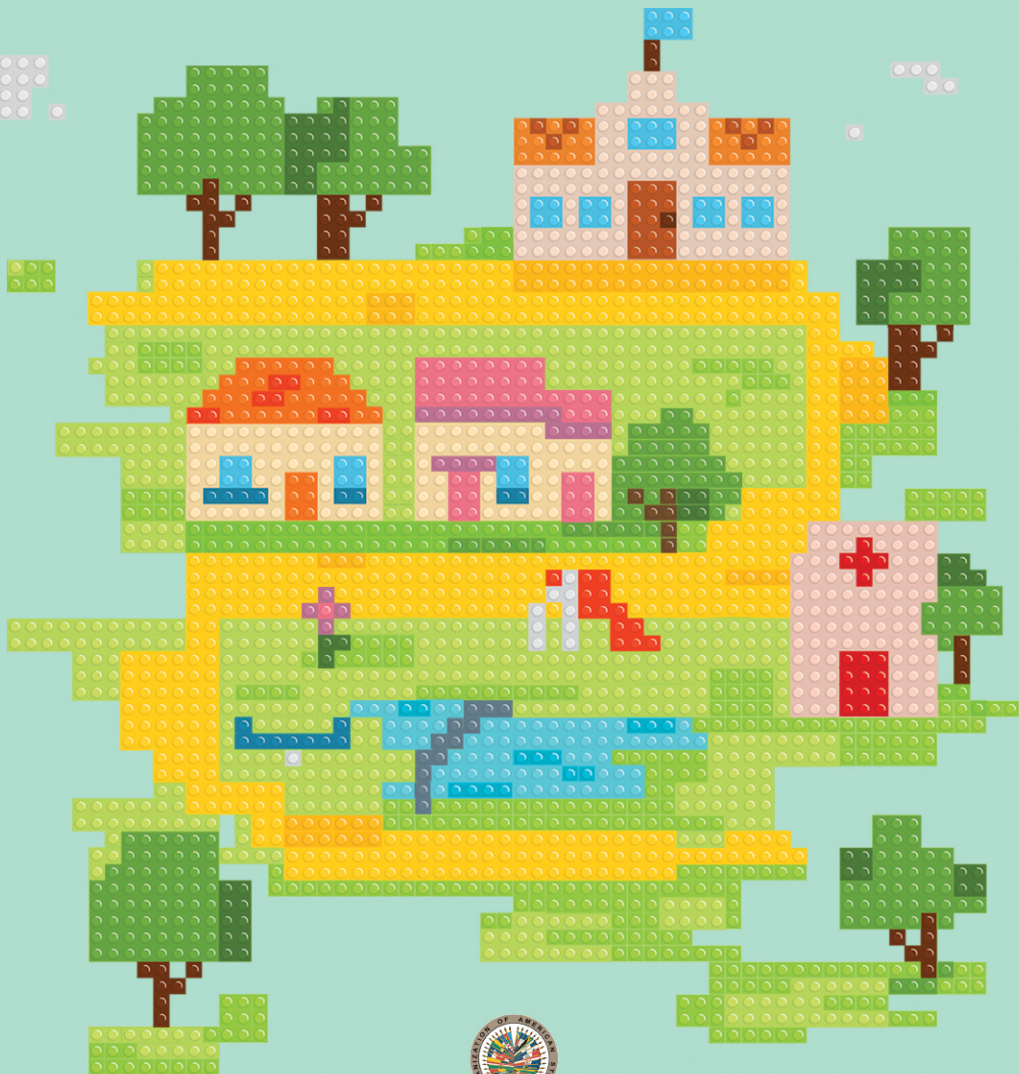


# Fulfillment of Children's Rights



**OAS**

More rights for more people

## Cover Art Concept

The mere legal recognition of the rights of children is insufficient to guarantee its effective respect and to transform the reality in which millions of children live in the region. A National Protection System is required to ensure the existence and functioning of an institutional framework and operational structure aimed at guaranteeing the full enjoyment, protection and defense of their rights. Their participation in the design and implementation of these systems is essential. Through playing, younger children communicate their vision of themselves and their needs, as seen in the community built with a set of insert pieces found on the cover of this report.

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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Towards the Effective Fulfillment of Children's Rights: National Protection Systems

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CHAPTER 1  
INTRODUCTION



# INTRODUCTION

## ***A. Introductory Remarks: Relevance and Importance***

1. International human rights law clearly recognizes the special status of the child<sup>1</sup> because of children's condition as developing and growing persons. Such recognition goes hand-in-hand with the establishment of a duty on the part of States to afford children special and enhanced protection; from this duty derives the principle of the best interests of the child, which requires States to make decisions and prioritize interventions that foster children's enjoyment of their rights as well as the protection thereof. This recognition is enshrined in Article 19 of the American Convention on Human Rights (hereinafter, the "American Convention" or the "ACHR"), Article VII of the American Declaration of the Rights and Duties of Man (hereinafter, the "American Declaration" or the "ADRDM"), and the articles of the United Nations Convention on the Rights of the Child (hereinafter, the "Convention on the Rights of the Child" or the "CRC"), as well as in all of the other main international human rights instruments having to do with children.
2. Generally speaking, after the entry into force and ratification of the Convention on the Rights of the Child, the States of the region have, at a national level, met their obligation to transpose and comply with this international instrument by adopting codes for children or special child protection laws that recognize the rights of children and adolescents.
3. The legislative commitment undertaken by the States when it comes to children is evident and has enabled clear achievements to be made and very important milestones to be reached in this area, thereby transforming the reality for children in our hemisphere, with advances such as: Recognition of compulsory and free education for children and reductions in illiteracy rates; falling infant mortality and morbidity rates thanks to

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\* The Commission acknowledges the special efforts of its Executive Secretariat in producing this report, and in particular, Angels Simon, Human Rights Specialist.

<sup>1</sup> The Commission uses the term "child" to indiscriminately refer to all male and female children and adolescents, which in the United Nations Convention on the Rights of the Child and the international *corpus juris* on the subject matter, is defined as every human being below the age of eighteen years.

measures like vaccination programs; and declines in malnutrition levels as a result of nutritional support programs, just to offer a few well-known examples. While progress is visible in all the States of the region, that challenges persist in connection with children's and adolescents' effective enjoyment of their rights is also undeniable.

4. As part of its mandate, the Inter-American Commission on Human Rights (IACHR) continuously monitors conditions in connection with children's and adolescents' enjoyment of their rights in the different countries of the region, as well as situations in which such rights have been violated and the responses offered by the States to protect, restore, and repair those rights. While the Commission acknowledges and commends advances like the ones described, it also notes with concern the profound gap between the rights recognized in laws and the reality in which millions of children and adolescents in the region live. Many of the issues surrounding the rights of children are, to a greater or lesser degree, experienced by the majority of the States.
5. For example, the IACHR observes that sexual violence, particularly against girls and adolescents, is a serious form of violence that is widespread in the hemisphere, with several States having among the highest rates in the world.<sup>2</sup> Adolescent pregnancy is likewise a serious problem, with this region being the only one in the world in which births among girls younger than 15 years of age are on the rise, with nearly 10 million pregnancies per year; the region also ranks second with regard to the number of pregnancies among teens between the ages of 15 and 19.<sup>3</sup> Corporal punishment of children, for its part, is deeply rooted and tolerated socially and even predominates in countries that have introduced laws that expressly ban its use as a form of discipline.<sup>4</sup> Thousands of children continue to be placed unnecessarily into institutions in the region because

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<sup>2</sup> IACHR, press releases, [IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights](#), March 8, 2016; IACHR, press release, [IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region](#), October 12, 2016; IACHR, press release, [It Is Time to Increase Action to End and Prevent Violence against Women and Girls](#), December 2, 2016.

<sup>3</sup> IACHR, 165<sup>th</sup> Regular Period of Sessions, thematic hearing [Sexual Violence against Girls in Latin America and the Caribbean](#), October 24<sup>th</sup> 2017, IACHR, 149<sup>th</sup> regular session, thematic hearing on [Human Rights of Girls in Latin America and the Caribbean](#), October 28, 2013, and United Nations Population Fund (UNFPA), [Motherhood in Childhood. Facing the challenge of adolescent pregnancy](#), p. 5, 6, 10, 11 y 12.

<sup>4</sup> See IACHR, *Report on Corporal Punishment and the Human Rights of Children and Adolescents*, 2009. Uruguay, Venezuela, Costa Rica, Honduras, Brazil, Bolivia, Argentina, Nicaragua, Peru, and Paraguay are the only countries in the region that have adopted laws or legal reforms expressly introducing an outright ban on corporal punishment in all settings, including in the home and schools. See [End corporal punishment](#).

of situations of vulnerability linked to poverty and other social causes, despite legal recognition of the right of children to live with their families.<sup>5</sup> In addition, although child labor has substantially decreased in the region, 5.7 million children work without having reached the minimum employment age and do jobs that are harmful to their development or that constitute a type of exploitation according to ILO Convention 182 on the worst forms of child labour.<sup>6</sup> Furthermore, even taking into account the major progress made in the area of education, 1.4 million children have never attended school and 5.6 percent have dropped out of school before finishing their education (10 million); this situation is particularly widespread in some Central American and Andean countries where approximately 10 percent of children ages 6 to 17 do not regularly attend school.<sup>7</sup> Additionally, the fact that this region is the most violent in the world means that several countries suffer some of the highest adolescent homicide rates, as well as an increased risk that children and adolescents will be recruited and used by organized crime for their own ends.

6. In addition to the above issues, which are well-known and which demonstrate the gap between recognition of the rights of children in States' domestic legislation and reality, it warrants noting that there are phenomena that have an adverse impact on the rights of the child, but that are unseen and make the existing gap even wider. For example, the children of persons deprived of their liberty suffer serious checks on the enjoyment of their rights as a result of their parents being incarcerated; this has an impact on their overall development, well-being, and access to opportunities on equal terms with other children even though children of incarcerated parents have the same rights as all other children and should not be treated as though they themselves were in trouble with the law because of the actions of their parents. This is a growing problem because of the high number of persons deprived of liberty in the region, especially in connection with the excessive use of pretrial detention and the use of imprisonment for non-violent drug offenses like micro-trafficking.<sup>8</sup>

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<sup>5</sup> See, for example, IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, OEA/Ser.L/V/II.doc 54/13, October 17, 2013.

<sup>6</sup> Figures provided by the [International Labour Organization](#) (ILO)

<sup>7</sup> IACHR, *Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, 2016, para. 294. UNICEF and ECLAC, *Child Poverty in Latin America and the Caribbean*, 2010, p. 69.

<sup>8</sup> IACHR, 156th Regular Period of Sessions, thematic hearing, *Situation of Children of Persons Deprived of Liberty in the Americas*, October 22, 2015. See also, United Nations Committee on the Rights of the Child, documents relating to the *Day of General Discussion* devoted to this issue and the Committee's *Recommendations*, 2011. Also, Church World Service América Latina y el Caribe, Gurises Unidos and Plataforma Regional por la Defensa de los Derechos de Niñas, Niños y Adolescentes con madres y padres encarcelados (NNAPes), *¿Invisibles hasta cuándo?*

7. Even though there is recognition and genuine concern on the part of States with respect to these and other problems that affect children, the measures they have adopted appear to be inadequate. Legal recognition of the rights of children and legislative changes to, for example, ban child labor or criminalize and institute heavier penalties for perpetrators of sexual violence against children and adolescents have proven insufficient when it comes to putting an end to these situations. Over time there have also not been substantive decreases in prevalence levels for several of these rights violations despite campaigns and programs targeting these issues, which calls into question the effectiveness of public policies. Impunity levels for crimes against children are also not showing promising results compared to progress made with other populations groups, which have seen an increase in the number of reports, access to justice, and the number of convictions, which further serves to deter repetition of these violations.

8. Given the context described, it is clear that mere legal recognition of children's rights is not enough to ensure the effective enjoyment of such rights or to transform children's reality. Based on General Comment no. 5 of the Committee on the Rights of the Child, the notion that in order to protect children and their rights, a set of elements is needed—in addition to laws—that make up a whole aimed at ensuring the rights of children has been expanded and broadened. Among such elements, the following stand out:<sup>9</sup>

- public policies, practices, programs, and services;
- institutional coordination mechanisms for planning, developing, adopting, enforcing, monitoring, and evaluating public policies, taking into account different territorial levels (institutional framework);
- data collection and analysis systems;
- independent monitoring mechanisms;
- systems for disseminating and raising awareness about the rights of children;
- specialized and sufficient human resources;
- adequate financial resources for funding policies, programs, and services; and

[Una primera aproximación a la vida y derechos de niñas, niños y adolescentes con referentes adultos encarcelados](#), 2014.

<sup>9</sup> Committee on the Rights of the Child, General Comment No. 5 “General Measures of Implementation of the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44)”, CRC/GC/2003/5, November 27, 2003.

protocols and standards for actions and service delivery as well as for case management, handling, and referral.

All of this as well in a context of participation by civil society organizations, communities, and children and adolescents themselves. **These are the components that normally stand out as parts of what is usually known in the countries of this region as the “national systems for the protection children’s rights” (hereinafter, the “systems” or the “national systems”).**

9. With respect to the foregoing, in addition to recognizing the rights of children and adolescents, a significant number of codes for children or special child protection laws generally include sections devoted to the assignment of jurisdiction and responsibilities among the authorities, as well as to the creation and operation of the institutions and the structures and mechanisms necessary to enforce the code or law. In other words, **they envisage the creation of an operational model to give effect to the rights recognized in the legislation.**<sup>10</sup>

10. On this score, the IACHR has noted that what are known as *national systems for the protection of children’s rights*, make up the fundamental framework and operational structure required for effective respect, protection and defense of the rights of children and adolescents, in the absence of which the legal frameworks providing for these rights are rendered unenforceable and ineffectual in practice and the rights themselves, impossible to realize.<sup>11</sup>

11. It should be noted that despite the fact that the term “national systems for the protection of children’s rights” is widely used in the countries to refer to the operational model and structures for the effective enforcement of laws that recognize the rights of the child, **in practice, the differences between the models are considerable.** Rather than follow a standard

<sup>10</sup> Alejandro Morlachetti, ECLAC and UNICEF, Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean, 2013. Usually, all rights of the child and situations affecting the enjoyment and exercise thereof are regulated under a single body of law, although prior to the entry into force of the CRC, regulation was in most instances spread out among several different statutes, which reflected the interdependent and complementary nature of all of the rights involved in order to attain full and comprehensive development of all boys and girls.

<sup>11</sup> IACHR, Press Release R176/16, IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents, November 28, 2016. IACHR, report, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, Prologue, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013.

system model, **each country follows its own model**, in keeping with the particular circumstances and context of each State, its own Constitution, legal framework, territorial and institutional structure, distribution of legal powers and available resources. **The systems are also dynamic and fluid** and can undergo changes over time in their structure and operation in order to better meet child protection needs. These operational models and the organizational designs, which were put into place in order to realize and ensure the rights of boys, girls and adolescents, are known by different names in each particular country, and there is also some variation in the definitions of these names, although many systems have similar organizational traits, operational logic and principles behind them.

12. As far as terminology is concerned, these operational models and organizational designs **have similar names, though with variations according to the country, and the definitions also differ somewhat**, though many systems resemble one another in their main organizational characteristics, operational logic, and principles.

13. The IACHR also cautions that the fact that a State may create an operational model for implementation of children's rights in its legislation and call it "national system for the protection of children's rights" does not mean that the State is fully meeting its international obligations when it comes to protecting the rights of children and adolescents. **This report specifically aims to indicate the obligations, principles, and standards that apply to the development and operation of these systems, pursuant to the obligations that flow from international human rights law.**

14. In general, all of the national systems of the States of the region aim to **address the issues of child protection and ensure these rights by taking a comprehensive and sustainable approach** although, in practical terms, States face significant challenges to effective implementation of rights. For the most part, the systems affirm the **role of parents and the family as having primary responsibility** for raising, caring for and protecting children and adolescents, as well as **recognizing States' responsibility** under international human rights law to provide special protection to children and adolescents because of their special condition as developing persons, from which the State's obligation to respect, protect and ensure the rights of children and adolescents flows, in keeping with applicable international instruments, and translated into policies, programs, and services. The systems also **identify abuse, neglect, abandonment, exploitation and, in general, violence against children as priority issues**, on which a considerable portion of resources and institutional efforts are spent. They not only seek to **promote changes** in



laws and regulations, but also **in views, attitudes and practices**, which in the end leads to increased child protection capacity in the home, school, community and care facilities, among other settings. The national systems also assign a **more central and important role to the children and adolescents themselves** by promoting involvement in social interactions, raising their awareness about their rights and thus empowering them to exercise those rights, and recognizing the value of their views. There is also a certain level of **recognition of the contributions civil society organizations make** to the promotion and protection of children's rights. The involvement of these organizations in the operation of national systems for the protection of children's rights is envisioned in the assorted codes and laws, although the conditions for doing so vary among the countries.

15. The IACHR acknowledges the significant efforts made by the States in this subject area, without which, the progress made in recent decades could not have been achieved. Notwithstanding, the IACHR believes that it is essential and is a matter of urgency to continue to invest in efforts to strengthen operational structures and mechanisms, as well as policies, programs and services, so that recognition of the rights of children and adolescents goes well beyond laws and is reflected in everyday life. In this regard, the IACHR has issued a general appeal to all States of the region, and appeals to specific States, when the opportunity has arisen to take a position on their national systems, to redouble efforts to strengthen the workings of the laws, programs and institutions of their child protection systems, in their **legislative, programmatic, and institutional dimensions**<sup>12</sup>. Despite the crucial role played by the national systems, proper functioning calls for all States of the region, without exception, to pay closer attention.
16. The IACHR also applauds the significant interest in this topic held by the authorities in the region responsible for matters related to children. Several States have recently adopted or amended their legislation to consider the creation, operation, and strengthening of their national systems for the protection of children's rights, while others are currently in the process of drafting laws, with the recognition that it is important to have an operational model and the structures necessary to fully protect children's rights and to do away with the obsolete vision that entailed a succession of independent programs that addressed different issues in a compartmentalized manner. The IACHR has been witness to the prominent

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<sup>12</sup> IACHR, Press Release R176/16, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016. IACHR, report, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), Prologue, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013.

interest shown by high-level authorities on children and adolescents to share experiences, best practices, and challenges amongst themselves in connection with their national systems for the protection of children's rights, mindful of the fact that the having such systems in operation is key to protecting children; this could be seen during the *First Inter-American Forum on National Systems for the Protection of Children's Rights* held in April 2017 under the auspices of the States of Mexico and Costa Rica and attended by high-level authorities on children and adolescents from 16 States in the region.<sup>13</sup>

17. Based on the foregoing, there is a need to close a gap and receive contributions from the inter-American system that help to identify the obligations States have, as well as the principles and standards based on international human rights law that are applicable to the operation of national systems for the protection of children's rights, to serve as substantive input to processes underway in the region to develop and strengthen these systems. This report is primarily aimed at authorities, officials, and specialists who work in the area of children's rights, as well as at civil society organizations that work to promote and protect the rights of children and adolescents.

## ***B. Scope and Objectives of the Report***

18. The instant report is intended to engage in a deeper examination of the current capacities of national systems to fulfill the legal mandate to ensure the rights of children and to adequately respond to violations of their rights, by identifying the major forward steps taken as well as the most common challenges faced by the systems.
19. Because the topic is so wide-ranging and a number of different models have cropped up in the region, rather than a single operational model for every country to follow or emulate, this report addresses the major issues identified by the IACHR as lying at the core of national systems. The report does not aim to provide an exhaustive comparative analysis of the structures and workings of all national systems in the region, but rather to identify what principles and standards should be applied in the way national systems are designed and function in accordance with international human rights law. The Commission also identifies the major

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<sup>13</sup> The States that took part in the Forum, via their high-level authorities on children and adolescents were: Argentina, Barbados, Bolivia, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Trinidad and Tobago, the United States, and Uruguay.

challenges and gaps existing in practice. In addition, the IACHR issues several recommendations to guide States' efforts to enhance and strengthen their national system and how they function in order to comply with States' international obligations in the area of protection of the rights of children and adolescents. The report is intended to provide an opportunity for States to review and assess the effectiveness of their national systems.

### ***C. Limitations of the Report***

20. Because the IACHR had the most access to information and statistics from the countries of Latin America, the observations expressed in this report about the most common traits of the institutional structures of national systems are mostly based on information received from those countries. It must also be clarified that differences in legal systems (common law vs. civil law systems) and socio-cultural contexts account for some variation in how national systems are created and function between the English-speaking Caribbean countries, the United States and Canada, on the one hand, and the countries of Latin America, on the other hand. Consequently, some of the descriptions of the structure of national systems are not necessarily applicable to all countries, particularly, those of the Caribbean, the United States and Canada. Even so, the basic principles upon which national systems should be structured and function and the legal obligations flowing from the CRC are applicable to all States<sup>14</sup> and, likewise,

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<sup>14</sup> The United States is not a party to the American Convention on Human Rights or to the United Nations Convention on the Rights of the Child and, as such, is the only country of the region that has not ratified this international treaty on the rights of the child. Nonetheless, the principles of the Charter of the Organization of American States (OAS) and the American Declaration of the Rights and Duties of Man are sources of international obligation for the United States, in particular, Article VII of the American Declaration, in conjunction with the concept of *corpus juris* that the Court and the Commission apply in interpreting the content and scope of the duty to provide special protection to children emanating from Article VII of the American Declaration and from Article 19 of the American Convention. In keeping with the well-established and long-standing jurisprudence and practice of the Inter-American human rights system, the American Declaration is recognized as constituting a source of legal obligation for OAS Member States, including those States that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter. Member States have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration, as well as the customary legal status of the rights protected under many of the Declaration's core provisions. See, IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al v. United States, July 21, 2011, paragraphs 115, 117, 118 and 119. IA Court of HR. "*Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights.*" Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paragraphs 35-45. Also see, OAS General Assembly, Resolution 314, AG/RES. 314 (VII-O/77),

the recommendations put forward in this report are aimed at all countries of the region.

## ***D. Concept and Terminology***

21. The Convention on the Rights of the Child from 1989 does not provide specific terminology or an exact and clear-cut concept or definition of a national system for the protection of children’s rights. Moreover, concepts of and approaches to national systems coexist in the hemisphere with some level of variation, as well as different levels of progress with respect to the adoption and the functioning of operational models and structures to ensure full respect and enjoyment of the rights of children and adolescents. Even though significant efforts have been made over the past few years to define what a child protection system is, what a child protection system should be, and how it should be carried out, as of the time of the drafting of this report, we can identify many different ways it is defined, as well as widely varying degrees of responsibility assigned to the State, the family, the community and to other non-governmental structures in each system.<sup>15</sup>

22. Regarding the terminology, in this report, the IACHR has opted to use the term “national systems for the protection of children’s rights,” bearing in mind that this is terminology (or some variations such “child protection systems”) that is widely used in the countries of the region, as well as the ease with which authorities, officials, experts, and civil society

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June 22, 1977 (entrusting the Inter-American Commission with the preparation of a study to “set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man”); OAS General Assembly, Resolution 371, AG/RES (VIII-O/78), July 1, 1978 (reaffirming its commitment to “promote observance of the American Declaration of the Rights and Duties of Man”); OAS General Assembly, Resolution 370, AG/RES. 370 (VIII-O/78), July 1, 1978 (referring to the “international commitments” of the OAS Member States to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

<sup>15</sup> Regarding concepts and terminology see findings and conclusions in: Alejandro Morlachetti, ECLAC and UNICEF, Comprehensive National Child Protection Systems: legal basis and current practice in Latin America and the Caribbean, 2013, pgs. 11 and 12. UNICEF, UNHCR, Save the Children y World Vision, “A better way to protect all children. Theory and practice of child protection systems”, Resumen de la Conferencia Internacional realizada los días 13-16 noviembre 2012, New Delhi, India, en la cual participaron más de 130 autoridades públicas con responsabilidades en formulación de políticas públicas, académicos, expertos y personal de organizaciones no gubernamentales que trabajan en el campo de la protección de los derechos de la niñez de más de 50 países de todos los continentes; y UNICEF, UNHCR, ChapinHall at the Chicago University y Save the Children, Adapting a Systems Approach to Child Protection: Key Concepts and Considerations

organizations that work to defend children’s rights are able to grasp the meaning and scope of what is being referred to thereby.

23. In Declarations issued in successive Ibero-American Conferences of Ministers and Senior Officials Responsible for Children’s Affairs, the States of the Organization of American States (hereinafter “OAS”) have also referred to these operational structures for the practical implementation of legislation associated with children as “comprehensive child protection systems.”<sup>16</sup> For its part, the Inter-American Children’s Institute of the Organization of American States (hereinafter, IIN-OAS) refers to “National Systems for Child Protection” in its Plan of Action when identifying strategic actions to support the States of the region within the framework of its institutional mandate.<sup>17</sup>
24. In view of the foregoing, and taking into account that other names are used in the region in the Spanish speaking countries, with some variation (such as “national system for the protection of children,” “national system for the comprehensive protection of children and adolescents,” or “system for the comprehensive protection of the rights of children and adolescents”), the IACHR cautions that the term used in this report should be considered only for purposes of reference and not as restrictive or binding.

25. Moreover, in this report, when referring to the different institutions and bodies that comprise a national system for the protection of children’s rights, the IACHR has identified the different most widely-used and typical names they go by in the region and lists the main functions and authority these types of institutions should have. For the sole purpose of making the report easier to read, at some points along the way the IACHR has opted to use the most common names of these institutions, but this in no way indicates a terminological preference for referring to them; what is relevant are the characteristics, functions, and principles that should govern them, as described by the IACHR in the report.

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<sup>16</sup> The Declaration of Pucón, adopted by the X Ibero-American Conference of Ministers and Senior Officials Responsible for Children’s Affairs (2007), emphasized the importance of “...promoting, stimulating and strengthening the implementation of comprehensive protection systems, based on the promotion of citizenship-building at the regional and local levels as part of a progressive decentralization programme aimed at facilitating the access of children and adolescents to the diverse services offered for their development in their own territorial environment, seeking to adapt these services to the particularities of each territory.” Similarly, the XII Ibero-American Conference of Ministers and Senior Officials Responsible for Children’s Affairs (2010) affirmed that “the comprehensive protection system for children and adolescents requires an institutional structure that is strongly coherent and coordinated by adequately-endowed entities and public budgets that include investment in children to guarantee their rights fully and effectively.”

<sup>17</sup> See IIN-OAS, [Action Plan 2015-2019](#).

## ***E. Methodology for Drafting the Report***

26. As input to the drafting of this thematic report, the IACHR prepared a questionnaire in order to gather meaningful information from the Member States of the Organization of American States, civil society and other relevant actors.<sup>18</sup> The IACHR wishes to express its gratitude to all of the States, civil society organizations and other actors, who submitted their responses to the IACHR, and notes their interest in and commitment to the subject, as can be surmised from all of the responses.
27. Additionally, within the framework of the 157<sup>th</sup> Regular Session of the IACHR, which took place from April 2 to 15, 2016, the IACHR convened an *ex officio* hearing titled “National Child Protection Systems in the Americas.”<sup>19</sup> This hearing enabled the IACHR to learn about the major issues with the functioning of these systems in the region. Also, as part of the 157<sup>th</sup> regular session, a working meeting was hosted by the Rapporteurship on the Rights of the Child with the Latin American and Caribbean Network for the Defense of the Rights of Children and Adolescents (hereinafter, REDLAMYC), and with other members of the Global Movement for Children of Latin America and the Caribbean, who the IACHR would like to thank for their participation in the hearing and for the technical exchanges and suggestions offered during the subsequent working meeting.
28. In addition, the Rapporteurship on the Rights of the Child conducted three country visits to gain firsthand knowledge about how national systems for the protection of children's rights are organized and function. The countries and cities visited were Brazil (November 16 to 20, 2015, Brasilia and Rio de Janeiro), Bolivia (November 30 to December 4, 2015, La Paz, Cochabamba, Sacaba y Viacha) and Mexico (November 14 to 18, Mexico

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<sup>18</sup> The IACHR received questionnaire responses from the States of Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, and Uruguay, as well as the following organizations, ANDHES (Argentina), Asociación Civil por la Igualdad y la Justicia (ACIJ) and Fundación Sur (Argentina), Confederación General del Trabajo de la República de Argentina, Aldeas Infantiles SOS Argentina office, World Vision Bolivia office, Corporación Opción (Chile), Colombia Diversa, Central Unitaria de Trabajadores de Colombia, Confederación de Trabajadores de Colombia (CTC), Fundación Biopsicosis (Colombia), Fundación Acceso (Costa Rica), World Vision El Salvador office, World Vision Mexico office, Grupo de Trabajo sobre Política Migratoria (Mexico), Aldeas Infantiles SOS Mexico office, CODENI (Nicaragua), CENIDH (Nicaragua), Global Infancia (Paraguay), CDIA (Paraguay), CUT-Authentica (Paraguay), Plan International Peru office, Save the Children Peru office, Paz y Esperanza (Peru), RENACSENIV and VIVA (Venezuela), Asociación Civil Red de Casas Don Bosco (Venezuela), and Plan International Americas Regional Office.

<sup>19</sup> IACHR, 157<sup>th</sup> regular session, thematic hearing, [National Child Protection Systems in the Americas](#), April 7, 2016.

City, Ecatepec, Pachuca and Acatlan). During these visits, the IACHR met with officials from the three branches of the State and with the office of the national independent human rights institution (ombudsperson), civil society organizations, UNICEF and other United Nations agencies, as well as children's' and adolescents' organizations. The Commission again expresses its gratitude to the government officials and all civil society individuals and organizations, who met with the Rapporteurship, for the invaluable information they provided and the suggestions they made. The Rapporteurship would like to especially acknowledge the children and adolescents who took part in the discussions with the Rapporteur; their opinions and experiences greatly contributed to developing the vision and the focus of this report as to the role that national systems must play and to identifying some of the major gaps and weaknesses of these systems.

29. Invaluable input for the drafting of this report also came from the presentations, roundtables, discussions and the information shared by 16 States of the region, members of the United Nations Committee on the Rights of the Child, independent experts, staff members of UNICEF, the Inter-American Children's Institute of the Organization of American States (IIN-OAS), World Vision, Save the Children, Plan International, REDLAMYC and civil society organizations from different countries of the region, who took part in the *First Inter-American Forum on National Systems for the Protection of Children's Rights*, held in Mexico City, Mexico from April 24 to 26, 2017. The event was co-sponsored by the State of Mexico through the *Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes (SIPINNA)*, *Patronato Nacional de la Infancia de Costa Rica (PANI)*, the IACHR, UNICEF, IIN-OAS and REDLAMYC.
30. The valuable efforts underway in the region—that translate into studies and guides—geared toward providing support and technical assistance to the States for the development and operation of their national systems for the protection of children's rights are also worth noting. Along these lines, UNICEF's initiatives in this area represented significant contributions to this report. The initiative being spearheaded by the *Inter-Agency Group on National Child Protection Systems*—comprised of Plan International, Save the Children, UNICEF, and World Vision—to develop indicators for evaluating levels of progress in the operation of national systems likewise serves as a useful tool for identifying advancement and the existence of challenges. The Inter-Agency Group shared this tool and the results of the pilot implementation thereof in a number of States with the Commission for preparation of this report; these ended up being interesting contributions.
31. Lastly, the IACHR is grateful for the important and continual support it received from World Vision organization in the drafting of this report. The



Commission thanks the organization for having shared the voluminous body of studies and research that it has produced on the subject of how national systems work in practical terms in the countries of Latin America and for helping to organize the meetings with boys, girls and adolescents during the country visits. The IACHR also would like to express its gratitude for the valuable collaboration of the members of the *Inter-Agency Group on National Systems for the Protection of Children's Rights*, and their generous technical contributions, which helped to enrich the substance of the report.

## ***F. Structure of the Report***

32. The instant report is divided into five substantive chapters and a concluding Recommendations section. The first chapter introduces the subject and explains the need for a report on national systems; outlines the objective, scope, and limitations of the report; lays out the methodology used herein; and clarifies some terminology.
33. The second chapter addresses the main international obligations States undertake in the area of the rights of the child under the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the UN Convention on the Rights of the Child, in particular, those pertaining to the creation of national systems for the protection of children's rights, as well as the legal framework for the functioning of these systems based on international human rights law. This chapter explains the normative, programmatic and institutional dimensions of national systems, going into greater depth on the programmatic and institutional sides. Specifically, this chapter examines the obligation to undertake a National Children's Policy and what this policy consists of, and the duty of the State to organize the state apparatus and all operational structures to ensure the rights of the child, identifying the major aspects of organization and functioning of the institutional framework of national systems.
34. The third chapter analyzes the economic aspects of a national system and the scope of the duty to allocate sufficient economic resources to adequately and effectively ensure the rights of children and adolescents, in accordance with international human rights law.
35. The fourth chapter places particular emphasis on recognition of the central role played by children and adolescents themselves and their rights in approving policies and designing and putting a national system into practice. Likewise, it recalls the role that international human rights law



assigns to families in protecting children, as a major aspect that must be taken into consideration by national systems in decision-making and implementation of child protection measures.

36. The fifth chapter identifies the major challenges identified by the IACHR in practice that hamper proper functioning of national systems.
37. The report concludes with several recommendations to the States of the region to improve and strengthen their national systems, in keeping with their international obligations to protect the rights of children and adolescents.



CHAPTER 2  
FRAMEWORK FOR BUILDING  
NATIONAL SYSTEMS  
FOR THE PROTECTION OF  
CHILDREN'S RIGHTS



## FRAMEWORK FOR BUILDING NATIONAL SYSTEMS FOR THE PROTECTION OF CHILDREN'S RIGHTS

### A. *Paradigm Shift: Children and Adolescents as Right Holders and Full Guarantee of Their Rights*

38. Without question, the most profound transformation to occur by operation of the Convention on the Rights of the Child was the recognition of children as having the same rights as all human beings, in addition to recognizing their right to special protection, as a result of their condition as developing and growing individuals. The Inter-American Commission and the Court have articulated the same recognition based on Article 19 of the American Convention and Article VII of the American Declaration.<sup>20</sup>

<sup>20</sup> Article 19 of the American Convention establishes that “every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” Similarly, Article VII of the American Declaration recognizes that “All women, during pregnancy and during the nursing period, and all children have the right to special protection, care and aid.” Regarding these holdings see, IACHR, Violence, Children and Organized Crime, OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, paragraphs 269 to 275. IACHR, Report No. 83/10, Case 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, para. 72. IA Court of HR, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, pars. 54, 55 and 60; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 244; *Case of the “Massacre of Mapiripán” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 152; and especially: IA Court of HR, *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 147 and IA Court of HR, *Case of Servellón García et al v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 113; *Case of Chitay Nech et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 164; *Case of González et al (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 408; and *Case of the Massacre of las Dos Erres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 184; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, pars. 124, 163-164, and 171; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, pars. 126 and 134; *Case of the “Street Children” (Villagrán Morales et al) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, pars. 146 and 185; and *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 172.

39. This new vision leaves behind the so-called “irregular situation” paradigm and the doctrine of tutelary protection, where the State intervened in what it regarded as an “anti-social act” committed by the child or when he was “in a state of risk or material or moral abandonment.” Under this treatment by the law, children are regarded as the objects of assistance and control, through tutelary interventions, which disregard the rights of the child and, very often, involve arbitrariness, abuses and the failure of the State to ensure rights in its conduct.<sup>21</sup> This vision failed to identify the State’s responsibility to create the conditions for the effective enjoyment of rights, on an equal basis, by all girls, boys and adolescents.
40. Moreover, laws predating the CRC framed the aspects of protection and development of the child within a family setting. The responsibility of the State for the wellbeing of the child was mostly confined to interventions in response to the situations of exception described above, a “state of danger or material or moral abandonment.” Laws failed to recognize the rights of the child, such as recognition of progressive autonomy and the right to participate in decisions affecting him or her, in keeping with age and maturity level. This legal vision for the most part treated the child as “property” of his or her family, not as an individual entitled to rights, and relegated the State to interventions of an exceptional nature, while not requiring it to make any investment in effort and resources to ensure the child’s wellbeing and enjoyment of his or her rights.
41. Entry into force of the CRC and swift ratification of it by the States of the region substantially changed the concept of the child under the law. Shortly thereafter, the States of the region amended their legislation in order to bring it in line with the CRC and the new paradigm. The CRC recognizes that children are holders of civil, political, economic, social and cultural rights and this recognition is framed within a holistic and comprehensive vision of rights.
42. This holistic and comprehensive vision flows from one of the four core principles upon which the CRC is based, the principle of full development of the child, which is reflected throughout the articles of the CRC. The Committee on the Rights of the Child has interpreted the word “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development, taking into consideration that all of the rights recognized in

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<sup>21</sup> The IACHR has raised several situations of concern, which carry over from the previous paradigm, and a failure to recognize the rights of children, particularly in the field of juvenile justice and in addressing the situation of children without parental care or at risk of losing it. In this regard, see its report, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas.](#)

the CRC are interdependent and contribute to the full development of the child.<sup>22</sup> The measures adopted by States must be aimed at achieving optimal development of the child. Following this logic, the CRC requires States to undertake a role of guarantor of the rights and to intervene in order to ensure the necessary conditions for the effective exercise, enjoyment and observance of all civil, political, economic, social and cultural rights for boys, girls and adolescents.

43. In the sphere of the Inter-American human rights system, the Commission and the Court have been clear in asserting that children “have the same rights as all human beings (...) and also special rights derived from their condition, and these [rights] are accompanied by specific duties of the family, society, and the State.”<sup>23</sup> Consequently, Article 19 of the American Convention and Article VII of the American Declaration must be viewed as establishing an additional and complementary right for children, who because of their state of development require special protection.<sup>24</sup>
44. This adapted and heightened special protection, which is recognized for children by international human rights law, is based on their condition as growing human beings and on the fact that they are different from adults as to their abilities and the challenges they face for effective exercise, full

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<sup>22</sup> Committee on the Rights of the Child, General Comment No. 5 “General Measures of Implementation of the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44)”, CRC/GC/2003/5, November 27, 2003, para. 12. The Committee interprets in this way the scope of Article 6 of the CRC, which establishes within the right to life, the obligation of the State Parties to ensure to the maximum extent possible the survival and development of the child.

<sup>23</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54.

<sup>24</sup> IACHR, Report N° 33/04 Jailton Neri Da Fonseca (Brazil), Case 11.634, March 11, 2004, para. 80. IA Court of HR, Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, paras. 54, 55 and 60; Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, para. 244; Case of the “Massacre of Mapiripán” v. Colombia. Judgment of September 15, 2005. Series C No. 134, para. 152; and especially: IA Court of HR, Case of the “Juvenile Reeducation Institute” v. Paraguay. Judgment of September 2, 2004. Series C No. 112, para. 147 and IA Court of HR, Case of Servellón García et al v. Honduras. Judgment of September 21, 2006. Series C No. 152, para. 113; Case of Chitay Nech et al v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 164; Case of González et al (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 408; and Case of the Massacre of las Dos Erres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 184; Case of the Gómez Paquiyauri Brothers v. Peru. Judgment of July 8, 2004. Series C No. 110, pars. 124, 163-164, and 171; Case of Bulacio v. Argentina. Judgment of September 18, 2003. Series C No. 100, pars. 126 and 134; Case of the “Street Children” (Villagrán Morales et al) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, pars. 146 and 185; and Case of the Yakye Axa Indigenous Community v. Paraguay. Judgment of June 17, 2005. Series C No. 125, para. 172.

respect and defense of their rights.<sup>25</sup> Thus, in the Inter-American human rights system, under Article 19 of the ACHR and Article VII of the ADRDM, States have the obligation to adopt all necessary measures to ensure the effective observance of the rights of children and adolescents, removing all obstacles to this end, and taking into consideration the particular conditions and challenges that children face at each stage of their lives in exercising their rights.<sup>26</sup> Under these precepts, States have the duty to adopt all necessary measures to ensure the right to a decent life for all children and adolescents and their full development as persons.<sup>27</sup>

45. Both bodies of the Inter-American system have recognized this comprehensive and holistic vision of child protection, while at the same time have widely developed the concept of *corpus juris* in order to establish a framework of holistic and heightened protection under Articles 19 of the ACHR and VII of the AMHRM, which incorporate the international human rights standards and have been fleshed out in the area of children, particularly, the CRC.<sup>28</sup>

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<sup>25</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 51.

<sup>26</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 43, OEA/Ser.L/V/II., Doc. 54/13, October 17, 2013.

<sup>27</sup> The concept of a “decent life,” as it pertains to children and adolescents and has been fleshed out by the Inter-American Court and Commission, is consistent with the concept used by the CRC and by the Committee on the Rights of the Child in its decisions, and is closely linked to the concepts of “full and harmonious development of the personality” or “comprehensive development of the personality” of children and adolescents. It is also understood that “development of the child is a holistic concept that encompasses physical, mental, spiritual, moral, psychological and social development” and, therefore, the realization of all of his or her rights. Consequently, the special protection owed to children and adolescents by the State must take into consideration the substance and scope of the right to a decent life and the full development of children as standards for compliance. See, IA Court of HR, Case of the “Street Children” (Villagrán Morales et al) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, pars. 144 and 191; IA Court of HR, Case of Chitay Nech et al v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 169; IA Court of HR, Case of the Juvenile Reeducation Institute v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 161; IA Court of HR, Case of the Sawhoyamaya Indigenous Community v. Paraguay. Judgment of March 29, 2006. Series C No. 146, para. 176; IA Court of HR, Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, pars. 67, 80, 84 and 86. As for the interpretation by the Committee on the Rights of the Child, referenced by the Court in the decisions cited above, see United Nations Committee on the Rights of the Child, General Comment No. 5 “Measures of Implementation of the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44)”, CRC/GC/2003/5, November 27, 2003, 34<sup>th</sup> Session, paragraph 12.

<sup>28</sup> The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have consistently addressed *corpus juris* in their decisions in relation to the human rights



46. Nonetheless, transformations in the everyday lives of boys and girls have been slower than the recognition of their rights in legislation. Legislative recognition does not automatically guarantee that the rights of the child are respected or that conditions are in place for the exercise and enjoyment thereof. In order to promote full implementation of these rights, additional legislative, administrative, practical, economic and other types of provisions must be adopted, which take into consideration the particular conditions of children, and the barriers and challenges faced by them, due to the fact that they are developing and growing. For this purpose, there is a compelling need for national systems and public policies to further the effective exercise of all rights and a real paradigm shift.

47. In light of the holistic approach to children's rights promoted by the CRC, States must design their interventions in a comprehensive way, considering the interdependence and complementarity of all rights. Additionally, a multifaceted approach must be followed to include promotion, public dissemination and outreach and sensitivity training on the rights of the child; violation prevention efforts; protection from risks and illegitimate interference; restoration of rights; reparation and rehabilitation; and, justice through investigation, prosecution and punishment of those responsible for violations of rights.

48. Rather than just intervening to protect children and adolescents from violations of their rights after the fact, all rights of children and adolescents must be ensured before the fact in an effective and positive way. This approach must be firmly based on coordination, cooperation and collaboration of different sectors and stakeholders (multisectoral), as well

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of children and adolescents, as the set of fundamental norms of content and different legal effects (treaties, conventions, resolutions and declarations), as well as in the decisions approved by international human rights bodies, which are linked by the purpose of ensuring the human rights of children and adolescents. While the international instrument par excellence for the protection of the rights of children and adolescents is the Convention on the Rights of the Child, these rights are also recognized and protected in other international treaties and, therefore, both the IACHR and the Committee on the Rights of the Child recommend ratification of the principal human rights treaties for adequate child protection.

See, IA Court of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, pars. 192 a 194, and IA Court of HR, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 57; additionally, paragraphs 259 to 268 of IACHR report on Violence, Children and Organized Crime, OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, and IACHR, Report No. 41/99, Case 11.491, *Minors in Detention in Honduras v. Honduras*, March 10, 1999, para. 72; IACHR, Report N° 33/04 *Jailton Neri Da Fonseca (Brazil)*, Case 11.634, March 11, 2004, para. 81.

as including the different levels of government and taking into account the perspectives of different disciplines (interdisciplinary). Similarly, interventions must consider different perspectives, such as a gender or ethno-racial perspective, which have a bearing on risk factors and must be taken into account by national systems, when appropriate.

49. Implementation of the CRC and of its new paradigm of comprehensive protection and a rights approach entails a shift in the model and requires new principles to guide the conduct of authorities, an organizational and operational structure in tune with the obligations flowing from the CRC, as well as a new institutional framework, new working methods, and enhanced mechanisms of collaboration and coordination. The CRC promotes a systemic approach involving different sectors and disciplines, geopolitical levels and stakeholders or actors, giving rise to the creation of what we know as national systems for the protection of children's rights.

## ***B. The duty to Respect, Protect and Guarantee the Rights of Children and Adolescents***

50. Compliance with the obligations to protect children, which flow from Articles 19 of the American Convention and VII of the American Declaration, in connection with Articles 1.1 and 2 of the ACHR<sup>29</sup> and with the obligations undertaken in ratifying the Convention on the Rights of the Child, means that the State has accepted the obligations to respect, protect and guarantee the rights set forth in the CRC for all children subject their jurisdiction, without any discrimination.<sup>30</sup> The obligation to **respect** these

<sup>29</sup> Article 1. Obligation to Respect Rights. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 2. Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

<sup>30</sup> The Commission and the Court have held repeatedly that States have the obligation to recognize and respect rights and freedoms of the human person, as well as to protect and ensure their exercise through the respective guarantees and the suitable means for them to be effective under all circumstances, in accordance with the general obligations established in Article 1.1 of the ACHR. IA Court of HR. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, para. 92. Separately, Article 2.1 of the CRC provides that States Parties shall respect

rights means that States must refrain from interfering in the enjoyment of human rights or from limiting them illegally or without good cause. The obligation to **protect** rights requires States to take reasonable and necessary measures to prevent violations and keep violations of rights by third parties from happening, to prevent abuses and illegitimate interference, when an identifiable risk comes to the attention of the State or the State should have known of such a risk existing. The obligation to **guarantee** means that States must adopt every necessary and adequate measure to ensure the effective exercise and enjoyment of the rights set forth in the international treaties, for all children and adolescents, on an equal basis and without discrimination of any kind.

