

The Convention on the Rights of the Child and Implementation of Economic, Social and Cultural Rights in Latin America

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Introduction

For many ordinary people struggling to survive in Latin America, the concept of “human rights”—limited to a traditional interpretation of civil and political rights—is far too abstract to have relevance to their personal lives. Indeed, in Guatemala as late as 2000—four years after the signing of the Peace Accords which ended 35 years of civil war—in a public opinion poll, 32% of the respondents declared that the word “democracy” was unknown to them.² On the other hand, the “social” right to education is tangible and understood. Guatemalan respondents, in answer to the question “What laws would you implement to help children?” mentioned as a first priority a law to fulfill the right to education (50% of respondents), whereas a law to protect children from abuse, which comes under the umbrella of civil and political rights, was the fourth priority, mentioned by only 18% of respondents in the poll.³ When asked what factors prevented the fulfillment of children’s rights, only 13% cited the government’s failure to meet its obligations, and only 12% mentioned the absence of laws.⁴ Overwhelmingly (62%), respondents considered poverty and other constraining economic factors as the main cause for the failure to fulfill the rights of Guatemalan children. In other words, from their perspective, the realization of economic and social rights, not civil or political rights, was a precondition for the realization of all of their “human rights.”⁵

The Latin American population’s acutely-felt lack of social and economic benefits derived from democratization is beginning to bear the negative fruits of political instability, with citizen engagement in unseating democratically-elected presidents (as happened in four Latin American countries since 2000) or their disengagement from any democratic participation at all (with the accompanying potential for inviting traditional, undemocratic “strong-men” to occupy the empty field of political action). Democracy is seen as the privilege of the few who have the social capital to access power.⁶ As indicated in some studies, the lack of fulfillment of social rights leads to perceptions of exclusion, discrimination and social disparities, which in turn fuels widespread distrust in the institutions of formal democracy.⁷

In short, there is an urgent need to accelerate and amplify efforts to implement economic, social and cultural rights in Latin America as a means for reducing social exclusion, thus increasing commitment to democratic institutions and processes. This article first discusses how the Convention on the Rights of the Child,⁸ which has been ratified by every nation on the continent, shows great potential for promoting such changes. Second, it sets out what a development approach guided by human rights principles would look like. Finally, it discusses case studies in Chile and Ecuador that illustrate these human rights-based approaches in action.

The Convention on the Rights of the Child: An Engine of Change

The Convention on the Rights of the Child (CRC) came into effect in 1990, less than a year after the collapse of the Berlin Wall. It unites, in one human rights treaty, civil, political, economic, social and cultural rights and is a faithful echo for children of the Universal Declaration of Human Rights. The ratification of the CRC swept through Latin America on the heels of the restoration of democracy, following the brutal dictatorships installed in the 1970s. As a human rights instrument, it captured the imagination of the same social movements that had confronted those authoritarian governments.⁹ In the democratizing context of the 1990s, which demanded that protection of human rights be codified into law, this progressive momentum resulted—at an uneven but decisive pace—in national legislation for implementing the principles and minimum standards enshrined in the CRC throughout the continent, from Mexico to Chile. Particular energy was injected into this movement for children’s rights by Brazil, whose 1988 Constitution, informed by the CRC (then circulating as a draft treaty) codified child rights in its Article 227.¹⁰

The continent-wide effort to reform national legislation to meet the minimum standards established by the CRC highlighted, for law-makers and civil society alike, the profound injustices of the reality in which children lived, compared to what the new laws demanded for its youngest citizens. Faced with this dichotomy, the establishment of laws consistent with the CRC served a pedagogic purpose, driving the State and society to look for opportunities to create a new reality for children. The process of legislative reform in Latin America has proved to be an engine for social change in favor of children, which—as the cases presented below demonstrate—foster public participation in the formulation of the laws and in the forward-looking social policies consistent with the human rights principles in international law. New legislation and the processes that accompany its implementation, while aiming primarily at recognizing children as subjects of human rights, also serve to reduce exclusion from the social and economic benefits of citizenship, not only of children, but of other marginalized groups as well.

The United National Children’s Fund (UNICEF) has been intimately involved with promoting legal reform in Latin America based on the CRC.¹¹ In Latin America, implementing the CRC meant changing the prevailing legal doctrine of “irregular situation,” codified in legislation enacted across the continent in the 1920s and 1930s. Although this legislation was considered to be an advance over what had existed, its aim was:

“...to ‘protect’ children in ‘irregular situations’—described in the legislation as those who were ‘supposedly abandoned’ and ‘presumably delinquent.’ It endorsed the unlimited use of state intervention to ‘dispose of’ those juveniles who were either materially or morally abandoned...there was no legal protection to prevent a child from being declared abandoned simply because he or she had no material resources.... In essence, children who were protected by basic social services such as health and education were being separated from those who were not [minors, a category of children]...who were viewed as being in ‘irregular

situations'...and regarded simply as objects of state intervention rather than true legal subjects entitled to certain rights and guarantees."¹²

