

La Constitución de la República en el artículo 2 garantiza el derecho al honor, a la intimidad personal (derecho a la autodeterminación informativa), y a la propia imagen; asimismo, el artículo 247 reconoce el amparo como mecanismo de protección ante la violación de este derecho. En razón de ello, el amparo -de manera supletoria- se convierte en la garantía para proteger derechos como la autodeterminación informativa, entre otros.

En el ordenamiento jurídico salvadoreño, como ya se mencionó anteriormente, no es reconocida la garantía del *habeas data*, como instrumento diseñado para la protección específica del derecho a la autodeterminación informativa. Sin embargo, ello no significa que este derecho se encuentre totalmente desprotegido. La Sala de lo Constitucional reconoció que el *habeas data* no tiene regulación especial en El Salvador, pero que la protección al derecho a la autodeterminación informativa es factible a través del proceso constitucional de amparo, sin importar la naturaleza del ente a quien se le atribuya su vulneración⁵⁷.

De lo anterior se debe entender que toda persona que estime violaciones a su derecho a la intimidad y al derecho a la autodeterminación informativa, por causa de su inclusión en una base de datos delictiva, crediticia u otra naturaleza, y especialmente por el uso no autorizado de su información personal, tiene derecho a interponer ante la Sala de lo Constitucional el recurso de amparo correspondiente.

2.2.2. Anonimato y cifrado

2.2.2.1. Salvaguardas constitucionales para la protección del cifrado y el anonimato

No se encontraron ni en la Constitución salvadoreña ni en la jurisprudencia constitucional regulaciones relacionadas directamente con las técnicas de cifrado ni con el anonimato digital. Sin embargo, el anonimato y el cifrado son necesarios para el efectivo ejercicio de los derechos a

⁵⁷ Sala de lo Constitucional. Corte Suprema de Justicia. Sentencia de Amparo 934-2007 del 4 de marzo de 2011, parte III 1. B. a.

la intimidad y a la libertad de expresión reconocidos en la Constitución y desarrollados en la jurisprudencia constitucional.

a) Cifrado

El cifrado es el proceso matemático de utilizar códigos y claves para comunicarnos de forma privada. A lo largo de la historia, la gente ha utilizado métodos cada vez más sofisticados de cifrado para enviarse mensajes entre sí con el objetivo de que no puedan ser leídos por cualquier persona además de los destinatarios. Hoy en día, las computadoras son capaces de realizar un cifrado mucho más complejo y seguro⁵⁸.

Expertos internacionales sostienen que en el entorno digital actual, la posibilidad de utilizar la tecnología de cifrado puede ser considerada como un prerrequisito para el ejercicio de los derechos de privacidad y de expresión, ya que en ausencia de cifrado las comunicaciones pueden ser fácilmente interceptadas. Los intermediarios de internet a menudo están en condiciones de poseer y leer todas las comunicaciones que pasan a través de sus redes, relacionando el cifrado directamente con la protección de intimidad. Por otra parte, el cifrado protege la libertad de expresión directamente cuando impide que sistemas automatizados de censura bloqueen el acceso a un contenido en particular o, incluso, a palabras clave en específico. Además, la protege indirectamente al guardar la confidencialidad de las comunicaciones y fuentes de sus usuarios⁵⁹. En ese sentido, el Relator para la Libertad de Expresión de las Naciones Unidas, David Kaye, ha sostenido que:

Actualmente el cifrado y el anonimato son los principales vehículos para la seguridad en línea, proporcionando a los individuos con un medio para proteger su privacidad, dándoles el

⁵⁸ Rodríguez, Katitza, *Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos sobre la promoción y protección del derecho a la libertad de opinión y de expresión* (International: EFF, 2015), 37.

⁵⁹ Rodríguez, Katitza, *Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos*.

poder de navegar, leer, desarrollar y compartir opiniones e información sin interferencias y apoyando a los periodistas, organizaciones de la sociedad civil, miembros de las minorías étnicas o grupos religiosos, a los perseguidos debido a sus orientación sexual o identidad de género, activistas, académicos, artistas y a otros los derechos a la libertad de expresión y opinión [...] El Cifrado y el anonimato y los conceptos de seguridad detrás de ellos ofrecen la privacidad y la seguridad necesaria para el ejercicio del derecho a la libertad de opinión y de expresión en la era digital. Dicha garantía puede ser esencial para el ejercicio de otros derechos, incluidos los derechos económicos, la privacidad, el debido proceso la libertad de reunión y de asociación pacíficas, y el derecho a la vida y la integridad corporal⁶⁰.

En El Salvador, el cifrado se encuentra protegido constitucionalmente a través de la libertad de expresión al ser un derecho fundamental reconocido y protegido en el artículo 6. Según la Constitución salvadoreña, comprende el derecho que tiene toda persona sin distinción alguna, a expresar y difundir libremente sus pensamientos. Esto significa que no se necesita ningún estudio o consideración de un hecho o asunto anticipado, ni un dictamen o juicio previo, ni debe rendirse garantía alguna para ejercer este derecho⁶¹. Por otra parte, la libertad de expresión está íntimamente relacionada con la libertad de prensa y derecho a la información, por ser fundamentales para la formación de la opinión pública⁶².

Por su parte, la Sala de lo Constitucional considera a través de su jurisprudencia que los derechos fundamentales son amplios en cuanto a su contenido y que la protección que debe

⁶⁰ Kaye, D. "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression". Human Rights Council. Twenty-ninth session, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc (consultado: 22 mayo, 2015)

⁶¹ El Salvador "Constitución de la República" Asamblea Legislativa (1983), artículo 6: Toda persona puede expresar y difundir libremente sus pensamientos siempre que no subvierta el orden público, ni lesione la moral, el honor, ni la vida privada de los demás. El ejercicio de este derecho no estará sujeto a previo examen, censura ni caución; pero los que haciendo uso de él, infrinjan las leyes, responderán por el delito que cometan.

⁶² Sergio García Ramírez, y Alejandra Gonza, *Libertad de Expresión en la jurisprudencia de la Corte Interamericana de Derechos Humanos*, (México DF.: Corte Interamericana de Derechos Humanos, Comisión de Derechos Humanos del Distrito Federal, 2007), 17.

dárseles por parte de las instituciones del Estado debe ser muy amplia⁶³. En ese sentido, esta interpretación amplia sobre la protección de los derechos fundamentales podría servir de fundamento para la utilización de técnicas de cifrado, en orden a proteger directamente su intimidad, pero también de manera indirecta su derecho a informarse y formarse una opinión, como etapa previa y necesaria para expresarse.

b) Anonimato

El anonimato se puede definir como actuar o comunicarse sin usar o presentar el nombre o identidad propios; o como actuar o comunicarse en una manera que protege la determinación del nombre o identidad propios, o usando un nombre asumido o inventado que no puede necesariamente asociarse con la identidad legal o habitual de uno⁶⁴.

El anonimato puede ser necesario para quienes estén preocupados por retribuciones políticas o económicas, acoso, o incluso amenazas a sus vidas, lo cual dependerá de las situaciones socio-políticas en las que se encuentren y de la calidad que tengan o función que desempeñen. En ese sentido, el anonimato estará ligado con la necesidad de protección de la persona⁶⁵. El informe del ex Relator para la Libertad de Expresión de Naciones Unidas, Frank La Rue, sostiene que:

El anonimato de las comunicaciones es uno de los adelantos más importantes facilitados por Internet, que permite a las personas expresarse libremente sin temor a represalias o condenas [...] El derecho a la intimidad suele entenderse como un requisito esencial para la realización del

⁶³ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucionalidad 91- 2007 del 24 de septiembre de 2010, http://www.csj.gob.sv/Comunicaciones/Boletin_informativo/2010/Septiembre_2010/Sentencia%2091-2007%20Art%20191%20con%20voto%20razonado.pdf (consultado: 5 noviembre, 2015) En relación a la colisión de derechos fundamentales, la Sala señala que para buscar el equilibrio entre estos debe haber una ponderación caso por caso, pues no existe en la Cn. una jerarquía, sino que todos los derechos tienen la misma fuerza y es ante una situación concreta que uno puede preponderar sobre otro.

⁶⁴ Rodríguez, Katitza, *Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos sobre la promoción y protección del derecho a la libertad de opinión y de expresión*, 3.

⁶⁵ Rodríguez, Katitza, *Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos*.

derecho a la libertad de expresión. La injerencia indebida en la intimidad de las personas puede limitar en forma tanto directa como indirecta el libre intercambio y evolución de ideas. Las restricciones al anonimato de las comunicaciones, por ejemplo, tienen un efecto intimidatorio en las víctimas de todas las formas de violencia y abuso, que podrían ser renuentes a denunciarlas por temor a la doble victimización [...] Los Estados deben abstenerse de obligar a los usuarios a presentar sus documentos de identidad como condición previa para obtener acceso a las comunicaciones, incluidos los servicios en línea, los cibercafés o la telefonía móvil⁶⁶.

La Constitución no contempla ninguna disposición que aborde de manera directa el derecho o la posibilidad de guardar el anonimato, como tampoco se identifican limitaciones directas. De manera general, el Estado salvadoreño tiene la obligación de brindar protección a las personas y asegurar el goce de los derechos humanos, por lo que debe proveer los mecanismos necesarios para que se cumplan y no sean vulnerados. Por lo que de seguirse el precepto constitucional que nadie está obligado a hacer lo que la ley no manda ni a privarse de lo que ella no prohíbe, tanto cifrado como anonimato pueden darse según nuestra Constitución (Art. 8). Más aún, como mencionamos anteriormente, la protección de los derechos por parte de las instituciones del Estado debe ser muy amplia⁶⁷. En ese sentido, esta interpretación amplia sobre la protección de los derechos fundamentales podría servir de fundamento para el derecho que tiene toda persona a expresarse y formar una opinión anónimamente.

⁶⁶ La Rue, F. "Informe del Relator para la Libertad de Expresión de Naciones Unidas", (Washington, D.C.: Asamblea General de las Naciones Unidas, 2013), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/133/06/PDF/G1313306.pdf> (consultado: 12 noviembre, 2015), párrafos 23, 24 y 88.

⁶⁷ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucionalidad 91- 2007 del 24 de septiembre de 2010, http://www.csj.gob.sv/Comunicaciones/Boletin_informativo/2010/Septiembre_2010/Sentencia%2091-2007%20Art%20191%20con%20voto%20razonado.pdf (consultado: 5 noviembre, 2015) En relación a la colisión de derechos fundamentales, la Sala señala que para buscar el equilibrio entre estos debe haber un ponderación caso por caso, pues no existe en la Cn. una jerarquía, sino que todos los derechos tienen la misma fuerza y es ante una situación concreta que uno puede preponderar sobre otro.

2.2.2.2. Limitaciones constitucionales al cifrado y el anonimato

No se encuentran normas específicas ni generales que puedan limitar el cifrado ni el anonimato en el texto constitucional.

2.2.2.3. Mecanismos de acceso a la justicia en el contexto del cifrado y el anonimato a nivel constitucional

A criterio de la Sala de lo Constitucional, todo derecho fundamental puede generar uno o varios tipos de obligación de parte del Estado, dentro de las cuales se destacan: i) de respetar – no violar los derechos por acción u omisión-; ii) de proteger – velar porque los particulares no violen los derechos-; iii) de garantizar – adoptar medidas en caso de que la persona sea incapaz de satisfacer el derecho por sí misma- ; y iv) de promover- adoptar medidas de largo alcance con el fin de fortalecer el derecho-⁶⁸.

La protección que otorga la Constitución de la República puede llevarse a la práctica por medio del recurso de amparo constitucional (cuando se trata de un particular o el Estado), o del proceso de inconstitucionalidad cuando una normativa vulnera derechos constitucionales relacionadas con la libertad de expresión, como el anonimato o el cifrado.

Si existe extralimitación en el ejercicio del derecho de libertad de expresión por parte de un tercero, y vulnera derechos como la intimidad, el honor, y buena imagen de otras personas, la consecuencia jurídica será el cometimiento de un delito, por lo que la persona que ha vulnerado tal derecho podrá ser procesada en un juicio penal, en el cual puede ser condenada a responder penal y civilmente.

⁶⁸ Sala de lo Constitucional. Corte Suprema de Justicia, Sentencia de Inconstitucionalidad 91- 2007 del 24 de septiembre de 2010.



Experiences, models and perspectives on the right to participation in the Juvenile Justice System

TRAINING MODULE

Time frame: 8 hours

Introduction

The right to participation represents a fundamental principle of the 1989 UN Convention on the Rights of the Child (CRC) ratified by all member states in Europe. More recently the Council of Europe embodied such a principle in its proposals to improve the Juvenile Justice's systems in order for them to become more "child friendly". Article 12 on the right of the child to be heard could be intended as a provision which gives access to the integrated system proposed by the CRC. At the same time, especially considering the structural purpose of the Juvenile Justice systems, participation has to be considered as a mean but also as an end in the rehabilitative key intention of the various measures applied. The right and the possibility for the child to actively participate in society and in the determination of his/her future represent a major challenge throughout all sectors of society as well as in culturally qualifying the relation between adults and children. The particular domain of Juvenile Justice and its concrete implementation proposes significant questions related to this principle, especially deriving from the possible situation of coercion which might arise from the application of the law. The possible answers, interpretations and models deriving from this question might lead to determine new and useful perspectives

both for the juvenile justice systems to strengthen their degree of compliance with the international legislation as well as to improve their capacity to provide children with the possibility to benefit from a system more capable of proposing effective and relevant rehabilitative paths in line with what should be considered as the core function of any justice's measure involving children .

Learning Objectives

Based on the elaboration and empirical research conducted in Italy, Spain and Belgium's Juvenile Justice Systems, the proposed seminar is conceived as an occasion of exchange for professionals and other actors involved in the JJ system to deepen the theoretical as well as the practical understanding of the right to participation in the context of Juvenile Justice systems and measures.

The one-day training seminar intends to verify the possible integration of a child rights-based framework into the actual practices, perspectives and models that will be brought by the participants. In particular the seminar aims at the following specific objectives:

1. Share and define how participation could be considered a key principle in promoting a child rights-based approach in the juvenile justice system;
2. Identify obstacles, opportunities, challenges, resources and actions to effectively apply the right to participation within the juvenile justice system and measures in relation to the different mandates and domains of expertise of training participants;
3. Develop opportunities for cooperation and follow-up between complementary professional mandates from a logic of greater integration of child protection system

Target group

The seminar is aimed at professionals in contact with children in conflict with the law working in the field of juvenile justice and child protection including lawyer, judges, social workers, educators, teachers, psychologists, director and staff of detention centres and care facilities, police and security guards, volunteers. This training experience also targets community members other than professionals as well as officials, institutional actors, policy and decision makers. The composition of multidisciplinary training groups involving different mandates is highly recommended.

Training format

This module (7.5-8 hours) is divided in two integrated and parallel blocks:

A session focused on theory and concepts (4 hours) that provides a theoretical and conceptual framework on children's rights, participation and the juvenile justice system. International and European standards will be used as a reference tool for determining a theoretical as well as practical framework for implementation.

A session concentrated on practices and interactive activities (3 - 3.5 hours) based on real experiences and case studies aimed at identifying obstacles while determining orientations and practical indications on how to implement and improve meaningful participation of children in the field of juvenile justice.

Methodological considerations

The training seminar uses a participatory methodology under a holistic, transcultural and human rights-based approach that places the persons at the centre of its action and carefully considers the relation with the surrounding context. In this light, the course facilitator should try to embrace, value and integrate training participants' experiences during the session. For this purpose, training seating is arranged in a circle to allow greater group interaction. This setting

could be metaphorically presented as a method for the co-building of knowledge by putting in the centre each different experience and expertise. The training methodology is inspired by the "adult learning theory", which links what has been learnt to the real world through empirical analysis starting from the fact that persons learn best through discussion, sharing of experiences, practical exercises, discovery and analysis. Such method requires limited number of participants up to a maximum of 20 ideally. The facilitator should make use of a flipchart to trace all the relevant elements that will comprise the resulting common thinking.

The approach towards participants should enable fruitful dialogue between different sectors and a comparison between theory and practice of child participation in the juvenile justice system. The objective is to generate knowledge together, giving value to each experience and expertise. The key guiding questions that orient the conduct of the seminar are: a) how the juvenile justice system can be informed by the spirit of the UN CRC; b) how child participation within juvenile justice systems works in practice; c) how participation could be ensured and made more effective and appropriate.

The training content is based on a systemic approach according to which subjects are as important as the relation between them within a surrounding context. To address the principle of participation, the CRC is used as the system of reference and Article 12 as the starting point. Article 12 will, however, be read in connection with other articles of the CRC as a systemic platform able to orient policies, strategies and actions that view children as informed decision makers and active members of society. The course facilitator should highlight the connection and interrelation of the different elements that will emerge during the session. In this sense, it is important that participants learn to understand their mandate as an integral part of a broader system and to place it accordingly.

List of training contents

- The UN Convention on the Rights of the Child and article 12
- Continuity needs/rights
- Participation in International Standards and Guidelines
- National legal framework
- Child-friendly justice
- The principle of participation: an interrelation of articles (CRC as framework)
- Systemic approach

Training activities and agenda outlines

SESSION 1: Understanding a child rights-based approach with a focus on the principle of participation in the field of juvenile justice.

Time frame: 4 hours

- Welcome and introduction to the seminar (15 min.)

Welcome to participants and introduction to the background of the training seminar by presenting the project Twelve following the structure: why, what, when, who and how. It is important to clarify with participants the purpose of the seminar and how it is conceived as part of a process (see above rationale) that could inform or generate future actions and changes in the contexts where participants operate. It could be useful to raise some questions that inspired the project Twelve, such as: it possible to talk about participation in situations of deprivation, semi-deprivation or limitation of liberty? Here participation is just the adhesion to a project built by the institutions? Participation is just formal or procedural or, instead, it can be substantial?

The facilitator continues with the presentation of the agenda, objectives and expectations of the training seminar. The facilitator writes the objectives in the flipchart sheet and posts it on the

wall. At the end of the session participants will verify the achievement of these objectives through a joint assessment. It should also be stressed that the method is as important as the content, by making reference to the circular setting and to the interaction opportunities that it generates.

- Introduction round of presentations (30 min.)

The facilitator asks participants to introduce themselves through a method that connects each one's presence with the biographical dimension based on experiential elements, as away to highlight the centrality of the person. The intention is to avoid focusing only on professional roles and mandates but to create an environment that considers each person as a unique product of life experiences. For this purpose, the facilitator invites each participant to first share with the group a keyword on what he or she believes it is important to enhance participation according to his or her experience; and secondly to briefly present him or herself as well as his or her professional mandate. The facilitator writes all the keywords in the flipchart and posts the sheet on the wall.

This exercise is also conceived as an icebreaker activity that beyond allowing participants to know each other better, will help at introducing the course content while fostering an appropriate training environment.

- Key concepts and considerations connected to the notion of participation (20 min.)

The facilitator introduces some reflections about the notion of participation, highlighting that the training seminar is proposing a comprehensive conception of participation, which could be synthesized through the following three R's: Recognition, Responsibility and Rehabilitation.

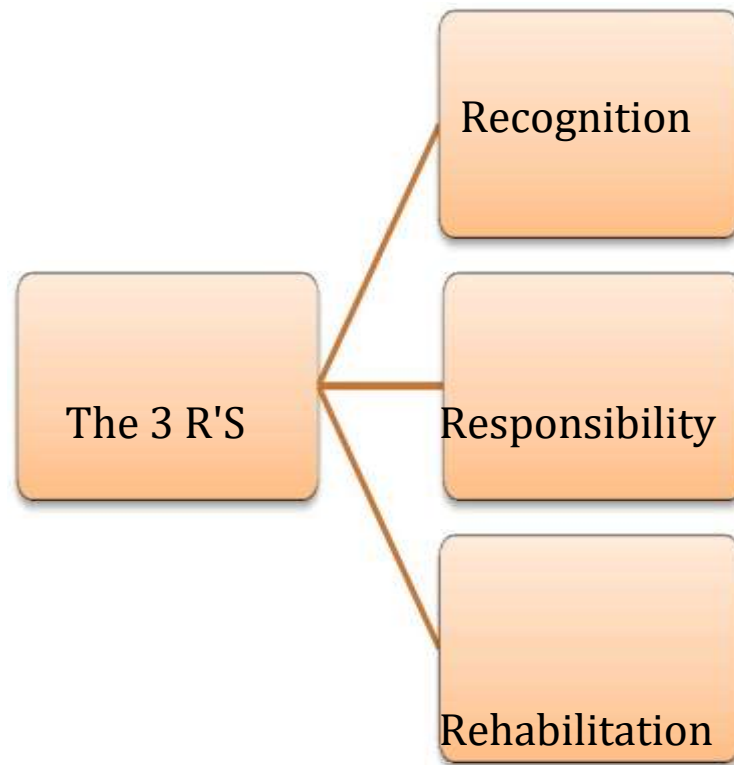


Figure 1: The Three R's

RECOGNITION: opportunities for participation allow children, professionals and officials in the juvenile justice field to interact and collaborate, demonstrating thereby respect for each other and gaining the recognition of the other. Meaningful child participation allows professionals and officials also to recognize and enhance the individual positive resources of children; it also can help the child to gain a better understanding and recognition of his or her personality, i.e. their own 'self'.

RESPONSIBILITY: Opportunities for children to participate enable children to be protagonists of their own lives towards self-determination and autonomy, even in the complex context of deprivation of liberty. Children who have the possibility to get engaged and exercise their participatory rights, have better chances to acquire a growing sense of responsibility.

REHABILITATION: Participation processes play a fundamental role for the rehabilitation and social inclusion of children who are in conflict with the law, allowing to (re-)create positive

ties and relations between the child and the society. The meaning of rehabilitation and social inclusion is to enable and encourage children and young persons to become active members of the community, to contribute with their own resources and skills, and to assume a constructive role in society. This can be achieved due to the reciprocal nature of the rehabilitation process that creates a feeling of belonging and enables children to feel accepted by the community, which they are ‘part of’.

The facilitator presents the relation of the notion of participation with a series of key concepts and considerations in order to create and share a general context of reference.



A. **HUMAN RIGHTS:** Participation is key to approach a human rights perspective connected to the recognition of each person and his/her self-determination. It is a fundamental principle. Participation means not only listening to the opinion of that child but also taking in consideration how that child can influence the environment; this can be done only if this child is recognised and heard. In general there is a lack of participation not only from the young generation but also by adults. Addressing participation is a big opportunity in order for the principles of the CRC to re-gain life.

B. **APPROPRIATENESS:** Those policies, measures and actions that respond to the uniqueness and peculiarity of each situation are appropriate. In other words, appropriate policies, measures and actions addressed to children should ensure the conditions for developing tailored responses and solutions. Considering participation as a key element of policies, measures and actions addressed to children could most likely contribute at giving better responses to the uniqueness and peculiarity of each situation and at recognising individuality and personal stories. Participation enables to take appropriate actions, create the appropriate conditions to implement and reach objectives, and establish an appropriate relation between adults and children.

C. **EFFECTIVENESS:** Effectiveness means to transform an objective in an action that produces a result which is consistent with the initial objective. In this light, participation could help at turning the system more effective, above all when it comes to juvenile justice and the rehabilitative scope of the criminal measures. Participation could also help professionals at understanding whether their actions are working and at adapting them accordingly.

D. **INCLUSION:** Participation is closely related with the principle of non-discrimination, since one of its meanings is to consider the person as part of something (in connection with the etymological definition of PARTICIPATION:

Etymologically “participation” derives from Late Latin *participatio(n-)*, “shared in”, from the verb *participare*, based on *pars*, part-“part” + *capere* “take”. Participation means to take part or have a share, as with others). Children involved in juvenile justice are often those who have been excluded from society or who have not benefitted from the support and services that they would have been entitled to; having thus not participated or participated wrongly. Is the juvenile justice system capable to be inclusive and offer a rehabilitative process that can lead the child back in the society and the system positively? Enabling meaningful participation is an important key to make a new start possible with better efforts to hear the views of the child and to take them seriously into account. For the child it is about being able to participate to a social contract and to the realization of the own story differently.

- E. **REHABILITATION:** The juvenile justice system works towards the rehabilitation and social inclusion of children in conflict with the law. It is a system that could enable the child to participate in a different way. Meaningful participation qualifies the scope of rehabilitation; the capacity to participate may be specular to the capacity to rehabilitate. The rehabilitative approach is conceived in contrast to the punitive approach. Participation could help at re-qualifying the notion and the scope of rehabilitation.
- F. **ECOLOGY:** Participation enriches the ecology of systems. The child protection system is currently fragmented, which often determines its effectiveness and appropriateness. Participation is a way to address this by re-establishing the relation among components. Participation, therefore, should be considered within a system of relations. In this sense, it is important to adopt an ecological approach in which there are different but interconnected levels and subjects. Participation could be an important element to qualify the relations between the elements of the system and the competences and skills operating within it.
- G. **CREDIBILITY:** To which extent the juvenile justice system is credible for children? The level of effective and meaningful participation may be proportional to the degree of credibility that

the system is able to generate. Only a credible system will be able to produce efficient and appropriate actions. It is important to consider that in some cases the perspectives of the children and of the system about what is right and what is wrong can be different. Participation may allow to create spaces for common understanding, sharing and exchange between different persons and positions. The relation between law – legitimacy – credibility may be further explored through the notion of participation.