51. States must use all means available to them to adequately implement the provisions of the CRC for all girls, boys and adolescents within their territory. It is important to emphasize that compliance with the obligations undertaken by States in the area of children's rights are not exhausted by merely recognizing these rights in domestic legislation. In order to guarantee effectiveness and enjoyment of the rights, States must adopt legislative, administrative, social, educational, financial, practical and other measures of other types,<sup>31</sup> as may be needed for this purpose, to the maximum extent of available resources.<sup>32</sup> Additionally, they must organize the governmental apparatus and, in general, all structures through which public power is exercised, so that these structures are all capable of juridically ensuring the free and full exercise of all rights. States are also obligated to establish mechanisms, and take actions as necessary in each particular instance, to protect boys, girls and adolescents from concrete risks or violations of their rights, in addition to offering an adequate response to restore the rights, rehabilitate the victim and redress the violation and punish those responsible.<sup>33</sup>

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and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.

<sup>31</sup> In connection with Article 2 of the ACHR.

<sup>32</sup> Article 4 of the CRC requires States Parties, similarly to Article 2 of the ACHR, to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention," and expressly adds that "with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

<sup>33</sup> IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al v. United States, July 21, 2011, pars. 122 to 125; IA Court of HR. Case of González et al ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236; Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, para. 166; Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 62; and Case of Godínez Cruz v. Honduras. Judgment of January 20, 1989, Series C No. 5, paragraph 175.

52. In this regard, the Court and the IACHR have affirmed that the obligations flowing from Article 19 of the ACHR and Article VII of ADRDM, in connection with the general duties set forth in Articles 1.1 and 2 of the ACHR, can be fulfilled in different ways by States, but they establish the duty of the due diligence of the State in compliance with these obligations and the need to demonstrate the suitability of the measures it adopts to comply with its obligations and effectively ensure the rights.<sup>34</sup> As the Court's own decision indicates, in interpreting the scope of Article 2 of the ACHR, States must establish the concrete measures they will take to make rights effective; however, this does not exempt each State from having to justify the appropriateness of the particular means it has chosen and to demonstrate whether the means will achieve the intended effect and result.<sup>35</sup>
53. Similarly, the Committee on the Rights of the Child has also written that it cannot prescribe in detail the concrete and specific measures, which each or every State must undertake to ensure effective implementation of the CRC.<sup>36</sup> Notwithstanding, even though it admits this point, the Committee establishes key advice or guiding principles under which this body finds that States must fulfill the obligation to protect and guarantee respect for the rights of children and adolescents. These general measures recommended by the Committee are laid out mostly in General Comment No. 5 of the Committee on the Rights of the Child "General measures of implementation of the Convention on the Rights of the Child." While these guidelines and principles do not exhaust the measures States are required to implement, they do establish minimum standards and criteria to serve as

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<sup>34</sup> IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al v. United States, July 21, 2011, pars.122 to 125; IACHR, Report No.51/13, Case 12.551, Paloma Angelica Escobar Ledezma et al, Merits, pars. 72 and 78. IA Court of HR. Case of González et al ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236; Case of the "Massacre of Mapiripán" v. Colombia. Judgment of September 15, 2005. Series C No. 134, pars. 111 and 113; Case of Perozo et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 298, and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 62.

<sup>35</sup> This criterion has been established by several Treaty Committees when examining the obligations flowing from articles of similar substance to Article 2 of the ACHR, which lays out general obligations in applying the respective treaties. See General Comment No. 3 (1990). The nature of the obligations of the States Parties, Article 2 of the International Covenant on Economic, Social and Cultural Rights, paragraph 4. Likewise, General recommendation No. 28 relative to Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, paragraph 23. Also see, IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), para. 87.

<sup>36</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child (articles 4 and 42 and paragraph 6 of Article 44)", CRC/GC/2003/5, November 27, 2003, 34<sup>th</sup> Session, para. 26.

guidance on adequate compliance with the obligation to guarantee all rights of the CRC.

54. The Committee has said that “the general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, **through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes.**”<sup>37</sup> In keeping with the guidance provided by the Committee in General Comment No. 5, the Committee asks the States to submit periodic information on follow up to compliance with the CRC, as it pertains to the following areas: a) legislation, b) policies and comprehensive strategies, c) coordination, d) allocation of resources, e) data collection, f) independent oversight, g) public dissemination and sensitivity training, and, h) cooperation with civil society. The structure of the concluding observations issued by the Committee is also based on these areas, which the Committee regards as structural in nature and key to ensuring implementation of the CRC, as well as constituting the foundation of a national system for the protection of children's rights.

55. In order to ensure children's rights, States must first adopt legislation to recognize these rights in accordance with the CRC and the *corpus juris* of the rights of the child. As a complement to the foregoing, so that these rights are actually realized, the State must adopt other measures to fulfill its international obligations. This includes that the State develop policies and strategies for compliance with each right. Additionally, States have to build a complete institutional framework to make all of it possible, that is, they must establish the bodies or mechanisms in charge of the formulation, monitoring and evaluation of policies; create the institutions in charge of the execution of the policies; and take protection actions in each individual case. **Based on these considerations, it can be asserted that building a national system involves a normative, a programmatic and an institutional dimension.**

56. **With respect to the normative dimension**, as was mentioned earlier, most of the countries of the region have approved specific child-related norms, with the rank of legal statute or law, which transfer and adapt the

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<sup>37</sup> Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child (articles 4 and 42 and paragraph 6 of Article 44)”, CRC/GC/2003/5, November 27, 2003, 34<sup>th</sup> Session, para. 9. Emphasis added, not in original.

content of the CRC to domestic law; usually Codes for Children or Special Children's Laws. This legislation is usually comprehensive in nature, inasmuch as it addresses the full range of rights of children and adolescents, to wit, civil, political, economic, social and cultural rights, and normally provides for and brings together in a single instrument the legal provisions pertaining to children, which heretofore were spread out in different bodies of law, pertaining to family law or juvenile criminal law.

57. **As for the programmatic dimension of national systems**, in order for States to comply with the obligations to protect and guarantee all rights of the girls, boys and adolescents, who are recognized in legislation, it is essential to adopt public policies, practices and services that create the proper conditions for the enjoyment and effective exercise thereof and to also be able to provide a response to potential violations of these rights.
58. **With reference to the institutional dimension**, a distinction can be drawn between: i) the bodies or entities at the different levels in charge of arranging and making decisions about the norms, policies, programs, practices and services; ii) the agencies, entities and institutions in charge of implementing policies, practices, programs, and responsible for the provision of services and direct care to children and adolescents and their surroundings; and iii) the entity or agency in charge of coordination and cooperation between all of the bodies and actors that come together in the national systems for the protection of children's rights (also known in some instances as the coordinating or lead agency). A more detailed examination of the main features of the institutional structure of national systems in the region will be provided in a subsequent section in this report.
59. The IACHR finds that in order for the national system to be able to achieve its goals of comprehensive protection and promotion of the rights of children and adolescents, it is imperative for the following elements to be in place: i) regulation of the Code for Children or the Special Children's Law; ii) a National Children's Policy, and plans of action, programs and regulations, stemming from that policy, in order to create and govern services targeting children; iii) administrative and judicial agencies for the protection and restoration of rights; iv) adequate economic resources flowing from defined and stable budget allocations; v) procedures, protocols, guidelines and operational manuals, such as protocols for case management, direct casework and case referrals, guidelines for how services are to function, and codes of conduct for staff in direct contact with children and adolescents; and vi) measures for the protection of rights and emergency or exceptional measures for the protection of rights (such as alternative care placement or foster care). Legal powers (competence), decision making procedures and action protocols must also be clearly

defined, in order to provide specific guidance to the bodies and actors involved in the full implementation of the rights of the child.

### ***C. The Obligation to Implement a National Children’s Policy***

60. With respect to the programmatic dimension of a national system, the IACHR has noted, “States, as a whole, and at every level, must promote, guarantee, and respect the rights of children and adolescents. To this end, they should build on the foundation of a comprehensive national plan or policy, one that is based on a meaningful and thorough assessment of the situation, with content grounded in the rights recognized in the Convention on the Rights of the Child and in the international human rights instruments.”<sup>38</sup>
61. The IACHR has also emphasized that this national plan for children “should include concrete and attainable objectives related to the civil, political, economic, social, and cultural rights of all children and adolescents and should include indicators that make it possible to track compliance, as well as strategies and deadlines for reaching the objectives,” so that it effectively serves as an action planning instrument culminating in full implementation of rights and transforming the lives of children.<sup>39</sup>

62. The national policy for children<sup>40</sup> is a framework document that establishes the strategic direction of the State in the medium and long term in order to bring about the realization of the human rights of children and adolescents. Consequently, it must hew closely to applicable international instruments and treaties ratified by the State on the subject of children and adolescents and, primarily, to the CRC, as well as to the recommendations made to it by the international human rights bodies about compliance with these international obligations. The Committee on the Rights of the Child itself

<sup>38</sup> IACHR, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016.

<sup>39</sup> IACHR, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016.

<sup>40</sup> These comprehensive National Policies targeting children are known by different names, depending on the countries; in some instances, it is called “Comprehensive National Protection Policy for Children and Adolescents” or “National Action Plan for Children and Adolescents.”



underscores the need for a State policy to be in place for children in every single country.<sup>41</sup>

63. The policy is a **strategic planning instrument or tool**, which must clearly establish the goals to be pursued, using as its point of departure a comprehensive and realistic diagnostic assessment of the situation of children and of their rights in the country. Because it is a planning instrument, which is useful for administrative, institutional and financial management purposes, the national policy for children must establish targets, results and goals in as realistic and attainable ways as possible, providing indicators and means of compliance verification. This helps to properly manage, in a rational, coordinated and realistic way, the physical and human resources, strategies and actions, over time, the different sectors and institutions involved, all with a view toward pursuing and achieving the intended goals.<sup>42</sup> Ideally, standardized and internationally agreed upon indicators should be used to allow for comparisons between countries and over periods of time.
64. The national policy for children must include how it is to be funded and implemented, as well as identify the officials in charge of it at the different levels.
65. Obviously, to transform the living conditions of children and to confront the structural causes giving rise to violations of their rights, entails engaging in medium and long-term planning in order to make an impact on these causes and turn them around, while at the same time be in a position to offer an immediate response to protection needs. For this purpose, these national children's policies usually have a multi-annual projection, with a ten-year period being the most common length of time, although some countries plan out for shorter periods of time (three-year or five-year periods), and also include periodic reviews to make any adjustments that may be needed at any given time based on current circumstances. The national policy also needs to be further developed in greater detail through action plans.
66. The national policy for children must become the State's children's policy; this way, it is less susceptible to swings in the political mood of the day and to changes in government. This provides an important basis for consensus

<sup>41</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child, paragraphs 28 to 36.

<sup>42</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child, para. 32.



and a higher likelihood for the policy to continue over time and for implementation strategies to be sustainable.

67. The planning exercise for the drafting of the national policy for children, must be based on a diagnostic assessment and analysis of the situation of each one of the rights of children and adolescents in the respective country, in addition to identifying the phenomena and issues negatively impacting enjoyment of their rights, such as sexual violence, the use and exploitation of children and adolescents by organized crime groups, teen pregnancies, child labor and exploitation, migration, among other phenomena, which have an impact on their rights. Additionally, the most high-risk groups of children and adolescents must be identified, inasmuch as they require focused care to ensure their rights. Such groups include, but are not limited to children or adolescents with disabilities, those who belong to a particular ethnic group, children in situation of poverty, children and teens lacking adequate parental care and migrant children.<sup>43</sup>
68. **Broad mechanisms of consultation** help to more thoroughly grasp the diverse real life circumstances and living conditions faced by children and adolescents and to identify the most vulnerable groups and those who have been rendered invisible and fallen through the cracks. For this reason, the State must coordinate mechanisms to include the broadest possible participation of society and of the children and adolescents themselves in the drafting of this policy. **Boys, girls and adolescents** from a wide range of socio-economic, geographic, cultural, sex and gender orientation, disability, ethnic and other backgrounds should **be consulted**, in order to make it possible to listen to and register their concerns and fears, as well as their proposals. The IACHR recalls the positive experience in some countries of convening broad consultation processes, as well as nationwide and decentralized forums, as part of the process of drafting national policy. States should also make sure that equally meaningful, rigorous and as broadly participatory processes are carried out for the monitoring of policy implementation and evaluation of results.
69. In addition, **complete, disaggregated and reliable information** is crucial to be able to conduct a proper diagnostic assessment, that is in step with reality, as well as to be able to follow-up on implementation of this national policy, monitor and measure progress, make adjustments and corrections, as well as to evaluate the impacts and changes that this policy actually brought about. For this purpose, a system of data generation and collection,

<sup>43</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child, pars. 29 and 30.

as well as information management, must be in place to meet the needs of planning, monitoring and evaluation of public children’s policies.

70. For successful management, the national children’s policy must include provisions for **continual monitoring and review** to allow for periodic updating of the status of implementation and to provide guidance for changes and adjustments, when needed. This national policy must also be subject to open, periodic, inclusive and participatory evaluation of the progress achieved, explain any potential deviation from the current course of action and provide a plan to overcome any obstacles that may arise to make it possible to achieve the pre-established goals. Evaluations must, at a minimum, be conducted at the halfway point of the duration of the Policy and at end of the period of effect. A schedule of periodic performance-based reporting to the parliament and the public should be set up, as mechanisms of transparency and accountability.<sup>44</sup> The information made available to the public and to children and adolescents must be widely accessible and in understandable language.

71. This national policy must **be endorsed at the highest level**<sup>45</sup> and, ideally, have the rank of a legal statute, making it a plan of mandatory compliance throughout the country, at all levels of government, and for all the different sectors involved. Regional and local governments must approve their own child protection policies, based on their own legal competence and responsibilities in the subject matter, and bring these policies in line with the national policy. Because of its rank as a law, the national policy for children must act as the framework policy for all policies and programs involving children and adolescents, thus making it the tool of coordination of its own implementation.

72. Obviously, as an essential component to ensure execution of the national policy for children, it needs to go hand in hand with the **necessary funding**. Providing for a defined, stable and adequate funding mechanism makes it possible to channel resources for the execution of strategies and programs in a planned and timely fashion, in order to achieve the intended goals of the policy. Otherwise, without a mechanism to effectively identify and earmark the funding required by the national children’s policy, it runs the risk of turning into a mere statement of good intentions. The legal obligations of States, from the financial standpoint, will be examined more thoroughly in a subsequent section of this report.

<sup>44</sup> Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child, para. 33.

<sup>45</sup> Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child, para. 31.

## 1. Comprehensive, Multifaceted, Multisectoral and Participatory Nature of National Children's Policies

73. The different phenomena and issues affecting children are complex, caused by multiple factors and are multifaceted. Consequently, the Commission finds that the best way to deal with these phenomena and issues is through public policies of a comprehensive, holistic and systemic nature, which take into consideration the variety of structural and interconnected causes. Interventions must follow a dual track: on the one hand, mitigate risk factors and, on the other hand, reinforce protection factors. Most of these phenomena also give rise to infringements of several rights, thus necessitating a coordinated response from different sectors.<sup>46</sup> This perspective takes into consideration the interdependence, indivisibility and complementarity of the rights.
74. In a comprehensive and systemic approach, child policies include the following facets: promotion (public information, dissemination/outreach and sensitivity training); prevention of violations of rights; promotion of conditions for effective enjoyment of rights by all children and adolescents; detection and response in the event of violations (protection); restoration of rights, rehabilitation, effective access to justice and reparation.
75. In order for an approach to these issues to be effective, several sectors and institutions must come together and act in conjunction. **Intersectoral and interinstitutional participation and coordination** is crucial, through the involvement of the different ministries and institutions with some type of responsibility in the area of children's rights. Usually, the sectors called upon to jointly formulate the national children's policy and coordinate implementation thereof include: social development and social services; national planning; health; education; justice; security; family; women; statistics; labor and social security; urban planning; culture, art and sport; and economy and finance,<sup>47</sup> in view of the fact that so many sectors are linked to the rights of the child one way or another. The IACHR finds that child policy must be written and implemented with a broad participation of

<sup>46</sup> IACHR, *Violence, Children and Organized Crime*, para. 117.

<sup>47</sup> Ministerial division varies from country to country; the agencies are given different names in each country; and different sectors can be placed under a single ministry. In some countries, for example, the Family, Women and Children are placed under a single ministry, while in other countries, separate ministries are in charge of these areas or they are all subsumed under the Ministry of Social Development. Some of the sectors that are most often called upon to collaborate in the formulation and implementation of child policies are identified in the text of this report.

all sectors involved in the area of child protection, in pursuit of a comprehensive and holistic vision.

76. The IACHR also finds that the standing participation of civil society in child policy formulation, implementation, monitoring and evaluation is essential, as is the establishment of channels of communication and mechanisms to adequately and sustainably integrate the visions and proposals of the very children and adolescents the policy serves, and in this way they are able to exercise their right to participate in matters that affect them.<sup>48</sup> In order to ensure this participation, the law creating the NSFIRCA must provide for and institutionalize mechanisms of participation of civil society and children and adolescents. Participation must be diverse and include representatives of academia and other sectors of society. Applicable principles and the basis for participation will be examined thoroughly in a subsequent section of the report.

77. The comprehensive, multifaceted, multisectoral and participatory nature, which must characterize a national child policy, both at the time of formulation, as well as in the process of implementation, monitoring and evaluation, has obvious implications in the institutional dimension of the national system. A national system has particular coordination requirements. It involves both horizontal (intersectoral) and vertical (between levels of government) coordination and an entity in charge of overall coordination,<sup>49</sup> as well as adequate mechanisms in place for this purpose, in addition to the clarity of duties and legal authority of each actor involved.<sup>50</sup> It is precisely this coordination that makes it possible for comprehensive and complementary policies to be implemented in order to increase effectiveness of public interventions in ensuring and protecting the rights of the child.<sup>51</sup>

<sup>48</sup> IACHR, IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents, November 28, 2016. Also see, Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child, para. 12.

<sup>49</sup> Known in some domestic legislation as ‘lead agency’ as well as ‘coordinating agency.’

<sup>50</sup> Also see, Alejandro Morlachetti, ECLAC and UNICEF, Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean, 2013. Pgs. 85 et seq.

<sup>51</sup> Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child, para. 27.

## 2. Universal and Targeted Policies

78. In order for a State to comply with its obligation to respect, protect and guarantee, policies must be translated into different measures, in keeping with particular circumstances of vulnerability, in order to effectively ensure, on an equal basis, enjoyment of rights by all girls, boys and adolescents.<sup>52</sup>

79. In practice, this has given rise to a classification system of different policy types: i) **basic social policies or universal policies**, aimed at all children and adolescents as a whole, such as education and health; ii) **social development policies, also known as social assistance or social welfare policies**, which are not universal in coverage, but instead are targeted to those families or children or adolescents requiring support from the State in order to overcome situations of vulnerability or barriers related to exclusion and inequities; one example of such policy measures would be conditioned monetary transfers to families; iii) **special protection policies**,<sup>53</sup> aimed at those children and adolescents, who because of some special condition, specific risk situation or violation of their rights, require special services in order to be protected for purposes of preserving and restoring their rights –including norms and policies involving the implementation of **measures of protection of an exception nature**, which entail removing a child from his or her family; and iv) **legal defense policies, enforceability of rights and guarantee of rights in the framework of administrative and judicial proceedings**, which are used to ensure that a specialized justice system specifically geared to children is in place, particularly to ensure access to justice, guarantee of rights in the context of administrative and judicial proceedings, and treatment in line with international standards for children and adolescents.

<sup>52</sup> IA Court of HR, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 61. IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), para. 46, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013.

<sup>53</sup> There is variation in the terminology and no generally accepted term has been agreed upon by consensus. The report uses this paragraph to provide a general typology of actions and policies with a brief description, but the Commission cautions that the names may be different in each country, even though these different types of public policies and interventions are widely found for the most part. While the IACHR is partial to this classification, which is intended to list the wide variety of interventions, some sources we consulted prefer to only distinguish between “measures of comprehensive protection” and “measures of special protection.” The former would encompass those measures listed under i) and ii) and, the latter, those listed under iii), thus leaving out of the classification the measures appearing under iv).

80. The national children's policy must consider these different types of policies as complements to each other and be formulated and implemented in keeping with the variety of protection needs of different groups of children.
81. In keeping with the principle of equality and non-discrimination, States must actively identify those groups of children and adolescents, who live in a situation of vulnerability of their rights and require interventions, which are targeted to their protection needs, in order for them to be able to realize their rights. The principle of non-discrimination does not preclude special measures from being implemented in order to defuse situations of inequality or discrimination. In fact, said principle may require implementation of proactive measures as a response to said situations. For this purpose, it is essential for the policy to provide for mechanisms to identify such groups and situations. One suitable measure for this purpose is to collect data and properly disaggregate it to be able to identify groups in particular situations of vulnerability, whose rights are not being ensured, as well as situations of discrimination. Another useful measure is direct consultation with civil society organizations, experts and members of academia. The task of identifying these vulnerable groups can be particularly difficult when a group has not been traditionally identified as vulnerable and, consequently, goes unnoticed as if it were invisible, as is often the case of minor children of mothers or fathers deprived of liberty.
82. Along these same lines, the IACHR notes that States often formulate specific or targeted plans of action, which more precisely define strategies to address a particular issue or right or to protect a particular group of children, such as a plan of action to address human trafficking for purposes of sexual exploitation, to protect the rights of child workers and to eradicate child labor exploitation, or an early childhood intervention plan, or one to protect migrant children. In many countries, committees, commissions and working groups are in place to deal with these issues, and propose policies and action strategies.
83. The IACHR recognizes the need to pay special attention to particular groups of children because of their particular circumstances, but at the same time, it notes that is important for these strategies to be coordinated with the national children's policy in order to avoid a mere patchwork of interventions and for more consistent, effective and efficient, comprehensive and coordinated actions to be designed. Additionally, the IACHR cautions that care must be taken to avoid creating conditions of further exclusion, stigmatization and re-victimization for these children through separate treatment, unless it is absolutely necessary or in their best interest.

84. In conclusion, special protection policies aimed at addressing particular circumstances, which cause situations of vulnerability, or targeted to certain groups of children and adolescents, are one of the building blocks of a national policy for the full implementation of the rights of the child. This type of rights protection and restoration policy must be integrated into general public policy on comprehensive child protection.

### 3. Linking National Children's Policy to the Rest of National Policies

85. In order for a national system to realistically be capable of fully ensuring all rights, reaching all children and adolescents, it must be designed in conjunction and coordination with other systems and all other policies that contribute to ensuring the rights of children and adolescents and creating the social, economic, political and legal conditions for these rights to be satisfied.

86. The IACHR has stressed the importance of national children's policies being linked to other strategic national plans and policies in order to make sure that children are not left out of the major policies of State, such as the policy to combat poverty, national development plans, and major social protection policies.<sup>54</sup> The national children's policy must be regarded as a fundamental part of these plans and must be consistent with all national plans and strategies. The IACHR notes that anti-poverty plans, development plans, and social protection plans, and the programs and services flowing from them all, are part of the national human rights policies and strategies.<sup>55</sup>

87. For this purpose, it is essential for the law or policy to provide for mechanisms to ensure adequate coordination and cooperation between different sectors and ministries, not only within the national system, but also in the settings and mechanisms of the other sectors, such as the points of coordination under the ministry of social development.<sup>56</sup>
88. For example, some of the strategies included in social protection systems, national development plans or in anti-poverty programs, such as

<sup>54</sup> IACHR, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016.

<sup>55</sup> IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), para. 101.

<sup>56</sup> Also see, Alejandro Morlachetti, ECLAC and UNICEF, [Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean](#), 2013, p. 87.



conditioned transfers to families and other family support programs, can make a difference in the material capacity of families and in their ability to care for their children and, therefore, have an impact on the enjoyment of the rights of children. **Different actors autonomously design these policies, the system of benefits and services channeled to children and their families, many times, with no connection to anyone else. Therefore, the national system does not necessarily play any kind of a role in the formulation and evaluation of those policies.**

89. Another clear example of the above-cited phenomenon is the education system. The design and operation of the education system falls squarely within the orbit of the Ministry of Education, which sets education policy. The education system plays an important role in raising awareness of children and adolescents about their rights and empowering them to assert and exercise them. In addition, the school is a setting where situations of a child's lack of protection can be detected and protocols must be in place for early detection and action and referral to the competent authorities. Nonetheless, even though the school should be a protective setting, it often becomes a setting where children and adolescents experience situations of bullying, abuse and violence perpetrated by their peers or adults. Consequently, it is essential that schools have plans drawn up to prevent and respond to such situations. All of these initiatives are best addressed and coordinated, when the education system and the national system have jointly designed these interventions through a collaborative approach.
90. The above-cited instance of a child or adolescent with one of his or her parents in prison is another example of how crucial it is for child protection policies and strategies to be designed in a coordinated fashion. None of the three systems involved in this case, the judicial system, the prison system and the national system, is in any position on its own and in isolation to be able to provide full implementation of rights to this group of children and adolescents, unless all three systems work side by side.

91. Additionally, along the same lines as the above-cited examples, it must be noted that Article 3.1 of the CRC establishes that the best interests of the child must take precedence in all measures concerning children. In keeping with their international and regional obligations, it is the duty of States to integrate and apply this principle into all legislative, administrative and



judicial proceedings that have a direct or indirect bearing on children.<sup>57</sup> This not only entails an assessment of norms and policies aimed directly and specifically at ensuring children's rights, but also in general at all State policies, at all levels of government, which may directly or indirectly affect children and adolescents.

92. In specific terms, it means that in the processes of analysis and discussion of laws and policies, prior to approval, a section must be introduced to specifically take into consideration potential impacts of the laws or policies on children. Policies of all types may have an effect on the respect for the rights of children, and the CRC obliges States to consider and assess these effects. This analysis and assessment is not only required of the national system, but of all institutions of the State.

93. The Committee on the Rights of the Child has held that compliance with Article 3.1 of the CRC requires a **continual process of assessment** of effects on the rights of the child in all decisions taken by the State, with a view toward determining the actual consequences of implementation of those decisions,<sup>58</sup> **in addition to when a policy is formulated.**

94. The impact study can be of a more superficial nature with those decisions that are not expected to have a significant, direct or indirect repercussion on the rights of children or adolescents. The State, at the very least, must conduct a more detailed analysis with any decisions that may have a significant effect on children and adolescents, including those that have direct repercussions on them, such as criminal justice or migration policies, and those that may have a more indirect impact on them, such as macroeconomic policy.

95. This impact study on the rights of the child must be included in any draft policy, law, regulation, budget or any other relevant administrative decision aimed directly at children and/or that is expected to have a direct impact on children and adolescents, at all levels of government, in order to anticipate any repercussions that they may have, in advance of approval,

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<sup>57</sup> See the general comments of the Committee on the Rights of the Child, General Comment No. 5 "General measure of implementation of the Convention on the Rights of the Child," para. 45; General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, pars. 6, 35 and 99, and General Comment No. 19 on public budgeting for the realization of the children's right (art. 4), para. 47.

<sup>58</sup> Committee on the Rights of the Child, General Comment No. 5 "General measure of implementation of the Convention on the Rights of the Child," para. 45 and General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, para. 35.

and throughout the entire period of implementation. This will aid, on the one hand, in identifying potential negative effects on the rights of children and cure them and, on the other hand, using this methodology contributes to better coordination between policies flowing from the different sectors. This is because when this study is conducted, it will bring into focus potential overlapping or duplication of efforts between some sectors and complementary efforts between others.

96. The Committee on the Rights of the Child itself has said that different methodologies and practices can be used to conduct impact studies. The Committee has noted that, at the very least, the CRC and its optional Protocols should be used as a framework for the assessment of measures, in particular, in order to make sure that assessments are based on the general principles of the CRC and especially take into account the differential effects that they have on children and adolescents.<sup>59</sup> The IACHR believes that the assessment will serve to both ensure the effectiveness of the measures approved, and to ensure their compatibility with international, regional and national obligations.
97. The impact study of these policies, norms, regulations, administrative decisions and other measures, on children and adolescents must be based on the insights of many different stakeholders in order to benefit from a variety of viewpoints. It is important to consider the input of children and adolescents and their families or care-providers, civil society and subject matter experts, as well as the appropriate public agencies, and incorporate relevant academic research and similar documented experiences in the same country and in other ones.
98. The study should conclude with the formulation of recommendations for changes, alternatives, improvements and/or strengthening of complementarity with other policies. The study and the recommendations issued in it must be made available to the public.<sup>60</sup>

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<sup>59</sup> General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, para. 99.

<sup>60</sup> General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, para. 99.

### ***D. Design of the Institutional Framework: the Obligation to Organize the State Apparatus to Ensure the Rights of Children and Adolescents***

99. As part of the obligations stemming from Article 19 of the ACHR and Article VII of the ADRDM, which recognize the rights of the child, the State must create and adapt its entire institutional structure and the State apparatus to be able to protect, respect and adequately ensure the rights of children and adolescents. This institutional framework represents what was referred to earlier in this report as the institutional dimension of the national system.

100. The holistic and comprehensive approach to the rights of children and adolescents, their circumstances and with regard to the necessary conditions for the effective enjoyment of their rights, demanded under the CRC, requires coordinating a systemic model linking all sectors involved in issues relating to children at all territorial levels of the State.

101. Adequate protection of the rights of the child require the creation and maintenance of **a specific and specialized institutional framework in order to ensure the promotion and protection of the rights of the child**. It is desirable for the norm creating the institutional framework for children, to have the **highest hierarchical level**, preferably the rank of a legal statute, such as a code for children or a special children's law. This is advantageous because the higher the **normative rank of the instrument creating them**, the higher the likelihood the institutions will endure over time and be more stable; while administrative decisions creating institutions are more readily overturned or amended, thus becoming a greater threat to institutional continuity. A high rank in the normative hierarchy also reflects political will and commitment to children's rights.

102. Most countries of Latin America with codes and/or special laws for children have created new institutions or have overhauled existing ones to bring them in line with the new demands of the vision of comprehensiveness to the protection of rights. The national systems created in the region have one essential function in common: to coordinate and bring together the different offices and actors at the national, regional and local levels with legal competence in children's rights. Notwithstanding, **the solutions provided by the countries vary**. There is no single model of a SNFIRCA, but rather each State shapes the structure of its own national system, based on different elements and factors of context.

103. Even though these differences do exist, many countries generally share the following functional classification scheme of the institutions comprising the national system: i) **bodies or mechanisms in charge, at the different levels, for child policy formulation, as well as for monitoring and evaluation of compliance** (deliberative and policy formulation bodies – usually called **children's councils, committees or commissions**); ii) **agencies in charge of policy execution and implementation, programs and services**, either directly or through coordination and oversight of implementation by third parties (implementing agencies);<sup>61</sup> and iii) **body with system-wide duties of management and coordination, known as the coordinating agency or lead agency of the national system.**
104. The principal differences, in particular, can be identified in the mandates and powers vested by law in each institution or agency, the structure, the administrative level, the composition, how each one functions, and the resources allocated to it to be able to operate. Thus, policy formulation and programs targeted to children, the execution thereof, and coordination of the SNFIRCA is exercised in different countries by a variety of institutions, ranging from national councils to general directorates or offices, ministries, vice-ministries, presidential secretariats and specialized institutes, all with different hierarchical rankings and varying degrees of political, technical and financial autonomy.<sup>62</sup> Additionally, in a significant number of countries, the same body serves as both the coordinating agency and as implementing agency. In other countries, the national deliberative and sanctioning body for child protection policies, is also empowered with the function of coordinating agency.
105. Even though States have the power to organize their apparatus for compliance with their responsibilities, several aspects and principles must be considered when setting up the institutional framework, its functions and legal powers, administrative rank, composition, how it functions, and the resources that are allocated to it.

106. At each territorial level, national, state/departmental or regional, and local/municipal, based on how the State is structured and the distribution of legal authority between the different levels, two bodies must be in operation: one body, which designs policies, formulates strategies, lays out

<sup>61</sup> Also see in this regard, the regional comparative research appearing in the study by Alejandro Morlachetti, ECLAC and UNICEF, [Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean](#), 2013.

<sup>62</sup> Also see the study by Alejandro Morlachetti, ECLAC and UNICEF, [Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean](#), 2013. Pgs. 71 to 73.

plans and programs, and supports the synergy between the different actors; the other body, which is executive in nature and operationalizes the programs, projects and services. As to the coordinating agency, the IACHR has noted the different models existing in the region and has come to the conclusion that these agencies must have a clear mandate and a high rank in the hierarchy to enable both horizontal and vertical coordination, as well as sufficient human, financial and technical resources in order to be able to carry out their duties.

107. Lastly, the national system must be prepared to provide measures of protection, defense and enforceability, restitution of rights, in the event of a violation thereof, which must be delivered, based on the institutional structure of each State, through administrative bodies for the protection of rights, specialized juvenile courts and specialized public defenders (legal defense). In some countries, this is known as “*special protection measures*”<sup>63</sup> in the framework of the “*national subsystem for the protection of children from violence, abuse, neglect or exploitation.*” The IACHR will refer to them, in each particular instance, to: measures of protection of an exceptional nature (such as removal of a child from his or her family for reasons of safety); measures of enforceability and judicial defense of rights (in the context of a judicial proceeding); and measures of restoration of rights (programs of care for child or adolescent victims), all of which are coordinated through the national system for the protection of children's rights.

## 1. Bodies or Mechanisms of Deliberation, Consensus-Building and Policy Formulation and Programs

108. As regards the **bodies or mechanisms of deliberation, consensus-building and policy formulation and programs**, the law must provide for their creation, as well as their multisectoral or inter-ministerial composition and establish the sectors which, at the very least, must take part and participate in these bodies, at the different levels. By the same token, the law must provide for the participation of civil society organizations specialized in the field of children's rights in these bodies.

<sup>63</sup> Terminologically speaking, “special protection measures” is the term usually used to refer to measures of protection against violations of rights and of restoration of rights, as opposed to “measures of comprehensive protection,” the phrase used to refer to all measures as a whole, for the guarantee and effectiveness of the enjoyment of rights and the prevention of situations of violations thereof.

109. At the national level, the law must create a deliberative and policy-making body on children's issues (usually called national children's councils, committees or commissions), whose major functions include consensus-building and approval of a comprehensive national public policy for children, the formulation of national plans, programs and action strategies, flowing from the national policy, as well as the drafting of legislative bills concerning children to be introduced before the legislative body of the country. This body is also in charge of monitoring of implementation of the national children's policy and the evaluation thereof. It should be noted that mechanisms for the participation of representatives of subnational levels of government must be included in the process of formulation of this policy, because this policy applies to all children and adolescents of the country.
110. **As for the composition**, the national policy-making body is made up of the sectors that are called upon to jointly formulate the national children's policy and to coordinate actions in the implementation of the policy, using a comprehensive and holistic approach. As was mentioned above, while many sectors are linked to the rights of the child in one way or another, the leading ones should make up these bodies, and other sectors can be invited or be coordinated with them, based on the particular area. The sectors most often making up the national policy-making body are: social development and social services; national planning; health; education; justice; security/law enforcement; family; women; statistics; labor and social security; culture, art and sport; and treasury and finance. Additionally, representatives of the legislative branch, the judicial branch, as well as representatives of associations of municipalities and of the national independent human rights Institutions (ombudsperson), often sit on the policy-making body, although usually as observers with voice but no vote. The IACHR finds that this participation and the input that could be provided by these actors are relevant to the enhancement of the protection of children's rights. Although these actors do not have recognized decision-making power in the debates of the national policy-making body, they could contribute, for example, by submitting reports or evaluations on the situation of children or on aspects of particular concern, which they have identified based on their respective mandates.

111. This type of body must be replicated at other territorial levels, in states (federal States), regions and municipalities, based on the scope of the legal authority granted to them in the legislation. Thus, at the subnational level, the law must provide for state or provincial policy-making bodies (in

federal States) as well as regional and municipal policy-making bodies on children's issues <sup>64</sup> which respectively must adopt state/provincial/regional policies and municipal policies for children, in accordance with the national children's policy.

112. The **hierarchical rank** assigned to these bodies in the organizational structure, at the national, subnational and local level, and the public official who acts as the presiding officer, are key to ensuring their capacity for decision-making and adequate coordination between sectors. Having the highest ranking public official chairing these bodies, along with the participation of ministers and vice ministers, chief executive officers of the key autonomous institutions, not only sends a clear political message about the importance attached to children, but also paves the way for smoother coordination, cooperation and increased effectiveness of these bodies. In this regard, the IACHR is pleased to see that in some countries of the region, the national policy-making body on children is chaired by the President of the Republic or by the President of the Council of Ministers, and that all of the relevant heads of ministries sit on the body as well, and that the state/regional policy-making bodies on children are chaired by the governors and the municipal policy-making bodies, by the Mayors. In contrast, other countries have opted to create this type of deliberative and consensus-building body for children's policy under a ministry or secretariat. The IACHR recommends that these bodies be granted the highest rank in the organizational structure of government and the highest-level officials of the executive branch chair them.

113. As for **citizen participation in the management of public affairs**, the IACHR deems it imperative for civil society representatives, who advocate for children's rights, as well as representatives of other sectors of society such as academia, to participate in these policy formulation and monitoring bodies.

114. Civil society groups working in defense of children's and adolescents' rights play an important role in actively contributing to the generation and implementation of public policies aimed at children and adolescents, as well as in monitoring and evaluating State policies. In order for civil society participation to actively participate, the State must promote mechanisms for this purpose. Civil society participation must come about voluntarily, independently and autonomously, recognizing these organizations as valid

<sup>64</sup> Also see the multi-country description and comparison of some of these bodies in the region appearing in the study by Alejandro Morlachetti, ECLAC and UNICEF, [Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean](#), 2013.



interlocutors. The law must provide for this participation in policy-making bodies on children at the different levels of government.

115. In addition to being broad, diverse, legitimate and inclusive, this participation of civil society must have the capacity to have a real bearing on policy making, and not just be tokenistic. The IACHR has identified that some countries of the region have established by law parity or coequal participation of civil society in policy-making bodies on children. Having the same number of State representatives as the number of social organization representatives makes for a pluralistic and diverse debate, bringing into the discussion a variety of views, experiences and real life circumstances affecting children. This insight is then embedded into the logic of the need to view children's policies as State policies, guided and framed by the rights of children and adolescents recognized in the CRC, to be as inclusive and participatory as possible.
116. The IACHR finds that the principle of participation in public affairs must be viewed as a right of individuals and as a principle associated with democracy, good governance and adequate and effective management of public affairs.<sup>65</sup>

117. National policy-making body on children, as well as the regional and municipal policy-making bodies on children, must be linked to **mechanisms of consultation with children and adolescents**, especially to formal and institutional mechanisms, such as **children's and adolescents' consultative councils (also known as children advisory panels or councils)**, and the opinions and proposals flowing from these children's and adolescents' councils must be taken into consideration. Applicable principles and obligations are more thoroughly examined subsequently in this report.

118. The IACHR commends the experiences of **convening periodic Forums or National Conferences**, with broad participation of society, for both the design and the evaluation of the national children's policy, which provides invaluable input for actions and compliance with the mandate of the national policy-making body on children. Decentralized hosting of these Forums and Conferences helps to include a broader and more diverse swath of society as a whole in order to be able to better inform child

<sup>65</sup> Carta Iberoamericana de Participación Ciudadana en la Gestión Pública, [‘Ibero-American Charter on Citizen Participation in Public Management,’ Spanish only], approved by the 11<sup>th</sup> Ibero American Conference of Ministers of Public Administration and Reform of the State, Lisbon, Portugal, June 25 and 26, 2009 and adopted by the 19<sup>th</sup> Ibero American Summit of Heads of State and of Government, Estoril, Portugal, November 30 and December 1, 2009 (Resolution No. 38 of the “Action Plan of Lisbon”).



policies and evaluate them. The municipal and subnational (regions/departments, provinces/states/ regions) forums are also highly useful in getting their respective inhabitants involved in participating in child policy formulation, monitoring and evaluation.

119. The IACHR also deems it important for the law to additionally provide for a **space or mechanism of cooperation and coordination between territorial entities**, for the purpose of coordinating children's policies throughout the territory and to ensure the principle of equality and a minimum or 'floor' of service provision and quality. These spaces are especially important to States with federal systems of government, or with strong decentralization of legal authority among regions. Ordinarily, the norm provides for a space or mechanism of coordination between representatives of the different state/provincial and regional/departmental policy-making bodies on children for these purposes. It is important for these spaces of cooperation to also be created at the municipal level.

120. The **particular situation of federal States** means that states (or provinces, in the case of Argentina) have autonomy in the adoption of statutes and regulations within the scope of their legal competence.<sup>66</sup> Even though states must respect the federal constitution, in matters not reserved or not specifically delegated to the central or national government, they may have legislative, regulatory and policy-making autonomy, including for the establishment of children's institutions. In these systems of government, each state creates its own children's policy formulation and execution bodies and the form and hierarchy thereof. Notwithstanding, the IACHR recalls that under Article 28 of the ACHR,<sup>67</sup> in connection with Article 2 of the same instrument, international obligations flowing from treaties are of mandatory compliance at all levels of the State, and the National Government is obligated to take measures to ensure this compliance.

<sup>66</sup> The federal States that exist in the hemisphere are structured and operate differently and, thus, references in this report associated with federal States must be considered in the context of each State's structure, jurisdictions, and specific way of operating.

<sup>67</sup> Article 28. Federal Clause:

1. Where a State Party is constituted as a federal State, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

121. Federal systems pose an additional challenge in terms of harmonization of federal and state/provincial norms in the area of children's rights. In practice, bringing state/provincial laws into line with federal legislation can come about slower in some states/provinces than in others and, consequently, progress in federal legislation may not be reflected as progress in all states/provinces of the country. There may be disparities and varying degrees of spottiness or a patchwork in the recognition, implementation and protection of rights among different states/provinces, which means that the rights of children and adolescents are better ensured and protected in some states/provinces than in others. The Committee on the Rights of the Child has expressed its concern over the complexity that is posed by multiple jurisdictions in federal States, when this gives rise to the situation of not all children in the nation being covered by the minimum standards enshrined in the CRC, as a result of legal, political and financial differences between the federal and state spheres.<sup>68</sup>
122. In the case of federal States, the decisions of the component states are crucial to the effectiveness of the national system, inasmuch as they are in charge of creating the policy formulation and implementation bodies in their territory and fund a considerable portion of them. However, in federal States, which are decentralized by their very nature, national children's policy must be implemented through a process of coordinated arrangement between the actions of the national/federal State and those of the states/provinces.
123. Because of the foregoing nature of such States, it is important for a federal level of consensus building to exist. For this purpose, federal legislation should create a **federal children's council** (or space, mechanism or similar body), made up of the representatives of the existing policy formulation bodies in each state/province at the most senior level (Governors), and thus be able to coordinate and agree on the formulation and execution of legislation and policies affecting children with a certain degree of standardization or uniformity throughout the nation and enable progress in territorial equity and ensure a minimum of parity.
124. Non-federal States with a high degree of decentralization in its regions, departments or other subnational territorial divisions, composed of a group of municipalities, could also benefit from the creation of this type of consensus-seeking council through **vertical coordination** between political and administrative territorial levels.

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<sup>68</sup> Committee on the Rights of the Child, Concluding Observations: Brazil CRC/C/15/Add.241. November 3, 2004, para. 13.

125. It has come to the attention of the IACHR that the functions and activities of federal children's councils, and of other mechanisms of vertical coordination in non-federal States, have shown potential in making a positive contribution in the following ways: i) in the economic sphere, to managing the distribution of budgetary resources for compliance with the goals of the national children's policy throughout the territory of a federal State, thus helping to even out child protection status throughout the territory of the federal State (although it may not always achieve full equity), streamlining transfers to areas of lower financial capacity; ii) in the legal sphere, to expediting amendment of laws and regulations and to increasing uniformity in children's policies and legal standards, in programs services and practices, in action protocols, and in guidelines for case management and child assistance and treatment; and iii) in practical terms, creating the federal council has contributed to stepping up the pace of creating the institutional framework of the national system in the states and has afforded higher hierarchical rank, a higher degree of specialization and raised the political profile of the area of children in the different states, in addition to contributing to the transfer of know-how and skills and to increase the capacities of technical staff. For example, in the framework of these federal children's councils, technical and financial assistance mechanisms can be proposed for the organization and functioning of the national system at the state and municipal levels. Although it must also be noted that those achievements are contingent upon the representatives sitting on these bodies. Therefore, it is recommended that the members of the federal councils be the highest-ranking public officials possible, along with the participation of the heads of the state/provincial policy-making bodies on children. Similar councils, which convene the heads of the local policy-making bodies on children to bring them together with the head of the respective state or region, can also have the same potential as the experience with the federal children's council.
126. In addition to approving policies, programs and services targeting children, the policy-making bodies on children should be assigned, at the very least, the following duties: i) evaluating on an annual basis the investment made in children and the results achieved from it; ii) drafting the budget for the following fiscal year; iii) monitoring compliance with the children's policy and the rest of the programs and services and evaluating compliance on a periodic basis; iv) gathering and analyzing information related to the situation of the rights of children and adolescents; v) identifying and proposing any financial vertical transfers, which may be necessary for proper functioning of the national system; and vi) submitting an annual report on the status of children and adolescents to the parliament or national assembly, or to the state legislative bodies and to mayors, as the case may be, for the particular territorial level. All of these documents must

be accessible to the public, written in understandable language, and steps must be taken for their public dissemination

## 2. Policy Implementing Institutions and Direct Case Work

127. The law must also provide for **the institutions in charge of implementation and execution** of policies and programs. The State must also organize the institutional framework and the operational mechanisms for the provision of direct services to children and adolescents and their families, as well as for case management and special protection measures in response to violations of rights and the need to restore those rights.