Applying the CRC and protecting the integral rights of children meant changing a culture in which children could be accused of "anti-social behavior" and, at the judge's sole discretion, deprived of their liberty "for their own protection," a culture in which poverty was criminalized for those "minors" who could not demonstrate adequate material resources. Implementing the CRC required a radical transformation of both the concepts and the operational procedures of juvenile justice and social protection, as well as of the process by which social policy was both developed and implemented. Engaging in these processes, UNICEF found its own approaches to development profoundly influenced by the human rights principles codified in the new legislation. At the same time, UNICEF found itself drawn into the development of social policies, which were necessary to meet the minimum standards established by the CRC.

A Human Rights-Based Approach to Development

Based on its commitment to the CRC, UNICEF has been a leader in developing a human rights-based approach to development programming, as it has come to be known by development practitioners within the United Nations and among non-governmental organizations such as CARE and Save the Children (UK). In Latin America, this approach is rooted in law, which has the potential (not always realized, to be sure) of making positive changes for children permanent and creating a framework for sustainable development in a democratic context.¹³

Applying human rights principles to social development—principles emanating from law reform—has led policymakers, at both international and national levels, to see injustices they may never have seen before, and to design policy remedies which, requiring public participation, can only function in a democratic State.¹⁴ Applying *the principles of universality and non-discrimination* directs the State's attention and resources towards vulnerable children and their families living at the margins of the mainstream and towards the provision of services to reach the "last 10%" of the excluded. In development programs for children, the most obvious consequence of applying the principle of universality has been in identifying, advocating for and supporting children whose relative numbers may be small but whose rights violations are greatest—children in prison, child victims of sexual abuse, exploitation and trafficking, children without families. Their rights are in particular need of legal protection and the integral approach of the CRC. The resulting legislative reform has enhanced that protection and done away with repressive laws based on the "doctrine of irregular situation." Application of this principle also leads to identifying, advocating for and supporting communities of ethnic and racial groups suffering discrimination.

Development programs that integrate these principles naturally contribute to reducing social and economic exclusion over the medium term and should stimulate the State to establish a time-bound plan for progressive realization of universal economic, social and cultural rights. Promoting universality and non-discrimination in programs contributes to

weaving an inclusive social fabric, fostering democratic dialogue and participation. As a result, over the medium and long term, the country is less likely to be rent by conflict and community and family breakdown.

Applying principles of the indivisibility of human rights leads to development programs that incorporate the inter-relatedness of the causes of socio-economic problems and social exclusion. These programs are increasingly intersectoral in content, addressing the inter-connected rights of the whole person. For example, programs to address maternal mortality go beyond the provision of health services, empowering mothers to recognize signs of risk, how to prevent risk/illness, where to get treatment; adapting health services so that they are sensitive to cultural birthing practices; changing men's attitudes that impede women from protecting their own health; advocating at the national level for more resources to be put into emergency obstetric care; and improving the legal status of women through legislative reform and civic education. A program that respects the principle of indivisibility would likely involve a different set of partners for each dimension of the inter-related problems it seeks to address: women's groups could be the actors empowering mothers; state policymakers the actors for guaranteeing culturally-appropriate services; human rights groups or churches the actors for changing men's attitudes; and parliamentarians the actors responsible for budgetary allocations and new laws. All these actors need to be motivated and enabled to work together—a role of “convener–networker” that UNICEF can undertake or support.¹⁵

Applying principles of participation is directly related to the strategy of empowerment and leads to programs that build citizens' capacity to take charge of their own development, the protection of their rights, and the fulfillment of their duties. In the area of legislative reform, the principle of participation requires that laws be formulated not solely by parliamentary committees but in a process of active citizen involvement through outreach, civic education and policy foras.¹⁶ In fulfilling the right to education, this principle requires increasing communities' capacity to negotiate with the Ministry for facilities, learning materials and teachers; to participate meaningfully in the school's management; to foster student governments within the school; and to demand accountability from teachers (i.e., that teachers report to work, respect children in the classroom and produce learning results), among other things. Once such skills are learned through empowering participation, they cannot easily be forgotten; thus the human rights approach can make a particular contribution to the sustainability of a development investment.¹⁷ For participation to be meaningful, the minimum conditions are that the State be sufficiently democratic to allow a public space for participation and that civil society have sufficient capacity to seize and expand that space. Support to capacity building of both the State and society, as described in the examples provided earlier and in the cases which follow, facilitate meaningful participation in public policy.

