

Violence, Children and Organized Crime



Organization of
American States



OEA/Ser.L/V/II.

Doc. 40/15

11 November 2015

Original: Español

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Violence, Children and Organized Crime

2015

www.iachr.org

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

Violence, children and organized crime.

v. ; cm. (OAS. Official records ; OEA/Ser.L/V/II)

ISBN 978-0-8270-6532-1

1.Children's rights--America . 2. Organized crime--America. 3. Children and violence--America.

I. Title. II. Series.

OEA/Ser.L/V/II. Doc.40/15

Report produced thanks to the financial support of the organization Plan International.
The positions herein expressed are those of the Inter-American Commission on Human Rights
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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. Insecurity and violence are significant sources of concern in the region, leading to serious human rights violations. Public opinion tends to associate these contexts with adolescents¹, whom they largely blame for the lack of security in many communities. In particular, male adolescents living in poor, peripheral neighborhoods and belonging to traditionally excluded and discriminated groups are singled out. They are often stigmatized and pointed to as “social dangers” that must be controlled. However, reality differs from these perceptions and is much more complex than this. Girls, boys, and adolescents, in fact, are groups most impacted by violence and rights violations in their diverse forms, as well as by organized crime. In general, the governments’ responses are inadequate to sufficiently protect the children most affected by these conditions, guarantee their rights, and prevent their recruitment and use by organized crime.

2. Furthermore, policies for controlling and repressing criminal groups have led to frequent abuses and arbitrary practices carried out by law enforcement against adolescents. In terms of adolescents committing crimes, the government continues to prioritize the punitive and retributive response of the criminal justice system, in conjunction with deprivation of liberty, to the detriment of rehabilitation and social reintegration programs. They lock adolescents into very precarious conditions, exposing them to situations of abuse and violence in prison, without offering the necessary support to ensure that they positively and constructively reconnect with society.

¹ For the purposes of this report, when the Commission uses the terms children it refers to all children and adolescents, meaning everyone under 18 years of age, as per the concept used in the United Nations Convention on the Rights of the Child and the international body of law on the subject. That notwithstanding, on some occasions in this report explicit reference is made to “children and adolescents”, “boys and girls” or “adolescents.” Under international human rights law, persons under 18 years of age are afforded rights and special protection because of the stage of development they are undergoing.

The concept of “adolescent” is usually used to refer to a stage of biological, psychological, sexual and social development in the lives of children, generally encompassing the period from age 10 to 18 years of age.

As for the term “youth” or “young person,” the United Nations and the Ibero-American Convention on Rights of Youth use it to mean anyone between the ages of 15 and 24. However, other sources mean a different age range when they refer to “youth”; country standards also use varying age ranges. In this report, the IACHR uses the term “youths” or “young people” to refer to people aged 15 to 24, which means that some children are included in this category as per the United Nations Convention on the Rights of the Child, for which children are persons under 18 years of age. The use of the term “youth” to refer to people under the age of 18 is not meant to deny them the special treatment they must be accorded under international human rights law. The use of the term “youth” in this report is meant to highlight how certain situations affect people in a particular or different way depending on their age, personal development, and the biological stage they are at, within an age range below and above 18 years.