H. **PREVENTION:** Reiteration and recidivism is one of the features present in the systems and participation is a way to tackle it. Some children/youth have probably

entered in conflict with the law because they are from particularly marginalised groups, they have been left behind by the social welfare system or they just participated wrongly.

Listening and participation can lead to actions that are more efficient and appropriate also in preventing young delinquency and recidivism before, during and after criminal proceedings. This means also extending participation from the closest family context to the wider child's community.

The facilitator leaves the possibility to participants of making comments or questions.

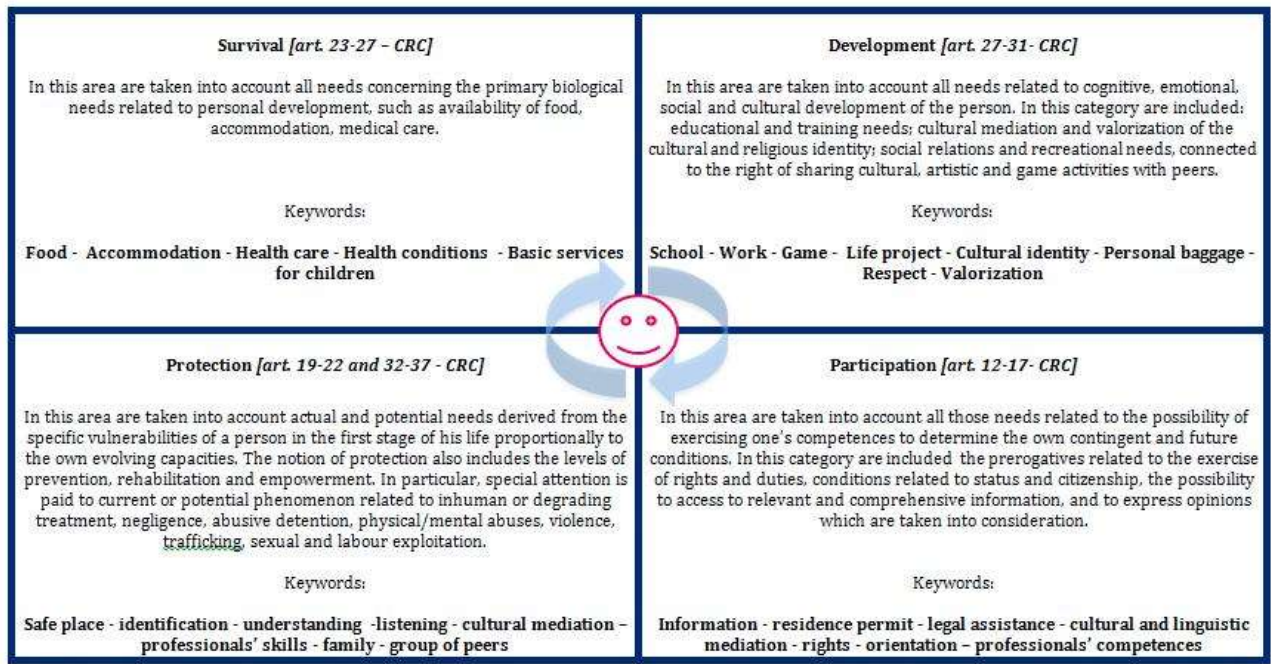
- The CRC and the child rights-based approach (45 min.)

The intent of this section is twofold. The first purpose is to show the continuity and interconnection between 'needs' and 'rights', while the second is to introduce the international

legal framework as a referral map for the developing and undertaking of interventions and actions with a holistic, systemic and preventive approach.

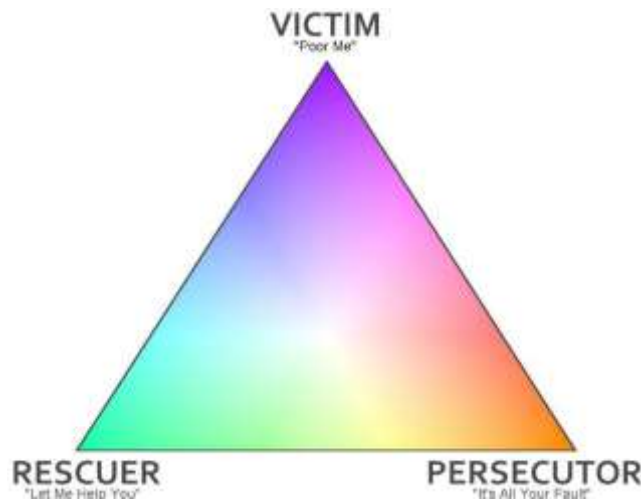
The facilitator proposes an exercise to the training group that consists in brainstorming the needs of a child. The facilitator notes the group's responses on the flipchart, and reiterates that the purpose of the exercise is to identify the needs that any child could have, without describing or categorising this child. On the basis of the answers provided, the facilitator underlines how every single need identified is guaranteed by a legal provision and the recognition of a right to our child. The shift from a logic of needs to a logic of rights is extremely important since the former foresees discretionary responses while the latter is enforceable. From a rights-based perspective, children cannot be identified as pure need anymore but as active subjects and holders of rights. A child rights-based framework introduces the identification and assumption of responsibilities of the different actors that play a role from a systemic perspective. The CRC has to be therefore understood as a system of multifaceted nature composed by interrelated articles and principles.

To simplify the understanding of the CRC and its use as a operational framework, the facilitator matches the identified needs with the rights afforded to all children, including in the context of juvenile justice, by using a simple clustering of the Convention divided into four dimensions: survival- development- protection- participation:

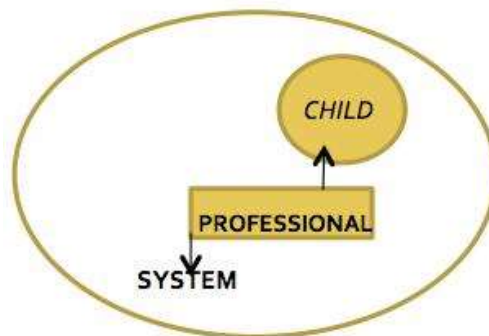


The facilitator should highlight here the importance of the dimension of participation, which is the very revolution of the CRC. It introduces for the first time the recognition of the child as an active subject that contributes to the society, not only taking into consideration his or her vulnerabilities but also his or her capacities and positive resources.

Related to this, the facilitator presents the Karpman Triangle, which is a helpful model to interpret the mainstream narrative according to which every situation can be interpreted following the triangulation victim – aggressor – savior. A child rights-based approach means to deconstruct this logic and avoid stereotypes in order to consider the uniqueness of each person and situation.



Professionals may play a key role in making practices closer to a child rights-based approach within the juvenile justice system, which includes enhancing the participation of the child. Workers and professionals could be considered as vectors of sense as well as vectors of change in relation with the child but also with the system. The facilitator suggests actions that professionals working with children in conflict with the law could adopt. For example: professionals should get information about the child's story and personal situation as well as about his interests and opinions in order to achieve meaningful communication and make proposals that make sense for him.



- Group discussion (40 min.)

The facilitator leaves space for questions, comments and discussion. Participants may have raised specific issues during the previous sections. The facilitator should use this moment to resume them and to relate the different elements emerged, ensuring that participants get a clear and general overview of the topics faced. The facilitator can ask the participants what are the key lessons that have learned from the discussion that can be applied to real-life and work situations.

- Child participation and juvenile justice in the International, European and national legal framework (60 min.)

The purpose of this section is to structure and systematize the information given so far, connect it with the juvenile justice system and highlight the importance given by the normative framework to the principle of participation.

The facilitator may use a PPT presentation or a similar tool (prezi for example). The presentation starts from a recap of the CRC with special mention to its 4 principles (best interest of the child, non-discrimination, survival and development, and participation) and to article 12. Then it refers and shifts to more specific tools such as the General Comments 10 and 12, the international standards, the regional standards in particular the Guidelines of the CoE for a child friendly justice, and the national legislation (see PPT presentations attached).

Particular emphasis might be given to General Comment No. 10 containing indications on how to develop and implement a comprehensive juvenile justice policy and to the GC No. 12 on the right of the child to be heard, in which the Committee on the Rights of the Child recommended that child participation shall meet the following requirements in order to be effective and meaningful:



After the presentation, the facilitator leaves space for questions and comments.

SESSION 2: Practical application of the principle of participation under a systemic child rights-based approach in the field of juvenile justice

Time frame: 3 – 3.5 hours

- The “Twelve Model” on child participation (60 min.)

The aim of this section is to present Article 12 as an entry point to the holistic and empowering approach promoted by the Convention: the recognition of children as rights holders. The Convention does not define or mention the ‘right to participation’ as such. However, Article 12 and other, related articles of the Convention, are together interpreted as the ‘participatory rights of children’ as they mutually inform an understanding of children’s agency as active members of society. In order to understand the far-reaching meaning and implications of Article 12, it is useful to look at the entire system of human rights proclaimed by the Convention, which are all inter-related and indivisible, and create thus a close net of standards for the holistic promotion and protection of children’s rights. As a general principle, the right of the child to have his or her views heard and taken into account is closely intertwined with the other general

principles of the Convention: the right to non-discrimination (Article 2); the best interests of the child as a primary consideration (Article 3); and the right to life, survival and development (Article 6). These articles are cross-cutting and significant for the interpretation of each right under the Convention and for its holistic implementation.

Furthermore, there are some other specific articles of the CRC that are primarily relevant for the participatory rights of children. The facilitator will use the following diagram to present and discuss how they relate to each other and how their effective implementation could enhance the participation of children in conflict with the law.



Child participation: some of the key rights and articles under the CRC

The facilitator should present how these articles may help at qualifying the very notion of participation and therefore how their respect should be carefully looked at in the specific context of juvenile justice:

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the

Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organisations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

After having presented the model, the facilitator proposes an open discussion in plenary

related with the diagram. Some possible questions to enrich the discussion could be:

- *Which of these articles are currently respected in the juvenile justice system?*
- *What is not possible to ensure? Why?*
- *How could these articles be further related and reinforced in practice?*

- Group activity: identification of barriers and opportunities to improve child participation (45 – 60 min.)

Participants are divided in groups of 4-6 people. Each group will identify one representative that will act as rapporteur of the group. Based on a case study provided by the facilitator, each group will identify possible actions to enhance child participation and to improve the situation proposed in the case study. Participants' answers may relate to different mandates and sectors of the juvenile justice system. The groups can use the "Twelve model" as a guiding tool.

- Partnership learning moment (30 – 45 min.)

The rapporteurs of each group are asked to present the outcomes of the activity to the full group. Following each presentation, the facilitator underlines the relevant aspects and asks for feedback. The facilitator keeps track of the general suggestions and insights gained from the different groups.

- Closing (15 min.)

The facilitator recaps the main issues faced during the training seminar, reiterating the importance of the systemic approach embodied in the CRC. The flip chart sheets posted so far may help at going through the different concepts and reasoning that have been tackled.

- Conclusion and evaluation (30 min.)

The facilitator with the collaboration of participants verifies if the objectives set and posted at the beginning of the session have been met and invites to share suggestions for

follow-up opportunities. The facilitator thanks the training group and leaves time for final questions, observations or comments.

Key references

Training facilitators should have as main references to prepare and conduct the session the following materials:

- *Children's rights to participation and the juvenile justice system: theory and practices for implementation (2016)*. The TWELVE handbook was drafted, formalized and published in parallel to the training seminars implemented within the framework of the Twelve project. It constitutes the fundamental reference point for the design, organization and delivery of the training deriving from the present module. Available for download at: <http://www.defenceforchildren.org/twelve-handbook/>

- *UN Convention on the Rights of the Child (1989)*:

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- *General Comment no. 10 (2007)* on children's rights in juvenile justice: <http://www.refworld.org/docid/4670fca12.html>

- *General Comment no. 12 (2009)* on the right of the child to be heard: <http://www.refworld.org/docid/4ae562c52.html>

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ANNEX 1: Sample evaluation form**Participant's Evaluation Form**

Place and date

We ask you to take a moment to provide your feedback. Your responses are anonymous and will be used to improve future consultative methods. Your feedback is important to us.

Please circle your response to each statement.		Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Not Applicable
1.	The seminar covered what I expected it to cover	1	2	3	4	5	0
2.	The seminar satisfied my professional needs in this area	1	2	3	4	5	0
3.	The seminar's objectives were clearly and adequately stated	1	2	3	4	5	0
4.	The approach followed by the project was understandable.	1	2	3	4	5	0

5.	The seminar's content was interesting	1	2	3	4	5	0
6.	The programme and the agenda of the seminar were effective	1	2	3	4	5	0
7.	The level of interactivity was appropriate	1	2	3	4	5	0
8.	The theme and discussion were useful and relevant for my area of work	1	2	3	4	5	0

Please circle 'Yes' or 'No' to the following statements	Response	If 'No' please circle or comment
1. The duration of the seminar was right for me	Yes / No	Too long / too short
2. The venue was right for me	Yes / No	
3. I was satisfied with the food	Yes / No	
4. The structure of the agenda was effective (sessions/breaks/etc).	Yes/No	
5. The overall organisation of the seminar was effective.	Yes/No	

Translated Texts

El Salvador

**Marlon Hernández
Anzora**

1. Background

1.1. Status of the national discussion

The main considerations about the impact of internet and information technologies in El Salvador began early in the first decade of the XXI century, mainly in the country's Jurisprudence Faculties. For the most part, the initial discussions were generated by the first data protection cases that were judged.

The theses to obtain the Bachelor's Degree in Juridical Sciences of many universities, mainly focused on penal and mercantile subjects, are the main academic contributions. In a less extend, personal or institutional blogs dedicated to discuss communication and information technologies and their implications in the national reality; are in less quantity; finally in a smallest amount, reports, institutional documents, academic essays, and books.

The first theses and monographs regarding the Licenciante in Juridical Sciences about e-commerce, habeas data, and computer crimes are registered between 2002 and 2003.

Some of them are mentioned below:

Chart 1

Production of National Thesis

Name	Year	University	Authors
El Habeas Data en la Constitución (The habeas data in the Political Constitution)	2002	Francisco Gavidia	Castro, Jorge et al.
Análisis jurídico del comercio electrónico (Juridical analysis of the e-commerce)	2003	Francisco Gavidia	Alcántara, Milton
Las intervenciones telefónicas (Telephone interventions)	2003	de El Salvador	Moran, Carolina et al.
Aspectos generales del delito informático (General aspects of cybercrimes)	2004	Francisco Gavidia	Gómez, Luis
El Habeas Data como garantía de protección de la persona frente al tratamiento de sus datos personales (The habeas data as people's guarantee protection facing the treatment of their personal information)	2004	de El Salvador	Alvarado, Karla et al.
Penalización de los delitos informáticos en El Salvador (Penalization of cybercrimes in El Salvador)	2005	de El Salvador	Benavides, Leo et al.
Habeas Data como mecanismo de protección de derechos relacionados con la autodeterminación informativa ante el tratamiento automatizado de datos personales.(The habeas data as mechanism of right's protection related to the informative self-determination regarding the automated treatment of personal information)	2006	de El Salvador	Hernandez, Maria et al.
La Firma Electrónica, tecnología del siglo XXI en la legislación salvadoreña (The electronic signature, technology of XXI century in the Salvadorian legislation)	2007	de El Salvador	López Flores, Sarbelio Enrique
La seguridad jurídica de los contratos en el comercio electrónico de El Salvador (The juridical safety of the contracts in the Salvadorian e-commerce)	2009	de El Salvador	Amaya, José et. al..
El derecho a la intimidad, su limitabilidad y protección en el marco normativo de la ley especial para la intervención de	2010	de El Salvador	Olivares, Erick

las telecomunicaciones (The right to privacy, its limitations, and protection in the regulatory framework of the special law for the telecommunications intervention)			
Aplicación legal práctica para la realización de actividades económicas en el comercio electrónico (Practical legal application for carrying out economic activities in the electronical trade)	2011	Dr. José Matías Delgado	Álvarez, Katia et al.
El ejercicio notarial frente a los avances tecnológicos, tales como la firma digital y la seguridad jurídica en el tráfico de bienes y servicios (The notarial practice facing the technological advances, such as the electronic signature and the juridical security in the traffic of goods and services)	2011	de El Salvador	Chámul, Flor et al.
La necesidad de crear una ley que regule el Habeas Data como mecanismo de protección de datos personales en El Salvador (The necessity of creating a law that regulates the habeas data as mechanism of protection of personal information in El Salvador)	2011	de El Salvador	Gavidia, Maria Magdalena et al.
El derecho a la intimidad, su limitabilidad y protección en el marco normativo de la ley especial para la intervención de las telecomunicaciones (The privacy right, its limitations and protection in the regulatory framework of the special law for the telecommunication interventions)	2011	de El Salvador	Miranda, Verónica et al.
Respeto al derecho de intimidad en la estructura de la Ley Especial de Intervención de Telecomunicaciones (The respect to the right of privacy in the structure of the special law of telecommunications interventions)	2012	de El Salvador	Amaya, Tomas et al.

Source: Self creation, with data from the mentioned universities.

The more frequent topics in the academic discussion in El Salvador are: data protection, cyber-crimes the e-commerce and the governance of Internet. Themes like electronic surveillance, censoring in Internet, public domain software, encoding or concealed identity, among others, appear in less proportion or simply the academic production and discussion about those topics is not identified.

1.1.1. Cyber crimes

Regarding the penalization of cyber-crimes, the theses mentioned in the previous chart⁶⁹ are mainly focused in the definitions of cyber-crime, penal types that emerge from compared law, punishment applied to cyber crimes in compared law, and the countries that currently have legislation about cyber crimes.

The theses that were created make emphasis on historical events (juridical and technological), and future perspectives that justify the necessity of its typification in the Salvadorian legislation, even the thesis written by Benavides et al. (2005), the authors suggest some penal types to be adopted by the Salvadorian criminal law.

In the political field, a media and legislative discussion regarding a draft bill known as The Special Cyber Crime Law and Related Crimes began in the first months of 2015. However, there have been little exposure of the content of the initiative, and the discussion was focused on the possibility that through this law political opponents and activists that make their complaints and critics by social networks can be criminalized. The draft bill was so problematic, that the legislators decided not to follow the steps for the formulation of the law, which is on hold.

1.1.2. Data protection

One of the most complete works about data protection in El Salvador was written by Ayala, José María et al. (2005). Here it can be clearly seen the predominance of Spanish jurists. Four out of the five authors are from such country, while only Henry Campos, a

⁶⁹We are referring to the thesis of Luis Alfredo Gonzalez Molina “Aspectos Generales del Delito Informático” (Bachelor Degree monograph, Francisco Gavidia University, 2004) and Leo Benavides et al. “Penalización de los Delitos Informáticos en El Salvador” (Bachelor Degree thesis, Faculty of Jurisprudence and Social Sciences, El Salvador university, 2005)

well-known Salvadorian jurist wrote on it. However, such work contains an important reflection on the situation of the country, making clear the scarce academic deliberation and juridical production in the topic.

It is important to mention that none of almost 40 sources of information consulted in this investigation is Salvadorian. By 2005, the only sources related to data protection that these investigators found were an amparo resolution and some academic essays dispersed in different national legal entities or international conventions.

It should be noted that data protection is probably the most studied topic in the academy. In the case of the theses mentioned in the previous chart, they studied in depth the doctrinaire elements about the right of privacy, as well as the informative self-determination and the protection of personal data. The figure of the habeas data is widely developed and seen from compared law, making emphasis in the need of habeas data legislation to integrally protect the people`s information in El Salvador.

1.1.3. E-commerce

One of the aspects that have been mostly developed in the Salvadorian academic production, at least at thesis level, is e-commerce. Currently, they are recognized two ways of business promotion through new technologies: e-business and e-commerce, which are related to each other, but they do not mean the same.

E-business is an information exchange with internal, external or both kinds of public of a company; while e-commerce involves buy and sale processes supported by electronic media, mainly Internet⁷⁰.

E-commerce is a concept that includes any commercial or business way of transaction that is transmitted electronically, using telecommunication webs and employing electronic money as hard currency. The World Trade Organization (WTO) defines e-commerce as “the production, advertising, sale, and distribution of products through telecommunication webs”.⁷¹

Regarding e-commerce, the first thesis developed in El Salvador dates to 2003. Nevertheless, it keeps much similitude with the last ones, considering that it is about the definition of the concept, the different types, and comparative law.⁷² In spite of the existence of a period of more than 10 years, the law initiative analyzed in the last theses is the same made by the lawyer Ricardo Cevallos as a request of the government, an e-commerce law draft bill.⁷³

The quantity of e-commerce that emerged in such period of time changed among the first and the last theses. By 2011, at least ten companies with a strong e-commerce or

⁷⁰ Gary Armstrong y Philip Kotler, *Marketing: Versión para Latinoamérica*, (Mexico D.F.: Pearson Education, 2007), 18.

⁷¹ Milton Leonidas Alcántara Quintanilla, et al., “Análisis Jurídico del Comercio Electrónico”, (Bachelordegree’s monography, Francisco Gavidia University, 2003), 11-2.

⁷² The thesis that we are referring to are the Milton Leonidas Alcántara Quintanilla et al., “Análisis Jurídico del Comercio Electrónico”, (Bachelordegree’s monography, Francisco Gavidia University, 2003) and the Katia Susana Álvarez Hernández et al., “Aplicación Legal Práctica para la Realización de Actividades Económicas en el Comercio Electrónico” (Bachelordegree monography, Dr. José Matías Delgado University, 2011).

⁷³ Katia Susana Álvarez Hernández et al., “Aplicación Legal Práctica para la Realización de Actividades Económicas en el Comercio Electrónico” (Bachelordegree monography, Dr. José Matías Delgado University, 2011).

whose commerce was only electronic, were identified in the country⁷⁴ once again, reality exceeded for a long time the juridical instruments needed to protect, in this case, the right of the consumers.

1.1.4. Internet Governance

Another recent reflection mainly at the level of blogs and official mass media, was about internet governance; in a good way stimulated by the NetMundial Forum on July 2014, in which it was gathered a great part of the region's Internet community to establish a road map of the new internet governance.

In the context of this event, representatives of the civil society, governments, academy, and corporative organizations debated the steps to follow in controversial and urgent themes related to the internet governance, such as privacy, access to private data, national and computer security, digital vigilance, among others.⁷⁵

In the framework of NetMundial, the Science and Technology vice minister, Erlinda Hándal, claimed that she was working in an electronic government's platform and that this discussion would help to better measure issues regarding security and privacy to protect the society and the national sovereign:

Each individual that visits and surfs web has the right to his privacy and security, so now that the internet is expected to expand it to public schools(...) all the materials related to

⁷⁴ Katia Susana Álvarez Hernández et al., "Aplicación Legal Práctica para la Realización de Actividades Económicas en el Comercio Electrónico" (Bachelor degree monography, Dr. José Matías Delgado University, 2011).

⁷⁵ Internet governance forum, "LACIGF: El Salvador en la hoja de ruta de la gobernanza de internet", http://prensa.lacnic.net/news/14junio_es/lacigf-el-salvador-en-la-hoja-de-ruta-de-la-gobernanza-de-internet (Retrieved: march 25, 2015).

violence should be regulated and controlled in a consensual way among the different sectors of society to not get affected from the web for this issue⁷⁶.

In El Salvador, there is not a government policy that tackles the topic of internet governance.⁷⁷ However, there is a discussion related to these topics, although the debate is not relevant yet, before the Salvadorian public opinion.

1.1.5. Documents and Reports

Among the known reports and documents that dealt topics related to new technologies and data protection, are:

Chart 2

Production of National documents and reports

Name	Year	Organism	Authors
El saber más III: Informe Regional sobre Acceso a la Información Pública y la Protección de Datos Personales.	n.d.	Regional Alliance for Free Expression and Information	Salvadorian Reporters Association
Informe de coyuntura legal e institucional	2014	Salvadorian Foundation for Economic and Social Development	Legal Studies Department

Source: Self-elaboration

⁷⁶ Internet governance forum, “LACIGF: El Salvador en la hoja de ruta de la gobernanza de internet”, http://prensa.lacnic.net/news/14junio_es/lacigf-el-salvador-en-la-hoja-de-ruta-de-la-gobernanza-de-internet (Retrieved: march 25, 2015).

⁷⁷ José Mejía, “¿Quién gobierna internet en El Salvador?”, <http://www.transparenciaactiva.gov.sv/quien-gobierna-internet-en-el-salvador/> (Retrieved: march 25, 2015).

The Regional Alliance for Free Expression and Information carried out a regional report in which the Salvadorian Reporters Association (APES for its initials in Spanish) and the Salvadorian Foundation for Economical and Social Development (FUSADES for its initials in Spanish)⁷⁸ gave their assessment about the situation of data processing and access to information in the country.

