



Discrimination and Human Rights in Uruguay

The Voice of Children and Adolescents

*An example of Good Practice when
Working on the Issue of Discrimination*



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Save the Children works for:

- a world which respects and values each child
- a world which listens to children and learns
- a world where all children

can have hope and opportunity

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Why this Report is an Important Example of Good Practice

Discriminatory practices against children take place in all societies. To fight discrimination against children successfully and to revitalize any responsiveness, we need to listen to the testimonies and voices from children and adolescents to get an unbiased picture of the problem. This topical and eye-opening report does exactly that and has bearing for anyone working with equality and the principle of non-discrimination, irrespective of geographical location.

The researchers and authors of this report have successfully used a qualitative methodology to collect empirical data. The primary data principally consists of individual in-depth interviews with children and adolescents from different departments and discussion groups/workshops with children who have experienced different forms of discrimination. The technique of using in-depth interviews is appropriate in this context, giving us unique information from children of different ages and with different experiences that otherwise would be complicated to acquire.

The work procedure and the methodology to get children/adolescents to participate in this report is an excellent example of *good practice* and can be utilized in most regions of the world. The Committee on the Rights of the Child- Uruguay is working on a long-term basis with children's rights and was able to get in contact with the children and adolescents in question, through the various regional departments they have already built up mutual confidence with.

Uruguay has often been described as a fairly developed country, in a Latin American context, with a well-educated workforce and high levels of social spending. Nevertheless the country encompasses more or less the whole range of child rights violations that can be found in less developed countries – incarcerated children, child labour, various forms of discrimination against children, increased social segmentation, marginalization, state tolerated violence against adolescents, child poverty, etc.

This publication "*Discrimination and Human Rights in Uruguay: The Voice of Children and Adolescents*" enlightens us on the different areas of concern, such as exclusion and socio-economic discrimination as well as other specific forms of discrimination and possible protective mechanisms against the problem.

In general, many researchers tend to focus on the structural problems of discrimination, which of course are important to combat it, but the superiority of the research process in this report is that children were invited to participate, and as a result they were both seen and heard. We need to hear the words and opinions directly from children and adolescents in order to understand the complexity of discrimination against minors.

Patrik Olsson

Policy Advisor
Policy, Research and Development Section
Save the Children, Sweden

Dear Reader:

It is a pleasure to share this publication with you about “*Discrimination and Human Rights in Uruguay: the Voice of Children and Adolescents*”. The publication is part of the process of thematic development of our work with Non-Discrimination in Latin American and the Caribbean region. We started this process with the elaboration of a reference guide called “*Combat all forms of discrimination against boys and girls in South America*”, the aim of which was to make known national and international laws and rules against discrimination. At the same time it wants to show cases of discrimination in different countries of the region and ways of acting in these situations in order to combat discrimination. At the moment we are finishing the Reference Guide for Central America. After having completed it, we will have the general Latin American frame for this kind of work.

A second component in this process has been to hear children’s and adolescents’ voices, which is indeed the main objective of this study. With this we want to make known how children and adolescents feel when they are discriminated or when they are witnessing discriminatory situations against other children. Uruguay like other countries around the world does not want to admit that among its population, in daily life, there are some strong forms of discrimination. However, the testimonies from children tell us the way they experience pain, shyness, anger, fear from the hints, words and gestures of people who are discriminating them because they are poor, girls, natives, with disabilities or homosexuals, etc. The fact that children and adolescents can give their views and express their feelings, is a step forward in the struggle against discrimination.

Besides, this study helps to identify the main actors in the society who are in charge of implementing the existing laws and regulations against discrimination, and of proposing protection measures to combat discrimination. And this is the other important component: it is not enough that children tell us their opinions; more important is that somebody listens to them and that the situations are changed. That is what we hope will happen in our region when we set out on this challenge. For this reason also, we want to share with you what we have been able to achieve so far in order to exchange experience and information, wherever we may be around the world, with the same ambition to work together against the discrimination of children and adolescents.

Per Tamm
Representative of Save the Children Sweden
In Latin America and Caribbean Region.

Executive Summary

Discrimination and Human Rights. The Voice of Children

This initiative and publication are the result of the efforts by the Uruguayan Committee for the Rights of the Child together with Save the Children Sweden. Its objective is to visualise how and to what extent children are discriminated against and what legal means there are to counteract these discriminations and to protect children. The book is meant to be a springboard to trigger debate, make the problem better known, to serve for training purposes and public mobilisation in order to bring about attitude changes and legal measures.

The base and framework for the initiative is the UN Convention on the Rights of the Child. When it came in 1989 it was a real push to change the perception of the child and to provide a legal base making it compulsory for signatories to guarantee the rights of the child. Adults are responsible to guarantee the implementation of the rights of the child. This is not a mere declaration of good intentions it is an international law.

The principles of equality and non-discrimination are fundamental for the protection of human rights. Equality in the sense that we are all equal before the law and justice, we have all the right to be treated the same way and that this is not only the responsibility of the State but of everybody and it includes equality of opportunities.

According to the UN Committee on Human Rights, discrimination is “all distinction, exclusion, restriction or preference which are based on motives like race, colour of skin, sex, language, religion, political opinion or opinion of equivalent nature, national or social origin, economic position, birth or other social condition and that have as objective or result to nullify or diminish the recognition, benefit or exercise, on equal terms, of all human rights and fundamental liberties of all persons”.

In this book, factors that lead to situations of poverty, which has a great bearing on the lives of boys and girls, are spelt out – such as the exercise of power, ideologies and politics. The discrimination that derives from this is readily identified like the mere fact to be a child and not an adult, to belong to an ethnic minority group, to be disabled, to be a girl or a boy, to live in specific socio-economic conditions, to have sexual preferences, etc.

The highlight of the book is the testimony of the children on how they themselves look upon discrimination.

The publication also includes international and national ways and means that are available to provide protection of children’s human rights in cases of discriminatory treatment. It brings up the responsibility of the State and the civil society to act in cases of discrimination and encourages the inclusion and participation of the children themselves in the knowledge and exercise of their rights with the aim to prevent and diminish discrimination.

Save the Children Sweden
Programme for Latin America and the Caribbean in August 2005

Acknowledgements

The participation and opinions of children and adolescents are vital to any exercise in democratic citizenship that aims to build a different world. To listen to their voices, their tones and the symphony composed from this diversity is, therefore, a priority. For this reason our thanks primarily go to the thirty children and adolescents who decided to make their voices heard during this research.

We would also like to thank the Institutions which made contact with these children and adolescents possible:

Asociación Cristiana de Jóvenes, Paysandú
Centro Abierto, Rivera
Comité de los Derechos del Niño Uruguay
Defensa de los Niños – Uruguay
Foro Juvenil, Durazno
Gurises Unidos
Hogar La Barca
Instituto Ariel Hebreo Uruguayo
Instituto de Educación Popular ‘El Abrojo’
Intercalle
IPRU
Movimiento Nacional Gustavo Volpe
Programa de Adolescentes, Intendencia Municipal de Montevideo
Rescatando Sonrisas, Maldonado

We should also like to express our gratitude for the contribution made by the Qualified Informants from the following Institutions, who, together with other professionals working in the field of child discrimination, contributed their experiences and thoughts, to enrich this report.

Uruguayan Coordinator in support of the World Conference against Racism, Racial Discrimination, Xenophobia and related forms of Intolerance
Defensa de los Niños – Uruguay
Intercalle
Movimiento Nacional Gustavo Volpe
PLENADI
Programa de Adolescentes, Intendencia Municipal de Montevideo.

Preface

The Committee on the Rights of the Child, Uruguay, is a coalition of social organisations whose principal task is to monitor the implementation of the International Convention on the Rights of the Child (CRC) in Uruguay. This monitoring takes place principally through the preparation of the non-governmental Report on the implementation of the CRC; this report must be submitted every five years to the United Nations Committee on the Rights of the Child.

This report has been made possible thanks to the support of the Regional Office for South America of Save the Children Sweden. It is part of a group of studies on discrimination against children and adolescents that are being conducted in South America.

The focus of the work of the Committee on the Rights of the Child, Uruguay, has been, for several years, to disseminate the principles of the CRC. In this respect, we believe that the discrimination approach is of major importance in understanding and analyzing, from a critical viewpoint, the practices and policies towards children and adolescents. In a country in which society is no longer inclusive and tolerant, this work highlights a problem that must urgently be addressed. Our report brings into the open things that have been hidden. It is of value in bringing together the voices of children and adolescents and, through them, making readers and the wider public aware of their perceptions and life experiences regarding discrimination.

We should like to contribute to the necessary and urgent debate on the role of public policies and institutions in guaranteeing and enforcing children's rights, which have been long neglected in Uruguay. We hope also that an inclusive and collective plan will be drawn up, in which children will play a leading role.

We hope this report is a contribution to that end.

Luis Pedernera
Executive Secretary
Committee on the Rights of the Child, Uruguay

Committee on the Rights of the Child, Uruguay

Introduction

This research was inspired by work carried out by Save the Children Sweden concerning all forms of discrimination against children and adolescents in South America¹. It is a work of descriptive research whose aim is to collect the views and opinions of children and adolescents regarding discrimination in Uruguay and their life experiences in this respect.

In a society such as that of Uruguay, in which the dominant collective perception does not admit the existence of *hard* forms of discrimination, we should like to bring out into the open forms of discrimination and of violations of the principle of equality.

We shall describe and inform about real cases of classic and hard forms of discrimination, whilst at the same time considering the subtle mechanisms through which discriminating behaviours and attitudes are expressed and reproduced. The statistical information will be construed from the perspective of rights, giving information about the existence of structural discrimination which violates the rights of Uruguayan children and adolescents.

In this work we raise awareness of the right to non-discrimination of children and adolescents and highlight the legislation and protection mechanisms that relate to this issue. We hope to provide a tool for dissemination, learning, debate and the mobilisation of society, in order to prevent discrimination and to achieve changes in policies, social perceptions and discriminatory practices.

The research methodology is qualitative and its results, therefore, do not have statistical value. Our work was based on oral statements taken in individual interviews, adolescent discussion groups and a children's workshop. We refer to oral statements in so far as they do not relate to experiences but to the accounts of these experiences told by the children. We shall transcribe the oral accounts so that they are not lost, can be circulated and made known. We thought it important to highlight the opinions of those who are discriminated against, as their own accounts conclusively express their views and experiences.

The Techniques Used in this Research were the Following:

Firstly, we studied some documents and publications containing statistical information which we considered relevant to an analysis of the conditions in which Uruguayan children and adolescents live.

Secondly, we carried out a survey and systematisation of international laws (international and Inter-American systems) and domestic laws concerning the principle of equality and non-discrimination of children and adolescents, attached as an Appendix to this report.

We also carried out in-depth individual interviews and group discussions with

¹ SAVE THE CHILDREN SWEDEN – COMISIÓN ANDINA DE JURISTAS (2003) Guía Referencial: Lucha contra todas las formas de discriminación a los niños, niñas y adolescentes en América del Sur. Lima-Peru.

adolescents who had experienced different types of discrimination.

In-depth interviews were also carried out with Qualified Informants who have first hand knowledge – as a result of their experience working in public and municipal institutions and in civil welfare organisations – of the situation regarding discrimination against children in Uruguay, and who were able to provide action proposals.

The material resulting from the in-depth interviews with Qualified Informants, together with the material resulting from the in-depth interviews and discussion groups of adolescents, were qualitatively analyzed, by means of a specific computer software program developed for that purpose.

There was also a workshop for children between 8 and 12 years old, using educational and play-thought techniques especially developed for children of that age. The children's workshop resulted in the painting '*Building a world from diversity*', a Mandala collage made by children from individual drawings they painted in the workshop. We also obtained a visual record of the workshop as well as records of the oral and written expressions of children.

There were 30 children and adolescents interviewed in total, from five different departments (administrative areas): Durazno, Maldonado, Montevideo, Paysandu and Rivera. The choice of departments was made in an attempt to reflect the diversity encountered in the different regions of the country, together with particular situations in departments we considered made them more prone to discriminatory practices. Moreover, the Committee on the Rights of the Child, Uruguay, which has previously worked with Institutions from all the participating departments, provided us here with contacts with adolescents.

The basic reference framework of this research is to focus on rights and non-discrimination. For this purpose, the International Convention on the Rights of the Child sets a minimum standard, a framework on which to build any proposal aimed at persons under 18 years old. This is an international agreement which involved a preparation and approval process lasting nearly 10 years, and which required many negotiations which culminated with the ratification of all UN member countries, with the exception of the United States. This Convention is based upon four fundamental principles: survival and development; participation; the best interest of the child and the principle of non-discrimination.

Chapter I

Children and Adolescents, Citizens with Rights

In 1989 the United Nations General Assembly approved the International Convention on the Rights of the Child, which heralded the beginning of a change in the conception of childhood, and created the legal grounds which makes rights enforceable. This is the one instrument on Human Rights which has most ratifications in the world, and which – for the first time – brings together in the same text, civil and political rights, and economic, social and cultural rights. As Emilio García Méndez said: “*this is the French Revolution for children, but 200 years late*”¹. This statement indicates the impact of this instrument and its effect on adult responsibilities to guarantee the human rights of children and adolescents.

This paradigmatic change in the conceptualisation of childhood and adolescence means leaving behind the concept of children as subjects of study for various disciplines, or as subject for the intervention of different institutions which are part of the welfare and/or punishment mechanisms of the State. These reifying ideas convert to a concept of human rights where the child is a citizen with rights, having the dignity inherent to all human beings, together with the possibility of making their rights enforceable before the State, the Community and the Family, who are obliged to guarantee them. The recognition of children’s rights brings with it the responsibility of adults to make these rights effective; they are not a declaration of intent but enforceable rights.

We are in a transition period, a period of conceptual change and of the will for legal and institutional reorganisation. Despite the Convention having been effective for 13 years now, Uruguay has, as yet, taken very few steps along the long road to truly guaranteeing the rights of children and adolescents. The legal recognition that meant the approval of the Convention as National Law number 16.137, was one step, but one which has not had the follow-up enforcing the change of domestic law that violates the Convention and institutional changes to put in place democratic relations with Uruguayan children and adolescents.

The recognition of the rights of all children would appear to be consolidated at the rhetorical level and there are very few protagonists who deny the enforcement of the Convention on the Rights of the Child in Uruguay. A paradigmatic example is, perhaps, that of an Attorney for minors, who claims that the Convention should have been approved with the exception of some articles². Most social protagonists, at least publicly, recognise the Convention as an essential legal instrument, and it is cited as the cornerstone of government and private initiatives³. Many public institutions and

¹ GARCÍA MÉNDEZ, Emilio (1998) *Infancia: de los derechos, de la justicia*. Ediciones Del Puerto: Buenos Aires.

² SILVA BALERIO, Diego, COHEN, Jorge, PEDROWICZ, Silvana y otros (2003) *Investigación sobre las infracciones juveniles y las sanciones judiciales aplicadas a adolescentes en Montevideo*. p.140. DNI, UNICEF: Montevideo.

³ Non -governmental organisations, welfare organisations, outsourcing organisations of social services, etc.

welfare and non-governmental organisations establish, as their institutional mission, some kind of work for children's rights, supported, of course, by the Convention.

Despite this public recognition, we are not very optimistic regarding the incorporation of the Statement of Principles of the Convention into the practices of the organisations that invoke it. We believe that we are going through ideal conditions to demand specific institutional changes based on the principles of survival and development, the child's best interest, non-discrimination and participation. It is claimed that "...many rights have developed on the basis of needs, but a legal approach adds moral and legal obligations in addition to responsibility. In the same way, a legal approach urges and empowers the holders of rights to claim his/her rights, which means they are not seen as objects of charity (as is the case of the approach based on needs), but they are seen as persons who demand their legal rights."⁴

The concept of the child as a citizen implies the exercise of his/her rights, which will be carried out supported by the principle of progressive autonomy⁵ which states that the child shall exercise his/her rights progressively, consonant with the development of his/her capacities.

In this regard, Article 5 of the Convention refers to the responsibilities, rights and duties of adults (parents, extended family, the community, guardians or other persons with legal responsibility for the child) "...to provide, in a manner consistent with the developing capacities of the child, appropriate direction and guidance to allow the child to exercise the rights recognised in the present Convention."

Article 28 also provides that "States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity..." they shall adopt a series of measures.

Both articles cited go in the same direction, of the holding and direct exercise by children of their rights, in harmony with the country's culture. Article 12 completes the above by saying: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

"2. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly,

⁴ SAVE THE CHILDREN SUECIA (2002) Programación de los Derechos del Niño: como aplicar un enfoque de derechos del niño en la programación. p.22.

⁵ CILLERO BUÑOL, Miguel, *Infancia, Autonomía y Derechos: una cuestión de principios*. The principle of protection and promotion of autonomy is expressed in the duty of guidance and direction of the parents, and is based on the grounds that the child has the 'right' to develop the exercise of his/her rights progressively, thus defeating the contrary traditional argument, that is to say, that parents have powers over the children, since children lack autonomy. This means that legally recognised rights of the parents – which are also limits to State intervention, that is the rights of the parents as against the State – are not unlimited powers, but legally limited responsibilities towards an end: the progressive autonomous exercise of children's rights which, in case of failure of compliance, shall be assumed by the State (arts. 9 and 20 of the Convention on the Rights of the Child) [...] The State and the family shall have to support and protect the child's development so that he/she progressively acquires autonomy in the exercise of his/her rights. In this way, the idea of the progressive autonomy of children's exercise of their rights becomes the key to interpreting the roles of the State and of the family in promoting the child's comprehensive development. The child as a legal entity should enjoy all the rights recognised in State Constitutions, international treaties and domestic law. He/she should also acquire progressively, as his/her faculties develop, autonomy to exercise his/her rights.

or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

These elements confirm the children’s charter of citizenship which is recognised by the Convention for all children and adolescents, and which has, as its corollary, the obligation on adults, expressed by the State, Community and Family triad, of creating the conditions to allow these rights to be exercised. These conditions require proactive actions to develop public policies which guarantee economic, social and cultural rights and to recognise and remove the restrictions on the exercise of civil and political rights.

To regard children as citizens is in harmony with an enigmatic view of childhood, since a child’s birth implies the irruption of someone else as part of us, a child within a society with values, culture and practices which cannot be attributed to this *new child*. This change is an exercise of otherness of the adult world towards the child, which begins by recognising him/her as a different individual with specific needs.⁶ What matters is the attitude we adopt towards these children, since “...acknowledging their existence as an individual prevents us from using children to reproduce our society, maintaining the status quo, nor is it possible to make him/her the arm of the revolution we dream of.. Both options, though politically opposed, reduce the child to the quality of an object we can mould to our will, which is at odds with his/her recognition as a new and different person, with the potential to bring about change to the world, to define his/her own course, unknown to us and potentially enigmatic path.”⁷

These ideas are grounded on some of the arguments of Hanna Arendt, who states: “the fact that man is capable of action means that we should expect him to do the unexpected, capable of doing the highly improbable. And this is possible solely because each and every person is unique, so that with each birth a special new being enters the world.”⁸ This capacity of action⁹, of doing the improbable, is a challenge to change the world through the action of children and adolescents.

⁶ BARCELLONA, Pietro (1996) Posmodernidad y Comunidad. El regreso de la vinculación social. Editorial Trotta.

⁷ SILVA BALERIO, Diego. (2004) Infancia como enigma: las potencialidades de los nacimientos y la adultocracia que obstaculiza su desarrollo. Boletín de la AIEJI (Asociación Internacional de Educadores Sociales). Mayo 2004.

⁸ ARENDT, Hannah. (1958) 1998. La condición humana. Barcelona: Paidós. p.202.

⁹ Action, knowledge, and politics.

Chapter 2

The Principle of Equality and Non-Discrimination

Preliminary Study

In this section we shall provide a brief conceptual overview of the principle of equality and non-discrimination, focusing on the situation of children and adolescents. We shall not, however, go into the philosophical conceptions or ideas of justice underlying the various concepts raised.

Principle of equality

The concept of equality has changed over time, something which calls for a historical perspective. The evolution of the principle of equality is usually expressed in the following terms:

In the first stage the principle of equality is regarded as ‘equality before the law’. This formulation introduces a concept of equality which is binding on the State, in the sense that the State should not approve any law which contravenes that principle, nor should it apply the law differently to people who are in similar situations.¹

This formulation of equality is expressly enshrined in article 8 of Uruguay’s Constitution. As we shall see, the principle of equality before the law does not prevent the approval of laws applied to certain groups or persons, under certain conditions.

In the second stage, the concept of equality becomes broader and gains new meaning. It is then possible to talk of ‘equal treatment’. In this case it is not only the State but also individuals that are under obligation.

Lastly, a third stage of the concept’s evolution is usually identified as referring to the principle of equality as ‘equality of opportunities’, or ‘fundamental equality’, as opposed to the ‘formal equality’ mentioned in the first formulations of the principle. From this viewpoint, the principle of equality requires States to create equality of conditions and opportunities for all via the adoption of affirmative/ positive measures leading to greater equality of opportunity.

With regard to the legal nature of the concept *“doctrine has considered that pursuant to our Constitution, not only is equality a right of individuals but it is also a general principle of the entire legal system.”*²

Discrimination

The first definition of ‘discrimination’ in an international rule is the one provided by article 11 of the 111 Convention of 1958 adopted by the International Labour

¹ Equality before the law is recognised by several international human rights instruments, such as article 7 of the Universal Declaration of Human Rights; article 26 of the International Covenant of Civil and Political Rights; article II of the American Declaration of Human Rights and Obligations and article 24 of the American Human Rights Convention.

² Cf. JIMENEZ DE ARECHAGA y RISSO FERRAND apud RISSO FERRAND, Martín, (1998) Principio constitucional de igualdad, en Cuarto coloquio Contencioso de Derecho público Responsabilidad del Estado y jurisdicción, Ed. Nueva Jurídica.

Organisation (ILO). This convention defines discrimination as “...*any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation*”.

Subsequently, the UN Committee on Human Rights noted that non-discrimination is a basic and general principle, relating to and underlying all human rights, and which shapes the enjoyment and exercise of such rights. For this reason the Committee has defined discrimination as “*any different treatment, exclusion, restriction or preference based upon reasons such as race, color, sex, language, religion, political or any other kind of opinion, national or social origin, economic situation, birth, or any other social condition, and which aim at or result in invalidating or undermining the recognition, enjoyment and exercise of human rights and basic liberty of individuals³ under equal terms.*”

In several instruments there are anti-discriminatory clauses,⁴ that is, provisions prohibiting discrimination, the aim of which is to fight discrimination.

From the above we may conclude that the principle of equality and non-discrimination is widely recognised in international instruments for the protection of human rights and in international jurisprudence.

The Uruguayan Constitution does not expressly forbid discriminatory distinctions; however, it has been considered by doctrine that the prohibition of discrimination is the consequence of the right to equality,⁵ and is implicit in our Constitution.

Affirmative measures

The principle of equality would determine that what is equal should be treated equally, and what is not equal should be treated unequally.

This conception has been traditionally adopted by our legal culture. Jiménez de Aréchaga said that “...*democratic philosophy demands that the State recognises the existence of certain inequalities and seeks to re-establish true equality between individuals by means of unequal treatment.*”⁶

This means that the principle of equality admits differences in treatment. The problem lies in determining which are the elements or circumstances under which such different treatment would be justified.

In Uruguay, various positions have been taken with regard to the constitutionality

³ General Observation N° 18, Committee on Human Rights, paragraph 7. International instruments on human rights, such as the International Convention on the Eradication of all forms of Racial Discrimination (article 1) and the Convention on the Elimination of All Forms of Discrimination against Women (article 1.1) use a very similar concept of discrimination to the ones cited. It is also important to note that neither the Universal Declaration of Human Rights nor the American Declarations of Rights and Obligations, the International Covenant on Civil and Political Rights and the American Convention on Human Rights defines discrimination.

⁴ By prohibiting discrimination, these clauses aim to obtain the full enforcement of rights (e.g. art. 2 sub paragraph 1, of the International Covenant on Civil and Political Rights, among others).

⁵ FLORES, María del Lujan, Género y derecho internacional, en Normas Discriminatorias de las mujeres, Cuadernos de la Facultad de Derecho, Tercera serie, N° 10, FCU, 2003, p. 13.

⁶ JIMENEZ DE ARECHAGA, Justino La Constitución Nacional, T. II., p. 158. Cf. BARBAGELATA, Aníbal Luis, La democracia, FCU, Montevideo, 1985, pp. 39 y ss.; GROS ESPIELL, Héctor, Los derechos económicos y sociales condiciones materiales para su efectividad, en Prisma, N° 12, August 1999, UCUDAL, pp. 132 y ss. who quote José G. ARTIGAS and José E. RODÓ to exemplify the deep and early presence of the principle of equality within our culture.

of unequal treatment. Some have expressed that section 8 of the Constitution does not provide for the possibility of making distinctions that are not grounded on the Constitution⁷, others demand that those distinctions should not be arbitrary, capricious or contrary to what is provided in the Constitution.⁸

Clearly, the correct application of section 8 of the Uruguayan Constitution and of the international treaties on human rights – based upon the provisions of sections 72 and 332 of the Charter – provides a solution to the problem of establishing the constitutional basis for distinctions which aim to *re-establish true equality*.

Affirmative measures are directed towards reversing the consequences of inequality. They do not contradict the principle of non-discrimination, because they are justified measures to correct a *de facto* and pre-existing discrimination that determines a situation of social disadvantage.⁹

In this respect, the European Court of Human Rights has stated that this principle is violated “...if the inequality lacks objective and reasonable justification, and the existence of such justification should be considered with reference to the purposes and effects of the measure under consideration, it being necessary to have a reasonable relation of proportionality between the means employed and the ends pursued.”¹⁰

The Inter-American Court of Human Rights provided: “...That the principle of equality mentioned in article 24 of the American Convention on Human Rights does not prevent the adoption of specific rules and measures with reference to children which require different treatment by reason of their special conditions. This treatment must be directed towards the protection of the rights and interests of children.”¹¹

The Court also referred to this issue by stating that not all differences in legal treatment are discriminatory as such, as not all differences in treatment can be considered, in themselves, offensive to human dignity, provided that: “the intention of the rule and the measures establishing the differential treatment are lawful; the distinction is based on substantial real and objective inequalities between persons; and there exists a reasonable relationship of proportionality (between these differences and the goal pursued).”¹²

Similarly, the Human Rights Committee has pointed out that if there is a difference in treatment based on reasonable and objective criteria, it is not a case of discrimination.¹³

Several international instruments adopt this understanding. Article 1, sub paragraph 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be

⁷ SAPOLINWSKY, Jaime (1990) Sobre el concepto de igualdad jurídica, en Cursillo sobre Derechos Humanos y sus garantías. Ed. FDSC. p. 89.

⁸ Judgment of the S.C.J. in La Justicia Uruguay, case 12.777.

⁹ In this regard see: General Observation N° 18, par. 13, Committee on Human Rights, and OC-4/84 of the Inter-American Court of Human Rights, par. 56 y 57.

¹⁰ S. 22/1981 del 2 de julio (BOE del 20), FJ 3. See also: Advisory Opinion of the Inter-American Court on Human Rights OC-4/84 of 11 January 1984.

¹¹ Advisory Opinion of the Inter-American Court of Human Rights OC-17/2002, item 3.

¹² Advisory Opinion of the Inter-American Court of Human Rights OC-4/84 January 19th 1984, par. 56 y 57.

¹³ General Observation N° 18, Committee on Human Rights. Par. 13.

necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

From this definition it may be concluded that there is not discrimination if a difference in treatment is legitimate, provided that such difference is based on factual assumptions which are essentially different and which express in a proportionate way a well-founded relationship between those differences and the objective of the rule.

The concept of distinction refers to treatment which is different from that generally applied, that is to say, a particular situation is singled out for certain reasons. In order that the distinction does not turn into discrimination it should fulfil the following requirements, established by human rights doctrine and jurisprudence:¹⁴

- It should pursue a legitimate end, and it should be objective.
- The difference should be relevant, important enough to justify a difference in treatment, and it should be necessary, not merely convenient and useful.
- There should be a relationship of proportionality between the actual difference and the legal difference, between the means chosen and the ends; a lack of proportionality between the contents of the different treatment and the intended purpose leads to discrimination.
- Another requirement highlighted is the fitness or adequacy of the legal consequences pursued through different treatment, taking into consideration the specific and actual conditions in which the distinction is to be applied.
- The reasonableness of the distinction, a criterion on which the system will be based and which was originally developed by the US jurisprudence.

From this point of view, equality does not mean the non-existence of a difference or distinction of treatment in the broad sense, but it is defined with reference to the distinction criterion. It should be noted that a discriminatory act prevents the exercise of other rights and that behind the violation of the principle of equality there are both an aggression toward and a disregard for human dignity. The protection of the principle of respect for human dignity is identified with the aim of Law itself, both national and international.

Special treatment of children and adolescents

Section 40 and following of the Uruguayan Constitution provides special treatment for children and adolescents as a group, as does article 19 of the American Convention on Human Rights, article 24 of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child (CRC), among others.

Recently, efforts were made to provide this special treatment with a specific content. Advisory Opinion CO-17/2002 of the Inter-American Court on Human Rights is an example of this effort. Despite the ambiguities found in the text, it is clear that this special treatment should not be discriminatory, and that all distinctions should fulfil the requirements specified above.

Moreover, any rule, which imposes special treatment, should comply with the

¹⁴ Cf. Advisory Opinion OC-18/03. September 17th 2003, and concurrent vote of Judge Hernan Salgado Pesantes. For further information on the constitutional analysis of differentiation, and to find a list of judgements in which these concepts have been considered, see Risso Ferrand, Martín. Op. Cit.

rules and principles of the CRC.

The principle of non-discrimination has a double expression in the CRC. Firstly, for being, in itself, an instrument against discrimination, since it aims to ensure that children have the same rights as any other person. Secondly, non-discrimination under the CRC demands equality in the protection of rights, that is to say, without discrimination.

Article 2 of the CRC requires States to guarantee that all the rights of the Convention are applied without discrimination to all children under its jurisdiction.

The State has the obligation to ensure that its own actions do not discriminate against any child, and that active measures are taken in order to prevent discrimination by others. This requires making a thorough analysis of the law and of institutional practice in order to evaluate their effect, not only on children as a group, but also on certain groups of children which are more prone to suffer it.

As we have already mentioned in general terms, the principle of equality and non-discrimination, does not prohibit lawful differentiation between children.

Article 2 of the CRC establishes equal application of the rights granted in it without any distinction whatsoever, and specifies thereafter the prohibition of certain specific discriminatory criteria. Important in this respect is the declaration of prohibition based on ethnic considerations of the person, affirmed by article 30, and the aforementioned prohibition on discrimination against the child, not on account of his/her own personal characteristics but of those of his/her parents, legal guardians or persons in charge (article 2.2).