3. Some countries are more intensely hit by the scourge of violence, particularly due to the presence of armed organized criminal groups. These groups operate in diverse illegal activities like illegal drug trafficking, human trafficking and smuggling, labor and sexual exploitation, weapons trafficking, robbery, and extortion, among others. The illegal drug market has significantly contributed to the emergence of criminal groups that control – or compete for control of – this market and its high profits. The presence of these groups stimulates violence, particularly in countries along drug trafficking routes and in large cities throughout the region. Easy access to weapons and their large quantity in private hands, contribute to a deterioration of the security and violence situations.
4. Violence statistics mapped out for the region show that the highest levels of crime are typically committed in large urban areas. The areas most heavily impacted by insecurity and violence are peripheral, poor neighborhoods with limited access to basic services and scarce government presence. These are areas with populations living in vulnerable conditions, in which their rights are not guaranteed. They belong to traditionally excluded and discriminated groups. Low levels of development, lack of opportunities and a dearth of institutional presence in these areas set the stage for the emergence and expansion of criminal gangs and organizations. The activities of these armed criminal groups further jeopardize the situations in which residents of these neighborhoods live and expose them to constant violations of their rights.
5. In this report, the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission,” “the Commission,” or the “IACHR”) verifies with deep concern that the conditions in which children and adolescents live in contexts where criminal groups are present and there is limited institutional presence of the State can be daunting. Many of them are victim to violence, abuse, and negligence in their homes, communities, and schools, either at the hands of adults, peers, or even the police. The quality of education is poor and there are many barriers to accessing secondary education, work opportunities, and decent employment. This lack of real opportunities for adolescents to develop an independent life plan, added to the challenges for the effective enjoyment of their rights, stems from structural social and economic exclusion that the government has not been able to reverse in these communities. As a result, inequality, rights violations, the undermining of State institutions, crime, and violence spread.
6. In areas where criminal organizations and gangs (*maras*) operate, children and adolescents often fall victim to pressure, threats, and trickery to get them to join these organizations. Others join these groups in search of opportunities, recognition, protection, and a feeling of belonging – aspects which they would otherwise not find. Once they are integrated into these structures, they are used by adults for a wide range of activities, from surveillance, to the transport and sale of drugs, robbery, extortion, kidnapping, and other violent activities associated with furthering the interests of these criminal groups.
7. In these organizations, children and adolescents are used and abused; adults consider them as interchangeable, throwaway pieces, the last link in the chain, and usually give them activities to do that pose a higher risk for their personal safety or

risk of being detained by the police. Many of these children and adolescents, especially small-scale drug dealers, are also drug users. Getting kids addicted to drugs is one of the trafficker's strategies for attracting new recruits into micro-trafficking. These criminal organizations are hierarchical with very strict rules. Any case of breaking internal rules or the orders of higher-ups is met with violence, even in the extreme form of executions. Quitting these organizations can mean risking life and limb. The Commission believes that the context and way in which children and adolescents are recruited by criminal structures, as well as the nature of their participation in criminal groups, can – in many cases – be considered abuse and exploitation.

8. In the above-mentioned context of insecurity, girls are affected differently than boys. While boys are used for drug trafficking and dealing, robbery, extortion, and violent activities, girls are generally victims of sexual and gender-based violence. Many are forced to have sex with members of the criminal groups; they are sexually abused, trafficked, and exploited. This notwithstanding, there are insufficient policies and programs to prevent violence against girls and protect victims—quite the opposite, they are often stigmatized. Some countries still criminalize girls who have been victims of sexual trafficking and exploitation, claiming they have violated anti-prostitution laws, and without serious and exhaustive investigations being conducted to identify and punish the individuals that exercise violence and exploitation against them. Nevertheless, girls and adolescents are often taken and used as mules for trafficking drugs, thus becoming exposed to networks of drug traffickers; many of them are left facing criminal convictions for drug-related crimes. Although their involvement with *maras* and other criminal organizations has usually been limited to traditional gender roles associated with caring for others or support tasks, the situation has begun to change in some cases, with adolescents/women taking on more active roles in these organizations.
9. These situations reveal a bleak outlook, in terms of violations of the rights of children. The homicide rate among adolescents is a useful indicator to understand the scale of the problem: homicides have become the leading cause of death among the male adolescent population in several countries in Latin America and the Caribbean. The advances made in the rate of surviving early childhood, through important public policies protecting children, are reversed in adolescence due to homicide rates.
10. One of the consequences associated with this insecurity is the marked surge in the number of unaccompanied migrant children and migrant families with children. The increased figures demonstrate the concerning security situation in which several countries across the region are living. As it indicated in its report, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, the IACHR has discovered that many children and their families leave their country of origin fleeing violence, threats and fear of gangs and organized crime, often converging with other causes related to the lack of opportunities in their country of origin or family reunification in the destination country. These same causes were also present in the majority of the cases examined by the Office of the United Nations High Commissioner for Refugees (UNHCR) in its investigation, *Children on the Run*.

Unaccompanied children leaving Central America and Mexico and the need for international protection.