Applying principles of accountability in development programs can take several forms. Establishing laws that protect and fulfill human rights standards makes it possible for citizens to claim their rights.¹⁸ Administrative measures that establish systems of sanctions for those civil servants who fail to fulfill their obligations (whether it be by not showing up for work or by misusing funds) enable citizens to hold State agents

accountable. Accountability is also enhanced when information campaigns—organized by civil society, the media or the government itself—inform the citizenry of the State's commitments (whether budgetary allocations to social services, social sector goals such as the Millennium Development Goals, or health/education service standards) and the State's performance with regard to those commitments. Additionally, applying the principle of accountability means citizens should have the legal right to challenge the State in national court,¹⁹ and where national courts are unresponsive, citizens should be provided the option of pursuing justice in international courts.²⁰

In summary, the human rights approach to development strengthens democracy by: 1) educating and enabling citizens to participate in civic affairs; 2) developing mechanisms that increase the transparency and accountability of State services; and 3) empowering and directing resources to marginalized groups, hence strengthening the social fabric and reducing potential social discord, conflict and disintegration. Finally, all these actions enhance the sustainability of development programs through:

- Codifying social and political consensus into laws, policies and programs institutionalizing democratic processes;
- Building capacity of citizens to engage in dialogue, meet their own responsibilities, and hold the State accountable for fulfilling its obligations;
- Strengthening the capacities of individuals and institutions to carry out their obligation as expressed in local, national and international laws, policies and programs; and
- Strengthening social cohesion through seeking consensus and by focusing assistance towards the excluded and most marginalized.

Implementation of Economic and Social Rights: Two Cases

With the Convention on the Rights of the Child as the guiding framework for UNICEF's country programs of cooperation and using legislative reform in Latin America as an opportunity to develop progressive and participatory social policies based in human rights principles, recent years have seen some advances in the implementation of economic, social and cultural rights. Two cases are presented below—Chile and Ecuador—both of which demonstrate that, beyond the ratification of an international treaty, the process and consequences of applying to development programs the principles embedded in the CRC can provide a platform for collective action and enhanced solidarity for implementing the rights of children, as well as of other excluded members of society.

*Applying the Principles of Universality, Indivisibility and Participation: Expanding Education to the Poorest in Chile.*²¹

Following 20 years of sharply-declining spending on social programs under military dictators, the democratically-elected governments of the 1990s reaffirmed Chile's commitment to education, when successive governments undertook a system-wide educational reform focused on expanding and improving existing facilities and modernizing the curricula. These important advances to ensure the right to education culminated in May 2003 in a Constitutional Amendment that guarantees to all children the right to 12 years of free education.²² This amendment expanded the minimum standard of compulsory and free primary education established in Article 28 of the CRC, which Chile had ratified on August 13, 1990.

UNICEF took advantage of the government's focus on education to call attention to the large number of adolescents (around one-third) who either never entered—or failed to complete—secondary school. UNICEF did so by opening debates around the issue among educational stakeholders and policymakers, by taking the issue to the media, and by helping to create support for inclusive secondary education among grassroots organizations. This human rights-based approach, particularly applying the principle of universality, led UNICEF's office in Chile to examine educational reform from the perspective of those children at the margins of society who were *not* benefiting fully from the reform. While government data looked at statistics reflecting entrance into secondary schools (school "coverage"), UNICEF focused on the number of students who actually completed this phase of their education, in order to calculate school drop-out rates. The results revealed that attendance rates had dropped between 1989 and 1993, and about one-third of all adolescents were not completing secondary school. Significantly, UNICEF's research revealed that 70% of school drop-outs were from Chile's poorest families; many left school because they had to join the labor market. The irrelevance of the curriculum to the needs and interests of Chile's non-elite youth and lack of programs for students with special needs—including pregnant girls and teenage mothers—were other key problems identified.²³

Faced with these startling statistics, in mid-2000 the Chilean Government launched the "Secondary School for All" program (*Programa Liceo para Todos*), which focused on schools identified as those with the highest drop-out rates. The strategies developed included: the provision of extra resources and technical assistance for schools that developed effective action plans to improve student retention rates; scholarships for students at high risk for school abandonment which would enable them to attend school without having to work; curriculum reform; and programs for students with special needs. The new initiative, as a practical recognition of the indivisibility of rights, also included the expansion of an existing program providing free school lunch for primary school students to include secondary schools and began to offer counseling for students with behavioral or learning problems.²⁴

To provide extra help for rural students, the government enhanced and expanded a "Rural Education" program, piloted in the early 1990s, in order to improve the education of rural

youth without removing them from their culture and traditions. With the new focus on inclusion and retention, the government's program worked to build the capacity of teachers in small schools to teach different grade levels, recognize and deal effectively with students with special needs, and employ newer, more flexible teaching methodologies. Another component was the installation of more computers in rural classrooms—to overcome isolation and distance from learning centers—thus enhancing the right to knowledge and information. A third component aimed at involving parents in the educational process, reducing their exclusion and increasing their motivation to support their children's school attendance.²⁵

The Ministry of Education also tackled issues of participation, through a component of the social studies curriculum designed to encourage civic participation by schoolchildren and their parents. Under the military regime, the civic education curriculum emphasized understanding the limits of citizen participation. The new curriculum focuses on building citizens who use knowledge and critical thinking skills to play an active role in public life.²⁶ In support of children's right to participate in decisions that affect their lives, the educational reform also has included the formation of student governments, which are encouraged to debate relevant school policies. All of these elements contribute not only to improving educational performance but to deepening and fortifying the country's democratic culture among the next generation.