On various occasions, international agencies monitoring compliance with international obligations have drawn attention to the Uruguayan State in relation to the violation of the principle of equality and non-discrimination. In this respect, the Committee on the Rights of the Child, the international agency responsible for monitoring compliance with the obligations assumed by the State after it ratified the CRC, has stated that is particularly concerned by the persisting discrimination against children born out of wedlock, including in regard to the enjoyment of their civil rights. It notes that the procedure for the determination of their name paves the way for their possible stigmatisation and the impossibility of having access to their origins, and that, in addition, children born to a mother or father who is a minor, cannot be recognised by that parent. The CRC also notes *“its concern at the prevalence in the country of the doctrine of “children in an irregular situation” which paves the way for the possible stigmatisation and frequent institutionalisation and deprivation of liberty of children on the basis of their disadvantaged economic and social situation.”*¹⁵

The Economic, Social and Cultural Rights Commission, an agency in charge of monitoring compliance with the Covenant on Economic, Social and Cultural Rights, has recommended: *“that the necessary legislative and economic measures be adopted to protect the rights of persons with disabilities and of street children. Particular importance should be given to information programmes in respect of health care, both physical and mental. Furthermore, all discriminatory provisions in the Civil Code or family law in respect of children born in and out of wedlock should be repealed.”*¹⁶

¹⁵ Concluding observations of the Committee on the Rights of the Child: Uruguay. 30/10/96. CRC/C/15/Add.62.

¹⁶ Final remarks of the Committee of Economic, Social and Cultural Rights. Uruguay. 22/12/97. E/C.12/1/Add.18.

Conclusions

The principle of non-discrimination, together with the principle of equality, in all the developmental aspects described above, are basic, general and fundamental principles relating to the international protection of human rights.

The principle of equality sometimes requires States to take affirmative actions to reduce or eliminate conditions that give rise to or permit to be perpetuated discrimination prohibited by international treaties¹⁷. This means that the principle of equality allows for differences in treatment. The problem is to determine the elements or circumstances that justify this unequal treatment.

The lack of a precise conceptual framework is evident. In order to determine when we are looking at a measure which involves discrimination and when we are looking at one which establishes a lawful differentiation, we must have recourse to various criteria which ultimately rest on a certain reasonableness required, fundamentally, in relation to the reason for the distinction. There is no precise legal definition as to what constitute affirmative measures, nor even of their types. It is evident that these are measures that imply the development of mechanisms or of the use of differentiated policies to favour people or groups of people who are or have been discriminated against, or who are in a disadvantaged situation.

From the legal perspective, it must be stated that the measures are not considered as rights, but they are regarded as exceptions or temporary limitations of a right in order, from a theological point of view, to make that right effective.

The laws outlined do not forbid legitimate differentiation in favour of children, or even between them. Specifically, our Constitution provides for different treatment with the specific purpose of protecting them. Therefore, measures to protect children as a group, or children who are especially vulnerable, should be adopted.

Being a complex social practice, the law is not limited to the existence of a rule. Its application is equally important. This aspect will be considered hereinafter. We cannot fail to be aware that the confirmation of the principle of equality, and of the right to non-discrimination within our legal system, is not sufficient to make the ethical, moral and political imperatives that are behind the same effective.

¹⁷ Committee on Human Rights, General Observation 28, par. 3.

Chapter 3

Exclusion and Socio-Economic Discrimination

Political and Economic Aspects

The reference guide “*Combat all forms of discrimination against children and adolescents in South America*” is a very important contribution for all the organisations working to promote human rights. From a technical point of view, it clearly expresses a set of key concepts for analysing and interpreting the multiple situations of discrimination faced by children and adolescents, which were dealt with in the previous chapter in respect to equality and non-discrimination.

In addition, we considered it important to take into account the factors relating to the exercise of power, ideology and politics, since the decisions of different players in the political field set priority criteria which lead to a greater social exclusion, inequality and discrimination against children and adolescents.

If we take the case of Uruguay, although it is a common aspect of many Latin American countries, the affirmation of the so-called neoliberal economic model has had a terrible impact on the lives of children and adolescents, since they are the people most affected by conditions of poverty.¹ In addition to socio-economic discrimination we should mention other forms such as discrimination on account of gender, for belonging to an ethnic minority, for being disabled or for belonging to a certain class, etc.

This economic model was consolidated in our country in the 90s, producing the *trade reform*. A labour reform took place where the State withdrew from collective bargaining, ceasing to mediate between employers and employees in the fixing of salaries. A reform which involved the privatisation of state companies was promoted in the public sector. This reform was only carried out in part, as a result of the people’s opposition to it in the 1992 referendum rescinding the Law on Public Companies.

According to Daniel Olesker, this reformist process continues the economic policies affirming the Liberal, Concentrating and Exclusive model,² which started in the 1970s by means of the implementation of the *financial reform* – which allowed Uruguay to be an attractive financial market for foreigners – and the *distributive reform* in which there is a transfer of labour wealth to the capital.³

Within this scenario of economic policies, the market is regarded as the regulator

¹ INSTITUTO NACIONAL DE ESTADÍSTICAS (2003) Estimaciones de Pobreza por el Método del Ingreso. Montevideo. p.13-14. “*Poverty affects proportionally more children than adults. The lower the age group considered, the worse the effect. The explanation lies in the particular make-up of the poorest homes, which have a lower proportion of adults, in general less than half the number of persons in the home. In 2003, almost 31% per cent of the country’s population was poor but if we look at the poverty situation by age groups – in round figures – we can see that 57% of the children under 6 years old, 50% of children between 6 and 12 years old, 43% of children between 13 and 17 years old, 28% of adults between 18 and 64 years old, and 10% of the elderly people (over 65 years old), are poor.*”

² OLESKER, Daniel (2001) Crecimiento y Exclusión. Ediciones Trilce. Montevideo.

³ OLESKER, 2001. p.35 y ss.

of economy, consolidating the concentration of wealth and deepening labour and social exclusion. Economic growth does not result in wealth distribution. The ruling model produces wealth concentration and social exclusion, thus significantly affecting children and adolescents. A revealing fact is that in 1998, in a time of economic growth, there were 150,000 people unemployed. Unemployment becomes a structural phenomenon, with little relationship to the growth or otherwise of the economy.

As Olesker expressed “...*beyond the growth of the Uruguayan economy during the nineties and beyond future growth, beyond today's recession, the issue is not the inability to grow, for the model has proved it can do so. The issue is the injustice within, which is functional to the system.*”⁴

This model has contributed to increasing social and cultural marginalisation, thus causing thousands of people to be excluded, and increasing inequality. This situation has resulted in a deep process of social segmentation, where the existing gaps between people from different social classes have become greater, with the subsequent elimination of areas for social interaction.

On this subject, studies by CEPAL and IPES⁵ have developed different analyses on the situation of social segmentation of the population, especially in the labour, educational and territorial areas.⁶ The weakening of the links of the poor from urban areas in the labour market, thus reducing the opportunities for informal socialisation with people from other social classes is shown. This leads to social isolation, and reduces the chances to accumulate social capital individually, collectively and as a citizen, and at the same time it increases the possibilities of social exclusion.

Another significant point is the application of social policies drawn up to respond to these exclusion phenomena. Policies of this type have not proved enough to solve the social issue of the continent facing more and more new people excluded from the middle class.

Under these circumstances, childhood and adolescence are the age-sectors most affected by these policies, as they are increasingly over-represented among the poor, according to the official poverty statistics.

It is worth noting that social exclusion arising from the application of economic policies implies the failure to respect the human rights of the citizens. When it comes to children and adolescents, it implies denying them the possibility to develop under conditions of human dignity, by discriminating them as a specific social group. Political discrimination is added to discrimination on account of cultural, ethnic, or gender grounds, making many children and adolescents suffer two or three different forms of discrimination at the same time.

This places children and adolescents in a situation of submission, since some social protagonists consider that they lack the ability to understand the socio-historical conditions of economic development and use this to oppose, for example, working children and adolescents seeking to organise their own affairs. Or to argue that issues are so complex that children and adolescents do not have the capacity to understand them, so they should participate under the influence of adults; and such social protagonists use this to deny their participation in matters that affect them directly, such as

⁴ OLESKER, 2001. p.30

⁵ KATZMAN, Ruben y Fernando FILGUEIRA (2001) *Panorama de la Infancia y la Familia en Uruguay*. Universidad Católica-IPES-IIN. Montevideo.

⁶ KATZMAN, Ruben (2001) *Seducidos y abandonados: el aislamiento social de los pobres urbanos*. Revista CEPAL N° 75.

the type of education they receive. These are all excuses that imply denying children and adolescents the exercise of their civil and political rights.

According to UNICEF's *Observatory on Children's and Adolescents' Rights in Uruguay*, the right to participate "[...] is still an outstanding debt and Uruguayan adolescents neither have their own spaces of participation nor are they taken into account when taking decisions which affect them."⁷ From qualitative studies it arises that "[...] adolescents perceive that society does not pay attention to them, and when it does, it is through negative reactions: the opinion of adults seems to lead either to discrimination or open rejection."⁸ In the same direction and from the National Consultation⁹ carried out by the Committee on the Rights of the Child, Uruguay, amongst almost 2300 Uruguayan adolescents, we observed that they do not believe or trust politicians, and consider that they are not listened to by those in authority.

Specific Aspects of Socio-Economic Discrimination Against Children and Adolescents.

It is worth providing some facts on the situation of childhood and adolescence in our country, within which our children and adolescents suffer experiences of discrimination, which we shall describe later in this report. This information makes up a group of empirical data that support the idea we have been developing.

Let us return to some particularly important issues, supported by five fully valid research projects:¹⁰

1- The biological reproduction of the Uruguayan population is in the hands of sectors suffering poverty, in the sector of people who are excluded from the exercise of their rights, therefore poverty focuses on children and adolescents. According to the Report of the Committee on the Rights of the Child in Uruguay, population growth is focused on the poorest neighbourhoods. In the same way, 50% of the child population lives in those areas, while only 11% of children live in high-income areas.¹¹

2- Children and adolescents: the poorest members of society. According to a report published by UNICEF in 2002, 104 000 children from 0 to 5 years old

⁷ UNICEF (2004) *Observatorio de los Derechos de la Infancia y la Adolescencia en el Uruguay*. Montevideo. P.65.

⁸ UNICEF, 2004:p.65.

⁹ COMITÉ DE LOS DERECHOS DEL NIÑO URUGUAY (2002) *Consulta Nacional: La opinión de las y los adolescentes uruguayos sobre su participación en el 'Plan Nacional de Acción'*. Montevideo.

¹⁰ The sources used are: COMITÉ DE LOS DERECHOS DEL NIÑO URUGUAY (2000). *La incorporación de los Derechos del Niño en las Políticas Públicas del Uruguay*. Montevideo;

COMITÉ DE LOS DERECHOS DEL NIÑO URUGUAY (2002). *Consulta Nacional: La opinión de las y los adolescentes uruguayos sobre su participación en el 'Plan de Acción'*. Montevideo;

SILVA BALERIO, Diego, COHEN, Jorge, PEDROWICZ, Silvana y otros (2003) *Investigación sobre las infracciones juveniles y las sanciones judiciales aplicadas a adolescentes en Montevideo*. DNI, UNICEF: Montevideo;

INSTITUTO NACIONAL DE ESTADÍSTICAS (2003) *Estimaciones de Pobreza por el Método del Ingreso*. Montevideo; and UNICEF (2004) *Observatorio de los Derechos de la Infancia y Adolescencia en el Uruguay*. Montevideo.

*“...do not cover the costs of food and of other goods and services considered basic”*¹² These children are 8.5% of Uruguay’s total population, but they represent some 16% of the total poor population. As regards to poverty *“...in 2002 approximately 12 thousand children, that is 5.4% lived in homes which could not meet the minimum nutritional needs. The same indicator for the whole population is 1.9%”*¹³

Children under 6 years old living in poverty in 2000 totalled 37.4%, in 2001 38.3% and in 2002 46.5%. In 2003 the situation of children under 6 years old living in poverty became even worse, reaching 56.5%, according to INE¹⁴ (National Statistics Institute) figures. If we compare these figures with the poverty figures for people between 18 and 64 years old, in 2003 they reached 27.8% and poverty among people over 65 years old reached 9.7%.¹⁵ There is a clear discrimination against the youngest children, since they bear the highest levels of poverty.

In 2002, 41.9% of the children between 6 and 12 years old lived below the poverty line and 3.8% were below the destitution line.¹⁶ In 2000, poverty reached 32.2%, in 2001 35.4%, in 2002 41.9%, and in 2003 more than half of all children came into this bracket: 50.2%.¹⁷

Regarding adolescents between 13 and 17 years old, in 2002 34.6% lived below the poverty line, while 2.7% lived below the destitution line. Poverty has increased with respect to previous years. In 2000, 25.9% of adolescents between 13 and 17 years old lived below the poverty line, in 2001 the figure was 27.7%, in 2002 it reached 34.6% and in 2003 it increased to 42.7%.¹⁸

These figures show that in Uruguay the population under 18 years old bears the greatest costs of poverty, since the relationship between general poverty and child poverty is always to the disadvantage of children, in general almost doubling it.¹⁹ On the other hand, if we look at the ages between 0 and 17 years old, the percentages of poverty increase in the lower age groups. There is a clear segmentation of poverty according to age, **the younger the Uruguayan, the more likely he/she is to be poor**²⁰ or destitute.

3- Penal control of children and adolescents has increased: From 1994 to 2002, there was an increase in the punitive control of children and adolescents. This is seen in the three sub-systems which make up the formal punitive control system: **police arrests** have increased by more than 25% over the period, 17% of which are illegal

¹¹ COMITE DE LOS DERECHOS DEL NIÑO URUGUAY, 2000: p.45.

¹² UNICEF, 2004: p.20.

¹³ UNICEF, 2004: p.21.

¹⁴ INE, 2003:p.13.

¹⁵ INE, 2003:p.13.

¹⁶ UNICEF, 2004:p.43.

¹⁷ INE, 2003: p.13

¹⁸ INE, 2003: p.13.

¹⁹ In 2003, for instance, general poverty was 30.9% while child poverty reached 56.5%.

²⁰ The lower the age, the higher poverty progression is seen throughout all the years considered in INE’s report. Let us take the example of 2003: The average percentage of poverty for the whole population: 30.9%; children under 6 years old: 56.5%; children between 6 and 12 years old: 50.2%; adolescents between 13 and 17 years old: 42.7%; adults from 18 to 64 years old: 27.8%; people over 65 years old: 9.7%.

and arbitrary arrests²¹; **taking** of children and adolescents **to court** has increased 165%²²; and deprivation of freedom²³ increased 48% between 1999 and 2002.

In the same way, the proportionality principle barely applies. Between the years 1994 and 2002 there were, on average, more than 70 adolescents who were deprived of freedom as a result of non-violent crimes (theft and attempted theft).²⁴ Moreover, the increase in police arrests is not the only reason for the increase in deprivation of freedom, since many criteria may contribute to that, such as decisions taken by protagonists in the legal system. This is allied to the existence of ambiguous laws which result from the coexistence of the socially protectionist-defensive Code of the Child of 1934 and the Convention, which permits margins of discretion when it comes to the system's decisions, which increases penalties imposed on the young and the excluded members of society.

4- The forms of participation of adolescents and the rules of discipline in education, restrict fundamental rights such as freedom of association, freedom of assembly, and freedom of expression. These violations of the rights granted in the International Convention on the Rights of the Child as regards the possibilities of secondary education students exercising their civil and political rights, continued throughout 2002 and 2003. Lastly, from the National Consultation²⁵ carried out by the Committee on the Rights of the Child in Uruguay in April of 2002, amongst almost 2300 Uruguayan adolescents, it can be seen that they neither believe nor trust politicians; 86% of the adolescents interviewed consider that those in authority do not listen to the opinion of children and adolescents on issues which concern them and 80% believe that those in authority would not take their opinions and suggestions into account, whilst they have plenty of answers to why the government should ask and involve adolescents when designing, deciding, implementing and monitoring a National Plan of Action for Children.

In 1996, the United Nations Committee on the Rights of the Child, when the Committee formulated its first observations to the Uruguayan State on the application of the Convention, stated: *"The Committee expresses its concern at the insufficient budget allocation for social expenditure, in particular in favour of children belonging to the most disadvantaged groups of the population. The Committee also notes with concern the trend towards the perpetuation of poverty amongst marginalised groups of children, with almost 40 per cent of children under five years of age living in 20 per cent of the poorest households and 4 per cent of children in this age group suffering from severe malnutrition, while social and economic discrepancies persist as regards access to education and health services."*²⁶

As mentioned before, the causes for the concerns of the United Nations Committee have, in fact, become deeper, since child poverty has increased enormously,

²¹ SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003:p.64.

²² SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003:p.39.

²³ SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003:p.39.

²⁴ SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003:p.215.

²⁵ COMITÉ DE LOS DERECHOS DEL NIÑO URUGUAY, 2002. Consulta Nacional: La opinión de las y los adolescentes uruguayos sobre su participación en el Plan 'Nacional de Acción'. Montevideo.

²⁶ Concluding observations of the UN Committee on the Rights of the Child, Uruguay. 30/10/96. CRC/C/15/Add. 62.

reaching 56.5% of children under 6 years old, with the resulting impacts on their survival and full development.

It has been seven years since the United Nations Committee on the Rights of the Child made its recommendations. Despite this they continue to apply, as, for example, the concern at “...*the insufficient measures taken to reflect in legislation and practice the general principles of the Convention...*”²⁷

The Voices of Children and Adolescents on Socio-Economic Discrimination

We have presented above some of the data that give evidence for, through empirical information, the socio-economic discrimination suffered by children and adolescents in Uruguayan society. From this data, it can be seen that there are multiple forms of discrimination – social, cultural, educational, by gender, of participation, relating to the basic access to goods and services, etc. – suffered by children and adolescents living in poverty.

In this chapter, we would like to focus on the perspectives of children and adolescents in this respect, how they experience discrimination and the ways in which they express it.

In many cases, when asked about socio-economic discrimination the children and adolescents interviewed would tell us their experiences as victims of ‘face to face’ discrimination by adults or by other children, victims of ‘suspicion’ and social exclusion, of their having been ‘demonised’ or criminalised, criticised or mocked on account of their being poor, or due to having developed street survival strategies or because of some form of child or adolescent labour.

Two adolescents from Montevideo told us:

Those who talk behind your back. You are somewhere begging for money, and two old ladies get together and say: “Be careful, they may rob you” and things like that. They kind of discriminate against you. When two old ladies get together they are like a nuclear bomb. They start gossiping and the next thing you know, they accuse you. You’re begging for money. People get paranoid.
(Montevideo, male adolescent, 17 years old)

Those lads who beg in the buses, they beg because they need to, but when people see them they say “look at that poor guy begging for money”, some people say nasty things to them, “look, how dirty”, there’s discrimination.
(Montevideo, male adolescent, 19 years old)

A girl from Rivera department says:

Many times, if a child who looks after cars, who is in need, who lives on the streets, comes near a Free Shop, they immediately kick him out. They think the child will steal from them or that he will do something to them, that he is going to get inside the store. My brother, when we were kids, he would look after cars and he once went inside a Free Shop, and the lady grabbed him by his arm and told him: “don’t come

²⁷ Concluding observations of the UN Committee on the Rights of the Child, Uruguay. 30/10/96. CRC/C/15/Add.62.

inside here any more because you will steal from me". My brother told her: "I may be poor, but I'm not a thief". (Rivera, girl, 12 years old)

When an adolescent from Montevideo was asked why people discriminate, he said:

The main reason would be that you are in the street, doing anything, begging for money. You realise there is discrimination because you see it in people's reactions. You are begging for money and people discriminate against you. They will say anything to you and all you are doing is begging for money.
(Montevideo, male adolescent, 17 years old)

An adolescent from Maldonado department admits she has felt discriminated against:

When I was begging for money people would shout things at me. And my classmates would complain about me. They would tell me I was dirty, and that I begged in the streets. (Maldonado, female adolescent, 13 years old)

We also witnessed discrimination by making fun of or mocking others (amongst classmates, at school) on account of their socio-economic situation. An adolescent from Rivera told us about his experience:

At school. Since I come from a poor family, and most of the children were well off, whenever I didn't have an exercise book or something I had to borrow one. So they would make fun of me: "Look, he's poor..." (Rivera, male adolescent, 16 years old)

While a 16 year-old adolescent from Paysandú recalls:

At school it wasn't that bad, because whether they had money or not, they were there to learn. But sometimes I felt people pitied me, and others too felt they were pitied, they were looked down on because their uniform was dirty, or because they were not wearing a ribbon, or because they wore shorts and flip-flops, those things bothered them. They wanted everyone to wear nice trainers, a good pair of trousers, a spotless uniform, and with a smart ribbon, well combed and a clean face. But all the kids who attended my school were simple people. They would wear what they had. I would always wear what I had, whenever they would say anything to me, I would always answer: that they should get me the clothes.
(Paysandú, male adolescent, 16 years old)

Poverty appears, therefore, as a base upon which a person may be discriminated. Not being well dressed, having the will to work but not being able to find a job or feeling embarrassed for having to go to a community diner, are paradigmatic examples of this form of socio-economic discrimination.

There are economic problems and stuff, right? If you are not well dressed it is not through choice, on the contrary, you want to be dressed, well dressed, the best possible... (Montevideo, male adolescent, discussion group of adolescents)

... We are going through an economic crisis, nowadays there are no jobs and people

have to leave the country because they can't earn a living here, and also, because it is the best for their children and for anyone. Then, what do the police want? That all the citizens move to another country so that only they remain here? Because if you want to get a job today, you won't find the job you want, the only way left is to become a police officer, and you don't want to be a police officer...

(Montevideo, male adolescent, discussion group of adolescents)

Maybe they feel embarrassed to go to a diner, you know? [...] Because they may meet people they know or something and they think the others are going to laugh at them.

(Montevideo, male adolescent, discussion group of adolescents)

...Discrimination against people on the street by those who are more or less [...] For instance, discrimination of poor and rich, of people who are in the streets and all that...I don't know how to say it, but you can feel it...you see it in the streets, that thing of poor and rich, you actually see it. [And, what do you see?] What I see from the people in the streets and all that, or that sometimes they have to beg or do other things, that no one should do but... that's it, some people do it to get some food or something. (Montevideo, male adolescent, discussion group of adolescents)

...I used to have a classmate who had a lot of money. And there was this girl, and she said that she wouldn't talk to her because she was very poor. Once I was sitting next to this girl and I approached her. And I talked to her, and we left together. I think that money is not important, money can come and go.

(Rivera, female adolescent, 17 years old)

I feel terrible because I don't look at them. And only because I'm from downtown and my brother looks after cars, they tell me I'm poor, they call me dirty, ugly, and I don't know what else... I tell them, "Only because I go to [she mentions an NGO] and I'm downtown all day, doesn't mean I'm dirty". I can go home and have a shower. And I tell them, "Come to my place and see if I have a shower or not". And well, I feel bad. I feel discriminated against, as if nobody anywhere loved me.

(Rivera, girl, 12 years old)

These voices tell us about the effects of poverty on childhood and adolescence: the need to beg; the fearful aggression of some adults toward poor adolescents who are badly dressed; the segregation of some businessmen; or the shame of the children and adolescents themselves at having to receive/need food. They talk about degradation, of how their human dignity is affected, of the efforts they make to survive, of serious human rights violations to the youngest generations of this society.

Official Discrimination and Dehumanisation Policies

We demand public policies that include a focus on rights, both in the drawing-up of programmes and projects, and in the exercise of professional, administrative and judicial practices, since many times they violate the human rights of children and adolescents. The challenge is in the cultural change of the behaviour of people who, in one way or another, work with children. The action must be aimed at guaranteeing the exercise of their rights, without discrimination, taking their opinions into account and encouraging processes of active participation, of leadership, which promote

the exercise of the citizenship and the strengthening of democracy.

As Alessandro Baratta expressed, the social covenant which gave birth to the modern State is implemented by excluding more than half of the population as it responds to the interests of the white, property-owning male,²⁸ thus discriminating against women, children and people from different ethnic groups.

Returning to what we said in the introduction, we should remember that in a society such as that of Uruguay, in which in the dominant collective representations the existence of forms of *hard* discrimination do not seem to be accepted, the goal of this research was to remove that veil and bring into the open the forms of discrimination and violations of the principle of equality against children and adolescents which exist in our country. We wanted to explore the issue of discrimination against children and adolescents and, at the same time, to describe and inform about specific cases of *classic* and strong discrimination, and to offer an interpretation of the statistics from the focus on rights, informing about structural discrimination which infringes the rights of Uruguayan children and adolescents.

Two of the Qualified Informants interviewed stated:

We have already referred to how the discriminatory apparatus works in the macro perspective, which takes place as a result of what we call invisibility or omission, that is, "this problem does not exist", it is not shown to exist. It is part of the structure of the system itself, for in that sense, we are no longer talking about a phenomenon that works within the Uruguayan borders. Structural discrimination takes place based on a system of ideas, which can be summarised as saying that these issues do not exist.
(Qualified Informant 7)

...One of the things that history has shown us is that there are class contradictions, which are in opposition, and there are contradictions which, even though we may resolve the ones in opposition, would still take place, until there is a more egalitarian system [...] I believe we have the tendency to conceal these things, to cover them. And we don't like seeing them, because we don't like them. Actually, Uruguayans don't like looking at themselves much. Especially looking at our deficiencies.
(Qualified Informant 2)

The situation of social segregation of children and adolescents, describes a powerful structural discrimination against poor children and adolescents, with the establishment of **official discrimination** generated by economic and social factors.

With respect to our subject matter, Zaffaroni states that "...all modes of discrimination have inorganic, organic and official forms. Inorganic forms are the ones that appear without a discourse or an institution supporting them in a purportedly coherent way. Organic forms appear when parties or institutions assume the discourse supporting them. Lastly, the official forms of discrimination are those assumed as State policies."²⁹

Certain economic and social policy decisions have had consequences on the violation of economic, social and cultural rights, which is directly linked to the lack of

²⁸ BARATTA, Alessandro. (1995) La niñez como arqueología del futuro. En *El Derecho y los Chicos*. Espacio Editorial, Buenos Aires. p. 20.

²⁹ ZAFFARONI, Eugenio Raúl (2000) El discurso feminista y el poder punitivo. P. 20. En AA.VV. *Las trampas del poder punitivo: El Género del Derecho Penal*. Buenos Aires: Editorial Biblos.

awareness on the part of adults that children and adolescents have civil and political rights that they can exercise.

This strengthens official discrimination against children and adolescents, bringing poverty to half of the population within this age group, to which are added other specific forms of discrimination such as discrimination on account of gender, disability or ethnic groups, with one discrimination being heaped on top of another. This has the consequence that many children and adolescents have their rights violated at two, three or four different and cumulative levels, whilst what is cast doubt on is the recognition of their human dignity.

To conclude this chapter, we would recall the words of the Argentine teacher Silvia Duschatzky and the semiologist Cristina Correa, who say: “*what is inherent to the human being is the possibility to stop being human*”. They say: “*After Auschwitz, humanity is no longer universal, but contingent; there is the paradoxical human experience of dehumanisation. The survivor, then, is an ambivalent being between human and inhuman: it is possible to survive without humanity, pure bare life, a living thing. Or it is possible to survive the experience of annihilation not as a mere living being, but as a person: that is a subjectivising experience. [...] Desubjectivisation, tells us about a way to inhabit a situation framed by impossibility, to be at the mercy of events, having minimised as much as possible the chance to say no, to do something which bursts through the circumstances. It is a way which deprives the individual of the possibility of decision making and of responsibility.*”³⁰

They refer to the political management of humanity, of the contingency of that socially constructed condition, tied to space and time parameters. It warns us about the dehumanising potential of certain institutional mechanisms, the concern for how the development of public policies may risk the full development of half the children and adolescents of a country, as a result of the failure to fulfil their basic needs at an early age.

³⁰ DUSCHATZKY, Silvia – CRISTINA CORREA. (2001) *Chicos en Banda: Los caminos de la subjetividad en el declive de las instituciones*. Buenos Aires: Paidós.

Chapter 4

The Concept of Discrimination

As we said before, the UN Committee on Human Rights defines discrimination as: “...any distinction, exclusion, restriction or preference on account of race, colour, sex, language, religion, political or any other opinion, national or social origin, economic situation, birth or any other status, with the purpose or effect of annulling, or which risks the recognition, enjoyment or exercise by all the people of all their rights and liberties, from the principle of equality.”

This legal concept is articulated together with the principle of equality, which determines “...that equal things should be treated as equals, and the unequal should be treated unequally. Which means that the principle of equality allows for different treatment. The issue arises regarding the determination of which are the elements or circumstances which justify unequal treatment.”¹

These concepts of discrimination and equality that are referred to all human beings, gain a specific meaning if applied to children and adolescents, since non-discrimination is a ruling principle of the Convention. This implies that the principle must be applied in all aspects of policies addressed to children and adolescents.

In this chapter we shall examine the concepts of discrimination arising from the accounts of the interviewees. A range of concepts of discrimination arise from the in-depth interviews with children, adolescents and adults and from the adolescents' discussion groups. We shall attempt to describe and classify them, being respectful of the *words* of the interviewees, though focusing on certain meanings that reflect their view and their experiences regarding discrimination.

In this respect, several ideas are repeated, expressed in different ways, but which can still be associated together. They reflect negative aspects they have witnessed, experienced or thought about.

The classification carried out in this chapter is expressed through verbs, since it reflects actions performed by an individual, group or institution addressed to another person or persons. These actions imply ways of undermining the dignity of the discriminated child or adolescent. Discrimination has a negative effect on the recognition or exercise of rights and liberties.

Discrimination is seen both in the private interpersonal relations of individuals or groups towards other groups which are typically minority groups within a certain society and time. Discrimination is also seen in what we call official discrimination associated with public policies that expressly or implicitly undermine the rights of individuals or groups that are identifiable as different on account of one or more particular features.

Children and adolescents mainly mention interpersonal discrimination between individuals, associated with different treatment, physical violence or pain and suffering, or different kinds of exclusion. There are also references to official discrimination, mainly to poverty or social control mechanisms, identified with police action in urban areas.

¹ PALUMMO, Javier (2003) Discriminación: una mirada al marco regional de tratados jurídicos internacionales. Paper presented in the Workshop No-Discriminación a Niñas, Niños y Adolescentes. Committee on the Rights of the Children, Uruguay, Save the Children Sweden. Montevideo.

The Viewpoints of Children and Adolescents

With regard to the most representative ideas of discrimination, there are primarily three actions that describe the group of discriminatory practices narrated by children and adolescents: to exclude, to subject to violence and to single out. This categorisation is for educational and epistemological purposes. It is not aimed at reflecting the complexity of the reality of the discrimination suffered by children and adolescents. It is aimed solely at giving some order to the expressions of the interviewees on the concept of discrimination, allowing us to offer a general structure to the concepts to be dealt with in the next chapter with regard to specific forms of discrimination, showing how complex an issue it is.

In most of the cases, discrimination is associated with actions. When asked “*What do you understand by discrimination?*”, the answers are verbs, actions representing their ideas on discrimination.

As Michel Foucault expressed “...*the verb states, it indicates that the speech in which the word is employed, is the speech of a man who not only conceives names, but judges them. There is the proposition – and the reasoning power – when a link of attribution is affirmed between two things, when it is said that this is that. All verbs boil down to only one, the one that means to be. All the other verbs secretly serve this unique function, but have covered it with determinations which conceal it...*”²

The words of children and adolescents are affected by the closeness of experience, of living, which refers to a sensitivity and conceptualisation that are difficult to dissociate. There are no theoretical concepts, but symbolisations describing personal experiences, of friends and acquaintances, and notions that represent the interviewees’ previous ideas but loaded with emotion and feelings. This is one of the reasons which may explain why under the *subject to violence* category many representations of discrimination are included, even though, in principle, we would be looking at another principle concept which curtails rights, and is not strictly discrimination, since the exercise of violence may, for instance, be classified as a crime. After reading all the different quotations included in this chapter, we were not certain as to whether to include some ideas in one or several categories, since they are deeply linked to each other.