128. The implementing institutions of children's policy and programs and the institutions in charge of the provision of protection services and restoration of rights of children and adolescents, play a particularly important and far-reaching role at the local level, because of their proximity to children and adolescents and their families. A priority emphasis should be placed at this level on ensuring quality and equality in access to these services for all children and adolescents throughout the territory.

129. With respect to the institutional framework established by the Codes for Children and Laws for direct care and case management and the implementation of measures of protection and restoration of rights, the IACHR notes that the legal competence, nature, hierarchical rank and make up of these institutions varies widely, based on the legal provisions in each individual country. Some of the bodies have a high degree of administrative and functional autonomy, such as Conselhos Tutelares of Brazil, although these bodies are financially dependent on the municipalities. In other instances, the implementing institutions are located under or are attached to the coordinating or lead agency, such as the case of Costa Rica's Juntas de Protección, which are attaché to the National Children's Trust or (Patronato Nacional de la Infancia or PANI), or in El Salvador, where the Juntas de Protección de la Niñez y de la Adolescencia are departmental administrative offices of the Consejo Nacional de la Niñez y la Adolescencia (CONNA). In other instances, the implementing institutions are attached to the municipalities, such as the case of Paraguay, where the municipalities create the Consejerías Municipales por los Derechos del Niño, Niña y Adolescente (CODENIS). In all of these countries, the legislation provides for the creation and the functioning of these services in each municipality, with the exceptions of El Salvador, where the law establishes only the obligation to create and fund at least one Junta per department, and in

Mexico, where the law establishes the creation of the federal and state level child services offices called Procuraduría Federal de Protección de Niñas, Niños y Adolescentes and Procuradurías estatales, respectively, while at the same time provides for the ability of the federative entities (states) to create local offices, i.e. Procuradurías Locales de Protección, and specialized intake/first contact areas at the municipal level.<sup>69</sup>

130. While there is variation in the laws of the States as to design of operational mechanisms, essentially, they all involve local services of direct care to children, their families and surroundings, which are capable of providing comprehensive and coordinated responses between different actors when situations of risk or violation of rights arise, and for the restoration of those rights. In other words, they are legally empowered to implement a special measure of protection of an administrative nature in response to a situation of risk, of violation of rights, and for the restoration thereof. These are usually services provided by specially trained staff and multidisciplinary teams, who are qualified to address social, psychological and legal aspects, and/or have the capacity to refer cases to other services and officials (health, police, justice). These local level services can also be tasked with other duties of promotion and dissemination/outreach/public education on rights, by providing information, guidance and counseling, among other things, as will be examined when the topic of the local system for the full implementation of the rights of children and adolescents is addressed subsequently in this report, with a more thorough discussion of these services at the local level.
131. In addition to this institutional framework, other agencies are identified, which are in charge of implementing the national level policies and whose structures vary pursuant to the particular regulations of the Codes and Laws in each country. In some instances, they are autonomous institutes attached to a Ministry, such as the PANI in Costa Rica, or to a Secretariat within a Ministry, such as Paraguay's Secretaría Nacional de la Niñez y la Adolescencia (SNNA). The SNNA in Paraguay, for example, implements specific programs such as "Fono Ayuda 147," which provides toll free telephone assistance to children and adolescent victims of abuse, or the program "Abrazo," which protects street children and adolescents and includes a network of direct care facilities for children and adolescents in such a situation. This institutional framework may be divided up into offices in order to have a presence at the subnational levels of government.

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<sup>69</sup> With respect to the typology, see Alejandro Morlachetti, ECLAC and UNICEF, Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean, 2013. pgs. 72 and 77.

### 3. Coordinating or Lead Agency

132. The Committee on the Rights of the Child has been emphatic in requiring States to create a **coordinating agency** (also known as lead agency), in charge of coordination of the different actors and to make sure that the national system functions in a comprehensive fashion.<sup>70</sup>

133. This should be a body with sufficient authority and legal powers to include effectively coordinating the national system in its entirety, as well as to coordinate with other relevant systems such as social protection, health, justice, etcetera, for the promotion and protection of the rights of all children and adolescents.

134. The nature, hierarchical rank and specific powers conferred by the law to this administrative office or agency varies from one State to another; it could be an autonomous institute, or a secretariat or directorate in a ministry. In some instances, the national policy-making body on children additionally exercises in addition to the function of deliberation and formulation of public policies, the function of the coordinating agency.

135. In one group of countries, namely, Brazil, El Salvador, Dominican Republic and Mexico, the law assigns the functions of the coordinating body to the national policy-making body on children. The IACHR takes a favorable view of this model followed by those countries and finds that this design makes a lot of sense, inasmuch as the same body that is responsible for the formulation of the national children’s policy, programs and services, and follow-up on compliance, is also the body that coordinates the functioning of the entire national system and offers the necessary technical guidance for compliance with the policies, programs and services, bringing together in this way, the programmatic dimension with institutional dimension of the national system. Nonetheless, the IACHR also notes that in practice, it may be counterproductive to overload the national policy-making body with duties that are actually executive and managerial in nature, unless it is endowed with sufficient recourses to be able to perform the duties belonging to a Coordinating agency, for example, through an executive secretariat, that is properly equipped with human, financial and technical resources.

136. In several countries, laws and codes assign coordination of the national system to autonomous secretariats, directorates and institutions, which are

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<sup>70</sup> Committee on the Rights of the Child, General Comment No. 5 “General measures of implementation of the Convention on the Rights of the Child, paras. 37 to 39.

located under ministries on the organizational chart. In these instances, the legal nature of these institutions and their relationship of dependence and hierarchical rank within the organizational structure of the Ministry must be taken into account, because these factors could either boost or weaken the coordination capacity. This is particularly important when directorates/offices or departments are involved, whose hierarchical rank and lack of autonomy can compromise the capacity to perform the executive functions of arranging and coordinating of policies and programs for children and adolescents.

137. In the view of the IACHR it is key for the coordinating agency to have a **high rank in the political-administrative hierarchy** and to have clear legal competencies that afford it effective coordination capacity of children's institutions, in addition to having the necessary human, financial and technical resources available to it. It must also have the capacity to coordinate universal public policies aimed at creating the social and economic conditions for the satisfaction of the rights of all children and adolescents with other ministries and public agencies.
138. The coordinating agency must draft proposed technical guidelines to enable effective implementation, functioning and coordination of the national system as a whole at all levels, as well as draft guidelines for implementation of action plans to put the national children's policy into practice and coordinate its execution.
139. The agency is also usually assigned **legal competencies of a technical nature** in the formulation of proposed operational guidelines, technical standards, and guide manuals and action and case referral protocols for public authorities and officials, and for public and private organizations, which work directly with children and adolescents. In its capacity as a specialized technical team, it can advise the national policy-making body on children and prepare draft regulations/laws and policies for their examination and discussion at this body.
140. The coordinating agency must also draft the strategic plan in support of instituting the national system at all levels and provide technical assistance to the municipalities in creating and strengthening municipal policy-making bodies on children. Additionally, it must provide technical support and advice to municipal services of direct casework, as well as set up and maintain a mechanism of training and ongoing exchange for public officials. It is equally important for it to draft and implement technical guidelines to promote the establishment and functioning of children's and adolescents' consultative councils, especially by promoting training for the representatives who make them up, at the national and subnational level,



making sure that these consultative councils have all of the human, material and technical support they need to be able to operate.

141. This agency is usually tasked with the responsibility of keeping the **register of entities and agencies providing direct services to children**, such as public or private foster care facilities and shelters for children without parental care or victims of violence; issuing operating licenses for these facilities; supervising compliance with operational regulations and monitoring them; and investigating potential irregularities or non-compliance with the rules and, when appropriate, impose corrective measures and sanctions, including the power to even close down the facility affected. The coordinating agency is often assigned **monitoring and supervision functions of quality and compliance with standards by local services providing direct care to children and adolescents**.
142. In addition, one of its main duties is to promote and disseminate information and data collection systems, as well as monitoring and evaluation of the systems provided for in the law, making sure that the necessary mechanisms, instruments, methodologies and guidelines are in place for this purpose, as well as making sure that the information is collected and made available to the public. It is also supposed to establish a transparency and accountability strategy for the national system as a whole, which includes making sure that the different reports drafted and evaluations conducted are published and disseminated to the public.

143. Despite its importance, in some countries it is not clear what institution performs this function of coordination, or whether or not the legal competency granted to it by law is adequate to carry out the function and able to coordinate the functioning of the national system for the protection of children's rights at the national and subnational level, which in and of itself denotes a weakness in the system.

#### 4. Participatory Structures for Children and Adolescents

144. The IACHR emphatically notes that, flowing from international obligations in the area of the rights of the child and, especially, the right of children and adolescents to participate and be heard, the States must **create formal structures or institutional spaces for the broad and representative participation of children and adolescents at the different levels**. The law itself establishing the national system must provide for their creation, in light of the importance and consequence of the participation of children



and adolescents and with a view toward ensuring the conditions of permanence and continuity of these spaces.

145. The IACHR, nonetheless, notes that this is an aspect that is not always implemented adequately, even though the Commission recognizes the efforts made by several States of the region to include the participation of the children and adolescents through a meaningful, permanent and institutionalized approach. Some States have created, at the national and different subnational levels, advisory bodies for children and adolescents generally called **children's and adolescents' consultative/advisory councils** as spaces for the institutionalized and standing participation of children and adolescents in the framework of the national system, especially in the processes of drafting, monitoring and evaluation of the policies of State in the area of children. These consultative councils inform the decision-making process of the policy-making bodies on children, at the different levels, acting as a conduit of the opinions and recommendations of the children and adolescents affected.
146. **The mechanisms of participation must be meaningful and geared toward different age groups**, in order to make them truly accessible, providing information and materials to facilitate active and meaningful participation in the process.<sup>71</sup> **The participation must also be broad, pluralistic, diverse and inclusive, ensuring that children and adolescents of different backgrounds, ages and social groups, *inter alia*, are represented.**
147. The State must additionally coordinate mechanisms and procedures to make sure that the participation of children and adolescents in children's consultative councils at the national, regional and local level, guarantees **an adequate degree of representation and, in this way, reflects the diversity of the real life circumstances of the children.** In other words, children's consultative councils must aim to elicit from the children and adolescent members opinions that are representative of their peers. As a prerequisite to this, the children and adolescents themselves must engage in a preparation process, either through dialogue, or hearings, consultations, forums, and in children's/juvenile organizations, that is, groups and associations, so that the children and adolescents who take part in these consultative councils do so as spokespersons, who reflect the voices of other children and adolescents.

<sup>71</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child, para. 29.

148. With respect to this aspect, the IACHR recommends that States include in the national children's policy a strategy to promote social participation of children and adolescents and earmark resources for this purpose. The State, as well, should provide support in the process of establishing children's and adolescents' own organizations in which they can participate in different social spaces, not just the consultative councils.<sup>72</sup>

149. The means to ensure representation, the **requirements to sit on** the children's and adolescent's consultative councils and the **number of representatives on them**, must be adequately set forth in the rules, and several aspects should be considered such as geographic distribution, ages, gender, socio-economic conditions, minorities, cultural and linguistic diversity, ethnic origin, and status of disability.

150. The law should also expressly set forth the obligation that the opinions and recommendations of children and adolescents shall be duly taken into account and reports will be submitted on compliance with this aspect so that their participation is meaningful and not merely tokenistic. In other words, explanations must be provided for how the opinions of the children and adolescents were incorporated into the policies, programs and services and other decisions and, when they were not, an adequate justification for such a decision will also be provided.

151. With a view towards facilitating participation, all **documentation** pertaining to the national policy, as well as evaluations and other accountability documents, and budget-related information, must be widely accessible to children and adolescents and expressed in understandable language.

152. Experience shows that listening to children and adolescents helps to gain a better grasp of their different real life circumstances and surroundings, can help to shed light on behind-the-scenes issues or issues for which little information is available, and their proposals and views can contribute to tailoring interventions to be more effective.

153. The national system for the protection of children's rights must not only integrate participation in its structures and processes (such as the children's and adolescent's consultative councils), but also promote participation as a right of children and adolescents in the different settings

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<sup>72</sup> Committee on the Rights of the Child, General Comment No.20 (2016), measures of implementation of the rights of the child during adolescence," CRC/C/GC/20, December 6, 2016, paras. 24 and 45.

where children develop and grow, thus contributing to move forward in the recognition of this right in the family and in society.

154. The IACHR is pleased that some States have created children's and adolescents' consultative councils at the national and subnational level (regional and municipal levels), in addition to consultative councils or advisory committees of other state institutions with the legal authority to monitor compliance with the rights of children and adolescents, such as the national independent human rights institution (ombudsperson's office). The IACHR has also identified cases in which one or several representatives of children and adolescents sit on the national or local policy-making body on children, that is, the deliberative body, either with voice alone or with voice and vote. However, the experience of consultative councils seems to provide a better opportunity for the participation of a higher number of children and adolescents. Despite these promising steps forward, the IACHR expresses general concern over the quality of practice, because of the absence of formalization of this participation in the organic structures as provided in the laws establishing national systems, and because of the significant gaps at the local level (where few consultative councils have been instituted).

155. Lastly, the IACHR notes that States often attempt to justify their failure to create and institutionalize permanent spaces of social participation or other mechanisms or means for children and adolescents to be consulted and voice their views, by citing a **lack of resources** available to implement these measures, promote participation and support them. In this regard, the IACHR, as well as the Committee on the Rights of the Child, recalls that **investment in the exercise of the right of the child to participate and to have his or her opinions duly taken into account is an obligation of an immediate nature**. This means that States have the duty to take legal measures and make funding available to achieve meaningful participation of children and adolescents in all decisions that affect them and, specifically, in the functioning of national systems for the protection of children's rights.<sup>73</sup>

<sup>73</sup> See United Nations Committee on the Rights of the Child, General Comment No. 19 "on public budgeting for the realization of the rights of the child" (art. 4)" CRC/C/GC/19, of July 21, 2016, para. 53 and Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, July 20, 2009, para. 137.

## ***E. The National Systems at the Local Level***

156. The expansion of democracy at the municipal level has meant greater responsibilities for municipal governments in the area of providing public services and guaranteeing residents' rights and well-being. Municipal governments have authority over any number of matters that impact the rights of children and adolescents. Other decentralized levels of government, such as regions or departments, generally also have responsibilities for children that are well-recognized. These responsibilities in the hands of decentralized governments are provided for not only in the codes on children, but also in the statutes on political structure and territorial organization, such as the law on municipalities.

157. One aspect of the national systems is political-institutional decentralization, which transfers to the regional, departmental, and especially municipal levels (subnational levels of government) part of the political and technical responsibility for drawing up the public policy on children, the implementation and monitoring of that policy, and for adopting measures of promotion, protection, and defense of the rights of children and adolescents, and the provision of services. Accordingly, States have different levels of decentralization with varying levels of responsibility entrusted to the regional/departmental and municipal institutions that work with children.<sup>74</sup>

158. In general, as regards institutional framework, municipal governments must have a decision-making body that determines the municipal policy on children and that monitors its implementation; and the institutional framework or services responsible for the implementation of policies, direct services for children and adolescents, and case management.

159. **Municipal policy-making bodies on children** have the important mission of discussing, designing, approving, monitoring and evaluating the **municipal children's policy**, which should be designed mindful of the national children's policy. The design of the municipal children's policy should adapt the priorities of the national policy mindful of the reality and specific situation of each municipality, but without losing sight of the importance of contributing to, being guided by, and fitting within the national children's policy and the attainment of its objectives, outcomes, and goals.

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<sup>74</sup> See Alejandro Morlachetti, ECLAC and UNICEF, [Sistemas nacionales de protección integral de la infancia: fundamentos jurídicos y estado de aplicación en América Latina y el Caribe](#), 2013, pp. 74 to 78.

160. Municipal services for the promotion, protection, and defense of children's rights vary widely in their competences, nature, place in the organizational structure of government, and composition. Some are organs with greater administrative and functional autonomy, whereas others are under a central autonomous institution, the local government, or the national policy-making body on children (national children's council). In general, in the countries of Latin America the legislation mandates that services for the promotion, protection, and defense of the rights of children and adolescents be established and operational at the municipal level, with some exceptions in which these services are provided at the regional/departmental level with the challenges intrinsic to the lack of immediacy and the limited accessibility characteristic of such arrangements.

161. Direct services should be permanent and free-of-charge, and ensure that children and adolescents and their families have access to specialized attention to ensure the effective observance of the rights of children and adolescents at the municipal level. They are administrative, not judicial, in nature, though they may refer cases to the courts and coordinate judicial interventions in the context of protection actions (for example adopting an exceptional protective measure that entails separating a child from his or her family).

162. Among the functions that the laws authorize them to carry out are:

- i. Actions to disseminate the rights of children and adolescents with social campaigns to raise awareness and educational actions geared to children and adolescents and their families, possibly coordinating with the schools, community and neighborhood groups, local organizations, health centers, and other agencies;
- ii. Provide specialized orientation and support for families, helping to strengthen their capacities and to reduce situations of risk to the rights of children and adolescents;
- iii. Promote family conciliation and other alternative dispute resolution methods for family disputes that affect children and adolescents (e.g. child support payments), favoring negotiation by the parties, and avoiding taking matters to court where possible;
- iv. Detect or receive cases involving the restriction and violation of the rights of children and adolescents;
- v. Preventive intervention in the case of a threat to or violation of the rights of a child or adolescent;

- vi. Perform assessment of the family context and of the conditions of children and adolescents using multidisciplinary teams;
- vii. Decide on the application of an administrative measure of protection applying a plan to support the family and restore the rights of the child or adolescent, accompanying the family group and supervising implementation of the measure;
- viii. Draw up and accompany the plan for restoring rights and coordinating implementation of the measures so that the competent institutions act in a timely and coordinated manner;
- ix. Refer the cases that fall under their jurisdiction to the judicial authorities, as provided by law, and request that urgent exceptional measures of protection be granted (such as separation from the family to protect the child);
- x. Report to the prosecutorial authorities those acts that presumably constitute a crime against a child or adolescent;
- xi. Inspect the public and private agencies devoted to carrying out alternative care programs and take stock of the situation of children and adolescents in them, and follow up on the situation of children and adolescents in a modality of alternative family care;
- xii. Support the implementation of alternatives to the deprivation of liberty for adolescents in conflict with the criminal law, in coordination with the judge;
- xiii. Undertake and promote studies and research to strengthen actions for promoting, protecting, and defending the rights of children and adolescents in order to disseminate them among the competent authorities and public, social, and private sectors, to engage them in the respective programs;
- xiv. Advise the competent authorities, accompanying them in implementing the legal framework for protecting the rights of children and adolescents and drawing up the municipal children's policy;
- xv. Promote coordination of the public, social, and private sectors in planning and carrying out actions in favor of addressing the needs of, defending, and protecting children and adolescents, among them with other municipal offices, health centers, schools, police, civil registry offices, neighborhood associations and grassroots organizations,

courts, and nongovernmental organizations, including organizations of children and adolescents; and

- xvi. In some cases, these centers also offer legal representation services to children and adolescents in judicial proceedings, or third-party services, without detriment to the powers of the Office of the Attorney General.
163. The types of services provided are generally very bound up with the subsystem for special protection from violence, abuse, exploitation, and neglect, and case management, although the IACHR considers that protection of rights and prevention should be bolstered.
164. In addition, these municipal services should keep an **electronic record** of the cases they handle and manage, including consultations, respecting confidentiality. To this end a standardized methodology should be applied in all the municipalities so as to allow for comparisons and for recording data that is broken down so as to be useful for drawing up a profile of the types of cases that reach these services. This information should be used in designing the municipal-level child protection policies. They should present **periodic reports** to the municipal authorities, and one annual report, on their activities and the results of their activities and interventions as well as case statistics, which should be public and easy to access and consult.
165. These municipal services should be **multidisciplinary**, with a team of professionals from different specialties. Usually the law identifies professionals in the areas of the law, psychology, social work, and other disciplines to work in these services, in addition to administrative support staff.
166. The States should **guarantee the effective accessibility, availability, adaptability, and quality of services and programs at the local level**, bringing services and services management closer to the families, children, and communities. The services should also be culturally relevant, offered in the various languages spoken in the country, and easy to access physically in terms of their location and as regards removing architectural barriers. They should also be adapted for children and adolescents of different ages, without discrimination. Access should be easy and safe for all persons. These services should be governed by quality standards, guided by clear protocols and procedures, and have adequate coverage.
167. The locale should have adequate and accessible physical facilities that guarantee safe spaces and a non-intimidating environment for children and adolescents, while ensuring a private and confidential service for each

person. The offices or centers where these services are provided, as a place of reference for the promotion, protection, and defense of the rights of children and adolescents in the community, should have the best possible conditions for providing the services.

168. Many children simply do not know where to turn to ask for help and cannot do so due to their age or because they feel fear or reservations, especially when the perpetrator is a member of the family, caregiver, teacher, or any other person responsible for their protection and well-being, or in a position of superiority. To this end, in order for them to perform their functions it is important to ensure the **widespread availability of the service** in the municipality, among children and adolescents and community members generally, so that any person can come forward to lodge a complaint, express a concern, or consult on a given matter.<sup>75</sup> These services should foster trust in children and adolescents and in the community in general. Children and adolescents, in particular, must be treated with respect and their consultations as well as any information or complaint they present should be taken seriously and handled appropriately, making them aware of the options and measures to be adopted, and keeping them informed. The design and dissemination of materials, signs, posters, and graphics that are easy to understand for children and adolescents of various ages should be part of the strategy for ensuring the widespread availability of these services. Making these services available through the schools is also a good strategy (for example with presentations on the service), as is cooperation between the school and these services for early identification and referral of cases of lack of protection. Close cooperation with health services is also well-advised.
169. The IACHR recalls that all professionals who are in contact with children and adolescents, such as teachers, educators, health professionals, and social workers, among others, when they learn of a possible situation of lack of protection or violation of the rights of a child or adolescents should have the obligation, establish by law, to bring the situation to the attention

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<sup>75</sup> *Mutatis mutandi*, the Commission has acknowledged that “the ability to submit complaints or claims must be extensive stakeholders. In that way, said ability to report complaints or claims may not be restricted to particular persons, the very staff members of the facility or institution, the child’s family members, civil society organizations, as well as any other person who becomes aware of a situation that warrants doing so, should be able to do so. There should also not be any restrictions either on what type of issues can be subject to complaints or reporting of claims, and mechanisms must be in place to allow anonymous reporting of petitions or complaints,” The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 407.



of the competent authority, such as for example these municipal children's services.<sup>76</sup>

170. The IACHR also considers very relevant the **existence of clear protocols and guidelines** for action that take account of the rights of the child and the best interest of the child, as well as **codes of conduct** for the professionals who work in these services, and appropriate **sanctions** in the event they are breached.
171. The IACHR has observed the important role the coordinating agency may play supporting local services with a view to increasing the quality of the service they provide by issuing guidelines and protocols, and drawing up minimum standards for quality and coverage, in addition to monitoring their performance. In addition, they can also carry out actions such as producing manuals and practical guides, organizing courses and trainings, and creating spaces for sharing methodologies, materials, and transfer of knowledge and experiences. All this is with a view to strengthening national systems locally, transforming institutional practices so as to guarantee better protection for the rights of children and adolescents.
172. The spaces for articulating the representatives of the local policy-making bodies on children (municipal children's councils) and the regional authorities may also be an opportunity for strengthening the national systems. Including the question of children on the agenda of the mechanisms for inter-municipal coordination, or on the agenda of the associations of municipalities, produces a greater level of political commitment to the issue and impacts on the capacity of municipalities to be able to assess their main challenges when it comes to carrying out their obligations to uphold the rights of children and to seek common solutions in cooperation with the central level.

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<sup>76</sup> *Mutatis mutandi*, the Commission has stated, regarding the principle of the best interest of the child and the special duty arising under Article 19 of the American Convention, that "the staff of the centers and institutions must be obligated to report any instances or circumstances that come to their attention, which may entail an infringement of children's rights in the context of the care received by them at the center or institution, as well as setting forth the appropriate disciplinary or other sanctions in the legislation, when noncompliance of this obligation is proven," IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 408. Along the same lines as establishing compulsory reporting mechanisms, the following have made pronouncements: Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, CRC/C/GC/13, April 18, 2011, para. 49 and in the Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, A/HRC/16/56, March 7, 2011, para. 55.

173. The IACHR notes that it is important for the law to be clear in dictating that forming municipal policy-making bodies on children and municipal services for children is an obligation, determining the authority responsible for establishing them. The IACHR observes that the establishment of the national systems at the municipal level has been a slow process, in relation to the creation of the municipal policy-making bodies on children and especially direct municipal services, with a worrisome lack of political will in some cases and a lack of legal mechanisms for demanding their implementation.

174. Finally, it should be noted that depending on a country's institutional structure, field offices of the national autonomous institution or agency or of the respective ministry responsible for children's matters may be set up to operate and carry out specific programs. In addition, the centers for alternative care are located in various parts of the territory; depending on the institutional framework of each State they may be under the municipal authorities or the national autonomous institution or agency entrusted with children's affairs

### ***F. The Subsystem of Protection from Violence, Abuse, Exploitation, and Neglect***

175. The IACHR notes that reference is generally made in the region to a national subsystem for the protection of children and adolescents from violence, abuse, exploitation, neglect, abandonment, and lack of adequate parental care (hereinafter "subsystems for protection from violence" or "subsystem"). This subsystem is not about, or should not be about, a subsystem disconnected from the national system for the protection of children's rights. The IACHR observes that the process of constructing and transforming the approach to children and the obligations of the State that stem from that approach, adopting the policies and establishing the institutions to that end, evolved from the entry into force of the Convention on the Rights of the Child. In the course of this process initially the notion of creating a system for protecting the rights of children began to take shape around the concept of protecting children and adolescents from violence, abuse, exploitation, and neglect. Intervention around protection from the various phenomena of violence and neglect or lack of adequate parental care were and have continued to be, to this day, the interventions that account for the lion's share of State efforts, leading the institutional structures to organize and operate in light of these priorities.

176. More recently, this conception has been called into question since the interventions of a system with these characteristics come once the violation of rights has already taken place, the logic of intervention being very much focused on special measures of protection in response to the violation and how to restore rights.
177. This model has major weaknesses. First, it was not a true system for fully guaranteeing the effective implementation of all the rights of the child, as provided for in the Convention on the Rights of the Child. Second, the same model of intervention neglected looking at the causes of the violence and the dimension of prevention, which requires a multisectoral approach.
178. The IACHR observes that at present all the national systems continue to give considerable specific weight to special protection in the face of the phenomena of violence, abuse, exploitation, neglect, abandonment, and lack of adequate parental care – or what continues to be called the “subsystem of protection from violence.” Nonetheless, there has been a trend towards a genuine national system for the full implementation of the rights of children and adolescents without denying or minimizing the challenges that persist to full implementation of the integral-system model.
179. At present, direct services at the municipal level include, for example, preventive actions for orienting and supporting families, or actions to disseminate the rights of children among children and adolescents themselves, their families, and the community. There is also better coordination with social policies, which reflects a more holistic vision and includes preventive actions.
180. The fact that several of the national systems of the region, in practice, are structured and operate guided fundamentally by the logic of protection from violence, abuse, exploitation, and neglect is due in part to the scope of the phenomenon of violence against children and adolescents and the multiple manifestations of violence and settings in which it occurs, as well as the effects it has on the integral development of children and adolescents and on the exercise of other rights. All this no doubt requires the attention of the State.
181. In this respect, the IACHR emphasizes that the set of policies, programs, and services that are taken in under what are called systems of protection from violence should be completely integrated in the national systems for the protection of children's rights, and draws attention to the challenges of a vision focused excessively on these subsystems without taking into consideration the need for the national system to be integral. A restrictive view on the part of the national systems focused fundamentally on the

subsystem of protection from violence poses major challenges even for tackling and preventing violence, since it requires articulating holistic, multisectoral, and multifaceted actions that respond to complex phenomena.

182. The IACHR has also stated that it is common for contemporary society to continue showing levels of **tolerance and permissibility towards certain forms of violence against children**, like corporal punishment, under the supposed justification of “childrearing and discipline”.<sup>77</sup> The lack of adequate legislation that expressly and clearly prohibits all forms of violence and public policies that promote social changes contributes to this state of affairs.<sup>78</sup> The Commission has referred with concern to the **lack of an adequate legal framework that expressly prohibits all forms of violence against children, and at the same time guarantees policies, programs, and services to prevent and eradicate such violence.**

183. In the Commission's view, among the measures aimed at ensuring the right to a life free from violence for children, it is fundamental to take action to modify the structural and institutional conditions, as well as the social norms and cultural standards that legitimate and reproduce forms of violence against children and adolescents, and to ensure the effective enforcement of the current law on the subject and work to turn back the high levels of impunity in crimes against the integrity of children and adolescents.<sup>79</sup> That is why the holistic, multisectoral, and multifaceted approach of the national systems, promoting the empowerment and participation of children and adolescents, is crucial for addressing the violence, as is direct work with the families and the community.

184. As regards situations of abandonment and neglect, the IACHR has also expressed the importance of linking the interventions with the social policies of protection for the family and social development, and has called attention to the persistence of state outlooks and responses that are more in line with guardianship and welfare-oriented models, with a strong emphasis on institutionalizing and separating children and adolescents from their families.<sup>80</sup> In this respect, the IACHR has said that an integral

<sup>77</sup> See IACHR, Report on Corporal Punishment and Human Rights of Children and Adolescents, 2009, and especially paragraph 35.

<sup>78</sup> IACHR, [Violence, Children and Organized Crime](#), OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, para. 121.

<sup>79</sup> IACHR, [Violence, Children and Organized Crime](#), OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, para. 293.

<sup>80</sup> IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), executive summary.

approach must be adopted by a robust national system based on a holistic and multisectoral view of the issues and situations affecting children.

## 1. Adopting Measures of Protection

185. The States should establish mechanisms for offering adequate and suitable protection to children and adolescents at risk and who have been victims of violence, abuse, exploitation, or neglect. In light of the circumstances, these measures of protection may also be exceptional and presuppose the temporary or permanent separation of the child from his or her family to protect the child.

186. The IACHR has noted the importance of offering specialized responses to the various situations of lack of protection that affect children and adolescents that consider and are respectful of the rights of children and adolescents, promote the effective observance of their rights, and address the socioeconomic and structural causes underlying the situations of lack of protection through social policies and social services. To the extent possible, and in keeping with the law, one should avoid bringing into court the social problems underlying the situation of violation of rights when these problems can be addressed more efficiently and adequately by social policies aimed at protecting and supporting the family, in particular when the backdrop to many of the measures of protection is poverty and social exclusion, and the impact of such living conditions on families.<sup>81</sup>

187. The IACHR has also emphasized that the **principle of legality** should prevail when it comes to regulating the procedure in the context of which decisions are adopted that affect the rights of children. As the Court and the Commission have indicated, the procedures, be they judicial or administrative, whose aim is to define rights, must be regulated by law, in addition to guaranteeing the procedural rights and guarantees recognized by the American Convention.<sup>82</sup> In addition, **any action that affects a child must be based on the evaluation by the professionals in the**

<sup>81</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, paras. 231 and 232.

<sup>82</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, paras. 231 and 232. I/A Court HR. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, paras. 94, 103 and 107, and, *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234. paras. 116 to 119. I/A Court HR. *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 105; I/A Court HR. *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69 to 71.

**multidisciplinary teams, must be objectively and sufficiently reasoned, as required by law, and must be in keeping with the best interest of the child, subject to verifications of its suitability and legitimacy through follow-up by the teams of experts.**<sup>83</sup>

188. The IACHR, in its report *The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas*, has addressed the principles and guarantees applicable for the determination, application, and review of an exceptional measure of protection that entails the separation of a child from his or her family, care for the child then being entrusted to alternative family environments or centers specialized in protection, taking into account that separation from the family environment should always be a last resort and for the least time possible, in keeping with international and inter-American standards. The IACHR has also highlighted the need for the measure to be adopted by the competent authority in keeping with the applicable law and procedures, strictly respecting due process guarantees, and subject to judicial review.<sup>84</sup>

189. Based on what has been noted, protection services should have **clear protocols for managing cases** that come in of children and adolescents in need of a protective measure. These protocols should include, at a minimum: guidelines for early identification of violations of rights; means for determining the situation of the child and his or her family by multidisciplinary teams; requirements for proceeding to refer to other offices (such as health and social services) when required or to bring the case to the attention of the judicial authorities; and it should consider the processes needed to determine and implement the intervention most in keeping with the best interest of the child, based on the design of an integral plan for restoring rights that is coordinated with other offices or agencies.

190. A case management mechanism implies having procedures, protocols, and assignment of responsibility in the provision of protection services all established in a legal regulation. There must be an institutional circuit and predetermined and clear protocols for action when adopting both integral

<sup>83</sup> I/A Court HR. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 113. Along the same lines guideline 57 of the Guidelines for the Alternative Care of Children establishes: "Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings."

<sup>84</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, paras. 65 to 75.

and exceptional measures, and one should ensure proper registration of all interventions with respect to children served in the services of the national system.

191. Integral measures may consist of providing support to the family through social workers and psychologists, drawing on material aid mechanisms such as subsidies, who help to better carry out parental responsibilities and contribute to the child's protection and well-being.<sup>85</sup> Exceptional measures imply that based on the evaluations done by the multidisciplinary teams and according to the terms set out in full in the law, a determination has been made that it is necessary to separate the child from his or her family either temporarily or definitively, for the child's protection. In the initial evaluation and the decision to open the case there must be a procedure for determining the best interest of the child that includes hearing directly from the child. There must also be protocols for referring cases to other agencies or services, and criteria must be established for closing a case. At the same time, the law should set out rules to ensure that cases are handled confidentially.

192. The IACHR considers it important that the law also spell out specific mechanisms for periodic review or audit of how cases are managed, to be performed by the coordinating agency or other administrative offices, in its role as guarantor of the adequate working of the national system as per the protocols, guidelines, and standards applicable, and correct actions should be taken as appropriate. In addition, it should be provided that the national independent human rights institute be able to review whether the management of protection matters generally follows the protocols and is in keeping with the regulations, and that recommendations be made in this regard.

### ***G. The Justice System and its Relationship with the National System for the Protection of Children's Rights***

193. The right of access to justice for the victims of human rights violations is recognized in the main international human rights instruments, among them the American Convention and the American Declaration. This is a right recognized for all persons, and therefore for children and adolescents as well. In addition, the age and growth and development of children, and

<sup>85</sup> See IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), paras. 76 et seq.



their dependence on adults when it comes to exercising their rights in light of their age and maturity, presupposes that the State adopt special guarantees to ensure that this group has access to justice.

194. Children and adolescents face particular challenges and barriers due to their condition that may entail obstacles that in practice impede effective access to justice, leaving violations of their rights in impunity and negatively impacting their right to obtain adequate reparation.

195. The State has the duty to ensure access to effective justice for children and adolescents stemming from Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the American Convention, and should adopt all adequate measures, giving special consideration to the particular conditions of children and adolescents and the duty of special protection towards them mindful of Article 19 of the American Convention, to effectively guarantee access to justice.

196. With respect to this issue, the IACHR has observed the need to strengthen the ties between the national system and the justice sector, with the objective of ensuring effective access for children and adolescents whose rights have been violated, diminishing the high levels of impunity that currently exist in relation to the violations of the rights of children and adolescents, so as to help prevent their repetition, and to articulate integral and integrated measures of reparation and restitution of rights.

197. Some of the **barriers and deterrent elements** that the IACHR has identified in access to justice for children and adolescents are associated with the lack of knowledge on the part of children and adolescents of their rights and the possibility of filing complaints and how to do so and where; the limitation on the standing of persons who can file actions with the justice system in response to violations of the rights of children and adolescents, since in some cases it is limited to parents and/or guardians, without children and adolescents being able to exercise the right on their own; the lack of legal counsel and independent and specialized legal representation, free of charge, for children, allowing them to effectively defend their interests and rights; the short limitations periods for some crimes committed against children and adolescents; the scant adaptation of judicial procedures to children and adolescents and the lack of specialization of the courts in respect of the rights of children; the fear of re-victimization in the context of judicial procedures; and the lack of trust in the authorities to investigate and prosecute crimes against children and adolescents.



198. With respect to the right of access to justice and to the ability to assert rights before a court of law, the Committee on the Rights of the Child has written that:

For rights to have meaning, effective measures must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 [of the CRC].<sup>86</sup>

199. Coordination between the national system for the protection of children's rights and the justice system is of vital importance in order to be able to identify, address and overcome barriers, and effectively guarantee the right to justice for children and adolescents. However, coordination between the two areas, the national system and the justice sector, has been lacking and ineffective in guaranteeing access to justice for children and adolescents and ensuring that they have access to full and integrated care, tailored to their status as children and adolescents and victims of human rights violations.

200. In this regard, the IACHR deems it necessary for the national system and the justice sector to jointly coordinate a strategy to ensure effective access of children and adolescents to justice. Actions regarded by the IACHR as requiring review include ensuring that children and adolescents have **access to information** about their rights, including their right of access to justice, and where to go to file a complaint or a lawsuit. **Mechanisms for filing a complaint must be accessible and safe, free of any formal procedures or other limitations and/or requirements, which unjustifiably restrict the ability of children and adolescents to gain**

<sup>86</sup> Committee on the Rights of the Child, General Comment No. 5 "General measures of implementation of the Convention on the Rights of the Child, para. 24.

**access to justice.** The IACHR finds it important to grant broad and clear legal authority to the direct care services of the national system in place at the local level to be able to examine complaints brought by children and adolescents, who resort to those services, and provide them with legal counseling and support them in gaining access to the judicial system.

201. The IACHR also finds it important to establish by law the duty of professionals, who come into contact or work with children and adolescents, to report instances of any suspicion or risk of any situation violating their rights.
202. **Judicial proceedings must be made expeditious, accessible, appropriate and understandable to children and adolescents,** with care being taken so that sufficient information is provided to them in understandable language about any proceedings affecting them. By the same token, **every mechanism must be provided to facilitate the right of children and adolescents to be heard in the context of proceedings that affect them and for their best interests to be assessed.** The IACHR has also held that States must ensure access to **free and quality legal assistance and representation, and ensure the existence of specialized jurisdictional bodies to hear cases involving children's rights.** It is also important to organize periodic training for judges, prosecutors, attorneys, police officers, teachers, social workers, health care workers and other professionals, on the subject of the rights of children and adolescents, including their right of access to justice. These cases must be heard expeditiously and diligently, making sure they are promptly processed and adjudicated and access to adequate compensation must be ensured for children and adolescent victims, and any necessary measures for the recovery, rehabilitation and full restoration of their rights must be taken.
203. In the context of judicial proceedings, the privacy and wellbeing of children victims and witnesses must be ensured and protected throughout all stages of the criminal trials. Children and adolescents must not be subjected to revictimization as a result of taking part in criminal trials. For this purpose, the number of interviews should be limited or testimony should be video-recorded. Along these same lines, the IACHR deems it important to put into place evidence collection and assessment protocols to be sensitive to the best interests of the child, such as adapting the way testimony of young children is taken and assessed or how evidence is collected, when children and adolescents are the victims of sexual violence (in coordination with the health sector).
204. The IACHR finds it useful for protocols or "road maps" to be drafted to guide officials and public employees during complaint intake, judicial

proceedings, and with regard to the necessary care and treatment in order to involve officials of both the national system and the justice sector and, when appropriate, the health sector, so that a comprehensive approach is taken. Additionally, **the State must design comprehensive and integrated services for the assistance of child and adolescent victims of crime, to encompass legal, psycho-social and medical aspects, among other ones, avoiding to the maximum extent possible the victims having to go to different agencies to obtain different components of the full care and assistance required by them.**

205. The IACHR also recommends the State to **draft indicators of access to justice for children and adolescents**, which include data such as the number of cases detected by child assistance services; the number of complaints filed; the number of court judgments, specifying whether or not they led to conviction or acquittal; and the rate of impunity for crimes against children and adolescents, by type of crime. For a thorough analysis, it is important to cross check the data from the justice sector with data generated by other sectors, such as those of the national system, health, law enforcement, as well as child and adolescent victimization surveys and information from civil society organizations and research institutes. Periodically, the State must evaluate compliance with the right of access to justice for children and adolescents, identify persistent obstacles, and approve a plan of measures to overcome them.

## ***H. Private Service Providers***

206. The law can establish some of the functions and services under the purview of the national system be delivered by properly accredited private agencies and/or non-governmental organizations, under the terms of a service provision contract. The law usually explicitly sets forth the type of services that may be contracted out to private agencies, the administrative registration and qualification obligation, in addition to the applicable rules of operation and quality of the service provided by them and the inspections and oversight to which they will be subjected.
207. These private service providers, in some countries, usually manage residential childcare facilities and institutions, where children without parental care or who have been victims of violence are housed.

208. The Commission has expressly addressed private and public child and adolescent protection and care service providers. The States of the region have opted for a variety of models of child protection service providers. In some countries, these services and facilities are public agencies and are

directly managed and funded by the State, while other countries these services are provided by private agencies, managed by private individuals, or by a mixed private/public arrangement, wherein the facilities are privately owned but publicly funded for their partial or total operation.<sup>87</sup>

209. In this regard, the Commission and the Court have established that, under Articles 19 of the ACHR and VII of the ADRDM, children's and adolescents' right to protection, wellbeing and comprehensive development, is a matter of public interest and, as such, it is the duty of the State to adequately regulate and oversee all public and private service providers (even when no service provision contract with the State is involved), which provide the different basic and fundamental services of the care for children directly linked to the observance of their rights.<sup>88</sup> By the same token, the Convention on the Rights of the Child requires that States Parties "shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."<sup>89</sup>

210. The Commission, therefore, finds that States have the duty to regulate and oversee the establishment and functioning of all services of care, custody, and protection, such as residential care facilities and shelters,

<sup>87</sup> For this section, see, IACHR, report The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, paragraphs 323 et seq.

<sup>88</sup> For this section, see, IACHR, report The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, paragraph 328. IA Court of HR. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 78. Also see, IA Court of HR. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, pars. 90, 96 and 97.

<sup>89</sup> Article 3.3 of the CRC. Also see, United Nations, Guidelines for the Alternative Care of Children, guideline 5, and, Committee on the Rights of the Child, General Comment No. 5, general measures of implementation of the Convention on the Rights of the Child, (articles 4 and 42 and paragraph 6 of article 44), CRC/GC/2003/5, November 27, 2003, paragraph 43. Also see: Committee on the Rights of the Child, report of the 31<sup>st</sup> session, September to October 2002, Day of general debate on "The private sector as a service provided and its function in the realization of the rights of the child," paragraphs 630 to 653. Committee on the Rights of the Child, General comment No 7, Implementaiton of the rights of the child in early childhood, CRC/C/GC/7/Rev.1, Septemeber 20, 2006, paragraph 32.

independently of whether they are public, private or mixed.<sup>90</sup> The regulations of the establishment and functioning of these facilities and the provision of services by them must be governed under the principle of the best interests of the child and address aspects pertaining to service quality and standards for effective protection of the rights of children and adolescents.

211. Moreover, States' obligations must include regulation of: i) qualification requirements and procedures for getting an authorization for operating, licensing and registry of residential care facilities, ii) period of validity of the authorization, renewal and extension thereof, and, iii) grounds for revocation of authorization. Child and adolescent protection and care service providers must be properly accredited and licensed to operate and appear in the appropriate register. For these purposes, States must create a registry of service providing agencies for the care and protection of children and adolescents.<sup>91</sup>
212. Lastly, States have the obligation to **establish a permanent mechanism or process of supervision, control and oversight** to make sure that all public and private service providers effectively comply with and respect the regulations, regardless of whether or not they have entered into a service provision and/or public funding agreement or contract. In many States, inspection duties are reserved for the coordinating agency of the national system. The law must provide for civil, administrative and criminal sanctions, as appropriate, in the event of a breach in the terms of service provision and/or violations of rights.<sup>92</sup>

<sup>90</sup> IACHR, report The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, paragraph 328. The Commission has underscored that these obligations of regulation and supervision are fundamentally important when public and private residential care facilities and institutions are in charge of the protection, custody and care of children separated from their families, inasmuch as both the duty of special protection of the child children under article 19 of the Convention and the particular protection needs of these children are applicable. In relation to these circumstances, the State has a heightened duty as guarantor in light of the situation of vulnerability, which children separated from their families are in, and this means, as the Court has recalled, that the State "must assume a special position of guarantor with greater care and responsibility, and must take measures especially oriented in the principle of the best interests of the child."

<sup>91</sup> IACHR, report The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, para. 334.