11. The government response to this insecurity is based primarily on policies heavily focused on the coercive control of law enforcement and punitive repression through the criminal justice system. These policies seek short-term results, but do not adequately address the underlying causes, nor do they pay sufficient heed to prevention or social investment or rights promotion programs. They are policies that do not take into account the structural causes or specific consequences of these contexts for adolescents. As a result, these policies do not respond to the mandate of comprehensive protection of children, do not take into consideration their higher interest, nor are they able to provide effective, lasting solutions to the problem. Moreover, implementation of these policies very often results in human rights violations and, in turn, undermines people's trust in State institutions and the rule of law.
12. The common denominators among the region's security strategies have been granting greater powers to State law enforcement (police and military), harsher prison sentences, proposals to lower the age for criminal liability for adolescents coming into conflict with criminal law, increased use of pre-trial detention, and the classification of new crimes, including "conspiracy to commit a crime" or "criminal association" [*asociación ilícita*]. In order to take on the *maras* and criminal organizations, some of the region's countries are considering enforcing the provisions of counter-terrorism laws against these groups; in other cases, the lack of security has led States to take other exceptional measures such as declaring states of emergency.
13. There has been a generalized progressive militarization of the police and its operations, and the military has been granted greater powers over citizen security, particularly in countries most impacted by violence and organized criminal activities. This strategy typically has not attenuated this climate of insecurity – quite the contrary, many countries have experienced a worsening of the violence, in addition to abuses, arbitrary acts, and human rights violations carried out by State security forces. The Commission's report states its concern about the high rates of arbitrary detentions, excessive use of force and deadly force, cruel, inhuman and degrading treatment, extra-judicial executions, and forced disappearances, as well as sluggish investigations and high levels of impunity for these types of acts.
14. Furthermore, based on the criminalization of "conspiracy to commit a crime" or "belonging to a criminal group," there has been an increase in the number of arbitrary detentions of adolescents based on their appearance or the belief that they may belong to a gang or criminal group, without any proof of a crime having been committed. This contributes to the stigmatization and police harassment of certain social groups. In several countries throughout the region, there is an over-representation of poor, afro-descendent, or minority adolescents among those arrested by the police. These new classifications of crimes have led to more pre-trial detentions lasting longer periods, due to the judicial system being saturated.

15. The most common response of the government to the involvement and use of children and adolescents in criminal activity and organized crime is through the juvenile justice system. This system does not see children and adolescents first as victims of a series of accumulated violations of their rights, but rather as criminal offenders. The report highlights that adolescents carrying out violent acts have generally themselves been victims of violence or abuse, or witness thereto, or have had their fundamental rights violated in some other way. It is the opinion of the Commission that the analysis of the circumstances surrounding these children lays bare the diverse underlying vulnerabilities and human rights violations that must be more carefully studied and properly taken into consideration, with a view to developing prevention policies and solutions for adolescents in conflict with criminal law.
16. Currently, governments in the region are prioritizing retributive and punitive solutions in the case of adolescents, with incarceration being the most commonplace. The tendency is to advocate for a reduction in the age of criminal liability as a way of tackling crime and violence—there are countries where individuals can be held criminally liable starting at age 12—as well as to lengthen sentences, which in practice might mean that they would spend their entire adolescence—a crucial phase for their personal development, growth, and education—locked up. Despite the fact that international law standards on human rights dictate that deprivation of liberty should be a measure of last resort and for the shortest amount of time absolutely necessary, in the case of adolescents it continues to be the most common and widely-used measure in the region. Additionally, detention centers – the majority of which hold adolescents in alarming conditions, in terms of safety, health, and over-crowding – have become aggravating factors feeding into their vulnerability and exposure to violence and crime. This deepens and intensifies the problem, instead of being the solution.
17. The IACHR notes with concern that the governments of the region have not fully implemented the restorative justice model called for in international human rights instruments for children under the age of 18. Although many countries have incorporated the principles of restorative justice into their legislation, reality drastically differs from the tenets of the laws, given that there is limited availability of non-custodial programs focusing on the rehabilitation and social reintegration of the adolescent. Measures holding adolescents responsible for their actions should address each situation on a case-by-case basis, as well as take into account the social and educational measures included in the restorative justice model to work towards their rehabilitation and social reintegration.
18. Governments have not prioritized policies to distance children and adolescents from criminal groups and gangs, despite the mandate to provide special protection to children whose rights are infringed. These programs are usually too limited to effectively reach and protect children directly affected. Coverage and resources are inadequate and tend to be based on programs designed and implemented by civil society organizations, without appropriate State oversight.
19. Pursuant to international human rights law, States not only have the obligation to both respect and to not violate human rights, they must also take the appropriate measures to guarantee their effective enjoyment. In the case of children and