To Exclude

Recently, there has been a lot of discussion on the forms of social exclusion. In the French streams of thought, social exclusion is linked to the social order, expressing the breaking of the social ties that join the members of a society. In Anglo-Saxon countries, in contrast, the concept of exclusion is related to material aspects, it is associated with inequality.

The declarations of the interviewees have features of both conceptualisations; both of social isolation and of inequality, which result from the different impacts that economic policies have on different population groups. In the declarations of adolescents there is specific reference to interpersonal relations between pairs, or in which the agent represents an institution, or an identifiable group. This is called inorganic discrimination, since it is expressed without either legitimating treatises or institutions that support it in a coherent way.³

² FOUCAULT, Michel (1966) 1969. *Las palabras y las cosas*. Editorial Siglo XXI. México. P.99.

³ ZAFFARONI, 2000:p. 20.

From the expressions of adolescents arises the idea of discrimination related to the idea of exclusion, which is expressed in different ways, though always by means of concepts such as separation, isolation or being turned out which lead us to variants of exclusion:

Discrimination is when someone approaches you and tells you: "we won't talk to this guy because he's black". They put us aside only because we are different, we have darker skin... (Rivera, male adolescent, 16 years old)

...Discrimination is something to isolate, to treat us badly...
(Rivera, female adolescent, 17 years old)

...We were all sitting around the table, and some people were left aside from the rest of the group... (Rivera, female adolescent, 17 years old)

...I felt discriminated because no one would speak to me. I was alone, there...
(Rivera, male adolescent, 15 years old)

To step away from someone's side... (Montevideo, girl, 9 years old)

...Someone discriminates against someone else when he tells him that he is poor, that he doesn't have any money, or that he is badly dressed, or that he is dirty.
(Maldonado, male adolescent, 13 years old)

...They discriminate against you because you're poor, or things like that...(Montevideo, male adolescent, 17 years old)

There's a lot of discrimination but it is not so much because of race, but rather because of what you have, for example, you have trainers of 'x' brand... that's discrimination. (Montevideo, female adolescent, 17 years old)

The last three quotations refer to socio-economic discrimination, a variety of exclusion, in which children and adolescents are affected because they are poor, do not have certain things.

Just as children and adolescents did, several Qualified Informants referred to the idea of exclusion in order to define discrimination:

Negative discrimination happens when someone, in some way, marks you out as different to exclude you. (Qualified Informant 4)

...is like violating opportunities of access...(Qualified Informant 1)

If someone establishes that in order to attend a certain course a basic training is needed, there is a certain criterion for that purpose. But when one sees that a person is left out on account of something which is not expressly stated and which refer to the fact that the person has a tattoo on his body, and that is not said, it is not seen by the children...Or because they smell, or because the person has a different skin colour, or because he/she dresses in a particular way, either because he/she wears a cap, or because he/she wears certain shoes... There is social stigmatisation that deprives the

individual from certain opportunities he/she would have if he/she complied with the 'permitted social rules'. (Qualified Informant 1)

To discriminate is to separate, to separate someone who belongs to a group on account of several reasons, his/her economic situation, skin colour, for being different. (Qualified Informant 3)

Actions of separation, leaving out, or denying access appear repeatedly and relate to forms of denying children and adolescents the exercise of the rights and liberties that are inherent to the human being.

To Subject to Violence

The traditional concept of discrimination does not imply the exercise of either pain and suffering or physical violence associated with a discriminative action. It is, nevertheless, included in the concept of discrimination provided by the United Nations Committee on Human Rights, since it complies with the requirements of annulling or endangering the recognition, enjoyment or exercise of rights and liberties, even though the verb "to subject to violence" is not expressly mentioned. However, it is a variant of discrimination, which is very important to the children and adolescents interviewed, since it is seen or experienced as having great impact on the experiences narrated.

To the question: *What do you understand by discrimination?*, we obtained the following answers:

...it is mistreatment. (Montevideo, male adolescent, 17 years old)

You are walking down the street and the cops stop you, put you against the wall, they punch you and take you to the police station... That is discrimination too. (Montevideo, male adolescent, 17 years old)

To mistreat someone because he/she is poor. (Montevideo, girl 11 years old)

Most people discriminate, the police, there is no doubt...you are discriminated against the most because they see you there, a bit dirty and they hit you with the truncheon in the head. (Montevideo, male adolescent, 17 years old)

If someone were walking down the street and another one kicked him, or a big guy who grabs someone smaller by the neck. (Paysandú, male adolescent, 16 years old)

To mistreat someone...(Montevideo, girl, 10 years old)

They see you begging in the streets, making trouble... and they kind of feel like mistreating you... (Montevideo, male adolescent, 17 years old)

For example, when we are in the street, they see us begging and they shout things at us, and they don't realise they are offending us. They are discriminating against us. (Maldonado, female adolescent, 13 years old)

...to judge someone for what the person is or does... (Montevideo, male adolescent, 19 years old)

To be insulted or poked fun at... (Montevideo, boy, 10 years old)

The social characteristics of the children and adolescents interviewed, may establish an important bias in the representations they prioritise when describing discrimination, although, at the same time, they have the value of expressing the experiences of a group of children discriminated against by the official policies. As we said before, it is a representation filled with emotion and which reflects their experience. It is different from an intellectual conceptualisation since it lacks the necessary distance for analysis, it expresses what the child has experienced or seen.

To Single Out

To single someone out as being different from someone else, to describe behaviours or conditions, establishing some distinctive peculiar feature, is also identified by children and adolescents as discrimination. It is expressed as showing negative treatment towards them, or special treatment to certain people or particular groups, which implies a privilege, which is linked to the concept of preference mentioned in the definition of the United Nations Committee on Human Rights. This takes place, mainly, through actions of differentiating, classifying, or treating people differently on account of specific features, especially associated with poverty, which is expressed by the lack of money or the clothes they wear.

The following expressions reflect this:

...to treat different. (Durazno, female adolescent, 16 years old)

...to treat a person differently, on account of something which makes him/her different. (Paysandú, female adolescent, 16 years old)

I think discrimination is the things someone dislikes about you.
(Durazno, male adolescent, 17 years old)

When someone discriminates against someone else, when he tells the person he's poor, he doesn't have any money, or when he is badly dressed, or dirty.
(Maldonado, male adolescent, 13 years old)

People discriminate against you for what you are, for what you do. The people who have money. (Montevideo, male adolescent, 15 years old)

I think discrimination is many things, for example when they discriminate against you for the way you are, for the way you dress, or when people stay away from you and things like that, I think all that is discrimination.
(Durazno, male adolescent, 18 years old)

It means that people discriminate, treat differently.
(Durazno, female adolescent, 16 years old)

...for being a thief, or, I don't know, for being a drug addict, for all those things. That is being discriminated against. (Montevideo, male adolescent, 17 years)

I think it is to treat a person differently, for something that makes him/her different.

It depends on the person who is establishing the differences at the time.
(Paysandú, female adolescent, 16 years old)

To discriminate against someone for the way he/she is, for his/her customs, skin colour, sex, or because of something they can think of to discriminate against.
(Maldonado, male adolescent, 15 years old)

Discrimination refers to skin colour, that is discrimination. Because one sometimes hears "black people this, black people that". And I think we are all human and we have to treat each other as such, not discriminating. Then, also illnesses, when a person is disabled or something like that. (Rivera, female adolescent, 14 years old).

It is to discriminate against people for the way they are, for the way they think, for the way they dress. Many times, people discriminate against others for the way they dress. You realise it because people stare at you, and it is not the same. If we were all equal... if you are badly dressed they look at you in a different way, it is not the same. (Montevideo, female adolescent, 17 years old)

As two Qualified Informants say, discrimination implies "...any kind of different treatment to people who, for some reason, are not equal or do not have the same things, or who are different from the majority, or from what the collective perception considers right". (Qualified Informant 8). Similarly, it was also noted that "... to discriminate is, in some way, to compare and to seek what is different. I believe there is negative and positive discrimination". (Qualified Informant 4)

The complexity in which forms of discrimination are expressed, makes it difficult to describe the expressions of the interviewees in an understandable way. We believe that, in a general way, the three verbs we have described here represent the ideas expressed by the children and adolescents. At the level of exploration of this research, it provides elements which require further study in order to thoroughly understand the different aspects in which discrimination occurs.

A 12 year-old girl from the city of Rivera clearly expressed the complexity of discrimination:

There are different types of discrimination: in the family, between black and white people, there's discrimination at school. Many times a classmate looks at you and tells you: "what a 'noyento'⁴ face", and doesn't speak to you anymore. For example, I approach, look at him/her in the face and think: "no, I won't relate with that person". And I don't speak to him/her, I don't even try to speak to him/her. But that is wrong. One has to talk, and see who the other person is, see what he/she is like. Because many times, you think you're not getting on well with someone because of his/her face... It happened to me. I went to school and thought I wasn't getting on well with a classmate because... when you look at the person, you think: "what a noyentita black", whose face is like this, and you look at her and think she is bad, I don't know... And then, you are there and you talk to her and you realise she is a good person. (Rivera, female adolescent, 12 years old)

⁴ It means 'disgusting' in the dialect used in Rivera department, in the border between Uruguay and Brazil.

She continued:

It is like a prejudice you have before you actually meet the person...
(Rivera, female adolescent, 12 years old)

This last phrase seems obvious, it refers to prejudice, to what we think of a person before actually knowing him/her. Sometimes, the basic things hold an important lesson, because they express straightforwardly what we try to make complex. It refers to the idea of otherness, of recognising ourselves in others. As the Mexican writer Octavio Paz said: *“In order to be, I have to be another, get out of there and find myself amongst others. The others who are not if I don't exist, the others who give me full existence”*.

This idea of otherness is not complete unless we refer to justice in the sense of giving each and every one what they deserve by right, which leads to the idea of equality. On this matter, an adolescent from Paysandú tells us:

Equality is like everything. It is like not paying attention to differences that may not be actual differences. We all have the same abilities, and despite not having the same opportunities, we do have the same ability to develop the same things. It would be nice if we all had the same possibilities to be equal as well.
(Paysandú, female adolescent, 16 years old)

The idea of equality of opportunities as this adolescent from Paysandú expressed it, refers to the ideas related to the conceptualisation of the child as a citizen with rights and of birth as the appearance of a new being which becomes part of an old world. It implies providing children with all the necessary things to live their best possible childhood, to travel their own roads. It implies attributing an enigmatic meaning to children. Since it is not possible to fully understand them, we neither know everything about children, nor do we outline their projects. Quite on the contrary, we provide them with spaces for their development, so that, little by little, they exercise their rights, so that they can take possession of a world that belongs to them.

Chapter 5

Specific Forms of Discrimination

Introduction

Going back to the different forms of discrimination experienced by children and adolescents, we observed that besides their being discriminated against on account of their age, for being too 'little' to do this or that, to give their opinion, to decide, etc., children and adolescents suffer the violation of other rights. We shall propose an organisation of the different 'forms' of discrimination, which we shall describe below, but this will be purely for the purposes of analysis as in real life they occur together. That is to say that typically multiple discrimination takes place, resulting in the violation not only of the right to non-discrimination, but also of many other rights that children and adolescents should enjoy in order to develop fully as citizens with rights.

In Chapter 3 – *Exclusion and Socio-Economic Discrimination* – we exposed the factors related to the exercise of power, ideology and politics, linked with the establishment of priority criteria which bring about a worsening of social exclusion, inequality and discrimination against children and adolescents. It is worth noting that we have already mentioned one of the specific forms of discrimination – socio-economic discrimination – suffered in Uruguayan society. That form of discrimination deserved a chapter of its own due to its particular importance as the threshold for many other forms of discrimination such as social, cultural, educational, gender, home, ethnic, of participation, in respect of access to basic goods and services, etc. suffered by children and adolescents in a situation of poverty or deprivation.

In this chapter, we would like to underline the perspective of children and adolescents on other specific forms of discrimination, the experiences they have lived, seen, heard and the way they expressed them, with the aim of removing the veil to disclose the forms of discrimination and violation of the principle of equality.

The Selectivity of the Juvenile Criminal System¹

The juvenile criminal system is clearly discriminatory due to socio-economic grounds. Poor adolescents are the eligible candidates, easy prey for the police since their method of operation is aimed at patrolling the streets, the place where these adolescents are most likely to congregate. The social control system, especially the police and the judicial system, operate in a selective fashion, which means that they react differently, based on discriminatory criteria.

Selectivity starts with the criminal law itself, as not all behaviour considered as reprehensible or damaging is defined as a crime. As many criminologists and experts in criminal law affirm, crime does not exist as an ontological category, it expresses a

¹ Some of the statements appearing in this chapter were published in SILVA BALERIO, Diego (2003) MENOS VIOLENCIA PENAL MÁS PROMOCIÓN CULTURAL: La libertad asistida, una propuesta educativo social. En AA.VV: La Justicia Juvenil en América Latina. DNI-Novib. Montevideo.

GARLAND, David 1999 (1990) Castigo y sociedad moderna: un estudio de la teoria social. Editorial Siglo XXI, Mexico. p229-230

social, cultural and historical construction, creating categories and descriptions which are typical of criminally punishable behaviour. These legal constructions answer to the hegemonic political power at the time the law is born. In this way, other behaviour, which causes injuries or losses or damages judicial rights, is excluded.

The police make a new selection of the facts which are submitted or notified to the judge, excluding others, for instance on account of evidential reasons, or simply as a result of corruption. The parameters of social class – economic and political power – operate as inhibitors of punishment. It is not easy to *mess* with those who can defend themselves. The Courts only receive part of the facts that violate the criminal law, once the filter mechanisms prior to the judicial system have operated. Therefore, not all crimes committed are uncovered, of the ones which are uncovered not all are proven, of the ones which are proven, not all of them merit punishment, which means that the individuals to whom a criminal sanction is applied are the ones who could not avoid the multiple stages of this long and complex selection process.

Adolescents to whom criminal sanctions are applied, under a special proceeding and under a different law from the one applied to adults, represent, in turn, a small group within the universe of people who have been sentenced to a criminal punishment. The constructions of the crime and its punishment are conditioned by the social, economic and political organisation and this is related to the views and sensitivities of a society at a certain time and place. These views or ways of thinking are related to cognitive features of culture, concepts, values, categories, distinctions, ideas, belief systems, traditions, etc., and are strongly related to feelings and sensitivities.

The Views and Words of Adolescents

The police force is the discriminatory agent of the criminal system most readily identifiable by adolescents. It plays a key role in the punishment given to adolescents before the courts are involved.

The following are some of the phrases uttered by adolescents during the in-depth interviews and discussion groups:

The police stop you only for being black. I have a friend who works and plays football and he didn't do anything, but since he is black, every time the police see him, they either take him or stop him. (Montevideo, female adolescent, 17 years old)

...in our watchword, in the book of the Rights of the Child, there is a part which reads that every citizen has the right to walk on the streets, right? And, for instance, the police do not respect that. Why can't we walk freely down the streets? We are always being watched by the police or by someone.
(Montevideo, male adolescent, discussion group of adolescents)

They don't put themselves in the place of their children, do they? If they have any. If they were poor like us, wouldn't they put themselves in the place of their children who, wherever they go they are being watched, you know? You are being watched by someone you don't even know, or you are paranoid because you think the police are going to do something to you, or that they are taking you away, or who knows what they may do to you... (Montevideo, male adolescent, discussion group of adolescents)

We were saying that the police are not to blame, but... crime exists, because here we are saying that we are not all criminals, not because you are walking down the

street, but... crime exists because there's hunger. Many people steal to get something to eat, and others steal to get drugs. Crime exists because there's hunger. If there weren't hunger, nobody would steal, if there were employment...everyone would be working and nobody would steal and everyone would do their things without stealing, this is what I think. There a lot of issues, there's crime, there's hunger, there's everything...there's the police who do things wrong, and there are people who do things wrong. (Montevideo, male adolescent, discussion group of adolescents)

They may stop you and ask you "Where do you live?", and if you answer "I live in Borro" they may take you, but if you say "I live in Pocitos" or in Malvin, they will say "Hey, wait a minute, we don't want to take you in".*
(Montevideo, male adolescent, discussion group of adolescents)

...the police are repressive, they are always repressive. And they hit you, they not only hit you with the truncheon, they sometimes embarrass you. They stop you downtown, put you against the wall and stuff, they search you, they manhandle you in the street in front of anybody and people go "Look! Look at that one", and you want to pass unnoticed because you are in front of everybody and everyone is looking at you and they embarrass you in front of everyone.
(Montevideo, male adolescent, discussion group of adolescents)

They arrested me at el Prado for robbery, but I wasn't guilty... I was walking and I don't know, they saw me and thought "you are the one". I was wearing a black sweater, and they took it away, they also took my watch, they kept everything.*
(Montevideo, male adolescent, discussion group of adolescents)

*I was locked up in the police station and some girls from Pocitos came in, who had been taken there because they had stolen a T-shirt at the shopping centre, and I had been there for a while. I asked if I could call my mother to let her know I was arrested, so that she wouldn't worry, but they didn't let me.
While, when these girls came, they didn't confiscate their belongings or anything, and after a while their parents came and took them out. They could take them because they had money. Why then, didn't they take me home? If we are all equal. They were all girls just like me. Either way they had stolen, it was the same, a T-shirt or anything, there was no difference, they had stolen and they didn't take anything from them, they were left in the waiting room with all their stuff, and afterwards they were handed over to their parents. And I had to wait until the following day for them to tell my mother to come and pick me up, although I hadn't done anything. However, those girls had stolen and they let them go anyway, and that's what pisses me off. Because if we were all the same it wouldn't matter that they live in Pocitos and I don't, it has nothing to do with it.*
(Montevideo, female adolescent, 17 years old)

It hurts me as a human being, because you can't live like that, there comes a time when you can't live, they pursue you, they take you, you can't be in the street, you

* T.N.: Borro is known to be a marginalised and poor borough in Montevideo, while Pocitos, and Malvin are boroughs known as suburbs where people of higher economic classes live.

* T.N.: El Prado is the name of a borough in Montevideo.

can't live because they follow you everywhere. They take you, you want to go dancing one night, and because you went they arrested you and they left you there without anything to eat, nothing, until the following day [...] and you watch TV or listen and see that some politicians steal and stuff and they are still at home as if nothing had happened, and nobody says nothing to them.

(Montevideo, female adolescent, 17 years old)

Race discrimination, harassment and being expelled from certain urban public places, restrictions on movement, residential and social class discrimination, and the privileges granted to some social sectors over others, are issues which appear repeatedly in the words of the adolescents.

Violence does not only mean hitting or insulting, but also the degrading of adolescents on account of their social condition. When asked about what the relationship with the police implies to them, one of the adolescents who participated in the discussion group said: *I feel embarrassed and powerless, because, why do they take you if you weren't doing anything?*

When asked whether the police arrest anybody or if they operate in a selective way, the following responses arose: *...I don't know, it is this way, this neighbourhood is already this way, they are of the idea that if someone is badly dressed, wearing shorts, wide shorts and all that, they say "This guy is going to rob an old lady or something."* On this issue another adolescent says: *...If you see a well-dressed person you assume he/she comes from work or something, from a company.* And he gets this answer: *Some people in suits and ties steal as well. Besides, he can wear a suit and tie and steal the same.* Another adolescent added: *Some people do it right, and nobody notices. Drug dealers and stuff, do you ever see them badly dressed? No! They are always well dressed. And where do they live? In Pocitos, Carrasco.*

The opinions of adolescents are contradictory. One of them is the spokesperson of social stigmatisation, since he attributes positive aspects to a person wearing a suit, it is someone who works. He attributes to the suit and the tie an inner reliability, whilst shorts project distrust, they build the "criminal image": *he will rob some old lady...says the adolescent and that's what the outfit means to him.*

On the other hand. As Gonzalo Fernández states "...the arbitrary alteration of the bureaucratic surveillance practices – which highlight the discretionary selectivity applied to groups likely to be criminalised – will determine the existence of a whole underground criminal sector, the so-called 'criminality figure' which, despite its perceptible presence, does not enter the tunnel of the punishment system, thus becoming a sector of tolerated criminality."²

Some of the Qualified Informants confirm many of the statements given by the adolescents. Let us take a look at what one of them has to say:

From the state criminal system standpoint, it is very likely that the blond child who is not poor does not get to jail, he/she is likely to solve the situation at a police level. The other one will never solve his/her problem and will be punished, whether he/she is guilty or not. Let me tell you about a black child who once told me: "They saw it wasn't me who committed robbery, I was there, standing at the butcher's and had just bought something. I was carrying the shopping bag. But I was arrested, they

² FERNANDEZ, Gonzalo. (1988) Derecho Penal y Derechos Humanos. Montevideo. IELSUR-Trilce p. 97

made me stand next to the other suspect in front of the victim and the person who had been robbed had to choose. But he didn't have to choose between several black people, but between a black one and a white one. They put a white guy next to me. The woman looked and said, 'it was him, it was the black one'"
(Qualified Informant 5)

On account of it being a risky area, a dangerous place from which the police make them stay away during the day: "No, you can't be here, together, playing, you must leave, if you don't leave here in a few minutes we'll come and arrest you". [...] Then, there's discrimination, violence, and everything else related with our job within police spheres. There was a child in the police station for breaking into a house and committing robbery, but they wanted him to say that he had a gun in his hand, a sawn-off shotgun in fact. They kept aiming at him with a gun, and if he denied the shotgun was his, they fired off some shots, they took him to the back, locked him in a cell and started over again, if you don't say the shotgun was yours we will shoot you..."
(Qualified Informant 5)

Torture is one of the most evil ways of degrading a person. This is even worse when we refer to adolescents, people whose physical, psychological and social development is not complete. Police harassment is many times associated with obtaining a confession,³ as it is stated in one of the narrations. Despite the extent of these reports,⁴ there are very few documented statements of maltreatment or torture recorded in the Courts.

According to experts from UNICEF's *Innocenti* Institute "...of all the stages of the juvenile justice system, it is during the arrest and immediately afterwards, while under police custody, that the accused adolescent is most likely to be a victim of torture and other forms of maltreatment".⁵

In addition, according to data taken from the research published by DNI and UNICEF in December 2003, most adolescents who have been submitted to a judicial process belong to the most disadvantaged social sectors.⁶ Some facts supporting this information are that 60% of the adolescents against whom a judicial procedure for breaking the law was started, are behind in their educational level; 80% do not study; 40% are casual workers and 42% neither study nor work. As a prosecutor clearly

³ FERNANDEZ, Gonzalo. (1988) *Derecho Penal y Derechos Humanos*. Montevideo. IELSUR-Trilce p. 98. "The imminent risk of the free intervention of the police, in this stage in which the preliminary investigation is carried out and, especially when the first statement of the accused is obtained, there is a certain possibility – longstanding – that illegal physical or psychological pressure is exerted in order to make the accused confess. Confession is traditionally considered to be the *queen of evidence*".

⁴ In a survey of adolescents carried out by UNICEF, 45% said that adolescents are habitually badly treated during police detention, and 50% thought the treatment received by adolescents is worse than the one given to adults. UNICEF (2001) *La voz de los adolescentes: percepciones sobre Seguridad y Violencia en Buenos Aires, Montevideo y Santiago de Chile*. See also pages 61 to 75 of SILVA BALERIO, COHEN, PEDROWICZ y otros, *Investigación sobre las infracciones juveniles y las sanciones judiciales aplicadas a adolescentes en Montevideo*, DNI-UNICEF, Montevideo, 2003; and DEUS, Alicia, GONZALEZ, Diana (y equipo), *Juicios y silencios. Los derechos humanos de niños y adolescentes en el proceso por infracción a la ley penal en Uruguay*, Konrad AdenauerStiftung, Montevideo, 2003.

⁵ UNICEF (1998) *Innocenti Digest 3- Justicia Juvenil*. p.8. Florencia-Italia.

⁶ SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003: p.75-85

expressed: *“A child whose parents do not attend a hearing has twice the chance of being sentenced to prison”*.⁷ This confirms that elements not strictly related with the offence may influence the sentence, taking into consideration social and family factors when determining the punishment.

The selectivity of the penal system is such that *“the social discrimination which is present in all criminal systems is an enormous affront to human dignity”*.⁸ It chooses poor adolescents mainly, as a consequence of offences committed against property, although the social extraction of these adolescents may not substantially differ from that of the police officers themselves. *“... we can't deny the enormous filter imposed by the police operation, characterised by notorious selectivity during their intervention, which – without exception – is applied to the most impoverished and marginalised classes of society. However, it is paradoxical that, according to the make-up of its human resources, the police department recruits its members also from amongst the economic disadvantaged sectors of the population.”*⁹

Regarding socio-economic discrimination and some features of social control, one of the adolescents who participated in the discussion group said: *“...today if you want to get a job, you are not going to get the job you want, the only chance you have is to become a police officer and nobody wants to be a police officer...”* On the one hand, he pointed out that being a police officer is an attainable job option, whilst, on the other hand, his experience and the implications associated with being a police officer made him refuse that option.

Discrimination on Account of ‘Look’: ‘La Plancha’

Let us introduce now the type of discrimination which we call discrimination *‘on account of look’* (which is discrimination due to appearance, *look*, face, *‘la plancha’**), in the words of a homeless adolescent from Montevideo:

You are somewhere and the cops come to break your balls. They come to bother you because you are dirty. Once I was walking down 18 and they arrested me for no reason and embarrassed me in front of everybody. “Against the wall” they told me... What would people think? They look at you and they are against you. They may think “he is a thief”. They discriminate you for the way you are, for your ‘plancha’.*

The interviewer asks the adolescent the meaning of *‘plancha’*, to what he answered:

‘Plancha’ is the look, the way you are. The way you dress. The way you walk. If you walk down the streets like the cock of the walk. If you walk like that in my neighbourhood they will tell you: ‘Hey, don’t play the bad guy... where are you from, come

⁷ Organización Mundial Contra la Tortura. (2004) Niños, Niñas y Adolescentes privados de libertad en Uruguay: ¿CON O SON DERECHOS? Ginebra.

⁸ ZAFFARONI, Eugenio Raúl. (1986) *Sistemas Penales y Derechos Humanos en América Latina* (informe final). Buenos Aires: Depalma. P.430.

⁹ FERNANDEZ, Gonzalo. (1988) *Derecho Penal y Derechos Humanos*. Montevideo. IELSUR-Trilce p.95

* T.N.: Due to the specificity of the term in Spanish, I preferred not to translate *‘la plancha’*, since its meaning can be understood from the whole context.

* T.N.: 18 de Julio, the main Avenue of Montevideo city.

here, come...” they thrash you and they get hold of you and you are dead meat. And they will even beat you if you speak in a weird way.

And then he told us:

Discrimination will always exist, because there are always people who discriminate against you. Police officers discriminate against you, all of them. They discriminate against you for anything. Because you are in the street. They say things to you, they kick you out of the place where you are... you are not doing anything and they kick you out. They abuse you. They insult you. Most of them hit you with the truncheon and they take you with them because they have the power. I disobeyed several times. You are peaceful and they come and degrade you, I punched them several times. They feel rage and envy at you. (Montevideo, male adolescent, 17 years old)

Similarly, a 16 year-old adolescent told us how the police had discriminated against him for his *look*. He said that the police had stopped him several times, and explains the reason for such arbitrary arrests as follows:

They would always arrest me for being in the street. I was in the street and they would lock me up. Sometimes I was with some people who were begging in the street just like me, and they would arrest me because of them and keep me inside for no reason. I was locked in the police station. Once I was at [he mentions the name of a shop] and they caught me. I had just arrived there because I watch motorbikes at a parking lot, and they took me and another boy who was also working there, and they locked us inside at 5 p.m. And they also took another guy there, and beat him hard. They injured him. They didn't hit me or the other boy. They didn't hit the boy who was arrested with me, he said a few things, so they didn't hit him. But there was a boy there who was hit hard, he was all black and blue. Their hands were all red. And they kept me there for quite a while, until 1 a.m. While the guilty ones were released at 8 or 9 p.m.” (Paysandú, male adolescent, 16 years old)

Other adolescents also told us about their experiences regarding discrimination for their *look*.

Yes, I remember once I was going to Sarandí, and a cop stopped me and said “ID, please”, so I gave him my ID, and he told me: “You will have to come with me”, and I asked “Why? I haven't done anything wrong” and he said “Because you will have to come with me” and suddenly an acquaintance of mine arrived and said she knew me, and the police officer said “No, it's nothing, we were just leaving”, but they wanted to arrest me because I looked like a criminal. If you dress differently these days, they'll arrest you. (Maldonado, male adolescent, 15 years old)

If someone is going to work, the cops think he/she is going to steal something, since they think he/she looks like a thief, they assume he/she is going to steal. [And what happens then?] They sometimes chase them, and if they say something they hit them. They are all friends of ours, they live nearby. [...and what is 'the look' of a thief like?] Well, some of them don't precisely have angel faces. The cops realise they have a different look and think they are thieves. [...] Because they dress differently than the rest of the people, because people with money don't dress like them. [...] While one

wears clean clothes, they wear dirty clothes.
(Montevideo, female adolescent, 13 years old)

In this respect, one of the Qualified Informants explains this kind of discrimination as follows:

Discrimination related to breaking the law, as I told you before, happens mainly at two levels: discrimination on account of a person's features and social situation, and discrimination on account of culture. The social aspect is explained by the role the person plays in society and their economic situation. The cultural aspect is explained through race. (Qualified Informant 5)

As shown by the research on the juvenile penal system in Uruguay, which has already been mentioned,¹⁰ "...17% of police arrests of adolescents submitted to a judicial process in the two periods analyzed are illegal, arbitrary and unconstitutional since they are performed under the vague category of being a 'suspect'. Arresting adolescents on account of their appearance, or their 'look' is a violation of the right to non-discrimination. It increases the stigmatisation of excluded groups, it considers them as 'deviant' and confirms the discriminatory nature of police intervention, which has consequences on the lives of adolescents even to the extent of making it easier to impose sentences".

Moreover, "...that 17% of arbitrary arrests should be linked to the high percentage of penalties applied in the interlocutory judgment (over 90%) and with the low percentage of cases with a final judgment (approximately 50%)."¹¹ This is further proof of the selectivity of the police-criminal system discussed above, together with the violation of rights it implies.

In this respect, adolescents told of their experiences and also exchanged ideas on this issue in the discussion group. By means of the following quotations, we will be able to see how the mechanisms of arrest, under "*suspicion*" related to 'look', operate. The quotations also show the views of adolescents on how the police build the identity of the adolescent '*plancha*'. Adolescents see themselves through the mirror of that social construction, they feel identified, but they question it being a reason for discrimination, for arbitrary and unjustified arrests, since arrests are not based on facts but on prejudice, on a "*suspicion based on look*". This is what they said:

Sometimes they arrest you for having a suspicious attitude, but sometimes they don't ask for your identification [...] They sometimes arrest you on account of a suspicious attitude and ask you for your identification [...] They ask you where you are from, what your are doing, if you work or study, I don't know, what you do to earn a living, who supports you [...] nothing to do with anything. [...] And they investigated me and stuff [...] They aimed at me "freeze or I'll shoot", and I was walking down the street. I didn't understand anything. [But, did they do that to everyone walking down the street?] No, only to the ones they considered had a suspicious look. [And who, according to them, had a suspicious look?] "Planchas". [What is that? What is "planchas"?] Us. For them we are planchas. I don't know. If you are badly dressed, or dirty when you come from work. Or things like that. Or if you

¹⁰ SILVA BALERIO, COHEN, PEDROWICZ (2003).