By mid-2001, overall school enrollment had increased by more than 17% over the level in 1990, and secondary school drop-out rates had declined by almost one third to 7.5%. In secondary schools, math scores increased and language scores remained stable, even though a larger number of students from the lowest income groups were tested.²⁷

Demonstrating the indivisibility of rights, the government's emphasis on the importance of 12 years of schooling has assisted efforts by UNICEF and Chile's 90,000-member Teacher's Union to discourage child labor, especially in rural areas. Teachers are actively disseminating materials on child labor, holding class discussions and beginning to identify children whose schoolwork suffers due to participation in the labor force and to encourage them to enroll in new government programs (scholarships, family subsidies, etc.). By providing financial resources that help poor families, Chile's new programs help to convince parents and youth that it is in their long-term interest to complete a secondary education—and thus reduce the incidence of child labor.

The measures taken by the Chilean government to implement the social right to education correspond to goals and values ascribed to by all members of society. Polls taken in 2002 among parents of all socio-economic groups placed free, obligatory secondary-school education far above any other government policy under consideration.²⁸ At the same time, social groups that might have opposed the designation of considerable public resources for eliminating educational inequalities recognized the overall value to society of an educated workforce and did not attempt to block the Constitutional Amendment. Thus, by applying the human rights principles of universality, indivisibility and participation, the expansion of the right to education in Chile both benefited from and

responded to a consolidation in the country's democratic processes and institutions, while beginning to redress social disparities.

*The Principles of Universality and Participation: A Budget for Implementing Social Rights in Ecuador*²⁹

Ecuador experienced a serious macroeconomic crisis during the late 1990s, which resulted in sharply decreased spending on social programs, thus undermining the rights of children, as well as adults, to health care, education and adequate nutrition. Poverty rates doubled between 1998 and 1999, and spending for health and education dropped by about 25%. Concerned at these cuts, which were especially devastating for Ecuador's poorest and most vulnerable families, in 2000 UNICEF began a dialogue with the Congress over the government's proposed budget. Congress invited the Ministry of Finance and Economy to participate in this dialogue, a step which led, some months later, to a signed agreement between the Ministry and UNICEF in which UNICEF was authorized to have access to the Ministry's financial data to analyze the national budget, monitor its execution, and communicate its findings. Helping legislators and the public to understand how the budget functions and what priorities it reflects were the objectives of this exercise, whose goal was to encourage the creation of more equitable public policies based on a shared consensus regarding society's obligation to fulfill the human rights of all of its members.

Faced with deteriorating conditions—which were threatening the rights of Ecuador's children to survival, health and nutrition—UNICEF sought to mitigate the impact of the crisis on families. Analysis of Ecuador's budget and spending patterns revealed that spending on social programs was plummeting. For example, investment in education dropped from US\$611 million in 1996 to US\$331 million in 1999; and health spending fell from US\$198 million to US\$96 million.³⁰ The budget analysis also revealed that spending for social sectors was disproportionately low (15% for 2000) compared to allocations for debt repayment (60%) and other non-social sectors. In addition, certain regions (the rural sector, Andean Highlands and the Amazon)—particularly those with a majority indigenous population—were not getting a fair share of social benefits.

In 1999, a discussion of the results with government officials yielded an agreement by Ecuadorian President Jamil Mahuad that UNICEF should track social expenditures and the key indicators of the national crisis by using information gathered from the Ministry of Economy and Finance. From this information, UNICEF created a series of visual tools—tables, bar graphs, pie charts, etc.—to make budget data accessible and comprehensible to ordinary Ecuadorians. Over time, this data became available online.³¹ As part of its agreement with the Ministry of Finance, UNICEF then undertook an ambitious outreach effort, sharing the information with a wide variety of partners, including legislators, business leaders, academics, media representatives, and indigenous, religious and trade union groups. The central issue during these meetings was how to make public spending more equitable. The key message of this advocacy effort was the universality of human rights translated into three goals: health and education for all and hunger for no one. It was a values-based message, offered in the spirit of overcoming a

crisis felt by all, but seriously threatening the survival of the country's poor and indigenous people.

UNICEF and government officials worked together to draft programs consistent with the overriding goals of universality and equity, including: expanding existing school nutrition and income-support programs; nutritional support for children under two and pregnant and lactating mothers; and subsidies for poor families to send their children to school. All programs were targeted to reach the most marginalized and impoverished segments of the population.