adolescents, pursuant to Article 19 of the American Convention on Human Rights (hereinafter, the “American Convention,” the “Convention,” or the “ACHR”) and Article VII of the American Declaration of the Rights and Duties of Man (hereinafter, the “American Declaration,” the “Declaration,” or the “ADRDM”), States also have the duty to provide special and enhanced care to children to ensure they are able to enjoy the rights conferred to them and to be protected from all forms of violence, in consideration of where they are developmentally and their greater vulnerability. These duties apply in contexts of insecurity, violence, and active organized crime and, specifically, require greater efforts in terms of prevention in order to prevent situations of vulnerability and risk that expose children and adolescents to the possibility of being captured and utilized by organized crime, of becoming involved in violent or criminal activities, and of becoming victims thereof. Measures adopted by States to combat organized crime must also take respect for human rights into consideration, specifically when force is being used, and generally, in terms of the actions taken by State law enforcement and by the judiciary. This report focuses on examining the scope and content of the obligations States have in the aforementioned contexts as far as prevention and protection are concerned, as well their obligation to investigate and punish those responsible for violating the human rights of children and adolescents, whether they are agents of the State or third parties.

20. The Commission concludes that the high levels of violence and crime throughout the hemisphere constitute a serious human rights problem by exposing children and adolescents to a series of rights violations. It further recognizes that the situation is complex, given the multiple contributing factors and the interrelationship between the diverse forms of violence and other human rights violations. The Commission, thus, understands that the best way to confront this violence, insecurity, and crime is through comprehensive, holistic public policies that include the various structural causes, address risk factors, and strengthen existing protection mechanisms, based on an approach respecting the central importance of human rights. This requires diverse sectors coming together to collaborate and coordinate their activities, including: security, justice, health, education, social services, professional training services and access to employment, culture, sports and recreation, urban planning, and finances, among others.
21. Lastly, the Commission recalls that the paradigm in the area of citizen security must be changed completely, and must take into consideration the new concept of security centered on the protection of all persons and conditions for guaranteeing the exercise of their rights. States must protect and guarantee the rights of all members of society, including ensuring a safe environment in which they can carry out their daily lives and exercise all their rights with the lowest possible level of threat to their personal safety and human rights. The Commission underscores that this necessitates promoting the strengthening of violence prevention and reduction efforts, in conjunction with traditional crime control and repression methods. Against this backdrop, the Commission reiterates the necessity, and appeals, for urgent attention to be paid to the specific protection needs of children.

CHAPTER 1
INTRODUCTION

INTRODUCTION

22. This report stems from the Commission's constant monitoring of the conditions in which children and adolescents exercise their human rights, as well as the vulnerability and violation thereof. The Commission has monitored how the region's insecurity and violence are impacting children, adolescents, and their rights. The Commission has studied several of the key aspects covered in this report through the various mechanisms it has at its disposal, i.e. the system of petitions and cases, precautionary measures, hearings, thematic reports, country visits, press releases, and communication with States, in keeping with the powers conferred upon it in Article 41 of the American Convention and Article 18 of Statute of the Inter-American Commission on Human Rights.
23. On June 18 and 19, 2013, the Office of the Rapporteurship on the Rights of the Child held an expert consultation in Washington, D.C., attended by independent experts² on the issue of the rights of the child and citizen security, the Special Representative of the United Nations Secretary General on Violence against Children, Dr. Marta Santos Pais, and her staff, as well as representatives of the United Nations Children's Fund (UNICEF) Regional Office for Latin America and the Caribbean. The meeting served to identify the characteristics of the problem and their interconnectedness with other diverse aspects and related issues. They also identified the fundamental aspects that should be included in the Commission's report and the main progress and challenges faced in the current approach and public policies being implemented. The Office of the Rapporteurship also held discussions on the issue with the regional offices of the United Nations Development Program (UNDP) and the United Nations High Commissioner for Human Rights (UNHCHR), and with a number of UNICEF country offices and experts from the organization Plan International working at the community level. The Commission wishes to extend its appreciation to the experts who participated in the meeting and their generous contributions and to several United Nations bodies for the information they provided during the drafting process of this report.
24. While the present report was being drafted, the Special Representative of the U.N. Secretary General on Violence against Children began a process of consultations and drafting of a worldwide report on armed violence in the community, the theme of which was similar to that of the IACHR's report. This gave rise to a number of working meetings and exchanges of information and technical contributions that have served both processes, in an invaluable cooperation between the inter-American system and the universal system of human rights.