¹¹ SILVA BALERIO, COHEN, PEDROWICZ y otros, 2003:p.217.

have a bad face. They pick you out. Straightaway. [...] Yes, sure they really discriminate against adolescents between 20 and 15 years old, I think they arrest people mainly between those ages. [...] If you wear a cap and a bulky jacket [...]
(Montevideo, male adolescent, 17 years old).

Adolescent- *The look.*

Adolescent- *I don't know, they saw you there, in a suspicious attitude and [...]*

Adolescent- *You go to a supermarket and they follow you, and they stare at you because they think you're going to steal something [...]*

Adolescent- *If you are wearing a hood they go after you.*

Adolescent- *The cap.*

Adolescent- *Sure, the uniform of the police is blue, the uniform of the people from the street is the cap, the blue trainers, because it's like that, I don't know.*

(Montevideo, discussion group of adolescents)

Sure, they discriminate against you only for being young, and if you are wearing a uniform, a uniform of the street, that's it! They discriminate against you even more.
(Montevideo male adolescent, discussion group of adolescents)

I don't know, they arrest you for anything, the police arrest you even if you're not doing anything. They would always come and take me, they always come and take you, they always come and take you, for no reason at all, for being in the street. And the police chase you, until you think, if they are going to arrest me, at least I should do something, why should they arrest me for nothing. If that's the case I should do something then and let them arrest me for doing something. [...] They bother you [...] until you've had enough of it...

(Montevideo, male adolescent, discussion group of adolescents)

Yes, we weren't doing anything here, we were walking that way, a van stops... and they said "against the van". We hadn't done anything, why? [...] Well, they searched us all over and that's it, then they left. They can't do that, only because we're dressed in this way or because we are walking... [...] Do we all have to walk like girls then? (laughs) (Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *Police officers are really corrupt people, do you know how many times they took money from me in the street? (laughter) Really, how many times they took money from me? Thousands, thousands of times they took my money [...]*

Adolescent- *That's abuse of power, he has more power than me and does whatever he wants.*

Adolescent- *But let's say that you work and earn your money, you mow the lawn at a house, or if you go to the corner, they stop you and tell you "where did you get that money from?" And you tell them, from mowing the lawn but they arrest you anyway and tell you that you stole the money, they send you to jail for robbery, or whatever [...]*

Adolescent- *But, even though you tell them, if you don't have a receipt or a work paper that certifies that the money is yours, they take it from you.*

Adolescent- *They know that one does whatever it takes to manage, either working at watching cars, or mowing the lawn, or doing anything to get some food, or those, the ones who do not take drugs, fight to eat or to feed their family. How to manage,*

depends on each person. (Montevideo, discussion group of adolescents)

“Thief”, “rastrillo”, “pichi”. “Pichi” is what everyone, all the cops, there isn’t a single one who doesn’t call you “pichi” to your face.* (Montevideo, male adolescent, 17 years old)

Many times adolescents are discriminated by people in the street for their *look*. They tell their experience as follows:

...I got off the bus and walked behind an old lady, she put her hand inside her bag and took out tear gas and sprayed it on me. I was just walking. A guy from a green grocer’s started to chase me... for doing nothing, just walking. [...] and I left, I know the guy wasn’t going to ask me what had happened... he was against me, he was quite big, he was going to get me and ruin me. He saw a woman spraying gas and he saw me, and that was it, he was against me, why should I stay? I crossed all the streets running [...] They discriminate against you.

(Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *...Someone is walking there and I’m walking here. If I feel the other person starts looking back, I cross the street so that they don’t get paranoid. I cross the street and keep walking.*

Adolescent- *You avoid him.*

Adolescent- *Or you leave him behind.*

(Montevideo, male adolescent, discussion group of adolescents)

...It also depends on the faces. There in Pocitos they look at your face and if they don’t like it, they get back inside, or they stare at you, or they even call the police and say “these people are here and I think they’re stealing”. And they always talk about robbery, crime, and you may be on an errand. (Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *For the face*

Adolescent- *For the way you walk, they discriminate against everyone for the way they walk, or for your haircut, this and that [...]*

Adolescent- *Also for your clothes, because...*

Adolescent- *It is discrimination [...]*

Adolescent- *They think you are going to rob them...*

Adolescent- *For your face, if you have a scar, for your haircut, or the way you walk, everything, you walk like this and they say “this guy is weird”.*

Interviewer- *[...] Which haircut do you need to have so that the police stop you?*

Adolescent- *Well, the hairstyle which looks like a mushroom [...]*

Adolescent- *The ‘brick’ haircut on the back of the head and stuff...*

(Montevideo, male adolescent, adolescents discussion group)

Being arrested because of how you ‘look’ is also very frequent among homeless children and adolescents, who suffer several forms of discrimination at a time.

Homeless children and adolescents, with whom I have direct contact, suffer discrimi-

* T.N.: “pichi” is a degrading word used to refer to indigent people.

mination everywhere, or almost everywhere they go [...] Well, the police discriminates against them, no question. Just for their physical appearance, they become part of a type that is 'repressible' for the police. Even though they are not doing anything. It happens in the neighbourhood, with the local police station. They know who they are, what they do, but still they stop them every time they see them, they ask them for their ID cards, they harass them, they arrest them.

(Qualified Informant 4)

Many times police officers take children, put them inside the van and take them to the station. They don't listen to the children [...] Often the police arrest adolescents who are begging in the streets, watching cars, washing windscreens, working, they take them to the police station. And if nobody picks them up, they are taken straight to INAME (National Institution for Minors). They don't listen to the children.

(Rivera, female adolescent, 12 years old)

The same selection process on the grounds of 'look', or 'suspicion' carried out by the police in public places, also takes place in private areas such as shops. In this case the discrimination is exercised by employees of private security agencies, who do not allow children and adolescents to enter, or chase them, not in the streets of our cities but between the supermarket shelves or in other shops, in several departments of our country.

I have recently witnessed it at the Bus Station [...] a boy went in [mentions the name of a shop]. He was badly dressed, and the security guards threw him out, one grabbed his arms and the other grabbed his feet. (Qualified Informant 3)

...Because they saw me begging and then I would go with my mother when we had some money and they would follow us everywhere, and if I was alone they wouldn't let me inside. You can't come in here, they told me. When I went with my mother they followed me everywhere as if we were criminals and would steal something from there. (Paysandú, male adolescent, 16 years old)

Yes, the police discriminate against people who beg. They kick them out of the supermarket. (Maldonado, female adolescents, 13 years old)

[...] I go to the supermarket and the security guy is always behind me. That pisses me off, because I'm there to shop and I can't shop because they follow me everywhere. That's why sometimes I leave and everything. I think they do it because of the way I dress, I don't know why. [But, for example, now you are not dressed in a particular way...] Yes, but some people don't like you or give you that look, I don't know, I don't get it. (Montevideo, female adolescent, 17 years old)

Adolescents also suffer discrimination on account of 'look', in the urban public transport service, or in public places such as the stadium, as the following examples show:

Adolescent- You call a bus, and it doesn't stop...

Adolescent- A taxi, there you go...Many times when I went dancing with many friends, well dressed and all that, and we would call a taxi and the taxi driver

wouldn't stop [...]

Adolescent- *"I won't stop for these niggers because they will shoot me".*
(Montevideo, discussion group of adolescents)

And in the stadium as well. In the stadium, two classic matches ago, the military police came into in one of the stands, and there were very young girls, and they came and hit everyone. There were people with children in their arms and stuff: [...] And below in one of the stands there were...two of them, what are their names? ...two anti-thieves there, of the big ones, and they came and grabbed us by our jackets and told us: "Come on you black, outside", and kicked us out. It sucks. I said: "Wait. How come? I have just got in and you're already kicking me out?", and he said: "Come on outside you black". There, and after that I shut up and stayed outside, I wasn't leaving, no way.*

(Montevideo, male adolescent, discussion group of adolescents)

As Bourdieu says, *"the judgment of others is the final judgment and social exclusion is the concrete form of hell and condemnation"*.¹² The 'look', the 'plancha', generates judgment and prejudice, and it is enough justification for the discrimination of many adolescents by unknown people, by workers of the public transport service and employees of private security agencies, as well as by the police. In the case of the latter, the 'look', as we have seen, operates as a mark, as a stigma that puts the selectivity mechanisms of the police-judicial system to work, thus violating fundamental human rights of adolescents.

Discrimination on Residential Grounds

As previously established in this Report, in Montevideo we are witnessing a social segmentation process that operates under the mechanisms of residential or educational segregation. We see a 'geography' of poverty, expressed by a double phenomenon of residential segregation of children and adolescents from the capital. On the one hand, *"...the unequal distribution of children in the capital, and the verification of the lack of children under 18 years old in neighbourhoods of higher income"*¹³ and their concentration in the poorest neighbourhoods. On the other hand, the process of residential segregation is expressed through the huge differences of the percentage of children living below the poverty line because of the areas they live in. In some suburbs, 1 out of every 10 children is poor (Punta Carretas, Pocitos or Parque Batlle), while in other areas 6 out of every 10 children are living below the poverty line (Casabó, Piedras Blancas, Cerro, Colón, among others). In the light of the increase of child poverty verified in 2003, this difference might have worsened even further.

Now, we are going to take a look at how adolescents regard this segregation. They are well aware of the division of Montevideo into 'red zones' and 'green zones'. Through their words we will see how the discrimination mechanisms associated with residential area operate from their perspective and from where they live.

Adolescent- *What people? Which neighbourhood are we talking about? A neighbourhood from the red zone or from the green zone? What are you going to tell them?*

¹² BOURDIEU, Pierre (1990) SOCIOLOGIA Y CULTURA. Grijalbo, D.F., México.

¹³ COMITÉ DE DERECHOS DEL NIÑO URUGUAY, 2000: p.46.

* T.N.: 'Classics' are the football matches played in Uruguay between Peñarol and Nacional which are the most important football teams of the country.

That they should discriminate less.

Interviewer- *You said earlier that you live in a red zone neighbourhood, didn't you? What would you say to someone from a green zone neighbourhood?*

Adolescent- *That they should spend some time in my neighbourhood which is a red zone, that they should spend some time in this area, find out what it is like to have no money, what it is like to starve.*

Adolescent- *Some people say, yes, that's a red zone neighbourhood, but when they get thrown out because they can't pay any more they'll come here.*

Adolescent- *They should take some citizens from the green zones and take them to the red zones so that they live there for a while, and they'll see it isn't that easy.*
(Montevideo, discussion group of adolescents)

...For example, if they say to you, I don't know, that you apply for a job and they ask you: "Well, where did you work before?" And you said: "Nowhere", and they ask you "Where do you live?" and you answer: "In 'x' place". And then they tell you: "Oh no, you can't work here then, because once I heard that people from that place are all thieves, and so on". And what do they know whether that person really wanted to work or not, they don't know. There, they are discriminating without knowing the person, just because of where the person lives.

(Montevideo, adolescents discussion group)

Interviewer- *The people living in 'x' neighbourhood, or settlement, and the ones who live in the opposite neighbourhood, in other houses, do they treat you differently, badly?*

Adolescent- *They don't look you in the eye, and stuff, they say things to us.*
(Montevideo, female adolescent, 14 years old)

Adolescent- *It was around 12 or so, and I was going to take a cab there in Peñarol, and the driver asked me: "Where are you going?", and I said: "San Martín and Teniente Rinaldi*", and he told me: "No, I don't go there". I told him: "Come on, take me there please, at least drop me opposite the taxi rank and I get there on my own". Yes, sure...*

Adolescent- *Why wouldn't he go. He will certainly not be robbed at a taxi rank.*
(Montevideo, discussion group of adolescents)

We have also noticed the effect of residential segregation in terms of the selectivity of the juvenile criminal system, as previously discussed, with neighbourhoods in Montevideo whose inhabitants are more easily and likely to be *caught* by the system. This can be seen through the words of adolescents:

It also depends on the neighbourhood you live in. There are red zones and other zones which are not red zones, right? And just because you live in a red zone people think that because you steal you live in a red zone. If you live in a red zone it is because you don't have money to move somewhere else...

(Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *No, wait...wait, because in Pocitos...I know people who live in Pocitos who rob...*

* N.T.: The street junction mentioned here is in a 'red zone' neighbourhood of Montevideo.

Adolescent- *Yes, there are some people who rob.*
 Adolescent- *And who do this and that, and take drugs and who do many things and even worse things...but then, since they live in Pocitos...and not only people from Pocitos, because that's just an example, I don't know, it happens in any neighbourhood.*
 Adolescent- *They are terrible thieves, but they are... good people.*
 (Montevideo, discussion group of adolescents)

In conclusion, residential discrimination, together with socio-economic discrimination and discrimination on account of 'look', are fertile grounds on which the selectivity mechanisms of the police-judicial system operate. The people living in 'red zones' are often discriminated against even at an interpersonal level – because of the place they live in, and they are likely to suffer other new forms of discrimination as well. This contributes to creating a wider social gap between the different sectors of the population, which can be geographically identified and which are symbolically far apart from each other.

This excludes children and adolescents from building a collective society, from knowing someone who is “*different from me*” and who, as a result of residential discrimination, they no longer know, they no longer **have contact with each other**, but rather go in the other direction for fear of the stranger that the other has turned into, or as adolescents say, “*I cross the street so that he doesn't harass me...*”

Discrimination for Being Different from the Norm

Another kind of discrimination experienced by some children and adolescents, is rooted in the particular appropriation and definition given to urban public space, to how they use it, and how they live in it. “*In this respect, some children have the symbolic capital to define their appropriation and definition of the urban public space as 'the' legitimate one: condemning the illegitimacy of the other (re) appropriations and (re) definitions, they define their own (my/our) as 'the' normal one.*”¹⁴

...I think it goes beyond being blond or brunette, or whatever, it has more to do with codes of social circulation. It also has to do with their attitude when they walk along the street. I believe that sometimes they are the ones who provoke their being stopped, because of the way they walk, or the way they move in the city that is different from the rest of the people. I think it is related to that, more than anything else.
 (Qualified Informant 4)

The “*...deviant game which is part of the (re) appropriation and (re) definition that homeless children and adolescents make of the urban public space is seen – from the legitimacy perspective – as abnormal, as a sign of negative distinction. [...] A legitimate way of appropriation-definition of the city's time-space which is symbolically arbitrary, therefore, prevails*”,¹⁵ and for that reason, those who do not respect this 'urban norm' are discriminated against.

¹⁴ PEDROWICZ, Silvana (1999) Sobre calesitas y otras realidades...Niños, niñas y adolescentes en situación de calle: (re) apropiación y (re) semantización del espacio público urbano. Documento Interno de Trabajo N°18, UNICEF Uruguay. Montevideo. P.15.

¹⁵ PEDROWICZ, 2000: p.20-22

Adolescents who are discriminated against for their 'look', in general have their own 'way of walking' and of using public spaces, which are different from the 'urban norm', and are therefore seen as illegitimate, as abnormal. This is how adolescents experience it.

...people in the streets sometimes stare at you because of the way you dress, they discriminate you because of the way you walk...

(Montevideo, female adolescent, 17 years old)

Adolescent- *And the neighbour too, "Look those two standing at the corner, they this and that".*

Adolescent- *Neighbour on the alert... (laughter)*

Adolescent- *But neighbours can't discriminate against you all day long [...]*

Adolescent- *But people get paranoid because you are at the corner. At first there are a few, then 20 who say "Look, those are already planning to rob a house or something" and they get paranoid.* (Montevideo, discussion group of adolescents)

There is also discrimination for being *different to what 'ought' to be* when we talk about certain situations that take place at school. The school model with regard to what 'ought to be', frequently collides with the ways in which some children occupy the school space. The difference between what the school expects from the children and what the children expect from school, leads many children to drop out, which adds to the numbers and traumatic experiences of school failure and desertion. In this respect, the average percentage of failure at school between 1990-1999 was 38% in some neighbourhoods, while in others it was only 4%.¹⁶

Uruguay discriminates, it discriminates a lot, not only on cultural grounds but also at the level of educational establishments. The one who is intellectually different is discriminated against. A child who enters school and is socially different and has difficulties – different ways of being, different behaviour – at school is segregated. A child having a disciplined, orderly behaviour, with a certain understanding, is not the same as an undisciplined and restless child. There is already discrimination and segregation. And it is very likely that the latter will not finish school [...] on account of the child's own characteristics which may not play a part, it may be just the way he is, a cultural factor, but it doesn't mean the child doesn't have a capacity for understanding. [What does the education centre do when faced with a different child?] It makes him quit. [...] It cannot but it does, in the long run; rejection is so strong, the burden the child has to bear... from both sides, from his classmates and from the teacher as well, leads him to quit. The other possibility is to change the child to a different school for children with behavioural or learning problems, etc. (Qualified Informant 5)

They feel discriminated at school because in some way they don't fit into the formal structure of the school. Adapting to a certain time, timetable, and specific task. Due to reasons related with their lifestyle, and because of the lack of other spaces for socialising, they cannot spend 4 hours sitting, looking to the front. And in general they

¹⁶ COMITE DE LOS DERECHOS DEL NIÑO URUGUAY, 2000: p. 126.

end up being excluded from the school spaces, focusing the problem on the child, and not on the system that is unable to meet the child's needs.
(Qualified Informant 4)

I believe that as regards the school there is a situation going on with many of the children we work with, which is related to how the school labels children when they don't fit in with the rules of the classroom. They are immediately diagnosed as having psycho-pedagogical problems, and they always end up being removed for behavioural problems and sent to special schools or schools for mentally challenged children, when in fact the conflict is between the child and the education system. The child neither has a learning problem, nor a problem of behaviour. Somehow, the problem lies in the relationship between the child and the school, not only in the child, or only in the school separately. (Qualified Informant 4)

Therefore, many of the children who do not adapt to the school 'format' are seen by the school system as 'problem children' and are discriminated against. As our Qualified Informants stated, these children end up being, either directly or indirectly, excluded from the system and from the possibility of exercising their right to education.

Discrimination for Being at INAME

Some children and adolescents who have been placed in INAME (National Institute for Minors) homes suffer a specific form of discrimination, because of the fact of being or having been at INAME. This, according to their own experience, has negative social connotations. They mean that the children and adolescents coming from INAME, or who are placed in INAME homes, are victims of prejudice, discrimination and encounter difficulties in social integration. An 18 year-old adolescent from Paysandú explained the following:

Walter has an aunt who is [the definition of] social discrimination. For example, she doesn't say hello to me, because of the colour of my skin and also because I come from INAME. [...] Right. I don't have status, don't have studies and that for her is... I don't know how to explain it. She treats me different. [Have other people discriminated against you for those reasons?] Well, yes. You apply for a job, and it is in the record [that I was at INAME] and they think you are a thief. [How is it recorded?] I don't know, for example, if you apply for a job at a supermarket and they ask you where you live, what is your phone number or something, and what should I tell them? I can't lie to them, I answer I live in INAME, so I don't get the job. The same thing happens at high school, school, everywhere. At school they find out at once. At high school, for example, they ask you for your phone number in case anything happens to you. And what should I say? I tell them I'm at INAME. Then, of course, they tell the teachers. And they ask me "Are you in INAME?", and all the other kids turn around. I arrived at INAME when I was three years old because my mother got sick.
(Paysandú, male adolescent, 18 years old)

We see how discrimination operates, in the case of this adolescent, and in general terms, and through it we see how the enjoyment of so many other rights is restricted.

The sole fact of being at INAME has changed many things for me, in every walk of life. It restricts many things, you have to do things which sometimes... for example, I would like to study, have a better job, and all that. Many doors close...Also, if there is a robbery nearby, and they know I was in INAME, come on, they already... I live in this house, you see, and everyone is very proud. The police talk to me and say "this one is it". Someone stole some pigs from the neighbours and the police came here at once. Sure, since they know I was at INAME...

(Paysandú, male adolescent, 18 years old)

Others who are in the same situation decide to escape the many discriminations suffered by having the 'INAME label', for example, by being reclusive and avoiding being exposed to other people's prejudices. This is at the cost of other options in life they could have chosen if they had been able to choose more freely, if they hadn't felt the burden of stigma and the need to escape it.

A friend of mine who had left INAME, had no option but to enter the Military service, in a place like that, where nobody asks you questions, you just have to be there.

(Paysandú, male adolescent, 18 years old)

The restrictions of rights arising as a result of being 'raised at INAME', not only take place as a consequence of social labelling. Among other things, as we shall see later, there is a consequence of the negative effects of institutionalisation, particularly for a long period, as one of the Qualified Informants explains below.

Well, what happens is the INAME mark happens for many reasons. Among other things because, well, they actually are INAME's children, so to speak. [...] they were almost raised in an institution, or they spent their adolescence in an institution. They obviously create some kind of dependence on the institution. And that institution abandons the children, because when they become 18 years old, 18 years old plus one minute, it tries to make them leave, and asks those young people, who are the most disadvantaged of all, to try to solve issues such as getting a home, a place to live in, a job, all things which are not asked from a middle-class university student. Then they complain because before they said that the institution used to be very paternalistic and it is true that INAME used to have children up to 27 years old. It was a reality. The question is what did INAME do during all the time these children were staying there; all institutions not just INAME, what did they do during the period the children were there? From school to high school, the ones who went to high school. But it is also true that now, once these children become 18 years and one minute old they are made to leave INAME. And they are asked to settle their lives, like they ask children who belong to other social classes.... (Qualified Informant 2)

The negative mark left on adolescents as a result of the discrimination they suffer before, during and after their stay in INAME, in many cases represents a reproducing of the circle of discrimination.

In the case of women it's even worse. Women end up getting pregnant, so they reproduce the cycle, because they can return to INAME's centres for mothers and children, and therefore are institutionalised again, actually to protect their children.

(Qualified Informant 2)

As this Qualified Informant expressed, the 'ex-INAME' stamp operates as a prejudice, which makes it difficult for adolescents to integrate since having been in INAME is seen as something negative in the collective perception. But apart from that, she considers that the negative impact that structural discrimination – socio-economic and other associated forms of discrimination – has on adolescents, cannot be reversed through the intervention of only one state institution. Therefore, the Qualified Informant said, adolescents cared for by INAME are not only discriminated against because of the label they bear, but they also suffer negative impacts in their development process, something which has repercussions on the exercise of their fundamental rights.

Interviewer- *This thing of the 'ex-INAME' label [...] can it be seen as something negative from a social perspective?*

Qualified Informant- *Yes, it is seen as something negative. What happens is that not only is it seen as negative, but actually many of the children from the institution have clear things lacking. Lack of affection, lack of material things and a lack of knowing how to manage in life. It is something noticeable, I mean, it actually happens, whether they say they have been in INAME or not. [...] Because the fact that is they don't have an alternative and if we think that this does not only apply to INAME. Another thing, and this is not to defend INAME, is that in reality, in a single State Institution, which is what INAME is, together with NGOs working on the issue, they expect to solve nothing short of the problems of the deprived children in the country. We are talking, however, about 40% of children who are being born below the poverty line. A single state institution cannot solve that. And we have no social policies that can override or carry more weight than economic policies.*
(Qualified Informant 2)

Birth Discrimination

Children who do not exist: violation of the right to identity

Not to be registered in the Registry of Births is a violation of the inalienable human right of every child to have an identity from the moment he is born and to be considered as a member of society. Section 7 of the Convention on the Rights of the Child recognises the right of the child to be registered immediately after birth, by the State under whose jurisdiction the child was born.

Even though according to the official figures and from the statistics point of view, Uruguay is amongst the countries with over 90% of births registered, there has been a significant increase in cases in which registration in the Public Registry of Births¹⁷ does not take place. This rise is especially important if we consider how, in the last decades, poverty has increased particularly amongst children, and that most of the children who have not been registered belong to the poorest sectors.

This situation, which is recognised as discriminatory, prevents the child from having access to many public services, such as school.

¹⁷ cf. Ministerio de Promoción de la Mujer y del Desarrollo Humano – Fondo de las Naciones Unidas para la Infancia (PROMUDEH-UNICEF), Informe Regional de las Américas sobre los avances hacia las metas de la Cumbre Mundial a favor de la infancia y los acuerdos regionales 1990-2000, Lima, 2000, Cf. CEPAL UNICEF SECIB, Construir Equidad desde la Infancia y la Adolescencia en Iberoamérica, Santiago de Chile, 2001, p. 63 y ss.

There is also what might be considered as discrimination at a social level or State discrimination, through laws that have become obsolete, considering today's family. We have a lot of kids who arrived at school without a name, and they weren't admitted, because one of the requirements of Primary Education is that the child has complied with all the registration proceedings. Some kids only had one name, some others didn't even have a name, parents would call them something, but legally they didn't exist. [...] There have been cases of children with no birth certificate, who weren't registered and who unfortunately have had to be sent to private schools, because we are not authorised to enrol them unless they take a birth certificate or a marriage certificate, which are the requirements to register them in school. They are allowed to go to some private schools, especially those who live in the neighbourhood and know the people there. The problem is that not all of them can afford a private school. (Qualified Informant 3)

Our Register of Births was created by Decree Law 1430 of February 12th, 1879, which was regulated by Decree dated June 3rd, 1879. Although with many amendments, these laws are still in force. The current system is, therefore, the result of a heterogeneous group of laws and decrees. It is a very old-fashioned and inflexible legislation, which has been partially amended, without there being a real reform of the system, merely patching to solve the issues that have arisen over time.¹⁸

The UN Committee on the Rights of the Child has expressed its concern for the “persistence of discrimination against children born out of wedlock, including in respect of the enjoyment of their civil rights”. The Committee has noted “that the procedure to determine their last names is the basis of their possible stigmatisation and the impossibility of knowing their origin and that children born to a mother or father who is under age, cannot be recognised by that parent”.¹⁹

[...] the parents of some of the children were married, or the parents were under age, so those children don't have the right to an identity. Somehow the law is discriminating against them by not allowing the full exercise of that right. (Qualified Informant 3)

This discrimination is caused by the old rules of the Civil Code. Sub paragraphs 3 and 4 of article 227 of the Civil Code, which provide that married parents cannot acknowledge children born out of wedlock, and article 235 of the Civil Code provides that any unmarried minor cannot himself/herself validly acknowledge his/her own illegitimate child. If we consider the great number of adolescent mothers we see that this rule causes a great injury to illegitimate children born under these circumstances.

Discrimination on the Grounds of Having a Disability

Article 2 of the UN Convention on the Rights of the Child, provides that States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction irrespective of – amongst other things – any physical disabilities the child may have. In chapter 23 it also provides that “States Parties recognise that a

¹⁸ PALUMMO LANTES, Javier M., Registro de nacimientos y derecho a la identidad, en Tribuna del abogado, N° 134, agosto/ setiembre 2003, pp. 23 y ss.

¹⁹ Observaciones finales del Comité de Derechos del Niño: Uruguay. 30/10/96. CRC/C/15/Add.62

mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community". In this respect, the child is entitled to receive special care to ensure that the disabled child "...has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development".²⁰

Even though our country ratified the Convention in 1990 and it is widely recognised that rights must be guaranteed to all children and adolescents, without exceptions, disabled children suffer many discriminations, which are even worse for those who also suffer from socio-economic discrimination.

When we asked children and adolescents about discrimination because of disability, they talked about *inorganic* (interpersonal) discrimination, how discrimination takes place in face to face relations, and they do not see it in its *official* dimension, i.e., in terms of State policies which do not seem to guarantee many of their rights.

When adolescents were asked what they understood by discrimination because of disability, they answered the following:

They laugh at them because they are different. I don't laugh because my little sister has Down's Syndrome. I know a case where they laughed at a girl because she had a callus in her brain. (Montevideo, female adolescent, 13 years old)

Because of the way he is, of the way he talks... I've seen that whenever there is a disabled person at the bus stop, people laugh behind his/her back. (Montevideo, male adolescent, 15 years old)

When people discriminate against you because of a physical deficiency. (Montevideo, male adolescent, 18 years old)

Some people discriminate against them for their condition, because they can't walk, or because they can't see, or because they have problems. I mean, I think we are all equal. Some people have a problem, but that's it, I treat them in the same way (Montevideo, female adolescent, 17 years old)

We can see what happens when this issue is brought to the discussion group, how adolescents define discrimination because of disability. For these adolescents it is obvious that excluding them, being violent with them, insulting them or making fun of them, are all acts of discrimination. But let us focus on the discussion around the issue of whether looking at disabled people *in a pitying way* would be discrimination or not. There are different opinions and contradictions or difficulties in resolving this problem in the group, especially when they exchanged ideas.

Adolescent- *What? A madman?*

Adolescent- *She means a child who, for example, I have learning problems, and he, I don't know, there is something written on the board, or if they tell him to do something and he does it quickly, while I do it slowly.*

²⁰The UN Convention on the Rights of the Child (1989) was ratified by Uruguay in 1990 by law 16.137 and is currently in force in our country.

Adolescent- *Or also because of physical problems, there are some guys who are like that, I see a guy who, well he's got Down's Syndrome, and I think, well he is stupid because God wanted it that way. (laughter) He has problems because, well, for some reason, but still people shouldn't laugh at them. Someday you may have a child like that, or a grandchild like that [...]*

Adolescent- *It always happens, that people see a disabled person and laugh: "Oh look at that stupid person". I wouldn't like to have a relative who has Down's Syndrome and that people laugh at him/her, because I would punch them in the face. That's why I don't like laughing at people.*

Adolescent- *Most of the time we say we don't discriminate, but when you stare and all that, I don't mean always, but you always discriminate when you keep staring at people. Nobody realises that.*

Adolescent- *Sure, we always do [...] but that wouldn't be discrimination, discrimination would be telling someone "Look, don't come near us" or "Don't stay here because you are like that" or "Don't do this" or I don't know, stuff. Or also laugh and harass him/her. [...]*

Interviewer- *Is that discrimination?*

Adolescent- *Discrimination. I don't think that looking at him and saying "Look at that one" or "Look"...is discriminating [...]*

Adolescent- *You don't realise when you discriminate, you don't see it, but you always stare at anyone who is on a wheelchair, who has no legs, no arms, you stare at them and think "Poor thing!". Not always to discriminate, right? But feeling sorry for that person. Some people laugh at the ones who are mentally ill, some stupid guys who laugh at them.*

Interviewer- *Is that discrimination?*

Adolescent- *The ones who laugh and all that yes, and people who stare, I don't know, it may be out of pity for what they suffered in an accident. There are many different cases. (Montevideo, discussion group of adolescents)*

I don't know, but you see people almost all the time. There at Plaza 1° de Mayo, where I live, you see a lot of people sitting there on the grass having mate, and there are some people who are like bent, and dribble. It is not cool, but sometimes it is discrimination and some other times it is just pity. I don't know whether to call it discrimination or pity, because of what happened to them.

(Montevideo, male adolescent, discussion group of adolescents)

Note how in the case introduced below, when explaining what discrimination because of disability is, the adolescent talks about disability in terms of the dichotomy between *sickness and health* and *normal vs. abnormal*. Within the framework of this dichotomy, the non-disabled person is the *healthy-normal* one, and the disabled is the *sick-abnormal*, which shows that the social conceptions of disability still apply.