On the other hand, a situation report presented by the Legal Studies Department of the Salvadorian Foundation for Economical and Social Development, highlighted and analyzed the sentence of amparo 142-2012, issued by the Constitutional Courtroom on October 2014 that established the violation to the informative self-determination right on the part of a private society, evidencing the necessity of approving a personal data protection law in the country. The report highlights that in such sentence it was reaffirmed the constitutional pretext of the informative self-determination right, and the right of being protected in its enjoyment.⁷⁹

1.1.6. Blogs

In El Salvador, there exist some blogs mostly dedicated to the development of the data protection theme and the information and communication technologies, the main ones are found in the following chart:

⁷⁸Regional Alliance for Free Expression and Information, *El saber más III: Informe Regional sobre Acceso a la Información Pública y la Protección de Datos Personales*, (n.d.), 66-7

⁷⁹Salvadorian Foundation for Economical and Social Development, *Institutional and legal situation report*

Chart 3**Specialized blogs and webs**

Blog's name	Year	URL	Author
El Economista	2005	http://blogs.eleconomista.net/author/ricardo-cevallos/	Ricardo Cevallos
Asociación Salvadoreña para la Protección de Datos e Internet	2011	http://indatasv.blogspot.com/	Salvadorian Association for Data Protection and Internet
Conversaciones en línea Lito Ibarra	2011	http://blogs.laprensagrafica.com/litoibarra/	Rafael Ibarra

Source: Self-elaboration

In the blog of the lawyer Ricardo Cevallos, it is analyzed the jurisprudence emitted by the Constitutional Courtroom of the Supreme Court, specifically about the constitutional protection related to the figure of habeas data; in addition, it is made a small approach of the regulatory bodies, where personal data protection has had any regulation, for example the Consumer Protection Law.⁸⁰

In its behalf, the Salvadorian Association for Data Protection and Internet (INDATA for its initial in Spanish) is a Non-profitable association, which shows interest in topics like data protection, habeas data, informative self-determination, and computer right. In its blog, it can be found many articles related to the cited topics. One of the most significant contributions of the Salvadorian Association for Data Protection and Internet was the

⁸⁰ Ricardo Cevallos, "La Protección de datos", <http://blogs.eleconomista.net/marketing/2008/06/la-proteccion-de-datos/> Retrieved: march 25, 2015).

presentation of the lawsuit of unconstitutionality against EQUIFAX-DICOM⁸¹, due to the arbitrary and illegal processing of personal data of thousands of people, which was resolved in favor of the Salvadorian Association for Data Protection and Internet.⁸²

In the blog of Rafael Antonio Ibarra, there are found topics regarding communication and information technologies and Internet and data processing, among other related issues. All the articles are written by Ibarra, who is recognized as “the father of Internet” in El Salvador as he led and specified the connection of the country with the internet in 1995⁸³.

In brief, the academic, legislative, and jurisprudential discussion about the issues related to new technologies, and the called society of control in El Salvador is still minimal or is virtually non-existent.

Regarding to revelations of the Snowden case, the Salvadorian government expressed its concern for the international complaint about the existence of cyber-spying over Latin-American countries on part of the government of the United States, in which El Salvador was included: “Our government is doing a follow up to this situation to verify its truthfulness, because it goes against the sovereign principle and violates the right to privacy of the Salvadorian people”.⁸⁴

⁸¹Equifax offers the consumers' information to companies and consumers, mainly the related to the credit record in the Salvadorian financial system. We equip the individual consumers to process its personal credit information, to protect its identity and to maximize its financial welfare.

⁸²Asociación Salvadoreña para la Protección de Datos e internet, <http://indatasv.blogspot.com/> (Retrieved: march 25, 2015)

⁸³Rafael Ibarra, “Gobernanza de internet”, <http://blogs.laprensagrafica.com//litoibarra/?p=1205> (Retrieved: march10, 2015)

⁸⁴El Salvador expresa preocupación por posible espionaje de EEUU en América Latina”, Diario digital Voces, July 11, 2013, <http://voces.org.sv/2013/07/11/el-salvador-expresa-preocupacion-por-posible-espionaje-de-eeuu-en-america-latina/> (Retrieved: march25, 2015)

The Salvadorian society, like the majority of societies in the world, seems to have embraced by the new information and communication technologies without having conscious or discussion about the risks and counter-productive effects in the privacy and liberty that such technological advancements could affect.

1.2.Digital Divide

El Salvador is a country of great socio economical contrasts. A portion of its society has the capacity of accessing to first world's technological services, while other important percentage still does not have access to Internet⁸⁵, that is digital analphabetism, and probably just the access to cell phones is the only thing that both realities have in common.

By 2007, the 65% of Salvadorian houses had at least one cell phone, the 9% had computers, and only the 3% had access to Internet⁸⁶. Seven years later, in 2014, it was estimated that near the 30% of Salvadorians were Internet users, according to the International Union of Telecommunications⁸⁷.

In 2011, it was estimated that near five hundred thousand smartphones were activated⁸⁸, a number that by 2014 increased to 1.8 million of the total of cell phone

⁸⁵By 2014 it was estimated that just the 29.7% of Salvadorians were Internet users, according to the International Union of Telecommunications. Accessible document in: <http://www.itu.itn/en/ITU-D/Statistics/Pages/stat/default.aspx>

⁸⁶Ana Marcela Lemus and Cesar Villatoro Canales, "La brecha digital en El Salvador: causas y manifestaciones" (BachelordegreeThesis, Universidad Centroamericana José Simeón Cañas, 2009), 38-40

⁸⁷International Union of Telecommunications. Informe sobre estadísticas de individuos que usan internet en El Salvador. (Washington D.C. : UIT, 2014) Accessible document in: <http://www.itu.itn/en/ITU-D/Statistics/Pages/stat/default.aspx>(Retrieved on November 4, 2015)

⁸⁸Luis Figueroa, "Smartphones, una revolución en las comunicaciones ", Reality and reflection. (september-december 2011): 33,21-2

subscriptions went around the 9 million (exceeding the population of the country, that goes around the 6 million people), according to verified data of the International Union of Telecommunications⁸⁹ and the director of the Telephone company⁹⁰. Smartphones have made possible for many people in the country in spite of not owning a computer, and that the residential Internet service access, are still low may access the internet from their mobile devices⁹¹.

In spite of its historical low economical growing and its serious social problems, the communication digital technologies like internet, smartphones, and devices with Wi-Fi access, take part of the daily life of a great part of the people and institutions of the country. Each time is more the people whose information is found in the electronic records of the National Records Center (CNR for its initials in Spanish), or the tax records of the Ministry of Finance, generating that these modern communication tools have a bigger impact in the daily life of the society, the State, and the market.

The new dynamics generated by information technologies and telecommunications have produced that rights as access to information, freedom of expression, press freedom, data protection and privacy, among others, are more important to discuss and legislate. In El Salvador it is particularly urgent the necessity of putting in the public agenda the topics

⁸⁹By 2014 it was estimated that there were near of 9,194.242 cell phone subscriptions in El Salvador, according to International Union of Telecommunications. Statistics report about people who use Internet in El Salvador. (Washington D.C. : UIT, 2014) Accessible document in: <http://www.itu.itn/en/ITU-D/Statistics/Pages/stat/default.aspx>

⁹⁰“1.8 million of smartphones move around the country. El diario de hoy, november 4, 2014, under “business section” http://elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47861&idArt=9218924 (Retrieved: April 8, 2015)

⁹¹In 14 years El Salvador goes over from having just 1.8% of people as Internet users (in 2000) to near the 30% in 2014, according to International Union of Telecommunications. Statistics report about people who use Internet in El Salvador. (Washington D.C. : UIT, 2014) Accessible document in: <http://www.itu.itn/en/ITU-D/Statistics/Pages/stat/default.aspx>

derived from the more extensive presence of internet in the economy and domestic politics.⁹²

This urgency is evident when the scenery suggested 10 years ago by José María Ayala regarding the legislation about data protection, it is still the same:

In El Salvador there exist conflictive cases, where companies manage the data of any person without his permission, and ignoring the existence of such file. Against this background, uncertainty gains ground. The Salvadorian citizenship does not know who and why their personal information is being kept, handled and being used; they ignore to whom they have to ask for the cancelation of wrong information and also they do not know if they can claim it judicially, because it does not exist a judicial framework that protects them against the abusive use of their personal information in the country.⁹³

Many years later in El Salvador, in spite the transcendence of such realities, there exist few academic and political discussion about it, and a serious absence of rules that regulate the immense world of Internet and its derivatives.⁹⁴ In a country dejected by violence, insecurity, and the high cost of living, the concerns about the security of the data or the surveillance that public or private organisms could do through new technologies are not just a priority, but also having a little presence in the public agenda. However, “it’s not

⁹²Rafael Ibarra, “Gobernanza de Internet” La Prensa Grafica, <http://blogs.laprensagrafica.com/litoibarra/?p=1205> (Retrieved: March 10, 2015)

⁹³José Ma. Ayala et al. La Protección de datos personales en El Salvador. (El Salvador: UCA editors, 2005), 21.

⁹⁴Rafael Ibarra, “Gobernanza de internet” La Prensa Grafica, <http://blogs.laprensagrafica.com/litoibarra/?p=1205> (Retrieved: March 10, 2015)

admissible, at least for jurists, politicians, and technologists, to adduce surprise or ignorance of the eventual implied risks in the usage of new technologies⁹⁵.”

In the digital era, communication technologies also have increased the capacity of the governments, companies, and people in general to carry out surveillance activities, interception, and data recording. The increasing of available technologies, for criminals and victims, combined with the scarce knowledge or information about how to protect their personal information and their communications, as well as possible crimes that can be suffered through new technologies, gives to the criminals a fertile field of potential victims.⁹⁶

1.3. Criminalization of Human Rights Advocates

Following, it is found a framework of the recent history and the current situation of the human rights of the advocates of the human rights in El Salvador. At the time, it is carried out a preliminary approach among the national judicial frameworks about new technologies and telecommunications, and the possibility of allowing spaces for the criminalization of the advocates of Human Rights.

1.3.1. Human Rights: during and after the militaries

The military governments (1931-1979) and the armed conflict (1980-1991) that El Salvador experienced in the XX century left a huge institutional practice of political persecution, Human Rights violations, and persecution of the Human Rights advocates.

⁹⁵ Antonio Enrique PerezLuño, “Internet y los derechos humanos”, right and knowledge, (without date), 2:27

⁹⁶ Marcelo Gabriel Ignacio Temperini, “Delitos informáticos en Latinoamérica: un estudio de derecho comparado.1 parte”, <http://conaiisi.unsl.edu.ar/2013/82-553-1-DR.pdf> (Retrieved: march 9, 2015)

Within the long and dark history of laws that were used to politically suppress and that allowed the violation of the Human Rights, are found, for example, the 1904 Penal Code, which ordered the involuntary commitment of crazy and insane people in hospitals or jails. In 1940, the repressive law of bums and thugs was established as a mean of social defense. Later, in 1953, it was enacted the law of the dangerous State, which was current until 1997.⁹⁷

It was also created some institutions as the National Democratic Organization (ORDEN, for its initials in Spanish). It worked from 1961 to 1979 as a tool of the Salvadorian army to collect information for the intelligence services, and was a key for political persecution and repression. The army and security organisms as the National Police, the National Guard, and the Fiscal Control Police were State institutions in charge of politically repressing and persecuting people during a good part of the XX century. In addition, paramilitary organizations as Death Squads were responsible of torturing and assassinating people, and also guerrilla cells that committed kidnappings and crimes in non-military objectives.⁹⁸

From the time of the armed conflict, it stands out as paradigmatic case the crime of Herbert Anaya Sanabria in 1987. He was the Director of the National Commission of Human Rights, a nongovernmental organization dedicated to the defense of Human Rights. A year before his assassination, Herbert was already apprehended by the currently

⁹⁷Juan Duarte Torres et al. "La efectividad de la función de prevención especial en la aplicación de las medidas de seguridad a los inimputables" (bachelordegreethesis, Universidad de El Salvador, 2013).

⁹⁸Comission of truth for El Salvador and The United Nations Organizations. "Informe de la Comisión de la verdad para El Salvador. De la locura a la esperanza: la guerra de 12 años en El Salvador", (San Salvador-New York, 1992-1993).

extinct Fiscal Control Police, among other ways of harassment from which heard all the Human Rights advocates of the time were victims of; in addition, to any person who stated his opposition to the regime or emitted a political position that was considered subversive.

The defense of Human Rights in El Salvador was linked to the efforts of a part of the Catholic Church, who dedicated itself to document the violations of the Human Rights, and to prosecute some cases. In 1982, the Archdiocese of El Salvador created the Archbishopric Legal Guardianship Office as initiative of Monsignor Arturo Rivera Damas, this office was in charge of the promotion and defense of the Human Rights. Maria Julia Hernandez, appointed as Director, would later become an important referent for the defense of human rights in the country. Legal Guardianship emerged to “develop a pastoral of human rights according to the church social doctrine, to promote and defend the dignity of the person as image of God, thus establishing a reconciliation, justice, and peace culture.”⁹⁹

1.3.2. Peace Agreements

The Peace Agreements of 1992 are part of the history of political repression and persecution of El Salvador. These agreements seek to achieve four big objectives: to finish the armed conflict by political means; to motivate the democratization of the country; to guarantee the unrestricted respect for the Human Rights; and to reunify the Salvadorian society. From the Human Rights perspective, the Peace Agreements meant important advancements, among which can be mentioned the dissolution of three security squads

⁹⁹Archbishopric of El Salvador, Legal Guardianship of El Salvador, (El Salvador, the Archbishopric, 2012), <http://www.arzobispadosansalvador.org/index.php/medios-de-comunicacion/radio-paz/11-nosotros/15-tutela-legal> (Retrieved: May 20, 2015).e

intimately linked to the systematic violation of Human Rights (Fiscal Control Police, National Police and National Guard), that were replaced by a new Civil National Police (CNP); the creation of the Office of the Procurator for the Protection of Human Rights (PDDH for its initials in Spanish), and the National Academy of Public Security (ANSP for its initials in Spanish); as well as the reform to the Army doctrine and its exclusion from any political and public security activity, limiting it to the national defense.

However, more than evaluating the accomplishment or advancement of the peace agreements, it is important to remark that the persecution and violation of Human Rights due to political reasons were overcome. After 1992, it was much sensibility to protect the freedom of expression, organization, and political participation in a juridical and political way. This in contrast to the recent past meant a major breakthrough. Nevertheless, it does not imply that the Salvadorian reality related to poverty, corruption, and impunity was totally outpaced. In 2013, the back then procurator for the protection of Human Rights summarized it in this way:

(...) The armed conflict ended, but the structural causes that originated it are not totally resolved: such as poverty, impunity, economical crisis, insecurity, among others (...) In this way, it must be emphasized that though it was made considerable progress in a democratic process of the country, the momentum has been slow, and sometimes instead of going toward a solid democracy, it may seem that we go back; as a result of public rules or actions from previous governments, the dollarization, privatization of public services, neoliberal politics, impunity permissiveness, late justice, corruption,

absence of public politics in favor of the people, political and financial crisis, among others.¹⁰⁰

After, the Peace Agreements did not record complaints about the persecution of Human Rights defenders in El Salvador, at least not systematically or under the same past modalities. On the contrary, the current Salvadorian organizations of Human Rights are focused on the defense of other fundamental rights, as the access to water, the environment, the access to public information, women rights, and reproductive sexual health and diversity rights. Indeed, from El Salvador, it was reported the persecution suffered by some colleagues in the region: “We are here in front of the Honduras Embassy in El Salvador, with the objective of reporting the repression, persecution, and the threat under which women human rights defenders in Honduras are living¹⁰¹.”

1.3.3. Present time: the Human Rights defense in the peak of social violence and organized crime

The juridical framework that can be used for the control, surveillance, and persecution of Human Rights defenders, must be examined from this new social violence context, in which the Maras' actions and the organized crimes, it has been used as a justification to make a series of reforms and create legislations that restrict the fundamental Human

¹⁰⁰Attorney's Office to defense of Human Rights, “Balance sobre la situación de los derechos humanos a 21 años de los Acuerdos de Paz”, (San Salvador, The Attorney's Office, 2013), <http://www.pddh.gob.sv/menupress/menuprensa/457-pddh-brinda-balance-sobre-la-situacion-de-los-derechos-humanos-a-21-anos-de-los-acuerdos-de-paz> (consulted: May 20, 2015).

¹⁰¹ Omar Fernández, “Organizaciones de Derechos Humanos denuncian represión y persecución del Estado hondureño a la coordinadora de Las Chonas Gladys Lanza”, Co LatinDairy, February 6, 2015, undernationalsection, <http://www.diariocolatino.com/organizaciones-de-derechos-humanos-denuncian-represion-y-persecucion-del-estado-hondureno-a-la-coordinadora-de-las-chonas-gladys-lanza/> (Retrieved: november 5, 2015).

Rights, because a great part of the public opinion, the media, and political elites have tagged laws that establish guarantees and fundamental rights like “criminal protectors” or designed “for Switzerland.”

In this sense, the State and the Salvadorian society, out of the desperation of stopping the increase of crimes and violence, have promoted a step backwards in the approval of penal legislations that are less guaranteed and fragmented, and probably may help to answer the situation, but its effectiveness is frankly questionable. The predominant attitude is to yield or reduce fundamental rights to achieve more security, without stopping to reflect about the effectiveness and convenience in the long term. In the words of Luigi Ferrajoli:

Such crisis is manifested in the legislative inflation caused by the pressure of the sectorial and corporative interests, the loss of generality and abstraction of laws, the increasing production of laws-acts, the decoding process and the development of a fragmentary legislation, even in penal matters, usually under the sign of emergency and the exception (...) precisely, the deterioration of the form of the law, the lack of generalized certainty because of the incoherence and the normative inflation, and mostly, the lack of elaboration of a comparable system of guarantees of social rights, by its capacity of regulation and control, to the system of guarantees traditionally predisposed to the property and freedom; represent in fact, not only a rights inefficiency fact, but also a more fertile land for corruption and judgment.¹⁰²

¹⁰² Luigi Ferrajoli, *Derechos y garantías: el derecho del más débil* (Madrid, Trotta editorial, 2004), 15-16

On the other hand, in this new Salvadorian political context it has to take into consideration that the persecution of Human Rights advocates probably should not only be examined from the State, but also other not less relevant actors must be added, as for example criminal organizations, as it has already happened in other countries, where the drug trafficking webs have begun to silence all those people who reported how they act.

A recent paradigmatic case about the persecution of Human Rights advocates in the current Salvadorian political context was the assassination of three environmentalists that opposed to the mining of the International Company Pacific Rim in Cabañas. This case started many suspicions and it has not been well investigated yet, because some organizations and locals link the crimes with the posture and action of the environmentalists against the projects of the international company; even implicating directly to those who were its representative and vice president in El Salvador at that time.¹⁰³

The possibility of using new information and communication technologies and its respective right for persecuting or harassing Human Rights advocates, it is something that must be investigated not only by the State as persecutor, but also from other organizations with the interests and resources to perform these actions.

1.4.Previous Conclusions

¹⁰³Saul Monge, “Piden investigar a ex presidente de Pacific Rim, por muerte de ambientalistas” , verdad digital newspaper, September 22, 2014, under social section, <http://verdaddigital.com/archivo/index.php/32-social/12831-piden-investigar-a-ex--vicepresidente- de-pacific-rim-en -el -salvador-por -muertes-de-ambientalistas> (Retrieved:November 5, 2015)

The discussion related to Internet, telecommunications, and new technologies in El Salvador has been mainly guided by the necessities and interests of the market, and not by the desire of protecting the fundamental rights of the citizenship.

Although it can be found an important academic production in some related topics, mostly in university theses, there exist a strong disassociation among the academy and the political elites in El Salvador, including the mass media. In that sense, the impact of that production, even though it can be academically meaningful and relevant, has less impact on the discussion of political elites and mass media.

In a country dejected by violence, insecurity, and life high cost, the worries about the data security or the surveillance that public or private entities can do through new technologies seem to be not only a priority, but also to be little present in the public agenda.

Most of the topics of this research are extremely new for the country, and barely count with incipient academic and journalistic works. Aspects that were legislated and discussed for a long time ago in South America, Europe, and United States, are barely in budding in the media and legislative discussion in El Salvador. Moreover, very few people in the country have been formed and have experience, from the technological to the social sciences and law in these topics.

2. National Framework

The present chapter develops the constitutional, jurisprudential and of secondary legislation protections and limitations of the right of privacy, in the context of the

surveillance of the State and the private area when it acts in collaboration with the State. This juridical framework is the one that could be used for the criminalization of Human Rights advocates, but it could be used also for the defense of their rights.

The concepts of privacy and intimacy are closely tied, as they integrate a personal discretion zone that is typical of the human beings autonomy, where the intromission of third persons is limited.¹⁰⁴ El Salvador recognizes and protects the right to intimacy as a fundamental right through which it can be promoted the free personality development, as well as the protection of personal information, personal activities, documents, and mass media.

The right to intimacy is related to the personality free development, personal decision making, and personal self-fulfillment, because it supposes a determined quality of relation with other people.¹⁰⁵ On the other hand, the protection of personal information is one of the manifestations of the right to intimacy and, although in El Salvador it does not exist a special law focused on giving protection to personal information, in the juridical order it can be found rules and mechanisms that can be used to assert this right.

2.1. International Treatments

It is important to begin clarifying the relationship between international right and internal right in the Salvadorian juridical order, due to the technological advancements regarding surveillance have produced that since some years, the experts and international

¹⁰⁴ Germán, Bidart Campos, *Manual de la Constitución Reformada*, Tomo 1, (Buenos Aires,: Ediar, 1998).

¹⁰⁵ Santiago Velásquez Velásquez y María Isabel Nuques, *El derecho a la intimidad y la competencia desleal*, (Ecuador: Universidad Católica de Guayaquil RightFaculty: n.d.), 9.

organisms are trying to show how the international right of the human rights is applied in the context of surveillance.¹⁰⁶

In that sense, according to the Salvadorian constitutional order any international instrument is upon the Constitution of the Republic. In case of conflict between an international and constitutional right disposition, the latter will be a priority. However, the international treatments ratified in a correct way are considered laws of the Republic, and in case of being contradictory to a secondary internal legislation, the international treatment will prevail (Arts. 144-149 Cn).

2.2. Constitution of the Republic of El Salvador

2.2.1. Surveillance

2.2.1.1. Constitutional safeguards of the right to intimacy in the context of communication surveillance

It must be highlighted that the Salvadorian Constitution guarantees the personal and familiar right to intimacy, and to own image in its article 2, and it is established the compensation by moral damages. Afterwards, it is argued that only it could be practiced the record or the inquiry of a person to prevent or discover crimes or faults, and that a person's dwelling is inviolable, therefore, someone can go inside with the consent of the person that lives in there, by judicial order, by flagrant crime or imminent danger of its perpetration, or people's grave risk (Arts.19 and 20).

¹⁰⁶See: Principios Internacionales sobre la Aplicación de los Derechos Humanos a la Vigilancia de las Comunicaciones: <http://es.necessaryandproportionate.org/text>

Also, article 24 establishes that any kind of correspondence is inviolable, prohibiting the interference and the intervention of telecommunications, barring some exceptions that will be developed later.

At the discretion of the Constitutional Room of the Supreme Court of Justice, the right to intimacy is:

A fundamental right directly established in article 2 second incise of the Constitution, of which all people are right-holders, that consists in the preservation of the strictly internal and the private field (that includes the family) before non-consented intromissions of the State or particulars.

Therefore, the violation par excellence, but not unique, in the dynamic of the current societies, to the right to intimacy is the obtaining and/or undesired revelation of data or information related to such fields by third parties.¹⁰⁷

The ways through which intromissions can be done to fields protected by the right to intimacy are many, for example: opening of correspondence, interception of phone calls and electronic communication, exposure of bank information, disclosure of clinical records, illegal forced entries to houses, seizure of computer data, access to data in hands of third persons, etc. The Penal Code typifies some conducts that attempt against the right to intimacy of the communications, which will be mentioned and explained later.

According to the Constitution, all the people are right-holders to this right and enjoy of protection under any circumstance; this implies that they have the right of being protected

¹⁰⁷Constitutional Room. Supreme Court of Justice, Unconstitutionality sentence 91-2007, September 24, 2010.

against any unnecessary and disproportional attack, and just in case of extreme necessity and when it exists a legitimate public interest, or to protect and guarantee other fundamental rights, this right can be limited by law disposition. The Constitution establishes the premises to protect and avoid any intromission in the private life, recognizing the personal intimacy protection in article 2, dwelling protection (place of residence) in article 20, and the protection (inviolability) of the correspondence and telecommunications in article 24.¹⁰⁸

To protect this right, the constitutional jurisprudence has constituted the amparo resolution as guarantee to the protection of fundamental rights in general and consequently, the right to intimacy. In some cases, the Constitutional Division has also used as guarantee the habeas corpus, by which important lines and jurisprudential criteria to protect the people`s right to intimacy have emerged. There are some examples:

Sentence 255-2000¹⁰⁹ in which the petitioner established its petition in telephone recordings obtained by contradicting what is disposed in article 24 of the Constitution. Sentence 249-2002¹¹⁰, in which the petitioner based his constitutional pretension in the infringement to his right to the inviolability of the home, due to the order that authorized the searching and the forced entry was not motivated.

¹⁰⁸It is established that by no reason the privacy in the correspondence of any kind can be violated, also it prohibits the interference and intervention of the telecommunications, barring exceptions, that can be come from an investigation or judicial process, a point from which the secret of the correspondence and teleccomunications is guaranteed.