² The independent experts that attended the consultation were Martin Appiolaza, Roberto Briceño, Luis Guillermo Solís, Franz Vanderschueren, as well as Magda Medina from UNICEF, and Cecilia Anicama from the Office of the Special Representative of the United Nations Secretary General on Violence against Children.

25. During the 147 period of sessions of the Commission, on March 2013, the Rapporteur on the Rights of the Child met with civil society organizations to present the initiative for drafting the thematic report, to launch a dialogue on the topic, and afford interested organizations the opportunity to send information and materials on the matter to the Rapporteurship.
26. The Rapporteurship on the Rights of the Child subsequently held three visits to gain a first-hand understanding of the impacts of insecurity, violence, and the presence of organized crime on children and adolescents. As part of these meetings, the Rapporteur held a thorough dialogue on the topic with authorities, civil society organization, academia, researchers, journalists, human rights defenders, and children and adolescents exposed to these situations. The visits were held in Brazil (Rio de Janeiro, Brasilia and São Paulo), Honduras (Tegucigalpa) and México (México DF) in the period between September 30th and October 17th, 2013. The Commission wishes to extend its renewed appreciation to the authorities and all those that met with the Rapporteurship for the valuable information, suggestions, and testimonials that they shared.
27. On February 25, 2014, the Commission published a questionnaire on its website, which was sent to all the States in the region to gather information for the report and to obtain a more detailed understanding of the situation in the countries across the region. The questionnaire sought to learn about the policies and initiatives in the area of children's rights being developed to address insecurity, violence, and organized criminal activity. The responses received both from the States and from civil society organizations have been invaluable in the preparation of this report, and the IACHR is grateful for all of the contributions made.³
28. In addition, the Rapporteurship, in cooperation with Plan International, conducted several meetings with children and adolescents in the context of the visits to Honduras and Brazil, which were extremely valuable because of the testimonies and the opinions provided by children and adolescents living in the areas most affected by violence. Furthermore, the Rapporteurship, together with Save the Children, adapted some of the questions from the questionnaire into a language accessible to children and adolescents, in order to be able to integrate them in the

³ The Commission received responses from the States of Bolivia, Chile, Colombia, Guatemala, Honduras, Jamaica, México, Perú, Trinidad y Tobago, and Venezuela. The Ombudsman from El Salvador (la Procuraduría de los Derechos Humanos del Estado de El Salvador) sent to the IACHR a publicación entitled Informe Especial sobre el Impacto de la Violencia en los Derechos de las niñas, niños y adolescentes en El Salvador [Special report on the impact of violence on the rights of children and adolescents in El Salvador], in which several aspects included in the questionnaire were considered. In addition civil police forces from El Salvador, Honduras, Panama y República Dominicana, as well as the "Organismo de Investigación Judicial" from Costa Rica, sent valuable information for the report. The IACHR also received information from the following civil society organisations: CASACIDIN, Aldeas Infantiles SOS Argentina, Defensa de Niñas y Niños Internacional (DNI) Sección Argentina, Colectivo de derechos de infancia y adolescencia – Argentina, Centro de Estudios Legales y Sociales (CELS), Associação Nacional dos Centros de Defesa de Criança e Adolescente (ANCED), Plan International Brasil, Red de Ongs de Infancia y Juventud – Chile, La Caleta, Universidad Pontificia Bolivariana – Clínica Jurídica en Derechos Humanos, Foro Dakar Honduras, Ririki Infancia, Save the Children México, Federación Coordinadora Nicaragüense de ONGs que trabajan con la niñez y la adolescencia (CODENI), Alianza Ciudadana Pro Justicia (sent a report connected to the questionnaire) and Save the Children República Dominicana.

consultation; workshops were conducted with children and adolescents in El Salvador, Guatemala and Honduras where the child-friendly questionnaire was applied and children had the opportunity to contribute their opinions and views on the issue. The Commission greatly appreciates and is very grateful for all of the contributions received from children and adolescents during the drafting of this report.