To sustain these programs and ensure greater equity in the medium and long term, in 2001 UNICEF returned to the budget for further analysis and discussions within the country. At the same time, the Ministry of Finance was preparing a proposal for tax reform and asked UNICEF for advice. This initiative ultimately led to an expansion of UNICEF's role from monitoring expenditure to include monitoring revenue. This information on tax reform was also shared widely; the tax issue received press coverage and was the topic of a national conference sponsored by the Ecuadorian Congress.³²

In 2001, the percentage of total government spending devoted to social programs rose to 22.1% and then again to 23.2% in 2002, exceeding the 1996 figure of 19.1%.³³ By 2002, *per capita* social spending had surpassed pre-crisis levels, although due to population growth, the poorest Ecuadorians were still receiving considerably less than in the past.

In addition, the need to reform the national tax structure and generate additional revenues resulted in important institutional changes. The capacity of the Internal Revenue Service (*Servicios de Rentas Internas*) was strengthened so that an additional four to five percentage points were collected in taxes, and a new Customs Service was created, the *Comisión de Aduanas de Ecuador*, which added a further two percentage points. Consequently, between 1999 and 2002, government revenue from taxes increased from 6.4% to 13.7% of GDP,³⁴ although the underlying tax structure still relies mainly on indirect taxes, and efforts to modify the structure are ongoing.

From the perspective of building a human rights-based society in Ecuador, the results were also impressive. A broad social consensus around the need for more just and equitable public-spending policies clearly emerged during the first few years of UNICEF's public budget work.³⁵ The leader of one of the country's largest indigenous groups noted that the work had "democratized budget information." Previously, few Ecuadorians were aware of, or able to understand, the national budget.

In facilitating this process, Ecuador's political leaders made tremendous strides towards accountable and transparent governance. By increasing and targeting social sector investment in light of the discovery of critical inequities, the government took a human rights-based stance that placed priority on fulfilling the rights of the country's most vulnerable citizens.

Perhaps the most important lesson learned from the Ecuadorian experience on implementing economic, social and cultural rights is that a human rights-based message can resonate and provoke change if it is based on widespread consensus and perceived as a positive contribution to the society. Even in an historically-inequitable society, most people share an underlying belief in human rights and social justice that, once tapped, can influence public policymaking. Although Ecuador had ratified the CRC on March 23, 1990 and approved a Code for Children and Adolescents in 2002, it was less these legal instruments than the principles of universality and participation sustaining them that propelled the process forward. At no time, whether analyzing the budget or sharing its findings with wide sectors of society, did UNICEF encounter resistance to the underlying premise that rights must be universal. This experience, rooted in democratic institutions and processes, challenges contemporary assessments of exclusionary public policy in Latin America and offers a positive model of building solidarity for social inclusion, even in a context of extreme resource scarcity.

Conclusion

The 2004 UNDP Report, “Democracy in Latin America: Towards a Citizens’ Democracy,” which documents the Latin American population’s crisis of confidence in the institution of democracy, calls for the continent’s people to pursue new policy options that promote full and multi-dimensional citizenship for all through a genuine “government of the people”:

Government of the people means that decisions that affect everyone should be taken by everyone. Government of the people therefore means a State of citizens in the full sense of the term. A system of electing authorities, but also a form of organization that guarantees the rights of all: civil rights (guarantees against oppression); political rights (to be part of public or collective decision-making); and social rights (access to well-being).³⁶

The processes for the implementation of children’s rights underway in Chile and Ecuador, as well as in several other countries of Latin America, represent success stories of active citizenship and participation in a “government of the people” which fulfils rights in an integral manner. They offer examples of participatory public policy that create momentum for social change and foster a national ethic in favor of inclusion; as such, these cases provide valuable insights on how to strengthen democracy through creating greater public debate on children’s rights. Even though that transformation to social inclusion is far from complete, what each country has shown is that society’s aspirations for the fulfillment of social and economic rights give an impetus for the creation of constructive dialogue on social inequities. This dialogue, which could not take place without the existence of formal democracy, strengthens democracy by building trust in the State and its institutions. Such a dialogue allows State and society to jointly achieve concrete results for the excluded: the extension of education to the poorest in Chile; increase in level of social budgets for the benefit of children and the poor in Ecuador; and response to the demand for the fulfillment and protection of child rights in Guatemala.³⁷

Through active citizenship, these countries have taken steps to answer the questions of what rights their society should centrally pursue and the minimum level of fulfillment it must provide for its citizens. These three cases offer hope that Latin America can find new ways to use democracy to fulfill economic and social rights, and in so doing, strengthen confidence in its processes and institutions, and thus, in democracy's promise of an inclusive society which offers a better life for all its citizens.