...a lot of people don't go near disabled people. The school I went to had half healthy people and half disabled. They had everything kept totally separate, we wouldn't mingle with them. They would go out into the playground before we did, so we never had contact. [...] they would never go outside with us. We could never mix with them [...] I think it's not right, because we could get together and talk, chat. But we never mingled. We were in different classes, disabled people with disabled people, and normal people with normal people. [...] Some of them were in wheelchairs,

others would dribble a lot. Some were mentally retarded.
(Rivera, female adolescent, 17 years old)

Regarding the issue of what happens in the education system with the integration of disabled children, one of the Qualified Informants contributed information taken from her experience.

The disabled child is discriminated against, even though now there are a lot of initiatives promoted by their parents, it was really hard for a child with a disability to be accepted, and that discrimination for being disabled not only happens at a social level, but also in Elementary education. For example, during the time in which a lot of things were bought in order to have learning resources, in schools for disabled, where I was working at the time, we did not get any resources. Because they used to think that the disabled didn't have to work, for example, doing chemistry tests. They would underestimate disabled children so much that they would consider them unable to understand certain things. [...] There is an integration policy in Elementary school that aims at sharing certain subjects with disabled kids at school, so that they can integrate. (Qualified Informant 3)

According to the 1st National Survey of people with Down's Syndrome "*with regard to insertion within the educational system, it was seen that the debate between segregated and integrated education is on the table*", and it is considered necessary to "*...make the future educators aware of the problem and to train them on the particular features of children and adolescents with Down's Syndrome, within an education system which does not segregate them, but which integrates them and encourages the development of their full potential, instead of working from the disability.*"²¹

Cases of discrimination on the grounds of disability are very concerning when this could be understood rather than as to *distinguish*, as to *violate* and to *exclude*. There are many rights violated here and the degree of abuse and *dehumanisation* is alarming.

Adolescent- *In my neighbourhood there is one guy who has problems, but nobody sees him, because they lock him inside. They made a room for him and they have him locked there. [...] They have had him there for years, the guy must be 19 or something, and he was almost never seen, around 12 or 13 years old they hid him inside and was never seen again, he's hidden in that room [...] He has Down's Syndrome...they made him a room out of tin, and in the summer he is locked inside.*

Adolescent- *They make you worse, they lock you in and make you worse, worse than you were before.*

Adolescent- *Seclusion and pills, that's how they treat him.*

(Montevideo, discussion group of adolescents)

They present another case regarding this issue.

²¹ ASOCIACION DOWN DEL URUGUAY – OPS/OMS ¿Una infancia sin fin?: 1er. Relevamiento Nacional de personas con Síndrome de Down. Asociación Down del Uruguay- OPS/OMS, Montevideo, 2000. P. 51. In this publication it also is mentioned that "*the link between persons with Down's Syndrome should be promoted to a greater extent*" and that "*Persons with Down's Syndrome have virtually no employment inclusion, since only 4% work*" (p. 50)

Adolescent- *The boy I was just telling you about, that boy has many problems, you see? He is like 17 years old, his mind is of a 5 or 6 year-old boy, and people abuse him, I don't know, they send him to beg, or they hit him, or if he doesn't want to have a shower they make him take a cold shower and that's not the way. I feel sorry for him. [...] I don't do him any harm, I see him and it's cool, I say hello and everything [...] but people abuse him. I don't like that because I have a sister with the same problem and I don't like her being abused.*

Adolescent- *But some people discriminate, right? I have seen it because it happens nowadays that when he goes to the baker's, the first thing people do is spray deodorant [...] people are mean to him. One way or the other, they discriminate against him.*

Adolescent- *Sure, there they discriminated against him, since he is mentally retarded and was dressed in a certain way, when he left the guy sprayed that thing, that deodorant. It is confirmed. If a guy in a suit or someone well dressed had entered, he wouldn't have done that.* (Montevideo, discussion group of adolescents)

In the following interview, we see how discrimination because of disability is identified and the debate is established in terms of the need to know and recognise the 'other'. Focusing on the abilities and not on the disability.

I have seen a lot. Around the corner, there is a child who wants to have fun. And when I get here from downtown, at 6 or 7 in the afternoon, I get here, take out the radio and we start dancing and fool around, like any girls would do, right? And he comes, and one of your friends says: "Don't let that boy play, that sick boy, he doesn't know anything..." However, once we wanted to learn how to dance and he was the best teacher. He showed us some steps we didn't know. So, I think that one shouldn't discriminate against a person without finding out about the person. First you should get to know how and who the person is, and then talk. Many times we think that that person is no use to us, and when we get to know him, we realise he is better than we are. They would say "He is sick, he doesn't know anything". However he taught us a step we didn't know. (Rivera, girl, 12 years old)

Finally, no matter how deep-rooted discrimination on the grounds of disability is, as in the case above, we believe education is essential to introduce the non-discrimination approach in practice – and not just in words – as it appears to seem from the following quote – and thus enable full exercise of the rights of children and adolescents.

Adolescent 1- *Typically everyone discriminates against somebody else for something. One day you are with your friends and a fat lady or a mentally ill person goes by and you shout something at them just to show off. I think we have all discriminated against someone, I don't know why, but everybody discriminates at some time.*

Interviewer- *What do you understand by discrimination because of disability? Can you name a case?*

Adolescent 1- *No. I think that people try to respect that issue a bit more. In high school and everywhere, we are always told that it is so much the better to have a classmate who is physically or mentally challenged... Besides, we have a friend who has that problem. It is better to introduce him to the group of friends, to integrate him, than to leave him aside. We've had friends like that.*

(Paysandú, male adolescent, 18 years old)

In order to avoid discrimination because of disability, it is essential to know the 'other' person, to relate to him, and recognise him as a valid speaker, emphasising what they can do rather than on their disability. Moreover, we should aim to make sure the State actually guarantees the rights of children and adolescents it has committed to guarantee by ratifying the Convention on the Rights of the Child.

Racism, Racial Discrimination, Xenophobia and Other Related Forms of Discrimination

There are different positions and emphases on what we should call these forms of discrimination, including all the different concepts. Some people prefer to use the term ethnic discrimination to include all the aforementioned forms of discrimination.

As established under the International Convention on the Elimination of All Forms of Racial Discrimination "...the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".²²

As expressed in the Reference Guide: *"the term 'racial discrimination' is still present at international debates, because it is an expression officially used in several human rights instruments to protect people. However, the expression 'race' is a vague concept due to the diversity of its meanings, which have changed over the last two centuries, mainly due to political reasons. The use of ethnic discrimination instead of racial discrimination does not only attempt to end this vagueness, but also tries to stress the social and cultural nature of racism. Ethnic discrimination refers to a classification, broadly speaking, of individuals in relation to the perception which society has of them. Thus, it will refer not only to discrimination against children whose skin colour is different to most of the population, but also to discrimination against children whose nationality, language, religion or cultural traditions are different. Nevertheless, racism, as an ideology, is still present in daily practice. On the other hand, it is important to stress that ethnic discrimination can encompass several aspects including racist ideologies expressed through legislative provisions, regulations and discriminatory practices, which hinder the development of their victims, pervert those who practice them, divide nations at the heart and disturb peace and international security by going against the fundamental principles of international law"*.²³

One of the Qualified Informants explained why he prefers using the term racial discrimination. He said that:

... exclusion based on ethnic reasons, that is, difference in customs, language, religion, skin colour, all of which we define as racial discrimination when we use the word race in a social and not in an anthropological sense. If we consider the word from an anthropological viewpoint, there is clearly only one race, giving us the strange, at times incomprehensible play between ethnic group and race. Even though using race as a differentiating feature can be dangerous, if we follow the definition of race from an

²² Article 1 United Nations Convention on the Elimination of All Forms of Racial Discrimination Ratified by law 13.670.

²³ SAVE THE CHILDREN SUECIA - COMISION ANDINA DE JURISTAS (2003) Guía Referencial: Lucha contra todas las formas de discriminación a los niños, niñas y adolescentes en América del Sur. Lima – Perú. p.19- 20.

anthropological viewpoint, as there is only one race, we insist on the word precisely to give it the value of all these types of things. [...] nowadays when we talk about race, even though it is generally accepted there is only one race, we do it for the purpose of including other aspects. Not only the name of any group, but also with reference to the skin colour, religious customs, food, tradition, etc. (Qualified Informant 7)

The Institute of Social Studies of the University of the Republic [...] defines racism as follows: *“Racism is a particular prejudice which has been defined as the group of beliefs in which genetically transmitted organic differences (either real or imaginary) between human groups are intrinsically associated with the existence or absence of certain abilities or features which are socially important and, therefore, in which such differences are a legitimate basis on which to base unfair differences between groups socially defined as races [...] This makes it possible to understand that, unlike the biological concept of race which can be the subject of scientific analysis, racism is a belief which can only be studied from a historical perspective.”*²⁴

If we focus on childhood and adolescence, article 30 of the CRC provides that *“... In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”*.

One of the concerns of the 2001 Durban Declaration is the *“the large number of children and young people, particularly girls, among the victims of racism, racial discrimination, xenophobia and related intolerance”*.²⁵

Since this study is based on the opinions and experiences of children and adolescents, we are including below the information collected in the following *statements*.

When asked what cases of discrimination he knew of, an adolescent from Montevideo told us the following:

A lot. For being black, for being young and not being allowed into a place, another case for being homosexual, that's one of the worst things. There are lots of different discriminations. (Montevideo, male adolescent, 19 years old)

When asked why do people discriminate, an adolescent answered:

Because they think they are superior. Some kids like discriminating in some way. They do it as a joke, just kidding. They say “you damn black”. Maybe he doesn't like being called that. The fact of being black doesn't mean he is not as good as them. He may even be better. (Montevideo, female adolescent, 16 years old)

A 17 year-old adolescent told us:

Here in Rivera some kids discriminate against those who are poorer. They don't hang out with us because we are poor. I got a scholarship to go to a private school and

²⁴ Universidad de la República, Instituto de Estudios Sociales, 1980, Informe preliminar sobre la situación de la comunidad negra en el Uruguay apud Foster, Jill, El racismo y la reproducción de la pobreza entre los afrouruguayos, Claeh, Serie investigaciones N° 69, Montevideo, 2001, p. 19.

²⁵ Durban Declaration and Program of Action. (2001)

the children there wouldn't play with black children. So I felt discriminated. And I asked them why. It was because their parents wouldn't let them play with black children... (Rivera, female adolescent, 17 years old)

...They would leave me aside. I approached them and they would leave as if I were some kind of monster or had some contagious disease.
(Rivera, female adolescent, 17 years old)

We have a child neighbour, who in summer used to play in the water and people would say things to him, they would throw the ball to hit him, because of his race and of the colour of his skin. (Durazno, male adolescent, 18 years old)

In the following quote, there is an example of racial discrimination added to discrimination for *belonging* or *having belonged* to INAME:

Walter has an aunt who is [the definition of] social discrimination. For example, she doesn't say hello to me because of the colour of my skin and also because I come from INAME. (Paysandú, male adolescent, 18 years old)

[What cases of discrimination do you know of?] *When people have different colour skin. When, for example, someone doesn't have the same economic situation as someone else. When someone is better dressed than another person, and the person who is better dressed complains. When a person is better looking than another one, and she complains because she is better looking.*
(Maldonado, female adolescent, 13 years old)

The boy who was just here, they call him black and he always gets offended, he doesn't like being called that. (Maldonado, female adolescent, 13 years old)

[What cases of discrimination do you know?] *Several. People are discriminated for the colour of their skin. [Have you ever felt discriminated?] On several occasions. You are usually discriminated in high school, they always call you degrading names. For example, if you are black, they call you black...*
(Maldonado, male adolescent, 15 years old)

[they call him] useless black, or disgusting black...
(Rivera, male adolescent, 16 years old)

Many times you get to a place, there is a conversation going on, and a white person may not even look at you because you are black. I think it is wrong, because we are all equal, we are all human beings. (Rivera, female adolescent, 12 years old)

I have a white sister who is racist. She doesn't like black people. She says she doesn't eat black peas because she doesn't want to turn black. My mother tells her "How come you are racist if your brothers are black, and your father and I are also black?" "But I don't like black people", she says. And my mother is trying to make her change, but she stays the same (...) She may think differently. That they are better than us. (Rivera, female adolescent, 14 years old)

Although discrimination against people of afro origin is an emerging and recurrent issue among adolescents, they put it in terms of interpersonal discrimination. They don't give a clue as to the structure of this form of discrimination.

As established in the Race Module carried out in the 1996 Continued Home Survey by the National Institute of Statistics "... the black population in Uruguay is 20% less than the white population. 40% of black women work doing housework. Retired white people get on average a 20 readjustable unit (RU) pension, while the black ones get a 14 RU pension. The working possibilities for black people are unqualified manual work, mainly in a service capacity. They have the same jobs as in Colonial times. The general level of income for white adults in employment is 85% higher than for black adults. Most afro-descendants only had elementary education. Black people have a greater percentage of drop-out at all levels of education".²⁶

Despite the information submitted, one of the difficulties of this issue are the problems related to access to periodical and disaggregated information, as expressed by the UN Committee on the Rights of the Child: "*The Committee, while recognising the efforts undertaken by the authorities in the collection of data, is concerned at the insufficient measures adopted to collect disaggregated data on the situation of all children, particularly those belonging to the most disadvantaged groups, including black children, disabled children, street children, children placed in institutions, including institutions of a penal nature, ill-treated and abused children or children from economically disadvantaged groups, which constitutes a major obstacle to the effective and full implementation of the provisions of the Convention.*"²⁷

Despite the lack of information available, there seems to be a relationship between socio-economic and racial discrimination according to information provided by INE. Black people have lower indices than the white population. This is one of the concerns expressed in the 2001 Durban Declaration: "*We also express our deep concern whenever indicators in the fields of, inter alia, education, employment, health, housing, infant mortality and life expectancy for many peoples show a situation of disadvantage, particularly where the contributing factors include racism, racial discrimination, xenophobia and related intolerance [...]*"²⁸

Amongst the adults questioned on the subject of discrimination, there is consensus on the fact that, although sometimes concealed, it is an issue present at all levels.

This happens in all levels of Uruguayan society. I don't know if it's any different from what happens in society in general. (Qualified Informant 4)

Poor people and black people are clearly discriminated against [...] some people don't

²⁶ Coordinadora Uruguaya de apoyo a la Conferencia Mundial contra el Racismo (2003) III Conferencia contra el Racismo Uruguay. Montevideo. P. 29. For a more in-depth look at the socio-economic condition of AfroUruguayans see Foster, Jill, El racismo y la reproducción de la pobreza entre los afrouruguayos, ClaeH, Serie Investigaciones N° 69, Montevideo 2001. This research starts from the hypothesis that "*racial discrimination in Uruguay impedes the accumulation of assets and prevents AfroUruguayans from having access to and taking advantage of the structure of opportunities, thus placing them in a situation of poverty which again prevents the accumulation of assets and taking advantage of the opportunities, creating a system which, in an underground and barely visible way, feeds back and perpetuates itself.*" (p. 9)

²⁷ Concluding observations of the Committee on the Rights of the Child: Uruguay. 30/10/96. CRC/C/15/Add.62.

²⁸ Durban Declaration and Program of Action (2001)

want to have a black person sitting next to them. We have a girl now who is under psychological treatment with the school's psychologist [...] in that class there is a black girl who said that [...] all she wanted was to change and become white.
(Qualified Informant 3)

Héctor Florit²⁹ carried out a study with 50 teachers in State Schools, in a year in which 40% of the children were poor. In this study he states that 75-80% of the black children in the class belonged to the low socio-economic stratum, while the remaining percentage belonged to the middle socio-economic stratum. According to Florit's study, 60% of school groups accept a black classmate, while 15% reject or exclude them and the rest have in-between levels of either intolerance or indifference. When considering personal self-worth, it became clear that 2 out of every 3 black children have poor self-esteem or devalue themselves.

All these data show greater violations of human rights of black children in respect to white children. This happens in all aspects of social relationships, as these two adolescents confirm:

The police stop you only for being black. I have a friend who works and plays football and he didn't do anything, but since he is black, every time the police see him, they either take him or stop him. In front of people. It is like he says: "I work and play football, and if somebody I know sees me, it's embarrassing that the police stop you, because they must stop you for some reason". And for the single fact of being black... (Montevideo, female adolescent, 17 years old)

Yes, some kids say that. Sometimes you are walking down the street and they insult you. [...] They are rich and all that...and one is poor [...] They insult you and stuff. [...] Dirty Black, or they tell you anything. They sometimes insult you even when you go to the market. (Montevideo, female adolescent, 14 years old)

Another issue related to racism is the selectivity of the criminal system. A lot has been written on this issue from critical criminological approaches. In this respect, the over representation of the non-white population (mainly black people and people of Latin American descent) in prisons in Europe and the United States, has been argued for many years. US Afro Americans undergo very strict criminal controls. Between 7 or 8 per cent of black males in the United States are under some kind of penal control in prisons, on probation or parole.³⁰ The French sociologist Lóic Wacquant refers to the issue by talking about the prison hyperinflation in the United States and Europe, and of the use of the criminal system as an instrument to control excluded populations.³¹

A Qualified Informant said:

Uruguay is a pretty racist country. Although it tries to cover up its race problems,

²⁹ FLORIT, Héctor (1994) Escuela Pública y racismo: borradores para una investigación necesaria. Revista Quehacer Educativo N° 14. June-November 1994.

³⁰ CHRISTIE, Nils. La industria del control del delito, Buenos Aires, Editores del Puerto, 1993, p. 127.

³¹ WACQUANT, Lóic Las cárceles de la miseria, Buenos Aires, Manantial, 2000 (1999)

they do exist. There are very few black professionals in Uruguay. Here being black is not the same as being white. The white person is likely to receive much more recognition than the black one [...] Most of the kids who come here for breaking the law are dark or black. White people come here in a smaller proportion. In general the black and poor are at a disadvantage when compared with the white and not poor.

(Qualified Informant 5)

It is clear that black children and adolescents seem to suffer higher discriminatory burdens than white children and adolescents. One of the main problems in affirming this more emphatically, is the lack of systematic data disaggregated by race. Far from being discriminatory, this would enable us to have reliable data on which to base affirmative actions to alleviate the impact of discrimination.

Another Qualified Informant also told us about discrimination suffered by a school child from his classmates when they found out that his father was a descendant of indigenous natives.

Some years ago, if a child was the child of a person known to be a descendant of indigenous natives, his/her classmates would laugh at him/her. Just for the fact that your father or mother is Indian. There have been important advances in this respect now. (Qualified Informant 7)

The adolescents in the discussion group affirm that there is religious discrimination.

Interviewer- *And the colour of your skin, for example, your religion? What happens?*

Adolescent- *[...] or because you believe this, or because you don't believe in this, or because you are black, or because you are white, or yellow. It happens all the time.*

(Montevideo, discussion group of adolescents)

Adolescent- *And for religion, they discriminate a lot for religion.*

(Montevideo, adolescents discussion group)

Adolescents told us that, according to their experience, umbandistas* are also discriminated against.

Adolescent- *They see you wearing a 'guia'* or something, you see those collars that 'paes'* wear, and they see you wearing one and they go: "Look, look at that 'macumbero'*". I have a 'guia' at home, but I'm not 'macumbero', I have it because...*

Adolescent- *Or if you go out at night to throw something out, they say: "Look, look at that macumbero, he is already doing some work* on us,"*

Adolescent- *It is discrimination.* (Montevideo, discussion group of adolescents)

* T.N.: Members of Umbanda, a religion of African-Brazilian origin.

* Guia is a religious collar worn by Umbandistas.

* 'Pae' is the priest and the highest hierarchy of Umbanda religion.

* A person who practices witchcraft.

* 'work' is the word used for witchcraft in Umbanda religion.

Even though Jewish adolescents were not interviewed to learn about their experiences as victims of discrimination, adolescents from the discussion group confirmed that there is discrimination against children and adolescents for the fact of being Jewish.

Interviewer- *But, do you think people discriminate against you for being a Mormon, Umandista, Jewish or Catholic?*

Adolescent- *Yes, definitely.*

Adolescent- *Sure. [...]*

Adolescent- *Haven't you ever heard "Look at that Jew, this and that"?*

Adolescent- *Or sometimes... yes, they do discriminate. [...]*

Education seems to play a fundamental role in fighting the forms of discrimination we have seen in this chapter. Article 29, sub paragraphs c and d, of the CRC provides that "*States Parties agree that the education of the child shall be directed to: [...] (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*".

Moreover, the 2001 Durban Declaration stresses "*the need to incorporate special measures, in accordance with the principle of the best interests of the child and respect for his or her views, in programs to combat racism, racial discrimination, xenophobia and related intolerance, in order to give priority attention to the rights and the situation of children and young people who are victims of these practices*".³²

Discrimination on Gender Grounds

As stated in the Reference Guide:³³ "*Notions of femininity or masculinity are found in common sense, in prejudices and attitudes, but also in institutional practices. Gender is not only a reference tool of identity, it is also an axis of classification, hierarchy, domination and inequality. The problem does not lie in the difference between the sexes, but in the inequalities built upon those differences [...] within the social organisation and gender is a system of exclusion and discrimination against women that can be observed.*"

By way of example, we shall see the diagnosis of two Qualified Informants regarding the situation of discrimination because of gender in Uruguay.

...the issue of discrimination by gender, like discrimination by poverty runs through the whole discrimination problem. Women suffer multiple degrees of discrimination, being black, being a woman, and being poor are three elements that strengthen [discrimination]... (Qualified Informant 7)

...there is also discrimination by gender. In this society, women have different rights from men... These are not explicit as we are all supposed to have equal rights, equal

³² Durban Declaration and Program of Action (2001)

³³ SAVE THE CHILDREN SUECIA COMISION ANDINA DE JURISTAS (2003) Guía Referencial: Lucha contra todas las formas de discriminación a los niños, niñas y adolescentes en América del Sur. Lima-Perú. P. 21

opportunities. But in fact, in real life this is not what happens. Quite the opposite [...] In the case of children, well, not all children, it depends on the social sector they were born in, have access to education and health care. In the case of women, from the perspective of their opportunities, they are still the ones who are left behind, according to their social stratum. This is reflected in institutions, through the different projects they have for men and women. (Qualified Informant 2)

Two adolescents interviewed expressed their viewpoint demonstrating the discrimination they suffer. In the second interview, the adolescent from Rivera tries, at least when she is talking, to reveal the inequalities she suffers. It is interesting to note how when the socially constructed gender perspective is questioned, the same adolescent says that cleaning the house and cooking is a man's right.

There has always been male chauvinism. Even women are chauvinist. For example in football. But now there are women who are mechanics. Here, at tea time, the boys prepare their own tea, but when it comes the time to do the washing-up they disappear and we have to clean everything by ourselves. If they want tea, they should also help do the washing-up, but they leave.

(Durazno, female adolescent, 16 years old)

Yesterday the adolescents who were here said "We are good at playing football". Then the girls said... I got up and said: "Look, if you had a child, you have to go and do the best for your child". Many times men say: "I don't cook, I don't know how to cook..." But today a woman can tell a man: "Cook". Like in my school [...] the other time they asked: "What would you like to be?"; "I want to be a cook when I grow up, I want to be a cook and help my mother..." Everyone laughed at him when he said that... The boys laughed: "Ah, he wants to be a cook..." [...] Men also have the right to clean up the house and to cook, and women can do the same. They can both do the same work. (Rivera, female adolescent, 12 years old)

Let us take a look at another example of how adolescents identify gender discrimination and try to explain it in terms of the discrimination agents, seeking to change the daily situations of discrimination.

Interviewer- *Do you think there is discrimination because you are a man or a woman?*

Adolescent- *Yes, there is. Now, for example, I am studying bakery. So my teacher only teaches the boys. I started to get tired of that, what am I here for then? So I told the teacher: "you only give work for the boys, what about the girls? I want to knead too." And after that he started to teach me. But if I hadn't spoken to him, he wouldn't have taught me. I felt discriminated against. I couldn't do something because I'm a woman. Now he gives me work more often. [...] We are around 17. Then we only cleaned the pots and that was it. And the boys would knead, make bread, and we couldn't. So one day I got tired of that and thought "I'm not just going to stand aside and watch, I want to touch the dough too, I want to do something."*

(Rivera, female adolescent, 17 years old)

The adolescent said she didn't just want to *look*, but she wanted to *do* as well. This shows how the rebellion she felt about not having the same opportunities as the boys.

This may be an example of a new generation of female adolescents who want to cease being spectators in society and to begin building it.

Note how *treating someone differently* is used specifically in this case as justification of discrimination on the grounds of gender.

Adolescent 1- *...women are treated differently from men.*

Interviewer- *Are they discriminated against then?*

Adolescent 2- *No. Because they are women, you cannot treat them the same as men. Women are not only good for giving birth: they clean, cook, they look after you when you are a baby, they change your nappy.*

Interviewer- *And if I were to ask you, who is supposed to cook?*

Adolescent 2- *Women, men have to work. Men have to do the heavy work, while the woman has to look after the children, cook, and clean the house.*

Interviewer- *Why?*

Adolescent 2- *Because that's why they were born women. That's what I think.*

(Montevideo, male adolescents, 17 and 15 years old)

Regarding the urban public space, and more specifically regarding children and adolescents living in the streets, we see how gender discrimination takes place. They do not give value to anything that is associated with female characteristics, basically through a process of masculinisation.

It is related to this, to the street as a public space. In order to survive both men and women have to become as masculine as they can. It is about being as unfeminine as possible. As a strategy to survive in the streets. Acquiring some body postures, speaking in a deep voice, cursing all the time, fighting as a way to show strength. And boys too. I guess the worst insult someone can pay a child or adolescent living in the streets is 'woman'. The worst thing they can call you is 'woman', 'María', 'servant', 'wife'. If somebody calls you that is the most degrading thing they can say to you. Even girls and female adolescents say it. I remember once, working with an adolescent, she asked me for some material [...] I told her "No. I can't give it to you because of this...". So she told me "are you playing the girl" as a negative thing. And that got me thinking. In that situation a woman was saying to me "Are you being a girl" and I realised that, for her, talking about "being a woman" had no value at all. Being a woman was, for her, a negative thing, and that was her way of surviving on the streets. (Qualified Informant 4)

What is special about this case is that symbolic discrimination against being a woman, demonstrated for example through the verbal violence that insults can constitute, is exercised both by male and female adolescents. In the strategy of street survival the male image is seen as stronger, as a positive value, and the female image is seen as weaker and vulnerable and is, therefore, both negatively valued and unwanted.

We will now see how the reproduction of the gender roles takes place within the family and the inequalities it entails. This is clearly recognised by the interviewees as a form of discrimination.

What I think is that discrimination takes place within the family. In the case of our children, where there are a lot of brothers and sisters, the mothers who gave birth to a lot of children appoint the older sisters to take care of their younger brothers and

sisters, to do the housework. There is parental discrimination and abuse in those cases. (Qualified Informant 3)

The greatest discrimination may take place at home. The brother goes out until 'x' hour and the sister is always there. Maybe instead of looking after her, they are actually... (Paysandú, male adolescent, 18 years old)

*Yes, it happens to me at home. We are 12, and we are three older girls, because the other one got married. So we do everything at home. And my brothers can't even get a T-shirt for themselves, they refuse, because they are men. And that's wrong. Because men should do the same as women. I work at home, I sell things in the streets, I work with my mother and my brothers and sisters. I sell disinfectant. I don't stay at home, because I leave at 7, I leave high school at 1, I come here, and then I leave at 6, at 6 I go to work with my mother. After that I return home at night and I have to do the homework, and everything, and I go to bed late.
(Rivera, female adolescent, 14 years old)*

To conclude, we shall present a case where the Qualified Informant tells us about her previous working experience, in which gender discrimination can be seen. This is an archetypal case of multiple discrimination: socio-economic discrimination, gender discrimination and for being from INAME, among others.

In the specific case of INAME, in all educational projects for, let's say, the most vulnerable children, or children who belong to populations at risk with whom INAME works in developing programmes there is more development, there is greater investment in male programmes. There is more development in training courses, workshops, computer workshops. In a women's institution, or in any activity relating to women, they would never think of teaching intellectual tasks, as they do with men. In men's development there is forging, computer science. In women's development there are sewing lessons, hair dressing. In a way they profile more clearly what in, reality, will be the fate and development the girls will face. In my particular case, when I entered INAME, now things have improved a little, women's options used to be hairdressing or dressmaking workshops with a teacher from the Polytechnic Institute, or getting married. Those were the projects, or being employed in a domestic capacity [...] And that is the life plan that the State creates for these young girls who are much more vulnerable than others, who actually need other tools. So they are being doubly discriminated against. (Qualified Informant 2)

The explanation as to why gender discrimination takes place through the creation of different institutional projects and of different plans of life for men and women, is presented below.

...women in general tend to degrade themselves much more. Women become prostitutes. They have different ways of transgressing. Women are actually much more self-destructive. In the case of men, since in general there are more men who infringe the law, the project in reality with men, is actually a project [...] better thought of. Because men are more dangerous for this society. So it is necessary to restrict them and include them in some other way. If a woman becomes a prostitute, she is the only one suffering the consequences. (Qualified Informant 2)

The accounts we have just presented on gender discrimination at INAME, contribute interpretations as to why this discrimination takes place and who exercises it – in this case it is *official* discrimination, following Eugenio Zaffaroni's classification. It is also possible to observe how gender discrimination is reproduced through discriminatory educational projects. We also observed the impact of discrimination on female adolescents, whose plans for life are restricted (getting married, domestic employment, becoming a prostitute or doing manual jobs) with many of their rights having been violated.

There is a close relationship between gender discrimination and discrimination against pregnant adolescents or adolescent mothers and also against homosexuals, forms of discriminations which we shall now consider.

Discrimination Against Pregnant Adolescents

Our civil law contains some discriminatory provisions, which leave both the adolescent mother and her child in a terrible situation. We refer to article 235 of the Civil Code, which provides that unmarried children under 18 years old will not be able validly to acknowledge their illegitimate child. It is to this we refer when speaking of the birth discrimination against illegitimate children.

Pursuant to the provisions of article 227 of the Civil Code, illegitimate children are those whose parents were not married when the child was conceived. They do not, however, have the legal capacity of illegitimate children, except when acknowledged or declared as such.³⁴

According to data from INE, in 2001 the percentage of children born out of wedlock reached 55.3 %. In addition, 16.5% of all births were to adolescent mothers, of which 82.9% were not married.³⁵ These data exemplify the seriousness of this discriminatory situation.

For the fact of being pregnant or for being an adolescent mother, the adolescent is exposed to situations of discrimination that adolescents of both sexes tend to see in interpersonal terms. Therefore, in these circumstances the father, the parents-in-law, friends, classmates, the people from the neighbourhood or people in general, are identified as the discriminating agents.

I have a 16 year-old cousin who is pregnant. And the father discriminates against her. He won't speak to her. She goes there, walks by his door, and he doesn't even look at her. I don't know why he does that. (Rivera, male adolescent, 15 years old)

It happened to me when I was pregnant. But with the father's family, not in high school. There was a lot of trouble. His mother discriminated against me more than anyone else [...] some friends walked out on me, they stopped visiting me. (Montevideo, adolescent mother, 17 years old)

Many times discrimination against a pregnant adolescent or an adolescent mother is related to negative social representations regarding adolescent motherhood. For the

³⁴ For further information on this issue see PALUMMO LANTES, Javier M. , Registro de nacimientos y derecho a la identidad, en Tribuna del abogado, N°134, August/ September 2003, pp. 23 y ss.