29. The report is divided into five chapters. The first chapter provides a broad, general explanation of the topic's context. It analyzes the main factors and causes contributing to the creation and persistence of this insecurity and violence in many communities. In particular, it studies the connection between inequality and social exclusion and violence. This chapter posits the multiplicity and complexity of the structural, institutional, and situational causes and effects of violence. It provides data on the prevalence of violence and information on victimization, with a special focus on children, enabling a better understanding of the scale of the problem. It also discusses the relationship between current drug and gun control policies in the hemisphere and the current climate of insecurity and violence. The chapter identifies the primary areas of concern that are analyzed more in depth in later chapters, underscoring the need for a more preventive, holistic, and comprehensive approach to the problem, founded on the protection and respect of human rights.
30. Chapter 2 specifically addresses children and adolescents, analyzing how insecurity and violence impact their rights. It first explores the links and overlap between the diverse forms of violence and rights violations to which children and adolescents are subject in these contexts. The chapter justifies the need for public policies that do not address the most serious forms of violence against children as silo issues, but rather polices that address all forms of violence and rights violations as intimately interconnected and related. It then presents some of the main impacts that the presence of criminal groups in communities has on children. It also discusses the relationship between youth gangs as a youth phenomenon and the need to differentiate between this and other violent phenomena. The report addresses violence carried out by State security forces in their efforts to combat organized crime and control crime and insecurity. This chapter also analyzes the main factors affecting the risk level and protection against violence for children and adolescents, the groups most exposed to violence. It provides a gender breakdown of rights violations.
31. Chapter 3 analyzes the applicable international legal framework on the protection of children against all forms of violence, as well as the duties of the State attached thereto under the mandate to provide special protection for children. It discusses the rights of children to live a life free of all forms of violence. It studies several rights that may be especially impacted, such as the right to life and humane treatment, personal liberty, safety, and freedom of movement and residence, health, education, and recreation. The chapter also thoroughly examines State duties in terms of prevention, protection, and elimination of violence against children, and the duty to investigate and punish acts violating the rights of children.

32. Chapter 4 considers the main State responses to insecurity, violence, and organized crime. It identifies the control and repression methods prioritized in the region, including: the progressive militarization of citizen security; the punitive and retributive methods used in juvenile justice, which do not fully integrate the principles of restorative justice and rehabilitation and social reintegration of adolescents. It also discusses some of the consequences of the criminalization of “conspiracy to commit a crime” or “belonging to a criminal organization.” The chapter also reviews drug policies from a child-centered perspective and the impacts that these policies have on children and adolescent rights.
33. Chapter 5 presents some of the main elements that, in the opinion of the Commission, citizen security policies should incorporate to effectively protect the rights of children.
34. The report closes with the Commission’s main conclusions on the matter and a series of general recommendations for States. The aim is to provide a deeper understanding of State obligations under international human rights law on protecting the rights of children in situations of insecurity, violence, and organized criminal activity.
35. This is a regional report and therefore refers to all Member States of the Organization of American States (OAS); and the observations and recommendations contained herein apply to all these countries, regardless of how prevalent organized crime or insecurity are in them. It is also important to note, however, that some States are referred to more frequently in the report because they are more seriously affected by the activities of organized crime, drug trafficking organizations, *maras*, and other violent groups. In other cases, despite the fact that these situations exist in certain countries, a lack of available and up-to-date information and data has made reference to them in the report difficult. Generally speaking, during the process of preparing this report, the IACHR noted that the States most affected by these phenomena are making considerable efforts to tackle the structural causes and consequences thereof, with valuable experiences that should be acknowledged, reinforced, and deepened. The report, however, focuses primarily on identifying the gaps and challenges that persist as well as efforts that need to be enhanced, guided by international human rights law, in order to help States meet their obligations.