¹⁰⁹ Constitutional Room. Habeas Corpus sentence 255-2000 of September 14, 2000. <http://www.jurisprudencia.gov.sv/DocumentosBoveda/D/1/2000-2009/2000/09/11B4.PDF> (Retrieved: November 5, 2015)

¹¹⁰ Constitutional Room. Supreme Court of Justice. Habeas Corpus sentence 249-2002 of February 24, 2003, <http://www.jurisprudencia.gov.sv/DocumentosBoveda/D/1/2000-2009/2003/02/1D94.PDF> (Retrieved: November 5, 2015)

Sentence 35-2005 / 31-2007¹¹¹, in which the petitioner based his constitutional pretention in the violation to correspondence, for that reason it should not be valued to configure the guilt of the person concerned.

Data protection is a recent right, and it refers to “the right of individuals, groups, and institutions to determine by themselves when, how, and with what extension the information related to them is communicated to others.”¹¹² In that order of ideas, the right to data protection is understood as the sum of principles, rights, and guarantees established in favor of the people who could be harmed by the treatment of personal data.

On the other hand the informative self determination is the right that has as main objective to guarantee the people’s faculty to know and access to the information filed in data banks, as well as to control their quality, which implies the possibility of correcting and cancelling the inexistent data or those that are unduly processed, and to decreed their transmission.¹¹³ The informational self determination is an aspect of the right to data protection, while the habeas data is a guarantee, a procedural instrument, that is not a medium to promote the whole right to data protection, because it includes aspects that exceed the possibilities of the judicial actions by the summary and contradictory proceeding of Habeas Data.¹¹⁴ On the other hand, the computing freedom is defined as

¹¹¹Constitutional Room. Supreme Court of Justice. Amparo sentence 135-2005 / 32-2007 of May 16, 2008, <http://www.jurisprudencia.gov.sv/DocumentosBoveda/D/1/2000-2009/2008/05/30F7.PDF> (Retrieved: November 5, 2015)

¹¹² María Elena Hernández León, et al., “Habeas Data como mecanismo de protección de derechos relacionados con la autodeterminación informativa ante el tratamiento automatizado de datos personales” (Bachelor degree thesis, Jurisprudence Faculty, El Salvador University, 2006), 95-6.

¹¹³Oscar Puccinelli, *The Habeas Data* (Santa fe, Bogotá, Colombia: Temis, S.A., 1999). 66.

¹¹⁴ María Elena Hernández León, et al., “Habeas Data como mecanismo de protección de datos”, 99.

“the person’s faculty to control the personal information that it is concerned, which is contained in public and private records.”¹¹⁵

In El Salvador, the right to informational self determination is not regulated expressly neither in the Constitution nor the secondary legislation. To exercise this right, it is necessary to appeal in a temporary way to the right to intimacy regulated in article 2 of the Constitution, as the informative self determination is considered as a manifestation of the right to intimacy. Up to day, the juridical development of the informative self determination has been given through jurisprudential criterion, emitted by the Constitutional Division of the Justice Supreme Court in sentences coming from amparo resources.

The Salvadorian constitutional jurisprudence has established that the right to informational self determination is the application of the intimacy to the computing area and such right implies the protection of every person facing the possibility of accessing the personal information that can be found in computerized banks.¹¹⁶ The jurisprudence says that the right to informational self determination has two facets: “(i) a material one – preventive-, related to the individual’s freedom and autonomy related to its personal data, and (ii) an instrumental one –of protection and reparation- , referred to the control that protects and reestablishes it before arbitrary restrictions.”¹¹⁷

The Constitutional Division has established that the material dimension of the right to informational self determination pretends to “satisfy the people’s need of preserving their

¹¹⁵Ayala, J.M. et al. La protección de datos personales El Salvador. (El Salvador: UCA Editors, n.d.)

¹¹⁶Constitutional Room. Supreme Court of Justice, Amparo sentence 934-2007 of March 4, 2011, III part, 1A.

¹¹⁷Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012 of October 20, 2014.

identity before the revelation and use of data that concerned them, and protect them before the unlimited capacity of filing, relating and transmitting them.”¹¹⁸ In this facet the following rights are highlighted: “ i) The faculty of knowing, in the specific moment of the data collection, the kind of personal information that is going to be recorded, ii) the power of knowing the existence of automatic data banks, iii) the freedom of accessing the information, iv) the faculty of data rectification, integration, or cancellation to assure their quality and the access to them, and v) the power of knowing the transmission of personal data towards third parties.”¹¹⁹

Regarding the instrumental dimension, the Constitutional Division says that:

The informative self determination constitutes a right to the control of systematized personal information or contained in data computing banks or files. Before this surveillance need, this right owns multiple content and includes some faculties related to this controlling finality, which are manifested, basically in those organizational and procedural state measures that are essential for the protection of the material field of the right assured constitutionally.¹²⁰

In the unconstitutional sentence with reference 58-2007, it was confirmed that the field of protection of the right to informational self determination implies different faculties in favor of the person, which are recognized to:

¹¹⁸Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012.

¹¹⁹Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012.

¹²⁰Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012.

Control the usage of the personal information that is concerned to them, not only during its collection, but also during its treatment, conservation, and transmission. However, such protection is not unlimited, because people do not have absolute constitutional rights over their data. For that reason, people have to tolerate certain limits to their right to informational self determination, due to a general interest.¹²¹

2.2.1.2. Constitutional limitations to the right to privacy in the surveillance context

The right to intimacy is not an absolute right. It has effects and limitations like the protection of national security and public order, and the protection of rights and freedoms of the other people. The Constitution establishes that the State can restrict this right, if the enjoyment of the fundamental rights of third persons is in danger, or if it is the framework of the judicial investigation of certain illegal actions.

The Constitution of the Republic does not expressly regulate which is the legitimate criterion that the legislator has to restrict or limit the fundamental rights. Regarding this, the Constitutional Division establishes that:

(...) He can take into account the ethic-ideological surface that gives unity and sense to the juridical order (constitutional values), but it cannot demand that he does that, because his action time allotted (in the election of purposes, mediums and deliberations) allows him to chase any purpose that is not

¹²¹Constitutional Room. Supreme Court of Justice, Unconstitutional sentence 58-2007. March 8, 2013.

prohibited constitutionally or it is not manifestly incongruent with its axiological background.”¹²²

In the article 24, the Constitution establishes that only in exceptional cases the temporary intervention of any kind of telecommunications could be authorized judicially, in a written and motivated form, preserving the secret of the private that do not keep relation to the process. According to the Constitution, the information coming from an illegal intervention will not have a value. A secondary law regulates what it was established in such constitutional disposition, so it will be analyzed deeply later on.

On the other hand, at the discretion of Constitutional Room, the right to informational self determination could be restricted.

Due to the finality that pursues the collection and administration of personal data, which must be legitimate (constitutional or legal), explicit, and determined. For those effects, the legislator must take into account not only the proportionality principle, but also the citizen's general right to freedom before the State that can only be restricted by the public power when it will be indispensable for the protection of the general interest.¹²³

In that sense, the need of recognizing the right to informational self determination, as well as the need of a secondary legislation that regulates the habeas data or its inclusion in an existing one, as it could be the Constitutional Procedures Law, is of fundamental importance to not generating defenselessness situations.

¹²²Constitutional Room. Supreme Court of Justice, Unconstitutional sentence 84-2006. January 20, 2009.

¹²³Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012.

2.2.1.3 Access mechanism to justice in the surveillance context

In virtue of the jurisprudence emitted by the Constitutional Division, the dual nature of the right to informational self determination can be distinguished. Due to this duality, the Division establishes that:

(...) It can be deduced that their guarantee cannot be limited to the possibility of the exercise of pretensions from the individuals; in contrary, it must be assumed by the State through the creation of a more operative protection area in the legislative measures that develop it. In fact, the legislator is obligated to do the delimitations of the individual fields required by the instrumental aspect –protection and reparation- and, in that way, to configure a substantial part of the right to informational self determination.¹²⁴

The Constitution of the Republic in article 2 guarantees the right to honor, personal intimacy (the right to informational self determination), and to self-image; additionally, article 247 recognizes the amparo as a protection mechanism before the violation of this right. Due to the above, the amparo –in an additional way- turns into a guarantee to protect rights like as informational self determination and others.

In the Salvadorian legal system, as it was mentioned before, the habeas data guarantee is not recognized, as an instrument designed for the specific protection of the right to informational self determination. However, it does not mean that this right is totally unprotected. The Constitutional Division recognized that the habeas data does not have special regulation in El Salvador, but the protection to the right of informational self

¹²⁴Constitutional Room. Supreme Court of Justice, Amparo sentence 142-2012.

determination is feasible through the amparo constitutional process, no matter the nature of the entity to which their vulnerability is attributed.¹²⁵

In view of the above, it must be understood that every person that estimates violations to their right to intimacy and informational self determination, due to their inclusion into a criminal, credit or another nature of data base, and specially by the non authorized usage of their personal information, has the right of interposing the correspondent amparo resource before the Constitutional Division.

2.2.2. Anonymity and encoding

2.2.2.1. Constitutional Safeguards for the Protection of Encoding and Anonymity

Regulations directly related to the encoding techniques and the digital anonymity were not found neither in the Salvadorian Constitution nor in the constitutional jurisprudence. However, anonymity and encoding are necessary for the effective exercise of the right to intimacy and expression freedom recognized in the Constitution and developed in the constitutional jurisprudence.

a) Encoding

The encoding is the mathematic process of using codes and passwords to communicate us in a private way. Along the history, people have used encoding methods each time more sophisticated to send messages among themselves with the objective that the messages cannot be read by any person, just the addressees. Nowadays, computers are able to do a more complex and safe encoding¹²⁶.

¹²⁵Constitutional Room. Supreme Court of Justice, Amparo sentence 934-2007. March 4, 2011, part III 1.B.a.

¹²⁶Rodriguez, Katitza, Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos sobre la promoción y protección del derecho a la libertad de opinión y de expresión (International: EFF, 2015), 37.

International experts uphold that in the current digital environment, the possibility of using the encoding technology could be considered as a pre requisite of the exercise of the rights to intimacy and expression, because in the absence of encoding the communications can be easily intercepted. The Internet intermediaries are often in conditions of possessing and reading all the communications that go through their webs, relating encoding with protection to intimacy. On the other hand, encoding protects the freedom of expression directly when it impedes that automatic systems of censorship block the access to a particular content, or even to specific key words. In addition, it protects it indirectly when saving the anonymity of the communications and sources of its users.¹²⁷ In this sense, the United Nations Reporter on Freedom of Expression, David Kaye, stated that:

Currently, encoding and anonymity are the main vehicles for the online surveillance, providing users with a medium to protect their privacy, and giving them the power of surfing, reading, developing, and sharing opinions and information without interferences and supporting reporters, organizations of the civil society, members of ethnic minorities, and religious groups, people who is pursued due to their sexual orientation or gender identity, activists, academics, artists and others, the right to expression and freedom of opinion(...) encoding and anonymity and surveillance concepts behind them offer the necessary privacy and security to exercise the right to expression and freedom of opinion in the digital era. This guarantee can be essential for the

¹²⁷Rodriguez, Katitza, Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos

exercise of other rights, including economic rights, privacy, due processes, freedom of assembly and peaceful associations, right to life, and physical integrity.¹²⁸

In El Salvador, encoding is constitutionally protected through the freedom of expression, as it is fundamental right acknowledge and protected in article 6. According to the Salvadorian Constitution, it includes the right that every person has, without distinction, to express and spread their thoughts freely. This means that it is not necessary any study or consideration of a fact or anticipated matter, ruling or previous judgment, and it is not necessary to perform a guarantee to exercise this right.¹²⁹ On the other hand, the freedom of expression is closely related to the freedom of press and the right to information, because they are fundamental for the formation of the public opinion.¹³⁰

For its part, the Constitutional Division considers through their jurisprudence that fundamental rights are wide regarding their content, and the protection that must be given to them by the State's institutions must be so wide.¹³¹ In that sense, this broad

¹²⁸Kaye, D. "Report of the Special Rapporteur on the promotion and protection of the right of opinion and expression freedom" Human Rights Council. Twenty-ninth sesión, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session29/Documents/A.HRC.29.32_AEV.doc (Retrieved: May 22, 2015)

¹²⁹El Salvador "Republic Constitution" Legislative Assembly (1983) article 6: Every person can express and spread freely their thoughts if it does not subvert the public order, and if it does not hurt the moral, the honor, and the private life of the others. The exercise of this right will not be subject to a previous test, censorship or caution, but those that making use of them break the laws will respond for the crime that they do.

¹³⁰Sergio García Ramírez and Alejandra Gonza, *Libertad de Expresion en la jurisprudencia de la Corte Interamericana de Derechos Humanos*, (México D.F.: Interamerican Court of Human Rights, Commission of Human Rights of the Federal District, 2007), 17.

¹³¹Constitutional Room, Supreme Court of Justice, Unconstitutional sentence 91-2007 of September 24, 2010. http://www.csj.gob.sv/Comunicaciones/Boletin_informativo/2010/Septiembre_2010/Sentencia%2091-2007%20Art%20191%20con%20voto%20razonado.pdf (Retrieved: November 5, 2015) Regarding on the collision of fundamental rights, the Room argues that to look the balance between them it must be a deliberation case by case, because it does not exist in the Cn. a hierarchy, in contrary, all the rights have the

interpretation about the protection of fundamental rights could be good fundamental to use encoding techniques, in order to directly protect their intimacy, but also in an indirect way, their right to be informed and to create an opinion, as a previous and necessary step to express themselves.

b) Anonymity

Anonymity can be defined as to act or communicate without using or presenting one's own name or identity, or to act or communicate in a way that protects the determination of our own name or identity, or using an assumed or invented name that cannot be associated necessarily with the legal or habitual identity of a person.¹³²

Anonymity can be necessary for those who are worried about political and economical retributions, harassment, or even threats to their lives, which will depend on the social political situations in which they may be and the quality that they have or the role they play. In that sense, anonymity is linked to the need of protection of protection that people have.¹³³ The report of the Former Reporter for Freedom of Expression of the United Nations, Frank La Rue, says that:

The communication's anonymity is one of the most important breakthroughs facilitated by Internet, that allows people to express freely without fear of retribution or reprisals (...) The right to intimacy is an essential requisite for the realization of the right to freedom of expression. The incorrect

same strength and people can analyze over other before a concrete situation.

¹³²Rodriguez, Katitza, Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos, 3.

¹³³Rodriguez, Katitza, Anonimato y Cifrado: Comentarios enviados a la Relatoría Especial de la Comisión de Derechos Humanos

interference in people`s intimacy can limit in a direct and indirect way the free interchange and evolution of ideas. The restrictions of the communication`s anonymity, for example, have an intimidating effect in the victims of any kind of violence and abuse, that could be reluctant to denounce them due to a fear of a double victimization (...) The States must abstain from forcing users to their identity documents as previous condition to obtain access to communications, including online services, cybercafes, and cell phones.¹³⁴

The Constitution does not consider any disposition that directly addresses the right or the possibility of keeping anonymity, and neither direct limitations are identified. In a general way, the Salvadorian State has the obligation of giving protection to people and assure the enjoyment of the Human Rights; for that reason, it must provide the necessary mechanisms to accomplish them and do not be vulnerable. Therefore, it must follow the constitutional precept that nobody is forced to do what the law does not order, neither to depriving of what the law does not prohibit. Both the encoding and the anonymity can happen according to our Constitution (Art. 8). Even more, as we mentioned previously, the protection of the rights on part of the state institutions must be broad.¹³⁵ In that sense, this broad interpretation about the protection of fundamental rights could serve as

¹³⁴La Rue, F. "Informe del Relator para la Libertad de Expresión de Naciones Unidas", (Washington D.C.: General Assembly of United Nations 2013), <http://daccess-dds-ny.un.org/doc/UNDOC/gen/G13/133/06/PDF/G1313306.pdf> (Retrieved: November 12, 2015) paragraphs 23, 24 and 88.

¹³⁵Constitutional Room, Supreme Court of Justice, Unconstitutional sentence 91-2007 of September 24, 2010. http://www.csj.gob.sv/Comunicaciones/Boletin_informativo/2010/Septiembre_2010/Sentencia%2091-2007%20Art%20191%20con%20voto%20razonado.pdf (Retrieved: November 5, 2015) Regarding on the collision of fundamental rights, the Room argues that to look the balance between them it must be a deliberation case by case, because it does not exist in the Cn. a hierarchy, in contrary, all the rights have the same strength and people can analyze over other before a concrete situation.

fundament for the right that every person has to express and create an opinion anonymously.

2.2.2.2. Constitutional Limitations to Encoding and Anonymity

There are no specific or general rules that could limit the encoding and the anonymity in the constitutional text.

2.2.2.3. Access Mechanisms to Justice in the Encoding and Anonymity

Context at a Constitutional Level

At the discretion of the Constitutional Division, every fundamental right can generate one or many kinds of obligations on part of the State, within it can be emphasized: i) to respect- do not violate the rights by actions or omissions-, ii) to protect- to ensure that particulars do not violate the rights-, iii) to guarantee- adopt measures in case of people are incapable of satisfying the right by themselves-, and iv) to promote- adopt far reaching measures to strengthen the right.¹³⁶

The protection that the Constitution of the Republic grants can be applied by the constitutional amparo resource (in regards to a particular person or the State), or the unconstitutionality process when a regulation violates the constitutional rights related to the freedom of expression as anonymity and encoding.

If the extra limitation in the exercise of the right to freedom of expression by a third person exists, violates rights as intimacy, honor, and self-image of other people, the

¹³⁶Constitutional Room, Supreme Court of Justice, Unconstitutional sentence 91-2007 of September 24, 2010

juridical consequence will be to commit a crime; for that reason, the person that violated such right can be prosecuted in a criminal trial, in which she/he can be criminally accountable for.

Experiencias, modelos y perspectivas sobre el derecho a la participación en el Sistema Penal Juvenil

Módulo de entrenamiento

Tiempo estimado: 8 horas

Introducción

El derecho a la participación representa un principio fundamental de la Convención de las Naciones Unidas de 1989 sobre los Derechos del Niño, ratificados por todos los miembros de Europa. Últimamente, el Consejo de Europa incorporó dicho principio en sus propuestas para mejorar el Sistema Penal Juvenil y así ser más “amigable con los niños”. El artículo 12, donde se expresa el derecho de los niños a ser escuchados, puede verse como una disposición, la cual le da acceso al sistema integrado propuesto por la Convención. Al mismo tiempo, al considerar el propósito estructural de los Sistemas de Justicia Juvenil, la participación no debe ser considerada solo como un medio, sino también como un fin en la rehabilitación de las diversas medidas aplicadas. El derecho y la posibilidad de que el niño participe activamente en la sociedad y en la determinación de su futuro, representan un gran reto en todos los sectores de la sociedad, así como en la tan importante relación entre adultos y niños. El ámbito particular de la Justicia Juvenil y su aplicación concreta, propone preguntas significativas relacionadas con este principio, especialmente derivadas de la posible situación de coerción, la cual puede derivarse de la aplicación de la ley.

Las posibles respuestas, interpretaciones y modelos derivados de esta pregunta pueden conducir a determinar perspectivas nuevas y útiles para los sistemas de justicia juvenil, y así reforzar el grado de cumplimiento con la legislación internacional; así también, para mejorar la capacidad de proveerle a los niños de beneficiarse con la posibilidad de tener un sistema más capaz de proponer formas de rehabilitación más efectivas y relevantes de acuerdo con lo que se considera la función principal de cualquier medida de justicia que involucre a los niños.

Objetivos de aprendizaje

Con base en la elaboración y la búsqueda empírica dirigida por los sistemas de justicia juvenil de Italia, España y Bélgica; el seminario propuesto se concibe como una ocasión de intercambio para profesionales y otros actores involucrados en el Sistema de Justicia Juvenil, para profundizar en la comprensión teórica y práctica del derecho a la participación, en el contexto de los Sistemas Judiciales Juveniles y sus acciones.

Este seminario de capacitación de un día tiene como objetivo verificar la posible integración del programa de los derechos de los niños con las prácticas, perspectivas y modelos actuales, que traerán los participantes. En especial, el seminario tiene los siguientes objetivos específicos:

1. Compartir y definir cómo la participación puede considerarse como un principio clave en la promoción de un enfoque basado en los derechos de los niños en el Sistema de Justicia Juvenil.

2. Identificar los obstáculos, las oportunidades, los retos, los recursos y las acciones para llevar a cabo efectivamente el derecho a la participación dentro del Sistema de Justicia Juvenil y sus acciones en relación con las diferentes zonas y áreas de formación de los participantes de la capacitación.

3. Desarrollar oportunidades de cooperación y seguimiento entre mandatos complementarios profesionales desde una perspectiva de mayor integración de los sistemas de protección para los niños.

Grupo meta

El seminario está dirigido a profesionales que se encuentran en contacto con niños que tienen conflictos con la ley, y que trabajan en el área de justicia juvenil y protección de los niños, incluyendo abogados, jueces, trabajadores sociales, profesores, psicólogos, directores y personal de centros de reclusión y guarderías, policías, guardas de seguridad y voluntarios. Esta capacitación también tiene como objetivo llegar a otros miembros de la comunidad, es decir, profesionales como policías, actores institucionales y responsables políticos. El constituir grupos de capacitación multidisciplinarios para desarrollar mandatos distintos es altamente recomendado.

Formato de la capacitación

Este módulo (7.5-8 horas) está dividido en dos bloques integrados y paralelos:

Una sesión enfocada en la teoría y varios conceptos (4 horas), la cual proporciona el marco teórico y conceptual de los derechos de la niñez, la participación y el sistema de

justicia juvenil. Se usarán estándares internacionales y europeos como herramienta de referencia para determinar el marco teórico y práctico para la implementación.

Una sesión dedicada a prácticas y actividades interactivas (3-3.5 horas), la cual se enfoca en experiencias reales y estudios de casos dirigidos a identificar obstáculos, al mismo tiempo que se determinan orientaciones e indicaciones prácticas sobre cómo implementar y mejorar la participación significativa de los niños en el campo de la justicia juvenil.

Consideraciones metodológicas

El seminario de capacitación utiliza una metodología participativa y un enfoque basado en lo holístico, transcultural y en los derechos humanos, el cual sitúa a las personas en el centro de su acción y considera cuidadosamente la relación con el contexto que les rodea. Desde esta perspectiva, el facilitador debe acoger, valorar e integrar las experiencias de los participantes durante la sesión. Para este propósito, los asientos serán acomodados en forma de círculo para así permitir una mayor interacción grupal. Esto puede considerarse metafóricamente como un método para construir el conocimiento, y poder enfocarse en las diferentes experiencias.

La metodología está inspirada en la teoría del “aprendizaje del adulto”, la cual vincula lo que ha sido aprendido con el mundo real a través de análisis empíricos, empezando por el hecho de que las personas aprenden mejor a través de la discusión, compartir experiencias, ejercicios prácticos, descubrimiento y análisis. Cada método requiere un número limitado de participantes, idealmente 20 personas como máximo. El facilitador

puede hacer uso de un rota folio para trazar todos los elementos relevantes que van a constituir el pensamiento común resultante.

El enfoque hacia los participantes debe permitir un dialogo fructífero entre los diferentes sectores, y una comparación entre la teoría y la práctica de la participación de los niños en el sistema de justicia juvenil. El objetivo es generar conocimiento entre todos y darle valor a cada experiencia. Las principales preguntas que orientan la conducta del seminario son: a) ¿Cómo el sistema de justicia juvenil puede basarse en el espíritu de la convención de las Naciones Unidas?, b) ¿Cómo funciona la participación el niños en el sistema de Justicia Juvenil?, c) ¿Cómo la participación se puede garantizar y hacer más eficaz y apropiada?

El contenido de la capacitación está basado en un enfoque sistémico, según el cual los asuntos a tratar son tan importantes como la relación entre ellos dentro del contexto que los rodea. Para tratar el principio de la participación, La Convención de los Derechos de los Niños se utilizará como referencia, y el artículo 12 será el punto de partida. Sin embargo, el artículo 12 se leerá en conjunto con otros artículos de la Convención de los Derechos de los Niños, como una plataforma sistemática capaz de orientar políticas, estrategias y acciones que ven a los menores de edad como miembros activos de la sociedad capaces de tomar decisiones. El facilitador debería resaltar la conexión y la interrelación de los diferentes elementos que van a surgir durante la sesión. En este sentido, es importante que los participantes aprendan a entender su mandato como una parte integral de un sistema amplio y a colocarla como corresponde.

Lista de contenidos de la capacitación

- La Convención de las Naciones Unidas sobre los Derechos de los Niños y el artículo 12
- Necesidades/derechos de continuidad
- Participación en Normas y Directrices Internacionales
- Estructura Jurídica Nacional
- Justicia amigable con la niñez
- El principio de la participación: una interrelación de artículos (Convención de los Derechos de los Niños como contexto)
- Enfoque sistemático

Actividades de capacitación y esbozo de la agenda

PRIMERA SESIÓN: Entendimiento del enfoque sobre los derechos de los niños con base en el principio de participación en el campo de la justicia juvenil

Tiempo estimado: 4 horas

- **Bienvenida e introducción al seminario (15 min)**

Bienvenida a los participantes e introducción a los antecedentes del seminario de capacitación por medio de la presentación del Proyecto Twelve, con base en la siguiente estructura: por qué, qué, cuándo, quién y cómo. Es importante aclararles a los participantes el propósito del seminario y cómo éste se concibe como parte de un proceso (ver las razones mencionadas anteriormente) que pueden informar o generar acciones futuras y cambios en los contextos en los cuales ellos operan. Asimismo, puede ser de

gran utilidad plantear algunas preguntas que inspiraron al Proyecto Twelve, tales como:
¿Se puede hablar de participación en situaciones de privación, semi-privación o limitación de libertad? ¿Es la participación solo la adhesión a un proyecto construido por las instituciones? ¿Es la participación solamente formal o procesal o, por el contrario, puede ser sustancial?