³⁵ VERNAZZA, Lucía, Uruguay: Familia y derechos de la Infancia, en Nuevas formas de familia. Perspectivas nacionales e internacionales, UNICEF UDELAR, 2003, p. 233 y 234.

pregnant girl, the *belly* is a sign of the sexuality of adolescents, which is frequently socially hidden or repressed, although it is a matter of debate between peers. The issue is not whether the pregnancy was desired or not, but of judging an adolescent in a negative way, through condemning remarks, for having had sexual relations. There follow some examples that illustrate this situation.

People. You know how people are. Some people say "Look at that girl, she must be 14 or 15 years old, and she's pregnant", I think that is discrimination.
(Montevideo, male adolescent, 17 years old)

[in the neighbourhood] she is discriminated against, because they are going to say "Look, she's so young and she turned out a whore, like her mother". (Laughter)
(Montevideo, discussion group of adolescents)

There follow examples of experiences of pregnant adolescents in the education system.

In my neighbourhood, adolescents of 14 or 15 years old are already pregnant, it is very common [...] And some girls get pregnant and when the bump starts to show, they drop out school. [...] I don't know, maybe they feel that their classmates disapprove of them. (Rivera, female adolescent, 14 years old)

...several times your friends discriminate against you when they say: "Oh, you are pregnant, you slept with several guys, you got pregnant..." So they throw something at your face that makes you feel bad. Many adolescents drop out of school because of that. (Rivera, female adolescent, 12 years old)

Discrimination suffered by these adolescents, in terms of singling out ("look at that girl, she must be 14 or 15 years old and she's pregnant"), violence ("Look, she's so young and she turned out a whore, like her mother") and exclusion ("they walked out on me, they stopped visiting me"), many times have such an impact on them, they feel so much pressure and rejection that they drop out of school. Thus, they are deprived of basic rights for their full development, such as the right to education.

Discrimination for Being Homosexual

In the discussion group of adolescents, the issue of discrimination for being homosexual and bisexual arose spontaneously. The discussion reflects the collective representations and positions that may be found on the issue, or at least, how adolescents feel about it and their experiences regarding the issue. It can also be seen how adolescents believe their peers or the 'people' would react if, rather than discriminating against homosexuals, they included the homosexual adolescent in their group of friends.

Note that the discussion is not focused on discrimination for being homosexual, but on the discrimination they may suffer as a result of having homosexual friends. As if afraid that by being with a homosexual adolescent would be enough for them to catch it. Fear of what the others may think: if you hang out with a homosexual it must be because you *are* a homosexual too. Even though the subject of lesbians was initially raised, female homosexuality did not arise as an issue in the discussion between these adolescents. They always refer to *he* and not to *she*.

Adolescent- *It is not only in the case of this kind of persons, right?, whether they are black, white, or Chinese, it also has to do with sex, because there are homosexuals, bisexuals, there are also lesbian women [...]*

Adolescent- *It is racism all the same...if you are a poof, that's it. (laughter)*

Adolescent- *If you are homosexual...if you are homosexual, someone may say: I won't hang out with that guy because he is gay. That is true, some people say "I'm not going near that guy because he is gay. He may embarrass me, if I walk down the street with him, I may feel embarrassed" [...]*

Adolescent- *But if you know that the person is respectful, if he is respectful, it doesn't matter what people say.*

Adolescent- *I hang out with everybody.*

Adolescent- *Or suppose that you have a homosexual friend, and you are going out with him and someone else says: "Look at that one, he is with a poof".*

(Montevideo, discussion group of adolescents)

The issue of respect from homosexuals towards adolescents arose many times ("*if he does nothing out of place*") as a value that permits a relationship, as a rule that should not be broken.

Adolescent- *...I had a classmate in first grade who was homosexual. He would openly say he liked boys. [...] And everyone would respect him in class. It was natural, if he liked boys why shouldn't he? If girls like boys, he may like boys too. [...] It was fine with him, as long as he behaved, because if he makes a move on you or something, there are some homosexuals who are disrespectful. And some others who respect others. I have no problem with gays who respect you, because if they respect you, you respect them back and you don't bother them.*

(Montevideo, male adolescent, discussion group of adolescents)

In the following case we see how a homosexual adolescent regards the disrespect of others as discrimination. The hidden dimension which this type of discrimination may also have unless it is explicitly stated can also be seen. In this respect, this adolescent – based on his fantasies or actual experiences- believes it possible that others disrespect him behind his back.

I am a homosexual. The people who know me have no problem about it, they don't disrespect me, they don't insult me or anything. Perhaps they insult me when I turn round. For example, the other day I walked by a very small boy, he wasn't even 11 years old and he said some awful insults...for no reason at all, that was bad, very bad... (Montevideo, male adolescent, 19 years old)

Discrimination against homosexuals also takes place at our schools, with– as in the case of pregnant adolescents – the resulting abandonment of education through indirect expulsion, which means, through pressure that ends up making the adolescent self-exclude from the school.

In high school, I have a friend like me. He only studied until second grade in high school because the other people would insult him, they put him off, they would say things to him, they would make fun of him in the shower, so he had to drop out. I imagine at school he might have gone through the same things. It has never happe-

ned to me though. (Montevideo, male adolescent, 19 years old)

...some men are gay and some people discriminate against them because of that. I think it is wrong because it is a life choice they have chosen for themselves. This kind of discrimination shouldn't exist. [...] Even among adolescents. [...] At school they are often discriminated against. At the Polytechnic school as well. It happens everywhere. [...] At school we had a student who was kind of "feminine". So the boys would treat him as a freak, and stuff. And once he even burst into tears and after that he didn't show up for a few days. (Rivera, male adolescent, 16 years old).

In the discussion group we saw how adolescents discovered for themselves that they are agents of discrimination as well. They began by saying that if a homosexual respects them, a relationship with him/her is possible, and ended up by saying that they respect the homosexual and do not discriminate against him in public and when in his/her presence – for fear that the homosexual reacts violently, has a violent reaction against them.

Adolescent- *[...] Because they respect them, they fear them. You may walk by him and say nothing to him, but you can walk round the corner you call him "poof". If when you are next to him you don't say anything to him, then you should shut your mouth and that's it, you shouldn't say anything at all [...]*

Adolescent- *Or even if you are beside him, you look at him and he looks back. And some of them are really big. (laughter) If they are big and you tell them something, they might beat you up.*

Interviewer- *You don't say anything to them, but do you think of things to say to him or not?*

Adolescent- *Yes, you think. I say it, I discriminate against poofs. I discriminate against them. So I don't say anything to them, though sometimes I do.*

Adolescent- *Sometimes I see a man...I look at him and he looks like a lady but he has hairs on his chest and I go, I think for myself, "Look at that poof", but I wouldn't tell him "Poof". I don't say anything to him, I think "look"...*

(Montevideo, discussion group of adolescents)

This shows there is a contained discrimination, a concealed discrimination which sometimes turns into actions. It is latent much of the time although not expressed through verbal violence, but it will probably end up by excluding the homosexual in some way.

Discrimination for the Mere Fact of Being a Child or an Adolescent

Another form of discrimination is the one suffered for the mere fact of being a child or adolescent, even though there is no other variable on which discrimination could be based.

Sure, you are discriminated against...only for being young.

(Montevideo, male adolescent, discussion group of adolescents)

...adults always think that young people are less than others, don't they?

(Montevideo, male adolescent, discussion group of adolescents)

Adolescents are also discriminated against. Not for being anything, not for having any labels. (Montevideo, male adolescent, discussion group of adolescents)

The following quotation is similar in context but is concerning because it shows how frequent devaluation of a child or adolescent by adults can have an impact on the building of their identity, to the point that an adolescent associates 'being young' with not fitting into the category of 'being a person'.

People, especially the police. I have nothing against them, but I know that being young we are discriminated against, while other people are not.
(Montevideo, female adolescent, 17 years old)

A child or adolescent is a person going through a process of physical, psychological and social development. Adolescents believe that this is the reason why they are discriminated against, because they "don't even know what they want" and because adults do not respect them in their search for what they want. On the contrary, they always return to the idea that "young people in the past used to be better".

They discriminate against you, they do, because they say: "look at that young boy, he doesn't know what he wants and makes a nuisance for no reason, he is just a nuisance, he is nothing but a nuisance in society because he doesn't know what he wants".
(Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *"Everything used to be better", right? They keep saying that.*

Adolescent- *But they were all young some time, and they all...*

Adolescent- *They may have gone through all that, but it was different then...*

Adolescent- *Some of them have gone through this, but they don't recognise it, they don't let others do what they did.*

Adolescent- *Or as they say now "In my time...", "When I was young, at 15 years old I was already working, lifting boxes, I don't know what else". [...]*

Adolescent- *Sure...they discriminate against you only for being young.*

(Montevideo, discussion group of adolescents)

Adolescents from the discussion group believe they are discriminated against by the decisions taken by politicians. They don't think that politicians value or even consider their opinion. In their own words, they say politicians "listen to them, but it goes in one ear and out the other, they're not going to do anything anyway". This goes along with the National Survey carried out by the Committee on the Rights of the Child³⁶ which we have mentioned above. According to the survey, 8 out of 10 adolescents believed politicians would not take their opinions and suggestions into account on matters important to them. They also believe that politicians have a double standard, they say that they do things for young people, but in fact they do nothing for them.

Interviewer- *What about politicians, through their policies, the decisions they take in Parliament?*

Adolescent- *They discriminate.*

³⁶ COMITÉ DE LOS DERECHOS DEL NIÑO URUGUAY, 2002. Consulta Nacional: La opinión de las y los adolescentes uruguayos sobre su participación en el 'Plan Nacional de Acción', Montevideo.

Interviewer- *Do they discriminate against young people for being young?*

Adolescent- *They pretend to give young people opportunities, and that they do things for young people, but they don't do anything. They do nothing for young people, neither politicians, nor anyone.*

(Montevideo, discussion group of adolescents)

Therefore, one of the ways in which adolescents feel discriminated against is for being 'too young' to give their opinion. They feel they are not listened to, which refers to the restriction to their right to freely express their opinion and for this opinion to be taken into account – in accordance with their age and maturity – in particular in decisions which affect them. This right is contained in article 12 of the Convention on the Rights of the Child, but sometimes it is hard to enforce it because adults do not recognise the child or adolescent as a valid speaker.

...if you haven't reached a certain age you are not allowed to give your opinion because you are too young. Or, for example, if your parents are talking and you want to give your opinion, they tell you can't because you are too young. Or if they are talking about moving house and they ask the woman, your mother, if she wants to move but you want to say no, you can't because you are too young.

(Montevideo, male adolescent, 15 years old)

I think adults don't listen to children much. In my own case, my mother doesn't listen to us much. That's why I think adults don't listen to children. Or sometimes they don't believe them. [...] Once I was tired of asking my mother to listen to me, and one day I got home [...] and told my mother to take me to the gynaecologist because I was 4 months pregnant. That was like a bucket of cold water for my mother. So I told her I had been trying to tell her for months, and she would never listen to me.

(Rivera, female adolescent, 17 years old)

Some adults don't let adolescents give their opinion. That is discrimination.

(Rivera, male adolescent, 15 years old)

There is a different kind of discrimination which is related to the rejection of different generations. The rejection of young people because they are different from adults and also different from what the adults were like when they were young.

[Could you tell us about any other discrimination experience?] In the rock festival. For the way people dress, because of the hair, for having dreadlocks, coloured hair, for wearing strange chains, ragged trousers, and people carrying mattresses. People talking on the radio, saying everyone should close their doors and windows, lock everything, not open the door to strangers. Because during the rock festival everyone will be doing all sorts of things. (Durazno, female adolescent, 16 years old)

In the case of children it is even worse. Discrimination is not only about beating or maltreatment, but it is also about attitude, rejection [...] for the mere fact of being young, for the mere fact of being adolescent and of being different. Because they wear earrings, or because they have long hair. (Qualified Informant 5)

We have seen, therefore, discrimination when a different person is not accepted, a

child or adolescent as a unique being, within a certain time and place, with all this implies (the way of dressing, hairstyle, the body art, new views and missions, etc.). In conclusion, it is discrimination for their 'look' or appearance, for their new ideas, since adults regard these as a way of questioning the status quo. Because the child or adolescent is seen as a transgressor of what 'ought to be' considered as acceptable by the adult world.

Behind this form of discrimination there lies a conception of children as disabled persons, as non-individuals, as 'somethings' that have to obey adults without disagreeing. This implies levels of submission of children typical of the times when physical punishment was legitimate as a form of repression both at school and at home. These attitudes are now obsolete, but we have not yet replaced that authoritarian model by democratic forms of relationships with children and adolescents.

Who Discriminates?: Discrimination Agents

We shall try to identify the main agents of discriminatory practice against children and adolescents. The specific relationships children and adolescents have with their environment have significant consequences in determining who discriminates against them.¹

The State

The State has the obligation to ensure that its actions do not discriminate against any child, and that active measures are taken in order to avoid discrimination exercised by other agents. For this purpose it is necessary to carry out a thorough analysis of the laws and institutional practices, in order to assess their effects, not only on children as a group, but also on certain groups of children which are more likely to suffer it.

Children are socially and politically excluded from most of the national institutions. They have barely any access to the mass media, they do not belong to pressure groups, and their opinion is not regarded as important by the authorities in the adult world. It is therefore not surprising, that not only the children and adolescents but also the Qualified Informants interviewed, have identified the State as an agent of discrimination. The system of administration of justice, the police, the education system, the National Institute for Minors, and the health services, were all strongly criticised by the interviewees.

The State and equality of opportunities.

The principle of equality requires States to create equal conditions and opportunities for people, by adopting affirmative/positive measures leading – in the words of Jiménez de Aréchaga – “...to restoring effective equality among individuals by means of unequal treatment”.²

In 1986, there were two poor children to every poor adult above 65 years old. In 1995, the proportion changed to seven poor children to every poor adult, and in 2002 to nine poor children to every poor adult.³ The exclusion process is discriminatory in its practice and consequences. This kind of discrimination must be tackled by promoting equality of opportunities, and that is the duty of the State.

¹ In this chapter we shall return to issues that have already been mentioned, mainly in Chapter 5, as to the specific forms of discrimination. We considered it illustrative to look at them here from the viewpoint of who the discrimination agent is.

² JIMENEZ DE ARECHAGA, Justino. *La Constitución Nacional*, T.II, p. 158. Cf. BARBAGELATA, Aníbal Luis, *La democracia*, FCU, Montevideo, 1985, pp. 39 y ss; GROS ESPIELL, Héctor, *Los derechos económicos y sociales condiciones materiales para su efectividad*, en *Prisma*, N°12, August 1999, UCUDAL, pp. 132 y ss.

³ UNICEF (2004) *Observatorio de los Derechos de la Infancia y Adolescencia en el Uruguay*. Montevideo.

I believe there are different forms of discrimination that originate in different places. The State is obviously discriminatory because it is not giving to those children the same opportunities based on their needs. I don't know if this is because we have had such a paternalistic state, [such] that in contrast there is now an anti-paternalistic culture, but I think they have gone too far the other way and either they are not paying much attention to what is going on, or they don't care.

(Qualified Informant 3)

This indifference towards the interests of children may be a reflection of the low *status* children have in our society. The State does not seem to recognise that their situation should be taken into account beyond emergency and/or welfare policies.

The System of Administration of Justice

The system of social control, especially the police and judicial system, work in a selective way. This implies a flagrant violation of the principle of equality and non-discrimination.

This selectivity implies a distribution of interventions that only affect those who are more defenceless against the punitive power and are therefore more vulnerable to criminalisation.⁴

Punishment and criminalisation become an element of the 'social policy' and of a way to control the poor and to deal with problem groups.⁵

Qualified Informants have referred to the operation of the juvenile criminal system as follows:

In the criminal system. The white child who is not poor is likely to sort things out at the police level. The other one is never going to sort things out, and will be punished, whether guilty or not. (Qualified Informant 5)

The Police

The selectivity of the system of administration of justice is preceded and supplemented by the police's own selectivity. Adolescents identify the police as an agent of discrimination, acting at various times and in various places as clearly shown in Chapter 5.

We shall recall here the situation experienced by adolescents who participated in the discussion group. They told us how, a few minutes before the discussion group activity started, they were stopped by police officers.

Adolescent 1- We weren't doing anything here. We were walking that way, a van stopped...and they told us to put our hands against the van, and we had done nothing, I mean why?

Adolescent 2- They searched us, and everything, and then they left. They had no reason, just because we are dressed this way or we walk that way... do we all have to

⁴ Cf. ZAFFARONI, Eugenio Raúl, *Derecho Penal, Parte General*, Ediar, Buenos Aires, 2002, p. 9 y 11; ZAFFARONI, Eugenio Raúl, *En busca de las penas perdidas*, Temis, Bogotá, 1992, pp. 220 y ss.

⁵ GARLAND, David, *Castigo y sociedad moderna. Un estudio de teoría social, Siglo XXI*, México, 1999, p. 159.

VAZQUEZ, Enrique y MENDIZABAL, Enrique Eds., *¿Los niños...primero?*, Save the Children Suecia y Universidad del pacífico, Lima, 2002, p. 83.

walk like girls then? (Montevideo, discussion group of adolescents)

We have already had the chance to verify the discriminatory effectiveness of the system in November 2003, during the “*Workshop on Non-Discrimination against Children and Adolescents*”. At that time, a Paraguayan adolescent who was taking part in the workshop was the victim of discrimination. Police officers stopped him in the downtown of Montevideo, while he was heading to the place where he would have dinner, 200 metres from the hotel he was staying at.

The system clearly discriminates against people on account of their socio-economic situation, gender, and even ethnic situation, amongst others.

The Education System

Investing in the education of children and adolescents is strategic to the development of the human resources of a country. That is why social policies must be aimed at providing opportunities for the poorest sectors so that they reach a reasonable and sustainable level of well being.

The fact that the education system itself is an agent of discrimination is particularly concerning, even more when we consider that the same system should be one of the most important tools in the fight against discrimination and in promoting respect for the basic rights of children and adolescents.

The education system is particularly seen as an agent of discrimination. A Qualified Informant spoke about inequalities between schools.

In the case of our school, we have a pretty diversified curriculum. [...] Many of these lessons are taught with the support of the Council of Elementary Education but initially, for example, in the case of computer science lessons, this is only the fourth year that we are able to have four hours paid by the Council of Elementary Education. Until now, we had to pay a teacher. While in the head schools of the department they have computer science teachers and computer rooms we don't have access to.
(Qualified Informant 3)

Considering the child as subject with rights within the education system implies regarding him/her as more than a mere receptor of knowledge. Recognising him as a special and unique individual should make the institution adapt. On this issue it might be useful to recall the words of the Qualified Informants.

The child who enters school and who is socially different, who has a certain difficulty is segregated. [...] It is not the same for a more disciplined, more orderly child, with a different capacity for understanding, as for the undisciplined and restless child. In that case, there is already discrimination and segregation.
(Qualified Informant 5)

They feel discriminated at school because they don't seem to fit in the formal structure of school. [...] The school somehow labels children if they don't fit in with the rules of the classroom. They are immediately diagnosed as having psychopedagogic problems, and they always end up being removed for behavioural problems and sent to special schools or schools for mentally challenged children, when in fact the conflict is between the child and the education system. The child neither has a learning

problem, nor a problem of behaviour. Somehow, the problem lies in the relationship between the child and the school, not only in the child, or only in the school.
(Qualified Informant 4)

It is necessary to have a system of education that recognises the particular problems suffered by children living in the streets, in order for them to benefit from the education system. The failure to take positive measures in favour of these and other groups of particularly vulnerable children, will inevitably result in an unacceptable restriction on the opportunities of these children and adolescents.

The need to implement strategies to prevent discrimination in centres of education must lead to strengthen the training of teachers and promoting the participation of children and adolescents in the education system.

The National Institute for Minors

Far from being the leading agency of policies for all children and adolescents, the National Institute for Minors (INAME) is seen as an agent of discrimination and a stigmatising institution.

For this reason, we would like to refer to both circumstances separately. We shall quote some of the words expressed by Qualified Informants. First, we shall refer to the statements regarding INAME as a discrimination agent, and then we shall refer to the discrimination suffered by children and adolescents who have been in the Institution.

INAME as an agent of discrimination:

In the particular case of INAME, [...] for example, in an institution for girls or in any activity relating to girls, they would never think of teaching more intellectual tasks, as they do with men. [...] Girls attend sewing lessons, hairdressing workshops. [...] When I entered INAME, girl's possibilities were very restricted. Now, it has at least improved a little but the options used to be hairdressing, dressmaking with a teacher from the Polytechnic Institute, or getting married. Those were the life plans, or becoming employed in a domestic capacity. (Qualified Informant 2)

INAME as a stigmatising institution:

If you apply for a job at a supermarket and they ask you where you live, what is your phone number or something, and what should I tell them? I can't lie to them, I answer I live in INAME, so I don't get the job. The same thing happens at high school, school, everywhere. At school they find out at once. At high school, for example, they ask you for your phone number in case anything happens to you. And what should I say? I tell them I'm at INAME. Then, of course, they tell the teachers. And they ask me "Are you in INAME?", and all the other kids turn around. I arrived at INAME when I was three years old because my mother got sick.[...] Someone stole some pigs from the neighbours and the police came here at once. Sure, since they know I was at INAME... (Paysandú, male adolescent, 18 years old)

The Health Services

Article 6 of the Convention on the Rights of the Child recognises the right of all

children to life and the obligation of States to guarantee to the maximum the survival and development of children. The principal of non-discrimination requires Governments to adopt proactive measures to guarantee that this right is respected equally for all children.

Where can the poor go: public systems. That would be discrimination. Where are all these more advanced health care systems? They are not in the public sector, sadly. They are only in the wealthier sectors who can pay for more comprehensive health care. (Qualified Informant 5)

A Qualified Informant told us that in order to receive health care services, children and adolescents must fulfill certain requirements they cannot fulfill due to their economic situation. Therefore, they are excluded from the possibility of receiving health care services. The State must organise health care services in such a way to ensure their accessibility and quality to all children and adolescents.

They have to fulfill certain requirements to be seen by a doctor, which most of the children do not fulfil. They have to go with an adult, with an ID number and a health care certificate. Often they either don't have the documents, or they have lost them due to living in the streets, maybe they got wet, or were torn up. (Qualified Informant 4)

The Mass Media

Children and adolescents have little or no access to the mass media. Therefore, they are excluded from one of the most powerful channels through which the adult world articulates and forms its opinions.

The mass media promotes discrimination against children by the way they are depicted. They are usually represented through negative stereotypes: the criminal, the under-age fugitive, the drug addict, the one who has been deprived of liberty, the ones living in the streets, etc.

When asked about how children and adolescents are discriminated against in our society, several Qualified Informants mentioned the mass media in the following terms:

Through several tools: education, mass media, which act as mass distributors, or rather generators of the social perception rather than mass distributors. Since these issues very seldom reach the mass media, and since the formal system of education is homogenising in nature, the consequence is the reproduction of elements that may turn into discriminating, or even racist elements. (Qualified Informant 4)

Trade

Private agents, stores and in particular large shopping centres, as we have previously mentioned, are repeatedly viewed as discrimination agents by children and adolescents.

In the [supermarket] because they saw me begging and then I would go with my mother when we had some money, we would go shopping there and they would follow us all over the place, and if I entered alone, they wouldn't let me inside. (Paysandú, male adolescent, 16 years old)

...[at the supermarket] some kids are kicked out because they think they are going to steal... (Maldonado, female adolescent, 13 years old)

Whenever I go to the supermarket, the security guy is always after me. It pisses me off, because I'm there to shop and I can't because they are following me everywhere... (Montevideo, female adolescent, 17 years old)

The scope of autonomy of will, which applies in private law and in business activities, cannot be an obstacle that dilutes the binding effectiveness *erga omnes* of human rights. Besides having the obligation of not discriminating through its own actions, the State is obliged to take active measures in order to prevent discrimination exercised by others. Failure to comply with any of these obligations compromises its international responsibility.⁶

The fight against these forms of discrimination and unfair arrests made by the police at the request of businessmen, became public after the weekly newspaper Brecha published an article on February 13th, 2004.

The Transport Service

The transport service also discriminates. Adolescents mentioned that many times they were denied the possibility of having access to transport for various reasons, and in some cases for no apparent reason at all.

You call the bus, and it won't stop or...
(Montevideo, male adolescent, discussion group of adolescents)

I called a taxi, and the taxi driver asked me "Where are you going to?" and I told him where I was going and he said "No, I don't go there".
(Montevideo, male adolescent, discussion group)

I was going to take a cab there in Peñarol, and the driver asked me: "Where are you going?", and I said: "San Martín and Teniente Rinaldi ", and he told me: "No, I don't go there". I told him: "Come on, take me there please, at least drop me opposite the taxi rank and I'll get there on my own". Yes, sure...
(Montevideo. Male adolescent, discussion group of adolescents)

The Labour Market

Poor children and adolescents are in a paradoxical situation with regard to the labour market. They live in a State which not only does not guarantee them the exercise of their most basic rights, but also which applies laws that restrict and prohibit child labour.

There's no work, not for people of my age. All jobs are for people over 18 years old, otherwise you must have references, you have to be of age, you have to be 18 years old. (Montevideo, female adolescent, 17 years old)

There you go. For example, I don't know, you apply for a job and they ask you: "Well, where did you work before?" And you say: "Nowhere", they will ask you

⁶ CONTRERAS, Mariana, Policía a la carta, en Brecha, año 19, N°950, p.2-3.

“Where do you live?” and you answer: “In ‘x’ place”. And then they would go: “Oh no, you can’t work here then, because once I heard that people from that place are all thieves, and so and so”. [...] There, they are discriminating without knowing the person, just because of where the person lives.

(Montevideo, male adolescent, discussion group of adolescents)

Adolescent- *Today if you want to apply for a job, you’re not going to get the job you want. The only way out is to become a police officer, and nobody wants to be a police officer.*

Adolescent- *Sure, you can either become a police officer or steal.*

Adolescent- *The only factory left open, is the police factory.*

(Montevideo, discussion group of adolescents)

Society

As we have already mentioned, in the Concluding Observations recently published by UNICEF⁷ it is observed that adolescents perceive that society pays them no attention, or when it does, it is negative: “[...] the opinion of adults seems to lead either to discrimination or open rejection”. This situation has been identified and confirmed by several of the Qualified Informants interviewed. They expressed the following:

I believe this is related to profiles and stigmatisation in general. The categories: the category of the child living in the street, the category of the child who breaks the law, the category of the poor child, the category of the disabled child... In a certain way, a division seems to appear: according to how they label you, there will be certain things you will not be able to do. Also from the collective perception is built the image of the child or adolescent who lives in the street, as lacking limits, being aggressive, violent, drug-taking, criminal.

(Qualified Informant 4)

...those who are well off and have better access to certain things and get the best treatment while those who have nothing, or who have arrived in this world with very little likelihood of having access to certain things, are discriminated against because they are not well dressed, or people generalise – because they live in the street people think they are criminals – they stigmatise them. So, it is not only the State, the whole population discriminates, of all social strata. There is not only discrimination against poor people, but those poor children in turn end up discriminating against and becoming resentful towards those other power groups who are, ultimately, the dominant ones. (Qualified Informant 3)

The adolescents themselves perceive the discrimination from society in an almost impersonal way. The following are some examples of the discrimination suffered or that adolescents know of.

People in the street sometimes stare at you because of how you dress, how you walk. People discriminate against you, they look at you badly, but I don’t mind. We all think differently, but sometimes it hurts.

(Montevideo, female adolescent, 17 years old)

⁷ UNICEF, 2004: p.65.

But people get paranoid if you are at the [street] corner for example. First there are a few and then they are 20 and people say “Look, they are already planning to rob a house or something” and they get paranoid.

(Montevideo, male adolescent, discussion group)

The Family

According to the Preamble of the Convention on the Rights of the Child, the family is a fundamental group of society and the natural environment for the growth and well-being of all of its members and particularly children. Article 5 of the Convention refers to the responsibilities of parents with respect to their children in the following terms: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention”.

According to this provision, the CRC also recognises and accepts the existence of different family make-ups and structures. It also states that family members do not have unlimited powers over the child, but powers that are legally established towards an end: the autonomous and progressive exercise of the rights of the child.

The family has, however, also been regarded as a discrimination agent. On this issue we collected the following statements:

I do believe there is discrimination within the family. In the case of our children, where there are a large number of brothers and sisters, the mothers themselves who have a lot of children designate the older sisters to take care of the younger brothers and sisters, and to take care of the housework as well. In those cases there is discrimination and abuse from the parents. (Qualified Informant 3)

I guess in some way [children and adolescents living in the street] are discriminated against by the family. The one who has to go out to the street suffers discrimination within the family, which can be either negative or positive, depending on the relationships within the family. But there is a reason. Especially when not the whole family goes out to the street, but only one member of the family. That member who is always in the street, is there because of something. Helshe has a special place within the family, within the existence and internal history of that family. [...] Particularly with children, who, through their process of working in the street end up living there. When we start tracing within the family why that child goes onto the street, there is always a point that leads us to the reason that this child has a different position in the family, different from his/her brothers and sisters.

(Qualified Informant 4)

Some Final Conclusions

The State, the family and society in their capacities as guarantors of the rights of children and adolescents, have obligations with respect to children and adolescents. However, in the interviews, we have seen how they are at the same time seen as agents who employ discriminatory practices against children and adolescents.

With this confirmation, we can see that it is necessary to carry out a complete legal, regulatory and institutional overhaul to adapt to the provisions of the CRC and

especially to the principle of non-discrimination. It is also necessary to provide for the creation of specific protection mechanisms for cases of violation of the principle of equality and non-discrimination.

It is also necessary to take measures to identify situations of discrimination existing in our country and to raise awareness within the whole of society in order to make public the serious discrimination suffered by children and adolescents.

Protection Mechanisms Against Discrimination

International Protection Mechanisms¹

Preliminary considerations

We shall provide a general overview of the international mechanisms to protect human rights, focusing on their application in cases of discrimination against children and adolescents.

International protection of human rights in the universal system

The United Nations Charter was signed on June 26th, 1945 in San Francisco. Article 1 of the Charter defines the purpose of the United Nations “*To achieve international co-operation [...] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*”.

It is therefore not surprising that the General Assembly and the Economic and Social Council (ECOSOC) perform an important role in respect of human rights.

The Human Rights Commission

In 1946 ECOSOC created the Human Rights Commission, which started as a group of experts. Since 1947 this has become an inter-governmental agency under ECOSOC and whose resolutions must be approved by the ECOSOC.

Sub-Commission for the Promotion and Protection of Human Rights

The same year ECOSOC was created, it authorised the Commission to create three sub-commissions. In those sub-commissions there are specific bodies concerned with the prevention of and fight against discrimination. That is the case of the Sub-Commission for Preventing Discrimination and Protecting Minorities, which since 2000 has been called the Sub-Commission for the Promotion and Protection of Human Rights. This sub-commission carries out studies and recommendations for the Commission in order to prevent discrimination of any kind and to protect racial, religious, and linguistic minorities.

¹ For further information on the issues dealt with in this chapter, see: MEDINA QUIROGA, Cecilia, *El derecho internacional de los derechos humanos*, en MEDINA QUIROGA y MERA FIGUEROA, Jorge Editores (1996) *Sistema jurídico y Derechos humanos*, en Cuadernos de análisis jurídico, N°6, serie publicaciones especiales, September; JIMENEZ DE ARECHAGA, Eduardo, *La Convención Interamericana de Derechos Humanos como Derecho Interno*, en *Revista del IIDH*, N°7, IIDH, January-June 1988; ABREGÚ, Martín y COURTIS, Christian Comp. (1988) *La aplicación de los tratados sobre derechos humanos por los tribunales locales*, ed. Del Puerto, Buenos Aires; RODRÍGUEZ PINZÓN, Diego, et al. (1999) *La dimensión internacional de los derechos humanos. Guía para la aplicación de normas internacionales en el derecho interno*, BID, Washington D.C.