<sup>92</sup> IACHR, report The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, paras. 334 and 342. Also see the opinion of the Committee on the Rights of the Child, General comment No. 5, General measures of implementation of the Convention on the Rights of the Child (articles 4 and 42 y paragraph 6 of article 44), CRC/GC/2003/5, November 27, 2003, para. 43. Also see:

## ***I. Non-State Actors and Community Structures***

213. The major international human rights instruments on the rights of the child include references to the role of society and the community in the protection and wellbeing of children and adolescents. Article 19 of the ACHR establishes that “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” While it is important to emphasize that the obligations to respect, protect and guarantee flowing from the rights recognized in the treaties, conventions and other international instruments refer to States, there is also recognition of the place held by society, the community and the people in the immediate surroundings of the child to his or her development and protection.

214. In this regard, the Committee on the Rights of the Child has written that “while it is the State which takes on obligations under the Convention, its task of implementation – of making reality of the human rights of children – needs to engage all sectors of society and, of course, children themselves.”<sup>93</sup>

215. Therefore, the role played by different actors in the development of children and adolescents, in exercising their rights and in protecting them from any violation of their rights or form of violence or neglect, is recognized, particularly as it pertains to actors, who are in close contact with the child in the physical surroundings where he or she grows up and develops.

216. In several Codes and Special Laws for Children, references are made to actors who are not officials or agents of the State, recognizing their role in the protection of the rights of the child and in the functioning of the national system. These actors include community-based organizations, parents' associations, civil society organizations working on behalf of the rights of the child, organizations of children's and adolescents' themselves, neighborhood councils, community associations, churches and religious congregations, civil associations, volunteer networks, and outreach

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Committee on the Rights of the Child, report of the 31<sup>st</sup> session, September to October 2002, Day of general debate on “The private sector as a service provided and its function in the realization of the rights of the child,” paragraphs 630 to 653. Committee on the Rights of the Child, General comment No 7, Implementation of the rights of the child in early childhood, CRC/C/GC/7/Rev.1, September 20, 2006, paragraph 32.

<sup>93</sup> Committee on the Rights of the Child, General Comment No. 5, general measures of implementation of the Convention on the Rights of the Child, (articles 4 and 42 and paragraph 6 of article 44), para. 1. Also, in comment No. 13 on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child recognizes the importance for community levels to be included in the coordinating framework to combat violence.

workers' networks. The nature of these actors is quite diverse; however, all share the common trait of being in the close physical proximity to the children and adolescents and the ability to make a positive contribution to promoting and defending their rights.

217. The community structures to which we are referring may consist of a network or a group of individuals working in coordination within a community, usually as volunteers, on behalf of promotion and protection of children's rights. The structure, operation and responsibilities of such mechanisms can be formalized to a greater or lesser degree, and some of them have become legal entities. Levels of organization, operational capacity, sustainability, and formality are, therefore, different.
218. These community-based support structures for children have historical roots in the region from social movements of solidarity or emancipation, at times linked to social ministries of churches. More recently, many of the community mechanisms specifically focused on the children's rights promotion and protection have been spearheaded by non-governmental organizations (NGOs) and international cooperation in coordination with the community and, in many instances, have received some degree of State support. They are usually present in the poorest and most remote areas, rural and peri-urban areas, and arise from an absence or limited presence of formal services of the national system. At the current time, NGOs and international cooperation agencies fulfill a role as facilitators, capacity builders, technical and economic support advisors, among other ones, but they are not the direct implementers of these community-based mechanisms.
219. The development of community-based mechanisms and the coordination thereof with the national system has given rise to significant achievements, such as increased sensitivity and social mobilization of communities and families, who take on a more active role in child protection; promotion of rights awareness; prevention strategies implemented by the network members, and in conjunction with the families; helping to defuse violence against children and adolescents and violent practices rooted in society (such as corporal punishment); implementation and enhancement of systems of detection, reporting and referral to formal bodies of the national system for child and adolescent victims of violence and of other violations of their rights; teaching children and adolescents about their rights and different self-advocacy skills; promotion of participation and recognition of children and adolescents as social actors or stakeholders in society; social mobilization for policy advocacy; and the development of response strategies and intervention models in cases of violations.



220. Empowering children and adolescents by making them aware of their rights and promoting their participation in society and their leadership is one of the strengths of several of the community-based mechanisms in the region. Children and adolescents mobilize around their rights and engage in specific dissemination and training activities about their rights;<sup>94</sup> they engage in participatory actions for diagnostic assessment of issues; and they are empowered for advocacy and participation in formulating budget proposals for public children's policy and the monitoring thereof.
221. Some Children's Codes and Special Laws provide for mechanisms of coordination and formal collaboration between community-based structures and the structures of the national system. The level where the highest degree of interaction and symbiosis can be identified between community-based structures and the formal structures of the national system is at the local level. The local level is where the functioning of the national system must have the greatest operational capacity to carry out direct actions and be capable of providing coverage to all children and adolescents, their families and communities; yet this is where the greatest weaknesses lies, especially in the most marginalized and isolated areas. Consequently, coordination between the formal system and the community structures is especially important at this level, and particularly, in areas with less of a presence of the national system.
222. The collaborative frameworks of these community structures with the national system for the protection of children's rights usually vary according to the particular country and the actors involved. In general, the common thread to them all is that representatives of civil society organizations and of the community structure sit on the local policy-making bodies on children to take part in the functioning of the national system through local public children's policy formulation and the monitoring thereof. These social organizations and community structures, for example, are represented in working groups, committees and other spaces, which are created at the local level to coordinate the efforts of the public agencies through actions, which non-State actors and community structures may have been conducting (such as a committee against human trafficking, a committee for the prevention of violence). In other words, these are spaces of deliberation and discussion of actions and strategies, where the representatives of the institutions comprising the national system and the community structures come together and participate alongside each other.

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<sup>94</sup> Usually, specific education and sensitivity training is provided, which promote the ability to identify cases of violence, express fear, making it easier to ask for help, awareness of one's own body and making psychological or gender violence visible, among other things.



223. In other countries, however, the degree of interaction is higher. In these countries, the children's code or special law provides for the ability to incorporate community-based protection mechanisms into the national system as a component part. In these instances, the law makes it possible for grass roots or community-based groups to be able to register and constitute a unit/center/office of promotion, protection advisory assistance on the rights of children and adolescents, which provides services to its community. Such is the case of some of the Defensorías del Niño y del Adolescente (DEMUNAS) of Peru.
224. The staff and outreach workers at these centers are often mothers, teachers, community leaders, and in general individuals, who are usually linked to the function of these direct care centers or programs on a voluntary basis. In some instances, the person in charge of the office is paid, or those working at it received some type of compensation, but very often the workers do their jobs strictly as volunteers. These individuals receive training and instruction by the members of the national system, and there are action, management and case referral protocols in place for the volunteers to follow, and they are also subjected to the supervision of the State.
225. These community-based structures, that are formally linked to the national system, usually focus their activities on aspects pertaining to: promotion and dissemination of rights; advisory assistance on access to services; some preventive and protective interventions; social mobilization and social participation of children and adolescents; as well as early detection, notification and referral of cases to formal services of the national system or other competent authorities. Their actions are usually limited to interventions that do not require a high degree of professionalization and specialization, and are more linked to aspects of public information, prevention, early detection and case referral.
226. In areas with less of a presence of the national system, these mechanisms act as the "entryway to the national system," the first point of contact with the national system. Nonetheless, these community-based services must be adequately linked and supported by the formal structures of the national system, especially by the local direct care services for children and adolescents and other public institutions with a child protection mandate (health, education, law enforcement), in order to be able to refer in a timely fashion those cases that so require it for adequate treatment.

227. In general, community-based mechanisms for the promotion and protection of rights play a significant role in increasing the sensitivity of society and promoting a culture of greater respect for children and

adolescents and are found throughout all countries of the region. Coordination of the national system with these community level structures has a basis in different cultural, historic, institutional and legal aspects, which characterize several countries and societies. In this regard, the IACHR deems it imperative for a national system to be based and founded on framework legislation for children, which clearly sets the formal limits of the national system, its functions, legal authority, as well as its capacity to coordinate with community structures, with a clear definition of the scope and limits of this coordination with these structures, in order to determine the responsibility of the State emanating from it.

228. This coordination must not create two separate child care systems, which provide differential care; the State is responsible for the promotion, protection and defense of the human rights of all children and adolescents throughout its territory, as well as for the functioning of the national system, the quality and coverage thereof. Therefore, it is important for the law to clearly define the scope and limits of this coordination between the national system and the community structures, to ensure that this coordination makes the two systems complementary to each other and does not represent a breach of State obligations in particular areas of the country.
229. These situations differ legally from the contracting of private agencies to provide services, which can be civil society organizations (NGOs), because in these instances a service provision contract or agreement is involved.
230. The IACHR underscores that, when formal cooperation is established between community structures and the national system, it is important for the law to provide for: the scope and limits of this cooperation; a mechanism of registration and supervision by the State; adequate regulation of the nature of the labor relationship with the individuals involved in these initiatives in order to avoid it giving rise to hidden contractual arrangements or other situations which run afoul of labor laws and the rights of workers; and training, the establishment of codes of conduct and guidelines for actions, identification, case reporting and referral to the formal mechanisms of the national system.

CHAPTER 3  
ECONOMIC ASPECTS OF  
NATIONAL SYSTEMS  
FOR THE PROTECTION  
OF CHILDREN'S RIGHTS



## ECONOMIC ASPECTS OF NATIONAL SYSTEMS FOR THE PROTECTION OF CHILDREN'S RIGHTS

### ***A. Legal Obligations in Relation to Economic Aspects of National Systems***

231. The measures that the State is required to adopt to promote and ensure the rights of children and adolescents include those of an economic nature. A state's fulfillment of its international obligations with respect to the rights of the child entails that it invest the necessary resources for the realization of those rights. Where international instruments refer to the obligation to "such measures as may be necessary" to ensure rights (Articles 1(1) and 2 of the American Convention and Article 4 of the CRC) they allude also to economic measures to finance the actions needed to ensure that all the rights of children and adolescents are respected, protected, and ensured.<sup>95</sup>

232. Specifically, the State must allocate budgetary resources to ensure the installation and annual functioning of the institutions and operational structures of national systems, as well as to guarantee that laws, policies, programs, and services targeting children are implemented.

233. In relation to the foregoing, the United Nations Committee on the Rights of the Child has said that when examining States Parties' reports, in its concluding observations, the Committee habitually raises concerns regarding whether the size of the budget is sufficient to realize the rights of

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<sup>95</sup> See, in this regard, United Nations Committee on the Rights of the Child, [General Comment No. 19 on public budgeting for the realization of children's rights \(art. 4\)](#), CRC/C/GC/19, 21 July 2016; Human Rights Council resolution 28/19 aiming towards better investment in the rights of the child, and the report of the United Nations High Commissioner for Human Rights that preceded the resolution, entitled "Towards better investment in the rights of the child" (A/HRC/28/33). They address the role of national policies, resource mobilization, transparency, accountability, participation, allocation and spending, child protection systems, international cooperation and follow-up in relation to investment in children; and General Assembly resolution 67/218 on promoting transparency, participation and accountability in fiscal policies, which emphasizes the need to improve the quality, efficiency and effectiveness of fiscal policies and encourages Member States to intensify efforts to enhance transparency, participation and accountability in fiscal policies.

the child.<sup>96</sup> The most common explanation offered by States in relation to difficulties with implementation of policies and the operations of national systems is shortage of economic resources. However, the rights of the child, as recognized in international treaties and domestic law, cannot be protected without sufficient economic resources for that purpose.

234. The IACHR agrees with the Committee on the Rights of the Child when it says that the rights of children will not be realized “without sufficient financial resources being mobilized, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner,”<sup>97</sup> and the necessary investment must be envisaged both for the institutions to function and for the national children's policy to be implemented.

235. In terms of budgets, “implementing children’s rights” means that the State is **obliged to mobilize, allocate and spend public resources** in a manner that adheres to its obligations of implementation of the CRC at all levels of the executive, legislative, and judicial branches as well as in all their structures.<sup>98</sup> The measures to consider, in light of the principles set forth in the CRC, include those **related to public revenue collection, budget allocations, and spending and its effectiveness.**

236. In that regard, according to the mandate contained in Article 3 of the CRC, “[i]n all actions concerning children [and adolescents] ... the best interests of the child shall be a primary consideration,” while Article 4 provides that the maximum extent of available resources shall be assigned for the realization of the rights recognized in the CRC, and Article 2 requires that those principles be combined with the principle of equality and nondiscrimination in the exercise of the human rights of children and adolescents. The CRC clearly establishes the priority that should be accorded to allocating public resources for addressing the rights of children and adolescents. Those principles should be considered **throughout every phase of the budgetary process and in all budgetary decisions that affect children and adolescents.**

237. The obligation contained in Article 3 of the CRC is crucial when States weigh up competing budget allocation and spending priorities. **States**

<sup>96</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children’s rights (art. 4)”, para. 11.

<sup>97</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children’s rights (art. 4)”, para. 11.

<sup>98</sup> In that connection, see United Nations Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children’s rights (art. 4)”, para. 27.

**should be able to demonstrate how the best interests of the child have been considered in budgetary decision-making, including how they have been weighed against other considerations.<sup>99</sup>**

238. The implementation of the State's obligations in terms of investment in the rights of the child should be considered in relation to each stage of the budgetary process; in other words, **in the public budget planning and approval process; in the execution process itself; and in follow-up and evaluation of how the investment was carried out, and its results in relation to the implementation and realization of the rights of children and adolescents.**
239. In first place, therefore, the State's budgetary obligations require it to have complete, sufficient, and accurate data available in a timely manner to enable it to adopt budgetary decisions targeting the realization of the rights of children and adolescents.
240. The amount of resources should be adequate to accomplish the national children's policy objectives, results, and goals, and to guarantee the functioning of the institutions that belong to the national system, which applies to all territorial jurisdictions of the State. In that connection, the IACHR recommends that States **make estimates of the cost of proposed legislation, policies, programs, and services that affect children and adolescents, as well as of the operating costs of the institutional framework**, in order to determine the level of financial resources necessary and enable budget planners and the pertinent decision-makers in the executive and legislative branches to adopt informed decisions on the resources necessary.
241. The IACHR considers that States should mobilize all their available resources in a way that is compatible with their obligations to provide children with special protection (Articles 19 of the American Convention and VII of the American Declaration) and to consider their best interests. To that end, at a minimum, they should consider the following:<sup>100</sup>
- a) **Conducting child rights impact assessments of legislation and policies pertaining to resource mobilization;** (For example, not all State income generation policies have the same impact on

<sup>99</sup> In that connection, see United Nations Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), paras. 45 and 46.

<sup>100</sup> Several of the considerations that follow are similar to those made by the United Nations Committee on the Rights of the Child in General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), paras. 76, 77 and 66.

children and adolescents. Thus, indirect tax receipts have more repercussions on the purchasing power of low-income families and, therefore, potentially could adversely affect children and adolescents in situations of greater vulnerability.)

- b) Reviewing and ensuring that policies and formulas for the division of public revenue among different government entities, both vertical (between different levels of the State) and horizontal (between sectors at the same level), favor and enhance assurance of rights and equality among children and adolescents in different geographical regions;
- c) Introducing and applying the budgetary principles of transparency, effectiveness, efficiency, equity, sustainability, accountability, and participation—and in general ensuring that good governance principles are adhered to—in budgetary regulations, as well as coordinating anticorruption measures, at all levels. The absence or weak enforcement of such principles can create inefficiencies, mismanagement of public finances, and corruption. This in turn can lead to insufficient resources being available to spend on the rights of the child.
- d) Ensuring mechanisms that encourage intersectoral and interinstitutional coordination and cooperation, both within the national systems for the protection of children's rights and in other systems, in the interests of more efficient and better coordinated spending. This also includes identifying cooperation opportunities with civil society organizations, international cooperation, academia, professional associations, media organizations, and the private sector in general, among others.
- e) Introducing in budgets a justification of the specific amount of resources that have been allocated to children, bearing in mind the commitments assumed by the State when it set the goals, results, and targets envisaged in the national children's policy in force upon the budget's adoption, stating whether or not the amount will be enough to meet those targets.
- f) **Ensuring that funds are raised and transferred in time to guarantee that they can be effectively spent.** It should also be ensured that the spending capacity exists. Such aspects are especially sensitive at the local level and in municipalities that face greater collection and spending challenges and that receive funds and transfers from the central level to implement all their policies, programs, and services.



242. In addition to the foregoing, States need to **analyze the repercussions that budgetary decisions have actually had on children and adolescents**, for which purpose it is important to conduct audits, evaluations and studies of the impact on children and adolescents of past public revenue collection, budget allocations and expenditures. That information should be made widely available to the public in clear, easily understood language. States should also have available information on the impact that previous years' budgets have had on children—in terms of meeting the national children's policy targets—to inform decision-making in the present budget cycle.
243. The State should **publish reliable and disaggregated information and data** regarding the extent to which children and adolescents are guaranteed their rights throughout the State's territory, as well as on the level of government investment in children as a proportion of the total national budget and in comparison to the level of investment in other sectors.<sup>101</sup> Information should be published in a timely manner on revenue mobilized, budgetary allocations to children, and actual expenditure across all levels of the State. That information should show and explain any deviations that have occurred.

244. In keeping with the foregoing, the State has an obligation to show how the public budget-related measures it chooses to take result in improvements in the situation of children. The information must be analyzed among other things, in relation to the level of realization of each right and the availability, quality, accessibility, and equitable distribution of services targeting children. To that end, it should demonstrate concrete results. If Articles 1(1) and 2 of the American Convention and 4 of the CRC are to be satisfied, it is not enough to show evidence that financial amounts have been allocated to children without evidence of results from that investment of resources in terms of rights.<sup>102</sup> In order to comply with the foregoing it is

<sup>101</sup> Traditional classification according to the degree of specificity of resource allocation for children: (i) Specific or Direct Expenditure: expenditure on programs and initiatives directed specifically at children and adolescents (e.g., school meals); (ii) Indirect Expenditure: proportion of expenditure that benefits children and adolescents through programs and initiatives directed at the family or other actors with a clear impact on children well-being (e.g., family income transfers); (iii) Collective Expenditure: proportion of expenditure directed at children and adolescents through programs and initiatives that benefit a wider population group (e.g., measures to raise living standards); (iv) Public Goods Expenditure: proportion targeting children of spending on provision of public goods not envisaged in other categories (e.g., urban services).

<sup>102</sup> In that connection, see United Nations Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), para. 24.

necessary that the resources specifically allocated to children be appropriately labeled and classified so as to allow accountability.

245. Therefore, the State must have available precise information on the amount of resources that are allocated annually to children and adolescents. In addition, that information should be disaggregated, at a minimum, by amount invested in children and adolescents in each of the country's geographic zones; by age, gender, and ethnicity; and by different vulnerability factors previously identified in the diagnostic assessment on which the national children's policy was based (such as disability, lack of parental care, migrants, in a street situation, LGBTI,<sup>103</sup> etc.) The information should show the level of investment specifically targeting those groups of children and adolescents, and States should continuously assess the outcomes in different groups of children and adolescents in order to identify where more effective promotion and further investment are required, as well as the specific results of that investment.<sup>104</sup>
246. It should also be kept in mind that, as the Committee on the Rights of the Child has said, “[s]pending equitably does not always mean spending the same amount on each child, but rather making spending decisions that lead to substantive equality among children. Resources should be fairly targeted to promote equality.”<sup>105</sup>
247. The above will not only require quantitative data, but also the inclusion of consultations with children and adolescents, with their families and caregivers, and with persons who work directly with, or to advance the rights of, children and adolescents in order better to determine how the budgetary measures have affected the children and adolescents. The results of those consultations and of the assessments mentioned above should also be given due consideration in subsequent budgetary decisions, with expressed justification given of how those opinions, results, and assessments are being taken into account in later budgetary decisions.<sup>106</sup>
248. The IACHR considers it essential for the State to provide environments conducive to the meaningful **participation of interested parties in the budgetary process**, including civil society and children and adolescents

<sup>103</sup> The acronym LGBTI is used in this report to refer to gay, lesbian, bisexual, trans, and intersex children and adolescents.

<sup>104</sup> See also United Nations Committee on the Rights of the Child, [General Comment No. 19 on public budgeting for the realization of children's rights \(art. 4\)](#)”, para. 27.

<sup>105</sup> See also United Nations Committee on the Rights of the Child, [General Comment No. 19 on public budgeting for the realization of children's rights \(art. 4\)](#)”, para. 61.

<sup>106</sup> Similarly, see United Nations Committee on the Rights of the Child, [General Comment No. 19 on public budgeting for the realization of children's rights \(art. 4\)](#)”, para. 69.

themselves. Participation should be assured throughout the whole budgetary cycle (planning, approval, execution, follow-up, and assessment), and to that end the State should promote the creation of permanent mechanisms and spaces like children's consultative/advisory councils, as well as other means, such as consultations, hearings, forums, and broad and inclusive debates, as well as "using new technologies."<sup>107</sup> The State also has the duty to establish **transparent public accountability mechanisms that enable civil society, including children and adolescents, to track the results of public spending.**

249. To that end, as a prerequisite, the IACHR and the Committee on the Rights of the Child consider it necessary for the State to promote appropriate **education and public awareness** initiatives concerning budget decision-making processes, via readily accessible media in clear language that is easy to understand.<sup>108</sup>
250. The IACHR recognizes that **budget transparency** is a fundamental principle for good governance and the fight against corruption, as well as a prerequisite for meaningful participation by civil society and children and adolescents. Transparency means ensuring that comprehensive, user-friendly information in easily understood, appropriate language is made publicly available in a timely manner in relation to the planning, enactment, execution and follow-up of budgets at the national, subnational, and local level.

251. Bearing in mind that resource allocation is an obligation that arises from the duty to respect, protect, and ensure the rights of the child, the IACHR considers that there should be an **express legal provision in place governing the duty of States to invest the necessary resources to meet their international obligations with regard to protection of the rights of the child.** The law should clearly set **minimum parameters that the State should observe in the process of resource allocation for children,** taking into account to that end the contents of the CRC and its general principles. The legal provision on budget allocation to children should refer to the different levels; that is, national, subnational, and local.

252. The State should also give consideration to the **sustainability of financial investment** in the rights of the child to avoid any regression in levels of

<sup>107</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4)", para. 69.

<sup>108</sup> In that connection, see United Nations Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), paras. 16, 52-56, and 62.

rights realization and to maintain levels of well-being and rights satisfaction for all children and adolescents under the State's jurisdiction.<sup>109</sup> States may only take retrogressive measures in relation to children's rights as outlined in the principles established by international human rights law as objective and binding criteria, which are described in the next section of this report.

253. Usually this means that the issue of the budget allocated to the workings of the institutions and implementation of child policies is mentioned in the children's code, special law on children, or another law as a **simple reference to the regular budget** for determining the amount of resources that are annually allocated to children, without any kind of additional provision. In some cases, however, those laws contain no mention of the budget.
254. In other cases, the IACHR has noted that the law goes further and introduces specific provisions aimed at ensuring a minimum floor or a certain level of resources for children. Some of the models identified are as follows:
- i. allocating a specific budget percentage to implementing the national children's policy and the functioning of the national system, either from the national budget or from the budget of the sector to which it is linked (for example, the Ministry of Social Development); that approach may also be combined with setting specific percentages in other sectors linked to children (for example, a percentage of the overall budget allocated to compulsory education, or in the area of healthcare to combat neonatal and child mortality);
  - ii. the establishment of a national children's fund from public and private contributions, usually through charges or indirect taxes, voluntary contributions, and international cooperation; the fund is used to finance the annual operations of the national system and the implementation of policies, programs, and services targeting children;
  - iii. the introduction of the principle of progressiveness and establishing that economic investment for the current year may not be inferior to that of previous years;

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<sup>109</sup> Committee on the Rights of the Child, [General Comment No. 19 on public budgeting for the realization of children's rights \(art. 4\)](#), para. 63.

- iv. in some cases, the law establishes the intangibility of funds allocated to children, or a part thereof, in the national budget.<sup>110</sup>

255. Ensuring the installation and normal operation of the national system and its institutions in a way that allows them to be sustainable requires guaranteeing a **necessary minimum level of investment**. The IACHR considers it essential to give greater predictability to guaranteeing budgetary minimums for the operation of national systems. Specifically, the IACHR recommends that the **law establish a concrete mechanism to ensure a specific minimum level for the operation of the national system and that the law explicitly mention the principles of non-regression and progressiveness in the protection of children's rights** recognized in the standards of international human rights law.

256. The IACHR also recommends that the applicable law **protect the budget for children** against external or internal disruptions, such as economic crises, natural disasters, or other emergencies, in order to maintain the sustainability of investments at least in basic or strategic programs and in the institutional framework for children. One way of doing that could be the establishment of a fund that **ensures the intangibility of the budget for its basic or strategic programs—and maintain the institutional framework that ensures the operating conditions for guaranteeing the rights of children and adolescents**.

257. The IACHR considers **basic or strategic programs** to include those aimed at ensuring the rights to life and physical integrity, providing healthcare, and combating malnutrition for children and adolescents, the disruption of which could put at serious risk the well-being and integrity of children and adolescents, with lasting or even irreversible effects on children and adolescents. Basic or strategic programs are also those that target groups in situations of greatest vulnerability who would be more intensely affected by an economic crisis or cuts in social security benefits than the rest of the population, to the detriment of their most basic rights, including the rights to life, physical integrity, and health.

258. The IACHR recommends that all States identify in a participatory manner such **basic or strategic programs for children**, and adopt measures to protect them from recessions, economic crises, natural disasters, and other exceptional eventualities.

<sup>110</sup> See the study by Alejandro Morlachetti, ECLAC and UNICEF, [Comprehensive National Child Protection Systems: Legal Basis and Current Practice in Latin America and the Caribbean](#), 2013, pp. 80 and 81.

259. Finally, the IACHR notes the need for the State to provide **institutional and financial mechanisms for dealing with inequalities and inequities within a given territory** of the State. Such differences have to do with the combination mainly of: the income generation capacity of the territorial authority, the competencies (responsibilities) attributed to the territorial authority, and the degree or level of unsatisfied rights in the population. That disparity gives rise to different realities and levels of protection and assurance of children's and adolescents' rights. Bearing in mind the principle of equality, the State should ensure that the mechanisms for calculating and making transfers among different territorial levels are properly coordinated and explain to the public what they consist of and how they are specifically linked to the realization of the rights of children and adolescents in the whole country, to overcoming conditions of inequality of opportunities, and to enhancing the State's capacity to provide protection.
260. The State should ensure that decision-makers on budgetary and taxation matters have the necessary **training and technical credentials** to analyze and discuss the impact on child rights of budget and tax proposals at the national and subnational level. In addition, the latter should have access to clear, user-friendly information on the situation of children to assist them in their decision-making.

## ***B. Progressiveness and Non-Regression***

261. The obligation of the State to allocate funds for the realization of the rights of children and adolescents is also connected with the notion of **allocation to the “maximum extent of available resources” and of the “progressive realization” of economic, social, and cultural rights**. The foregoing is especially relevant with regard to the realization of economic, social, and cultural rights,<sup>111</sup> on the basis that States do not have available

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<sup>111</sup> In spite of the distinction that is usually made between economic, social, and cultural rights on one hand, and civil and political rights on the other, it is important to remember that human rights are interdependent and indivisible and that caution should be exercised in differentiating between those two categories of rights. Both systems for the protection of human rights—the inter-American and the universal—hold that there is no hierarchy of human rights and have affirmed the interdependence between civil and political rights and economic, social, and cultural rights. The realization of economic, social and cultural rights will frequently affect children's ability to fully exercise their political and civil rights, and vice versa. For this section, see UN Human Rights Committee, General Comment No. 17, Rights of the Child (Art. 24), 07/04/1989, CCPR/C/35, paras. 3 and 6; that position has been consistently reiterated by the United Nations Committee on the Rights of the Child. Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, 1990. In the context of the IAHRs, see I/A Court H.R., *Case of Acevedo Buendía et al.* (“Discharged and Retired

all at once all the necessary resources to ensure fully all those rights for children and adolescents, but that it requires sustained efforts by the State over time to achieve that goal. In general, the complete realization of those rights cannot come about quickly and, therefore, it requires a process during which each country, based on their level of development, will advance resolutely and steadily at different rates toward that objective. Except as warranted in extreme cases, those principles regard regressive measures as invalid and exclude inaction.<sup>112</sup>

262. Article 4 of the CRC expressly provides that the State has an obligation to “take measures to the maximum of their available resources” in relation to the implementation of economic, social and cultural rights and, where needed, within the framework of international cooperation, with a view to achieving “progressively” the full realization of these rights. Similar language is used with respect to the implementation of economic, social, and cultural rights in Article 26 of the American Convention<sup>113</sup> and Article 1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).<sup>114</sup>
263. Both the inter-American system and the universal system for protection of human rights have made pronouncements on the scope and content of the obligation “progressively” to implement economic, social and cultural rights, and on the immediate obligation to “adopt measures” and the correlative duty of “non-regression” in ensuring those rights. Both systems understand that while the full realization of those rights may be achieved

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*Employees of the Comptroller”) v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009, Series C No. 198, para. 101. IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#) and IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, pars. 48 ff. See also Protocol of San Salvador, preamble.

<sup>112</sup> United Nations, [Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations](#), 1990, para. 9. IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights \(2008\)](#), para. 6.

<sup>113</sup> Article 26 of the American Convention provides: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

<sup>114</sup> The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.



progressively, **steps towards that goal must be taken without delay and should be deliberate, concrete, constant, and targeted as clearly as possible towards satisfying those rights.** The progressive nature of the obligation to ensure the realization of economic, social and cultural rights requires, at a minimum, that their observance and access not be reduced over time; it also gives rise to a *prima facie* prohibition against adopting measures that are deliberately regressive ("**prohibition of regression**" or "**prohibition of retrogression**").<sup>115</sup>

264. In that connection, the Commission has held that by virtue of the obligation of progressive realization, States are forbidden to adopt policies, measures, and laws that, without proper justification, worsen the situation of rights or are detrimental to "progressive" advances that countries have been making in the area of economic, social, and cultural rights enjoyed, in this instance, by children.<sup>116</sup> Thus, the State undertakes to improve the situation of these rights and to advance their enjoyment, while it simultaneously accepts the prohibition against reducing the rights in force or the levels of access, enjoyment, and protection attained, without sufficient and reasoned justification. The obligation to take steps means that immobility and inaction are not acceptable.

265. However, the IACHR has established that a regressive measure is not necessarily incompatible with Article 26 of the American Convention, and

<sup>115</sup> As the Court has held in this regard:

Full exercise of economic, social and cultural rights of children has been associated with the possibilities of the State that is under obligation (Article 4 of the Convention on the Rights of the Child), which **must make its best effort, in a constant and deliberate manner, to ensure access of children to those rights, and their enjoyment of such rights, avoiding regressions and unjustifiable delays, and allocating as many resources as possible to this compliance.** I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, para. 81; see also para. 64. Emphasis added.

The IACHR has determined: "The progressive nature of the duty to ensure the observance of some of these rights, as is recognized in the language of the provisions cited, does not mean that [name of the State] can delay in adopting all measures needed to make them effective. To the contrary, [name of the State] **has the obligation to immediately begin the process leading to the complete realization of the rights contained in those provisions. In no way can the progressive nature of the rights mean that Colombia can indefinitely postpone the efforts aimed at their complete attainment.**" IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V.II.102 Doc. 9 rev. 1, February 26, 1999, Ch. III, para. 6. See also, IACHR, The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights, pars. 29-58. Emphasis added.

See also: United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, 1990, para. 1.

<sup>116</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, para. 6.



that the obligation of “progressive realization” does not preclude a State from imposing, **in special circumstances, certain restrictions on the exercise of those rights; however, such restrictions must be objectively and sufficiently justified and be subject to scrutiny** by the competent authorities in the area of human rights protection.<sup>117</sup>

266. The Committee on the Rights of the Child also considers it that, in times of economic crisis, States should only adopt regressive measures after assessing all other options to ensure that the level of enjoyment of children's rights does not deteriorate, since children are one of the most sensitive groups to the adverse impacts of regressive measures. The State must **demonstrate that such measures are necessary, reasonable, proportionate, non-discriminatory and temporary and that any rights thus affected will be restored as soon as possible.** In particular, **the State must demonstrate that the most vulnerable children will be the last to be affected by cuts.**<sup>118</sup>

267. However, the immediate and minimum core obligations imposed by children's human rights shall not be compromised by any retrogressive measures, even in times of economic crisis.<sup>119</sup> Specifically, the CESCR has stated:

[T]he Committee is of the view that **a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights** is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a

<sup>117</sup> IACHR, Report No. 38/09, Case 12.670, Admissibility and Merits, “National Association of Ex-Employees of the Peruvian Social Security Institute et al.,” Peru, March 27, 2009, paras. 139 and 140.

<sup>118</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4)”, para. 31. United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, 1990, para. 12.

<sup>119</sup> See the core obligations specified in the general comments of the Committee on Economic, Social and Cultural Rights, such as No. 13 (1999) on the right to education, No. 14 (2000) on the right to the highest attainable standard of health, and No. 19 (2007) on the right to social security. For example, paragraph 51 of General Comment No. 13 provides: “The obligation to provide primary education for all is an immediate duty of all States parties.”

way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.<sup>120</sup>

268. In turn, the Guiding Principles on Extreme Poverty and Human Rights provide that “human rights law demands that **at least minimum essential levels of all rights should always be ensured.**”<sup>121</sup> The obligation of States to ensure the minimum essential content of each social right serves as a baseline from which to measure progressive realization and the obligation of non-regression.

269. “States parties shall undertake such measures to the maximum extent of their available resources” means that States are expected to **demonstrate that they have made every effort to mobilize, allocate and spend budget resources to fulfill the economic, social and cultural rights of all children and adolescents.**<sup>122</sup> **To demonstrate that, it is necessary to have information with which to measure investment and the progress achieved with that investment.**

270. Progress should be measurable in relation to objectives, results, and concrete goals, and clear and consistent qualitative and quantitative goals and indicators should be used to illustrate the progressive realization of children's and adolescents' economic, social and cultural rights to the maximum extent of available resources. Such measurements should be done, among other things, as part of the implementation of the national children's policy and in relation to the results and measurements of previous national children's policies<sup>123</sup>.

<sup>120</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, 1990, para. 10. See also the minimum core obligations with respect to essential levels in the general comments of the Committee on Economic, Social and Cultural Rights, such as No. 13 on the right to education, No. 14 on the right to the highest attainable standard of health, and No. 19 on the right to social security.

<sup>121</sup> United Nations, Guiding Principles on Extreme Poverty and Human Rights, adopted by consensus by the Human Rights Council on 217 September 2012, through its resolution 21/11, para. 48.

<sup>122</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), para. 30.

<sup>123</sup> States also have an obligation to report regularly to the Committee on the Rights of the Child on their implementation of the contents of the CRC; thus, Article 44 of the Convention obliges States Parties to regularly report on their progress in advancing all the rights of children in their jurisdictions, including economic, social and cultural rights. A follow-up mechanism based on periodic reporting is also established for the Protocol of San Salvador, allowing measurement of progress made by states in the realization of economic, social and cultural rights. The system of progress indicators and the periodic reporting procedure envisaged in Article 19 of the Protocol of San Salvador serves not only for international supervision, but also to assess what states and

271. It should also be considered that economic, social and cultural rights give rise to the immediate obligation to ensure the exercise of those rights on an equal basis without discrimination as well as the possibility of their justiciability.<sup>124</sup>

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civil society are doing to implement the Protocol at the domestic level. See OAS, [Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador](#), 2nd edition, 2015.

<sup>124</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, 1990, para. 1.



CHAPTER 4  
CENTRALITY OF CHILDREN  
AND ADOLESCENTS



## CENTRALITY OF CHILDREN AND ADOLESCENTS

272. The CRC requires that States adopt a comprehensive and holistic approach in addressing children's issues that has children and all their rights as recognized in international human rights instruments at heart. The ultimate goal of national systems for the protection of children's rights is to ensure for children and adolescents the full and effective exercise of all their rights.
273. National systems should be founded on the four guiding principles of the Convention on the Rights of the Child (CRC),<sup>125</sup> which guide all that treaty's provisions: (i) The principal of (and right to) comprehensive, harmonious, and holistic development for children and adolescents that take all their rights into consideration (CRC, Art. 6); (ii) the principle of equality and nondiscrimination (CRC, Art. 2); (iii) the principle of the best interests of the child (CRC, Art. 3) and (iv) the right of children and adolescents to have a say in all matters that affect them (CRC, Art. 12).
274. Giving centrality to children and adolescents in the operation of national systems for the protection of children's rights implies, among other things, recognizing them as holders of civil, political, economic, social, and cultural rights as well as of all the rights attendant on their integral development; understanding protection of their rights as a continuum, not as isolated and unconnected interventions; assuming the existence of different needs as they grow and their abilities evolve, which in turn gives rise to responsibilities of varying types and intensity for the State, family, and society at each stage of their development; respecting the autonomy that children and adolescents gradually acquire in the exercise of their rights, as they grow in age and maturity; recognizing and promoting their right to be heard and have due weight given to their opinions in all decisions that affect them; giving particular attention to groups of children and adolescents who face special or unique challenges in enjoying their rights, in order to promote conditions that ensure those rights; and introducing the principle of the best interests of the child as a prime consideration in all decisions that affect children and adolescents, while taking the necessary

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<sup>125</sup> Committee on the Rights of the Child, General Comment No. 5, "General measures of implementation of the Convention on the Rights of the Child," para. 12.

steps to see to it that those interests are effectively valued and justified in an objective way.

## A. *Rights Holders*

275. The CRC unequivocally recognizes children and adolescents as rights holders and emphasizes their dignity as persons. For its part, the Committee on the Rights of the Child has stressed that children and adolescents are at a vital and enormously important stage in the evolution of their abilities and ongoing physical, psychological, emotional, mental, moral, cognitive, and social development.<sup>126</sup> The IACHR recognizes that during the different stages of childhood and later as teenagers, children and adolescents gradually develop their personal, social, and legal autonomy, which occurs as they grow and their abilities develop. Childhood and adolescence are, therefore, vital stages of critical importance in a person's existence that have value in their own right and should not be regarded for legal purposes and socially merely as a transit to adulthood.

276. Children and adolescents are full holders of rights that must be recognized, observed, protected, and ensured. These days children and adolescents are considered neither minors, nor incapable, nor lacking, but complete persons, full human beings with dignity who possess capacities and potential to be developed, and as holders of civil, political, economic, social, and cultural rights that must be recognized based on the mere fact of their existence.

277. Article 6 of the CRC provides that every child has an inherent right to life and that States shall ensure the survival and development of all children. In its General Comment No. 5, the Committee states that **the development of the child is “a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development” and that “implementation measures should be aimed at achieving the optimal development for all children,”**<sup>127</sup> in line with their growth-based needs, taking into consideration what those specific needs are at each stage. The

<sup>126</sup> See, for example, United Nations Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, and General Comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016.

<sup>127</sup> Committee on the Rights of the Child, General Comment No. 5, “General measures of implementation of the Convention on the Rights of the Child,” para. 12.



Committee recognizes that children's needs change throughout their different stages of development, and also that their ability autonomously to exercise their rights increases and evolves.<sup>128</sup> At all events, their rights should be recognized holistically, bearing in mind their indivisibility and interdependence.

278. These considerations are enshrined in Article 19 of the American Convention and Article VII of the American Declaration, which, as has been mentioned, **recognize that children and adolescents are entitled to appropriate, strengthened special protection**, by reason of their condition as still-growing persons who, because they are still developing, encounter specific obstacles with regard to their possibilities for the effective exercise, full observance, and protection of their rights,<sup>129</sup> which also give rise to “specific duties [for] the family, society, and the State.”<sup>130</sup>
279. Although all persons under the age of 18 are recognized as rights holders, **the ability to exercise human rights depends on the child’s level of development and maturity**. As they grow and develop, children and adolescents learn autonomous decision-making skills and capacities on the issues that affect them and to exercise their rights for themselves. Plainly, a months old child will not have the same decision-making ability as a 17-year-old adolescent, and a baby is more dependent on adults for their well-being, protection, and care than an adolescent is in their relationship with adults. Thus, there is a diversity of obligations, not only for the State, but also for the family and the community.
280. There is recognition, therefore, of the **progressive autonomy of children and adolescents in exercising their own rights**, which increases with age and maturity, and States have an obligation to adapt their laws, policies, and practices to recognize and support children and adolescents in the autonomous exercise of their rights and decision-making.
281. All children and adolescents have the **right to grow and develop on an equal basis with others**, to expand their potential, and to contribute to the development of society. States must respect and ensure the rights set forth in the CRC to all children and adolescents within their jurisdiction without discrimination of any kind. That means that States have a duty to identify children and adolescents at special risk where the enjoyment of their rights

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<sup>128</sup> See General Comment No. 7 (2005), Implementing child rights in early childhood, and General Comment No. 20, on the implementation of the rights of the child during adolescence.

<sup>129</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, para. 51.

<sup>130</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, para. 54.

is concerned, and adopt specific measures to promote and guarantee their rights on an equal basis with other children and adolescents.

282. It is also worth recalling that under the **principle of universality of human rights**, national systems for the protection of children's rights must provide care to all children and adolescents under the jurisdiction of the State, since States have a duty to respect and ensure the rights of all children and adolescents who are in their territory. Thus, for example, national systems must ensure that child and adolescent migrants will have their rights guaranteed without any discrimination based on their immigration status. The Court, the IACHR, and the Committee on the Rights of the Child emphasize that immigration status cannot be used as a pretext to deny child and adolescent migrants assistance and services such as health care, education, food, and decent housing, among other rights recognized by the CRC.<sup>131</sup>
283. At the same time, **rights awareness and empowerment for children and adolescents** is of critical importance. For children to exercise and defend their rights they must first know and understand them. For example, much of the violence perpetrated against children goes unchallenged, not only because certain forms of abusive behavior are understood by children as "normal" and accepted social practices, but also due to the lack of child-friendly reporting mechanisms or the fact that they are unaware of their existence.<sup>132</sup>
284. Rights awareness and empowerment for children and adolescents is linked to education and the educational environment. According to Article 29 of the CRC, apart from technical instruction and transmission of knowledge, the **goals of education** include the development in children and adolescents of an awareness of their rights, as well as the development of skills for life and for responsible participation in society.<sup>133</sup> Fulfilling what

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<sup>131</sup> See, for example, IACHR, "[Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System](#)" (2016); I/A Court H.R., [Rights and guarantees of children in the context of migration and/or in need of international protection](#), Advisory Opinion OC-21/14 of August 19, 2014; United Nations Committee on the Rights of the Child, General Comment No.6 (2005), Treatment of Unaccompanied and Separated Children outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.

<sup>132</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 120.

<sup>133</sup> IACHR, [Violence, Children and Organized Crime](#), pars. 531 to 541. The Convention on the Rights of the Child recognizes children's right to education at Article 28, while Article 29 describes the aims and goals that education should pursue. With regard to the aims and goals of education, see Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, U.N. Doc. CRC/GC/2001/1 (2001), 17 April 2001.

the right to education entails, in conjunction with the duty to provide protection recognized at Article 19 of the American Convention, means that States have a duty to ensure that those topics are included in the academic syllabus from a very early age in an age-appropriate way.

285. The duties of the State in terms of ensuring rights have given rise to the creation of **complaint, reporting, and rights enforcement mechanisms**. Owing to their child status, children and adolescents face specific barriers and challenges when it comes to accessing complaint/reporting mechanisms and justice. Despite the recognition of children and adolescents as rights holders, every country in the region still has challenges where **enforcement and access to justice** are concerned that need to be evaluated and strengthened.
286. Therefore, the Commission considers providing adequate protection to children and adolescents requires that the State ensure that all children and adolescents, especially those at special risk, such as child migrants, those in foster care, or those in the juvenile justice system, among others, know and have access to information about their rights and about mechanisms for lodging complaints and reporting wrongdoing.<sup>134</sup>

## ***B. Principle of Equality and Nondiscrimination***

287. The principle of equality and nondiscrimination is considered one of the cornerstones of the system for protection of human rights and a pillar of any democratic system.<sup>135</sup> The American Declaration and the American Convention were both inspired by the ideal that “[a]ll men are born free

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<sup>134</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, para. 405. The Committee on the Rights of the Child has expressed similar positions in various general comments. See, in particular, General Comment No. 5, paras. 53, 66, and 68, and General Comment No. 13, para. 48.

<sup>135</sup> See, *inter alia*, IACHR, *Annual Report of the Inter-American Commission on Human Rights 1999*, Chapter VI. The same can be said, in general, in the framework of the United Nations, as the Human Rights Committee has established: “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights” (UN, Human Rights Committee, General Comment 18. *Non-discrimination*, CCPR/C/37, 10 November 1989, para. 1). Equality and nondiscrimination are recognized at Articles 1 and 24 of the American Convention and II of the American Declaration.

and equal, in dignity and in rights,"<sup>136</sup> while the CRC considers that principle one of the four fundamental principles on which the CRC rests.

288. Article 2 of the CRC establishes the obligation for States to respect and ensure the rights set forth in the Convention to all children within their jurisdiction without discrimination of any kind.

289. The IACHR has specified a dual conception of the right to equality and nondiscrimination: one has to do with the prohibition of any arbitrary difference in treatment; another concerns the obligation to create conditions of real and effective equality for groups that have historically been excluded and are at greater risk of discrimination.<sup>137</sup> In other words, the inter-American system espouses a formal notion of equality, precluding any unreasonable, capricious or arbitrary differences in treatment. At the same time, however, it is moving toward a concept of material or structural equality that is premised upon an acknowledgement of the fact that for certain sectors of the population different special measures need to be adopted aimed at equalizing access to rights and opportunities.<sup>138</sup>

290. The State has a duty to promote integral development for children and adolescents from the most excluded and underprivileged groups, as well as for those in situations of vulnerability or at a disadvantage in the exercise of their rights, whether civil and political or economic, social, and cultural.<sup>139</sup>

291. In connection with the foregoing, the Inter-American Court has held that any person who is in a vulnerable condition is entitled to special

<sup>136</sup> American Declaration of the Rights and Duties of Man, Preamble. The general principles of nondiscrimination and equality are recognized at Articles 1 and 24 of the American Convention and II of the American Declaration.