El facilitador continúa con la presentación de la agenda, objetivos y expectativas del seminario. Además, escribe los objetivos en una hoja del rota folio y la coloca en la pared. Al final de la sesión, los participantes verificarán si dichos objetivos fueron alcanzados a través de una evaluación conjunta. También se debe enfatizar que el método es tan importante como el contenido, al hacer referencia a la forma en que están acomodados sus asientos y a las oportunidades de interacción que esto puede generar.

–Introducción y ronda de presentaciones (30 min)

El facilitador pide a los participantes que se presenten a sí mismos a través de un método que conecta la presencia de cada uno de ellos con la dimensión biográfica basada en elementos experimentales, como forma de resaltar la individualidad de la persona. La intención es evitar enfocarse solamente en los roles y zonas profesionales, y crear un ambiente que considere a cada persona como un único producto de las experiencias de la vida. Para este propósito, el facilitador invita a cada participante a compartir con el grupo una palabra clave que crean que es importante para incrementar la participación de acuerdo con su experiencia y, después, a presentarse brevemente a sí mismos, así como a su zona profesional. El facilitador escribe todas las palabras clave en el rotafolio y luego coloca la hoja en la pared.

Este ejercicio también se usa como una actividad para romper el hielo, la cual más allá de permitirles a los participantes conocerse mejor entre ellos, ayudará a presentar el contenido del curso mientras se promueve un ambiente de capacitación apropiado.

–Conceptos clave y consideraciones relacionadas con la noción de participación (20 min)

El facilitador introduce algunas reflexiones sobre la noción de participación, y enfatiza que el seminario propone una concepción comprensiva de la participación, la cual puede ser sintetizada a través de: Reconocimiento, Responsabilidad y Rehabilitación.

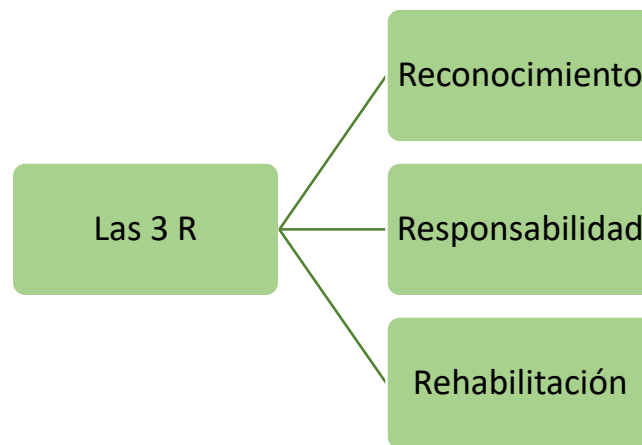


Figura 1: Las 3 R

RECONOCIMIENTO: Las oportunidades de participación le permiten a los menores de edad, profesionales y oficiales en el campo de la justicia juvenil, interactuar y colaborar, y así demostrar respeto entre ellos y ganarse el reconocimiento de los demás. La participación significativa de los niños le permite a los profesionales y a los oficiales reconocer e incrementar los recursos positivos individuales de los niños; asimismo, le

puede ayudar al niño a comprender y reconocer mejor su personalidad, por ejemplo su propio “yo”.

RESPONSABILIDAD: Las oportunidades de participación le permiten a los menores ser protagonistas de sus propias vidas hacia la autodeterminación y la autonomía, incluso en el contexto complejo de la privación de la libertad. Los niños que tienen la posibilidad de comprometerse y de ejercer sus derechos de participación, tienen mayores oportunidades de adquirir un creciente sentido de responsabilidad.

REHABILITACIÓN: Los procesos de participación juegan un papel fundamental en la rehabilitación e inclusión social de los menores que tienen conflictos con la ley, permitiéndoles (re)crear lazos y relaciones positivas entre los niños y la sociedad. El propósito de la rehabilitación e inclusión social es activar y estimular a la niñez y a las personas jóvenes para que sean personas activas en la comunidad, contribuir con sus propios recursos y habilidades, y asumir un rol constructivo en la sociedad. Esto se puede lograr debido a la naturaleza recíproca del proceso de rehabilitación, el cual crea un sentimiento de pertenencia y le permite a los niños sentirse aceptados por la comunidad, de la cual ellos “son parte”.

El facilitador presenta la relación de la noción de participación con una serie de conceptos clave y consideraciones con el objetivo de crear y compartir un contexto de referencia general.



A. DERECHOS HUMANOS: La participación es la clave para abordar una perspectiva de derechos humanos que esté conectada con el reconocimiento de cada persona y su autodeterminación. Es un principio fundamental. La participación no solo significa escuchar la opinión de esos niños, sino también tomar en cuenta cómo estos pueden influir en el ambiente; esto puede hacerse solo si son reconocidos y escuchados.

En general, existe poca participación no solo por parte de las personas jóvenes, sino también de las personas adultas. El hablar sobre la participación es una gran oportunidad para que los principios de la Convención de los Derechos de los Niños se fortalezcan.

B. PERTINENCIA: Las políticas, medidas y acciones que responden a la singularidad y peculiaridad de cada situación, son apropiadas. En otras palabras, las políticas, las medidas y las acciones apropiadas que están dirigidas a la niñez pueden asegurar las condiciones para el desarrollo de respuestas y soluciones a la medida. Al considerar la participación como un elemento clave de políticas, medidas y acciones dirigidas a la niñez se puede contribuir a proponer mejores respuestas a la singularidad y peculiaridad de cada situación y a reconocer la individualidad y las historias personales. La participación habilita la toma apropiada de acciones, crea las condiciones adecuadas para implementar y alcanzar objetivos, y establece una relación apropiada entre las personas adultas y los menores de edad.

C. EFECTIVIDAD: Efectividad significa transformar un objetivo en una acción que produzca un resultado consistente con la meta inicial. En este punto, la participación puede ayudar a que el sistema se vuelva más efectivo, sobre todo cuando llega a la justicia juvenil y al ámbito de rehabilitación de las medidas criminales. La participación puede ayudar también a los profesionales a entender si sus acciones están funcionando y a adaptarlas como corresponde.

D. INCLUSIÓN: La participación está estrechamente relacionada con el principio de la no discriminación, ya que uno de sus propósitos es considerar a la persona como parte de algo (en conjunto con la definición etimológica de PARTICIPACIÓN:

(Etimológicamente “participación” se deriva del Latín Antiguo participatio (n-), “compartir en”, del verbo participare, basado en pars, part- “parte”+ capere “tomar”. Participación significa tomar parte o tener una parte, como con otros). Los menores involucrados en la justicia juvenil son usualmente aquellos que han sido excluidos de la sociedad o quienes no han sido beneficiados con el apoyo y servicios a los que ellos tienen derecho, por lo que entonces tienen una participación nula o equivocada. ¿Es el sistema de justicia juvenil capaz de ser inclusivo y de ofrecer procesos de rehabilitación que puedan dirigir a la niñez de regreso a la sociedad y al sistema positivamente? El propiciar la participación significativa es una clave importante para hacer posible un nuevo inicio con mejores esfuerzos para escuchar la perspectiva de los niños y tomarlos seriamente en cuenta. Para los menores de edad es ser capaces de participar en un contrato social y en la realización de su propia historia pero de una manera diferente.

E. REHABILITACIÓN: El sistema de justicia juvenil trabaja en dirección a la rehabilitación y la inclusión social de los menores que se encuentran en conflicto con la ley. Es un sistema que puede propiciar la participación de la niñez de una manera diferente. La participación significativa fortalece el alcance de la rehabilitación; dado que la capacidad de participar puede ser especular a la capacidad de rehabilitar. El enfoque de la rehabilitación se concibe en contraste con el enfoque punitivo. La participación puede ayudar en la recalificación de la noción y del ámbito de la rehabilitación.

F. ECOLOGÍA: La participación enriquece la ecología de los sistemas. El sistema de protección de la niñez está actualmente fragmentado, lo cual determina su efectividad y su pertinencia. La participación es una forma de abordar esto al restablecer la relación entre

los componentes. Por lo tanto la participación puede ser considerarse dentro de un sistema de relaciones. En este sentido, es importante adoptar un enfoque ecológico, en el cual existen niveles y temas diferentes, pero que están interconectados. La participación puede ser un elemento importante para calificar las relaciones entre los elementos del sistema y las competencias y habilidades que operan dentro de el.

G. CREDIBILIDAD: ¿Hasta qué punto el sistema de justicia juvenil es confiable para los niños? El nivel de participación efectiva y significativa debe ser proporcional al grado de credibilidad que el sistema sea capaz de generar. Sólo un sistema creíble es capaz de producir acciones eficientes y apropiadas. Es importante considerar que, en algunos casos, las perspectivas de las personas menores de edad y del sistema sobre lo que está bien y lo que está mal, pueden ser diferentes. La participación puede crear espacios de entendimiento e intercambio entre las diferentes personas y las posiciones. La relación entre ley-legitimidad-credibilidad se puede explorar más a fondo a través de la noción de la participación.

H. PREVENCIÓN: La reiteración y la reincidencia es una de las características presentes en los sistemas y la participación es una forma de abordarla. Algunos menores de edad han estado probablemente en conflicto con la ley porque pertenecen a ciertos grupos marginados, han sido abandonados por el sistema de bienestar social o solamente participaron de una manera errónea. La escucha y la participación pueden dirigir a acciones más eficientes y apropiadas, así como a prevenir la delincuencia juvenil y la reincidencia antes, durante y después de los procedimientos criminales. Esto significa

también extender la participación del contexto de una familia cerrada a una comunidad de niños más amplia.

El facilitador deja a quienes participan la posibilidad de hacer comentarios o preguntas.

La Convención de Derechos de los Niños y el enfoque basado en los derechos de los niños (45 min).

Esta sección tiene dos funciones. El primer propósito es mostrar la continuidad y la interconexión entre “las necesidades” y “los derechos”, y el segundo es introducir el marco teórico legal internacional como mapa de referencia para el desarrollo y el emprendimiento de intervenciones y acciones con un enfoque holístico, sistemático y preventivo.

El facilitador propone un ejercicio al grupo, el cual consiste en una lluvia de ideas sobre las necesidades de un niño. El facilitador anota las respuestas del grupo en el rotafolio y les reitera que el propósito del ejercicio es identificar las necesidades que cualquier menor de edad puede tener, sin describir o categorizar al niño. Con base en las respuestas obtenidas, el facilitador enfatiza cómo cada necesidad individual identificada está garantizada por la provisión legal y el reconocimiento de un derecho a nuestra niñez. El cambio de una lógica de necesidades a una lógica de derechos es extremadamente importante, ya que lo primero prevé respuestas discretas y lo último es aplicable.

Desde una perspectiva con base en los derechos, las personas menores de edad ya no pueden ser identificadas como una necesidad, pero sí como miembros activos y poseedores de derechos. Un marco fundado en los derechos de la niñez introduce la

identificación y la aceptación de las responsabilidades de los diferentes actores que cumplen un papel desde una perspectiva sistemática. Por consiguiente, la Convención de los Derechos de los Niños debe entenderse como un sistema de una naturaleza multifacética compuesto por artículos y principios interrelacionados.

Para simplificar el entendimiento de la Convención y su uso como marco operacional, el facilitador asociará las necesidades identificadas con los derechos proporcionados a los niños, inclusive en el contexto de la justicia juvenil, y por medio de una simple agrupación de la convención dividida en cuatro dimensiones: sobrevivencia, desarrollo, protección y participación:

Sobrevivencia (art. 23-27 Convención)

En esta área se toman en cuenta todas las necesidades biológicas relacionadas con el desarrollo personal, tales como: disponibilidad de alimento, vivienda y cuidado médico.

Palabras clave

Comida, vivienda, cuidado de la salud, condiciones de salud, servicios básicos para las personas menores de edad

Desarrollo (art. 27-31 Convención)

En esta área se consideran todas las necesidades relacionadas con el desarrollo cognitivo, emocional, social y cultural de la persona. En esta categoría se incluye: necesidades relacionadas con la educación y el entrenamiento, mediación cultural y valorización de la identidad cultural y religiosa, relaciones sociales y necesidades de recreación unidas al derecho de compartir actividades culturales, artísticas y juegos con sus pares.

Palabras clave

Escuela, trabajo, juego, proyectos de vida, identidad cultural, antecedentes personales, respeto, valorización



Protección (art. 19-22 y 32-37 Convención)

En esta área se toman en cuenta las necesidades actuales y potenciales derivadas de la vulnerabilidades específicas de una persona en la primera etapa de su vida, proporcionalmente a sus propias capacidades de evolución. La noción de protección también incluye los niveles de prevención, rehabilitación y empoderamiento. En particular, se presta atención especial a los fenómenos actuales o potenciales relacionados con tratos inhumanos y degradantes, negligencia, castigos abusivos, abusos físicos y mentales, violencia, tráfico ilegal, explotación sexual y laboral.

Palabras clave

Lugar seguro, identificación, entendimiento, escucha, mediación cultural, destrezas profesionales, familia, grupo de colegas

Participación (art. 12-17 Convención)

En esta área se toman en cuenta todas aquellas necesidades relacionadas con la posibilidad de ejercer las competencias de cada uno para determinar la propia contingencia y condiciones futuras. En esta categoría se incluyen las prerrogativas relacionadas con el ejercicio de los derechos y funciones, condiciones relacionadas con el estado y la ciudadanía, la posibilidad de acceso a la información relevante y comprensiva, expresar opiniones que son tomadas en cuenta.

Palabras clave

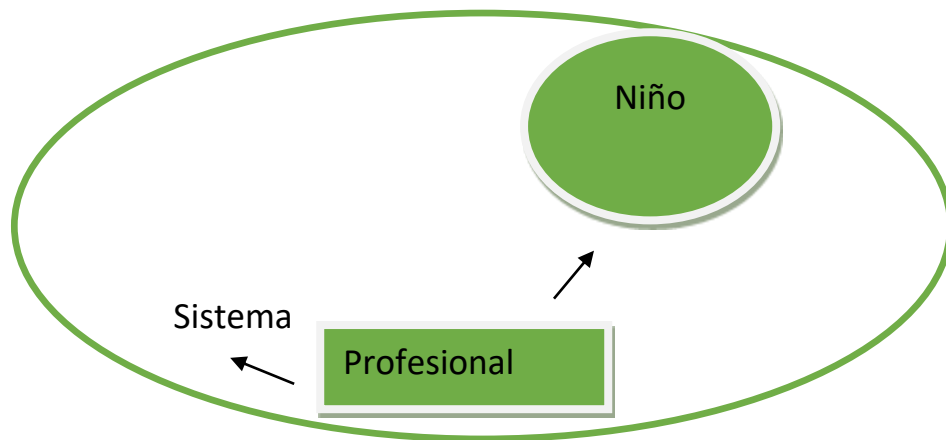
Información, permiso de residencia, asistencia legal, mediación cultural y lingüística, derechos, orientación, competencias profesionales

El facilitador debe enfatizar la importancia de la dimensión de la participación, la cual es la gran revolución de la Convención de los Derechos de los Niños. Esta presenta por primera vez el reconocimiento de las personas menores de edad como sujetos activos que contribuyen a la sociedad, no sólo al considerar sus vulnerabilidades, sino también sus capacidades y recursos positivos.

En relación con esto, el facilitador presenta el Triángulo de Karpman, el cual es un modelo que ayuda a interpretar la narrativa principal, de acuerdo con cada situación puede ser interpretada siguiendo esta triangulación: víctima- agresor- salvador. Un enfoque basado en los derechos de los niños significa destruir esta lógica y evitar los estereotipos, para solo considerar lo que hace única a cada persona y situación.



Los profesionales pueden jugar un papel clave al hacer las prácticas más similares al enfoque basado en los derechos de los niños dentro del sistema de justicia juvenil, el cual incluye mejorar la participación de los menores de edad. Los trabajadores y profesionales pueden considerarse como vectores de sentido, así como vectores de cambio en relación con el menor y con el sistema. El facilitador sugiere acciones que los profesionales que trabajan con los menores de edad que tienen conflictos con la ley pueden adoptar. Por ejemplo: los profesionales pueden obtener información sobre el historial de los menores y su situación personal, así como sobre sus intereses y opiniones para lograr una comunicación significativa y hacer propuestas que tengan sentido para ellos.



– **Grupo de discusión (40 min)**

El facilitador deja un espacio para preguntas, comentarios y discusión; en caso de que los participantes planteen cuestiones específicas durante las secciones previas. El facilitador puede utilizar este momento para resumir y relacionar los diferentes elementos que hayan surgido, para asegurarse que los participantes tengan una perspectiva clara y

general de los temas expuestos. El facilitador puede preguntarle a los participantes cuáles son las lecciones clave que han aprendido de la discusión y que pueden ser aplicadas en la vida real y en situaciones laborales.

–Participación de los niños y la justicia juvenil en el marco legal internacional, europeo y nacional (60 min)

El propósito de esta sección es estructurar y sistematizar la información impartida hasta el momento y vincularla con el sistema de justicia juvenil y recalcar la importancia otorgada por el marco normativo del principio de la participación.

El facilitador puede hacer uso de una presentación de Power Point o una herramienta similar (por ejemplo Prezi). La presentación empieza con una recapitulación de la Convención, haciendo énfasis en sus cuatro principios (los mejores intereses del niño, la no discriminación, la sobrevivencia y el desarrollo y la participación) y el artículo 12. Luego, se referirá a herramientas más específicas, tales como los Comentarios Generales 10 y 12, los estándares internacionales, los estándares regionales, (en particular las directrices del Consejo de Europa para una justicia amigable con el menor de edad) y la legislación nacional (Ver las presentaciones de Power Point adjuntas).

Se le debe dar énfasis en particular al Comentario General No. 10, ya que contiene los pasos a seguir para desarrollar e implementar una política de justicia juvenil comprensiva; y al Comentario General No. 12, sobre el derecho de los niños a ser escuchados, en el cual el Comité de los Derechos de los Niños recomienda que la participación de los menores de edad debe reunir los siguientes requerimientos para que sea efectiva y significativa:



Después de la presentación, el instructor debe dejar espacio para preguntas y comentarios.

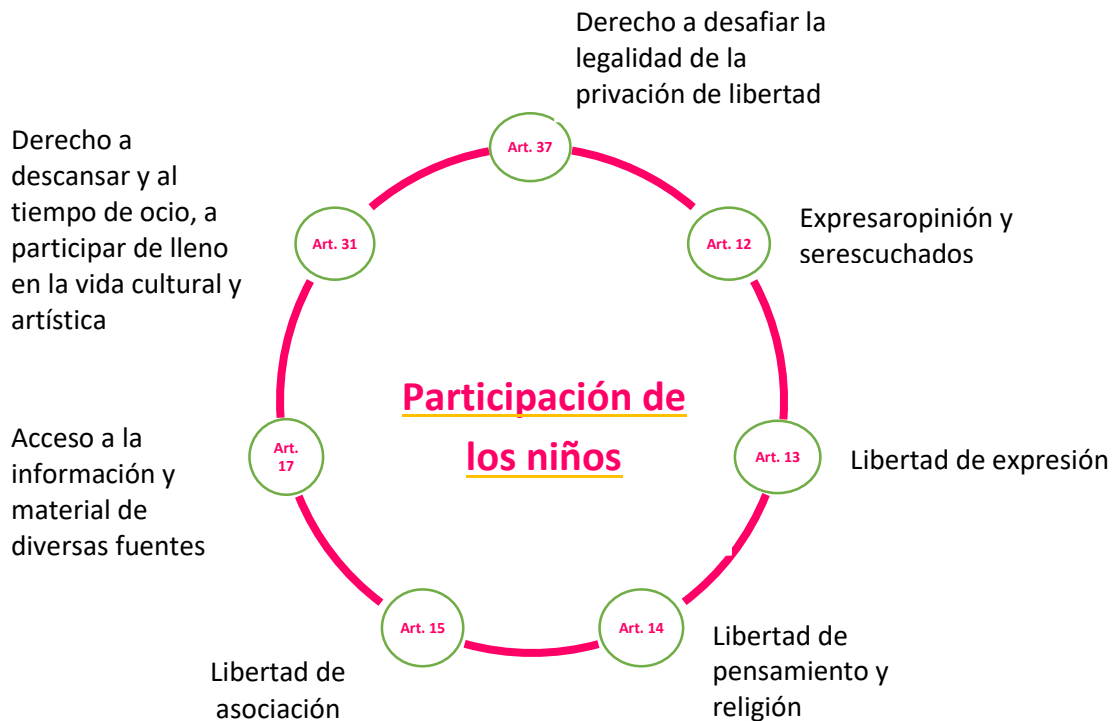
Sesión 2: Aplicación práctica del principio de participación bajo un enfoque basado en los derechos de los niños en el campo de la justicia juvenil.

– **El “ Modelo Twelve” en la participación de los niños (60 min)**

El objetivo de esta sección es presentar el artículo 12 como punto de entrada al enfoque holístico y de empoderamiento promovido por la Convención: el reconocimiento de las personas menores de edad como poseedores de derechos. La Convención no define o menciona el “derecho a la participación” como tal. Sin embargo, el artículo 12 y otros artículos relacionados con la Convención, se interpretan en conjunto como los “derechos participativos de los niños”; debido a que informan de manera mutua un conocimiento de la agencia de los menores de edad como miembros activos de la sociedad.

Para entender el significado trascendental y las implicaciones del artículo 12, es necesario tener una visión más amplia de todo el sistema de derechos humanos, tal como lo proclama la Convención, los cuales están todos interrelacionados e indivisibles; por lo que crean una red cerrada de estándares para la promoción holística y la protección de los derechos humanos. Como principio general, el derecho de los niños a ser escuchados y tomados en cuenta está estrechamente entrelazado con otros principios generales de la Convención: el derecho a la no discriminación (art. 2), los mejores intereses de los menores de edad como consideración primaria (art. 3), y el derecho a la vida, sobrevivencia y desarrollo (art. 6). Estos artículos son un asunto transversal y significativo para la interpretación de cada derecho bajo la Convención y su implementación holística.

Además, existen otros artículos específicos de la Convención que son relevantes para los derechos de participación de la niñez. El facilitador usará el siguiente diagrama para presentar y discutir cómo se relacionan entre ellos y cómo su implementación efectiva podría mejorar la participación de las personas menores de edad en conflicto con la ley.



Participación de los menores de edad: algunos de los derechos y principios clave bajo la Convención

El facilitador debe presentar cómo estos artículos pueden ayudar a calificar la noción de participación y, además, cómo su respeto debe analizarse con gran cuidado en un contexto específico de justicia juvenil.

Artículo 13 (Libertad de expresión): Los niños tienen derecho a obtener y compartir información, siempre y cuando la información no los dañe a ellos ni a otras personas. Al ejercer el derecho de la libertad de expresión, los niños tienen la responsabilidad de también respetar los derechos, las libertades y la reputación de los demás. La libertad de expresión incluye el derecho a compartir información de la manera en que ellos elijan, incluyendo hablando, dibujando o escribiendo.

Artículo 14 (Libertad de pensamiento, conciencia y religión): Los niños tienen el derecho a pensar y creer lo que ellos quieran y a practicar su religión siempre y cuando esto no le impida a otras personas disfrutar de sus derechos. Los padres deben ayudar a guiar a sus hijos en estos asuntos. La Convención respeta los derechos y obligaciones de los padres de proveer

una guía religiosa y moral a sus hijos. Los grupos religiosos alrededor del mundo han expresado su apoyo a la Convención, la cual indica que de ningún modo se le puede prohibir a los padres criar a sus hijos dentro de una tradición religiosa. Al mismo tiempo, la Convención reconoce que los niños al madurar son capaces de crear su propio punto de vista, e incluso algunos pueden cuestionar algunas prácticas religiosas o tradiciones culturales. La Convención apoya el derecho de los niños a examinar sus creencias, pero también establece que su derecho a expresar sus creencias implica el respeto por los derechos y libertades de los demás.

Artículo 15 (Libertad de asociación): Los niños tienen el derecho a conocerse entre ellos y a unirse a grupos y organizaciones, siempre y cuando esto no le impida a los demás disfrutar de sus derechos. Al ejercer sus derechos, los niños tienen la responsabilidad de respetar los derechos, las libertades y la reputación de los demás.

Artículo 17 (Acceso a la información, medios de comunicación): los niños tienen derecho a obtener información importante para su salud y bienestar. Los gobiernos deben exhortar a los medios de comunicación masiva – radio, televisión, periódicos y fuentes de contenido de Internet – a proveer a los niños con información que puedan entender, y no alentar el uso de material que pueda hacerles daño. Se debe motivar a los medios de comunicación para que proporcionen información en idiomas que pueden comprender los niños de las minorías y los niños indígenas. Los niños también deben tener acceso a libros adecuados para ellos.