The Committees

Human rights treaties, besides establishing the obligation to respect the rights expressed there under, usually include the obligation to report, to a body, all the measure taken to comply with the obligations initially specified.

Treaties may also make provision for individuals to be able to report violations of the rights mentioned in the treaty. For this to be possible there must also be an express declaration of the State authorising the submission of these reports.

As a result of this, some treaties provide for the existence of a Committee: a) The Covenant on Civil and Political Rights, created the Human Rights Committee. b) The International Convention on the Elimination of All Forms of Racial Discrimination, created a Committee of the same name. c) The Convention on the Elimination of All Forms of Discrimination against Women, created a Committee of the same name. d) The Convention for the Repression and Punishment of the Crime of Apartheid, created a Committee made up of 3 members of the Human Rights Commission. e) The International Covenant on Economic, Social and Cultural Rights allows for the submission of reports to ECOSOC. However, ECOSOC created a Committee on these rights, made up of experts appointed by ECOSOC. f) The Convention on the Rights of the Child created the Committee on the Rights of the Child. Among others.

Except for the International Covenant on Economic, Social and Cultural Rights, in which ECOSOC's resolution which created the Committee encourages the reception of reports from non-governmental organisations, in the remaining Committees the participation of the civil community is not expressly provided for.

The regulations of the Committee on the Rights of the Child provided for the possibility that States should write their reports with the participation of the civil community, and it also allowed civil community organisations to submit alternative reports.

After analyzing all the reports submitted, these committees make remarks and recommendations on them, the latter being their main task. They also prepare *General Observations* on the provisions of the Convention they monitor.

With regard to the principle of equality and non-discrimination, it should be noted that in most of the treaties mentioned there are clauses which demand that the enjoyment of the rights they recognise, be under equal conditions and without any kind of discrimination whatsoever. In addition, some of these treaties are themselves instruments against discrimination, for example the actual CRC itself.

The Inter-American system on the protection of human rights

The 1948 Charter of the Organisation of American States provides an international system of protection in order to promote human rights observance and defence.

The main weak point of the system is that some States have not ratified the San José de Costa Rica Covenant. Those states are: United States, Canada, Cuba, and several Caribbean States. Moreover, there are some countries, which, having ratified the Covenant, have not accepted the adjudicatory jurisdiction of the Inter-American Court.

The Inter-American Commission on Human Rights

The Commission is a quasi-judicial body for the promotion and protection of human rights. Any individual or non-governmental organisation may inform the Commission

of human rights violations against a natural person. The presentation of the report gives rise to a procedure, which may end with the Commission sending the case to the Inter-American Court of Human Rights.

In serious and urgent cases in which irreparable damage to the exercise of rights may take place, the Commission, pursuant to its regulations, has provided precautionary measures.

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.

It has two main jurisdictions. Firstly, the Court shall exercise advisory jurisdiction, which allows it to issue opinions regarding the true interpretation of the Convention or of other treaties concerning the protection of human rights, and to examine the compatibility of any of its domestic State laws with the Convention.

Secondly, the Court has an adjudicatory jurisdiction, through which the Court determines whether a State has incurred international liability by the violation of a right or freedom protected by the American Convention, and in some cases of other treaties relating to human rights. In order that a State may be subject to this jurisdiction, it must have ratified the American Convention and have accepted the adjudicatory jurisdiction of the Court in general or for a particular case.

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.²

The Convention, the Statute of the Court and its Regulations provide a procedure with the following stages: a) a first stage of preliminary arguments in which the arguments submitted by the State are decided; b) followed by the stage on the background of the matter, after which the Court shall decide and pass judgement; c) a redressing stage; d) and the supervision of compliance with the Court's decision and its enforcement. Some of the stages may not be completed, either for being of a temporary nature, for having reached a friendly settlement, or because the procedure has finished due to dismissal of the case or other extraordinary measure.

Conclusions

The International Law on human rights is complementary to domestic Law. This does not imply that it is subsidiary. On the contrary, its substantive part is designated to become part of domestic Law. What is subsidiary is the use of international mechanisms of protection. These procedures can, in principle, only be accessed once the domestic mechanisms have been exhausted.

The possibility exists, therefore, of appealing both to the mechanisms provided for in the universal system and in the regional system of human rights, since the Uruguayan State has ratified almost all the treaties cited, and has recognised the jurisdiction of the Inter-American Court of Human Rights.

² The provisional measures can be found in article 63 of the American Convention on Human Rights.

National Protection Mechanisms

Introduction

As we have previously mentioned, the principle of equality and non-discrimination is fully enshrined in our Law both as a domestic and international source.

This ample recognition does not necessarily mean that there are effective domestic mechanisms of protection to which application can be made. In this section we shall mention some of the main protection mechanisms provided in our Law.

The fight against the discrimination of children and adolescents, in addition to demanding a series of legal tools, should be accompanied by a social and cultural change which must be primarily motivated by the State.

When children and adolescents were asked whether they believed that discrimination against them could be avoided, they recognised the need for this cultural change, as follows:

To avoid it [discrimination] we should have to live in another world, so to speak. Differences are in the opportunities, as I was telling you before, and the discrimination lies in whether attention is paid or not, that could be prevented. Preventing that would make the differences narrower. But that requires taking a much larger step, which is beyond my control, of telling someone you are, or you are not different.
(Paysandú, female adolescent, 16 years old)

That they feel and see a situation of discrimination for themselves, and that they should be made to change that ugly feeling you feel, which they feel..
(Rivera, female adolescent, 17 years old)

It would require a change in world politics for this to work.
(Paysandú, female adolescent, 16 years old)

It would imply changing everybody's mind.
(Montevideo, male adolescent, discussion group of adolescents)

They consider it necessary to demand information and awareness-raising campaigns, mainly through the media and the education system, in order to confront the problem.

They could give information, brochures, instructions. We are all human beings, we all have financial problems, we cannot all be physically equal, nor can we all think in the same way, otherwise it wouldn't be... but it can be avoided.
(Durazno, male adolescent, 18 years old)

Journalists should do an interview, publish it, or something.
(Montevideo, male adolescent, 19 years old)

At school, children should be taught to play with everyone else. The school has a responsibility, high school too. Everyone I guess. [...] I think that instead of discriminating against people they should get to know each other better. Look for a way in which everybody would be aware of discrimination, put it aside. Do a performance

in a square or a theatre showing discrimination, so that they could see it and feel how painful and awful is to be discriminated against, so that they stop discrimination. (Rivera, female adolescent, 17 years old)

Giving everyone a little tape recorder with a message saying tolerance, tolerance, tolerance, tolerance. To everyone, the skinheads, the ones with mohicans, the people who like cumbia, the police, everyone. Giving everyone something so that they all listen, that's the only way.
(Montevideo, male adolescent, discussion group of adolescents)

Other suggested ways to avoid discrimination focus on the importance of dialogue, of knowing the other.

I believe dialogue is the most important thing. Or by proving to the other that he/she is wrong. I think that by showing the other person, if someone is doing something, I show the person the same thing that he/she did, that he/she is wrong.
(Rivera, female adolescent, 17 years old)

By knowing each other better. If you know the other person, little by little, you begin to make friends with the other person. In that way there is no discrimination for race, colour, or economic situation. By being friends.
(Rivera, male adolescent, 15 years old)

They should first know the person before talking. I think that many times in the family too, children want to say something and they are not listened to. I think it's wrong. (Rivera, female adolescent, 12 years old)

The most pessimistic ones in this respect think that given the current conditions in which a large part of Uruguay's population live, such as poverty, unemployment of the parents, and children who are exposed to living in the street, discrimination is unavoidable. In this respect, they expressed the following:

I don't think so. I don't think that's ever going to change, because everyday there are more children living in the streets. (Montevideo, male adolescent, 15 years old)

Not while there are children living in the streets. It is always going to happen. There will always be poverty. While parents are unemployed, there will always be discrimination. (Montevideo, male adolescent, 17 years old)

Instead of sending vans with riot police to the settlements, they should send work instead of police officers. (Montevideo, male adolescent)

The adults interviewed agreed that education has a key role to play as an instrument for bringing into being the necessary cultural change in the fight against the discrimination of children and adolescents.

In the Institutions, they should, on the one hand, raise awareness, to try to break the image that "all children living in the streets are drug addicts or criminals". To be able to show them the other face of these children as children who have the right

to education, the right to health care, that there is a whole question of restitution of rights within the capability of Uruguayan society to restore. It is related to making the Institution responsible too, as another Institution in the social network. And these children after their inclusion. The Institution also has things to do related with that. There is a question of institutional omission to take care of.

(Qualified Informant 4)

There are several forms. The definitive form is the one already mentioned, through education. In the particular case of children, something which is being done in certain levels of society is the dissemination of the Convention on the Rights of the Child etc., etc., etc., which is to say, for children to assume not only their capacity as citizens without the right to vote, but also their first instances of social development, that they are the object of rights, not of facts. (Qualified Informants 7)

Adults consider it important to approve certain laws to implement positive measures and to create effective mechanisms to denounce situations of discrimination against children and adolescents. When asked how discrimination should be avoided and what should be the role of the State, they answered the following:

Without being a paternalistic State, the State should somehow delegate the enforcement of these laws to NGOs through INAME, and to monitor that the laws are actually enforced. This is one of the basic steps the State should take. There has to be a project for the country. The State has to take positive discrimination measures because it has to take care of the most disadvantaged persons.

(Qualified Informant 3)

The role of the State is clearly the legislation issue, and it is also related to education, in general terms, but especially to the conceptions on which education is based, through which everybody in the State passes. There are also the media, and civil community organisations as well. (Qualified Informant 4)

It is evident that, in general, when we talk about affirmative actions, the State is the one which can say yes or no, we can only propose them. Because some actions... the most important affirmative actions have to go through the State and there has to be a State which is receptive to affirmative actions of this kind.

(Qualified Informant 7)

What positive measure has the State taken to avoid discrimination? I guess none. Because if it thinks that avoiding discrimination means giving people food, I think it is wrong. (Qualified Informant 3)

I believe there should be something clearer relating to discrimination. A clearer system to report discrimination. Discrimination as a concept appears in the Constitution, in the Convention, but it is not considered in practice. How to put it into practice, how to guarantee non-discrimination. I also believe there should be a culture of non-discrimination, which does not exist in Uruguay, and which is more related to the issue of education in general. (Qualified Informant 4)

I think that in this society problems are concealed. That's why I think the first mea-

sure should be to put the cards on the table, and show Uruguay as it is. They always talk about Uruguay as an egalitarian country, where there is no discrimination, no violence against women, a country that does not resemble Central America. We, as a country, tend to lay our problems elsewhere. All our crises and all our evils, so I think that one of the first things to do is to sit around a table to discuss what is going on and face it. Which is something we can't do. Because we always lay our problems elsewhere, blame others. Talking about the problem is a measure that will enable us to start thinking about what is happening. (Qualified Informant 2)

Legal perspective

Our legislation does not have any general anti-discrimination laws, such as Argentine Law 23.592 of August 3rd, 1988, Article 1 of which provides:

Any person who, arbitrarily obstructs, restricts or in any way undermines the full exercise on an equal basis, of the basic rights and guarantees granted by the National Constitution, shall be obliged, at the request of the injured party, to undo the discriminatory action or to stop it and repair the pain and suffering and material damage resulting from it. For the purpose of this article, special attention shall be paid to discriminatory actions or omissions based on reasons such as race, religion, nationality, ideology, political or union opinion, sex, economic situation, social condition or physical characteristics.

What our legislation does provide for are crimes of “*incitement to hatred, contempt or violence towards determined people*” and the “*commission of acts of hatred, contempt or violence against determined people*” (articles 149bis and 149ter of the Criminal Code under the wording given by law 17.677 of July 29th, 2003³).

The first of these crimes characterises the behaviour of a person who publicly or through any means fit for public dissemination, incites to hatred, contempt or any form of pain and suffering or physical violence against one or more persons for the colour of their skin, their race, religion, national or ethnic origin, sexual orientation or sexual identity. The second one describes the behaviour of the person who performs those acts of pain and suffering or physical violence, hatred or contempt against one or more persons on account of their skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity.

The amparo appeal

This action, which is regulated by Uruguayan Law 16.011 of December 19th 1988, is an important mechanism for protecting human rights.

This entitles any individual, public or private entity, to file an amparo appeal [appeal for protection] against any action, omission or fact of the State or Para-State Authorities or individuals, which in fact or potentially, in their judgement, manifestly unlawfully harm, restrict, alter, or threaten any of the rights or liberties expressly or implicitly granted by the Constitution.

The amparo appeal does not proceed pursuant to this law in: a) cases for which *habeas corpus* remedy may be filed; b) jurisdictional acts; c) acts of the Electoral Court; d) laws and decrees of Departmental Governments which have legal force within their jurisdiction. The law also provides that the amparo appeal shall only proceed

³ To take a deeper look at this aspect of our legislation see BERGSTEIN, Isaac Nahum (1981) *Delito y discriminación racial: proyecto de ley de delitos contra la pacífica convivencia social y política de las razas humanas*, FCU, Montevideo.

when there are no other judicial or administrative means that allow the same result to be obtained.

Several of the requirements demanded by this law and by the practice of the Courts, make the amparo appeal an instrument rarely used, especially when it comes to fighting against the discrimination of children and adolescents.

Declaration of unconstitutionality

In the case of a law or decree of a Departmental Government, with legal force within its jurisdiction, and which violates the principle of equality, we may have resource to the process of declaration of unconstitutionality.

This request may be filed by anyone who feels his/her direct, personal and legitimate interest to have been harmed – either by filing a law suit before the Supreme Court of Justice or by means of a defence, which may be filed in any judicial procedure – without prejudice to the possibility of any judge applying *ex officio* for a declaration of unconstitutionality.

The decision of the Supreme Court of Justice shall only apply to the specific case brought and shall only take effect on the proceedings for which judgement was passed. This means that the law declared as unconstitutional is not repealed. The law remains in force.

The principle of equality and non-discrimination in private relations

The state is not the only entity obliged to respect human rights. Individuals in their relations with other individuals may commit discriminatory actions. The scope of autonomy of will, which appears in private law, cannot be an obstacle that dilutes the binding effectiveness *erga omnes* of human rights.

In addition to being an axiological factor and an ethical, moral and political imperative, equality is a basic right, and as such must be respected as such within private relations. Notwithstanding the fact that it would be better if there were a general anti-discrimination law in our domestic law, expressly referring to the situations that occur within the scope of private relations.

Within our domestic law there are rules that refer to the right of equality before the law, and the right to non-discrimination within private relations, in addition to the already mentioned rules. Firstly, there are rules relating to equality of women and in particular, to the prohibition on discrimination which violates the principle of equality of treatment and opportunities for both sexes in any area or branch of the working activity.⁴ There are also rules relating to discrimination on the grounds of disability.⁵

Regarding the situation of children it seems significant to mention law 16.802 since article 3 provides that *“the owners of kindergartens shall be legally responsible for any act of discrimination, sub paragraph 1 of Article 2 of the Convention on the Rights of the Child, Law 16.137 of September 28th, 1990, without prejudice to the responsibilities incurred by those people taking part in these acts.”*

⁴ Law 16.045. In this respect there are also several International ILO Conventions of which have been ratified (C100, C111 and C156).

⁵ Law 16.095 articles 5 and 40 amongst others. Due to the broad scope of the latter of these articles, its application in the private sphere is very clear.

It is worth, under this heading, mentioning the recent ratification by law 17.724 of December 24th, 2003 of the Convention against Discrimination in Education adopted on December 14th, 1960 by the General Conference of the United Nations Education, Scientific and Cultural Organisation, which came into effect on May 22nd, 1962.

It is also important to mention a bill which declares the fight against racism, xenophobia and discrimination⁶ to be of national interest, and which creates an Honorary Commission against Discrimination, Xenophobia and Racism. This bill does not refer expressly to “all forms of discrimination” having a restricted sphere of application, something which caused an interesting Parliamentary debate.

Another aspect of the application of the principle of equality and non-discrimination in private relations is the possibility of filing a law suit for damages in case of a situation of discrimination. Despite there not being specific laws regarding the civil liability of anyone responsible for discriminatory behaviours, as it is an illegal act for a person to cause damage to another, the law provides the obligation of remedy for the damage. This results from the application of the general rules of non-contractual liability under article 1319 of the Civil Code. Our doctrine has referred to “damage to personal rights” or more specifically “damage on the grounds of discrimination” in these cases.⁷

International liability

At the level of international liability, the State shall be liable for any violation of human rights performed by individuals, unless the State has taken effective measures to prevent such violation or has tolerated it or allowed its perpetrators to go unpunished.

The Human Rights Committee has expressed that: “*The right to equality before the law and freedom from discrimination, protected by article 26, requires States to take measures against discrimination by public and private agencies in all fields. [...] States Parties should review their legislation and practices and take the lead in implementing all measures necessary in order to eradicate discrimination against women, in all fields, for example by prohibiting discrimination by individuals in areas such as employment, education, political activities and the provision of accommodation, goods and services*”.⁸

Conclusions

There are many forms in which children and adolescents are discriminated against. The mechanisms of protection against discrimination are important instruments to achieve true compliance with the laws enshrining the principle of equality and non-discrimination. Our legislation does not have an anti-discrimination law and we, therefore, have to have recourse to mechanisms which, beside, in general, not being specifically against discrimination, are not specifically geared to cases of discrimination against children and adolescents.

It is essential that, within the context of the projected legislative reform, to adapt

⁶ Comisión de Educación y Cultura de la Cámara de Representantes. Repartido N°1233. Carpeta N°2894, April 2003.

⁷ For further details on this subject see PERDOMO, Nelly (1994) Discriminación por incapacidad: un daño a reparar, en Revista Uruguaya de Derecho de Familia y Menores, Año 7, N°9, FCU, Montevideo, p. 121.

⁸ Igualdad de derechos entre hombres y mujeres (Artículo 3): 29/03/2000. CCPR/C/21/Rev. 1/Add. 10, CCPR Observación General 28, parr. 31.

our domestic laws to the provisions of the Convention on the Rights of the Child, specific mechanisms protecting the human rights of children and adolescents be incorporated, together with the creation of an ombudsman, and of *habeas data*, among others.

These mechanisms must protect children and adolescents from any discriminatory act, including situations that take place at a private relations level.

Furthermore, and pursuant to the Committee on the Rights of the Child, all staff working with children should receive special training. The rights of the child should be included in the study plans at all levels of education and an information campaign should be carried out in order to eradicate discriminatory attitudes against children and adolescents, and also to promote respect for their basic rights.⁹

⁹ Concluding Observations of the Committee on the Rights of the Child: Uruguay. 30/10/96. CRC/C/15/Add.62, parr. 26.

Chapter 8

The Impacts of Discrimination on Children and Adolescents

Discrimination against children and adolescents does not pass unnoticed. It has consequences on their lives, both in the development of their personality and in the patterns of relationships with and towards others. In addition to implying the violation of specific rights, the basic fact of experiencing discrimination leaves marks. The rejection suffered, the insults heard or the violence received have effects both on the receiver and on the agent of the discrimination. In the case of inorganic discrimination, which is essentially interpersonal – with no institutions or discourses which seek to legitimise them – this relationship between the receiver and the agent is a complex one, and to the extent of its dialectic aspects, it is not necessarily unidirectional: the receiver may become the agent, or vice versa.

Below there is a description of a group of situations which describe effects, that is, reactions which may, in part, be attributed to situations of discrimination suffered by children.

The Discriminated Discriminate

The impact of socio-economic discrimination on many children and adolescents living in the streets implies for them the violation of their economic, social and cultural rights. It could also favour the development of antagonistic strategies for survival within a hostile environment. On this issue, a Qualified Informant declared:

There is strong discrimination within the group in which they live or their peer group, which is related to homosexuality. There is a situation there that we have been working on and which is related to... it may be the explanation we found as adults, beyond discrimination against homosexuals existing in our society. This discrimination seems to be greater, because the street as a public space is a fundamentally male space in the codes. There they are guided by the 'law of the jungle', the big one eats the small one. In some way, they have to prove their masculinity all the time, and the way they do it is by showing they are not children, they have to prove they are neither women nor homosexuals. And they prove it, not based on their own attributes, but by attacking somebody else's. They become pretty homophobic. They walk down the street, and in their own words, they see a homosexual and insult him or throw stones at him, as violent physical aggression just for the fact that the other person is a homosexual. Discrimination also takes place whenever there is a case of a homosexual relationship within the street environment, it is something they come back to constantly afterwards to degrade the person. Even though this was a violation. It doesn't matter, they use it to degrade the other person.

And there's the story of two brothers who lived on the streets for many years, and we realised they were especially violent on this issue. After investigating a little as to their origin, it seems they had a transvestite brother, and they felt disgust for having a transvestite brother. A brother we found out about after 4 years of working with them. That brother had never come up in the conversation of any of the family. They said:

“It’s really disgusting to have a transvestite brother”, it was a strong rejection they felt.

[And what about gender?] It is related to this, to the street as a public space. In order to be able to survive in the street they have to become as masculine as possible, both boys and girls. It is about being the least feminine that it is possible, it’s like a strategy for survival in the street. Having a male posture, speaking in a deep voice, swearing all the time, fighting to show strength.

And boys do the same. I guess the worst insult you can pay a boy or male adolescent living in the street is ‘woman’. That’s the worst insult, to be called ‘woman’, ‘Maria’, ‘servant’, ‘wife’. It is the most degrading thing someone can say to you. I remember once we were working with an adolescent, she asked me for something specific, suppose “I need 15 pesos to buy a pencil case”. I told her “I can’t give you the money for this and that...” And she replied “you’re playing the woman” as something negative. And this made me think. In that situation a girl was saying to me “you’re playing the woman” and I realised that “being a woman” had no value for her. Being a woman for her was something negative, and that was her way of surviving in the street. (Qualified Informant 4)

Experiences of discrimination suffered by these children living in the street and socialising there for many hours a day, with no one to guarantee the satisfaction of their basic needs, favour the development of self-preservation strategies. As the interviewee expressed, children become masculine as a way to bear the aggressions, they assume a *stronger* identity. Being *another* person by occupying a place that enables them to exercise power over others also reproduces social discriminatory relationship patterns. This is expressed in the title: *The discriminated Discriminate*, which emphasises the denial of the freedom to choose. We cannot decide how we should relate. Social conditions lead to a way of action that reproduces the discrimination suffered.

Turning a Blind Eye

Another reaction to discrimination involves a passive attitude, a non-reaction. Some people try to avoid or undermine the effects of discriminatory actions, since there is the underlying idea that ‘reacting’ will have the effect of making discrimination worse.

I let it go, I don’t mind, they can say whatever they want... they should realise the things that they say and do... (Montevideo, male adolescent, 19 years old)

Similarly, when several adolescents were asked about their reaction towards police arrests, they expressed the following:

Against the wall, and I say “I’m not doing anything”. How can I react...when there is violence. I have disobeyed the cops several times. It’s useless. Sometimes I am sitting there, quiet, and they come to bother me. And if you treat them nicely they think you are pulling their leg. Everything because of an informant. (Montevideo, male adolescent, 17 years old)

Nothing. I stay there, quiet, I don’t disrespect them... (Montevideo, male adolescent, 17 years old)

You have to take it easy, there's no other way.
(Montevideo, male adolescent, 15 years old)

It bothers me, yet there's nothing you can do about it, because at that moment they rule because you are behind bars, you are locked in... the worse you behave, the worse it will be for you. You have nothing, at least if you keep your mouth shut, they may give you something.
(Montevideo, male adolescent, 17 years old, discussion group of adolescents)

If you talk to them correctly, they will beat you the same, and if you talk to them badly, they will beat you as well, so it makes no difference at all.
(Montevideo, male adolescent, discussion group of adolescents)

The better you talk to them, the worse they treat you.
(Montevideo, male adolescent, discussion group of adolescents)

But if you answer violently, they will hit you with the truncheon on your head and there's no point because they will take you anyway, it's useless.
(Montevideo, male adolescent, discussion group of adolescents)

The relationship between agent and individual is loaded with 'intelligent submission'. What we are trying to express is that inaction is grounded on the idea of avoiding *worse evils*, as the popular saying goes. The reference to the treatment they receive from the police is recurrent. There is a strong element of repression, which breeds rejection and selective exercises of submission from adolescents who have learned the way of avoiding or reducing physical and psychological violence.

Indignation

Another reaction is indignation, rage or anger, which is expressed in different ways. When asked about their feelings regarding the discrimination situations they have experienced, they answered the following:

You feel anguish, rage. You don't know what you may feel, because it is impossible. If I want to hang out with someone who rummages through dustbins in the street, or who owns a car, and he wants to be my friend, but his parents won't let him because he is poor, or I am poor... (Paysandú, male adolescent, 16 years old)

I was hurt and angry. The thing is that there's nothing you can do at that moment, because you are locked in and you have nowhere to go. No matter how mad you get, you have nothing... (Montevideo, female adolescent, 17 years old)

I don't like being discriminated against. The sole fact of being discriminated against gets me mad. I tell the person, "look I don't like people saying that to me".
(Maldonado, male adolescent, 15 years old)

A bit of rage, but I try to handle it. It has happened to me in the street. When I get a job or study, it will be different... (Montevideo, male adolescent, 17 years old)

Powerlessness

Other reactions caused by discrimination are not knowing what to do, or knowing that it is helpless.

[How would you react to these situations of discrimination?] *First, you are like...what can you do, is there anything you can do about it? You can't. Whatever has happened has already happened, and you cannot change it. Obviously there are places you don't want to go back to, otherwise why do you go?*

(Paysandú, male adolescent, 18 years old)

[How did you react to these situations of discrimination?] *A little afraid, I don't know why.* (Maldonado, male adolescent, 13 years old)

...There in the Polytechnic too. There is one who is kind of... and they call him one-eyed. So he gets mad and starts to cry. Then he leaves the class because they call him "one-eyed". He feels discriminated against.

(Maldonado, male adolescent, 15 years old)

[Have you or your mother ever reported this situation, or have you ever done anything to make others respect your rights?] *No because it was the end of term, so I asked my mother to change me to another class, because I couldn't stand it anymore. I was crying all the time, that's why my mother changed me.*

(Rivera, female adolescent, 17 years old)

I felt, I felt embarrassed. Everyone stares at you.

(Montevideo, male adolescent, discussion group of adolescents)

Well... you get used to it, because it is always the same, you go there and you know you'll be discriminated against.

(Montevideo, male adolescent, adolescents discussion group)

You feel discriminated against. That whenever you turn around they'll be talking about you. People who don't even know you are already talking about you. Because sometimes I am dirty, begging for money.

(Montevideo, male adolescent, 17 years old)

At school we used to have a classmate who was "sort of feminine". So the boys would treat him as a deviant, and a lot more things. And once he even cried and then he was absent from class for a lot of days. (Rivera, male adolescent, 16 years old)

Powerlessness is expressed in many ways, either by assuming that any action is useless to fight discrimination, or by keeping away as a strategy to avoid confrontation. Both attitudes reflect the distrust and ignorance of the mechanisms that may be exercised to eliminate or reduce discrimination.

Indifference

Simulating indifference is one of the reactions, which seem to minimise the effects of discrimination since it prevents it from worsening. Not paying attention, not saying

anything or ignoring the perpetrator, arise as strategies carried out by adolescents when faced with discriminatory attitudes.

There are people who are totally indifferent. Some people may feel upset because of that but still say nothing. (Paysandú, female adolescent, 16 years old)

If you pay too much attention to them, you will always feel afraid that somebody will say something to you. I, at least, don't pay attention to it.
(Durazno, male adolescent, 18 years old)

They may say anything to me. Only you know who you are and what you are not.
(Maldonado, male adolescent, 15 years old)

Protective Reactions to Discrimination

Faced with situations of discrimination, the reactions of the environment may have a positive impact, which provides effective support to the child and therefore enable him/her to overcome the negative effects.

At first, when I talked to them, and then it became clear, that I was absolutely discriminated against. They would say "don't let him stand here because he likes men", all those awful remarks. Then, at last, they realised I was still the same person.
(Montevideo, male adolescent, 19 years old)

My family encourages me, they would help me in everything they can. Here teachers want us to have an occupation, they want to help us. Otherwise we are going to stay in the streets, making trouble; doing anything. Before I came to Gurises Unidos my mind was somewhere else. Then I came here and started working and studying. They tell you to do this or not to do that. They support me.
(Montevideo, male adolescent, 17 years old)

I found friends who don't discriminate against me. Good people. I have only one true friend, the others are people I know. He supports me in everything. That makes me feel good. (Durazno, male adolescents, 17 years old)

Teachers don't discriminate at all, they try to help us. They used just to teach, now they are more companions... (Durazno, male adolescent, 18 years old)

As we have previously expressed, discrimination against children and adolescents can have devastating effects on self-esteem. It delays their development, reduces their self-confidence and prevents the participation of the child in group activities. Just as the exercise of the right to participation – opinion, association and freedom of expression – has a synergic effect in promoting the rights of children and adolescents, discrimination operates in the opposite direction, by restricting and inhibiting the exercise of human rights.

Chapter 9

Final Remarks

Discrimination against Uruguayan children and adolescents is a reality that can be seen, and its most radical expression takes place through official mechanisms. These official mechanisms are responsible for the socio-economic discrimination suffered by almost half the child and adolescent population; which results from the situation of poverty in which they are born and which then affects and conditions their whole development. These aspects have a structural impact on the violation of economic, social and cultural rights. On the basis of these aspects negative initial conditions are established, to which other specific forms of discrimination are added, such as the ones described in Chapter 5.

The non-discrimination approach offers us the possibility of understanding the reality of children and adolescents from a critical perspective. It enables us to question the institutional mechanisms, the public policies, the professional practices or the outsourced management of policies directed towards children and adolescents. As we have stated in the preface, Uruguay has mythologised its hyper-integration nature, constructing a treatise aimed at smoothing out the differences, and highlighting the exercise of tolerance as a national value. That image, which was passed on to us, collapsed catastrophically a long time ago. Today this is even clearer as a result of the effects of the joint crisis – in the economic and political sectors – which has structural features if analyzed from the perspective of thousands of people living in poverty in Uruguay.

The impact of discrimination in creating the subjectivity of children and adolescents is manifest. One of its main features is the loss of trust in themselves and in others. This is one of the worst effects of discrimination, as it regards children and adolescents as things, turning them into the impotent targets of exclusion. Many of them lose hope of leading a life without deprivations, they do not believe their situation can change nor can they imagine different worlds that will include them in collective and integrating projects.

Such a context cuts out what is enigmatic in childhood. Arendt says that since man is capable of action, the most unlikely thing can be expected of him. Childhood as something new to the world has the potential to provoke radical changes. In Uruguay this newness is conditioned by factors that have an impact on the increase in child mortality for reasons that are avoidable (low weight at birth, childhood diarrhoea or infections). Birth and mortality are heavily influenced by the political management of birth and death, with human dignity and dehumanisation.

With the rhetorical impact of the Convention on the Rights of the Child confirmed, we are in the best condition possible to process the changes in institutional and legal structures, in the collective perception, in interpersonal and professional practices, and in the proposed methodology in favour of the actual exercise of the human rights of children and adolescents.