Notes

1. All opinions expressed are those of the author and do not necessarily represent the views of UNICEF. The author wishes to thank Rhea Saab and Alison Raphael, without whom this chapter could not have been written.
2. Opinion poll of 3,200 people ages 10-55 on perceptions of democracy, peace, human rights and child rights. SOPORTE, *Conocimiento y Percepción de Derechos Humanos de la Niñez en Guatemala* (UNICEF: Guatemala City, 2000).
3. Time Research-UNICEF, *La voz de los niños, las niñas y los adolescentes en América Latina y el Caribe* (Guatemala: UNICEF 2000).
4. SOPORTE opinion poll, cited in footnote 2.
5. An illustrative example comes from Nebaj—one of the areas most savagely affected during Guatemala's civil war—where there was an alarming increase in youth suicides in the three years following the 1996 Peace Accords. The assumption of many, including UNICEF, was that these suicides were directly tied to the experiences of violence and gross violations of civil and political rights that these young people and their families had endured during the war. However, a qualitative study of Maya-Ixil youth, which UNICEF carried out with the Catholic Archbishop of Guatemala's Office of Human Rights, revealed a far more complex picture.

The direct experience of violence had been integrated into the youths' identity and certainly affected them, but they were far less likely to be frustrated by the demons of the past than by their perceived lack of opportunity in the future. To the extent that the motivation for suicide could be detected, it tended to be the adolescent's perception that he or she would never be able to complete their education or better their material conditions. For the young Mayas interviewed in the study, there was an enormous gap between their aspirations and their actual possibilities. When asked, "How would I like my community to be?" they listed material aspirations: cement-block houses, running water, electricity, televisions, sewing machines, stylish clothing, etc., far removed from their daily reality of wattle and daub houses, candle power and home-made, traditional clothes. But the young people themselves recognized that even if they were fortunate enough to go to school, they might not be able to earn what they needed to procure the ideal life they envisioned for their community. As one boy stated, "We can't get a job. None of the boys in our high school have jobs, and there are none available for us

[here]...if only we could attend workshops on how to get a job, we might, but unfortunately there are none....”

While the lack of opportunities available to Mayan youth is directly tied to their historical exclusion from the political life of the nation, what is important here is that in their *own* perceptions, the realization of social rights was seen as the path to a better future—and being barred from that path was perceived as a reason to give up on life. These findings are taken from Christian Salazar-Volkman, “*The Identity of Young Mayas after the Genocide: A Qualitative Analysis*” (UNICEF, Guatemala, 2002), 19.

Suicide as a response to desperate socio-economic conditions is not confined to Guatemala. For example in Brazil, “[a] recent memorial service for Jaqueline [who committed suicide when she was 13] at a schoolhouse here quickly turned into a political rally, with angry Kaiowa speakers pleading with a contingent of police officers in attendance for social and economic reforms. ‘We need jobs. We need wages,’ Maximo Arevalo [her grandfather] told an audience of more than 200 people. ‘This is why our children are committing suicide.’ ” See Jon Jeter, “Young Brazilian Indians Find Suicide Only Way Out,” *The Washington Post*, April 14, 2004.

6. See Andrew Reding, “Latin America’s ‘Arc of Crisis’ where All are Unequal, Democracy is Little more than a Word,” *JINN Magazine* (May 30, 2000): 1. Redding states that, “the poor have lost faith with nominally democratic institutions that favor the interest of the elite.”

7. Disillusionment infects the young in insidious ways. In an opinion poll of Guatemalan children and adolescents 9-18 years old, 33% agreed that “as a place to live, my country is getting worse.” Nearly half (47%) stated that they had no confidence in the government. This disillusionment is fostered by the perception that historical patterns of social exclusion scarcely have been changed with the institution of formal democracy and by the unfulfilled expectation of improvements in the material quality of peoples’ lives. In a recent United Nations study, almost 55% of Latin Americans said they would prefer an “authoritarian” regime over a “democratic one,” if it “resolved” their economic problems. See Time Research-UNICEF, See also, United Nations Development Report, “Democracy in Latin America: Towards Citizens’ Democracy,” *UNDP News Bulletins* (April 21, 2004); and *Summary Report: Democracy and Economy* (Latinobarometro, 2003), whose review of opinion polls in Latin America over eight years concludes: “The success of public policies in education, health and housing are the base of a democracy; a culture of equality before the law without structural forms of discrimination [such as exist against the uneducated, who do not have the same rights as those with education] is what keeps the edifice of governable democracy standing above this foundation.”

8. Henceforth, the Convention on the Rights of the Child—known in Spanish as the *Convención Internacional sobre los Derechos del Niño*—will be referred to by its English acronym, CRC.

9. For a full accounting of this process, see Emilio Garcia-Mendez, “Infancia, Ley y Democracia: Una Cuestión de Justicia,” in *Infancia, Ley y Democracia en América Latina*, eds. Emilio Garcia-Mendez and Mary Beloff (Temis: Bogota, 1998).