Artículo 31 (Ocio, juegos y cultura): Los niños tienen derecho a relajarse y a jugar, así como a participar en una amplia gama de actividades culturales, artísticas y recreativas.

Después de haber presentado el modelo, el facilitador propone una discusión abierta en plenario, relacionada con el diagrama. Algunas posibles preguntas para enriquecer la discusión pueden ser:

- ¿Cuáles de esos artículos son actualmente respetados en el sistema judicial juvenil?
- ¿Qué no es posible asegurar? ¿Por qué?
- ¿Cómo pueden dichos artículos estar relacionados y reforzados en la práctica?

Actividad grupal: identificación de barreras y oportunidades para mejorar la participación de los niños (45-60 min).

Los participantes se deben dividir en grupos de 4 a 6 personas. Cada grupo nombrará un representante, el cual será el vocero del grupo. Con base en un estudio de caso facilitado por el instructor, cada grupo identificará posibles acciones para aumentar la participación de los niños y mejorar la situación propuesta en el caso bajo estudio. Las respuestas de los participantes pueden relacionar diferentes áreas de formación y sectores del sistema judicial juvenil. Los grupos pueden utilizar el “Modelo Twelve” como una herramienta de guía.

–Momento de aprendizaje en conjunto (30 – 45 min)

Los voceros deben presentar los resultados de la actividad al grupo en general. En cada presentación, el facilitador debe enfatizar los aspectos relevantes y pedir retroalimentación. El instructor debe tomar nota de las sugerencias generales y percepciones obtenidas de los diferentes grupos.

–Cierre (15 min)

El facilitador debe recapitular los principales temas discutidos durante el seminario, y reitera la importancia del enfoque sistemático materializado en la Convención de los Derechos de los Niños. Las hojas del rotafolio pueden ayudar a repasar los diferentes conceptos y a analizar lo discutido.

–Conclusión y evaluación (30 min)

El instructor, con la colaboración de los participantes, verifica si se alcanzaron los objetivos propuestos al principio de la sesión, e invita al grupo a compartir sugerencias como oportunidad de retroalimentación. El facilitador agradece la participación del grupo, y les da un espacio para preguntas, observaciones o comentarios finales.

Referencias clave

Las siguientes son las referencias principales que los facilitadores deben utilizar para preparar y dirigir la sesión:

–**Children’s rights to participation and the juvenile justice system: theory and Practices for implementation (2016)**. El folleto Twelve fue elaborado como un borrador, formalizado y publicado paralelamente con los seminarios de capacitación implementados dentro del marco del Proyecto Twelve. Este constituye el punto fundamental de referencia para el diseño, la organización y la entrega de la capacitación derivada del presente módulo. Disponible para descargar en:

<http://www.defenceforchildren.org/twelve-handbook/>

–**UN Convention on the Rights of the Child**

(1989):<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

–**General Comment no. 10 (2007) on children’s rights in juvenile justice**:<http://www.refworld.org/docid/4670fca12.html>

–**General Comment no. 12 (2009) on the right of the child to be heard:**

<http://www.refwold.org/docid/4ae562c52.html>

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Anexo 1: Ejemplo de un formulario de evaluación**FORMULARIO DE EVALUACIÓN PARA EL PARTICIPANTE****Lugar y fecha**

Le solicitamos que se tome un momento para darnos su retroalimentación. Sus respuestas son anónimas y serán usadas para mejorar futuros métodos de consulta. Su realimentación es importante para nosotros.

Por favor encierre en un círculo su respuesta a cada enunciado

	Totalmente en desacuerdo	En desacuerdo	Neutro	De acuerdo	Totalmente de acuerdo	No aplica
1. El seminario abarcó los temas que esperaba	1	2	3	4	5	0
2. El seminario satisfizo mis necesidades profesionales en esta área	1	2	3	4	5	0
3. Los objetivos del seminario fueron claros y fueron expresados adecuadamente	1	2	3	4	5	0
4. El enfoque seguido por el proyecto fue comprensible	1	2	3	4	5	0
5. El contenido del seminario fue interesante	1	2	3	4	5	0
6. El programa y la agenda del seminario fueron efectivos	1	2	3	4	5	0
7. El nivel de interacción fue apropiado	1	2	3	4	5	0
8. El tema y la discusión fueron útiles y	1	2	3	4	5	0

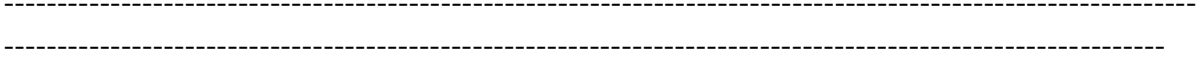
relevantes para mi área de trabajo

Favor encerrar en un círculo “Sí” o “No” en los siguientes enunciados	Respuesta	Si la respuesta es “No” favor encerrar o comentar
1. La duración del seminario fue apropiada	Sí/No	Muy Largo/MuyCorto
2. El lugar fue ideal para mí	Sí/No	
3. Estuve satisfecho con la comida	Sí/No	
4. La estructura de la agenda fue efectiva (sesiones/recesos/etc)	Sí/No	
5. La organización del seminario en general fue efectiva	Sí/No	

¿Qué fue lo que más le gustó sobre este día?

¿Qué fue lo que menos le gustó?

¿Tiene alguna sugerencia sobre cómo se podría mejorar?



¡Gracias por sus comentarios!

Chapter V

Data Analysis

This chapter shows the results of translating the documents “El Salvador” from Spanish into English and “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” from English into Spanish. Also, it contains the application of the instruments previously explained in chapter III, in order to make the comparison of the results of both translations.

Here it can be found the text analysis chart, where the investigator makes a detailed explanation of the characteristics of each text, the color coding designed by the translator itself to separate by colors how each translation technique was used to give an accurate sense of the message, and finally the two glossaries prepared during the investigation to facilitate the work of the translator, composed of technical or unknown words that appeared inside the text.

5.1 Analysis and Interpretation of the Results

According to the objectives stated in Chapter I, the instruments used to get the results of this investigation are: the text analysis, which were useful to understand to main topic of each text, to look for hard words that need to be researched deeply to get the best translation of them, and to define the characteristics of each document, like text style, text function and stylistic scale.

Another instrument used during this research is the color coding to identify each of the six translation methods applied by the translator, and finally, the glossaries to have by hand some tricky words that the translator unknown when he made the text analysis.

5.1.1 Text Analysis

The first aspect analyzed was the text style. In the case of “El Salvador,” the text style is discussion, because it has emphasis on abstract nouns (concepts), it is a treatment of ideas and logical arguments related to web crimes. On the other hand, the text “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” shows a narrative style, because it is a dynamic sequence of events explaining the development of the training.

The second fact that was analyzed is the scale of formality. “El Salvador” presents a formal scale because it has vocabulary used in discourses and also it can be understood by a great number of people without problem, while “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” has a neutral scale because its vocabulary is neither formal nor informal, and all the people can understand everything without problem.

Comparing the scale of generality, “El Salvador” was written using the educated scale, because it is directed to an audience with more education, and it expresses a formal sense used commonly in certain documents. By the way, “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” was written under the neutral scale, because it has basic vocabulary (words that people hear every day), and its meaning is easily understandable.

Another analysis was the scale of emotional tone. In this case, both are factual or unemotional texts, which main objective is to inform and explain processes to the reader. There are few usages of intensifiers in the two texts. Then, the translator analyzed the text function. Both texts communicate facts or ideas related to a specific topic, the intention of them is to transmit knowledge, so these documents were classified as informative texts. Finally, the translator made an analysis of the type of translation and both cases are communicative, because the main idea is to achieve the complete understanding of the information by the readers.

The following chart is a summary of the elements that were analyzed.

Table 4

Text Analysis Criteria	El Salvador	Experiences, Models, and Perspectives on the Right to Participation in the Juvenile Justice System
Text Style	Discussion	Narrative
Stylistic Scale of Formality	Formal	Neutral
Stylistic Scale of Generality	Educated	Neutral
Stylistic Scale of Emotional tone	Factual	Factual
Text Function	Informative	Informative
Type of Translation	Communicative	Communicative

Table 4 shows the analysis of the translation “Experiences, models and perspectives on the right to participation in the Juvenile Justice System” from English into Spanish and “El Salvador” from Spanish into English. Source: Researcher’s own creation

5.1.2 Color Coding

The color-coding is a kind of instrument that will help the translator to identify the translation techniques that were applied to the documents. The green color is assigned to transpositions; red represents omission, blue means amplification, purple for modulation,

light blue for explicitation, and orange goes with literal translation. This instrument contains two paragraphs; the first one corresponds to the paragraph that represents the sourcelanguage text and the second one the target language text. The second paragraph will be highlighted with the colors that correspond to the different techniques that were applied.

Technique	Color
Modulation	Purple
Transposition	Green
Omission	Red
Amplification	Dark Grey
Explicitation	Light Blue
Literal translation	Yellow

5.1.2.1 Translations from English into Spanish of the document “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System”

Paragraph 1

The right to participation represents a fundamental principle of the 1989 UN Convention on the Rights of the Child (CRC) ratified by all member states in Europe. More recently, the Council of Europe embodied such a principle in its proposals to improve the Juvenile

Justice's systems in order **for them** to become more "child friendly". Article 12 on the right of the child to be heard could be intended as a provision, which gives access to the integrated system proposed by the CRC. At the same time, **especially** considering the structural purpose of the Juvenile Justice systems, participation has to be considered as a mean but also as an end in the rehabilitative **key intention** of the various measures applied. The right and the possibility for the child to actively participate in society and in the determination of his/her future represent a major challenge throughout all sectors of society as well as in culturally qualifying the relation between adults and children. The particular domain of Juvenile Justice and its concrete implementation proposes significant questions related to this principle, especially deriving from the possible situation of coercion, which might arise from the application of the law.

El derecho a la participación representa un principio fundamental de la Convención de las Naciones Unidas de 1989 sobre los Derechos del Niño, ratificados por todos los estados miembros de Europa. Últimamente, el Consejo de Europa incorporó dicho principio en sus propuestas para mejorar el Sistema Penal Juvenil y así ser más "amigable con los niños". El artículo 12, donde se expresa el derecho de los niños a ser escuchados, puede verse como una disposición, la cual le da acceso al sistema integrado propuesto por la Convención. Al mismo tiempo, al considerar el propósito estructural de los Sistemas de Justicia Juvenil, la participación no debe ser considerada solo como un medio, sino también como un fin en la rehabilitación de las diversas medidas aplicadas. El derecho y la posibilidad de que el niño participe activamente en la sociedad y en la determinación de su futuro, representan un gran reto en todos los sectores de la sociedad, así como en la tan importante relación entre adultos y niños. El ámbito particular de la Justicia Juvenil y su aplicación concreta, propone preguntas significativas relacionadas con este principio,

especialmente derivadas de la posible situación de coerción, la cual puede derivarse de la aplicación de la ley.

Paragraph 2

The training seminar uses a participatory methodology under a holistic, transcultural and human rights-based approach that places the persons at the center of its action and carefully considers the relation with the surrounding context. In this light, the course facilitator should try to embrace, value and integrate training participants' experiences during the session. For this purpose, training seating is arranged in a circle to allow greater group interaction. This setting could be metaphorically presented as a method for the co-building of knowledge by putting in the centre each different experience and expertise. The training methodology is inspired by the "adult learning theory", which links what has been learnt to the real world through empirical analysis starting from the fact that persons learn best through discussion, sharing of experiences, practical exercises, discovery and analysis. Such method requires limited number of participants up to a maximum of 20 ideally. The facilitator should make use of a flipchart to trace all the relevant elements that will comprise the resulting common thinking.

El seminario de capacitación utiliza una metodología participativa y un enfoque basado en lo holístico, transcultural y en los derechos humanos, el cual sitúa a las personas en el centro de su acción y considera cuidadosamente la relación con el contexto que les rodea. Desde esta perspectiva, el facilitador debe acoger, valorar e integrar las experiencias de los participantes durante la sesión. Para este propósito, los asientos serán acomodados en forma de círculo para así permitir una mayor interacción grupal. Esto puede considerarse metafóricamente como un método para construir el conocimiento, y poder enfocarse en las diferentes experiencias.

La metodología está inspirada en la teoría del “aprendizaje del adulto”, la cual vincula lo que ha sido aprendido con el mundo real a través de análisis empíricos, empezando por el hecho de que las personas aprenden mejor a través de la discusión, compartir experiencias, ejercicios prácticos, descubrimiento y análisis. Cada método requiere un número limitado de participantes, idealmente 20 personas como máximo. El facilitador puede hacer uso de un rota folio para trazar todos los elementos relevantes que van a constituir el pensamiento común resultante.

Paragraph 3

The approach towards participants should enable fruitful dialogue between different sectors and a comparison between theory and practice of child participation in the juvenile justice system. The objective is to generate knowledge together, giving value to each experience and expertise. The key guiding questions that orient the conduct of the seminar are: a) how the juvenile justice system can be informed by the spirit of the UNCRC; b) how child participation within juvenile justice systems works in practice; c) how participation could be ensured and made more effective and appropriate.

The training content is based on a systemic approach according to which subjects are as important as the relation between them within a surrounding context. To address the principle of participation, the CRC is used as the system of reference and Article 12 as the starting point. Article 12 will, however, be read in connection with other articles of the CRC as a systemic platform able to orient policies, strategies and actions that view children as informed decision makers and active members of society. The course facilitator should highlight the connection and interrelation of the different elements that will emerge during the session. In this sense, it is important that participants learn to understand their mandate as an integral part of a broader system and to place it accordingly.

El enfoque hacia los participantes debe permitir un diálogo fructífero entre los diferentes sectores, y una comparación entre la teoría y la práctica de la participación de los niños en el sistema de justicia juvenil. El objetivo es generar conocimiento entre todos y darle valor a cada experiencia. Las principales preguntas que orientan la conducta del seminario son: a) ¿Cómo el sistema de justicia juvenil puede basarse en el espíritu de la convención de las Naciones Unidas?, b) ¿Cómo funciona la participación de los niños en el sistema de Justicia Juvenil?, c) ¿Cómo la participación se puede garantizar y hacer más eficaz y apropiada?

El contenido de la capacitación está basado en un enfoque sistémico, según el cual los asuntos a tratar son tan importantes como la relación entre ellos dentro del contexto que los rodea. Para tratar el principio de la participación, La Convención de los Derechos de los Niños se utilizará como referencia, y el artículo 12 será el punto de partida. Sin embargo, el artículo 12 se leerá en conjunto con otros artículos de la Convención de los Derechos de los Niños, como una plataforma sistemática capaz de orientar políticas, estrategias y acciones que ven a los menores de edad como miembros activos de la sociedad capaces de tomar decisiones. El facilitador debería resaltar la conexión y la interrelación de los diferentes elementos que van a surgir durante la sesión. En este sentido, es importante que los participantes aprendan a entender su mandato como una parte integral de un sistema amplio y a colocarla como corresp

Paragraph 4

Welcome to participants and introduction to the background of the training seminar by presenting the project Twelve following the structure: why, what, when, who and how. It is important to clarify with participants the purpose of the seminar and how it is conceived as part of a process (see above rationale) that could inform or generate future actions and changes in the contexts where participants operate. It could be useful to raise some questions that inspired the project Twelve, such as: it possible to talk about participation in situations of deprivation, semi-

deprivation or limitation of liberty? Here participation is just the adherence to a project built by the institutions? Participation is just formal or procedural or, instead, it can be substantial?

The facilitator continues with the presentation of the agenda, objectives and expectations of the training seminar. The facilitator writes the objectives in the flipchart sheet and posts it on the wall. At the end of the session participants will verify the achievement of these objectives through a joint assessment. It should also be stressed that the method is as important as the content, by making reference to the circular setting and to the interaction opportunities that it generates.

Bienvenida a los participantes e introducción a los antecedentes del seminario de capacitación por medio de la presentación del proyecto Twelve, con base en la siguiente estructura: por qué, qué, cuándo, quién y cómo. Es importante aclararles a los participantes el propósito del seminario y cómo éste se concibe como parte de un proceso (ver las razones mencionadas anteriormente) que pueden informar o generar acciones futuras y cambios en los contextos en los cuales ellos operan. Asimismo, puede ser de gran utilidad plantear algunas preguntas que inspiraron al proyecto Twelve, tales como: ¿Se puede hablar de participación en situaciones de privación, semi-privación o limitación de libertad? ¿Es la participación solo la adhesión a un proyecto construido por las instituciones? ¿Es la participación solamente formal o procesal o, por el contrario, puede ser sustancial?

El facilitador continúa con la presentación de la agenda, objetivos y expectativas del seminario. Además, escribe los objetivos en una hoja del rota folio y la coloca en la pared. Al final de la sesión, los participantes verificarán si dichos objetivos fueron alcanzados a través de una evaluación conjunta. También se debe enfatizar que el método es tan importante como el contenido, al hacer referencia a la forma en que están acomodados sus asientos y a las oportunidades de interacción que esto puede generar.

Paragraph 5

RECOGNITION: opportunities for participation allow children, professionals and officials in the juvenile justice field to interact and collaborate, demonstrating **thereby** respect for each other and gaining the recognition of the other. Meaningful child participation allows professionals and officials **also** to recognize and enhance the individual positive resources of children; it also can help the child to gain a better understanding and recognition **of** his or her personality, i.e. their own 'self'.

RESPONSIBILITY: Opportunities **for children** to participate enable children to be protagonists of their own lives towards self-determination and autonomy, even in the complex context of deprivation of liberty. Children who have the possibility to **get** engaged and exercise their participatory rights, have better chances to acquire a growing sense of responsibility.

RECONOCIMIENTO: Las oportunidades de participación le permiten a los menores de edad, **profesionales y oficiales en el campo de la justicia juvenil, interactuar y colaborar**, y así **demostrar respeto entre ellos y ganarse el reconocimiento de los demás**. La participación significativa de los niños le permite a los profesionales y a los oficiales reconocer e incrementar los recursos positivos individuales de los niños; **asimismo, le puede ayudar al niño a comprender y reconocer mejor su personalidad, por ejemplo su propio "yo"**.

RESPONSABILIDAD: Las oportunidades de participación le permiten a los menores ser protagonistas de sus propias vidas hacia la autodeterminación y la autonomía, **incluso en el contexto complejo de la privación de la libertad**. Los niños que tienen la posibilidad de comprometerse y de ejercer sus **derechos de participación**, tienen mayores oportunidades de **adquirir un creciente sentido de responsabilidad**.

Paragraph 6

HUMAN RIGHTS: Participation is key to approach a human rights perspective connected to the recognition of each person and his/her self-determination. It is a fundamental principle. Participation means not only listening to the opinion of that child but also taking in consideration how that **child** can influence the environment; this can be done only if **this child** is recognized and heard. In general there is a lack of participation not only from the young generation but also by adults. Addressing participation is a big opportunity in order for the principles of the CRC to regain life.

B. APPROPRIATENESS: Those policies, measures and actions that respond to the uniqueness and peculiarity of each situation are appropriate. In other words, appropriate policies, measures and actions addressed to children should ensure the conditions for developing tailored responses and solutions. Considering participation as a key element of policies, measures and actions addressed to children could **most likely** contribute at giving better responses to the uniqueness and peculiarity of each situation and at recognizing individuality and personal stories. Participation enables to take appropriate actions, create the appropriate conditions to implement and reach objectives, and establish an appropriate relation between adults and children.

DERECHOS HUMANOS: La participación es la clave para abordar una perspectiva de derechos humanos que esté conectada con el reconocimiento de cada persona y su autodeterminación. Es un principio fundamental. La participación no solo significa escuchar la opinión de esos niños, sino también tomar en cuenta cómo estos pueden influir en el ambiente; esto puede hacerse solo si son reconocidos y escuchados. En general, existe poca participación no solo por parte de las personas jóvenes, sino también de las personas adultas. El hablar sobre la participación es una gran oportunidad para que los principios de la Convención de los Derechos de los Niños se fortalezcan.

PERTINENCIA: Las políticas, medidas y acciones que responden a la singularidad y peculiaridad de cada situación, son apropiadas. En otras palabras, las políticas, las medidas y las acciones apropiadas que están dirigidas a la niñez pueden asegurar las condiciones para el desarrollo de respuestas y soluciones a la medida. Al considerar la participación como un elemento clave de políticas, medidas y acciones dirigidas a la niñez se puede contribuir a proponer mejores respuestas a la singularidad y peculiaridad de cada situación y a reconocer la individualidad y las historias personales. La participación habilita la toma apropiada de acciones, crea las condiciones adecuadas para implementar y alcanzar objetivos, y establece una relación apropiada entre las personas adultas y los menores de edad.

Paragraph 7

INCLUSION: Participation is closely related with the principle of non-discrimination, since one of its meanings is to consider the person as part of something (in connection with the etymological definition of PARTICIPATION: Etymologically “participation” derives from Late Latin *participatio(n-)*, “shared in”, from the verb *participare*, based on *pars*, part- “part” + *capere* “take”. Participation means to take part or have a share, as with others). Children involved in juvenile justice are often those who have been excluded from society or who have not benefitted from the support and services that they would have been entitled to; having thus not participated or participated wrongly. Is the juvenile justice system capable to be inclusive and offer a rehabilitative process that can lead the child back in the society and the system positively? Enabling meaningful participation is an important key to make a new start possible with better efforts to hear the views of the child and to take them seriously into account. For the child it is about being able to participate to a social contract and to the realization of the own story differently.

INCLUSIÓN: La participación está estrechamente relacionada con el principio de la no discriminación, ya que uno de sus propósitos es considerar a la persona como parte de algo (en conjunto con la definición etimológica de PARTICIPACIÓN: (Etimológicamente “participación” se deriva del Latín Antiguo participatio (n-), “compartir en”, del verbo participare, basado en pars, part- “parte”+ capere “tomar”). Participación significa tomar parte o tener una parte, como con otros). Los menores involucrados en la justicia juvenil son usualmente aquellos que han sido excluidos de la sociedad o quienes no han sido beneficiados con el apoyo y servicios a los que ellos tienen derecho, por lo que entonces tienen una participación nula o equivocada. ¿Es el sistema de justicia juvenil capaz de ser inclusivo y de ofrecer procesos de rehabilitación que puedan dirigir a la niñez de regreso a la sociedad y al sistema positivamente? El propiciar la participación significativa es una clave importante para hacer posible un nuevo inicio con mejores esfuerzos para escuchar la perspectiva de los niños y tomarlos seriamente en cuenta. Para los menores de edad es ser capaces de participar en un contrato social y en la realización de su propia historia pero de una manera diferente.

Paragraph 8

REHABILITATION: The juvenile justice system works towards the rehabilitation and social inclusion of children in conflict with the law. It is a system that could enable the child to participate in a different way. Meaningful participation qualifies the scope of rehabilitation; the capacity to participate may be specular to the capacity to rehabilitate. The rehabilitative approach is conceived in contrast to the punitive approach. Participation could help at re-qualifying the notion and the scope of rehabilitation.

ECOLOGY: Participation enriches the ecology of systems. The child protection system is currently fragmented, which often determines its effectiveness and appropriateness. Participation

is a way to address this by re-establishing the relation among components. Participation, therefore, should be considered within a system of relations. In this sense, it is important to adopt an ecological approach in which there are different but interconnected levels and subjects. Participation could be an important element to qualify the relations between the elements of the system and the competences and skills operating within it.

REHABILITACIÓN: El sistema de justicia juvenil trabaja en dirección a la rehabilitación y la inclusión social de los menores que se encuentran en conflicto con la ley. Es un sistema que puede propiciar la participación de la niñez de una manera diferente. La participación significativa fortalece el alcance de la rehabilitación; dado que la capacidad de participar puede ser especular a la capacidad de rehabilitar. El enfoque de la rehabilitación se concibe en contraste con el enfoque punitivo. La participación puede ayudar en la recalificación de la noción y del ámbito de la rehabilitación.

ECOLOGÍA: La participación enriquece la ecología de los sistemas. El sistema de protección de la niñez está actualmente fragmentado, lo cual determina su efectividad y su pertinencia. La participación es una forma de abordar esto al restablecer la relación entre los componentes. Por lo tanto, la participación puede considerarse dentro de un sistema de relaciones. En este sentido, es importante adoptar un enfoque ecológico, en el cual existen niveles y temas diferentes, pero que están interconectados. La participación puede ser un elemento importante para calificar las relaciones entre los elementos del sistema y las competencias y habilidades que operan dentro de él.

Paragraph 9

CREDIBILITY: To which extent the juvenile justice system is credible for children? The level of effective and meaningful participation may be proportional to the degree of credibility that

the system is able to generate. Only a credible system will be able to produce efficient and appropriate actions. It is important to consider that in some cases the perspectives of the children and of the system about what is right and what is wrong can be different. Participation may allow to create spaces for **common** understanding, **sharing** and exchange between different persons and positions. The relation between law – legitimacy – credibility may be further explored through the notion of participation.

PREVENTION: Reiteration and recidivism is one of the features present in the systems and participation is a way to tackle it. Some children/youth have probably entered in conflict with the law because they are from particularly marginalized groups, they have been left behind by the social welfare system or they just participated wrongly. Listening and participation can lead to actions that **are more** efficient and appropriate also in preventing young delinquency and recidivism before, during and after criminal proceedings. This means also extending participation from the closest family context to the wider child's community.