<sup>137</sup> IACHR, The Situation of People of African Descent in the Americas. OEA/Ser.L/V/II.Doc.62, December 5, 2011, para. 89, 90-95, citing, *inter alia*, IACHR, Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile, September 17, 2010, para. 80.

<sup>138</sup> Specifically, it follows from the foregoing that States have an obligation to refrain from adopting any measures that are in any way intended, either directly or indirectly, to create situations of discrimination, and must take positive steps to correct or change any discriminatory situations that exist in their societies, based on the notion of equality and the principle of nondiscrimination. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paras. 89-99.

<sup>139</sup> OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 44; see also para. 63. See also the related analysis on this subject in, IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.L/V/II.132, July 19, 2008, para. 48; see also pars. 53 and 55.

protection, which must be provided by the States if they are to comply with their duties to respect and guarantee human rights. The Court considers that States should not merely abstain from violating rights, but must **adopt positive measures** to be determined based on the specific needs of protection of the subject of law, either because of their personal situation or because of the specific circumstances in which they find themselves.<sup>140</sup>

292. For its part, the Committee on the Rights of the Child has emphasized the importance that State efforts take into consideration groups of children and adolescents who are in a vulnerable situation where their rights are concerned: “Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. (...) [T]he non-discrimination principle does not prevent the taking of special measures to diminish discrimination.<sup>141</sup> The Human Rights Committee, in turn, has underlined the importance of adopting special measures to reduce or eliminate conditions that lead to discrimination<sup>142</sup>.
293. Addressing discrimination may require changes in legislation, administration, policies, programs, services, and resource allocation, as well as educational measures to change attitudes and perceptions. It should be highlighted that applying the principle of nondiscrimination and equality in access to rights does not mean that all children and adolescents should be treated the same.<sup>143</sup> The IACHR reminds States that not every differentiation of treatment will constitute discrimination if the criteria for

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<sup>140</sup> I/A Court H.R., Case of Ximenes Lopes v. Brazil, Judgment of July 4, 2006, Series C No. 149, para. 104.

<sup>141</sup> Committee on the Rights of the Child, General Comment No. 5, General measures of implementation for the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44), para. 30. Likewise, the II World Conference on Human Rights (Vienna, 1993) stated specifically that: “National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies.”

<sup>142</sup> Human Rights Committee, General Comment No. 18 (1989), HRI/GEN/1/Rev. 7 at 168 (1989), para. 10. Committee on the Rights of the Child, General Comment No. 5, “General measures of implementation of the Convention on the Rights of the Child,” para. 12.

<sup>143</sup> Committee on the Rights of the Child, General Comment No. 5, “General measures of implementation of the Convention on the Rights of the Child,” para. 12.

such differentiation are reasonable and objective and if the aim is to achieve a purpose that is legitimate under the Convention.<sup>144</sup>

294. Moreover, the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For States, identifying those groups of children and adolescents entails, among other things, that the data collected be broken down so that actual or potential discrimination can be identified.
295. Some of the groups of children and adolescents usually identified are those in poverty; in traditionally excluded or discriminated-against social groups; in street situations; with disabilities; who belong to indigenous peoples or a minority; migrants; without parental care; girls and female adolescents by reason of their gender; and LGBTI children and adolescents, among others.
296. However, it is important to note that “groups in a vulnerable situation” or “groups that historically suffer discrimination” will vary from one society to the next and from one point in history to another. Every State has a duty to determine who those groups are in order to devise appropriate inclusive policies that ensure them the free and full exercise of their rights.<sup>145</sup> In addition, there are groups of children and adolescents who, while not included in traditionally excluded groups, find themselves in situations of vulnerability that go unnoticed, (children of persons deprived of liberty, for example.)

297. The IACHR considers it highly pertinent to emphasize the principles of equality and nondiscrimination because every country in the region, without exception, has deep social divides and structural situations that foster inequality, social exclusion, and discrimination. The region ranks first in the world in terms of economic inequality and inequity within countries.<sup>146</sup> For that reason, the IACHR considers it essential that all States

<sup>144</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, pars. 89-99. See also Human Rights Committee, General Comment No. 18 (1989) on non-discrimination, para. 147.

<sup>145</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 118.

<sup>146</sup> Between 2008 and 2010, 8 of the 10 countries with the highest rate of income inequality in the world were located in Latin America, where an enormous share of income goes to a small fraction of the population: the richest 10% tap 32% of income, while the poorest 40% receive just 15%. United Nations Development Programme (UNDP), *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 22. For an overview of the regional context we describe, see the World Bank report, *Shifting Gears to Accelerate Shared Prosperity in Latin America and the Caribbean* and the LATINOBAROMETRO annual report for 2013. IACHR, *Violence, Children and Organized Crime*, para. 38.

include in their national plans for children policies and strategies to promote equality for those groups with clear targets and indicators. They should also conduct reviews of those policies and publish the specific results obtained with them in terms of transforming the realities of those children and adolescents.

298. The IACHR recommends that social policies targeting children in situations of vulnerability not only be welfare oriented, but seek to transform the underlying structural conditions in such situations, as well as addressing children's and adolescents' immediate and basic needs. To that end, objectives, results, and targets should take account of both aspects: coverage of immediate needs and structural change. Indicators and evaluations should focus not only on the level of investment made or on the number of children and adolescents covered, but on elements that allow the change in structural conditions to be measured and made public.

299. **The lack of effective observance of the principles of equality and nondiscrimination impacts a host of different rights.** The IACHR, for example, has highlighted the widespread discrimination and social exclusion faced by LGBTI children and adolescents, made worse by the entrenched prejudice, stereotypes, and cisnormative patterns in the region's societies, which tends to lead to generalized discrimination, stigmatization, intimidation, harassment, abuse, mistreatment, physical, psychological, and sexual violence, and in extreme cases even death. Such situations occur in all spheres, including in the victim's own family, in schools, in the healthcare system, in the protection system, in their community and in society. They are often excluded from education, either through absenteeism or because they drop out as a result of the discrimination and violence they suffer in the classroom. The lack of a proper education has repercussions on their opportunities for later life, relegating them to circles of exclusion and poverty that put them at even greater risk for violence and exploitation. They are sometimes made to undergo "treatments" to change their sexual orientation, while intersex children and adolescents are forcibly subjected to surgical procedures or therapies to "normalize" their sex. Some children and adolescents are driven from their homes by their families, exposing them to street situations, poverty, deteriorating health, and becoming victims of violence and exploitation. Such experiences adversely impact their quality of life and are associated with low self-esteem, an increased depression, and



suicide.<sup>147</sup> This example provides a measure of the broad array of rights that can be violated as a result of discrimination.

300. The IACHR has also indicated that **equality can be affected indirectly** as a result of arbitrary or disproportionate distinctions in the application of laws, measures, practices or policies that at first glance appear to be neutral but that in fact have an impact that is prejudicial to groups in vulnerable situations.<sup>148</sup>
301. In that regard, an examination of laws and policies to ensure that they comport with the principles of effective equality and nondiscrimination should also look for their **potential discriminatory impact**, even when their formulation appears neutral or they apply to everyone, without distinction.<sup>149</sup> That was the finding of the Inter-American Court, for instance, in relation to standards and procedures for belated registration of birth, in which the practical consequence of the onerous requirements and bureaucratic red tape was to increase the number of undocumented children who had no way to prove their nationality. Particularly, for children of immigrant parents with irregular status, the effect was to exacerbate their exclusion by denying them access to social benefits and rights.<sup>150</sup>
302. Therefore, to examine norms and policies for their adherence to the principle of effective equality and nondiscrimination, one has to look at their discriminatory *impact*—even those whose formulation is neutral or those that apply to everyone, without exception. The emphasis must be on objective factors—including the discriminatory effect or result—in preference to the declared *intention* to discriminate.<sup>151</sup>

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<sup>147</sup> IACHR, [Violence against LGBTI Persons](#), 2015. IACHR, press releases, [On Trans Day of Visibility, IACHR Urges States to Ensure Full Inclusion of Trans People and Combat the Factors that Exacerbate Discrimination and Exclusion](#), March 31, 2017; [IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States](#), March 15, 2017; [Intersex Awareness Day – End Violence and Harmful Medical Practices on Intersex Children and Adults, UN and Regional Experts Urge](#), October 24, 2016; [Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness](#), May 12, 2016; [Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#), May 13, 2015; [IACHR Expresses Concern over Pervasiveness of Violence against LGBTI Persons and Lack of Data Collection by OAS Member States](#), December 17, 2014.

<sup>148</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 89.

<sup>149</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 90.

<sup>150</sup> I/A Court H.R., *Case of the Girls Yean and Bosico*, Judgment of September 8, 2005, Series C No. 130, para. 141.

<sup>151</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 92.



303. The IACHR also emphasizes that the principles of equality and participation are intertwined. That occurs in two ways: on one hand, broadly consulting the opinions of children and adolescents, and enabling them to participate in the design, application, monitoring, and evaluation of laws, policies, programs, and services, can throw light on potential situations of inequality and discrimination; on the other hand, promoting rights awareness in children and adolescents, empowering them, and facilitating different channels and mechanisms for their social participation, creates conditions that will enable them to uphold their rights and achieve equality.

304. The national children's policy and all the workings of the national system for the protection of children's rights should be founded on an inclusive and fair approach that ensures effective equality before the law for all children and adolescents, and should correct or change any *de jure* or *de facto* discrimination prejudicial to certain groups.<sup>152</sup>

### ***C. Right to be Heard and to Meaningful and Protagonist Participation***

305. As the Committee on the Rights of the Child has said, Article 12 of the Convention on the Rights of the Child is a unique provision in a human rights treaty. It addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights. Paragraph 1 of the CRC assures, to every child 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 age and maturity. Paragraph 2 states, in particular, that the child shall be afforded the right to be heard in any judicial or administrative proceedings affecting him or her.<sup>153</sup>

<sup>152</sup> I/A Court H.R., Case of the Yean and Bosico Children v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 8, 2005, Series C No. 130, para. 141.

<sup>153</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009. Article 12 of the Convention on the Rights of the Child provides: 1. 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, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

306. The right of all children and adolescents to be heard and have due weight given to their views constitutes “one of the four general principles of the Convention, ... which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.”<sup>154</sup> In the opinion of the Committee, “[a]rticle 12 as a general principle provides that States Parties should strive to ensure that the interpretation and implementation of all other rights incorporated in the Convention are guided by it.” Furthermore, the Committee has expressly underscored the relationship that exists between determining the best interests of the child in each case and the right of the child to be heard.<sup>155</sup>
307. The right of the child to be heard has both an **individual and a collective dimension**; thus, there is the right to be heard of an individual child and the right to be heard as applied to a group of children (e.g. a class of schoolchildren, the children in a city or country, children with disabilities, or girls).<sup>156</sup> This section looks most closely at the collective dimension and at the right to social participation of children and adolescents.<sup>157</sup>
308. The IACHR recalls that children and adolescents should be regarded as full holders of rights whose exercise must be ensured and progressively realized, including through spaces for their participation, consistent with their developing abilities and taking into account their age and maturity. Therefore, **the State should adopt effective, appropriate measures to ensure the rights of children and adolescents to express their views on all issues that affect them, by providing them with access to the means and mechanisms for doing so in line with their development. They should also see to it that due weight is given to their views** in, for example, policies and decisions relating to their education, health, sexuality, safety, culture, family life, and judicial and administrative proceedings, among others. That principle extends to all spheres in which children and adolescents play a role, including the family, education, the

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<sup>154</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 2.

<sup>155</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 17.

<sup>156</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 9.

<sup>157</sup> For an analysis of both dimensions, see Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard. Specifically with regard to the concrete right of children and adolescents to participate and be heard in administrative and judicial proceedings, see also IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, pars. 247 to 264.

community, politics, administrative settings, and judicial proceedings, as well as in the context of services provided for them.<sup>158</sup>

309. This section of the report deals not only with the participation of children and adolescents in consultative/advisory councils on children and adolescents within the institutional structure of national system for the protection of children's rights, but also, in general, with their participation in all the different environments and spaces where they are present.

310. The IACHR underscores that it should not be about just any kind of role for them, but **involve meaningful and protagonist participation**. That includes the possibility to express themselves freely and to be heard by those who take decisions that will affect their rights, their development, and the course of their lives. It entails, on one hand, that the State ensure that children and adolescents receive all the information and advice they need freely to form an opinion and take an autonomous, informed decision in their best interests. On the other hand, it requires that laws, at a minimum: ensure and promote the existence of appropriate spaces and processes suitable for children and adolescents to exercise their right to participate and to be heard; envisage sustained, set procedures and mechanisms to that end; make assistance available for children and adolescents in those processes; establish mechanisms to guarantee that those opinions are being heard and due weight given to them in decision-making; and contemplate the obligation to set down on record a reasoned explanation of the way in which the opinions of children and adolescents are weighed in the final decision, as well as to notify them of the outcomes. Merely symbolic, inconsequential exercises that do not offer a real possibility of influencing discussions and the final decision should be avoided.

311. Likewise, the Committee on the Rights of the Child has said that **participation processes should be meaningful, genuine, respectful, and sustained**. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programs and measures in all relevant contexts of children's lives. Accordingly, it encourages that **participation occur in the context of permanent structures**. The Committee also underlines the importance of States establishing a direct relationship with children, not simply a link

<sup>158</sup> See, in this connection, Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, especially para. 19.

through nongovernmental organizations (NGOs) and civil society organizations.<sup>159</sup>

312. Specifically, the State should ensure that children and adolescents are consulted and participate actively and directly in the preparation, application, oversight, and evaluation of all pertinent laws, policies, programs, and services that affect their lives, whether in schools or in community, local, national, and other contexts. As was mentioned, the views expressed by children and adolescents may add perspectives and experience that are highly useful in analyzing the situation of children in a country or municipality and in decision-making, policymaking and preparation of laws and/or measures, as well as their evaluation.<sup>160</sup> The importance has also been highlighted of hearing the views of certain groups of children and adolescents on specific matters, such as, for example, the opinion of adolescents who have experience with the juvenile criminal justice system with regard to proposed amendments to applicable laws in that sphere; of children and adolescents who were adopted on laws and policies relating to adoption; of child and adolescent migrants on immigration laws, policies, and practices; or of children and adolescents who have been placed in alternative care on reforms of standards and practices with respect to children without parental care.
313. The participation of children and adolescents should encompass the regulatory, programmatic, and institutional dimensions of the national system. In turn, besides children's and adolescents' consultative councils, various means and mechanisms should be made available for their participation—including forums, consultations, focus groups, opinion polls, and self-perception surveys—that directly gather the views and experience of children and adolescents.
314. For example, the IACHR has found that self-perception and victimization surveys, used in combination with other sources, have the advantage of providing first-hand information on the circumstances in which children and adolescents live and the challenges they face in exercising their rights, the prevalence of certain phenomena, and possible policies and measures to adopt as more effective means of prevention and response.<sup>161</sup> The periodic opinion polls targeting children that some States in the region carry out are a valuable tool for assessing the situation of children in a

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<sup>159</sup> In that vein, see Committee on the Rights of the Child, General Comment No. 5, “General measures of implementation of the Convention on the Rights of the Child,” para. 12, and Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, paras. 3 and 13.

<sup>160</sup> Coincidentally, see General Comment No. 12, paras. 12 and 27.

<sup>161</sup> IACHR, *Violence, Children and Organized Crime*, paras. 510 to 512.

country and knowing the opinions of children and adolescents; however, it is important for the information collected to inform policy formulation and evaluation in a meaningful way. The consultations and forums held during the national children's policy formulation process, or in its evaluation, are also invaluable for collecting the opinions of a large number of children and adolescents and for grasping their different realities. Such methods should supplement more permanent and institutionalized contexts, since on their own they are too limited to fulfill the obligation of ensuring the right to participation of all children and adolescents in children's policies and the national system.

315. At the same time, the State should invest in measures to help children and adolescents to understand and exercise their rights. As was mentioned, schools are crucial to that end because they perform an important role in fostering children's and adolescents' awareness of their rights and development of skills for life and for responsible participation in society.<sup>162</sup> The school is also one of the settings in whose management and operation the State should encourage and ensure child and adolescent participation.<sup>163</sup> The school can also serve as a setting to gather the opinions of children and adolescents, using mechanisms such as surveys on different aspects of their enjoyment of their rights. However, that should not be a barrier to the inclusion of out-of-school children and adolescents in consultations and participation mechanisms. States should also be aware that online media and new technologies now offer numerous innovative opportunities to intensify and broaden child and adolescent participation, although their participation should not be confined exclusively to such media.<sup>164</sup>
316. By the same token, **adults' understanding and awareness of children's and adolescents' right to participation** is important for the latter's enjoyment of that right. Similarly, the IACHR urges States to invest in

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<sup>162</sup> See Convention on the Rights of the Child, Articles 28 and 29 and Committee on the Rights of the Child, General Comment No. 1, Article 29 (1): The Aims of Education, CRC/GC/2001/1, 17 April 2001.

<sup>163</sup> The Committee on the Rights of the Child has noted that “[s]teady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.” Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. A10. IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, paras. 521 to 526.

<sup>164</sup> In that regard, see also a number of recommendations in General Comment No. 20 on the implementation of the rights of the child during adolescence, paras. 48 and 49.

training and awareness-raising on child/juvenile participation, particularly for parents and caregivers, professionals working with and for children and adolescents, policymakers, and decision makers. Trained facilitators and personnel are needed to mentor the participation of children and adolescents of different ages and backgrounds in the processes of design, implementation, monitoring, and evaluation of policies, programs, and services, as well as assisting with a proper understanding of all aspects to do with their participation, thereby adequately ensuring their right.<sup>165</sup>

317. The Committee on the Rights of the Child has indicated that Article 12 imposes no age limit on the right of children and adolescents to express their views, and discourages States from introducing age limits either in law or in practice which would restrict their right to be heard in all matters affecting them.<sup>166</sup> Moreover, States “cannot begin with the assumption that a child is incapable of expressing her or his own views.” On the contrary, States should devise appropriate measures to encourage and support the participation of different groups of children and adolescents, especially those that face greater challenges for doing so, by tailoring methodologies to children and adolescents of different ages and from different backgrounds, and adapting mechanisms and procedures to make that possible, without discrimination.<sup>167</sup> At the same time, the child has the right not to exercise this right. Expressing views is a choice for the child, not an obligation.<sup>168</sup>

318. The IACHR understands that the age- and language-specific peculiarities associated with the ways in which children and adolescents communicate, as well as any special assistance requirements and needs that they may have in order to form their views and express them, should not in practice be an impediment or obstacle to ensuring the right of children to make themselves heard. On the contrary, Articles 19 of the American Convention and 12 of the CRC give rise to additional obligations for States in terms of regulating processes and mechanisms appropriate for children and adolescents for guaranteeing the effective participation of all children and adolescents, without discrimination, taking into account their evolving

<sup>165</sup> Committee on the Rights of the Child, General Comment No.20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras. 25. IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 254.

<sup>166</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 21.

<sup>167</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 20 and 21.

<sup>168</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, para. 16.

capacities and the principle of progressive autonomy. It should be borne in mind that some groups of children and adolescents, such as very young boys and girls, children and adolescents with disabilities, migrants, or those who belong to excluded or underprivileged groups or to ethnic, cultural, and linguistic minorities, experience more difficulties and obstacles in exercising their right to participate.

319. Among the means that enable and make it easier for children and adolescents to express their views are interpreters and other specialized personnel, such as those who work with young children or children with a disability, for example.<sup>169</sup> Environments should be secure and conducive to children and adolescents expressing themselves freely without fear of repression or ridicule, feeling intimidated, or being influenced or manipulated by others.

320. Furthermore, in keeping with the objective of promoting real and meaningful participation, the law should envisage the obligation for decision-makers at different levels (national and subnational) to inform children and adolescents how their views have been weighed and taken into consideration. That allows accountability on compliance with the duty to ensure and respect children's and adolescents' right to participation.

321. The IACHR recommends that, in addition to the provision in law of permanent, institutionalized mechanisms of participation, directives, guidelines, protocols, and practical guides be adopted on child and adolescent participation in order to promote and properly guarantee that right, as well as to establish the conditions to that end, in line with what has been indicated above<sup>170</sup>.

322. Ultimately, participation is a right and a process that allows children and adolescents to have role in their personal and social development. That implies exercising the right to be informed, to express opinions, to be heard, to organize, and to influence decisions on issues that involve or concern them, while taking into account at all times the principles of

<sup>169</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, paras. 20 and 21; Committee on the Rights of the Child, General Comment No. 9, The rights of children with disabilities, CRC/C/GC/9, 27 February 2007, Forty-third session, para. 32: "It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities."

<sup>170</sup> The IIN-OAS has published various studies and tools for the States to promote this right that can be consulted in the following [link](#).



nondiscrimination, progressive autonomy, and the best interests of the child.

323. This right is closely linked to other articles in the CRC that facilitate its assurance: Article 13 on freedom of expression, which, in turn, includes freedom to seek, receive and impart information; Article 14, which enshrines freedom of thought, conscience and religion; Article 15, which recognizes the right to freedom of association; Article 17, which guarantees access to information and to the national and international mass media; and, finally, Article 31, which recognizes the right to participate fully in cultural and artistic life.

#### ***D. The best Interests of the Child***

324. Article 3(1) establishes the best interests of the child as the main criterion or parameter in decisions that affect the rights of children and adolescents, a recognition echoed by both organs of the inter-American system, which have linked it to Articles 19 of the American Convention and VII of the American Declaration.

325. The Committee on the Rights of the Child has identified Article 3(1) as one of the four fundamental principles that underpin and inform the whole CRC, its interpretation, and its implementation, and that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.<sup>171</sup>

326. Thus, in all legislative, administrative, judicial, financial, and other measures concerning children and adolescents the best interests of the child shall be a primary consideration. That does not mean to the exclusion of other persons' rights, but that priority should be given to measures that favor the realization of children's and adolescents' rights. The best interests of children and adolescents should be considered in decisions that affect both as individuals and collectively or as a group.

327. The principle of the best interests of the child entails that children's and adolescents' holistic development and full enjoyment of their rights must be considered the guiding principles in establishing and applying standards

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<sup>171</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 4. General Comment No. 7, Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, paras. 1 and 4.



and policies to the lives of children and adolescents.<sup>172</sup> That principle has a direct impact on the adoption of laws and policies, as well as on the type, quality, and appropriateness of programs and services provided to children and adolescents, and it sets a priority in the allocation of public funds for children. In other words, the best interests of the child must govern every aspect of the operations of national system for the protection of children's rights as well as overall.

328. That principle gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere, and it should be applied as a **dynamic concept that requires an assessment appropriate to the specific context**.<sup>173</sup>
329. According to the Committee on the Rights of the Child, the child's best interests should be considered a threefold concept: a substantive right, an interpretive legal principle, and a rule of procedure<sup>174</sup>:

**A substantive right:** The right of the child to have their best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision that affects them. It is applicable whether the decision concerns a child, a group of identified children, or children in general. It is directly applicable or self-executing and can be invoked before a court

**A fundamental, interpretative legal principle:** If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests, taking into account all the rights contained in the CRC, should be chosen.

**A rule of procedure:** Assessing and determining the best interests of the child require procedural guarantees to guarantee that the child's best interests are given serious consideration and that this principle is not applied arbitrarily or subjectively. As part of the procedure, justification must be provided for the decision that shows that the child's best

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<sup>172</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, pars. 53 and 137(2).

<sup>173</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 1.

<sup>174</sup> See Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 6.

interests have been explicitly taken into account, what criteria the decision is based on, and how the child's interests have been weighed against other considerations, be they broad policy issues or individual cases.

330. Thus, whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, be it a decision in the context of administrative or judicial proceedings, or the adoption of laws, policies, strategies, programs, plans, budgets, and guidelines that govern the activities of persons who work with children and adolescents, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.<sup>175</sup> In addition, the State has the obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by those providing services that target children, whether in the public or private sector, and that they are recognized in the rules governing their operations.<sup>176</sup>

331. This legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term "concerning" refers first of all, to measures and decisions directly concerning a child, children as a group or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated by the Committee on the Rights of the Child, such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport). Therefore, "concerning" must be understood in a very broad sense. According to the Committee, that does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.<sup>177</sup>

332. The State should review and, where applicable, amend its domestic laws and other sources of law in order to incorporate the best interests of the

<sup>175</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 10, 13 and 14.

<sup>176</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 14(c) and 25.

<sup>177</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 19 and 20.

child. **The law should expressly include the child's best interests as a guiding principle, and a procedure should be established for their determination.** The State should also provide information and training on the best interests principle and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children.<sup>178</sup>

333. In addition, a continuous process of child rights impact assessment is needed not only to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, but also to evaluate the effects on the rights of the child of a particular law, policy, or budgetary allocation, in order to weigh the actual consequences of their implementation and formulate recommendations for introducing the necessary changes.<sup>179</sup>

334. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should be complemented with ongoing monitoring and evaluation of the real and effective impact of measures on children's rights.<sup>180</sup> The impact assessment should take into account opinions and input from children and adolescents, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be made publicly available.<sup>181</sup>

335. In keeping with the holistic interpretation of the CRC, the realization of the child's best interests should be considered in the light of the progressive autonomy of the child in making decisions that affect him or her and in the exercise of his or her rights. There is an intimate relationship between the

<sup>178</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 15(a) and (f).

<sup>179</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 35 General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 35 and 45.

<sup>180</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 35. General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 99.

<sup>181</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 99.

realization of the best interests of the child and the recognition of their progressive autonomy and of their right to be heard and to have due consideration given to their views in all matters that affect them, for which they should be afforded the opportunity to influence decisions. In determining the child's best interests, the opinions of the child or children who will be affected should be taken into account, in keeping with their evolving capacities, which should be given due consideration in line with their ability to understand and their maturity. As the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. If the decision differs from the views of the child, the reason for that should be clearly stated.<sup>182</sup>

336. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, **any decision concerning the child or children must be motivated, justified and explained.** The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained.<sup>183</sup>

## ***E. Principle of Progressive Autonomy***

337. The duty of to provide special, appropriate and strengthened protection for children, as recognized in the American Convention (Art. 19), the American Declaration (Art. VII), and the CRC, is based on recognition of the special condition of children who, because of their progressive development at all levels—physical, cognitive, emotional, psychological, and social—depend on adults for effective access to and enjoyment of all their rights, as well as for recourse to legal action to demand them.

<sup>182</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, paras. 70-74, 84, and 85; General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), paras. 43 and 44.

<sup>183</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 97; see also paras. 38 and 39.

338. However, that dependency on adults, and its intensity, is modified in accordance with the evolving capacities of the child and his or her level of maturity. Thus, in the period corresponding to the early years of the life of the child, when the dependence on adults for the realization of their rights is greatest, the link between the right to a family and the rights to life, development, and humane treatment of the child is particularly important. However, as the boy or girl grows and their skills and abilities develop, that dependence on adults to exercise and enjoy their rights diminishes.<sup>184</sup>
339. Article 5 of the CRC provides that the exercise of the rights of the child is progressive by virtue of the evolving capacities of the child,<sup>185</sup> and that parents, family members, and other persons responsible for the child have a responsibility to provide appropriate direction and guidance in the exercise by the child of those rights. That principle is grounded in the fact that boys and girls have the right progressively to develop the autonomous exercise of their rights, moving beyond the traditional argument that the parents have powers over their children because the latter lack capacity and autonomy.

340. That principle recognizes the special and unique condition of children and adolescents based on their growth and development. It highlights the role of all children and adolescents as active participants in the promotion, protection, monitoring, and upholding of their rights, and as the architects and decision-makers for their own lives, while recognizing their right to special appropriate measures for ensuring their rights.

341. Indeed, that principle points to the fact that children and adolescents, who are subjects of rights, can progressively exercise those rights for themselves as they acquire more abilities and skills in line with their evolving capacities, age and maturity, thus leaving behind the notion of children as merely objects and recipients of assistance and care.<sup>186</sup>

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<sup>184</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, para. 271. Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, Fortieth session, U.N. Doc. CRC/C/GC/7/Rev.1, 20 September 2006, para. 17.

<sup>185</sup> Article 5 of the CRC provides: “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 recognized in the present Convention.”

<sup>186</sup> The Inter-American Court of Human Rights has established that “[i]n the case of children, they exercise this right in a progressive manner in the sense that the minor of age develops a greater level of personal autonomy with time” I/A Court H.R., Case of Gelman v. Uruguay, Merits and

342. Specifically, in light of the principle of progressive autonomy, the IACHR considers that, at a minimum, the State should adopt the following measures: legal recognition of the agency of children and adolescents; the introduction of policies for empowerment of children and adolescents through the knowledge and exercise of their rights; policies of support for parents, caregivers, educators, and other persons in direct contact with children and adolescents in relation to the evolving capacities and progressive autonomy of children and adolescents; fostering the participation of children and adolescents in policy processes and in the formulation, implementation, monitoring, and evaluation of policies and services that target them; and ensuring direct access for children and adolescents to readily available, age-appropriate services.

343. The IACHR recommends that States review, in direct consultation with children and adolescents, all laws relating to legal capacity and the capacity autonomously to exercise rights and access services in the case of children and adolescents, taking into account the principle of progressive autonomy and in a manner compatible with the right to protection and the principle of the best interests of the child. Setting age limits in law, or other means of assessing maturity for autonomous decision-making, should consider the prohibition of any gender-based discrimination; age limits or other considerations addressing maturity for the exercise of rights should be equal for girls and boys.<sup>187</sup>

344. The IACHR has observed that States in the region have proceeded to introduce a number of legislative amendments that leave behind the traditional vision of persons under 18 years old lacking legal capacity autonomously to exercise their rights, and include provisions relating to age and maturity for exercising various rights.<sup>188</sup> In that connection, there

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Reparations, Judgment of February 24, 2011, Series C No. 221, para. 129. IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), para. 44. General Comment No. 12, The right of the child to be heard, paras. 84 and 85; and Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, para. 17. IACHR, [Violence, Children and Organized Crime](#), para. 273.

<sup>187</sup> In that regard, see, Committee on the Rights of the Child, General Comment No. 20 [on the implementation of the rights of the child during adolescence](#), para. 38.

<sup>188</sup> The Committee on the Rights of the Child has also referred to that aspect in different general comments. See, for example, General Comment No. 20 [on the implementation of the rights of the child during adolescence](#); Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/[general comment No. 18 of the Committee on the Rights of the Child on harmful practices](#); General Comment No. No. 15 [on the right of the child to the enjoyment of the highest attainable standard of health \(art. 24\)](#); and General Comment No. 7 [Implementing child rights in early childhood](#); as well as the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, [Right to health in adolescence A/HRC/32/32](#), 4 April 2016.

should be a broad recognition of the capacities of children and adolescents at all times, unless that recognition would give rise to unacceptable risks for their protection and well-being. As the Committee on the Rights of the Child has stated, “[e]volving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity.”<sup>189</sup>

345. The parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence, such as, for example, in the exercise of freedom of religion, access to information, freedom of thought and expression, freedom of association, planning for their own health, and in access to information and services in relation to sexual and reproductive health.<sup>190</sup> States should also take all appropriate legislative and other measures to strengthen and ensure respect for the privacy and confidentiality of data of children, consistent with their evolving capacities, particularly during adolescence.<sup>191</sup>

346. At the same time, the IACHR emphasizes that the right of children and adolescents to exercise increasing levels of autonomy and responsibility in decision-making does not obviate States’ obligations to guarantee their protection. Therefore, a balance should be ensured between respecting the evolving capacities of adolescents and appropriate levels of protection.<sup>192</sup>

<sup>189</sup> Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, para. 17, and General Comment No. 20 on the implementation of the rights of the child during adolescence, para. 18, see also paras. 39 and 40.

<sup>190</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, paras. 603 to 624. In the context of the universal system, see Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, paras. 99 and 100; and Committee on the Rights of the Child, General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, 17 April 2013; General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 21 July 2003, paras. 26 and 28. See, also, Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, 11 August 2000, para. 23, and Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Right to health in adolescence A/HRC/32/32, 4 April 2016. Regarding the exercise of the right to health, see, for example, IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, in particular, paras. 32, 38, 48, 59, 60, 90, and 91.

<sup>191</sup> General Comment No. 20 on the implementation of the rights of the child during adolescence, para. 46.

<sup>192</sup> In that same connection, see General Comment No. 20 on the implementation of the rights of the child during adolescence, paras. 19, 20, 39, and 40.



Thus, States should keep in mind the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse, such as, for example, by setting a minimum age limit of 18 years for marriage, recruitment into the armed forces, and involvement in hazardous work.

347. In keeping with the recognition of evolving capacities and the principle of progressive autonomy, the State should promote greater empowerment for children and adolescents through knowledge of their rights from an early age, in line with their level of development, so that they can exercise them and report their violation. Information accessible to children and adolescents of all ages should be disseminated about their rights and how to exercise them through, *inter alia*, the school curriculum, the media, including digital media, and public information materials, adapting contents and media to different ages and making particular efforts to reach out to children and adolescents in marginalized situations.
348. As regards the duty of the State to promote rights awareness in children and adolescents, coupled with the aims that the CRC ascribes to education in that most important role,<sup>193</sup> the IACHR is concerned about the absence of a broad inclusion of children's and adolescents' rights and of teaching strategies for promoting and disseminating those rights in school curricula. Furthermore, the IACHR is particularly concerned by discussions in the region that propose backward steps in the area of human rights education and in empowerment for children and adolescents in the exercise of their rights in educational contexts.<sup>194</sup>
349. The responsibility also arises for the State **to provide assistance to families in developing child-rearing skills**, which entails taking account of the evolving capacities of children and adolescents and their progressive autonomy for exercising their rights, bearing in mind Articles 19 of the American Convention and VII of the American Declaration, taken in conjunction with the provisions set forth in Articles 5 and 18 of the CRC.<sup>195</sup>

<sup>193</sup> See Articles 28 and 29 of the CRC and Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, U.N. Doc. CRC/GC/2001/1 (2001), 17 April 2001.

<sup>194</sup> The IACHR has monitored those situations through requests for information made to States under to Articles 41 of the American Convention and 18 of the Commission's Statute, as well as through data received at thematic hearings. See, for example, IACHR, 161st regular session, thematic hearing, , [Human Rights Situation of Young People in Guyana](#), March 22, 2017; IACHR, 150th regular session, thematic hearing, [Public Policies for Protecting the Human Rights of LGBTI Children and Adolescents in Paraguay](#), March 28, 2014; IACHR, 149th regular session, thematic hearing, [Human Rights of Girls in Latin America and the Caribbean](#), October 28, 2013.

<sup>195</sup> Article 18 of the CRC provides: 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary



The direct care services provided by national systems at the local level could develop a role in that regard, in coordination with healthcare services and those that provide support to pregnant women and families, as well as through spaces linked to schools, such as parents' associations. However, the IACHR has seen only limited evidence of such efforts, although it is worth highlighting the positive impact had by campaigns to end corporal punishment in the home as a best practice.

350. In addition, the State should provide training in children's and adolescents' rights for all **professionals working directly with them**, with a focus on acquiring the competencies needed to work with them in accordance with their evolving capacities; The State should also **adopt guidelines and protocols to provide clear guidance to professionals** who are in contact with, and provide services to, children and adolescents, particularly to promote understanding and respect for the evolving capacities of children and adolescents and their consequences, on the personal, social, and legal planes, in order to realize their rights and eliminate any unjustified obstacles to the exercise of their rights or access to different services.
351. Furthermore, **services targeting children and adolescents** should be age-appropriate, their access guaranteed, and the assistance they provide consistent with the principle of respect for their progressive autonomy and their right to protection. Such access should be made available even without an adult present, especially in the case of information and advisory services.
352. The IACHR has found that though laws have advanced in recognizing that children and adolescents are entitled to exercise rights for themselves, they continue to face significant obstacles as a matter of routine. In particular, the IACHR is troubled by information it has received regarding the prejudice and nonrecognition of the capacities of adolescents in the region, who frequently have difficulty exercising their rights and accessing services for themselves. The State should ensure the conditions that will enable everyone, including children and adolescents in accordance with their evolving capacities, to act autonomously and to move forward with their own life plan.

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responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

## ***F. Protection as a Continuum and the Interaction of Rights***

353. The objective of protection of children and adolescents and of their rights should be viewed broadly and as a continuum; it should be understood not only as protection against infringements of rights, but also as a set of prevention strategies designed to stop such violations from occurring; the interaction of rights must also be considered.

354. Protection needs vary depending on the child's stage of life (i.e., their age and level of biological, psychological, emotional, social, and cognitive development) and on their family and social environment.<sup>196</sup> That entails adapting interventions to suit their protection needs, which are associated with their life stage as well as their progressively evolving capacities and autonomy. As was noted, at an early age children are completely dependent on adults for their survival, well-being, development, and basic care; that situation evolves and changes as children grow, acquiring greater autonomy the nearer they get to adolescence.

355. Longitudinal studies show the importance of interventions from a very early phase—even from pregnancy—with the family and throughout every stage of the child's growth, since they are all interrelated and influence the final outcome in terms of the child's level of protection and enjoyment of rights. What happens in the early years of a child's life has an impact in adolescence and later in adulthood.

356. Evaluations of early childhood interventions, or in infancy, have helped to grasp the importance of protection as a continuum and not as isolated, disconnected interventions that only address risks that may arise at certain stages in a child's life. This protection and rights-oriented approach is based on the **life course**,<sup>197</sup> and therefore is conceived as a continuum.

357. The approach based on protection as a continuum is the vision most consistent with the protection that the CRC demands. That vision seeks to ensure the holistic development of children and adolescents, as required by Article 6 of the CRC, taking into account the specific characteristics of each

<sup>196</sup> Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, Fortieth session, U.N. Doc. CRC/C/GC/7/Rev.1, 20 September 2006, and General Comment No. 20 on the implementation of the rights of the child during adolescence.

<sup>197</sup> The term "life course," as opposed to "life stages," tends to be used to highlight precisely the continuity, overlapping, and interrelated element of all peoples' experiences from the beginning to the end of their lives.

stage of the life cycle, while at the same time integrating a longitudinal outlook on life and its different stages. This outlook considers the different phases of a child's development, as well as their protection needs and risks at each one of them, as interrelated and connected aspects.

358. Incorporating the approach of protection as a continuum allows an understanding of how a child's first experiences in life may have an influence throughout their lives and on their future, affecting their health, education, development, and other rights. This approach is premised on the consideration that a particular factor in a child's life negatively affects the enjoyment of a certain right in the present and restricts others at later stages in the child's life; or, to the contrary, a particular factor promotes the enjoyment of a certain right in the present and propitiates the enjoyment of others in the future.
359. For example, situations of acute undernourishment in early childhood may adversely affect the child's health and development in the first years of life, as well as having subsequent negative repercussions and impacts on their education and future opportunities by causing disability and health problems, impairing their quality of life, reproducing cycles of poverty, and making children and adolescents more vulnerable to situations of violence and exploitation. **Some factors, such as exclusion, discrimination, poverty, and domestic violence may even affect the next generation by being transmitted intergenerationally.**
360. The bio-psychosocial development of human beings is a systematic process of continuity and change in persons that occurs between birth and death. It is a process of changes, developing capacities, relations with their environment, and learning based on accumulated life experience. That process of maturation in children and adolescents is critical. The evidence systematically shows that there are development opportunities in early childhood that are not repeated at later stages in life. Unequal access to development opportunities between boys and girls from different socioeconomic backgrounds, especially in the early stages of life, tends to reproduce the original inequality intergenerationally.
361. Development theories in psychology also show that empowering adults to exercise the rights and freedoms that they enjoy is largely conditioned by their experiences and their enjoyment of rights, or lack of access thereto, during childhood and adolescence. That link is expressed, for example, in the fact that a safe childhood with adequate family and community support increases a person's self-assurance and their chances of developing fully in the future. The opportunities to which people have access as children help to shape and develop their skills and opportunities as adults. By the same token, negative lessons learned during childhood in contexts where boys

and girls grow up, such as violent or discriminatory forms of relationship, tend to be reproduced in adolescence—increasing their chances of getting into trouble with the law—and later in adulthood.<sup>198</sup>

362. The Committee on the Rights of the Child acknowledges that investment in early childhood development has a positive impact on children's ability to exercise their rights, breaks poverty cycles and brings high economic returns. Underinvestment in children in their early years can be detrimental to cognitive development and can reinforce existing deprivations, inequalities and intergenerational poverty.<sup>199</sup> Therefore, it has profound implications, not only for their individual optimum development, but also for the present and future social and economic development of the society and country.
363. The above is consistent with the findings of numerous empirical studies which show that investing in family assistance and early childhood development programs, in particular those targeted toward families in vulnerable circumstances, is one of the most cost-effective and efficient ways to reduce subsequent risk behaviors among youth.<sup>200</sup> More specifically, family-oriented interventions to change parenting styles and improve relationships within the family have produced results in terms of reducing the risk of children becoming involved in antisocial behavior and violence. The earlier these programs are administered in a child's life, the greater the benefits.<sup>201</sup>
364. Economists have also found evidence based on a monetary quantification of the costs of an early intervention versus the costs of a later intervention. The investment done in one stage has positive repercussions on the next.
365. However, that is not to deny the importance that each life stage has, just as it implies recognizing that the risk factors in adolescence are not the same as they are in childhood, or that the protection factors are.<sup>202</sup> Therefore, interventions must be tailored with that in mind. The IACHR concurs with the Committee on the importance of giving greater attention to the period of adolescence.

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<sup>198</sup> In this regard, see IACHR, *Violence, Children and Organized Crime*, paras. 129 and 130, and United Nations Secretary-General's Study on Violence against Children, pp. 285 and 287.

<sup>199</sup> Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4)", para. 50.

<sup>200</sup> United Nations Secretary-General's Study on Violence against Children, pp. 318.

<sup>201</sup> IACHR, *Violence, Children and Organized Crime*, para. 462.

<sup>202</sup> Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, paras. 2 and 3. IACHR, *Violence, Children and Organized Crime*, paras. 128 to 132.

366. In addition, there is evidence that infringements of children's rights and the various kinds of violence inflicted on them are usually linked and overlap one another, which leads to the successive victimization of the children most exposed to these vulnerabilities,<sup>203</sup> hence the need to approach protection as a continuum.

367. For example, children who repeatedly experience violence in their family are most likely to leave home to escape from the violence, abuse, or neglect and may end up in extremely precarious and vulnerable circumstances, in the street or in institutions where they generally face greater risks of being abused and exploited, recruited and used by criminal groups or organizations, and coming into contact with the juvenile justice system.<sup>204</sup> Therefore, prevention of violence in the home is a protection factor not only in the present, but also against the risk of violations of other rights in the future. Seen from another perspective, interventions to protect children in street situations would be more effective if the root causes of that phenomenon were addressed, which include, among others, domestic violence, which takes place long before they run away from home. That is why it is important to consider protection of the child holistically and as a continuum, and not as isolated episodes of protection interventions to safeguard a particular right or to deal with a particular situation in a given sector or institution.

368. In light of the above, the Commission has emphasized that, specifically in relation to prevention of violence in adolescence, it considers that steps should be taken during both childhood and adolescence to prevent the victimization of adolescents and violent behavior on their part, and that they should give due consideration to the role played by the family and society in the child's life. Preventive measures need to be holistic and contemplate, among other aspects, the impact that socialization norms and patterns of social behavior have on children.<sup>205</sup>

369. It is necessary not to lose sight of the fact that rights are interconnected and complementary; likewise, different types of rights violations and violence cannot be viewed independently or in isolation.<sup>206</sup> The IACHR considers that interventions limited to just one sphere or to a particular

<sup>203</sup> In this regard, see, for example, *Press Release No. 26/04*, Inter-American Commission on Human Rights and Unicef Express Concern over Situation of Boys, Girls, and Adolescents Involved with Gangs in El Salvador, Guatemala, and Honduras, December 4, 2004.

<sup>204</sup> IACHR, *Violence, Children and Organized Crime*, para. 126.

<sup>205</sup> IACHR, *Violence, Children and Organized Crime*, para. 130.

<sup>206</sup> IACHR, *Violence, Children and Organized Crime*, para. 200.

manifestation of violence or violation of a right can only partially achieve their objective. The IACHR has also indicated that initiatives to address the most extreme forms of violence need to take into account the above-mentioned factors involving different overlapping and interconnected forms of violence and should initiate prevention in small children working with their families, as well as considering the underlying factors related to tolerance or social acceptance of any form of violence and discrimination. They should not focus only on addressing the most serious forms of violence with interventions exclusively targeting children and adolescents, without considering their families, communities, and social environments.<sup>207</sup>

370. In conclusion, the holistic view of children, families, and communities is a hallmark of the systemic approach to child protection and requires that the services offered in the context of national systems be a continuum adapted to the various needs of children and adolescents over time, as well as taking their families, communities, and social environments into account. In formulating its goals and, in particular, designing intervention strategies, the national children's policy must give special attention to protection as a continuum and the interaction of all rights.