Both affirmative actions and proposals promoting the respect for diversity, and the acceptance and integration of differences, are part of the necessary strategies to reverse discriminatory situations such as the ones shown, or on the grounds of any other distinction which implies preventing the exercise of a certain right or liberty.

The principle of equality and non-discrimination is enshrined in our legislation. Of equal importance with this regulatory enshrinement is the enforcement of these provisions and the establishment of effective mechanisms to fight against all forms of discrimination against children and adolescents.

All these mechanisms must be accompanied by the training of the people who work with children and adolescents, the incorporation of the rights of the child in the study plans at all educational levels, and the mounting of information campaigns to eradicate discriminatory attitudes against children and adolescents, and to promote respect for their basic rights.

A favoured strategy for fighting discrimination is to promote the exercise by children and adolescents of their right to participate (to express themselves freely, to give their opinion in matters which affect them, to associate with other children or adolescents). This is a synergic right that encourages the enjoyment of other rights. Beyond the role of the State and of social or non-governmental organisations in promoting the rights of children and adolescents, children and adolescents themselves have a role to play in the defence of their own rights. Giving children and adolescents the chance to exercise their civil and political rights, by assuming a key role in building democracy, is without any doubt, a certain way to avoid or at least reduce discrimination against them.

Annex

Systematisation of international and national laws relating to the Principle of equality and non-discrimination of children and adolescents.

I. Preliminary Considerations

a. Objectives

The objective of this compilation is to unify and systematise the laws relating to the principle of equality and non-discrimination of children and adolescents, thus facilitating its access to the user.

The work carried out shall serve as a basis for future compilations that go into greater depth and supplement this present one.

The laws have been divided into two chapters:

- a) International laws.
- b) National laws.

The first chapter has been divided into two sub-divisions relating to the laws of the (i) universal system and the laws of the (ii) Inter-American system.

The laws have been ordered chronologically within each one of these chapters and sub-divisions.

b. Criteria

Regarding the criteria used in this work, the simplest forms of systematisation were preferred. A footnote to the article was used at the end of the law cited.

Due to lack of space, some laws are not transcribed; they are instead only mentioned or cited.

Not all the laws relating to the principle of equality and non-discrimination have been systematised, only some of them. Especially the ones referring to discrimination against children and adolescents, and the general laws we consider are the most representative of the evolution of the legal thinking in these matters.

II. Principle of Equality and Non-discrimination

a. International laws

i. Universal system

(1944) The International Labour Organisation Declaration Concerning Aims and Purposes

II. Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice, the Conference affirms that:

(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

1946C78 Medical Examination of Young Persons (Non-Industrial Occupations) Convention. Ratified by law 12.030

Article 6 - 1. Appropriate measures shall be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations.

2. The nature and extent of such measures shall be determined by the competent authority; for this purpose co-operation shall be established between the labour, health, educational and social services concerned, and effective liaison shall be maintained between these services in order to carry out such measures.

(1948) Universal Declaration of Human Rights

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Note: Adopted and proclaimed by the General Assembly under Resolution 217 A (III), dated December 10th, 1948.

(1949) Geneva Convention adopted on August 12th, 1949 relative to the Protection of Civilian Persons in Time of War

Article 3 - In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

Note: See also similar provisions of the Geneva Convention adopted on August 12th, 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva Convention relative to the Treatment of Prisoners of War. Geneva Convention relative to the Protection of Civilian Persons in Time of War.

(1951) C100 Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. Ratified by Law 16.063

Article 1 - For the purpose of this Convention:

(...) (b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Article 2 - 1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of:

- (a) national laws or regulations;
- (b) legally established or recognised machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.

(1958) C111. Convention concerning Discrimination in Respect of Employment and Occupation. Ratified by Law 16.063

Article 1 - For the purpose of this Convention the term discrimination includes:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(...)

Note: See all the Convention. This is the first definition of 'discrimination' within an international law.

(1959) Declaration of the Rights of the Child

Principle 1 - The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 5 - The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 10 - The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

Note: Declaration of the Rights of the Child, Proclaimed by the General Assembly on 20 November 1959.

(1960) Convention against Discrimination in Education. Ratified by law 17.724 on December 24th, 2003

Article 1 - For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour,

sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Note: Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation on 14 December 1960. Entered into effect on May 22nd, 1962.

(1963) United Nations Declaration on the Elimination of All Forms of Racial Discrimination. Proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963

(1965) International Convention on the Elimination of All Forms of Racial Discrimination. Ratified by law 13.670

Article 1 - In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. General observation on its application.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2 - 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimina-

tion against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything that tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 5 - In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(...)

(d) Other civil rights, in particular:

(...)

(vi) The right to inherit.

Note: adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19. See following articles.

**(1967) Declaration on the Elimination of Discrimination against Women
Proclaimed by General Assembly resolution 2263(XXII) of 7 November 1967.
Agreement between articles 3 and following**

(1968) Proclamation of Teheran

2. It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions;

8. The peoples of the world must be made fully aware of the evils of racial discrimination and must join in combating them. The implementation of this principle of non-discrimination (...) constitutes a most urgent task of mankind at the international as well as at the national level.

11. Gross denials of human rights arising from discrimination on grounds of race,

religion, belief or expressions of opinion outrage the conscience of mankind and endanger the foundations of freedom, justice and peace in the world;

15. The discrimination of which women are still victims in various regions of the world must be eliminated. An inferior status for women is contrary to the Charter of the United Nations as well as the provisions of the Universal Declaration of Human Rights. The full implementation of the Declaration on the Elimination of Discrimination against Women is a necessity for the progress of mankind (...)

(1969) Declaration on Social Progress and Development. Proclaimed by General Assembly resolution 2542 (XXIV) of 11 December 1969

(1972) Declaration of the United Nations Conference on the Human Environment

Principle 1. Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated..

Note: This Declaration is part (Chapter I, Part One) of the Report on the United Nations Conference on the Human Environment. This Conference was held in Stockholm, Sweden, from June 5th to 16th of 1972.

(1975) Declaration on the Rights of Disabled Persons

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

(...)

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

Note: see full text of the Declaration.

(1976) International Covenant on Civil and Political Rights. Ratified by law 13.751

Article 2 - 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 - The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

(...)

Article 16 - Everyone shall have the right to recognition everywhere as a person before the law.

(...)

Article 26 - All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(...)

Article 27 - In those States in which ethnic (...) minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Note: Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

(1976) International Covenant on Economic, Social and Cultural Rights.

Ratified by Law 13.751

Article 2 - (...) 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(...)

Article 3 - The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Note: Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

(1977) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Ratified by law 15.764

The same law ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

(1979) Convention on the Elimination of All Forms of Discrimination against Women. Ratified by Law 15.164

Article 1 - For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Note: 1979, New York, USA. Entered into force Sept. 3, 1981. Agreement: articles 2 and following.

(1981) C156 Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. Ratified by Law 16.063

Article 1 - 1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as workers with family responsibilities.

Note: Adopted by the General Conference of the International Labour Organisation, during the 60th session of the Conference held in Geneva in June 1981.

(1984) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratified by Law 15.798

Article 1 - 1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Note: Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Entry into force: 26 June 1987, in accordance with article 27.

(1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The ‘Beijing Rules’)

(...) 2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. (...)

Note: Adopted by General Assembly resolution 40/33 of 28 November 1985.

(1986) Declaration on the Right to Development. Adopted by General Assembly resolution 41/128 of 4 December 1986

(1990) Convention on the Rights of the Child. Ratified by Law 16.137

Article 2 - 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social

origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

(...)

Article 7 - 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

(...)

Article 23 - 1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

(...)

Article 27 - 1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

(...)

Article 29 - 1. States Parties agree that the education of the child shall be directed to:

(...)(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own (...)

Article 30 - In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

(1990) World Declaration on Education for all “*Meeting Basic Learning Needs*”

(...) Article 3 - Universalising access and promoting equity. 1. Basic education should be provided to all children, youth and adults. To this end, basic education services of qua-

lity should be expanded and consistent measures must be taken to reduce disparities.

For basic education to be equitable, all children, youth and adults must be given the opportunity to achieve and maintain an acceptable level of learning.

The most urgent priority is to ensure access to, and improve the quality of, education for children and women, and to remove every obstacle that hampers their active participation. All gender stereotyping in education should be eliminated.

An active commitment must be made to removing educational disparities. Under-served groups: the poor; street and working children; rural and remote populations; nomads and migrant workers; indigenous peoples; ethnic, racial, and linguistic minorities; refugees; those displaced by war; and people under occupation, should not suffer any discrimination in access to learning opportunities.

The learning needs of the disabled demand special attention. Steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system.

Note: Jomtien, Thailand, March 5th to 9th, 1990.

(1990) United Nations Minimum Rules for Non-Custodial Measures (The Tokyo Rules)

(...) 2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

(...)

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.(...)

Note: Adopted by General Assembly resolution 45/110 of 14 December 1990.

(1990) United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

3. For the purposes of the interpretation of the present Guidelines, a child-centered orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control.

(...)

10. Emphasis should be placed on preventive policies facilitating the successful socialisation and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organisations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialisation and integration processes.

(...)

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialisation of children have to be designed.

(...)

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(...)

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilisations different from the child's own and for human rights and fundamental freedoms;

(...)

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences.

(...)

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitised to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

(...)

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

(...)

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

(...)

Note: Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

(1990) United Nations Rules for the Protection of Juveniles Deprived of their Liberty

(...) Rule 4 - The Rules should be applied impartially to all juveniles, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

(...)

Note: Adopted and proclaimed by General Assembly resolution 45/113 of 14 December 1990.

(1990) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Adopted by General Assembly resolution 47/135 of 18 December 1990

(1992) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Article 1 - 1. States shall protect the existence and the national or ethnic, cultural,

religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2 - 1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

(...)

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Note: Adopted by General Assembly resolution 47/135 of 18 December 1992. See full text of Declaration.

(1993) Vienna Declaration and Programme of Action

(...) Directive 21. (...) In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight.

(...)

Part II, Directive 48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide (...).

Part II, Directive 49. The Conference urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

(1998) Lisbon Declaration on Youth Policies and Programmes. Adopted at the World Conference of Ministers Responsible for Youth, held at Lisbon from 8 to 12 August 1998

(1999) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Ratified by Law 17.338

Article 1 - A State Party to the present Protocol ("State Party") recognises the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Note: Adopted by the General Assembly of the United Nations on 6 October 1999. Ratified by law 17.338 of May 2001.

(2000) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Ratified by law 17.559

(...) 4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

(...)

Note: General Assembly – Resolution A/RES/54/263 of 25 May 2000.

(2001) Durban Declaration and Programme of Action

(...) 9. We note with concern that racism, racial discrimination, xenophobia and related intolerance may be aggravated by, *inter alia*, inequitable distribution of wealth, marginalisation and social exclusion;

(...)

17. We note the importance of paying special attention to new manifestations of racism, racial discrimination, xenophobia and related intolerance to which youth and other vulnerable groups might be exposed;

(...)

31. We also express our deep concern whenever indicators in the fields of, *inter alia*, education, employment, health, housing, infant mortality and life expectancy for many peoples show a situation of disadvantage, particularly where the contributing factors include racism, racial discrimination, xenophobia and related intolerance;

(...)

72. We note with concern the large number of children and young people, particularly girls, among the victims of racism, racial discrimination, xenophobia and related intolerance and stress the need to incorporate special measures, in accordance with the principle of the best interests of the child and respect for his or her views, in programmes to combat racism, racial discrimination, xenophobia and related intolerance, in order to give priority attention to the rights and the situation of children and young people who are victims of these practices;

(...)

Note: World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (South Africa), August 31st to September 8th 2001.

ii. Inter-American System

(1948) American Declaration of the Rights and Duties of Man

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Article XVII. Every person has the right to be recognised everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

Note: Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

(1969) American Convention on Human Rights. Ratified by Law 15.737

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

(...)

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Note: San José, Costa Rica November 7th to 22nd, 1969.

(1988) Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”). Ratified by Law 16.519

Article 3 - Obligation of non-discrimination. The States Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, colour, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

(...)

Article 6 - (...) 2. The States Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and professional training projects, in particular those directed to the handicapped (...).

(...)

Article 13 - Right to Education. 1. Everyone has the right to education.

2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

3. The States Parties to this Protocol recognise that in order to achieve the full exercise of the right to education:

(...)

e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.

(...)

Article 18 - Protection of the Handicapped. Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;

b. Provide special training to the families of the handicapped in order to help them

solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of these persons;

c. Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;

d. Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

(1994) Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Ratified by Law 16.735

(...)

Article 4 - Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The right to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;
- i. The right of freedom to profess her religion and beliefs within the law; and
- j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

(...)

Article 6 - The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.

Note: Adopted on June 9th, 1994, in Belém do Pará, Federal Republic of Brazil, in the 24th Ordinary Period of Sessions of the General Assembly of the Organisation of American States.

(1999) Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities. Ratified by Law 17.330

Article 1. For the purposes of this Convention, the following terms are defined:

1. Disability. The term “disability” means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.

2. Discrimination against persons with disabilities

a. The term “discrimination against persons with disabilities” means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or

past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.

b. A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.

b. National Laws

National Constitution

Section 8 - All persons are equal before the law, there being no other distinction between them than those given by their talents and virtues.

Section 9 - It is hereby forbidden to create of privileges over property. No public authority shall be entitled to grant noble titles, honours, or hereditary distinctions.
(...)

Section 41 - (...) The law shall provide the necessary measures to protect children and adolescents against physical, intellectual or moral abandonment by their parents or guardians, and to protect them against exploitation and abuse.

Section 42 - Parents shall have the same duties towards children born out of wedlock as towards those born in it. (...)
(...)

Section 46 - The State shall provide asylum to indigents and people who lack sufficient resources who, on account of a permanent physical or mental disability, are incapacitated for of work.
(...)

Civil Code

(...) Article 21 - All persons who belong to the human race are considered persons.
(...)

Article 22 - Citizens are those so declared by the State's Constitution. Others are aliens. The Uruguayan law does not recognise any difference between Uruguayans and aliens, in respect of the acquisition and enjoyment of the civil rights governed under this Code.
(...)

Law 10.783

Article 1 - Men and women have the same civil rights.
(...)

Article 6 - At any time, either spouse or both in agreement, may request without declaration of reason, the dissolution or the liquidation of the communal marital estate.
(...)

Article 9 - The conjugal domicile shall be determined with the agreement of both

spouses.

Article 10 - Both spouses shall contribute to household expenses (article 121 of the Civil Code) in proportion to their financial situation.

Article 11 - The custody of the child shall be exercised by both spouses, without prejudice to any judicial resolutions which may remove, suspend or limit its exercise or grant it to one of them, or to a third person, and of the covenants provided under article 172 of the Civil Code.

Article 12 - Where children who are under age have property of their own, the spouses shall decide which of them shall administer such property, notwithstanding the exceptions provided in the Civil Code.

(...)

Note: Sessions Room of the General Assembly, in Montevideo, September 11th, 1946.

Law 15.982

(...) Article 4. Equality of procedure – The court shall consider the parties as equals during the procedure.

Note: General Code of Procedure.

Law 15.587

Article 1. Workers shall be protected against all discrimination that attempts to undermine the freedom to join a union related to their employment.

Note: Sessions Room of the State Council, in Montevideo, June 27th, 1984.

Law 16.045

Article 1 - All discrimination which violates the principle of equality of treatment and opportunities for both sexes in any sector or branch of employment activity is hereby forbidden.

Article 2 - The prohibition referred to in the previous article shall also apply in respect of:

- A) Calls to occupy positions;
- B) Selection criteria;
- C) Recruitment and contracting;
- D) Performance evaluation criteria;
- E) Right to promotion and salary rise;
- F) Stability of employment;
- G) Social benefits;

H) Suspension and dismissal, particularly in cases of change in the person's marital status, pregnancy or breastfeeding;

I) Professional and technical training or retraining possibilities;

J) Qualification and up-dating

K) Remuneration criteria;

Article 3 - The fact of reserving the contracting of activities to a specific sex when such condition is essential for the performance of the same and the exceptions resulting from the International Labour Conventions ratified by the country shall not constitute discrimination.

Furthermore, compensatory discrimination aimed at promoting equality of opportunities and treatment for both sexes in specific situations of inequality, does not

fall under the scope of the prohibition referred to in article 1 of this law.

Article 4 - The Judge of the Labour Court of Montevideo, or the Department Judge of the Court of First Instance shall have jurisdiction in case of breach of the provisions of this law. At the request of the worker, the person who suffered damage as a result of the breach or at the request of their legal representatives, the Judge shall summon the parties for a hearing within three days, during which he/she may take the measures necessary to bring to an end the situation reported. If the Judge considers it proper, he/she may order the opening of evidence, in which case the procedure specified under articles 6 and following of Decree-Law 14.188, of April 5th, 1974, shall be followed. Failure to comply with a judgement passed shall oblige the defaulting party to pay compensation equivalent to 10 RU [ten readjustable units] for each day of default.

The remedy of appeal, which must be supported in law, should be filed within a fixed term of five –working days from the personal service of notice. The appeal shall be upheld with a transfer within equal period and the proceedings shall be submitted to the Labour Court of Appeals, whose judgement shall be final.

Article 5 - Without prejudice to the action specified in the foregoing Article, verified breaches shall be also punished by the Administration pursuant to article 289 and following of Law 15.903, of November 10th, 1987.

Article 6 - The State, and particularly the education authorities, shall carry out the necessary education campaigns all over the country, to promote interest in and understanding of the problems affecting female workers, to raise awareness of their situation both by themselves and their employers, and in particular, to remove the causes which prevent employees from fully applying their skills.

(...)

Note: Sessions Room of the General Assembly, in Montevideo, May 17th, 1989.

Decree 37/997 regulates Law 16.045, prohibiting the holding of invitations to apply for work, selections or appointments of personnel, which directly or indirectly establish sex-related demands. It is prohibited to discriminate by gender when setting criteria for performance evaluation, promotion, remuneration, training and retraining. Any limitation on the permanence in office of a person based on discriminatory criteria shall be unlawful with those based on changes in the marital status of the person, pregnancy, or breastfeeding, being considered particularly oppressive.

Any person who considers him/herself disadvantaged at work by reason of his/her sex, may report such situation to the Labour Inspectorate.

A National Commission will be created to implement education campaigns and to propose, coordinate and evaluate support programmes in respect of the issue in question.

Decree 365/999 that amends the Decree 37/997 in order to institutionalise the Tripartite Commission for Equality of Opportunities and Labour Relations.

Law 16.048

(...) Article 2 - The following article shall be included within the Criminal Code:

Article 149 bis. (Incitement to hatred, contempt or violence towards certain people). Any person who, in public, or through any other means of public dissemination incites to hatred, contempt, or any form of pain and suffering or physical violence

against one or more persons by reason of their skin colour, race, religion, or national or ethnic origin, shall be punished with 3 to 18 months in prison.

Article 3 - The following article shall be included within the Criminal Code:

Article 149 ter. (Commission of acts of hatred, contempt or violence against certain persons). Any person who commits acts of pain and suffering or physical violence, hatred or contempt against one or more persons by reason of their skin colour, race, religion or national or ethnic origin, shall be punished with six to twenty-four months in prison.

Note: Sessions Room of the House of Representatives in Montevideo, June 6th 1989. New wording given by law 17.677.

Law 16.095

CHAPTER 1. General rules.

Article 1 - (Purpose of the law). This Law provides for full protection for disabled persons, to ensure their health care, education, physical, psychological, social, economic and professional rehabilitation and their social security cover, and shall grant them the benefits, services and stimuli which enable the disadvantages caused by disability to be neutralised, thus giving them the opportunity, by means of their own effort, to play a role in the community, similar to that played by other persons.

Article 2 - (The concept of disability). A disabled person is considered to be any person suffering a permanent or prolonged, physical or mental, functional difference which in relation to his/her age and social environment implies a considerable disadvantage to his/her family, social, educational or labour integration.

Article 3 - (The concept of prevention). Prevention is the application of measures destined to prevent the occurrence of physical, sensory or mental disabilities, or, if these have already occurred, to prevent negative physical, psychological or social consequences resulting from them.

Article 4 - (Rehabilitation concept). Complete rehabilitation is the total process, which is characterised by the coordinated application of a series of medical, social, educational and labour measures, in order to habilitate or rehabilitate the individual. Its aim is to achieve the highest possible level of training and social integration of disabled persons, together with the actions aimed at removing the disadvantages of the environment in which they move, to permit the development of that ability.

Professional rehabilitation means the part of the complete rehabilitation process during which the means, especially professional guidance, professional training, and selective placement are provided, to permit disabled persons to obtain and keep suitable employment.

Article 5 - (Rights). Without prejudice to the rights provided by the domestic laws in force, and by the international labour conventions which have been ratified, the rights of disabled persons shall be those set forth in the Declarations on the Rights of Disabled Persons and the Declaration on the Rights of Mentally Handicapped Persons, dated December 9th, 1975 and December 20th 1971, respectively.

Disabled persons shall enjoy all rights, without exception and without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinions, national or ethnic origin, wealth, birth or any other circumstance, either personally referred to the disabled person, or to his/her family.

To this effect, specific recognition is given to the following rights:

A) To respect for their human dignity, whatever the origin, nature or seriousness of their disabilities and handicaps;

- B) To enjoy a decent life, as normal and full as possible;
- C) To take measures destined to allow him/her more autonomy;
- D) To receive health, psychological and functional care, including prosthesis and orthopaedic equipment, to receive medical and social rehabilitation, education, professional training and re-training, and work;
- E) To economic and social security and to a decent standard of living;
- F) To live with his/her family or alternate home;
- G) To be protected against exploitation, all discriminatory, abusive or degrading regulations or treatment;

H) To have competent legal assistance, whenever it is proven necessary for the protection of the person or his/her property. If subject to a law suit, the person should be submitted to a procedure appropriate to his/her physical and mental condition.

Article 6 - (State Protection). The State shall protect the rights of the disabled to the extent necessary and sufficient to allow his/her maximum advancement and individual and social development.

This protection shall also extend, as applicable, to:

- 1) The persons they depend on, or who take care of them.
- 2) The welfare entities with legal personality, whose specific goals are to promote the protection, development and integration of the disabled persons.
- 3) Private institutions with legal personality, which provide the same services they provide to all their members.

Article 7 - The State shall do all within is power to prevent disability of any kind and shall promote programs aimed at eradicating handicaps and disabilities which can be avoided.

Article 8 - Let the complete rehabilitation of disabled persons be declared in the national interest.

Article 9 - The amplitude of the measures adopted regarding disabled persons shall be adapted in all cases, to the nature and to the seriousness of the disability.

(...)

CHAPTER III. Special Policies.

Article 15 - The protection of disabled persons, regardless of their age, shall be carried out by means of actions and measures regarding their health care, education, social security and work.

Article 16 - The State shall provide coordinated assistance to the disabled persons who lack one or all the benefits mentioned in the above sub paragraphs, in order that they are able to perform a role in society similar to any other person.

For this purpose, it shall take the corresponding measures in the areas mentioned below, as well as in any other areas provided by law:

- A Health, psychological and social care;
- B Complete rehabilitation;
- C Special social security regime;
- D Special education programme;
- E Work and professional training;
- F Money or grants destined to facilitate their physical, working and intellectual activities;
- G Public transport;
- H Training of specialist staff for their guidance and rehabilitation;
- I Incentives for the entities that provide them with jobs;

J Education programmes by and for the community to the benefit of disabled persons:

K Urban and building adaptation;

Article 17 - An Advisory Service will be created to give:

- 1) Information on the rights of the disabled and on the means of rehabilitation.
- 2) Therapeutical, educational and employment guidance.
- 3) Information on the labour market.
- 4) Guidance and training for parents, guardians, family and helpers.

Article 18 - The Ministries, Local Governments, and other bodies involved in the fulfilment of this law have the power to allocate from each budget the necessary funds to cover the costs necessary to carry out the actions for which they are responsible.

CHAPTER IV.

Transfer of family property and right to inhabit.

Article 19 - A family property may be transferred to a disabled child for the time the disability persists, and provided that he/she does not own any other real estate. The property must be the habitual home of the beneficiary.

(...)

Article 23 - The former spouse, the spouse who is de facto separated and the natural father or mother of a child recognised or declared as such, with the custody or care of a disabled child, may apply in respect of the disabled child for right over the house for the duration of the disability. If the spouse or any of the natural parents of the disabled child refuses to give his/her consent, this will be granted in accordance with sub paragraph B) of article 6 of decree law 15.597, of July 19th, 1984.

CHAPTER V. Social Policies.

Article 24 - Social assistance shall be an integral part of all health care plans for the disabled.

(...)

Article 26 - A dynamic process of social integration shall be promoted, with the participation of the disabled person, his/her family and the community.

Article 27 - The progressive balancing of the money received by disabled people who are beneficiaries of the Family Assistance system, whether public or private to the area in which their parents, guardians, or other corresponding legal representatives work, shall be promoted.

(...)

CHAPTER VI. Health.

Article 29 - The prevention of handicap and disability is a right and duty of all citizens and of society as a whole, and shall form part of the priority obligations of the State in the public health and social security, occupational or industrial fields.

(...)

CHAPTER VII. Education.

Article 33 - The Ministry of Culture and Education shall facilitate and provide the disabled person –on a permanent basis, and without age limits- with the scientific, technical or pedagogical elements or means within the educational, physical, recreational, cultural and social fields, necessary for the full development of his/her intellectual, artistic, sporting, and social abilities.

Article 34 - Disabled persons should mingle with non-disabled persons in ordinary lessons, from kindergarten onwards, provided such integration is beneficial to them in all aspects.

If it is necessary they shall be provided with special supplementary education in their normal educational institution, with the proper supporting materials. Where the nature or degree of the disability so requires, they will be taught in special education

centres, by specialist teachers. Programmes will be adapted to the special situation of the disabled persons.

Article 35 - Disabled persons shall benefit from the right to general education, reeducation and proper professional training.

Article 36 - Where the inability to start or finish the compulsory education stage has been duly proven, the disabled person shall receive training to allow him/her to obtain an occupation appropriate to his/her vocation and possibilities.

For this purpose, special schools will have occupational training workshops, supervised by competent teachers, and duly equipped.

Article 37 - Any disabled person who has finished the compulsory education stage shall be given the opportunity to continue his/her studies.

Article 38 - The Ministry of Culture and Education, shall promote in all its training programmes and levels, the inclusion within the syllabus of regular courses, of information on and the study of disability related to the subject matter in question, and the importance of rehabilitation, together with the need to prevent disability.

Article 39 - The raising of the awareness and the education of the community on the meaning and behaviour appropriate to different disabilities, together with the need to prevent disability through different institutions or any organised human grouping, will be promoted.

Article 40 - Recreation, sports or social centres shall not discriminate against people protected by this law.

CHAPTER IX. Architecture and Urban Development.

Article 49 - Institutions which are in charge of public areas and buildings, as well as bodies which may provide technical advice in these matters, shall work together to draw up a set of rules to enable elements and provisions which are useful for the autonomous development of disabled persons to be incorporated.

Article 50 - The building, extension and alteration of buildings, either private or public, intended for public use, together with the planning and urban development of public areas, parks and gardens, shall be carried out in such a way as to make them accessible and usable by disabled people.

Article 51 - Local Governments must include in their respective Regulatory Plans or Urban Development Plans, the necessary provisions in order to adapt public roads, parks, gardens and buildings to the general rules approved.

Article 52 - Public bodies working with construction projects or whose offices draw architectural plans, must equally comply with the rules established in this matter.

Article 53 - Existing facilities, buildings, streets, parks, gardens that are to remain for a considerable period of time, shall be gradually adapted, pursuant to the order of priorities set by the regulations.

Article 54 - Public Entities shall authorise the necessary funding in their budgets to finance the changes to the buildings for which they are responsible.

Article 55 - In all building projects, some housing will be included, the architecture of which is appropriate to enable access and full enjoyment by disabled persons and their integration in the community in which they live.

CHAPTER X. Transport.

Article 56 - All national bus transport companies for the transport of passengers by land must carry disabled persons free of charge under the conditions required by the regulations. Facilities will be granted to private companies to permit them to adopt the necessary technical measures for the progressive adaptation of their buses to permit the transport of disabled persons.

Article 57 - Exemption from parking charges will be authorised for all duly identified disabled persons' vehicles.

CHAPTER XI. Tax Rules.

Article 58 - The Executive Branch is hereby empowered to exempt from the payment of all tariffs on the importing of medical equipment, prostheses, orthopaedic vehicles classified for personal use, and of technical aids to be used by the disabled or by institutions responsible for their care, together with the payment of tariffs on the importing of goods, materials and equipment required by rehabilitation centres, protected workshops, employers, and disabled persons and certain auxiliary elements and instruments which disabled people may need to obtain and keep their jobs.

Note: Sessions Room of the House of Representatives, in Montevideo, October 4th, 1989.

Decree 431/999 provided for the enforcement of the full system of protection of disabled persons, establishing that State bodies, together with non-State public entities, must, in order to provide vacancies, make a call for applicants in which only people duly registered on the Disabled Register may apply.

Law 16.169 replacing the provision of law 16.095 on the full system of protection for disabled people. The composition of the body in charge of the system of protection of disabled people is hereby amended.

Law 17.266 Article 1. As from the date of this present law, the compatibility between the activity of the disabled, either public or private, and the disability pension is hereby authorised.

The retirement pension generated by the said activity of the disabled person, described in the above sub paragraph, will also be compatible with the said pension.

Law 16.802

Article 3 - [...]

The owners of kindergartens shall be legally liable for any act of discrimination, sub paragraph 1) of Article 2 of the Convention on the Rights of the Child, Law 16.137, of September 28th, 1990, without prejudice to any liabilities which those persons involved in such acts may have incurred.

Law 16.873

Article 1. In order that companies may hire young persons under any of the contractual forms provided in this law and obtain the corresponding benefits, they must fulfill the following requirements:

A) Certify they have regularly paid the special social security contributions.

B) Have not, in the sixty days prior to the hiring of a person, or during the period of the same, dismissed any employee, or dismissed or made redundant permanent staff members who used to perform the same or similar tasks to those the hired person will perform in the company.

C) That they have been working in the country for at least a year, unless there is previous authorisation pursuant to the provisions of the corresponding legislation.

D) That the percentage of people hired under any of the forms provided herein does not exceed 20% (twenty per cent) of the total workforce of the company. In the case of sole traders or employers who employ up to five workers, they may not hire more than one employee under the conditions set forth in this law.

Note: This law establishes requirements and grants benefits to companies which

hire young persons in the contractual forms specified.

Decree 318/998. Regulates Law 16.873

Law 17.677

Article 1 - The following article hereby substitutes Article 149 bis of the Criminal Code, incorporated into the same by Law 16.048 of June 16th, 1989:

Article 149 bis (Incitement to hatred, contempt or violence towards certain persons). Any person who publicly or through other proper means of public dissemination incites to hatred, contempt or any other form of pain and suffering or physical violence against one or more persons by reason of their skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity, shall be punished with a sentence of three to eighteen months in prison.

Article 2 - The following article hereby substitutes Article 149 ter of the Criminal Code incorporated into the same by Law 16.048, of June 16th, 1989:

Article 149 ter (Commission of acts of hatred, contempt or violence against certain persons). Any person who commits acts of pain and suffering and physical violence of hatred or contempt against one or more persons by reason of their skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity, shall be punished with a sentence of six from twenty-four months in prison.