CREDIBILIDAD: ¿Hasta qué punto el sistema de justicia juvenil es confiable para los niños? El nivel de participación efectiva y significativa debe ser proporcional al grado de credibilidad que el sistema sea capaz de generar. Sólo un sistema creíble es capaz de producir acciones eficientes y apropiadas. Es importante considerar que en algunos casos, las perspectivas de las personas menores de edad y del sistema sobre lo que está bien y lo que está mal, pueden ser diferentes. La participación puede crear espacios de entendimiento e intercambio entre las diferentes personas y las posiciones. La relación entre ley-legitimidad-credibilidad se puede explorar más a fondo a través de la noción de la participación.

PREVENCIÓN: La reiteración y la reincidencia es una de las características presentes en los sistemas y la participación es una forma de abordarla. Algunos menores de edad han estado probablemente en conflicto con la ley porque pertenecen a ciertos grupos marginados, han sido

abandonados por el sistema de bienestar social o solamente participaron de una manera errónea. La escucha y la participación pueden dirigir a acciones más eficientes y apropiadas, así como a prevenir la delincuencia juvenil y la reincidencia antes, durante y después de los procedimientos criminales. Esto significa también extender la participación del contexto de una familia cerrada a una comunidad de niños más amplia.

Paragraph 10

The facilitator proposes an exercise to the **training** group that consists in brainstorming the needs of a child. The facilitator notes the group's responses on the flipchart, and reiterates that the purpose of the exercise is to identify the needs that any child could have, without describing or categorizing this child. On the basis of the answers provided, the facilitator underlines how every single need identified is guaranteed by a legal provision and the recognition of a right to our child. The shift from a logic of needs to a logic of rights is extremely important since the former foresees discretionary responses while the latter is enforceable. From a rights-based perspective, children cannot be identified as pure **need** anymore but as active subjects and holders of rights. A child rights-based framework introduces the identification and assumption of responsibilities of the different actors that play a role from a systemic perspective. The CRC has to be therefore understood as a system of multifaceted nature composed by interrelated articles and principles.

El facilitador propone un ejercicio al grupo, el cual consiste en una lluvia de ideas sobre las necesidades de un niño. El facilitador anota las respuestas del grupo en el rota folio y les reitera que el propósito del ejercicio es identificar las necesidades que cualquier menor de edad puede tener, sin describir o categorizar al niño. Con base en las respuestas obtenidas, el facilitador enfatiza cómo cada necesidad individual identificada está garantizada por la provisión legal y el reconocimiento de un derecho a nuestra niñez. El cambio de una lógica de necesidades a una

lógica de derechos es extremadamente importante, ya que lo primero prevé respuestas discretas y lo último es aplicable.

Desde una perspectiva con base en los derechos, las personas menores de edad ya no pueden ser identificadas como una necesidad, pero sí como miembros activos y poseedores de derechos. Un marco fundado en los derechos de la niñez introduce la identificación y la aceptación de las responsabilidades de los diferentes actores que cumplen un papel desde una perspectiva sistemática. Por consiguiente, la Convención de los Derechos de los Niños debe entenderse como un sistema de una naturaleza multifacética compuesto por artículos y principios interrelacionados.

Paragraph 11

The facilitator should highlight **here** the importance of the dimension of participation, which is the very revolution of the CRC. It introduces for the first time the recognition of the child as an active subject that contributes to the society, not only taking into consideration his or her vulnerabilities but also his or her capacities and positive resources.

Related to this, the facilitator presents the Karpman Triangle, which is a helpful model to interpret the mainstream narrative according to which every situation can be interpreted following the triangulation victim – aggressor – savior. A child rights-based approach means to deconstruct this logic and avoid stereotypes in order to consider the uniqueness of each person and situation.

Professionals may play a key role in making practices closer to a child rights-based approach within the juvenile justice system, which includes enhancing the participation of the child. Workers and professionals could be considered as vectors of sense as well as vectors of change in relation with the child but also with the system. The facilitator suggests actions that professionals working with children in conflict with the law could adopt. For example: professionals should get

information about the child's story and personal situation as well as about his interests and opinions in order to achieve meaningful communication and make proposals that make sense for him.

El facilitador debe enfatizar la importancia de la dimensión de la participación, la cual es la gran revolución de la Convención de los Derechos de los Niños. Ésta presenta por primera vez el reconocimiento de las personas menores de edad como sujetos activos que contribuyen a la sociedad, no sólo al considerar sus vulnerabilidades, sino también sus capacidades y recursos positivos.

En relación con esto, el facilitador presenta el Triángulo de Karpman, el cual es un modelo que ayuda a interpretar la narrativa principal, de acuerdo con cada situación puede ser interpretado siguiendo esta triangulación: víctima- agresor- salvador. Un enfoque basado en los derechos de los niños significa destruir esta lógica y evitar los estereotipos, para solo considerar lo que hace única a cada persona y situación.

Los profesionales pueden jugar un papel clave al hacer las prácticas más similares al enfoque basado en los derechos de los niños dentro del sistema de justicia juvenil, el cual incluye mejorar la participación de los menores de edad. Los trabajadores y profesionales pueden considerarse como vectores de sentido, así como vectores de cambio en relación con el menor y con el sistema. El facilitador sugiere acciones que los profesionales que trabajan con los menores de edad que tienen conflictos con la ley, pueden adoptar. Por ejemplo: los profesionales pueden obtener información sobre el historial de los menores y su situación personal, así como sobre sus intereses y opiniones para lograr una comunicación significativa y hacer propuestas que tengan sentido para ellos.

Paragraph 12

The purpose of this section is to structure and systematize the information given so far, connect it with the juvenile justice system and highlight the importance given by the normative framework to the principle of participation.

The facilitator may use a PPT presentation or a similar tool (prezi for example). The presentation starts from a recap of the CRC with special mention to its 4 principles (best interest of the child, non-discrimination, survival and development, and participation) and to article 12. Then it refers and **shifts** to more specific tools such as the General Comments 10 and 12, the international standards, the regional standards in particular the Guidelines of the CoE for a child friendly justice, and the national legislation (see PPT presentations attached).

El propósito de esta sección es estructurar y sistematizar la información impartida hasta el momento y vincularla con el sistema de justicia juvenil y recalcar la importancia otorgada por el marco normativo del principio de la participación.

El facilitador puede hacer uso de una presentación de Power Point o una herramienta similar (por ejemplo Prezi). La presentación empieza con una recapitulación de la Convención, haciendo énfasis en sus cuatro principios (los mejores intereses del niño, la no discriminación, la sobrevivencia y el desarrollo y la participación) y el artículo 12. Luego, se referirá a herramientas más específicas, tales como los Comentarios Generales 10 y 12, los estándares internacionales, los estándares regionales, (en particular las directrices del Consejo de Europa para una justicia amigable con el menor de edad) y la legislación nacional (Ver las presentaciones de Power Point adjuntas).

Paragraph 13

The aim of this section is to present Article 12 as an entry point to the holistic and empowering approach promoted by the Convention: the recognition of children as rights holders. The Convention does not define or mention the ‘right to participation’ as such.

However, Article 12 and other, related articles of the Convention, are together interpreted as the ‘participatory rights of children’ as they mutually inform an understanding of children’s agency as active members of society. In order to understand the far-reaching meaning and implications of Article 12, it is useful to look at the entire system of human rights proclaimed by the Convention, which are all inter-related and indivisible, and create thus a close net of standards for the holistic promotion and protection of children’s rights.

As a general principle, the right of the child **to have his or her views** heard and taken into account is closely intertwined with the other general principles of the Convention: the right to non-discrimination (Article 2); the best interests of the child as a primary consideration (Article 3); and the right to life, survival and development (Article 6). These articles are cross-cutting and significant for the interpretation of each right under the Convention and for its holistic implementation.

El objetivo de esta sección es presentar el artículo 12 como punto de entrada al enfoque holístico y de empoderamiento promovido por la Convención: el reconocimiento de las personas menores de edad como poseedores de derechos. La Convención no define o menciona el “derecho a la participación” como tal. Sin embargo, el artículo 12 y otros artículos relacionados con la Convención, se interpretan en conjunto como los “derechos participativos de los niños”; debido a que informan de manera mutua un conocimiento de la agencia de los menores de edad como miembros activos de la sociedad.

Para entender el significado trascendental y las implicaciones del artículo 12, es necesario tener una visión más amplia de todo el sistema de derechos humanos, tal como lo proclama la Convención, los cuales están todos interrelacionados e indivisibles; por lo que crean una red cerrada de estándares para la promoción holística y la protección de los derechos humanos. Como principio general, el derecho de los niños a ser escuchados y tomados en cuenta está estrechamente entrelazado con otros principios generales de la Convención: el derecho a la no discriminación (art. 2), los mejores intereses de los menores de edad como consideración primaria (art. 3), y el derecho a la vida, sobrevivencia y desarrollo (art. 6). Estos artículos son un asunto transversal y significativo para la interpretación de cada derecho bajo la Convención y su implementación holística.

Paragraph 14

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are

able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Artículo 13 (Libertad de expresión): Los niños tienen derecho a obtener y compartir información, siempre y cuando la información no los dañe a ellos ni a otras personas. Al ejercer el derecho de la libertad de expresión, los niños tienen la responsabilidad de también respetar los derechos, las libertades y la reputación de los demás. La libertad de expresión incluye el derecho a compartir información de la manera en que ellos elijan, incluyendo hablando, dibujando o escribiendo.

Artículo 14 (Libertad de pensamiento, conciencia y religión): Los niños tienen el derecho a pensar y creer lo que ellos quieran y a practicar su religión siempre y cuando esto no le impida a otras personas disfrutar de sus derechos. Los padres deben ayudar a guiar a sus hijos en estos asuntos. La Convención respeta los derechos y obligaciones de los padres de proveer una guía religiosa y moral a sus hijos. Los grupos religiosos alrededor del mundo han expresado su apoyo a la Convención, la cual indica que de ningún modo se le puede prohibir a los padres criar a sus hijos dentro de una tradición religiosa. Al mismo tiempo, la Convención reconoce que los niños al madurar son capaces de crear su propio punto de vista, e incluso algunos pueden cuestionar algunas prácticas religiosas o tradiciones culturales. La Convención apoya el derecho de los niños a examinar sus creencias, pero también establece que su derecho a expresar sus creencias implica el respeto por los derechos y libertades de los demás.

Paragraph 15

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organizations, as long as it does not stop other people from enjoying their rights. In

exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children’s books.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Artículo 15 (Libertad de asociación): Los niños tienen el derecho a conocerse entre ellos y a unirse a grupos y organizaciones, siempre y cuando esto no le impida a los demás disfrutar de sus derechos. Al ejercer sus derechos, los niños tienen la responsabilidad de respetar los derechos, las libertades y la reputación de los demás.

Artículo 17 (Acceso a la información, medios de comunicación): los niños tienen derecho a obtener información importante para su salud y bienestar. Los gobiernos deben exhortar a los medios de comunicación masiva – radio, televisión, periódicos y fuentes de contenido de Internet – a proveer a los niños con información que puedan entender, y no alentar el uso de material que pueda hacerles daño. Se debe motivar a los medios de comunicación para que proporcionen información en idiomas que pueden comprender los niños de las minorías y los niños indígenas. Los niños también deben tener acceso a libros adecuados para ellos.

Artículo 31 (Ocio, juegos y cultura): Los niños tienen derecho a relajarse y a jugar, así como a participar en una amplia gama de actividades culturales, artísticas y recreativas.

5.1.2.2 Translations from Spanish into English of the document “El Salvador”

Paragraph 1

Las principales reflexiones sobre el impacto del internet y las tecnologías de la información en El Salvador comienzan a darse a principios de la primera década del siglo XXI, principalmente en las Facultades de Jurisprudencia del país. Las discusiones iniciales fueron generadas, en buena parte, por los primeros casos sobre protección de datos que fueron judicializados.

Las tesis de grado para la Licenciatura en Ciencias Jurídicas de varias universidades, sobre todo enfocadas en las materias penal y mercantil, son los principales aportes académicos. En menor cantidad se identifican algunos blogs personales o institucionales que se dedican a discutir sobre las tecnologías de la información y comunicación y sus implicaciones en la realidad nacional, y - en menor proporción- se identifican informes, documentos institucionales, artículos académicos o libros.

The main considerations about the impact of internet and information technologies in El Salvador began early in the first decade of the XXI century, mainly in the country's Jurisprudence Faculties. For the most part, the initial discussions were generated by the first data protection cases that were judged.

The thesis to obtain the Bachelor's Degree in Juridical Sciences of many universities, mainly focused on penal and mercantile subjects, are the main academic contributions. In a less extend, personal or institutional blogs dedicated to discuss communication and information technologies and their implications in the national reality; finally, in a small amount reports, institutional documents, academic essays, and books.

Paragraph 2

Los temas que aparecen con más frecuencia en la discusión académica en El Salvador son la protección de datos, los delitos informáticos, el comercio electrónico y la gobernanza de internet. Temas como vigilancia electrónica, censura en internet, software libre, cifrado o anonimato, entre otros, aparecen en menor proporción o simplemente no se identifica producción y discusión académica al respecto.

1.1.1. Delitos informáticos

En cuanto a la penalización de los delitos informáticos, las tesis mencionadas en el cuadro anterior se concentran principalmente en las definiciones de delito informático, así como los tipos penales surgidos del derecho comparado, las penas aplicadas a los delitos informáticos en el derecho comparado y los países que actualmente cuentan con legislación sobre delitos informáticos.

Las tesis producidas ponen énfasis en hechos históricos (jurídicos y tecnológicos) y perspectivas de futuro que justifican la necesidad de su tipificación en la legislación salvadoreña, sugiriendo incluso en la tesis de Benavides et al.(2005) algunas propuestas de tipos penales a adoptarse en el derecho penal salvadoreño.

The more frequent topics in the academic discussion in El Salvador are: data protection, cyber-crimes, the e-commerce, and the governance of Internet. Topics like electronic surveillance, censoring in Internet, public domain software, encoding or concealed identity, among others, appear in less proportion or simply the academic production and discussion about those topics is not identified.

1.1.1. Cyber-crimes

Regarding the penalization of cyber-crimes, the theses mentioned in the previous chart are mainly focused on the definitions of cyber-crime, penal types that emerge from compared law, punishment applied to cyber-crimes in compared law, and the countries that currently have legislation about cyber-crimes.

The theses that were created make emphasis on historical events (juridical and technological), and future perspectives that justify the necessity of its typification in the Salvadorian legislation, even in the thesis written by Benavides et al. (2005), the authors suggest some penal types to be adopted by the Salvadorian criminal law.

Paragraph 3

En el ámbito político, en los primeros meses de 2015 se inició una discusión legislativa y mediática sobre un anteproyecto de ley denominado como Ley Especial sobre Delitos Informáticos y Conexos, sin embargo, ha existido poca divulgación del contenido de la iniciativa y la discusión se centró en la posibilidad de que, a través de dicha iniciativa de ley, se criminalice a los opositores políticos y activistas que hacen sus denuncias y críticas a través de las redes sociales. El anteproyecto resultó tan problemático que los legisladores decidieron no seguir el trámite de formación de ley, por lo que actualmente se encuentra detenido.

1.1.2. Protección de datos

Una de las primeras obras, muy completa, sobre protección de datos en El Salvador es la de Ayala, José María et al (2005), en donde puede verse claramente la predominancia de juristas españoles. Cuatro de los cinco autores son de ese país, mientras que solo Henry Campos, un reconocido jurista salvadoreño escribe en ella. Sin embargo, dicha obra contiene una importante reflexión sobre la situación del país, dejando clara la poca deliberación académica y producción jurídica en el tema.

In the political field, a media and legislative discussion regarding a draft bill known as The Special Cyber-Crime Law and Related Crimes began in the first months of 2015. However, there have been little exposure of the content of the initiative, and the discussion was focused on the possibility that through this law political opponents and activists that make their complaints and critics by social networks can be criminalized. The draft bill was so problematic, that the legislators decided not to follow the steps for the formulation of the law, which is on hold.

1.1.2. Data protection

One of the most complete works about data protection in El Salvador was written by Ayala, José María et al. (2005). Here it can be clearly seen the predominance of Spanish jurists. Four out of the five authors are from such country, while only Henry Campos, a well-known Salvadorian jurist wrote about it. However, such work contains an important reflection on the situation of the country, making clear the scarce academic deliberation and juridical production in the topic.

Paragraph 4

Vale mencionar que de casi 40 fuentes bibliográficas utilizadas en esta investigación, ninguna es de origen salvadoreña. Para 2005, en El Salvador, sobre protección de datos las únicas fuentes que encontraron estos investigadores fueron una sentencia de amparo y algunos artículos dispersos en distintos cuerpos legales nacionales o convenios internacionales.

Debe destacarse que la protección de datos es muy probablemente el tema que más se ha profundizado desde la academia. Para el caso de las tesis mencionadas en el cuadro anterior, profundizan en los elementos doctrinarios sobre el derecho a la intimidad, así como en el derecho a la autodeterminación informativa y la protección de datos personales. La figura del *habeas data* es ampliamente desarrollada y vista desde el derecho comparado, haciendo énfasis en la necesidad

de una legislación de *habeas data* para proteger de manera más integral los datos de las personas en El Salvador.

It is important to mention that none of almost 40 sources of information consulted in this investigation is Salvadorian. By 2005, the only sources related to data protection that these investigators found were an amparo resolution and some academic essays dispersed in different national legal entities or international conventions.

It should be noted that data protection is probably the most studied topic in the academy. In the case of the theses mentioned in the previous chart, they studied in depth the doctrinaire elements about the right to privacy, as well as the informative self-determination and the protection of personal data. The figure of the *habeas data* is widely developed and seen from compared law, making emphasis in the need of *habeas data* legislation to integrally protect the people's information in El Salvador.

Paragraph 5

Uno de los aspectos que se ha desarrollado bastante en la producción académica salvadoreña, a menos a nivel de tesis, es la de comercio electrónico. Actualmente, se reconocen dos formas de promoción de los negocios por medio de las nuevas tecnologías: el negocio electrónico y el comercio electrónico, los cuales se encuentran relacionados pero no significan lo mismo.

Negocio electrónico es un intercambio de información ya sea con el público externo, interno o con ambos públicos de una compañía; mientras que el comercio electrónico abarca los procesos de compra y venta apoyados por medios electrónicos, principalmente internet.

El comercio electrónico es un concepto que engloba cualquier forma de transacción comercial o de negocios que se transmite electrónicamente, utilizando las redes de la telecomunicación y

empleando como moneda de cambio el dinero electrónico. La Organización Mundial del Comercio (OMC) define comercio electrónico como “la producción, publicidad, venta y distribución de productos a través de las redes de telecomunicaciones.”

One of the aspects that have been widely developed in the Salvadorian academic production, at least at thesis level, is e-commerce. Currently, there are recognized two ways of business promotion through new technologies: e-business and e-commerce, which are related to each other, but they do not mean the same.

E-business is an information exchange with internal, external or both kinds of public of a company; while e-commerce involves buy and sale processes supported by electronic media, mainly Internet.

E-commerce is a concept that includes any commercial or business way of transaction that is transmitted electronically, using telecommunication webs and employing electronic money as hard currency. The World Trade Organization (WTO) defines e-commerce as “the production, advertising, sale, and distribution of products through telecommunication webs.”

Paragraph 6

En cuanto a comercio electrónico, la primera tesis producida en El Salvador data de 2003. Sin embargo, guarda mucha similitud con las últimas producidas, ya que fundamentalmente trata sobre la definición del término, las diferentes formas, y el derecho comparado. A pesar de haber un período mayor a 10 años, la iniciativa de ley que se analiza en las últimas tesis es la misma elaborada por el abogado Ricardo Cevallos a solicitud del Gobierno, un anteproyecto de Ley de Comercio Electrónico.

Lo que sí cambió entre las primeras y las últimas tesis es la cantidad de comercio electrónico que surgió en ese lapso de tiempo. Para 2011, se identificaban en el país, por lo menos, diez empresas con un fuerte comercio electrónico o cuyo comercio era solamente electrónico; nuevamente la realidad superó por mucho tiempo a los instrumentos jurídicos necesarios para proteger, en este caso, el derecho de los consumidores.

Regarding e-commerce, the first thesis developed in El Salvador dates to 2003. Nevertheless, it keeps much similitude with the last ones, considering that it is about the definition of the concept, the different types, and comparative law. In spite of the existence of a period of more than 10 years, the law initiative analyzed in the last theses is the same made by the lawyer Ricardo Cevallos as a request of the government, an e-commerce law draft bill.

The quantity of e-commerce that emerged in such period changed among the first and the last theses. By 2011, at least ten companies with a strong e-commerce or whose commerce was only electronic, were identified in the country; once again, reality exceeded for a long time the juridical instruments needed to protect, in this case, the right of the consumers.

Paragraph 7

Otra reflexión reciente, principalmente a nivel de blogs y medios de comunicación oficial, ha sido sobre el gobierno o gobernanza de internet, en buena manera estimulada por la realización del Foro *NetMundial* en julio de 2014, en el que se reunió a buena parte de la comunidad de internet de la región para establecer una hoja de ruta de la nueva gobernanza de internet.

En el marco de dicho evento, representantes de la sociedad civil, gobiernos, academia y organizaciones empresariales debatieron los pasos a seguir en temas controversiales y urgentes referentes a la gobernanza en internet, tales como la privacidad, el acceso a datos privados, la seguridad nacional e informática, la vigilancia digital, entre otros.

En el marco de *NetMundial*, la Viceministra de Ciencia y Tecnología Erlinda Hándal aseguró que estaba trabajando en una plataforma de gobierno electrónico y que esta discusión ayudaría a dimensionar mejor los temas de seguridad y privacidad de cara a la protección de la sociedad y la soberanía nacional.

Another recent reflection, mainly at the level of blogs and official mass media, was about internet governance; in a good way stimulated by the NetMundial Forum on July 2014, in which it was gathered a great part of the region's Internet community to establish a road map of the new internet governance.

In the context of this event, representatives of the civil society, governments, academy, and corporative organizations debated the steps to follow in controversial and urgent themes related to the internet governance, such as privacy, access to private data, national and computer security, digital vigilance, among others.

In the framework of NetMundial, the Science and Technology vice minister, Erlinda Hándal, claimed that she was working in an electronic government's platform and that this discussion would help to better measure issues regarding security and privacy to protect the society and the national sovereign:

Paragraph 8

En el blog del abogado Ricardo Cevallos se analiza la jurisprudencia emitida por la Sala de lo Constitucional de la Corte Suprema de Justicia, específicamente sobre amparos sobre la figura del *habeas data*; asimismo, realiza un pequeño abordaje de los cuerpos normativos en donde la protección de datos personales ha tenido alguna regulación, como por ejemplo la Ley de Protección al Consumidor.

Por su parte, INDATA es una asociación sin fines de lucro, la cual muestra interés en temas como protección de datos, *habeas data*, autodeterminación informativa y derecho informático. En su blog se pueden encontrar diversos artículos relacionados a los temas citados. Uno de los aportes más significativos de INDATA fue la presentación de la demanda de inconstitucionalidad contra la empresa EQUIFAX-DICOM por el procesamiento arbitrario e ilegal de datos personales de miles de personas, la cual fue resuelta a favor de INDATA.

En el blog de Rafael Antonio Ibarra se abordan temas sobre las tecnologías de la información y la comunicación e internet y protección de datos, entre otros temas relacionados. Todos los artículos son escritos por el ingeniero Ibarra, a quien se le reconoce como “**el padre de internet**” en El Salvador por haber sido **la persona** que lideró y concretó la conexión del país con internet en 1995.

In the blog of the lawyer Ricardo Cevallos, it is analyzed the jurisprudence emitted by the Constitutional Courtroom of the Supreme Court, specifically about the constitutional protection related to the figure of *habeas data*; in addition, it is made a small approach of the regulatory bodies, where personal data protection has had any regulation, for example the Consumer Protection Law.

In its behalf, the Salvadorian Association for Data Protection and Internet (INDATA for its initials in Spanish) is a Non-profitable association, which shows interest in topics like data protection, *habeas data*, informative self-determination, and computer right. In its blog, it can be found many articles related to the cited topics. One of the most significant contributions of the Salvadorian Association for Data Protection and Internet was the presentation of the lawsuit of unconstitutionality against EQUIFAX-DICOM, due to the arbitrary and illegal processing of

personal data of thousands of people, which was resolved in favor of the Salvadorian Association for Data Protection and Internet.

In the blog of Rafael Antonio Ibarra, there are found topics regarding communication and information technologies and Internet and data processing, among other related issues. All the articles are written by Ibarra, who is recognized as “the father of Internet” in El Salvador, as he led and specified the connection of the country with the internet in 1995.