## ***G. Gender Perspective***

371. A national system for the protection of children's rights that is rights-based must inevitably consider the principles of equality and nondiscrimination, and how they apply to issues of gender. The aim of that approach is to identify and alter the array of social stereotypes, beliefs, practices, mores, and values predicated on sexual difference and gender roles that historically have been used to discriminate against women. Giving consideration to this approach is critical for taking steps to overcome gender- and sex-based structural inequalities and discrimination and move toward more-genuine equality among all children and adolescents.<sup>208</sup>

372. A gender-aware approach should highlight the social inequalities and structural discrimination experienced by girls and adolescent women in the societies of all the hemisphere's countries. In practice, such gender-based structural inequalities have meant that girls and adolescent women,

<sup>207</sup> IACHR, *Violence, Children and Organized Crime*, para. 127.

<sup>208</sup> For the terminological aspects of "gender" and "sex," see IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, doc. 36, November 12, 2015.

in particular, face constant challenges in exercising their rights and the level of violence and discrimination against them. It also restricts their participation, which impacts them socially and affects the exercise of their rights. The IACHR has appealed to the countries of the region to pay greater attention to the various challenges confronting pre-teen and teenage girls, bearing in mind the different risk factors to which they are exposed and the high prevalence of certain forms of violence against them, as well as other rights violations precisely for being girls. **Accordingly, it has urged States to strengthen the gender perspective in national systems for the protection of children's rights, and that they regularly consult girls and adolescent women on their situation and on proposals to improve it, as well as empowering them and involving them in the design and evaluation of public policies for ensuring their rights.**<sup>209</sup>

373. It is also essential for the gender approach to be widely conceptualized and implemented, including identification and analysis of inequalities, discrimination, stigmatization, and prejudice against individuals by reason of sex, gender identity and expression, sexual orientation, or because their bodies differ from the male and female norm. There are disturbing situations affecting different groups because of gender identity, sexual orientation, and their bodies, such as LGBTI children and adolescents. The national system should identify such situations and implement policies aimed at achieving equality for all children and adolescents in the exercise of their rights, without discrimination based on biological traits, gender stereotypes, gender identity, or sexual orientation.

374. Legal reforms are needed to confront direct and indirect discrimination against girls and LGBTI children and adolescents, as are policies, programs, services, sensitization and educational efforts, and investment, among other measures.<sup>210</sup>

<sup>209</sup> IACHR, press release, [IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region](#), October 12, 2016. See also the preamble to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará).

<sup>210</sup> In that regard, the IACHR has recognized that *de jure* equality alone is not enough to achieve gender equality. It also requires eliminating practices and conduct that generate and perpetuate women's position of inferiority in society. Nevertheless, the commission does not underestimate the importance of formal equality and underlines the importance of the right to achieve social "although formal equality does not guarantee the elimination of instances of discrimination, recognizing it makes it possible to encourage transformations in society, thereby enhancing the authority of this right." See IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998, Ch. IV. IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 98.



375. The IACHR and the Court have noted with particular concern on multiple occasions that social stereotypes regarding gender, gender identity, biological traits, and sexual orientation are closely linked to violence and discrimination.<sup>211</sup>

376. States should work in partnership with all interested parties, including civil society, community and faith leaders, and the broader community, as well as with children, adolescents, women, and men to change social attitudes and effect real change. States should recognize the importance of engaging with everyone—boys and men, as well as girls and women—in all measures introduced to achieve gender equality.

377. The gender approach should be crosscutting and applied in the formulation, implementation, monitoring, and evaluation of policies and programs, as well as in the establishment and working of services targeting children, in personnel and professional training, and in awareness-raising strategies. The national children's policy should include it as a crosscutting approach. At the same time, however, the IACHR recommends the inclusion of concrete goals and specific targets for doing away with this type of discrimination, bearing in mind the troubling situation that exists in all countries in the region and the need proactively to promote transformations in society.

378. All services targeting children should include the gender dimension, as well as making the way in which they implement that dimension an explicit part of their operating protocols, and highlighting measures adopted and the justification for doing so. Explicit measures are needed in all laws, policies, and programs to guarantee the rights of girls on an equal basis with boys, just as they are for LGBTI children and adolescents. In turn, it entails providing specialized services and care that take account of special needs and necessary actions to fully ensure their rights, while making catering for differences. The measures adopted and the results obtained should be compiled, evaluated, measured, and made publicly available.

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<sup>211</sup> I/A Court H.R., *Case of Atala Riffo and Girls. v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239, I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, pars. 236 and 258. IACHR, press releases, [It Is Time to Increase Action to End and Prevent Violence against Women and Girls](#), December 2, 2016, and [IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region](#), October 12, 2016. IACHR, [Violence against LGBTI Persons](#), 2015. IACHR, press releases, [Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#), May 13, 2015, and [IACHR Expresses Concern over Pervasiveness of Violence against LGBTI Persons and Lack of Data Collection by OAS Member States](#), December 17, 2014.



379. The opinions and experiences of children and adolescents are essential for identifying problem areas associated with discrimination and stigmatization based on biological characteristics, gender stereotypes, gender identity, and sexual orientation

380. Furthermore, the gender approach also entails identifying and recognizing the existence of social notions rooted in masculinity and male rules of gender socialization that are associated with violence and male dominance, both among peers and toward women.<sup>212</sup> The IACHR considers that one cannot disregard or negate the vulnerability of boys and adolescent males to such social stereotypes, socially prevalent rules of behavior, and expectations of them in terms of their attitudes and how they interact with others, as they are ubiquitous, significant obstacles to boys and adolescent males achieving full and harmonious development, and to preventing them from being exposed to violence or engaging in it themselves with the attendant consequences.

381. Gender socialization rules as well as using violence to settle disputes and as an instrument to exert power and dominance in interpersonal relationships influence children and adolescents of both sexes, increasing the likelihood of their reproducing the same rationale. It has been noted, for instance, that violence is more widespread when boys are encouraged to develop aggressive masculine traits, interpersonal relations are based on power and submission, and relations with adolescent and adult women are characterized by abuse and sexual dominance.<sup>213</sup>

382. Failing adequately to recognize that this environment is colored by gender stereotypes and notions of masculinity also creates a gap in terms of policy and prevention and protection services for tackling and responding to this specific problem area and offering adequate protection to boys and adolescent males.

383. The IACHR urges States to adopt a gender approach in designing a strategy for dealing with these problems, promoting positive masculinities, overcoming cultural values based on machismo, and promoting greater recognition that most of the abuses that boys and adolescent males suffer also have a gender dimension.<sup>214</sup> This approach should include actions

<sup>212</sup> IACHR, Violence, Children and Organized Crime, para. 129, 240 and 241.

<sup>213</sup> IACHR, Violence, Children and Organized Crime, para. 129, and United Nations Secretary-General's Study on Violence against Children, p. 287.

<sup>214</sup> Research and statistics show that during adolescence—generally from age 15 on—there is a marked increase in the incidence of both adolescent victims of violence and adolescent

aimed at changing the way in which children and adolescents of both sexes interact with each other, as well as making parents, educators, caregivers, and society in general aware of these issues.

## **H. Intercultural Perspective**

384. An intercultural perspective involves respecting differences, recognizing and respecting the right to diversity, promoting equitable interaction among cultures where it is understood that no cultural group is superior to any other, and recognizing and valuing the contributions of all those groups to society. The intercultural approach alludes to the recognition of cultural diversity, according legitimacy to culturally different representations, views, and practices, and promoting mutual knowledge and respect among cultures.

385. That entails encouraging children and adolescents who belong to indigenous peoples, religious, linguistic, migratory, or other groups to preserve their own cultures, profess and practice their own religion and beliefs, and use their own language. At the same time, tolerance, respect, mutual knowledge, and interaction among children and adolescents from different cultures should be fostered.

386. From that point of view, social, economic, and political inequalities that exist in society to the detriment of particular cultural groups should be taken into account, as they may result in discrimination and exclusion, made more acute by failure to recognize and value ethnic and cultural differences or by undervaluing a given culture or ethnic group. The intercultural approach should identify such structural inequalities based on membership of a particular linguistic, religious, cultural, or ethnic group, and devise measures to eliminate them through measurable concrete goals whose fulfillment should be monitored. It entails, among other things, recognizing that indigenous and migrant children and adolescents, for example, need special measures for the realization of their individual and collective rights without discrimination and on an equal footing with the rest of the population.

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perpetrators of violence, with most of that violence occurring in communal or public spaces. IACHR, [Violence, Children and Organized Crime](#), para. 129. UNODC, [Global Study on Homicide 2013](#), pp. 28-30, and UNDP, [Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America](#), p. 53. UNICEF, [Hidden in Plain Sight: A statistical analysis of violence against children](#), 2014, p. 34. See also Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras. 29 and 30.

387. This approach aims to promote conditions for building a more inclusive and egalitarian society and should be mainstreamed in the activities of the various sectors that make up the national system for the protection of children's rights, particularly in policy design, implementation, monitoring, and evaluation. Similarly, the national children's policy should set concrete goals and targets to measure progress and allow public accountability on actions and results obtained in that regard. That information should be publicly accessible in different languages, including indigenous languages and those of other linguistic minorities. The services provided by national systems should be tailored to respect cultural and linguistic differences, as well as the diversity of world visions, beliefs, and ideologies, in addition to being readily accessible to all groups.

## ***I. Protecting the Family as a Cornerstone of Child Rights Protection***

388. The American Declaration, American Convention, and CRC all recognize the family as the main nucleus of protection of children and adolescents, and assign the family a preponderant role in ensuring the care, well-being, and protection of children and adolescents as the natural setting for their growth and development, especially during the early stages of their lives.<sup>215</sup> They also recognize the right of the child to live with and be cared for by their parents, as well as the duty of States to support the family so that it is can carry out its functions fully. Those rights give rise to the obligation of the State to promote and propitiate adequate support for families to enable them to meet their parental responsibilities in caring for and bringing up their children, thereby guaranteeing the protection of children and their rights.<sup>216</sup>

<sup>215</sup> See American Convention, Article 17(1); American Declaration, Article VI; and CRC, preamble and Articles 3.2, 5, 7, 8, 9, 10, 11, 16, 18, 20, 21, and 27.

<sup>216</sup> In that regard, see IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc.54/13, 2013, particularly pars. 49 to 64). See, in particular, Articles 18(2) and 27 of the CRC: Article 18(2): "For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children." Article 27: 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to

389. The right to a family recognized in Articles 17.1 of the American Convention and VI of the American Declaration is closely tied to the effective observance of the rights of the child and, therefore, Articles 19 of the American Convention and VII of the American Declaration, owing to the importance of the family in the life of the child and its protective, caregiving, and child-rearing role.<sup>217</sup> The Court and the commission have held that “[i]n principle, the family should provide the best protection of children (...). And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus.”<sup>218</sup>
390. As was mentioned, children and adolescents need a secure family environment that satisfies their emotional, welfare, security, care, and holistic development needs. The family environment should offer appropriate conditions for children and adolescents to attain an optimum standard of living and to develop their capacities and full potential, recognizing that children and adolescents have a central role and responsibility in their own development, whose personal autonomy evolves and increases in line with their age and maturity.<sup>219</sup>
391. Nevertheless, the IACHR also observes that the persons closest to children, who should protect them and take care of them, may in some instances expose children to situations that threaten their personal integrity and development. In order to prevent violations of the rights of children from occurring and to guarantee effective protection for children, States should devote efforts in strengthening the family and community settings, as well as introducing exceptional measures to protect the child when their own family are the cause of their rights being unprotected and violated.

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implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The same rationale applies to several of the General Comments of the Committee on the Rights of the Child that address topics related to the importance of family care and the State's obligation to support it.

<sup>217</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 57.

<sup>218</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, para. 66. See also IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, paras. 42 and 53. In the context of the universal system, the Human Rights Committee has also expressly linked the protection to which the family is entitled, as recognized in Article 23.1 of the International Covenant on Civil and Political Rights, to the fulfillment of the duty to protect children by reason of their special status recognized in Article 24.1 of that covenant. UN Human Rights Committee, General Comment No. 17: Article 24 (Rights of the Child), Thirty-fifth session, U.N. Doc. HRI/GEN/1/Rev.7 (1989), and General Comment No. 19: Article 23 (The Family), Thirty-ninth session, U.N. Doc. HRI/GEN/1/Rev.7 (1990).

<sup>219</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 42.

392. Accordingly, the State has the obligation to adopt legal, administrative, financial, and other measures that prioritize strengthening the family as the principal unit for protecting and caring for the child, as well as to reduce risk factors.<sup>220</sup> The State has an obligation to favor, in the broadest possible way, the development and consolidation of the family nucleus as a protection measure for the child.<sup>221</sup> From the above, it is inferred that the State needs to have a national system for the protection of children's rights that includes policies, programs and services for family support and assistance and takes into account the role of families as the natural environment in which children grow and should be provided care and the necessary protection for their integral, harmonious development, as well as combining mechanisms for early detection of situations of violence, abuse, and neglect.

393. The IACHR has emphasized that social protection policies for families are crucial for the protection, care, and well-being of children, and should be a priority for States in keeping with their international obligations as regards protection of the rights of the child.<sup>222</sup>

394. Currently, in several of the region's countries, a considerable part of the operations of national systems—and of the programs and services that they implement—center on protecting the child from situations after the fact, from abandonment or neglect by parents, or from violence of which they are victims in the family environment, and generally intervene to separate the child from his or her family unit in order to ensure the child's safety and offer some form of temporary or permanent alternative care. Although the importance of such measures must be acknowledged, national systems should give greater consideration to prevention strategies so that children are not deprived of their right to live and grow in their family

<sup>220</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, paras. 53, 71, 72, and 76. In the same sense, see Human Rights Committee, General Comment 17, Rights of Child (Art. 24), 07/04/1989, CCPR/C/35, paras. 2, 3, and 6. United Nations Committee on the Rights of the Child, Committee on the Rights of the Child Day of General Discussion on "Children without Parental Care," 2005, Report on the fortieth session of the Committee on the Rights of the Child, CRC/C/153, para. 645.

<sup>221</sup> See I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, para. 66; *Case of Gelman v. Uruguay*, Merits and Reparations, Judgment of February 24, 2011, Series C No. 221, para. 125; and *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of May 25, 2010, Series C No. 212, para. 157. IACHR, Report No. 83/10, Caso 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, para. 105.

<sup>222</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, para. 4.

environment and have their right to a dignified life free from all forms of violence ensured.

395. In addition, poverty alleviation strategies and social protection programs should consider families and their material circumstances when designing and implementing policies, programs, and services, in order to ensure the economic means and access to services that contribute to the realization of the rights of all members of the family and promote conditions of social inclusion. However, the IACHR notes that in practice, the synchronization between children's policies and the policies mentioned is weaker than one would reasonably expect, bearing in mind all the above considerations regarding the intrinsic relationship that exists between protecting the rights of children and adolescents and the capacities of the family to care for and raise them.
396. Poverty and families' want of means to provide an adequate standard of living have profound and often irreversible repercussions on children and adolescents and all their rights. Limited access to nutritious food, malnutrition, lack of access to health care services, clean water, sanitation, and decent housing have an impact on the physical integrity, development, and health of children and adolescents, as well as adversely affecting other rights. As strategies for dealing with poverty, children and adolescents drop out of school to work, run the risk of being victims of labor exploitation or hazardous work and of becoming victims of violence and sexual exploitation or trafficking, and are more likely to enter into child or forced marriages, being caught up by gangs and groups that engage in criminal activities, and migrating in search of new opportunities. Poverty is also one of primary reasons parents decide to give up guardianship of their children, give them up for adoption, abandon them, or allow authorities to separate children from their parents, place them in institutions, or declare them eligible for adoption.<sup>223</sup>
397. Although economic reasons cannot be a justification for separating a child from his or her parents, in practice, the IACHR has found that poverty continues to be the main backdrop in cases of children being separated from their families. The IACHR and the Court have established that poverty

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The Commission has underscored the need to assess more thoroughly the situation of children and adolescents living in poverty and the impact it has on the exercise of their human rights. The Commission also notes that measuring child poverty requires a multidimensional approach based on a perspective that includes children's and adolescents' access to adequate services enabling their full physical, social, mental, spiritual, and moral development. It should also provide for the ability to enjoy all their rights, reach their full potential, and participate as full and equal members of society. IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), 2016, pars. 279 ff. IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), pars. 6, 95, 96 et seq.

alone cannot be grounds for separating children from their parents and denying them other rights enshrined in the American Convention as a result; rather, it should be considered a sign of the need to adopt measures to support the family.<sup>224</sup>

398. The vulnerability of families is compounded when two or more vulnerability factors intersect. The State, through the national system, should have the capacity to identify families in situations of greatest vulnerability so that they can provide them with special assistance, such as poor families, indigenous families, families that belong to traditionally discriminated-against ethnic groups, single-parent families, families composed of adolescent parents, and families in which one of the members, whether a child or a parent, has a disability.

399. The IACHR and the Committee on the Rights of the Child have reminded States of the right of every child to a suitable standard of living for physical, psychological, mental, cognitive, social, and moral development, and urged them to introduce social protection floors that provide children and adolescents and their families with basic income security and access to social services access to ensure their rights.<sup>225</sup>

400. The IACHR acknowledges the valuable efforts that States in the region have been making in terms of investing greater resources in policies, programs, and services designed to improve the material living conditions of families in vulnerable circumstances or poverty, as well as in programs and services aimed at raising awareness and educating parents on aspects relating to raising and caring for their children and for early prevention and detection of violence in the home. However, it has also noted that, in general, there is a need to strengthen the integral and complementary nature of the measures, their coverage and funding, as well as to conduct regular evaluations of their effectiveness in achieving the desired objectives.<sup>226</sup>

401. The IACHR has observed that in this area in particular, there is a need for various sectors to coordinate policies, programs, and services, especially with respect to the national system, social protection policies, poverty alleviation strategies, health care services, and social assistance services.

<sup>224</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, pars. 6 and 96. I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, para. 76.

<sup>225</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, pars. 96-114. United Nations Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, para. 67.

<sup>226</sup> IACHR, Violence, Children and Organized Crime, para. 530.



Several sectors have complementary objectives whose coordination is necessary to strengthen how they function and their efficiency and effectiveness in achieving those objectives. **The IACHR considers that coordinated policy planning, integrated services and program design, and impact assessments are critical for boosting efficiency.**

402. Furthermore, in relation to State policies targeting the family, the IACHR has established that States have the duty to prevent and protect children and adolescents from violence in the home, with the aim not only of preserving the child's right to humane treatment but also their right to live with their family. Violence in the family is a common vulnerability factor for children and adolescents and may lead to the separation of children from their families in order to be placed in alternative care or, as still often happens in practice, institutions, with the attendant risks for many other rights that institutionalization entails for children and adolescents. The IACHR has defined States' obligations with regard to prevention of violence in the home and protection of children and adolescents based on Articles 1(1) and 2 of the American Convention on Human Rights in conjunction with Articles 17 and 19 of that treaty, which include the responsibility to devise policies, programs, and services targeting families in the framework of national systems for the protection of children's rights in coordination, particularly, with health and education services to support families in providing their children with a positive, violence-free upbringing, care, and well-being.<sup>227</sup>
403. Accordingly, as regards fulfilling the obligation to adopt all appropriate domestic measures to provide support to and strengthen families, the Commission has recommended, for example, making day care services available that make it possible to combine a job with parental responsibilities, support and advisory services from the antenatal phase and through the child's upbringing; counseling and training programs for families on the rights of the child and positive child rearing without violence; and benefits or direct material assistance and conditional transfers, among other measures.<sup>228</sup>
404. However, the Committee on the Rights of the Child and the Committee on Human Rights, as part of their follow-up on States' implementation of their treaty obligations, have both expressed their concern about the type and the quality of data they receive from the States as regards compliance with

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<sup>227</sup> IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), pars. 6, 7, 94, 95, and 115-129.

<sup>228</sup> IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), conclusions 6, 7, and 9.



this obligation, the suitability of measures for achieving their objectives, and the level of coverage of those measures.<sup>229</sup>

405. The IACHR notes that although States must establish the concrete measures that they deem appropriate for realizing the right to protection of the family (Article 17(1) of the American Convention), that does not, however, exempt each State from having to justify the appropriateness of the particular means it has chosen and to demonstrate whether the means will achieve the intended effect and result.<sup>230</sup> Thus the State has a duty to act immediately in the context of the national system for the protection of children's rights and in close coordination with other sectors, in order to regulate and give effect to the content of this right based on the social function of the family.

406. The IACHR recommends that in designing national children's policies, as well as social protection, national development and poverty alleviation policies, States implement **mechanisms to gather opinions and experiences from families and the professionals who provide them with services, in order to obtain a more closer representation and understanding of the various realities and challenges that they face, and what type of support and services would be relevant.** States should also have data on families' circumstances in order to formulate policies better tailored to them. Access should also be improved to information on services established for families, ensuring that the information reaches, in particular, the most vulnerable families whom the services target and strengthening active transparency mechanisms to facilitate access to services. Periodic assessments of services and their impact should be used to make policy adjustments.

407. Finally, as regards different types of families and the protection to which they are all entitled, according to the Inter-American Court, **the concept of**

<sup>229</sup> Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, adopted by the Committee at its fifty-fifth session (13 September-1 October 2010), CRC/C/58/Rev.2. The Committee requests States parties, with regard to the group of Articles included in the section "Family environment and alternative care (Articles 5, 9 to 11, 18 (1) and (2), 19 to 21, 25, 27 (4) and (39))", to provide information on family support measures under paragraph 1. See also Human Rights Committee, General comment No. 19: Article 23 (The family), Thirty-ninth session, U.N. Doc. HRI/GEN/1/Rev.7 (1990), paras. 1 and 3.

<sup>230</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, para. 87. This position has been established by the various treaty bodies in their examination of obligations under Articles with content similar to that of Article 2 of the ACHR that contain general obligations for implementation of the respective treaties. See, General Comment No. 3 (1990), The Nature of States Parties' Obligations, Article 2 of the International Covenant on Economic, Social and Cultural Rights, para. 4.

**family should not be confined exclusively to marriage or to a univocal and immutable concept of family.** The Court considers that the concept of family life “is not confined solely to marriage-based relationships and may encompass other *de facto* “family” ties where the parties are living together outside of marriage.”<sup>231</sup> In another decision, the Inter-American Court held more specifically that “the American Convention does not define a limited concept of family, nor does it only protect a ‘traditional’ model of the family.” The Court also rejects “a limited, stereotyped perception of the concept of family, which has no basis in the Convention, since there is no specific model of family (the ‘traditional family’).”<sup>232</sup> Further, the Court considers that the imposition of a specific vision of the family could constitute arbitrary interference with the right to private life, recognized in Article 11(2) of the American Convention because of the impact it may have on a family unit.<sup>233</sup>

408. In this regard, the Commission has shown concerns over a limited and stereotyped interpretation of the concept of family, which fails to recognize existing inter-American standards on the subject and arbitrarily excludes diverse families, such as those formed by same-sex couples, who deserve equal protection under the American Convention. The IACHR notes that this type of interpretation creates an environment conducive to the development of discriminatory speech and attitudes toward LGBTI persons. The concept of family cannot be limited only to stereotypes based on binary gender constructs—man and woman—or on heteronormative sexual orientation. **The concept of family should be understood in its broadest spectrum to ensure recognition of diverse emotional connections and to respect people’s sexual orientation and gender identity, as well as to protect the children who belong to these families.** The Commission urges the States of the region to adopt all measures to recognize the rights of the different types of families within their jurisdictions and to ensure that all their members can fully exercise

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<sup>231</sup> I/A Court H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, citing a decision of the European Court of Human Rights, para. 69.

<sup>232</sup> I/A Court H.R., Case of Atala Riffo and Girls. v. Chile, Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239, pars. 142 and 145.

<sup>233</sup> I/A Court H.R., Case of Atala Riffo and Girls. v. Chile, Merits, Reparations and Costs, Judgment of February 24, 2012. Series C No. 239, para. 175. The Inter-American Court notes that “social, cultural, and institutional changes are taking place in the framework of contemporary societies, which are aimed at being more inclusive of their citizens’ different lifestyles. This is evident in the social acceptance of interracial couples, single mothers or fathers and divorced couples, which at one time were not accepted by society. In this regard, the law and the State must help to promote social progress; otherwise there is a grave risk of legitimizing and consolidating different forms of discrimination that violate human rights.” See I/A Court H.R., Case of Atala Riffo and Daughters v. Chile, para. 120. See also Case of Fornerón and daughter v. Argentina, Merits, Reparations and Costs, Judgment of April 27, 2012, Series C No. 242, para. 98.

their human rights<sup>234</sup>. The Commission uses in this report the term family as established by the jurisprudence of the inter-American system, i.e., in the broad sense described.

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<sup>234</sup> IACHR, Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.2, doc. 36, November 12, 2015, para. 330 and recommendation 83. IACHR, press release, IACHR Regrets Ban on Gender Education in Paraguay, December 15, 2017.



CHAPTER 5  
PRINCIPAL CHALLENGES



## PRINCIPAL CHALLENGES

409. All the information collected by the IACHR during the process of preparing this report reveals a series of principal challenges that affect the capacity of the State to adequately implement the rights of children and adolescents.
410. The first observation that the IACHR has almost always received is that “there are major gaps between the legal recognition of the rights of the child in the law, and the reality experienced by a great many boys and girls,” as well as gaps “between the legislative mandate to establish the national systems and the responsibilities vested in them by the law, and their effective implementation and actual operation.” In addition, these gaps appear to be more profound at the local level, and in certain municipalities and geographic zones.
411. The IACHR notes that even though the States of the region have made legal, programmatic, and institutional gains, one must also recognize that major challenges persist when it comes to fully guaranteeing all rights for all children and adolescents. Although in some countries legislative changes are still required in order to establish a genuine national system with the characteristics described in the preceding chapters, or there may be a need to adapt and/or adjust the legislation in force, in general the principal and most common problem lies in the effective implementation and operativity of the national systems once they are established by law. Following is a description of the main challenges identified that have been shared by the countries of the region.

### ***A. Challenges in the Process of Transforming the Public Administration and Good Governance***

412. Recognition of the central role of human rights and the attendant duties of the State to guarantee them has brought with it profound legal and political changes, and changes in the structure and organization of the State, in particular in the processes and methods of action available to the public administration to enable it to carry out that duty to uphold human rights. The view of the State and its function with respect to persons under its jurisdiction have been modified. The legal, political, and social conception according to which the central role of the State is to seek to guarantee the

rights and security of all persons, organizing its policies, structures, and resources to that end, is well-established.

413. More recently, modernization of the administration and operations of the State has been given impetus associated with the concept of **“good governance.”** **Special importance is accorded to the principles of transparency; citizen participation; effectiveness and efficiency in public management; quality in planning, implementing, monitoring and evaluating public policies; performance and results indicators in public-sector management; professionalization and creation of protocols for action and quality standards; accountability; independent oversight; and fighting corruption, among others.**
414. It has been said that good governance is the process by which public institutions conduct public affairs, administer public resources, and guarantee the attainment of human rights and the well-being of all persons in a manner essentially free from abuse, discrimination, and corruption, respecting the rule of law and democratic principles.

415. The IACHR finds that many of the challenges the national systems face have to do with the need to continue improving and deepening processes for managing public affairs. These include aspects related to the political and institutional processes of designing, implementing, monitoring, and evaluating public policies; systems for information and measurement; social participation and the participation of children and adolescents themselves; technical capacity and professionalization; transparency and accountability; independent oversight; and effective, efficient, sustained, equitable, and transparent financing. Following are some of the main challenges detected.

## 1. Policy planning Methods

416. The IACHR observes that in general, while systems for planning public policy for children have improved, one of the main problems that one continues to encounter at the root of the current challenges to the operation of the national systems is the deficient planning of the national children's policy and the policies and programs that stem from it. This gives way to problems of ineffectiveness and inefficiency, may lead to corruption, and erodes the confidence of the population in the institutions of the State and the capacity of the public administration to carry out the commitments assumed in the laws and policies on the human rights of children and adolescents.



417. There is a need for public institutions to continue developing systematic strategic planning processes. The planning processes should become basic tools of government and management of public affairs.

418. As noted earlier, the national children's policy should include the objectives and expected results, the strategies for getting there, as well as the goals to be achieved in the period established in the planning exercise. The IACHR notes that it is necessary to increase the quality of the planning method, identifying with greater precision the interventions and activities needed to effectively attain the objectives sought, as well as coming up with a price projection of the programs' costs, in order to be able to realistically calculate the costs of the national policy and to ensure that the human and financial resources needed to make it viable are secured. This would make it possible for the States to plan more adequately, to improve their performance, and to verify compliance with their international obligations. Otherwise, a dissociation is created between the objectives set in the policies and what is actually attained.

419. As a prerequisite, systems are needed for gathering data and systematizing the information so as to allow for a complete and reliable understanding of the situations faced by children and adolescents. This aspect is particularly weak in the vast majority of countries of the region, requiring efforts to establish and strengthen such systems. Without reliable and comprehensive information, it is difficult to be able to construct a national children's policy with the capacity to respond adequately to the challenges that children and adolescents face. Moreover, without a strong information system it is not possible to carry out actions for monitoring, measuring gains and outcomes, conducting evaluations, or ensuring accountability.

## **2. Systems for Collecting Data and Analyzing Information**

420. As indicated, the IACHR detects a major weakness of the data collection and information analysis system, with major gaps in the availability and accuracy of data and statistics. This poses a crucial challenge for improving policies in terms of the following considerations, among others: preparing assessments that are technically solid, complete, and in line with the reality of the situation of children's and adolescents' rights on which to base the national children's policy; taking stock of the level of attainment of various rights, identifying which rights are most frequently violated and why; identifying what groups of children are more exposed to violations of their rights or to lack of guarantees, as well as casting light on the structural contexts of discrimination and social exclusion, and identifying the causes and consequences of these situations; and gauging the level of prevalence

of various phenomena that have a negative impact on children as well as identifying the areas most affected (geo-social mapping).

421. The shortcomings are mainly due to the lack of reliable data collection systems; the lack of sufficient institutional capacity; and the lack of trained human resources to collect and analyze the relevant data. Information systems are costly and the States should allocate sufficient resources to establish and operate them, given that this is part of the “necessary measures” that the State must adopt to ensure effective observance of the rights of children and adolescents. The State should invest systematically in generating a steady flow of information and evidence using various methods.

422. This information is essential for States to be able to make informed decisions on the design of public policies. That is, it allows for the design of more effective evidence-based strategies for intervention, it makes it possible to monitor and adjust these policies as necessary, as well as to evaluate their effectiveness, efficiency, and impact, and to take note of good practices and lessons learned. In addition, the information must contribute to facilitating well-grounded decision-making on the level of economic resources needed to adequately finance these policies.<sup>235</sup>

423. The health and education sectors are usually the main exception to this situation. Generally speaking, substantive gains have been made in these sectors regarding the information systems and systems for collecting data on indicators of implementation of these rights. The adoption of **standardized indicators** internationally in health and education have contributed decisively to these gains.

424. Direct services for children and adolescents at the local level perform an important mission collecting data on the types of cases, consultations, and interventions in their work, keeping statistics on them. This information is extremely valuable to get an overview of what types of situations come into the system more often, by municipality. To this end it is important that these services/offices/care centers have a computerized system to record and share this information in real time. This information is input for decision-making of the municipal policy-making body in working out the local policy on children, for example on the type of preventive interventions that need to be strengthened or on the need to establish a

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<sup>235</sup> Along the same lines, see the report of the IACHR [Violence, Children and Organized Crime](#), paras. 505 ff., and IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), paras. 80-90 and 554 et seq.

strategy for addressing certain phenomena that are highly prevalent in the municipality.

425. Moreover, the IACHR has noted that **efforts at intersectoral coordination** in collecting data and statistics for designing public policies are crucial given that at present the information is scattered across various sectors and institutions. To that end, it is necessary to maintain a constant dialogue and an information system that cross-checks the data from the various institutions, such as the ministries of security, justice, health, labor, social development, planning, and education, among others.<sup>236</sup> The existence of a **single and integrated system** that brings together all the statistical information on children available through the various sectors and institutions would contribute decisively to improving information management.
426. The obligation to produce statistical information entails producing data and information that is **duly disaggregated**. The disaggregation should be suitable and relevant for serving the aim of seeing to and strengthening the attainment of all the human rights of all children and adolescents. The information should be disaggregated so that it is useful for taking stock of and monitoring the situation of the **persons, groups, and communities in who are vulnerable** in the exercise of their rights or historically discriminated against, excluded or at a socioeconomic disadvantage.<sup>237</sup> The information should be broken down at least by: age, gender, ethnic origin or social group, geographic location, socioeconomic situation, immigration status, disability, and other characteristics relevant to the national contexts.
427. As the IACHR already noted in its report *Violence, Children and Organized Crime*, the process of understanding and responding adequately to complex and multicausal phenomena that affect the rights of children and adolescents will continue to pose challenges, but to the extent that efforts are furthered to improve the systems for generating and collecting data and analyzing information, it will be easier to obtain evidence for understanding these phenomena, the risk factors and factors of protection, and the strategies of intervention that have worked to enhance prevention and to improve the responses to violations. In this regard, the IACHR has noted the importance of having not only quantitative data, but also qualitative data, research, and longitudinal studies, among others.<sup>238</sup> In this

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<sup>236</sup> IACHR, *Violence, Children and Organized Crime*, paras. 505 et seq.

<sup>237</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008)*, para. 58.

<sup>238</sup> UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, 2014, p. 6.

regard, partnerships with academia and research centers may prove very valuable.

428. The data system should also pull together information on the number of cases of violations of the rights of children and adolescents that have been reported, the prosecutions, the verdicts, and the measures of reparation offered the victims, broken down by type of offense, profile of the person responsible and profile of the victim. The data should include all victims under 18 years of age and should be made available to the public periodically. This type of information is not always collected and is essential for obtaining evidence of impunity and better understanding the types of crimes committed against children and adolescents and their characteristics.
429. Where there are **observatories of the rights of the child** one notes a greater capacity for collecting data, quantitative and qualitative, for cross-checking data from various sectors and sources, and for interpreting them. Various and standardized methodologies are applied, along with evaluations to gauge the impact of the policies. In some cases, the observatories represent interesting partnerships between the State and academia. The use of new technologies should be explored in this field.
430. The IACHR also notes that it is essential **to introduce the participation of children and adolescents in generating this information**. The voices and opinions of children are crucial for understanding the various realities in which different groups of children live, to give visibility to hidden issues, and to identify solutions, as has been noted on several occasions in this report. In this respect, innovative and promising experiences are beginning to be detected in the region that should be maintained and strengthened. **Self-perception surveys**, for example, have proven to be very valuable for collecting information directly from children and adolescents, as have **surveys done in schools** in various countries of Latin America and the Caribbean, although the IACHR notes that mechanisms should also be found for gathering information on the situation of those children and adolescents who are not in the school system, to hear their voices.
431. Moreover, the availability of data serves to **incentivize an informed debate with the public and can prompt government authorities to act** to fulfill their responsibilities. In addition, by raising awareness about certain issues, it can serve as a **catalyst for legislative, policy, and social actions and changes**.

432. The IACHR recognizes that the States are making efforts aimed at improving existing data and information systems, though they need to go

further, particularly in aspects related to: establishing a national-level mechanism that centralizes the information and establishing an integrated information system that is available to the public to facilitate the oversight and scrutiny of public policies; establishing a system of standardized indicators in various sectors; adopting methodologies and protocols that ensure data quality; introducing aspects related to the rights of the child in population surveys and longitudinal studies; including the participation of children and adolescents; as well as conducting qualitative studies and research.

### 3. Systems of Measurement, Monitoring and Evaluation

433. Related to what was just referred to, the IACHR has also identified the need, in all countries of the region, to create and strengthen systems of measurement that make possible effective and transparent monitoring, introducing measurable goals and creating indicators for measuring the progress, results, and impacts of the policies.

434. Establishing monitoring and evaluation systems is tied to adequate fulfillment by the States of their international obligations, and to principles related to good government, particularly the principle of transparency and accountability. Having **constant monitoring**, of both the operation of the national system and the national children's policy, will make possible adequate, effective, and efficient implementation while also making it possible to identify, in a timely fashion, problems, gaps, or deviations, and to introduce the corrections or adjustments necessary to overcome those situations and move towards the results proposed. Monitoring allows those in charge of implementing the national children's policy to have information on progress towards attaining the expected results and therefore towards its objectives and goals.

435. The national children's policy, with a medium- and long-term horizon for implementation, needs **intermediate evaluations** that make it possible to identify possible needs for adjustments or updates. The **final evaluation**, once the national children's policy is no longer in effect, on its effectiveness, its strategies, and the results that have been obtained, and of the workings of the national system at its various levels, presupposes that this evaluation can inform in a timely manner the future public policy decisions and the operation of the institutional framework for children, make recommendations, and draw out the lessons learned. The evaluation mechanisms should be focused on identifying evidence and concrete results obtained, comparing this information with planning projections. In

addition to contributing to transparency and accountability to society, it discourages corruption and increases the suitability of these policies and their capacity to ensure the exercise and enjoyment of rights.

436. In addition, an annual report should be prepared that the executive submits to the legislature regarding the national children's policy and the gains made, which is tied to the report on the execution of the budget earmarked for children and adolescents. This report should be made in an accessible language and be widely disseminated among the public and especially among children and adolescents.
437. **Constructing indicators** is crucial for monitoring, evaluation, transparency, and accountability; they also highlight the efficiency and effectiveness of policies and services, while also bringing to light whether they comply with the principles of equality and equity, when it is possible to break down the information by various groups of children and adolescents. It is also important for the systems of measurement to incorporate standardized indicators that allow for international comparisons and comparisons over time; although internationally standardized indicators are interesting for the reasons noted, it is also important to supplement them with others adapted to the specific situation of each country.
438. Usually health and education are the sectors with the most indicators, many of them standardized, followed by security and justice. However, such measurement instruments need to be developed for other sectors. It is important for other sectors to develop their indicators and compile the data to use these indicators and measure the gains made.
439. The IACHR also considers that the participation of civil society should be expanded, along with the participation of children and adolescents in the monitoring and evaluation processes, so as to ensure that their opinions are heard.

#### 4. Transparency and Access to Information

440. Transparency is a principle that should guide the relationship between the State and all persons under its jurisdiction in the conduct of public affairs. Access to information is a right that undergirds the proper working of democracy, as it is a condition for ensuring other rights, in particular the right to citizen participation in the conduct of public affairs.

441. The Commission considers it necessary **to strengthen the debate on matters of public interest** based on the principle of active transparency, that is, objective, adequate, sufficient, updated, broadly accessible, understandable, and reliable information should be proactively disseminated to society; and that there be accountability for the results obtained through the policies being implemented. The **principle of active transparency** means that the State should make available to the public – without necessarily requiring a request for information – data on the implementation and results of public policies and on the level of investment in children, as well as information on the services and benefits that the State offers and the requirements, conditions, procedures, and time periods of the administrative procedures and how to access them. This makes it possible to **monitor compliance with the commitments** States have undertaken with respect to children and **enables institutional performance to be evaluated and public management and the service operation to be improved.**

442. The principle of active transparency and the right of access to information are crucial in a democratic society, as they facilitate participation, monitoring, and oversight of State activity. They also make it possible to overcome the barrier of the lack access to information as an obstacle to obtaining services for groups in a situation of greater vulnerability, and to keep the information from being used as a way of exercising power, discriminating, proselytizing, or engaging in corruption. In addition, information should be provided on the procedure for consultations and filing complaints. That information should be provided to the public routinely and proactively.

443. The IACHR has identified the need to develop transparency and accountability as part of the institutional culture of the public administration, especially in relation to the rights of the children, and in particular: greater visibility should be given to the national children's policy and the budget for children; and there should be broad dissemination of the reports on progress and gains, and of the results of the evaluations and recommendations made, and on the State's plans to carry them out. The media, new technologies, and transparency (or open government) portals are useful instruments for performing that function. The IACHR considers that one should accord the schools a more preeminent role for conveying information to children and adolescents about their rights, the national children's policy, the State's investment in their rights, and the specific progress and gains made.



## 5. Participation of Civil Society, and of Children and Adolescents

444. While the IACHR recognizes that **civil society participation in the conduct of public affairs** related to children has progressed substantially since the coming into force of the Convention on the Rights of the Child, it also observes that this participation should be strengthened. The same applies for the social participation of children and adolescents, although recognition of the importance of their participation and its effective promotion has taken even more time due to preconceptions and stereotypes regarding the capacity of children and adolescents to participate and the need to articulate special measures for facilitating the participation of children and adolescents of various ages.

445. Social participation plays a central role in democratic life on channeling and expressing some of the social demands and on overseeing the application of rights through participation in the governmental political system. These groups need to remain vigilant to the implementation of the national children's policy and the operation of the national system and its services. In addition, they should have the opportunity to contribute constructively, proposing improvements to the policy-making bodies on children, but also through other participatory mechanisms such as forums, hearings, debates, and consultations. A strong social movement for children would help advance more quickly protection for the rights of children and adolescents.

446. The IACHR has observed various levels of recognition of civil society participation in the operation of the national systems. In particular, the IACHR considers that the States should review their legislation in order to accord legal recognition to civil society participation in the main institutions that make up the national systems, especially the policy-making bodies on children, at all levels, ensuring that such participation is broad, diverse, legitimate, and inclusive, and that it has the capacity to effectively impact on debates and decision-making.

447. Related to the foregoing, the IACHR views with concern that some organizations or groups assume levels of representation that do not correspond to the plural, diverse, and inclusive outlook that is required for such bodies to work, and asks the States to review their laws and practices to effectively ensure this plurality, diversity, and inclusiveness of outlooks and points of view. Equality and pluralism need to be ensured. For this reason, once the channels of citizen participation are opened up, it is



necessary to avoid having them come under the control of organized interests ensure that reproduce social exclusion.<sup>239</sup> The IACHR is also concerned about those cases in which social representation is decided upon by the executive; it is recommended that this situation be modified where it exists, and that mechanisms and procedures for selecting civil society representatives be put in place that are democratic, transparent, consensus-based, and participatory. With respect to diversity and non-discrimination, the particularities, characteristics, and needs of the indigenous and Afro-descendent peoples should be respected, as well as those of any other socially and culturally diverse population group.

448. The growing provision of public goods and services through commercial entities and social organizations may generate the risk of conflicts of interests when these same service-provider organizations that are contracted by the State sit down to participate in the policy-making bodies on children, for their independence may be impaired and their monitoring and oversight role may be cast in doubt. In those States with a high degree of outsourcing of children's services to NGOs this situation may lead to challenges in terms of the role that should be played, ideally, by civil society organizations through their participation in the bodies that engage in deliberations and decision-making on public policy, programs, and services for children. The State should articulate the mechanisms needed to expand civil society representation in these spaces and ensure that possible conflicts of interests not perturb their operations.
449. As regards the participation of children and adolescents, the IACHR notes that gradually children's and adolescents' consultative councils have been established nationally, while at the local level there are considerable gaps, with a failure to implement them. At the same time, the processes for State promotion of and support for the participation of children and adolescents on these consultative councils for children and adolescents is also limited at the local level, which makes participation difficult. These aspects require greater attention by the States in order to implement the right of children and adolescents to participate in the matters that affect them.

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<sup>239</sup> Along the same lines, see Articles 10(e) and 33 of the [Carta Iberoamericana de Participación Ciudadana en la Gestión Pública](#) (Ibero-American Charter on Citizen Participation in the Conduct of Public Affairs), approved by the Eleventh Ibero-American Conference of Ministers of Public Administration and Reform of the State, Lisbon, Portugal, June 25-26, 2009 and adopted by the Nineteenth Ibero-American Summit of Heads of State and Government, Estoril, Portugal, November 30 and December 1, 2009 (Resolution No. 38 of the "Lisbon Action Plan").

450. The IACHR is of the view that the States should perform an evaluation of the current status of children's participation in the country, including their recognition in the legislation as well as identifying existing spaces and mechanisms for children and adolescents to participate in designing, monitoring, and evaluating public policies that affect them, at the different levels. This document should identify the main gaps in setting up children's and adolescents' consultative councils, or similar entities, and establish a short-term action plan to effectively guarantee this right, adopting goals and strategies to that end, and reporting annually on what has been accomplished.

451. The IACHR has not found sufficient evidence, from the information provided, of what the States are accomplishing in other areas such as the systematic production of materials for children and adolescents with information on the national children's policy and the budget earmarked to children, as well as the follow-up reports and evaluations; support by the States for efforts to organize children and adolescents; provisions on how one should take into account the opinions of children and adolescents in public policy-making and in relation to the operation of the national systems; including in the national children's policy an objective aimed at promoting the participation of children and adolescents in various areas, such as the family, school, community, and in the children's and adolescents' consultative councils, among others; and evaluations on compliance with the duty to promote the right to participation of children and adolescents.

## 6. Professionalization and Specialization

452. The IACHR identifies as major obstacles to the implementation and proper functioning of the national systems the need to **ensure the professionalization and specialization of the staff who make up the national systems**, especially those persons who are in direct contact with and serve children and adolescents.<sup>240</sup> This unmet need is most marked at the local levels, especially in some rural zones and municipalities, or

<sup>240</sup> The IACHR, the Court, and the Committee on the Rights of the Child have all referred repeatedly to the importance of the principles of professionalization and specialization of work with children. See, e.g., IACHR. *The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas*, paras. 201 ff., OEA/Ser.L/V/II., Doc. 54/13, 17 October 2013. IACHR, *Violence, Children, and Organized Crime*, paras. 502 to 504, OAS/Ser.L/V/II. Doc. 40/15, November 11, 2015. I/A Court HR. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, paras. 78-79.

geographically isolated areas, due to the lack of qualified and trained human resources in these places, and to budget limitations when it comes to hiring personnel with the qualifications required and in adequate numbers.