10. “It is the duty of the family, the society and the State to assure, with absolute priority, the child and adolescent’s right to life, to health, to food, to education, to recreation, to professional training, to culture to dignity to respect, to freedom and family and community harmony, in addition to spare them all forms of neglect, discrimination, exploitation, violence cruelty or oppression...” (Constituição da República Federativa do Brasil de 1988).

11. This has been propelled by the organization’s 1996 Mission, which states: “UNICEF is guided by the Convention on the Rights of the Child and strives to establish children’s rights as enduring ethical principles and international behavior towards children.” UNICEF Mission Statement E/ICEF/1996/AB/L.2, adopted by the UNICEF Executive Board, January 22, 1996.

12. Emilio Garcia Mendez, *Child Rights in Latin America: From ‘Irregular Situation’ to Full Protection*, Innocenti Essays, no. 8, (Florence: International Child Development Center, 1998).

13. In areas of the world where law-making institutions are weaker than in Latin America, such as in Eastern Africa, the human rights approach to development has been based more on building the capacities of families and communities to claim their rights and on encouraging local and national State officials to fulfill their obligations.

14. UNICEF has encouraged its government partners to see the benefits of involving civil society in the development and implementation of social policies and programs. This involvement is integral to the human rights approach, which operates within the duality of claim-holders and duty-bearers at all levels of society. At the same time, UNICEF’s own partnerships, both for advocating for children’s rights and for implementing programs to advance and protect those rights, have greatly expanded to include non-governmental organizations. UNICEF itself does not directly implement programs, but supports state institutions and civil society organizations in their work. In particular, UNICEF seeks to support the development of consensus between these two sides of the “coin” of a functioning democracy. The paragraphs that follow describe the changes that a human rights approach can bring to development. This explanation does not specify UNICEF as an actor, but rather points to the different roles that can be taken up by the State and citizens.

15. The principle of indivisibility also ensures that the advancement of one right should not impede the enjoyment of another, which is to say that, for example, an ethnic minority child’s right to education cannot be fulfilled by forcibly removing him or her from the family and cultural environment and placing the child in a boarding school.

16. For example, to assist the Government of Chile in meeting its obligations under ILO Convention 182, UNICEF supported the participation of representatives of public and private organizations in the cataloguing of the “worst forms of child labor,” including delegates from the Ministry of Labor, the Ministry of Planning, the police, NGOs and trade unions. It also supported the Ministry of Labor in organizing forums on child labor in six regions for local authorities and civil society organizations (UNICEF Chile, *Annual Report 2002*, 10; on file with author).

In Guatemala, to help meet the challenge of establishing consensus on the reformulation of the Children’s Code into the new “Law for the Integrated Protection of Children and Adolescents,” in 2002 UNICEF—with the support of Save the Children and Action Aid (international NGOs)—gathered together 12 diverse sectors of civil society, including religious, youth and women’s organizations, agricultural worker organizations, labor unions, indigenous groups, student groups and human rights groups. Subsequent to the law’s passage in November 2002, leaders from these sectors were sensitized about the provisions of the new law, so that, through improved understanding, they could play a role in its effective application (UNICEF Guatemala, *Annual Report 2002*, 14; on file with author).

In Ecuador, the process of analyzing and ratifying new legislation on children was supported by a communication campaign in which children and adolescents themselves played a leading role through marches, calls to legislators, provision of information and media interviews. Considerations of a both legal and political nature meant that reaching consensus among those in Congress was challenging, but UNICEF’s advisory services, together with the active participation of civil organization working for child rights proved decisive for securing the law’s enactment on December 18, 2002 (UNICEF Ecuador, *Annual Report 2002*, 13, 14, 18; on file with author).

17. Naturally, citizen participation in social development cannot compensate for an absence of responsiveness by the State except in extreme cases, such as those referred to earlier, when civil society movements overthrow elected governments representatives who fail to fulfill their citizens’ expectations.

18. The case of Guatemala is interesting in this regard. The country ratified the CRC in 1990, making it the seventh country in the world to do so. But when it came to transforming the Convention into national legislation, many in the country found they were not ready. A platform of civil society organizations worked with legislators, the Attorney General’s Office, the Social Welfare Secretariat and other state institutions to prepare a draft law “El Código de la Niñez y Juventud” (Child and Youth Code), which was presented to three different legislatures until, after considerable advocacy, Congress finally passed the Code unanimously in September 1996. It was due to enter into effect one year later, providing Congress the time needed to raise the necessary resources and establish the basic institutions that the new law would require. However, during this time lapse, conservative forces in society organized a disinformation campaign against the Code. When the time for the Code’s entry into force arrived, the Congress suspended it, under the pretext that the necessary resources for its implementation had not been found.

This suspension was renewed several times until 2001, when the law's entry into force was suspended "indefinitely." Nevertheless, the Child and Youth Code continued to be a subject of national debate and thus served as a platform for advancing the understanding of child rights. Beyond this, the Code also had some practical impact on protecting child rights at the municipal level.