Paragraph 9

En resumen, la discusión académica, legislativa y jurisprudencial sobre lo relacionado con las nuevas tecnologías y la denominada sociedad de control en El Salvador es aún mínima o prácticamente nula. A propósito de las revelaciones del caso Snowden, el gobierno de El Salvador expresó su preocupación ante la denuncia internacional sobre la existencia de espionaje cibernético sobre países latinoamericanos por parte del gobierno de los Estados Unidos, en los cuales estaba incluido El Salvador: “Nuestro gobierno está dando seguimiento a esta situación para verificar la veracidad de la misma, pues riñe con el principio de soberanía y violenta los derechos a la privacidad de los salvadoreños y salvadoreñas”.

La sociedad salvadoreña, como la mayoría de sociedades en el mundo, parece haber abrazado los avances de las nuevas tecnologías de la información y la comunicación sin mayor conciencia ni discusión sobre los riesgos y efectos contraproducentes en la intimidad y la libertad que estos avances tecnológicos podrían afectar.

In brief, the academic, legislative, and jurisprudential discussion about the issues related to new technologies, and the called society of control in El Salvador is still minimal or is virtually non-existent.

Regarding to revelations of the Snowden case, the Salvadorian government expressed its concern for the international complaint about the existence of cyber-spying over Latin-American countries on part of the government of the United States, in which El Salvador was included: “Our government is doing a follow up to this situation to verify its truthfulness, because it goes against the sovereign principle and violates the right to privacy of the Salvadorian people.”

The Salvadorian society, like the majority of societies in the world, seems to have embraced the new information and communication technologies without having conscious or discussion about the risks and counter-productive effects in the privacy and liberty that such technological advancements could affect.

Paragraph 10

El Salvador es un país de grandes contrastes sociales y económicos. Una parte de su sociedad tiene la capacidad de acceder a los servicios tecnológicos de primer mundo, mientras que otro importante porcentaje aún vive una realidad sin internet, de analfabetismo digital, siendo probablemente solo el acceso a la telefonía celular lo único que ambas realidades comparten.

Para el año 2007, el 65% de los hogares salvadoreños tenía al menos un teléfono móvil, el 9% tenía computadora y solo un 3% tenía acceso a internet. Siete años después, en 2014, se calculaba que cerca del 30% de la población salvadoreña era usuaria de internet, según el Organismo Especializado de las Naciones Unidas para las Tecnologías de la Información y la Comunicación, conocido por sus siglas en inglés como UIT.

El Salvador is a country of great socio economical contrasts. A portion of its society has the capacity of accessing to first world's technological services, while other important percentage still does not have access to Internet, that is digital analphabetism, and probably just the access to cell phones is the only thing that both realities have in common.

By 2007, the 65% of Salvadorian houses had at least one cell phone, the 9% had computers, and only the 3% had access to Internet. Seven years later, in 2014, it was estimated that near the 30% of Salvadorians were Internet users, according to the International Union of Telecommunications.

Paragraph 11

En 2011 se estimaba que había cerca de 500 mil *smartphones* activos, cifra que para 2014 aumentó a 1.8 millones de un total de suscripciones de teléfonos móviles que rondaba los 9 millones (superando la población del país, que ronda los 6 millones de habitantes), según datos contrastados de la UIT y del director país de la empresa Telefónica. Los *smartphones* han posibilitado que, a pesar que la posesión de computadora y acceso al servicio de internet residencial sean aún bastante bajas, muchas personas en el país estén accediendo a internet desde sus dispositivos móviles.

No obstante su histórico bajo crecimiento económico y sus graves problemas sociales, las tecnologías digitales de la comunicación como internet, los teléfonos inteligentes y los dispositivos con acceso a *Wi-Fi* ya forman parte de la vida cotidiana de buena parte de las personas e instituciones del país. Cada vez son más las personas cuya información se encuentra en los registros electrónicos del Centro Nacional de Registros (CNR) o del registro tributario del Ministerio de Hacienda, generando que estas modernas herramientas de comunicación incidan cada vez más en la vida diaria de la ciudadanía, del Estado y el mercado.

In 2011, it was estimated that near five hundred thousand smartphones were activated; a number that by 2014 increased to 1.8 million of the total of cell phone subscriptions that went around the 9 million (exceeding the population of the country, that goes around the 6 million people), according to verified data of the International Union of Telecommunications and the director of the Telephone company. Smartphones have made possible for many people in the country, in spite of not owing a

computer and that the residential Internet service access are still low, many people may access the internet from their mobile devices.

In spite of its historically low economical growing and its serious social problems, the communication digital technologies like internet, smartphones, and devices with Wi-Fi access, take part of the daily life of a great part of the people and institutions of the country. Each time is more the people whose information is found in the electronic records of the National Records Center (CNR for its initials in Spanish), or the tax records of the Ministry of Finance, generating that these modern communication tools have a bigger impact in the daily life of the society, the State, and the market.

Paragraph 12

Las nuevas dinámicas generadas por las tecnologías de la información y las telecomunicaciones han provocado que derechos como acceso a la información, libertad de expresión, libertad de prensa, derecho a la protección de datos y la privacidad, entre otros, se vuelven cada vez más importantes de discutir y legislar. En el Salvador, en particular, urge la necesidad de poner en la agenda pública los temas derivados de la presencia cada vez más extensa de internet en la economía y política doméstica.

Dicha urgencia queda en evidencia cuando el escenario planteado hace diez años por José María Ayala en cuanto legislación sobre protección de datos, continúa siendo prácticamente el mismo:

En El Salvador existen casos conflictivos, en donde las empresas manejan datos de cualquier persona sin su consentimiento e incluso con su desconocimiento sobre la existencia del mismo fichero. Ante esta situación, la incertidumbre gana terreno. La ciudadanía salvadoreña no sabe quién y para qué se están almacenando, gestionando o utilizando sus datos personales; ignora a quién tiene que dirigirse para solicitar la cancelación de informaciones erróneas o incluso desconoce si puede exigirlo

jurídicamente, porque no existe, en el país, un marco jurídico que lo proteja contra el uso abusivo de sus datos personales.

The new dynamics generated by information technologies and telecommunications have produced that rights as access to information, freedom of expression, press freedom, data protection and privacy, among others, are more important to discuss and legislate. In El Salvador, it is particularly urgent the necessity of putting in the public agenda the topics derived from the more extensive presence of internet in the economy and domestic politics.

This urgency is evident when the scenery suggested 10 years ago by José María Ayala regarding the legislation about data protection, is still the same:

In El Salvador, there exist conflictive cases, where companies manage the data of any person without his permission, and ignoring the existence of such file. Against this background, uncertainty gains ground. The Salvadorian citizenship does not know who and why their personal information is being kept, handled and being used; they ignore to whom they have to ask for the cancelation of wrong information and also they do not know if they can claim it judicially, because it does not exist a judicial framework that protects them against the abusive use of their personal information in the country.

Paragraph13

Tantos años después en El Salvador, a pesar de la trascendencia de tales realidades, existe escasa discusión académica y política al respecto con una grave ausencia de normativas que regulen el inmenso mundo de internet y sus derivados. En un país abatido por la violencia, la inseguridad y el alto costo de la vida, las preocupaciones por la seguridad de sus datos o la vigilancia que organismos públicos o privados puedan realizar a través de las nuevas tecnologías

parece no solo no ser prioritario, sino estar poco presente en la agenda pública. Sin embargo, “no es admisible, al menos para juristas, políticos y tecnólogos, aducir sorpresa o desconocimiento de los eventuales peligros implícitos en el uso de las nuevas tecnologías”.

En la era digital, las tecnologías de la comunicación también han aumentado la capacidad de los gobiernos, las empresas y los particulares para realizar actividades de vigilancia, interceptación y recopilación de datos. El incremento de tecnología disponible, tanto para los delincuentes como las víctimas, combinado con el escaso conocimiento o información sobre cómo proteger sus datos personales y sus comunicaciones, así como de los posibles delitos que se pueden sufrir a través de las nuevas tecnologías, otorga a los delincuentes un campo fértil de potenciales víctimas.

Many years later in El Salvador, in spite of the transcendence of such realities, there exist few academic and political discussion about it, and a serious absence of rules that regulate the immense world of Internet and its derivatives. In a country dejected by violence, insecurity, and the high cost of living, the concerns about the security of the data or the surveillance that public or private organisms could do through new technologies are not just a priority, but also having a little presence in the public agenda. However, “it’s not admissible, at least for jurists, politicians, and technologists, to adduce surprise or ignorance of the eventual implied risks in the usage of new technologies.”

In the digital era, communication technologies also have increased the capacity of the governments, companies, and people in general to carry out surveillance activities, interception, and data recording. The increasing of available technologies, for criminals and victims, combined with the scarce knowledge or information about how to protect their personal information and their communications, as well as possible crimes that can be suffered through new technologies, gives to the criminals a fertile field of potential victims.

Paragraph 14

1.3. Criminalización de defensoras y defensores de derechos humanos

A continuación un marco de la historia reciente y la situación actual de los derechos humanos de los y las defensores de derechos humanos en El Salvador. A su vez, también se realiza un acercamiento preliminar entre el marco jurídico nacional sobre nuevas tecnologías y telecomunicaciones y la posibilidad de que este pueda dejar espacios para la criminalización de las personas defensoras de derechos humanos.

1.3.1. Derechos humanos: durante y después de los militares

Los gobiernos militares (1931 a 1979) y el conflicto armado (1980 a 1991) que experimentó El Salvador en el siglo XX dejaron **como saldo** una amplia práctica institucional de persecución política, violaciones de derechos humanos y persecución de defensores y defensoras de derechos humanos. Dentro del largo y oscuro historial de leyes que fueron utilizadas para reprimir políticamente y que sirvieron para violar derechos humanos se encuentran, por ejemplo, el Código Penal de 1904 que ordenaba el internamiento –en hospital o cárcel- de los locos y dementes. En 1940 la ley represiva de vagos y maleantes se estableció como un medio de defensa social. Más adelante, en 1953, fue promulgada la ley del estado peligroso, la cual se mantuvo vigente hasta 1997.

1.3. Criminalization of Human Rights Advocates

Following, it is found a framework of the recent history and the current situation of the human rights of the advocates of the human rights in El Salvador. At the time, it is carried out a preliminary approach among the national judicial frameworks about new technologies and telecommunications, and the possibility of allowing spaces for the criminalization of the advocates of Human Rights.

1.3.1. Human Rights: during and after the militaries

The military governments (1931-1979) and the armed conflict (1980-1991) that El Salvador experienced in the XX century left a huge institutional practice of political persecution, Human Rights violations, and persecution of the Human Rights advocates. Within the long and dark history of laws that were used to politically suppress and that allowed the violation of the Human Rights, are found, for example, the 1904 Penal Code, which ordered the involuntary commitment of crazy and insane people in hospitals or jails. In 1940, the repressive law of bums and thugs was established as a mean of social defense. Later, in 1953, it was enacted the law of the dangerous State, which was current until 1997.

Paragraph15

También se crearon instituciones como ORDEN (Organización Democrática Nacionalista), que funcionó de 1961 a 1979 como el instrumento del ejército salvadoreño para recoger información para los servicios de inteligencia, siendo clave para la persecución y represión política. El Ejército y los cuerpos de seguridad como la Policía Nacional, la Guardia Nacional y la Policía de Hacienda, fueron instituciones estatales encargadas de reprimir y perseguir políticamente durante buena parte del siglo XX. A ellas les acompañaron organizaciones paramilitares como los Escuadrones de la Muerte, responsables de torturas y asesinatos, y también algunas células guerrilleras que cometieron secuestros y asesinatos en objetivos no militares.

De la época del conflicto armado sobresale como caso paradigmático el asesinato de Herbert Anaya Sanabria en 1987, quien fuera director de la Comisión Nacional de Derechos Humanos (CDHES), organización no gubernamental dedicada a la defensa de los derechos humanos. Un año antes de su asesinato, Herbert ya había sido apresado por la ahora extinta Policía de Hacienda, entre otras formas de hostigamiento de las cuales él y todas las personas defensoras de derechos

humanos de la época eran víctimas. Y, en general, todo aquel que manifestara su oposición al régimen o emitiera posición política que fuera considerada como subversiva.

It was also created some institutions as the National Democratic Organization (ORDEN, for its initials in Spanish). It worked from 1961 to 1979 as a tool of the Salvadorian army to collect information for the intelligence services, and was a key for political persecution and repression. The army and security organisms as the National Police, the National Guard, and the Fiscal Control Police were State institutions in charge of politically repressing and persecuting people during a good part of the XX century. In addition, paramilitary organizations as Death Squads were responsible of torturing and assassinating people, and also guerrilla cells that committed kidnappings and crimes in non-military objectives.

From the time of the armed conflict, it stands out as paradigmatic case the crime of Herbert Anaya Sanabria in 1987. He was the Director of the National Commission of Human Rights, a non-governmental organization dedicated to the defense of Human Rights. A year before his assassination, Herbert was already apprehended by the currently extinct Fiscal Control Police, among other ways of harassment from which he and all the Human Rights advocates of the time were victims of; in addition, to any person who stated his opposition to the regime or emitted a political position that was considered subversive.

5.1.3 Glossary

The glossary is an important instrument that helps the translator to have at hand the terms or words that he considers necessary to take into account when translating a specific text. There are different kinds of glossaries according to the different fields and topics of study. In this last part of the chapter, the translator will provide two glossaries he created to carry out the translation of the documents.

Table 5

Spanish Term	English Term	Grammatical Category	Definition
abarca	involve	verb	Acaparar o asumir diversas obligaciones de manera simultánea
activistas	activists	noun	Que participa activamente en la propaganda del partido o sociedad a que pertenece o practica la acción directa en la lucha por los cambios sociales o políticos que pretende
asidero	pretext	noun	Pretexto, justificación o sustento
autodeterminación	self-determination	noun	Decisión consensuada de los habitantes de un territorio o unidad territorial sobre su futuro estatuto político
censura	censoring	noun	Acción de examinar una obra destinada al público, suprimiendo o modificando la parte que no se ajusta a determinados planteamientos políticos, morales o religiosos, para determinar si se puede o no publicar o exhibir
cifrado	encoding	adjective	Que está escrito con letras, símbolos o números que solo pueden comprenderse si se dispone de la clave necesaria para descifrarlos
consensuada	consensual	adverb	Acordado de mutuo acuerdo entre las partes, es decir pactado acordado entre las partes

contraproducentes	counter-productive	adjective	Que produce un efecto contrario al que conviene o se pretende
coyuntura	situation	noun	Combinación de factores y circunstancias que caracterizan una situación en un momento determinado
deliberación	deliberation	noun	Es un acto entendido en cuanto a proceso y resultado en el cual se evalúan los pros y contras relevantes con objeto de adoptar una decisión determinada
divulgación	exposure	noun	Es la acción y efecto de divulgar (difundir, promover o publicar algo para ponerlo al alcance del público)
doctrinarios	doctrinaire	adjective	Que defiende rígidamente una doctrina o que presta más atención a la doctrina o a las teorías que a su aplicación en la práctica
engloba	includes	verb	Incluir varios elementos o individuos en una sola unidad o conjunto, o considerar que forman parte de él
espionaje	spying	noun	La práctica y al conjunto de técnicas asociadas a la obtención encubierta de datos o información confidencial
incidan	Have an impact	verb	Influir en un asunto o causar efecto en él
jurisprudencia	jurisprudence	noun	Conjunto de las sentencias, decisiones o fallos dictados por los tribunales de justicia o las autoridades gubernativas

juristas	jurists	noun	Persona que se dedica al estudio del derecho o lo ejerce como profesión
limitabilidad	limitation	noun	Circunstancia o condición de algo o de alguien que limita, impide o dificulta su desarrollo
mercantil	mercantile	adjective	Del comercio o que tiene relación con él
moneda de cambio	hard currency	noun	Sistema monetario en el cual el Valor de la Moneda está determinado por la Oferta y la Demanda
notarial	notarial	adjective	Del notario o del notariado, o relacionado con ellos
penalización	penalization	noun	Es una sanción o castigo impuesto por una autoridad debido a una infracción
penas	punishment	noun	Condena o sanción que un juez o un tribunal impone
predominancia	predominance	noun	Condición de la persona o cosa que predomina
tipificación	typification	noun	Clasificación en tipos o clases de una realidad o un conjunto de cosas

Table 6

English Term	Spanish Term	Grammatical Category	Definition
appropriateness	pertenencia	noun	The quality of being suitable or proper in the circumstances
coercion	Coerción	noun	The act of coercing; use of force or intimidation to obtain compliance
compliance	cumplimiento	noun	The action or fact of complying with a wish or command
comprise	constituir	verb	To consist of; be made up of
conceived	concibe	verb	To form or devise a plan or idea in the mind
core function	función principal	noun	The central, innermost, or most essential task of something
deepen	profundizar	verb	To make or become deep or deeper
domain of expertise	áreas de formación	noun	It is to have an expertise in a certain field
embodied	incorporó	verb	To be an expression of or give a tangible or visible form to an idea, quality, or feeling
embrace	acoger	verb	To hold someone in your arms as a way of expressing love or friendship
enforceable	aplicable	adjective	Able to be imposed so that it must be complied with
enhance	incrementar	verb	To rise to a higher degree; intensify; magnify

flip chart	rotafolio	noun	A large pad of paper bound so that each page can be turned over at the top to reveal the next, used on a stand at presentations
foresees	prevé	verb	To be aware of beforehand; predict
fostering	promueve	verb	To encourage or promote the development of something
framework	programa	noun	A basic conceptional structure
guidelines	directrices	noun	A rule or instruction that shows or tells how something should be done
latter	última	adjective	Near or towards the end of something
mandates	mandatos	noun	A command or authorization to act in a particular way on a public issue given by the electorate to its representative
recidivism	reincidencia	noun	The tendency of a convicted criminal to reoffend
scope	ámbito	noun	an extent or range of view, outlook, application, operation, effectiveness, etc
strengthen	reforzar	verb	To make or become stronger
tackle	abordar	verb	To try to deal with something or someone
thereby	y así	Adverb	By that means; as a result of that
undertaking	emprendimiento	noun	A formal pledge or promise to do something

Chapter VI

Conclusions and Recommendations

This chapter will expose the results, analysis of the texts, and the recommendations related to this research. When the researcher starts an investigation, he has different objectives to reach at the end. The goal of this chapter is to compare the objectives stated in the first chapter with the results of this investigation through its previous analysis, so in that way we can see if those objectives were achieved or not. This section will also show different recommendations the researcher wants to provide as an advice for future researches related to topics similar to it.

6.1 Conclusions

6.1.1 To translate the documents “El Salvador” from Spanish into English for Fundación Acceso and “Experiences, models and perspectives on the right to participation in the Juvenile Justice System” from English into Spanish for DNI Costa Rica.

The translator before starting to translate the texts had to analyze them first, in order to understand what is the topic about and to find difficult words that must be investigated to achieve the correct meaning according to the context of each one. The first step was the general reading, in which the researcher just made a quick reading to understand the general idea of the documents. Then, he made the close reading, which was more detailed due to he needed to find difficult words to analyze the correct meaning, and also to choose the words that he consider useful to have in the glossaries.

According to Newmark (1988), close reading is a tool that helps the translators find words that are equivalent in the target language, while general reading needs encyclopedias, textbooks, or technical documents to understand the content of a text. Additionally Newmark, also states that a text analysis is a way to become more familiar with the source text and its elements that may help the translator to know beforehand how to solve issues that may arise along the process of translation. These readings also helped the researcher to identify the type of vocabulary used, the purpose of the author, and hence the purpose of the translator. In addition, this information helped the researcher to understand which translation method fitted better to the type of text.

Both texts have the same translation method. The method that was used in them was the communicative one, because the idea of them is to inform about a specific topic. In the case of “El Salvador” that was translated from Spanish into English; the authors wanted to expose information related to cyber-crimes, e-commerce, and, in addition, they want to comment various theses that were written regarding those topics. On the other hand, the text “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System,” translated from English into Spanish had as objective to inform the people about how to proceed with children who have conflicts with the law. It is a kind of manual to instruct people, who have direct contact with this kind of children, by using as reference the rights of the Convention of Human Rights. Hence the importance of close and general reading before translating, this action can facilitate many information of the text since the beginning, making the text clear for the translator and helping the researcher to choose the translation techniques he wanted to use.

Thanks to this previous readings, it was analyzed the scale of formality. “El Salvador” presents a formal scale because it has vocabulary used in discourses, and also it can be understood by a great number of people without problem, while “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” has a neutral scale because its vocabulary is neither formal nor informal, and all the people can understand, everything without problem.

Then, comparing the scale of generality, “El Salvador” was written using the educated scale, because it is directed to an audience with more education, and it expresses a formal sense used commonly in certain documents. By the way, “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” was written under the neutral scale, because it has basic vocabulary (words that people hear every day), and its meaning is easily understandable.

6.1.2 To apply various translation techniques to the documents in order to achieve communicative texts.

After reading both texts and understanding the context of the documents, the researcher has to analyze which translation techniques are the best in order to achieve precision and naturalness when translating. As stated by Nida & Taber (1969), a technique aims to produce correct equivalents and their functions are, to adjust the message to the structural requirements of the target language, create equivalent semantic structures, provide adequate stylistic equivalents, and allow a communicative equivalent.

To choose the correct procedure to translate the documents is so important, because the translator needs to be precise and natural when translating the texts. Also, depending on the procedure, he must be familiarized with some phrases or words that may not have

meaning in the target language, so he has to adequate some terms like in modulation, or he has to add some words to explain better the concept of a word like in explicitation.

Using literal translation, on the other hand, is easier for the translator because he translates word by word in the same order that each of them appear in the text, while amplifications are words that must be included in the text to give it naturalness, and reductions are words that can be omitted without losing its sense. Transpositions are more common to use when translating because English language is full of them, due to its grammatical structure.

Regarding the techniques (transposition, explicitation, modulation, omission, amplification, and literal translation), all of them were effective for both texts, but we can see that those texts have abundance of literal translation and transpositions while the other techniques were use less frequently. The researcher concluded that it happened because both texts were so technical, and consequently, it made difficult to find explicitations and modulations.

It is important to mention that the color coding is the instrument that allowed their identification. In both translations most of the techniques were used to convey meaning.

6.1.3 To create a glossary with the most relevant terminology found in both texts.

When the translator began to make the close reading, he found some words that caught his attention, because he has never heard them, or they were too difficult to understand its meaning. For that reason, the researcher decided to record those words in a glossary,

because it is important to have them by hand for future translations whose main topic is related to that field.

When a researcher starts a project like this, at the end of it he or she will not have the same number of vocabulary in their memory, because at the end of the reading the vocabulary knowledge of the person would increase, which means that reading and looking for new terms is like to update the information related to vocabulary that people have in their memory. It is an opportunity to learn new words and to learn different ways to use it in different texts.

The glossaries were so helpful in the translation process because in that way when the translator was doing the translation of the documents, he learned new words that he can use in other texts, or in conversations where the topics are related to the ones that he researched in this investigation. Also he saved time doing the glossaries, because having them by hand when he was making the translation, he did not have to investigate those concepts once again.

6.2 Restatement of the Research Question

What is the effect of procedure and methods used to translate the documents “El Salvador” from Spanish into English for FundacionAcceso and “Experiences, Models and Perspectives on the Right to Participation in the Juvenile Justice System” from English into Spanish for DNI Costa Rica?

The effects were analyzed using as reference the theory cited in chapter II about text analysis, style, stylistic scales, text function, type of translation, and translation techniques

from different authors. After applying a combination made of translator own knowledge, some previous research and the theory, it was possible to use the technical translation techniques to transmit the author's message from English into Spanish and viceversa, maintaining the same style and providing the specific audience a text that does not sound like a translation.

6.3 Recommendations

This part of the investigation is where the researcher gives some recommendations to take into account for future investigations similar to this. Here, the translator explains how he can modify some procedures that he followed, or which steps could be taken in consideration that he did not apply doing this research.

The first recommendation is to follow the steps that Newmark mentions in their books in order to do the text analysis. It is helpful to take enough time to read and translate the documents, because it is important to identify some difficult words, to analyze the different categories of the text like the scale of formality, the scale of generality, and finally, if needed, to make an additional investigation of the topic to understand better the context in which the texts were written. Also it is necessary to study the unknown words that the translator consider must be part of the glossaries, in order to make a kind of previous list with its corresponding meaning to create the glossary at the end.

Another recommendation is to look for the documents to be translated before taking the graduation seminar because there are few organizations and public institutions that are willing to trust their documents to outsiders. It is easier to find documents to translate

from English to Spanish because most of the organizations and public institutions receive material from English-speaking countries. On the other hand, the documents that need translation from Spanish to English are difficult to acquire since it is not common to find an organization or public institutions requesting that task often. People who work and study at the same time must be so organized with the time, because the tiring, the sleep, and the scarce of institutions are some facts that the researcher must fight against during the execution of the project.

Third, in order to achieve communicative texts, the creation of a glossary with the most important terminology will be recommended as it provides parallelism and coherence to translate accurately. Additionally, a glossary will not only save time, but also money for future translators because it is a useful tool that can be used anytime to carry out the translation of any text related to the terminology developed in previous translations. Because those are words that are not used commonly, it is important to create this kind of tools like the glossary, in order to have a kind of file specifying the type of vocabulary that can be found in this document, so in that way, future researchers, or maybe the same researcher who made this project can have this information by hand when needed.

Finally, it is mandatory to take into account the different procedures and techniques that translators can apply when translating documents, because they are tools that help to give naturalness and precision to the final documents written in the target language, without losing its original meaning.

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