453. Applying the principles of specialization and professionalization implies the need for **specialized and multidisciplinary units in the local services provided directly**, with trained staff and protocols adapted to children in the sectors and entities with responsibilities for the rights of children.
454. The IACHR considers that there should be an increase and strengthening of the **training plans and continuing professional education courses** as well as workshops for professionals to share experiences with one another, to increase the quality of care provided to children and adolescents. In addition to the personnel hired in the context of the services of the national system, professionals from other sectors such as teachers, police, judges specialized in matters involving children, and health services personnel should all receive training on children's rights and should all be familiar with the protocols for identifying child and adolescent victims of violence, abuse, and neglect; case management; and referral. Training on children's rights should be geared not only to the personnel who are in direct contact with children and adolescents, but also to the decision-makers, in the legislative and executive branches, so that they may have a better understanding of the rights of children as they do their work.
455. The processes of **selecting and contracting** the personnel who work directly with and for children and adolescents should be provided for in the law, and should be carried out carefully based on academic qualifications, merits and references, and the professional experience of the candidates, especially those who have direct contact with children and adolescents, discarding anyone with any history of abuse, neglect, or any other form of violence against children. One must also see to it that the **labor conditions and remuneration** of the personnel correlate with their responsibilities, and thus do all possible to hire and retain suitable and trained personnel, motivated personnel, with continuity and stability in their positions and opportunities for professional development and continuing education. The IACHR has noted that in those countries that experience a high turnover in the personnel devoted to providing direct attention and protection, the quality of attention declines, and therefore greater efforts are needed to promote the **stability and professionalization** of these positions.
456. There are countries in the region in which the legislation provides that local promotion and protection services are to have personnel chosen by popular vote, with a fixed term (e.g. four years with the possibility of re-

election), at the end of which they must leave their positions and new candidates must be elected (this is the case of the Conselhos Tutelares in Brazil). In these cases, it is also fundamental to establish the requirements and minimal criteria for ensuring the level of professionalism, specialization, and multidisciplinary approach of the teams that work directly with children and adolescents. The challenge of the turnover entailed in a system with the characteristics described could be solved by having technical support personnel on permanent multidisciplinary teams working alongside the persons elected. This would also represent progress, considering that the number of persons elected is very small compared to the level of coverage and the ratio of professionals/population that is generally established in the legislation, and considering that integral protection requires the involvement of professionals from various disciplines.

457. It is also crucial to have guides, procedures, and protocols for action, case management and referral, as well as codes of conduct that ensure quality, timeliness, and suitability, while also considering the best interests of the child, in all activities under the mandate of the national systems. Insofar as possible the States should offer integral and integrated responses in a single service, through multidisciplinary teams, to avoid the need to go before various mechanisms to secure complete attention (one example is to be found in the integral and integrated services for victims of sexual violence that include medical, legal, psychological, social, and family assistance). These protocols, guides, and procedures should be widely known by the personnel in contact with children and adolescents; periodic trainings should be organized on them, as well as evaluations of their effectiveness and suitability.
458. Several experiences in the region are seeking to cover personnel shortages in the areas with the greatest challenges for contracting qualified and suitable professionals, to ensure coverage. These include **agreements with universities** so that students in the last years can engage in professional practices at centers and services for children, thereby bolstering the possibilities of these services expanding their human resources with personnel from various disciplines, at the same time as they provide students learning opportunities. In any event, there should always be a professional expert to guide the work of the students, through cooperation agreements, to formalize the modality of professional practices and the suitable professional practices and the suitable profile required, in addition to having an adequate training plan. These modalities also make it possible to expand coverage and improve the presence of services in the communities with more professionals and other personnel.

459. The **integration of community structures in the structure of the national system** may also pose some challenges when it comes to guaranteeing the principles of professionalism and specialization. These grassroots social organizations or community-based structures are valuable as they provide the national system with connections to the communities and the environments closest to children and adolescents, which helps strengthen protective spaces for children and adolescents. Coordination with these structures has made it possible to overcome challenges to services coverage of the national system at the local level. In these cases, as noted above, in addition to the legal definition of the scope and limits of this cooperation, it is important that the States guarantee the **transfer of knowledge, training and education for persons who are part of these community structures, which are part of the national system**. In addition, the State should provide **guidance and protocols for action, and technical support, and supervise its workings**. These community structures should have access and proximity to formal services made up of professionals and multidisciplinary teams within the structure of the national system to which those cases that so require can be referred.

## 7. Independent Oversight Systems

### Independent National Human Rights Institutions

460. National independent human rights institutions have an important mandate to supervise the State's compliance with its international obligations, and its obligations under domestic legislation, in relation to the rights of children and adolescents.<sup>241</sup>
461. In this respect, the IACHR observes that most of the countries of Latin America, with some exceptions, have a national independent human rights institution operating under guidelines established by the United Nations for these institutions (the so-called Paris Principles).<sup>242</sup> These national independent human rights institutions have attributed to them, in addition to their general functions, a specific mandate to protect the rights of children, and to that end they have a specialized area, unit, or division responsible for this. These areas, in some cases, are at the same time

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<sup>241</sup> On this issue see, Committee on the Rights of the Child, General Comment 2 of the Committee on the Rights of the Child of the United Nations, The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, November 15, 2002.

<sup>242</sup> Principles relating to the Status of National Institutions. Adopted by General Assembly resolution 48/134 of December 20, 1993.

responsible for other population groups such as women or persons with disabilities. In the case of Argentina, the law provides for the establishment of an Ombudsperson for the Rights of Children and Adolescents dedicated exclusively to promoting, protecting, and defending the rights of this population group.

462. Depending on the mandate attributed to them by the legislation of each State, the national independent human rights institutions may, among other activities: supervise the implementation of the law, policies, and practices in keeping with the rights of children and adolescents; evaluate the level of implementation of the rights recognized to vest in children and adolescents; seeing to effective respect for the statutory rights and guarantees for children and adolescents; conduct investigations; promote extrajudicial and judicial measures, with the possibility of submitting, on their own behalf, cases to the courts and intervening in judicial cases to inform the court of issues related to the rights of children and adolescents; exercise authority to provide support for children and adolescents to turn to the courts of justice; provide legal counsel; supervise the public and private agencies that are devoted to providing direct services to children and adolescents; receive all types of claims made by children and adolescents or that are made by any person with respect to children and adolescents; foster the enforceability of rights by receiving complaints; keep tabs on the actions and decisions of the State authorities as per the law; draft and publish reports on issues related to the human rights of children and adolescents; make recommendations to agencies of the State to better carry out their obligations; and report annually to the legislature on the work done in a public report.

463. The IACHR emphasizes that the mandate of the national independent human rights institutions is useful for implementation of the rights they oversee, since they monitor the relationship between children and the State, and propose institutional changes, changes in social practices, changes in policies on children, and legislative reforms. Nonetheless, the IACHR observes as the main challenge the scant economic resources allocated to these institutions, which limits their ability to fully carry out their mandate and ensure their coverage throughout the territory. In addition, the IACHR recommends that the States grant broader authority to these national independent human rights institutions, revising the mandates assigned to them in the legislation.

464. The IACHR also values the drawing up of monitoring plans and indicators in relation to the recommendations made by international human rights

supervisory bodies, such as the IACHR and the Committee on the Rights of the Child of the United Nations.

465. The IACHR recommends that the States, in designing and monitoring implementation of the national children's policy, specifically refer to the recommendations made by the national independent human rights institutions and by international human rights supervision bodies, spelling out the specific actions needed to carry them out, and reporting on this implementation.

## 8. Mechanisms for Filing Complaints and Reports

466. Adequate protection for the rights of children and adolescents requires that there be mechanisms for enforcing their rights. In this regard, the Commission considers it essential for the States to establish mechanisms for filing complaints and reports on the treatment received by children and adolescents in the context of the national systems, i.e. with respect to the actions of the agencies and entities that constitute it and of those who provide direct services to children and adolescents, both public and private. These mechanisms for filing complaints and reports should be known, accessible, and adapted to children and adolescents, while also being safe, flexible, and effective.<sup>243</sup>

467. The mechanisms for filing complaints and reports should be spelled out by the law or by regulation, consistent with the relevant international human rights instruments, and they should have at least the following characteristics: they should be simple, widely known, and designed mindful of children and adolescents; they should be easily accessible to children and adolescents and to adults under the jurisdiction of the State without any discrimination, adapted for age, sensitive to gender, language, disability and other conditions; they should be available to children and adolescents in a special situation of dependency on the State, or of vulnerability, such as children and adolescents at residential institutions for alternative care, children and adolescents deprived of liberty; and

<sup>243</sup> For this section see: IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas](#), paras 402 ff.; Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, A/HRC/16/56, March 7, 2011; Committee on the Rights of the Child of the United Nations, General Comment No. 12, The right of the child to be heard, paras. 46 and 120; Committee on the Rights of the Child of the United Nations, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (articles 4, 42 and 44, para. 6), para. 24; Report of the United Nations Independent Expert for the Study of Violence against Children, A/61/299, August 29, 2006, para. 112(d).



migrant children and adolescents, among others; they should be guided by the best interests of the child and informed by the experiences and perspectives of children; respect the rights to intimacy, privacy, and confidentiality; promote the establishment of a free 24-hour phone line for direct attention; avoid any risk of harm, intimidation, reprisal, or re-victimization by the filing of a complaint; process the complaint promptly and take the measures considered appropriate; have adequate financial, professional, and technical resources for processing the complaints; and conduct regular systematic monitoring of the mechanisms to determine whether they are adequate for children. Said supervision should include consultations and the opinions of children and adolescents who have used such processes.<sup>244</sup>

468. The Commission considers that mindful of the principle of the best interests of the child and the duty of special protection stemming from Article 19 of the American Convention, associated with Article 25 of the American Convention, the possibility of filing complaints or grievances should be broad. Accordingly, this possibility of filing complaints or grievances should not be restricted to certain persons; it should be possible for children and adolescents themselves to do so, as well as members of the child's family, civil society organizations, and any other person who comes to learn of a situation that should be reported. Nor should the subject matter on which one may present a complaint or grievance be limited. And mechanisms should be put in place allowing for complaints and petitions to be submitted anonymously in all centers, institutions, and entities that provide services directly to children and adolescents.<sup>245</sup> The IACHR has noted that such complaint mechanisms are not always available in all the services, with the requirements cited.

## ***B. Weaknesses of the Institutional Framework, Limitations in Political Leadership, and Fragmentation of Interventions***

469. The IACHR has noted that while most of the countries of the region have a legislative and conceptual framework for a systematic approach to guaranteeing the rights of children, in practice the national systems face challenges. Among the main challenges and weaknesses, the IACHR notes the following: weaknesses in the operation of the institutional framework

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<sup>244</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending institutionalization in the Americas, paras. 402 to 421.

<sup>245</sup> IACHR. *Juvenile Justice and Human Rights in the Americas*, para. 604.



associated with a lack of leadership, which could be read as a lack of political will; the persistence of the earlier institutional framework, paternalistic and welfare-oriented, and of practices and procedures from the previous paradigm for protecting children; the need to develop new capacities, methods, skills, and processes with a systemic logic; and the insufficient allocation of resources, an aspect that will be analyzed in the next section. The weaknesses of institutional structures at the local level will be discussed in a subsequent section.

470. The IACHR has found that in many instances there is no high-level political leadership assigning the necessary political importance to and promoting the operation of the national systems and implementing the national children's policy, as there should be. While the IACHR is satisfied to see that in some countries the chair of the national system is the president of the country (or the governor, in federal States), in other cases it is the minister in charge of children's issues who presides over it, while in yet other countries the administrative structure of the national system is situated below the ministerial level, in practice undercutting the leadership and operational capacity of the national system.
471. The IACHR considers that only with such political leadership will the State be able to accelerate gains in respecting children's rights, articulating government initiatives on an interagency basis, working in coordination with regional/state and municipal/local governments, and promoting a budget allocation that makes it possible to meet the objectives of the national children's policy. This leadership at the highest level makes it possible to commit all government actors and to mobilize other actors such as civil society, academia, the business sector, the media, and society in general due to the prominent place the issue of children's rights is coming to have on the political agenda.
472. The **scant intersectoral coordination** observed in the public institutions is one of the greatest obstacles to applying the systemic view. Often, the sectors/ministries operate as silos, when the success of public policies on children requires precisely coordinated and complementary interventions among the various agencies of government. Along with horizontal articulation, it is essential that there be articulation of the various levels of government. The very scope of the national children's policy requires ongoing coordination among the sectors and levels of government.

473. The **policy-making bodies on children (children's councils)** answer precisely to this necessary intersectoral coordination and articulation among the levels of the State. The main difficulties observed are: (i) the composition of these bodies is not sufficiently broad and comprehensive;

(ii) their rank does not give the policy-making body sufficient capacity to mobilize, and the public servants who work in them do not have decision-making powers; (iii) the persons who participate in the various sectors do not have even minimal training in the rights of children, making it difficult to discuss policies from a children's-and-adolescents'-rights-based perspective and to go forward designing the policies together; (iv) these policy-making bodies on children are not convened as regularly as they should be; (v) these bodies do not have the resources needed to operate adequately and in a sustained manner; (vi) neither work methods nor capacities have been developed that facilitate real intersectoral articulation and the joint and integrated construction of the policies geared to children; (vii) the policy-making bodies on children operate based more on a logic of sharing information than on one of effective coordination, conflicting interests persist among sectors, and resistance persists to turning over decision-making power to these bodies and/or part of their budgets to cover the costs of an articulated policy. One observes a need to continue going further in the change in organizational culture and the administrative and managerial methods and processes based on the new paradigm involving an integral approach to guaranteeing rights and the principles of good governance.

474. The IACHR has also identified lack of clarity in the law as to the scope of authority of the various agencies and mechanisms that constitute the national system, weaknesses in putting in place and operating the mechanisms for vertical articulation, and delays in the establishment of the national systems, as provided for by law, especially at the local level.
475. The IACHR has also noted the **recurrent changes** in several countries as regards the institutional framework that constitutes the national system. These changes in the institutional framework are usually associated with changes in government, with the coming into office of a new president or prime minister and his or her cabinet, and the reorganization of organizational charts in the executive branch, with no assessment of effectiveness generally being done to guide the decision making. In the cases observed, there is generally a change in the rank and nature of the various institutions that make up the national system, the structures of the national system are subsumed within another ministry, or the existing institution is eliminated and the institutional arrangement changes.
476. These periodic changes, associated with new government administrations taking office, make for a precarious situation for the stability and solidity of the national system and the main institutions and agencies that are part of it. This instability has repercussions for the technical staff who support the operation of the national system when, for example, the institutional structure of the national system is moved from one ministry to another, or

from one section or bureau to another within the same ministry, resulting in a loss of investment in both human capital and the level of specialization. These recurrent changes also make it difficult to evaluate the national systems for the purposes of analyzing their effectiveness and efficiency, and to introduce any adjustments that may be called for to improve their operation, for not enough time elapses with the system running to be able to make such evaluations and introduce the changes in case needed.

477. In some countries, there is no real “system” for integrally guaranteeing the rights of children and adolescents, beyond the names that the relevant law might give it. In other cases, while the law formally provides for a genuine “system,” in practice it has not yet become operational.
478. Traditionally child protection and the relevant policies and financing have been focused almost exclusively on specific issues and groups of children considered to be the most socially excluded. Nonetheless, this **approach limited solely by specific issue or group, via targeted programs, has serious limitations and has led to lack of coordination, fragmentation, and duplication of effort.** While one must recognize that these interventions have produced positive results for the protection of these particular groups, and in developing methodologies for intervening and generating knowledge, this approach often results in a compartmentalized response to child protection marked by numerous inefficiencies, the lack of an integral perspective on rights and their interconnectedness, limitations in terms of the approach to prevention, and problems of sustainability.<sup>246</sup>
479. The Commission has observed the tendency to construct the public policy of protection for children’s rights based on an **aggregate of a variety of scattered programs**, initiatives, and interventions, without a sufficient overall vision of the complementarity and articulation of all of them. At the same time, the IACHR also notes, as it did at the beginning of this report, that there is a tendency to emphasize and overemphasize a focus of the national system on issues related to violence, abuse, exploitation, neglect, and abandonment. **The States must complete this process of transition to the new paradigm of genuine integral guarantees of the rights of all children and adolescents, making greater efforts focused on preventive policies, social policies aimed at ensuring rights, and in promoting human rights.**
480. The reasons for the aspects that have been referred to are, mainly: the inertia of the past and the structuring of interventions based on the logic of these programs, going back several years; the persistence of the previous

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<sup>246</sup> UNICEF, UNHCR, ChapinHall at the University of Chicago, and Save the Children, [Adapting a Systems Approach to Child Protection: Key Concepts and Considerations](#).

institutional arrangement based on a paternalistic approach without the mandate, capacities, human resources, or infrastructure to adopt a holistic and systemic approach to integrally guaranteeing the rights of children and adolescents; the resources from international cooperation and foundations interested in a particular issue, seeking specific programs focused exclusively on the topic that is being financed; the weakness of the coordinating/lead agency when it comes to articulating the national system and for coordinating with other sectors and entities of the State; and the limitation in the economic resources made available, which means that those resources end up focused on the most pressing issues and on the groups in the most vulnerable situations.

481. The IACHR also notes that **policies for children are relegated and isolated**. The policies geared to children are accorded the importance or priority that legal provisions say they must have, based on the principle of the best interests of the child and the duty of special protection and preferential attention for children and adolescents, their rights and wellbeing, recognized in international human rights law and in the legislation of the States. It is common for policies geared to children to be relegated to a secondary plane, which in times of economic crisis has meant that they have been very hard hit by the policies furthering cutbacks. This situation of being relegated is also apparent when the levels of budgetary allocations are notoriously insufficient and inadequate for complying with the laws and codes on children.
482. In addition, policies geared to children need to be tied more closely to the rest of State policies, especially to the national development plans and other structural policies of the State. The lack of priority assigned to the policies on children not only violates the laws and commitments assumed by States in respect of human rights, but has also proven inefficient, as more evidence has come to light on the positive returns of investing in the rights of children and preventing violations of their rights.<sup>247</sup>

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<sup>247</sup> United Nations, Committee on the Rights of the Child, [General Comment No. 19, "on public budgeting for the realization of children's rights \(art. 4\)"](#), para. 50. See also the statements by the Special Representative of the United Nations Secretary General on Violence against Children emphasizing the positive returns of investing in preventing all forms of violence against children and adolescents, [Viewpoint: The Economic Costs of Violence against Children](#).

### ***C. Insufficient Allocation of Economic Resources and Limitations on Budget Management***

483. While an adequate and sustainable economic investment is among the measures that the State is obligated to adopt to carry out international obligations to uphold children’s rights, one of the main pitfalls facing the operation of the national system and the application of policies, programs, and services for children and adolescents is their **inadequate financing**.

484. Despite the abundance of political statements on the priority accorded children and their rights, or the priority they should have in the public agenda, the reality often appears to point in the opposite direction. All too often there would appear **not to be a real political will to prioritize the issue of children, which becomes more evident in times of recession or economic crisis, when it is common for policies for children and social programs linked to children to suffer cutbacks**.

485. The insufficiency of economic resources is impacted by several factors, among them the need to modernize the public administration and its management systems. Deficient administrative and financial management systems generate ineffectiveness and inefficiencies in the allocation, management, and spending of resources.

486. Regarding management of financial resources, the IACHR, based on the information provided by the States, finds that interesting and promising gains have been made, but that they need to be taken further. The gains have involved: (i) implementing better methodologies in budgetary processes for planning, approval, execution, and monitoring, and (ii) the availability of more information concerning the reality of children and adolescents and for calculating the costs of activities for children. These gains have made it possible to improve decision-making by the political and managerial levels regarding allocation of resources, and have bolstered the capacity for evaluating results obtained from the budget decisions, resulting in more oversight and more transparency. Even so, the IACHR also notes pronounced differences among the States of the region in both respects.

487. Specifically, the IACHR observes that the States that used **“program budgeting” and “results-based budgeting”** indicate that they have attained a better, more efficient, and more transparent level of planning, implementation, monitoring and evaluation of resources earmarked to children, and that they have done so consistent with attaining the objectives, results, and goals set in the national children’s policy. These

cost-based budget methods take into consideration the costs of attaining the objectives, results, and goals included in the national children's policy, and therefore they are aligned with that plan and take into consideration both the actions and activities needed to carry it out and its costs. "Results-based budgeting" also emphasizes establishing performance, results, and impact indicators that help cast light on the problems and the insufficiencies, economic and otherwise, limiting the attainment of the objectives, outcomes, and goals.<sup>248</sup> The aim is to improve public decision-making and modernize management of the public administration, boosting effectiveness, efficiency, transparency, and accountability.

488. The IACHR, based on the information collected, considers that despite the major gains there has yet to be a profound transformation in the methods for administering and securing the economic resources needed to be in keeping with the mandate to guarantee all the rights of children and adolescents, and to see to the full application of the principles of effectiveness, efficiency, equity, transparency, and sustainability in budgeting.
489. Among the findings of the IACHR, while the new methodologies for budget preparation have attained greater effectiveness, efficiency, and transparency, they exist side-by-side with traditional criteria and practices on the allocation and use of resources that limit gains, be it due to: inertia; lack of technical capacity in public administration, especially for programming and budgeting; the existence of political interests; power struggles between or among sectors and levels of government for the allocation and use of public resources; corruption; lack of mechanisms for gathering data that would make it possible to have complete and reliable information on which to be able to plan the policy and design and monitor the budget; and sluggishness in bringing about the transformations needed for the sound conduct of public affairs, among other factors.
490. The IACHR notes that there is a need to **strengthen the planning systems** that give orient and frame the decisions on allocation of budgetary resources. Similarly, gains have been limited when it comes to defining indicators and mechanisms for monitoring and evaluation of budgetary execution, which in turn has hampered the ability to strengthen future program-budgeting.

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<sup>248</sup> See, Gabriel Filc and Carlos Scartascini, "El presupuesto por resultados en América Latina: un análisis de economía política de sus determinantes" (Results-based Budgeting in National America: A Political Economy Analysis of Its Determinants), in *Reforma Fiscal en América Latina. ¿Qué fiscalidad para qué desarrollo?* (Fiscal Reform in Latin America. What Tax for What Development?), Ch. V, ECLAC, CIDOB, and Ibero-American General Secretariat, 2012.

491. The IACHR has noted that if one uses “results-based budgeting” without putting in place the needed technical capabilities, and without modifying the **patterns of organizational culture and the traditional methods of administration** – which generally accord priority to formal deployment of means over attaining ends – the reform towards a model more in line with the principles of good governance will continue to run up against challenges to its implementation. In practice, it implies that a model is surviving that allocated constant resources, over time, to certain institutions, programs, and services, which is at odds with what should be a method of allocating resources based on planning and defining the results to be attained, previously and specifically set in the public policy on children, and periodically evaluated to make any modifications needed.
492. **Intersectoral coordination** is also key in budgetary affairs. It is important for the ministries of economy and finance, which draw up the budgets (and the competent authorities at the subnational level), do so with intersectoral cooperation so that they can get the information they need to draw up a proposal for financing that is in line with the objectives set in the national children’s policy. Coordination and dialogue within the executive branch should be reinforced, especially between the ministry of economy and finance and the areas related to the public policies on children, with a key role for the lead or coordinating agency.
493. It is also important to ensure that legislators at the national and subnational levels have access to detailed and easy-to-assimilate information on the situation of children and adolescents and that they have a sound understanding of how the budget proposals aspire to improve their wellbeing and uphold their rights. The budget process, due among other things to its level of technical complexity and its duration, is not always analyzed and debated in depth in the legislatures so as, for example, to analyze whether the budget is going to attain the objectives that have been set when it comes to guaranteeing the rights of children. **The legislature should strengthen its role in allocating public resources, exercising control over the executive’s budget proposal to confirm that the budget for children effectively contributes to carrying out the legal framework and public policies on children.** Similarly, the Committee on the Rights of the Child has made the following recommendations:

States parties should contribute so that members of legislatures are adequately prepared to analyze and debate the impact of budget proposals on all children prior to enacting budget legislation, by seeing that national and subnational legislatures, including relevant legislative committees: (a) Have access to information about the



situation of children that is easy to understand and use; (b) Have clear explanations from the executive on how legislation, policies and programs directly or indirectly affecting children are translated into budget lines; (c) Have sufficient time within the budget process to receive the budget proposal, review and debate it, and suggest amendments related to children before the enactment; (d) Have the capacity to independently undertake or commission analyses that highlight the implications of budget proposals on the rights of the child; (e) Are able to hold hearings regarding the budget proposal with stakeholders within the State, including civil society, child advocates and children themselves; (f) Have the necessary resources, for example through a legislatures’ budget office, to undertake oversight activities such as those outlined in (a) to (e) above.<sup>249</sup>

494. The States should also establish and maintain transparent and efficient financial and budgetary systems and practices and keep them open to scrutiny. The information about public resources available (public revenues), the amounts allocated, and what is spent on each policy, program, and service, should be clear, adequate, and sufficient, easy to access and grasp, and be available to society on a timely basis. Transparency contributes to efficiency and stops corruption, and is a basic requirement for making significant participation in the budget process possible.

495. The IACHR has found that in order to improve the effectiveness and efficiency of investment in children and to avoid corruption, the States should pay greater attention to: (i) information systems on the link between the level of implementation of the rights of children and adolescents and the level of investment in children; (ii) establishing systems for budget classification and earmarking that identify the resources earmarked to children; (iii) establishing a system of indicators of performance, outcome, and impact; (iv) increasing technical capabilities in the area of budgeting and the methods of “program-based budgeting” and “results-based management”; (v) strengthening the mechanisms of participation of civil society and of children and adolescents in the budget cycle; (vi) strengthening the procedures for procurement of goods and services so as to guarantee quality and avoid corruption in contracting; (vii) avoiding delayed transfers that do not allow for proper execution in

<sup>249</sup> United Nations, Committee on the Rights of the Child, General Comment No. 19, “on public budgeting for the realization of children’s rights (art. 4)”, para. 90.



timely fashion; increasing the capacity for management and absorption of the resources allocated; (viii) improving oversight and supervision (internal and external) of the results of the expenditures/investment made in children; (ix) submit an annual report on investment earmarked for children, disaggregated and easy to consult and understand, for the general public and for children and adolescents, which, in addition to submitting the financial information, highlights the level of implementation of the national children's policy and its programs; and, (x) making public the evaluations and audits for previous years.

496. **Budget information systems** are especially weak and constitute one of the main hindrances to the effective application of the new methods of budgeting (program-based and results-based) due to the insufficient information for planning, measuring using a system of indicators, and evaluation.
497. The **systems of classification and earmarking** should also be strengthened. The IACHR recommends that the States accede to the internationally agreed-upon budget classification systems.
498. The implementation of robust **monitoring, accountability, and evaluation systems** could well make it possible to monitor the performance of public-sector managers as well as to identify the results and impacts of the investment allocated and executed, making it possible to identify problems and their causes, so as to adopt corrective measures, thereby increasing effectiveness and efficiency, and reducing opportunities for **corruption**. Publicly presenting **evaluations and audits** from prior years fosters transparency; helps improve public policies and future investment based on the lessons learned and the recommendations; and makes possible social scrutiny of the implementation of policies and level of investment by the State in children, facilitating debate on and social oversight of these issues.

#### ***D. Weaknesses at the Local Level***

499. Many countries of the region are known for extensive decentralization of authority in relation to children, thus one increasingly finds the decisions, resources, and management of actions and services happening at the subnational levels of government (regions/department, and mainly municipalities/counties). The local actors are also in close contact with children and can carry out actions adapted to their contexts and that have direct impacts on their lives. Nonetheless, the national systems are

particularly weak at the local level, in terms of both their establishment/absence and operational shortcomings. There are also profound disparities in the capacities of the national systems to act and respond specifically at this level. On the one hand, there is a dynamic process of decentralization in which decisions, resources, and management are increasingly handled at the municipal level; while on the other hand are the weaknesses of the system and its capacities and resources at the local level, giving rise to differences in terms of equal access to services and enjoyment of rights.

500. The disparities in the services earmarked for the promotion, protection, and defense of the rights of children and adolescents, and their quality, may be quite marked as among municipalities. This heterogeneity does not favor carrying out the principle of equality and it poses major challenges. At present, the fact of being born in certain parts of a country means that children cannot enjoy the same level of services and support for their wellbeing and integral and harmonious development, nor will they have the same chances as other children of exercising and having assured the rights that the laws and treaty provisions vest in them. **The national systems need to be strengthened at the local level, with respect to which the IACHR has recommended that the human, material, and economic resources needed to turn back these situations, which are detected in all countries of the region, be allocated decisively and without delay.**<sup>250</sup> These disparities are usually more intense when comparing urban municipalities with rural and geographically remote ones, but one also observes contrasts when comparing sectors and neighborhoods with uneven levels of development and investment within a single city, especially in large metropolitan areas.
501. It should be noted, nonetheless, that the municipal authorities, given their proximity to the population, are in a privileged position to undertake actions to promote, protect, and defend the rights of children and adolescents and to identify, early on, situations of risk and lack of protection. Each municipality and locality has its own context and reality, and experience shows that the responses are more effective and constructive when they take into account these particularities, and problems are addressed at the community level. In addition, municipalities, due to proximity with their populations, can more easily integrate citizen participation, and the participation of children and adolescents themselves in the conduct of public affairs, in identifying the issues and possible

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<sup>250</sup> IACHR, press release, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016.

solutions.<sup>251</sup> Nonetheless, the IACHR notes that, with very few exceptions, not enough is invested in mobilizing this participation and implementing it as a matter of public policy.

502. **The bigger delays in the deployment and establishment of the national systems occur at the municipal level**, where the municipal policy-making bodies on children and direct services have been established slowly; they are not operational in all municipalities, even though in general it is expressly established by statute that these bodies and services must be created at the municipal level.

503. The IACHR has observed the **lack of municipal children's policies** that are coordinated with and contribute to carrying out the national policy, as well as the lack of direct services for children and adolescents, with sufficient quality and coverage, and with adequate human, technical, and financial resources.

504. Several factors stand in the way of effective decentralization of competences and responsibilities in respect of children, including: (i) the scant knowledge and political commitment of many local authorities to the effective realization of the rights of children and adolescents; (ii) budget limitations associated with the financial capacity of certain municipalities and the demands for social investment in light of the conditions of vulnerability of their inhabitants, factors that vary depending on the socioeconomic characteristics of each municipality; (iii) shortage of personnel specialized, qualified, and trained in children's rights, at the local level; (iv) shortcomings in planning and coordination (horizontal and vertical) and the lack of data; and (v) the lack of standards and indicators on the implementation and operation of the national systems at the local level that would make it possible to monitor them and identify shortcomings (for example, indicators of coverage and accessibility).

505. One observes a **low technical capacity** in some municipalities when it comes to designing and implementing integral, intersectoral, and multidimensional public policies, and action more focused on violations of rights, yet the structural and social problems are not addressed strategically, and therefore resources are not allocated to tackle them. There is scant specialization and technical knowledge on the rights of children and adolescents in the municipal governments, as well as a lack of human resources specialized in the new paradigm of integral protection, especially in the areas furthest from the urban centers, where it is more difficult to find professionals who are specialists in the field.

<sup>251</sup> IACHR, *Violence, Children and Organized Crime*, para. 430.

506. In addition, one should **specify the parameters of coverage and quality** in relation to the establishment and operation of municipal services for children that take into consideration the size of the population and the existing needs. It is striking that some laws provide for a single service for children for all municipalities equally, without taking into consideration the size of the municipality or the levels of coverage, considerations which could help ensure the quality of the service and effective case management.
507. The **lack of specialized human resources** in the services that engage directly with children and adolescents and their families, and the **material limitations**, of physical spaces, of resources for management and operations (for example, for making home visits for evaluations and follow-up), and the insufficient number of staff for serving the population, mean that those services that can be provided are restricted to identifying cases and referring them to other institutions (health, police, justice); yet they are not able to effectively perform all the functions assigned to them by law at the local level.
508. The IACHR has also identified positive measures that seek to overcome these challenges, such as the signing of agreements between or among municipalities to jointly provide some of the services (for example in small municipalities in rural areas); technical support from the central level through training, production of guides and protocols, certifications, and evaluation mechanisms at the national level (usually done by the coordinating/lead agency at the national level); vertical economic transfers; cooperation agreements with universities for professional internships; or the cooperation ties established with community mechanisms to serve as “first point of entry” to the formal national system.
509. On the existence of **mechanisms for vertical transfers of budget resources**, despite their importance, these mechanisms are not unaffected by problems in practice, such as receiving resources late, which limits the ability to spend them as programmed (for example, when resources arrive at the end of the budget execution cycle), or the fact that the level of transfers may have to be negotiated annually, and therefore are exposed to various changing political and economic forces.
510. In some federal States in the region, due to the jurisdictional attributions, the states or provinces are competent to decide on the establishment and authority granted to local bodies. This has created **asymmetries and heterogeneity** among the states/provinces in terms of the specific institutional structure of the national system at the local level. This aspect, which could be considered a strength in the construction of the system, in practice creates gaps in the quality of care received by children and adolescents, given that each state/province establishes organs of

protection with different parameters and competences, giving rise to differences in degree of coverage, professionalization, interdisciplinary approaches, and integral nature of the measures.

511. In general, it is important for the States to articulate suitable measures to ensure that decentralization not constitute an obstacle to the protection of the rights of children and adolescents, but rather better protection for each and every one of them. In that regard, all the States should develop a program of action aimed at strengthening the local system through training, technical assistance, resources, and the definition of minimum standards and protocols of action. The State should find the mechanisms for ensuring the rights of children and adolescents in equal conditions, avoiding disparities in the attainment of rights and in the services that the State provides across the national territory.

512. One example of the negative consequences of the absence or weak implementation of the national system at the municipal level, and that has come before the IACHR repeatedly, is the lack of uniform treatment accorded by programs for implementing non-custodial measures for adolescents at odds with the criminal law. Such community- and family-based programs should be developed at the local level, close to where the children and adolescents are, and this is provided for in most of the legislation that regulates such measures. Nonetheless, in practice the weaknesses of municipal children's policies that do not provide for or fund such programs, and the lack of specialized technical services for accompanying their implementation and follow up, limit their availability. That means that even though the legislation provides for situations in which a non-custodial measure would be applied, indeed indicating a list of them, in practice they are not always available, which leaves the judge without the option of imposing educational measures that promote the social integration of the adolescents, and that work on the risk factors to prevent recidivism. More worrisome still are the situations that have been described to the IACHR where this has led – given the lack of other options – to judges continuing to make excessive use of deprivation of liberty for adolescents at odds with the criminal law.

### ***E. Lack of Central Role for Children and Adolescents***

513. The current national systems still suffer from a lack of a genuine central and proactive role for children and adolescents themselves, even though they are recognized as holders of rights, and despite acknowledgement of their progressive autonomy for making decisions, in keeping with their age and maturity, and their right to participate and for their opinions to be

given timely consideration in all matters that affect them. The national systems, in their operations, need to grant a more proactive role to children and should create the mechanisms for doing so. It is essential to empower children and adolescents in the knowledge of their rights, to identify situations of risk and situations that violate those rights, as well as to strengthen their participation in the search for solutions and in designing, implementing, monitoring, and evaluating the public policies geared to them. Such strategies are not only more in keeping with the view of the child as the holder of rights, but also increase the capacities for prevention, early detection, and self-protection in the face of situations that violate rights, while also giving visibility to hidden issues, and to the search for more effective solutions. The IACHR considers it appropriate for the national children's policy to establish a specific objective aimed at increasing the central role of children and adolescents in the operation of the national systems, drawing up indicators for measuring them, and reporting on the gains made.

## ***F. Relegating Prevention***

514. As has been noted, the IACHR has observed that in general there is inertia in the operation of the systems, which are mainly focused on responding to violations of rights once they have occurred. Even though the States in their respective legislations recognize the obligation of the State to take all appropriate measures to prevent violations of the rights of children and adolescents, particularly those in especially vulnerable situations, it is normal for the services and programs to focus mainly on serving the needs of children and adolescents whose rights have already been violated, or who are in a specific situation of risk, with primary prevention policies relegated to a secondary role.
515. In light of the international obligations assumed by the States, they should design public policies, programs, and services, and allocate the necessary resources to ensure the effective exercise, enjoyment, and observance of all rights, for all children and adolescents, and to prevent violations. Nonetheless, the IACHR has found that the policies and programs earmarked for primary prevention, or for addressing the structural causes behind the situations of violations of rights, continue to need greater attention and resources. Such policies require articulated strategies, with a multisectoral approach, for the proper functioning of the policy-making bodies on children, which, as indicated, are still plagued by weaknesses, especially at the local level.

## ***G. The need to Promote Social and Cultural Transformations***

516. The effective attainment of the rights of children and adolescents requires going beyond the approach and perspective of the law and legislation. The transformation of the legal status of children that has been brought about with the Convention on the Rights of the Child has been fundamental for recognizing their rights and for the State to articulate all those measures that are required in order to respect, protect, and safeguard their rights. Nonetheless, a considerable part of the existing gaps between the provisions that recognize the rights of children and adolescents and their reality is explained by the lack of social and cultural transformations in the ways in which society relates to children and adolescents.

517. Disseminating the rights of children, **promoting knowledge of these rights** among children and adolescents, and raising awareness in society as to the special challenges children and adolescents face when it comes to exercising their rights and as to the effects that the various forms of violence, discrimination, and other violations of their rights have on them, are extremely important for moving these social transformations forward. **Better information systems, qualitative and quantitative data, and communication strategies are all needed** to show evidence of and explain the issue.

518. The IACHR emphasizes that greater knowledge and awareness on the part of society helps to promote social rejection of the various forms of violence and other violations of the rights of children and adolescents and increases the chances of these violations being reported and not remaining in impunity, thereby contributing to creating a safer, more protective environment for children. Reports of situations in which rights are violated by third persons is much more important for protecting children and adolescents than it might be for adults, due precisely to their development and the challenges they face accessing mechanisms of protection and justice on their own.

519. The national systems should seriously consider this factor and focus their efforts on promoting this social transformation. Following this logic, the States should create mechanisms for collecting information and monitoring social perceptions of children and adolescents and their rights. In particular, it is important to take stock of the social outlook and perceptions with respect to: (i) children and adolescents who belong to groups that are traditionally excluded, discriminated against, and in vulnerable situations, such as children living in the streets or children who



belong to certain ethnic groups; (ii) the exercise of certain rights that encounter more resistance in society when they are to be exercised by children and adolescents, such as sexual and reproductive rights, or the right to participation; and (iii) certain phenomena that detrimentally impact children and that are socially tolerated or accepted, such as corporal punishment. The challenges identified should inform the communication strategies and the design of public policies geared to raising awareness and changing existing perceptions.

520. The IACHR considers that the national children's policy, and the programs and plans derived from it, should include a strategy for communication and promotion and dissemination of children's rights. The IACHR has determined that these efforts are not carried out on an ongoing and sustained basis, with a clear strategy, and measuring the results and impacts obtained. Usually such strategies are associated with specific programs through campaigns for a defined time, to foster awareness about a given issue (such as the programs for tackling trafficking of children and adolescents), or they may coincide with the commemoration of a given date (for example, World Day against Child Labor, or Children's Day).

521. The communication strategy and the dissemination and social education campaigns should be sustained and should be aimed at the general public and at children and adolescents. At the same time, some strategies for promotion and awareness-raising should consider and be focused on the circles closest to children and adolescents, such as the family. Strategies for raising awareness among future fathers and mothers have yielded very positive results for this change in perceptions, attitudes, and practices towards children and adolescents; such strategies have been coordinated with the health sector.

522. **Children and adolescents should be included in these communication and awareness-raising strategies**, in their design and as protagonists for transmitting messages through their own voices and in their own words. In addition, adequate means of communication should be considered that allow for broad dissemination, using various platforms that are accessible to a very diverse public; in addition, messaging should be produced mindful of the country's cultural and linguistic diversity. The budgetary programming of the national children's policy should include a communication component for carrying out the strategies proposed. The results of the communication strategies should be monitored and evaluated to gauge the change in perceptions and knowledge.

523. The **media** also play a key role in forming social perceptions, in its role transmitting both information and entertainment. The IACHR has warned, for



example, of the stigmatizing and stereotyped media treatment generally accorded adolescents from certain social groups in coverage of events related to citizen security<sup>252</sup>, at the same time as it has highlighted the media's potential for transforming social perceptions.<sup>253</sup>

524. The IACHR notes the promotion and dissemination efforts among children and adolescents themselves to get to know their rights, and the places they can turn to for assistance or to get more information or find answers to questions or doubts. Schools and human rights education programs as part of the academic curriculum play a crucial role in this area, as indicated above.
525. The IACHR considers that the issue of promoting and disseminating rights with a view to bringing about a social transformation in relations with children and adolescents should be a key consideration in the national children's policy and in general in the operation of the national system.

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<sup>252</sup> IACHR, Violence, Children and Organized Crime, paras. 123, 134 and 568 to 575.

<sup>253</sup> The IACHR is currently preparing a thematic report on media and the rights of children and adolescents that will delve into these and other issues.



CHAPTER 6  
RECOMMENDATIONS



## RECOMMENDATIONS

526. As has been noted throughout this report, the new paradigm for integral protection and the rights-based approach, ushered in by the CRC and other international instruments, require an organizational and operational structure adapted to the obligations that stem from the CRC as well as a new institutional structure based on a systemic model, in addition to principles and standards in keeping with the CRC, new working methods, and improved management mechanisms. The IACHR values the gains made by the States in this regard, yet it has also identified the persistence of major challenges as well as the need to spell out the obligations for the States. Mindful of the analysis and conclusions presented in this report, the IACHR makes the following recommendations to the member States of the OAS:

### **Legislative Adaptation**

1. For those countries that have yet to do so, or whose legislative frameworks are not fully adapted, adapt and harmonize the domestic legislation, bringing it into line with international human rights commitments and especially the American Convention, the American Declaration of the Rights and Duties of Man, and the Convention on the Rights of the Child, by adopting specific laws on children, or amending existing legislation, such as codes or special statutes, that include the establishment of a national system, and the principles for its operations and funding.
2. Grant the highest rank (statute) to the provision establishing the institutional framework for children with a view to making said institutional framework sustainable over time and endowing it with legitimacy so as to be a major actor in decisions that may affect the rights of children.

### **Fundamental Principles that Should Govern the Establishment and Operation of the National System**

3. The national systems should be based on the four guiding principles of the Convention on the Rights of the Child also recognized in the framework of

the inter-American human rights system: (i) the principle of (and right to) the integral, harmonious, and holistic development of children and adolescents, taking into consideration all their rights (Article 6, CRC); (ii) the principle of equality and non-discrimination (Article 2, CRC); (iii) the principle of the best interests of the child (Article 3, CRC); and, (iv) the participation of children and adolescents in all matters that affect them (Article 12, CRC).

4. In addition, in their legal, programmatic, and institutional dimensions, they should put children and adolescents at the center, which implies:
  1. Acknowledging them as holders of all civil, political, economic, social and cultural rights, and based on the logic of the integral development of children and adolescents;
  2. Understanding the protection of their rights as a continuum and not as a series of isolated and disjointed interventions;
  3. Assuming the existence of different needs based on the evolution of the capacities of children and adolescents and their growth, which are accompanied by responsibilities varying in nature and intensity, that must be assumed by the State, the family, and society in each stage of development;
  4. Respecting the autonomy that children and adolescents gradually acquire for the autonomous exercise of their rights, mindful of their age and maturity;
  5. Recognizing and promoting their right to participate and for their voice and opinions to be heard and taken into consideration in all decisions that affect them;
  6. Giving special attention to those groups of children and adolescents who face special or particular challenges in the enjoyment of their rights, so as to foster conditions to guarantee their rights;
  7. Introducing the principle of the best interests of the child as a principal consideration in all decisions adopted that affect children and adolescents, and adopt the necessary measures to see to it that this interest is effectively valued and objectively justified;
  8. Adopting a gender perspective and an intercultural perspective; and,

9. Considering protection for the family as a key factor for protecting the rights of children and adolescents.
5. In addition, the national systems should be governed by the following principles:
1. Professionalization and specialization
  2. Effectiveness
  3. Efficiency
  4. Active transparency and access to information
  5. Equity
  6. Sustainability
  7. Accountability
  8. Social participation
  9. Independent oversight and evaluation (by agencies such as the national independent human rights institutions)

### **National Children's Policy**

6. Adopt and apply a national children's policy geared to the effective implementation of the international obligations taken on by the State in respect of children's rights, and see to it that it has foreseeable and sufficient resources, and is based on a solid and reliable assessment of the situation. The national children's policy should be set forth in the framework document that establishes the strategic direction of the State in the medium and long term when it comes to assuring effective observance of the human rights of children; it should become a matter of State policy towards children.
7. Create the means for this policy to be integral, systemic, multifaceted, intersectoral, and participatory, both in its design and in the process of its implementation, monitoring and evaluation. This recommendation has obvious implications for the institutions, since it requires certain conditions of coordination, both horizontal (intersectoral) and vertical (among levels of government), and an agency or office responsible for coordination.