One of the Code's institutional innovations (a contentious innovation of "social control" from the point of view of the law's opponents) was the creation of Municipal Boards of Child Protection (*Juntas Municipales de Protección de la Niñez*). Made up of volunteers selected by the community, these Boards were first established in 1997 in three provinces. By 2003, ninety-one of Guatemala's 331 municipalities had established a Child Protection Board. Each Board defends and promotes children's rights by serving as an entity empowered to receive, assess and act upon allegations of violations. They also orient the population, through education and advocacy, in the respect for child rights. As such, even in the absence of a law (the "Código de la Niñez y Juventud"), the Boards make an important contribution to creating a culture of rights, where dialogue, not violence, is increasingly the means of resolving disputes within the family as well as within society. The Boards serve as catalysts so that communities recognize violations, work cooperatively to prevent them, and generally build solidarity with the vulnerable—a precondition for the reduction of social exclusion. The success of the Boards contributed to the creation of a demand for the fulfillment of child rights, and the passage, in July 2003, of a very comprehensive "Ley Integral de Protección de la Niñez y la Adolescencia" based on the "Código de la Niñez," which reconciles the country with the main mandates derived from the CRC.

19. For example, in Guatemala, the Social Movement for Children, a network of civil society organizations dedicated to children's rights, challenged the constitutionality of the 2000 suspension "for an indefinite period" of the Child and Youth Code, which had been voted into law unanimously in 1996 and took this case to the Constitutional Court (*Corte de Constitucionalidad*).

20. For example, in 1999, Covenant House (*Casa Alianza*) of Guatemala City, acting on behalf of murdered street children, successfully brought their case (*Villagran Morales et al.*) to the Inter-American Court of Human Rights and won compensation from the Guatemalan Government for the children's families (Inter-American Court of Human Rights, Series C, No. 63, Judgment of November 19, 1999).

21. This section has been adapted from an internal UNICEF document: "Chile: Extending the Right to Education" (December 2003); on file with author.

22. "Reforma constitucional que establece la obligatoriedad y gratuidad de la educación media," Ley No. 19.876, *Diario Oficial de Chile* (May 22, 2003).

23. Cristian Bellei, "Educación Media para Todos? Deserción Escolar y Desigualdad Social en Chile" in *Educación, Pobreza y Deserción Escolar* (Santiago, Chile: UNICEF, 2000), 25-47.

24. Programa Liceo para Todos, “Fundamentos, Estrategias, Componentes” (Ministerio de Educación, Santiago, Chile, 2003, mimeographed), 30.

25. See *12 Años de Escolaridad Obligatoria*, eds. C. Bellei and F. Fiabane (Santiago, Chile: LOM, 2003).

26. Leonor Cariola, “Estructura y Curriculum de la Educación Media. Cambios y Reformas, 1980-2000,” in *20 Años de Políticas de Educación Media en Chile*, eds. L. Cariola, C. Bellei and I. Nuñez (Paris: UNESCO/IIEP, 2003), 27-172.

27. Cristian Bellei, “Ha tenido impacto la reforma educativa en Chile?” in *Políticas Educativas en el cambio de siglo. La reforma del sistema escolar chileno*, ed. C. Cox (Santiago, Chile: Editorial Universidad de Chile, 2003), 125-209.

28. Fundación Chile 21, “Opinion sobre la Agenda Pública. Balance Ciudadano,” *Opinión Pública*, no. 8 (December 2002): 6, Table 1 and 2.

29. This section is summarized from an internal UNICEF document: “Ecuador: Increasing Transparency and Social Spending in Public Budgets” (December 2003); on file with author.

30. Ibid.

31. See the website <http://www.gastosocial-ec.org>.

32. Daniel Badillo, “Características de la Pro forma Presupuestaria y del Gasto Social para el 2001” (Quito, Ecuador: UNICEF, November 2001); Daniel Badillo, “Descifrando El Gasto Social en el 2000” (Quito, Ecuador: UNICEF, May 2001).

33. UNICEF Analysis, based on Official Ministry of Finance data from 2001 and 2002.

34. Daniel Badillo, “La relevancia de los sistemas de redistribución: Evidencia internacional y opciones de política para Ecuador” (Quito, Ecuador: UNICEF, December 2000); Daniel Badillo, “Comentarios al proyecto de ley de reforma tributaria presentado por el gobierno nacional” (Quito, Ecuador: UNICEF, January 2001).

35. The president, top ministers and the legislature were open to this approach, while at the same time representatives of a wide variety of social groups, including Ecuador’s poorest inhabitants, made use of the budget figures to participate in national debate for the first time, arguing for greater justice and equity in public spending.

36. Elena Martínez quoted in “Democracy in Latin America: Towards a Citizens’ Democracy,” *UNDP News Bulletin* (April 21, 2004).

37. See footnote 20.