8. The national children's policy should be based on an integral and systemic approach that considers the facets of: promoting rights (such as information, dissemination, awareness-raising, and education/training); preventing violations of those rights and addressing the structural causes of violations; creating conditions for the effective enjoyment of all rights for all children and adolescents; and detecting and offering a protective response when these rights are violated, including rehabilitation, restitution, and reparation of rights, and effective access to the justice system.
9. Include in the national children's policy the recommendations of the United Nations Committee on the Rights of the Child and other international human rights bodies, such as the IACHR and the Inter-American Court, as well as those drawn up by their respective national independent human rights institution considering the specific actions needed to carry them out, and present a report on what is done in this regard.
10. Include in the national children's policy specific and attainable objectives with respect to civil, political, economic, social, and cultural rights for all children and adolescents, set out indicators and make it possible to monitor their attainment, and adopt strategies and realistic deadlines for achieving them. It should be a real planning tool for administrative, institutional, and financial management, making it possible to organize in a rational, coordinated, and realistic manner a set of material and human resources, strategies, and actions, sustained over time, from different sectors and institutions, seeking to attain the established ends, while also making possible monitoring and accountability.
11. Include provisions for the constant monitoring of the national children's policy based on indicators that make it possible to periodically update the status of implementation of the policy, and to guide the introduction of variations and adjustments when necessary. Ideally, standardized indicators agreed upon worldwide should be used, as they allow for international comparison over time.
12. The mechanisms for evaluating the national policy should also be provided for, with evaluations being conducted openly, periodically, in an inclusive and participatory manner, describing the progress made, with explanations of the possible problems and a plan for overcoming the obstacles so as to attain the goals set. The law should provide at least two evaluations, one halfway through the period in which the policy is in force, and second one upon its conclusion.
13. The national children's policy should be adopted at the highest level, ideally with the rank of a statute, constituting a plan whose implementation is



mandatory nationwide, for all levels of government, and for the various sectors implicated. The autonomous and decentralized governments (states/provinces, departments/regions, and municipalities/counties) should become involved in the design and implementation of the public policies on children, respecting the scope of authority of each jurisdiction.

14. In addition, the subnational governments (states/provinces, regions/ departments, and municipalities/counties) should adopt their own policies for children based on their authority and responsibilities in the area, aligning these policies with the objectives proposed by the national policy.
15. The law should consider presenting periodic reports on the implementation of the national children's policy to the legislature (and, in the case of states and provinces, to the governor, and in the municipalities, to the mayor) as a matter of transparency and accountability. The frequency of such reports should be established in the law and it should be carried out; administrative sanctions should be spelled out for failure to do so. The information should be made available to the public and to children, it should be broadly accessible, and should be proactively disseminated by the State in a comprehensible language.
16. The IACHR recommends that systemic strategic planning processes be furthered and enhanced, improving the quality of the tools used for planning, monitoring, and evaluation. The planning systems should be basic tools for governance and management.
17. Based on the principle of equality and non-discrimination, the States should actively identify those groups of children and adolescents who are in a vulnerable situation in terms of respect for their rights and who require interventions that serve their needs for protection, all with a view to securing the effective observance of their rights. The law should establish the mechanisms for identifying those groups; one appropriate means of doing so is breaking down the data gathered to be able to identify groups with particular situations of vulnerability whose rights are not guaranteed, as well as situations of discrimination. Another measure that contributes to this identification is direct consultation with children and adolescents, civil society organizations, and experts and academia.
18. The national children's policy and the programs and plans that derive from it should include a strategy for communication and promotion and dissemination of the rights of children with a view to bringing about a social transformation in how society relates to children and adolescents and to do away with stereotypes and visions of childhood not in keeping with their rights. Children and adolescents should be included in the design

and implementation of these strategies for communication and raising awareness.

### **Linkage of the National Children's Policy with All other National Policies**

19. Ensure that the national children's policy is linked to other national plans and policies to guarantee that children are not relegated by the major policies of the State, such as the policies for fighting poverty, the national development plans, and social policies. To that end, introduce mechanisms for ensuring that the national system, along with other systems, designs in a coordinated fashion all those policies that contribute to guaranteeing the rights of children and adolescents and to bringing about the social and economic conditions for satisfying those rights.

### **Analyses of the Impact of Laws, Policies, and Administrative Decisions on the Rights of Children**

20. Establish in the law the need to perform analyses of the impact on the rights of children of draft legislation, regulation, policy, budget, or other administrative decision, geared directly to children and/or that are expected to have a direct impact on children and adolescents, at all levels of government, before they are adopted, and consider the impact of its implementation over time. The projects that are considered should have a specific section that analyzes the expected impact on the rights of children and adolescents. There should also be an analysis once implementation has begun on the effects, in practice, on the rights of children. Adequate measures should be adopted to correct the negative effects, with specific recommendations made to that end. The analyses that are conducted should include opinions from a variety of sources, and should be made available to the public.
21. It is desirable to undertake these analyses on the impact on the rights of children and adolescents, even if a given provision or policy may not be directly geared to children, when it is expected that it may have indirect effects that are not always intended or anticipated.

### **Systems for Compiling and Analyzing Data and Information**

22. Create and strengthen a system for generating and compiling data, and for managing information, that answers to the needs for planning, monitoring

and evaluation of the public policies for children and the budget earmarked for children, and allocate sufficient material and human resources. Create reliable, diverse, quality, and standardized methodologies for data collection.

23. These systems should be capable of generating complete, useful, disaggregated, quality, reliable, and accessible information for drawing up a sound assessment of the level of implementation of the rights of children and adolescents, in line with reality, that makes it possible to design the national children's policy, and the policies on children regionally and locally, as well as to be able to monitor them and the results obtained, and to facilitate preparation of the budget for children.
24. The disaggregation of the information should be suitable and relevant for serving the aim of overseeing and strengthening the attainment of all human rights of all children and adolescents, and should be useful for taking stock of and monitoring the situation of those persons, groups, and communities in vulnerable circumstances when it comes to the exercise of their rights, or who have suffered historically from discrimination, exclusion, or socioeconomic disadvantage. The information should be broken down, at a minimum, by: age, gender, ethnic or social group, geographic location, socioeconomic status, immigration status, disability, and other characteristics relevant to the national contexts.
25. The information system should also make it possible to evaluate the effectiveness, efficiency, and impact of the policies, programs and services geared to children, and of the budget, to collect evidence, and to record good practices and lessons learned.
26. This information system should be unified and integrated, pulling together all the information produced by the various sectors, to facilitate its management and accessibility. At present, the information is scattered across various sectors and institutions, such as the ministries of security, justice, health, labor, social development, planning, and education, among others. The law should clearly establish the authority responsible for operating this information system and the system for measurement, monitoring and evaluation.
27. The information and data should be easy to consult and should be available in timely fashion to officials in the executive branch and legislators involved in drawing up and adopting laws, public policies, and budgets, both national and subnational, in addition to being available for civil society, including children, with a view to facilitating oversight and scrutiny of public policies and the budget.

28. The information system should pull together information on institutional performance in case management to make it possible to improve care, the flow of referrals, and coordination. Its publication and periodic dissemination should serve as an incentive for improving institutional management and the operation of the services, and has a positive impact on transparency and accountability in the conduct of public affairs.
29. Consider creating an observatory for children which, in cooperation with academia and civil society, can generate information and analyze the operation and efficiency of the national system, implementation of the national children's policy, investment in children, and the human rights situation of children in general. Furthermore, using new technologies should be further explored in this area.
30. Collect information through services that work directly with children and adolescents at the local level related to the types of cases, consultations, and interventions they carry out, keeping statistics. The services should have a computerized system for recording and sharing this information in real time. This information can be fed into the decision-making processes of the municipal policy-making bodies on local children's policy, for example on the type of preventive interventions that should be strengthened or the need to establish a strategy for addressing certain phenomena that are highly prevalent in the municipality. Once this information is centralized, it is very useful for having an overview of what types of situations are coming into the system the most, by municipality, and an overall view of the situation of children throughout the territory.
31. The IACHR considers it essential to introduce the participation of children and adolescents in generating information, and recommends that mechanisms for doing so be put in place, such as surveys in school settings. Children's voices and opinions are crucial for understanding the many realities in which the different groups of children live, giving visibility to issues that are hidden, and identifying solutions.
32. With a view to casting light on and reducing levels of impunity, as well as to better understand the types of crimes committed against children and adolescents and their characteristics, information should be collected on the number of cases of violations of the rights of children and adolescents reported, the prosecutions, the verdicts, and the measures of reparation offered to the victims, broken down by type of crime, profile of the person responsible and the victim, and where the violations occurred.
33. The IACHR recommends that a study be published each year on the situation of children in the country, based on the information collected, to

be disseminated among the population and specifically children and adolescents.

### **Systems for Measurement, Monitoring and Evaluation**

34. Considerable efforts need to be made in all the States to strengthen the systems of measurement, monitoring and evaluation with a view to allowing for effective and transparent monitoring, improving the efficiency and effectiveness of the policies and services, and ensuring accountability. The system for measurement, monitoring and evaluation should work closely with the information system.
35. The law should provide for constant monitoring, of both the operation of the national system and the national children's policy, and the budgets, so as to facilitate adequate, effective, and efficient implementation, have information on progress in attaining the expected results, as well as identifying, on time, problems, gaps, or deviations, and introducing the corrections or adjustments needed to overcome those situations and move towards the proposed results.
36. The law should also provide for evaluations on the operation of the national system, the gains and impacts of the national children's policy, and the budgets, which should be formulated in a language that is accessible and widely disseminated to the public at large, especially children and adolescents. The final evaluation of the national children's policy should show how the objectives, results, and goals of the policy were attained, and to what extent; draw out lessons learned; and make recommendations to inform future public policy decisions. There should also be an exhaustive evaluation of the scope and results of the institutional structure of the national system, its difficulties and limitations, and of the budget allocated to children and its capacity to guarantee the rights of children and adolescents.
37. The evaluation mechanisms should be focused on identifying evidence and specific results obtained, comparing this information with the planning. Evaluations, in addition to contributing to transparency and accountability to society, discourage corruption, and the recommendations that stem from them increase the suitability of policies going forward, and their capacity to ensure the exercise and enjoyment of rights.
38. In addition to internal evaluations, there should be independent evaluations by agencies such as the national independent human rights institutions and the supreme audit institutions (i.e. Chief Financial Controller, Comptroller General, Auditor General) of the implementation of

the national children's policy, the operation of the national system, and the budget allocated to children. The conclusions and recommendations should be made public and the State should develop a plan to monitor them.

39. The IACHR recommends that robust indicators be constructed that can measure the gains in addition to being able to show whether the State is abiding by the principles of equality and equity, by being able to disaggregate the information by various groups of children and adolescents. It is also important for the systems of measurement to incorporate standardized indicators.
40. The IACHR considers that the States should expand the participation of civil society and of children and adolescents in monitoring and evaluation to ensure that their voices are heard.

### **Specific and Specialized Institutional Framework for Children**

41. Those States that have not done so should create a specific and specialized institutional framework to look out for the promotion and protection of the rights of children and adolescents at the various levels of government, establishing an unequivocal legal duty to put in place all the institutions at all levels. The law should provide for the decision-making bodies and those that implement policies and programs and that are in charge of services, and designate the coordinating/lead agency.
42. The law establishing the institutional framework for children should have the highest rank, preferably with the level of a statute, such as a Code on Children or a Special Law on Children, mindful of the sustainability and stability in time of that institutional arrangement. The law should clearly attribute the mandate, competences, and responsibilities, which should be broad and with an integral view of the rights of children, and it should refer to the various levels.
43. A decentralized system should be adopted that provides for the mechanisms and systems for all the institutions to work together and to carry out the national children's policy in a coordinated manner, under general directions, standards, and common guidelines that guarantee quality and the principle of equality.
44. The law should also establish the mechanisms for financing this institutional framework so as to ensure its operational functioning, sustainability, and establishment throughout the territory in keeping with the quality and coverage standards that are set.

45. The law should provide for the establishment of the organ or mechanism for deliberation, coordination, and design of policies and programs at the national level and give it a high level in the administration to guarantee its decision-making capacity, and to be able to articulate a systemic model that connects and links all the sectors involved in child-related matters.
46. The law should also establish its multisectoral or interagency composition; determine the sectors which, at a minimum, should be part of and participate in such bodies, at the different levels; and expressly provide for the participation of civil society organizations specialized in children's rights on those same bodies. Their main functions and competences should include negotiating and adopting an integral national public policy for children; designing plans, programs, and action strategies at the national level that derive from this national policy; drafting bills on children's matters to be introduced to the legislature; and being responsible for monitoring the implementation of the national children's policy, and for evaluating it.
47. In addition to adopting policies, programs, and services for children, the policy-making bodies on children should be vested with at least the following functions: (i) annually evaluate the investment made in children and the results obtained; (ii) draw up the budget for the next year; (iii) monitor compliance with the children's policy and the rest of the programs and services and periodically evaluate their implementation; (iv) compile and analyze the information related to the situation of the rights of children and adolescents; (v) identify and propose those vertical economic transfers needed for the adequate operation of the national system; and, (vi) present an annual report on the situation of children and adolescents to the legislature, or to the legislative organs of the state and the mayors, as the case may be. All these documents should be accessible to the public and drafted in an easy-to-understand language, and arrangements should be made to ensure their dissemination.
48. The law should also provide that these types of organs be replicated at subnational level, in states or provinces (in federal States), and in regional and municipal governments, with a mandate to adopt, respectively, the state/provincial/regional and municipal children's policies, consistent with the national children's policy.
49. It is recommended that the national policy-making body on children be chaired by the president of the republic or by the chairperson of the council of ministers, that all relevant cabinet ministers be included, and that the state/regional bodies on children be chaired by the respective governor and at the municipal level by the mayors.

50. Link the national policy-making body on children, as well as the regional and municipal policy-making bodies on children, to formal and institutional mechanisms for child participation, such as the children's and adolescents' consultative or advisory councils.
51. Convene national forums or conferences, with broad social participation, to design and to evaluate the national children's policy, feeding into the activities and mandate of the national policy-making body on children, and hold these forums or conferences on a decentralized basis.
52. Establish, by law, a space or mechanism for cooperation and coordination among the local and regional governments with the objective of coordinating policies on children nationwide and to ensure the principle of equality and a minimum of services delivery, and quality, especially in federal States and those that are highly decentralized. The IACHR also recommends that such mechanisms be created with respect to the municipal level.
53. The law should also provide for the institution or institutions in charge of implementing and carrying out the policies and programs. At the same time, the State should organize the institutional framework and specific operational arrangements for providing direct services to children and adolescents and their families, as well as for case management and special measures of protection in response to violations of rights and the imperative of restoring them.

## **Coordination**

54. The law should clearly designate the coordinating/lead agency of the entire national system, with clear and broad powers and a rank that enables it to articulate effectively both horizontally (intersectorally) and vertically (among levels of government). It should be vested with a clear role of political and technical coordination, and articulation with other systems (such as social protection, health, and justice, among others), and with civil society, in addition to seeing to the integral operation of the national system.
55. That coordination requires establishing a coordinating/lead organ that is high-ranking in political-administrative terms, and that is the highest-level authority of the system for integral protection of children, strengthening its role of political and technical coordination, and establishing it as a focal point for engagement with all sectors of government and with the other systems. The IACHR notes that in some countries this function is attributed to the national policy-making body on children, with the characteristics and



functions just described. The IACHR values this model, at the same time as it recommends, in these cases, endowing the national policy-making body on children with the necessary structures, such as an executive secretariat, well-endowed with human, material, and financial resources, so as to be able to serve this dual role, and in particular the managerial tasks. In other countries, this function is vested in autonomous institutes, or a secretariat or office of a given ministry; the IACHR notes challenges as regards rank and the lack of sufficient resources to be operational.

56. The coordinating/lead agency should draw up proposed guidelines that make possible the effective implementation, operation, and coordination of the entire national system at all levels, while also drafting the technical guidelines for implementing the action plans to carry out the national children's policy and coordinating to ensure they are carried out.
57. It is important that the coordinating/lead agency be vested with technical authority for designing proposed operational guidelines, technical standards, codes of conduct, and guides and protocols for acting and for referring cases to the authorities and officers, and to public and private organizations that work directly with children and adolescents at the various levels. In its capacity of technical specialization, it can advise the national policy-making body on children and draw up draft legislation and policies for analysis and discussion in this national body.
58. Mindful of the weaknesses observed in the operation of the national system at the local level, the IACHR recommends that the coordinating/lead agency draw up a strategic plan to support the implementation of the national system at all levels, especially at the local level, and provide technical assistance to the municipalities for creating and strengthening the municipal children's committees and the municipal centers and offices for providing direct services to children and adolescents, and case management. Among other things, it should have a mechanism for training and ongoing exchange with authorities and public officials. The IACHR recommends, with a view to ensuring the quality of care provided by the municipal services, that the coordinating/lead agency assume a greater role monitoring them.
59. At the same time, it is important to draw up technical guidelines for the establishment and operations of the children's and adolescents' consultative/advisory councils, fostering their establishment at various levels, and ensuring that they have all the human, material, and technical support required for their operations.
60. Keep a record of the institutions and agencies that provide services to children, such as the centers that take in children without parental

caregivers and shelters, or that take in victims of violence, both public and private, unless the legislation expressly places responsibility for this aspect in another agency; issue the authorizations for these centers to start up their operations; supervise compliance with the operating regulations; and investigate possible irregularities or violations of the law, and impose corrective measures and sanctions. The center in question may even be closed. Generally, it is also assigned the functions of monitoring the local services working directly with children and adolescents and supervising their compliance with quality standards.

61. The IACHR also recommends that its main functions include giving impetus to and ensuring the deployment and installation of the information and data systems, as well as the monitoring and evaluation systems provided for in the law, ensuring that the mechanisms, instruments, methodologies, and guides needed to do so are in place, in addition to ensuring that the information is collected and made available. It should also establish a strategy for transparency and accountability with respect to the operation of the entire national system, which includes seeing to it that the various reports and evaluations produced are published and disseminated.

## **Federal States**

62. Take appropriate measures to ensure adaptation and harmonization of legislation and regulations in all the states/provinces to guarantee recognition and effective observance of the rights of children and adolescents in all jurisdictions.
63. Ensure that the states/provinces create the institutional framework of the national system at the state/provincial level, adopt the state/provincial policy, and contribute the resources needed, based on the principles that apply to the State as a whole.
64. Provide for in the legislation, and establish, a space for consensus-building and coordination at the federal level (federal children's council), bringing together the state/provincial and federal authorities, led by the coordinating/lead agency, to ensure and accelerate the adaptation of the state/provincial systems, and to ensure that the legal frameworks are harmonious with and respectful of the rights, principles, and guarantees enshrined in the Convention on the Rights of the Child, and with a view to attaining greater homogeneity in policies for children and in the programs and services to make it possible to advance in territorial equity and to guarantee a minimum of parity, promoting technical and financial assistance the organization and operations of the national system.

65. The IACHR recommends that common standards be agreed upon among the states/provinces in the context of the federal children's council, or similar bodies, with the aim of avoiding asymmetries and heterogeneity among the states/provinces as regards the institutional expression of the national system and quality of services.
66. Establish the mechanisms for transferring economic resources vertically (between the federal government and the states/provinces), and among the states/provinces, to finance the installation of the national system. The law should establish mechanisms for distributing budgetary funds to carry out the objectives of the national children's policy throughout the national territory, with a view to facilitating transfers to areas with less financial capacity and equalizing the levels of protection afforded children's rights.
67. The IACHR recommends that the federal children's councils be made up of representatives of the existing policy-making bodies in each of the states/provinces, if possible at the highest level (governors).
68. The IACHR recommends that those non-federal (unitary) States that have a high degree of decentralization to the regions, departments, or other subnational territorial divisions, establish coordinating councils among the different political-administrative levels of government through a mechanism for vertical articulation. In addition, similar spaces should be created that bring together the principals of the local policy-making bodies on children with the principal of the respective province or region.

## **The Local Level**

69. The law should design a decentralized national system, providing for a deliberative body that determines the municipal children's policy and monitors its implementation as well as the institutional arrangement or services responsible for carrying out the policies, for providing direct services to children and adolescents and their families, and for case management. The law should be clear in providing as mandatory the establishment of the municipal policy-making body on children and the direct municipal services, establishing the authority responsible for creating them.
70. Draw up the municipal children's policy adapting the priorities and strategies of the national policy to the reality and specific situation of each municipality, but without losing sight that they must contribute to, be guided by, and conduct their activities within the national children's policy and the attainment of its objectives, results, and goals.

71. The law should provide for the establishment of direct municipal services that are permanent, free of charge, and multidisciplinary, that ensure that children and adolescents and their families will receive specialized care in their communities. Such services should contribute to the promotion, protection, and defense of the rights of children and adolescents at the municipal level.
72. Guarantee the effective accessibility, availability, adaptability, and quality of the local services and programs. The services should also be culturally relevant, offered in the different languages spoken in the country, and be easy to access physically in terms of their location and in relation to the removal of architectural barriers. They should also be adapted for children and adolescents of different ages, without discrimination.
73. Spell out the parameters and standards of coverage and quality in relation to the establishment and operation of the municipal services for children to ensure similar attention throughout the national territory, and to allow for monitoring and identifying shortcomings.
74. In addition, the IACHR recommends adopting protocols and guidelines for care and case management that are clear and that take into account the rights of the child and the best interests of the child, as well as the codes of conduct for the professionals who provide these services, and appropriate sanctions in the event that these are breached.
75. Establish mechanisms of cooperation between the schools and these services for early identification of cases of lack of protection and their referral. Such mechanisms of cooperation should also be established with health services.
76. The IACHR underscores the need for the operation of the national system at the municipal level to be truly integral in protecting all rights of all children, and that the services provided not focus solely and exclusively on certain groups of children due to their particular circumstances of vulnerability, or be limited to serving only certain issues and certain violations of rights. The IACHR also recommends that greater attention be given to the functions of promoting rights, guaranteeing rights, and prevention strategies.
77. All the services should have mechanisms for filing complaints or grievances. These complaint or grievance mechanisms should be widely known, simple, adapted to children and adolescents, safe, reliable, flexible, and effective. They should be accessible to all children and adolescents and to adults under the jurisdiction of the State, with no discrimination whatsoever; they should be adapted to the age, be sensitive to gender,

language, disability, and other conditions; and their availability should be ensured for children and adolescents in a situation of special dependency on the State, or of vulnerability. The IACHR also recommends that free 24-hour phone lines be put in place.

78. The law should establish the duty to ensure that the direct municipal services are allocated the human, material, and economic resources needed.
79. It is also recommended that institutional and financial mechanisms be provided to overcome the inequalities and inequities, which are particularly pressing at the municipal level, and that originate in the mix of local situations. Specifically, heeding the principle of equality, the State should articulate the mechanisms for calculating and effectuating the transfers among the various levels of government and it should explain to the public what they entail and how they tie in specifically with the attainment and enjoyment of the rights of children and adolescents nationwide, overcoming conditions of inequality in the exercise of rights, and bolstering the capacity of the State to provide protection.
80. In general, it is important for the States to articulate suitable measures to ensure that decentralization not become an obstacle to the promotion of the rights of children and adolescents, but rather a means of providing better protection for each and every one of them. Accordingly, all the States, through the coordinating/lead agency, should develop a program of action aimed at strengthening the local systems through training, technical assistance, resources, definition of minimum standards, and protocols for action.
81. The direct municipal services should submit periodic reports to the municipal authorities, and one annual report, on their activities and the results of their interventions as well as the statistics of cases, which should be public and easy to access and consult.

### **Civil Society Participation in the Institutional Structures**

82. Increase and strengthen the mechanisms for civil society participation in the conduct of public affairs related to children. The law should recognize its participation in the operation of the national system, especially on the policy-making bodies on children, at the various levels, ensuring that this participation is broad, diverse, legitimate, and inclusive, and that it has the capacity to effectively impact debates and decision-making.

83. The IACHR recommends that the law regulates the number of representatives of civil society organizations working on children's issues who will participate in the policy-making bodies on children, at the various levels. One of the possibilities is establishing parity participation of civil society, facilitating a plural and diverse debate and dialogue that incorporates various perspectives, experiences, and realities that affect children.
84. Social representation cannot be decided upon by the executive; it is recommended that this situation be changed, and that mechanisms and processes for selecting representatives of civil society organizations be adopted that are democratic, transparent, consensus-based, and participatory. With respect to diversity and non-discrimination, the particularities, characteristics, and needs of the indigenous and Afro-descendent peoples should be respected, as well as of any other socially and culturally diverse population group.
85. The States that already have such legal provisions should review their laws and practices to effectively guarantee this plurality, diversity, and inclusiveness of visions and points of view. At the same time, it is necessary to prevent forums for participation from being controlled by organized interests that reproduce social exclusion; and adequate measures need to be taken if the civil society organizations are, in a given country, the main implementing agencies for the services of the national system, for their independence may be impaired and their monitoring and oversight role may be cast in doubt.
86. In addition, the IACHR recommends that the law includes other spaces that provide a real opportunity to make constructive contributions with proposals for improvements, such as forums, hearings, debates, and consultations, without limiting participation solely through the formal policy-making bodies.

### **Participation of Children and Adolescents in the Institutional Structures**

87. The legal text that creates the national system should provide for the establishment of the permanent institutional structures to ensure the broad and representative participation of children and adolescents in the context of the national system, at the various levels, which should be serious, accessible, and adapted to the different ages.
88. In addition, efforts should be made to ensure that participation is broad, plural, diverse, representative, and inclusive, ensuring that children and

adolescents from different backgrounds, ages, and social groups, among others, are represented. To that end, the text should provide for the means of ensuring representativity, the requirements for members of the children's and adolescents' consultative/advisory councils, and the number of representatives; consideration should be given, among other aspects, to geographic distribution, age, gender, socioeconomic conditions, minorities, cultural and linguistic diversity, ethnic origin, and disability, among other aspects.

89. Guarantee the conditions for the effective participation of all children and adolescents, without discrimination. Some groups of children and adolescents, such as very young children, children and adolescents with disabilities, migrant children and adolescents, and those who belong to marginalized or underprivileged groups, and those from ethnic, cultural, and language minorities, who experience greater difficulties and obstacles to exercising their right to participate, should receive appropriate measures of support.
90. Directives, guidelines, protocols, and practical guides should be adopted on the participation of children and adolescents in the children's and adolescents' consultative/advisory councils, with a view to promoting and adequately guaranteeing this right, and establishing the conditions for doing so, in keeping with what has been indicated.
91. The legal text should provide for the way in which children's and adolescents' opinions and recommendations will be taken into account by decision-makers, and also report on this aspect, so that it can be said that participation is serious and not merely symbolic.
92. The State should ensure that all documentation regarding the national policy is widely accessible to them in an understandable language, as well as the evaluations and other accountability documents, and the information on the budget, with a view to facilitating active and meaningful participation in the process.
93. In addition to the children's and adolescents' consultative/advisory councils, various means and mechanisms should be provided to this end, such as forums, consultations, focus groups, opinion polls, and self-perception surveys, among others, that directly draw on the opinions and experiences of children and adolescents. In every case the State must guarantee that the participation processes are serious, genuine, respectful, and capable of promoting significant and proactive participation of children and adolescents.

94. The IACHR considers that the States should conduct an evaluation of the current status of children's participation in the country, including legislative recognition and identifying existing spaces and mechanisms for children and adolescents to participate in the design, monitoring, and evaluations of the public policies that affect them, at the various levels of government. This document should identify the main gaps in the establishment of the children's and adolescents' consultative/advisory councils, or similar bodies, and establish a short-term action plan to effectively guarantee this right, establishing appropriate goals and strategies, and reporting annually on how much has been achieved.
95. The IACHR recommends to the States that they adopt, in the national children's policy, a strategy specifically aimed at promoting and increasing children's and adolescent's opportunities to engage in social participation, and to earmark resources to that end. Among the measures for doing so, the States may provide support to the organizing and associative processes of children and youth, and support the processes of empowerment of children and adolescents with a view to the exercise of this right.
96. Set aside funds for securing the participation of children and youths in the national systems, without the lack of resources being used to justify the breach of the immediate duty of the State to guarantee the right of the child to participate, and for children's opinions to be taken duly into account in the design, monitoring, and evaluation of the policies, programs, and services that affect them.
97. The IACHR considers that better use could be made of the opportunities that schooling offers for promoting the right to participate among children and adolescents; it could be a basis for ushering in more participation of children and adolescents in the children's and adolescents' consultative/advisory councils, at the same time as measures should be taken to promote the right to participation of those children and adolescents who are not in school. The IACHR has not received sufficient information on this aspect beyond the information on the participation of children and adolescents in schools' participatory and governing bodies.
98. Invest in initiatives to educate on and raise awareness of aspects related to the participation of children and youth, especially for parents and other caregivers, professionals who work with and for children and adolescents, policy-makers, and decision-makers.
99. These recommendations should be given special consideration and implemented at the municipal level, where the IACHR has detected the greatest shortcomings.



100. The national system not only should include the participation of children and adolescents in its structures and processes, but at the same time should promote participation as a right of children and adolescents in their different pursuits, thereby helping to advance recognition of this right in the family, school, and society in general.

### **Economic Aspects**

101. The IACHR recommends that the States introduce an express legal provision on the duty to invest the resources needed to comply with their international obligations to protect the rights of children. The law should clearly set the minimum standards, in keeping with the American Convention, the American Declaration, and the Convention on the Rights of the Child, that the State should observe in the process of allocating resources to children, referring to the different levels, i.e. national, subnational, and local. Specifically, the States should mobilize, allocate, and spend resources in a manner in keeping with their obligations to provide special protection for children, and with a view to the best interests of the child and the principle of equality and non-discrimination in the exercise of the human rights of children and adolescents.
102. The States should establish a well-defined financing mechanism that is stable and sufficient, and that identifies and binds the funds required by the national children's policy and the operations of the national system, and ensure the annual budget needed for the operations of the entire system. This requires calculating the cost of financing the entire institutional framework that constitutes the national system, at the national and subnational levels, as well as the cost of the public policy, programs, and services.
103. Establish in the legislation the duty to allocate the maximum resources available for the attainment of the rights recognized to vest in children and adolescents, and that the budget for children be protected by the principle of non-regressivity and progressivity, according to which the budgetary allocation cannot be less than in the previous period. Regressive measures may only be adopted if the State can show that the measures are necessary, reasonable, proportionate, non-discriminatory, and temporary, and that the rights negatively impacted will be re-established as soon as possible. In particular, the State must show that the most vulnerable children will be the last ones impacted by the cutbacks.
104. To ensure the establishment and normal operation of the national system and its institutional structure in conditions that allow for its sustainability, as well as to implement the national children's policy, the IACHR

recommends that the law establish a specific minimum percentage for the operation of the national system and for carrying out the policy, and that investment in children be protected through express mention of the principles of non-regressivity and progressivity in the law.

105. Introduce and apply the budget rules and budget principles of transparency, effectiveness, efficiency, equity, sustainability, accountability, participation, and in general the principles of sound management of public affairs, in addition to articulating measures against corruption, at all levels.
106. It is important that the States weigh the effects of the legislation and policies associated with mobilizing resources and general revenue (e.g. tax policy) on the rights of children, and not only the effects of measures related to budget allocation and expenditures.
107. It should be assured that the policies and formulas for dividing up public revenues among the various State entities, both vertical (among the various levels of the State) and horizontal (among sectors at the same level), favor and improve guarantees for the rights of children and adolescents and equality among the different geographic locations. In addition, mechanisms should be established that support intersectoral and interinstitutional coordination and cooperation, within the national system and with other systems, for more efficient and articulated spending.
108. The States must be capable of showing that the best interests of the child have been taken into account in decision-making on budgets, how this principle has been taken into account in light of other considerations, and how the budget decisions that have been made have improved the situation of children, showing the specific results attained.
109. The States should publish the information on revenue mobilized, budget allocations to children and amounts actually spent, including the different levels of government. The level of investment made in children should be stated in relation to the total State budget and compared to other sectors. This information should show and explain the possible mismatches that may have occurred between the budget approved and the budget executed, and should tie this investment to the attainment of the objectives set in the national children's policy. Doing so should serve the interests of transparency and accountability, and justify that the maximum resources available have been allocated to children.
110. The States should analyze the repercussions that the budget decisions have actually had on children and adolescents. These evaluations should include consultations with children and adolescents, their families and caregivers, and those who work directly with them or on behalf of their rights, to learn

more about how budget measures have affected children and adolescents. This information should be widely accessible to the public and to children and adolescents in a clear, easy-to-understand language.

111. The resources allocated specifically for children need to be adequately earmarked and classified to be able to account for them. Moreover, the State should have disaggregated information at the very least on the amount of resources invested in children and adolescents in each of the geographic zones of the country, by age, gender, ethnicity, and by various conditions of vulnerability previously identified in the national children's policy. The information should show the level of investment specifically earmarked for these groups of children and adolescents, and the States should continuously evaluate the results in different groups of children and adolescents to determine where more effective promotion and greater investment is needed, and the specific result sought.
112. Ensure that the collection and transfer of resources is done in timely fashion so that they can actually be spent, and ensure the capacity for spending.
113. The States should have internal control processes and independent external audits performed by supreme audit institutions (i.e. Chief Financial Controller, Comptroller General, and Auditor General) that ensure respect for the applicable technical principles in the areas of budgeting and accounting. This scrutiny should also be contemplated and facilitated for other actors, such as the legislature and the national independent human rights institution (ombudsperson).
114. The States should actively promote access to information on public revenues, allocations, and expenditures related to children, and the results obtained from this investment, as mechanisms of transparency and to facilitate the participation of civil society and particularly of children and adolescents in designing and overseeing the public budgets.
115. The IACHR recommends that the law provide that in times of economic crisis the minimum essential levels of all rights and the basic or strategic programs shall be armored, while maintaining the institutional framework that ensures the operational conditions for guaranteeing the rights of children and adolescents. The IACHR understands basic or strategic programs to be those that are geared, among other things, to guaranteeing life, humane treatment, and health programs, and to confronting child and adolescent malnutrition, whose disruption could seriously endanger the wellbeing, integrity, and lives of children and adolescents with lasting, including irreversible, impacts.

116. The IACHR recommends that the States improve the systems of administrative and financial management that generate ineffectiveness and inefficiencies in the allocation, management, and spending of resources; that they tie economic decisions to implementation of the national children's policy; and that bolster efforts to invest in technical training for the public servants whose job it is to design and adopt the budget, at all levels of government.

### **The Subsystem of Protection from Violence, Abuse, Exploitation, Neglect, and Abandonment**

117. Integrate the national subsystem of protection for children and adolescents from violence, abuse, exploitation, neglect, and abandonment fully into the national system. While the national system and its programs and services may give important specific weight to special protection from these phenomena, due to the scope of the issue, a restrictive view of the national system that focuses primarily on the subsystem for protection from violence poses major challenges, even when it comes to confronting and preventing violence itself, since it is crucial to put in place holistic, multisectoral, and multifaceted actions that respond to complex phenomena in order to tackle and prevent violence.
118. The IACHR recommends adopting legislation that expressly and clearly prohibits all forms of violence against children, and explicitly those forms of violence that continue to be socially tolerated, such as corporal punishment, psychological violence, and exploitation such as domestic child labor (*criadazgo, restavek*) or the use of children and adolescents for microtrafficking of drugs. Equally important is that policies, programs, and services be guaranteed for preventing and eradicating all forms of violence with a view to promoting social changes in relation to perceptions and behaviors that legitimize and reproduce forms of violence against children and adolescents. Such efforts should constitute a suitable and sufficient measure for effectively protecting children and adolescents from violence and for guaranteeing their rights.
119. Adopt effective measures to fight the high rates of impunity for crimes against integrity.
120. Eliminate those responses from the State that are more to be expected from the paternalistic and welfare-type model, with a major emphasis on institutionalization and separating the child or adolescent from his or her family; it is necessary to adopt an integral approach, with a robust national system based on a holistic and multisectoral view of the issues that affect

children, and to promote interventions through social policies for protection of the family and social development.

121. When adopting measures of protection, establish mechanisms for offering adequate and suitable protection to children and adolescents at risk, or who have been victims of violence, abuse, exploitation, and neglect. Based on the circumstances these measures of protection may also be exceptional and presuppose the temporary or permanent separation of the child from his or her family on grounds of protection.
122. Offer specialized responses to the various situations of lack of protection that affect children and adolescents that consider and are respectful of their rights, promote their effective observance, and address the socioeconomic causes and structural nature of situations of lack of protection through social policies and social services.
123. Avoid taking into court – so long as it is not contrary to the best interests of the child – the social problems that underlie the situation of violation of rights when these problems can be addressed more efficiently and appropriately using social policies for protecting and supporting the family, in particular when the backdrop to many of the measures of protection is poverty, social exclusion, and the consequences for the families.
124. Ensure that the principle of legality prevails in relation to regulating the procedure in the context of which decisions are made that affect the rights of children, in addition to ensuring the procedural rights and guarantees recognized in the American Convention. In addition, guarantee that any action that affects a child must be based on an evaluation by professionals from multidisciplinary teams; reasoned as per the law objectively, sufficiently, and in keeping with the best interest of the child; and subject to verification of suitability and legitimacy through follow-up by teams of experts.
125. Regulate clearly, and in keeping with international standards, the competent authority and the principles and guarantees that apply for the determination, application, and review of an exceptional measure of protection involving separating a children from his or her family and ordering his or her care in alternative family spaces or in specialized centers for protection, taking into account that separation from the family should always be a measure of last resort and, insofar as possible, for the shortest possible time, applicable only in those situations specifically provided for by law, and, consistent with international and inter-American standards, subject to judicial review.

126. Adopt clear protocols for the services that care for children, on managing the cases they receive of children and adolescents in need of a measure of protection. These protocols should include, at least: the guidelines for early identification of violations of rights; the means for the multidisciplinary teams to make a determination as to the situation of the child and his or her family; the requirements for referring a child to other mechanisms (such as health, social services) when required, or to bring the case to the attention of the judicial authorities; and consider the steps necessary for determining and implementing the intervention most in keeping with the best interests of the child based on the design of an integral plan for restoration of rights coordinated with other mechanisms or entities.
127. Make a proper record of all interventions with respect to children and adolescents that are handled within the services of the national system. Provide for periodic review or audit mechanisms of how the cases are managed, to be done by the coordinating/lead agency or other administrative mechanisms or offices, in their role of guaranteeing the adequate operation of the national system in keeping with the applicable protocols, guidelines, and rules, and adopt corrective actions that are in order.
128. In addition, one should provide for the possibility of the office of the national independent human rights institution reviewing whether the protection cases are generally managed in way that follows the protocols and is consistent with the applicable provisions, and making relevant recommendations.

### **Access to justice for Children and Adolescents**

129. Articulate all measures needed to ensure children and adolescents access to effective justice, giving special consideration to the particular conditions of children and adolescents and the challenges and specific barriers they face due to their circumstances, and strengthen the articulation between the national system and the justice sector, with a view to them jointly creating a strategy to ensure children and adolescents effective access to justice and to services for physical and psychological recovery, rehabilitation, reparation, and restitution of their rights.
130. Specifically, take the following actions with a view to overcoming some of the main barriers and obstacles: promote knowledge of their rights on the part of children and adolescents, including information about the possibility of filing complaints, how to do so, and where to turn; ensure that mechanisms for pursuing grievances are accessible and safe, eliminating formalities or other limitations and/or demands that unjustifiably restrict

the ability of children and adolescents to access justice; eliminate limitations on standing to sue of persons who can file actions before the courts for violations of the rights of children and adolescents, allowing children and adolescents themselves to file complaints, unless it is an exceptional case in which it is clearly contrary to the best interests of the child; provide for longer limitations periods for crimes committed against children and adolescents, considering the most serious crimes imprescriptible; provide legal counsel and independence and specialized legal representation, free of charge, for children and adolescents, to more effectively defend their interests and rights.

131. Grant broad and clear authority to the direct services of the national system that exist at the municipal level to examine the complaints made by children and adolescents who turn to those services, provide them with legal orientation, and support them in gaining access to the judicial system.
132. Adapt the judicial procedures to children and adolescents so that they are flexible, accessible, appropriate, and comprehensible to them, ensuring that they have sufficient information about the procedures under way that may affect them, in a comprehensible and adapted language. The processing of matters should be diligent, ensuring prompt consideration and resolution of their cases.
133. Deploy all mechanisms to facilitate the right of children and adolescents to be heard in the context of the procedures under way that affect them, and establish mechanisms for evaluating and documenting their best interests.
134. Guarantee access to adequate compensation for child and adolescent victims, and the measures necessary for their recovery and rehabilitation, and the integral restitution of their rights.
135. Adopt measures to protect the privacy and wellbeing of child victims and witnesses at all stages of the criminal justice process, ensuring they not suffer revictimization from participating in criminal proceedings, for example by limiting the number of interviews, using video-recordings and rooms fitted with one-way mirrors. In that connection, draw up protocols for obtaining and weighing evidence in a manner that is respectful, and that takes into account the best interests of the child.
136. Establish and ensure the operation of specialized courts for children's rights throughout the national territory.
137. Establish as a matter of law the duty of those professionals who have contact with or work with children and adolescents to report cases in



which there is a suspicion or risk that they may be victims of some situation that violates their rights.

138. Organize periodic trainings for judges, prosecutors, police officers, teachers, social workers, health services personnel, and other professionals regarding the rights of children and adolescents, including their right to access the justice system.
139. Draw up protocols or "road maps" that provide guidance to public servants and authorities, from the receipt of the report, during the judicial proceeding, and regarding any attention and treatment required, which involves the authorities of both the national system and the justice sector, and, if relevant, the health sector as well, to ensure integral attention.
140. To the extent possible, design integral and integrated services for children and adolescents who are victims of crimes that include legal, psychosocial, and medical assistance, among others, avoiding to the greatest extent possible requiring them to go to different offices to obtain different components of the integral attention that they need.
141. The IACHR recommends that the competences of the national independent human rights institution be reviewed, to give it as broad a mandate as possible, and specifically that it be able to receive reports, examine individual complaints and petitions, carry out the respective investigations, and have the authority to provide support by turning to the courts of justice, as well as submitting, in its own name, the cases of problems affecting children, in addition to intervening in judicial cases to inform the court about the human rights issues involved.
142. Periodically the State should evaluate implementation of the right of access to justice for children and adolescents, identify the obstacles that persist, and adopt a plan of measures to overcome them, with a view to reducing the high rates of impunity that exist currently in violations of the rights of children and adolescents, which helps prevent their repetition.
143. Related to the foregoing recommendation, draw up indicators on access to justice for children and adolescents including data such as the number of cases detected by the child care services; the number of complaints filed; the number of judicial resolutions and their outcome (conviction or acquittal); and the rate of impunity in crimes against children and adolescents, by type of crime. Cross-reference these data with the data produced by other sectors such as those from the national system, health services, police, as well as the surveys on victimization done with children and adolescents and information from civil society organizations and research centers.



## **Community Structures for Promotion and Protection of the Rights of Children and Adolescents**

144. The IACHR believes it is important to recognize the valuable contributions of the community structures in various aspects related to the promotion, protection, and defense of the rights of children and adolescents such as: raising awareness and social mobilizing in the communities and families to get them to assume a more active role protecting children and eradicating deeply-rooted social practices that are at odds with the rights of children and adolescents; promoting knowledge of rights; the prevention strategies implemented from these community structures; implementing and improving the system for early detection, notice, and referral to the formal mechanisms of the national system of children and adolescents who are victims of violence or other violations of their rights; training for children and adolescents about their rights and various issues related to self-protection; and promoting the participation and recognition of children and adolescents as social actors, among others.
145. The IACHR has observed that in the areas with the least implementation of the national system these mechanisms may represent the “gateway to the national system,” the first point of contact. Nonetheless, these community services should have an adequate linkage with and support from the formal structures of the national system, especially the local direct services for children and adolescents and from other public institutions with a mandate to protect children (health, education, police) to be able to make timely referrals in those cases in which it is called for to ensure adequate treatment.
146. The IACHR recommends legislating the mechanisms of coordination and formal collaboration between the community structures and the structures of the national system, with a clear determination of the formal limits of the national system, its functions, its competences, as well as its capacity to articulate with the community structures, with a clear definition of the scope and limits of this coordination with the community structures in order to determine the responsibilities of the State that derive from this.

## **Provision of Services by Private Institutions**

147. Adopt rules to regulate the establishment and operation of the public and private institutions that provide services of attention, care, and protection for children and adolescents, and create the records of service delivery agencies.

148. The law may provide that some of the functions and services assigned to the national system may be provided by duly registered private agencies and/or non-governmental organizations, using services delivery contracts.
149. The rules should include the minimum standards for the delivery of services in keeping with the principle of the best interests of the child and the Convention on the Rights of the Child, and include the requirements and procedure for the licensing, prior authorization to operate, and registration of the centers that provide services to children and adolescents, with special care regarding centers for foster care and centers for special protection.
150. The rules should also establish the mechanisms of supervision, oversight, and inspection of these public and private institutions, and provide for civil, administrative, and criminal sanctions, as appropriate, in case of breach of the conditions for the delivery of the service and/or violations of rights. To this end, the States should create a registry of service providers involved in caring for and protecting children and adolescents.

### **Dissemination of this Report, and Implementation and Follow up of its Recommendations**

151. The IACHR recommends that the States widely disseminate this report and its recommendations to all branches of government (legislative, executive, and judicial), all levels of government, all government structures, as well as public agencies and entities. In addition, it recommends that it be disseminated to civil society, academia, the public at large, and to children and adolescents in versions adapted to and with a language appropriate for their ages. It is recommended that the recommendations be translated into the relevant languages (indigenous and other languages, and in media apt for persons with disabilities).
152. It is recommended that the State draw up a plan to follow up on and implement the recommendations contained in this report. These plans should not in any way be seen in isolation, but rather incorporated into the already-existing national plans and strategies for children. The IACHR recommends having civil society organizations and children and adolescents participate in the preparation of the plan to follow up on the recommendations and that they also be included in the mechanisms to follow up on the implementation of the recommendations contained in this report.