CHAPTER 2

CONTEXT

CONTEXT

A. *Inequality, Social Exclusion, and Violence in the Americas*

36. In recent decades, the Americas region, and Latin America and the Caribbean, in particular, has experienced so much economic growth and human development that millions of people have been lifted out of poverty and extreme poverty. However, challenges persist that pose a threat to the progress achieved. As a whole, the region has not yet done enough to tackle social exclusion and inequalities inherited from previous eras.⁴ Rather than overcoming them, recent developments have, instead, underscored them by making them more obvious to society.⁵
37. The scourge of violence and the insecurity associated with it are not new to the region, either, but they have been exacerbated in recent years, reaching critical levels threatening the progress made with economic growth, social cohesion, and the recognition and effective exercise of human rights. In addition, the rampant insecurity in several countries in the region, the inability to respond effectively to violence, and responses that themselves break the law undermine the credibility of those countries' democratic institutions and are detrimental to the rule of law.
38. This region heads two world rankings comparing statistics for countries and regions. One of them measures levels of inequality in general and economic inequality in particular within countries; the other ranks per capita homicide rates. Numerous studies have examined and established the links between contexts characterized by inequality, social exclusion, and discrimination and contexts

⁴ This report uses the term "social exclusion" to refer to structural and systemic inequalities that make it harder for certain groups of people or segments of the population to access the whole set of social, political and economic processes needed for the exercise and full enjoyment of civil, political, social, and cultural rights, on equal terms and with equal opportunities. It uses the terms "inequalities" (*inequidades*) and "economic inequalities" (*desigualdades económicas*) to reflect differences between social groups with respect to access to and enjoyment of economic resources that contribute, albeit not exclusively, to the creation of a situation of "social exclusion." The term "poverty" is used in the report to depict situations in which economic constraints prevent access to minimal levels of enjoyment of rights. Those minimal levels are generally established by internationally used indicators that serve as tools for making comparisons.

⁵ 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](#).

characterized by violence, insecurity and crime.⁶ Nevertheless, even though a close correlation has been shown between both contexts, it is not automatic or immediate: the confluence of a variety of other—political, social, and institutional—conditioning factors needs to be considered.⁷

39. The macro-economic figures for the region show positive outcomes. However, more detailed analysis of the distribution of wealth, access to basic quality services on equal terms, and the enjoyment of rights shows profound differences and inequalities among groups and segments of the population. Inequality, low social mobility, uncertainty of employment, and the intergenerational transmission of poverty are major obstacles that the region still needs to overcome.⁸
40. The Commission considers that the existence of inequalities, social exclusion, and the lack of equal opportunities in the exercise and enjoyment of rights in respect of certain sectors, including the existence of situations in which they are discriminated against, constitute a major cause for concern from a human rights perspective that needs to be seriously addressed by all States in the region. These circumstances are also worrying because they are the source of possible tensions and social conflicts, violence, and insecurity that undermine the effective observance of various rights. Moreover, the existence of contexts characterized by social violence may trigger repressive responses by States and practices that violate human rights and are themselves illegal.
41. This region is also known for its high rates of violence and has the highest per capita homicide rate in the world.⁹ More than one third of the violent deaths in the

⁶ Crime and violence pose threats to people's security, life, personal integrity, and property. Nevertheless, they need to be distinguished analytically, given that not every crime is violent and not all acts of violence are legally characterized as crimes. Larceny, for instance, is defined as "the non-violent taking of other people's property without their consent." One example of a violent act that is not categorized as a crime is the corporal punishment of children and adolescents, which is still not expressly prohibited in States' legislation in several countries in the region.

⁷ Along the same lines, 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. 17 et seq.

⁸ 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, pp. 3, 22. Although the estimates available point to at least 40% of households in the region managed to move up into a higher socioeconomic class between 1995 and 2010, most people living in poverty who improved their lot did not join the ranks of the middle class directly. Rather, they joined a group located between the lower and the middle class. The World Bank calls this segment of the population "vulnerable groups," which make up the most numerous "class" in Latin America: 38% of the population. This segment is typically exposed to informal employment, educational stagnation, and scant access to social services.

⁹ A number of sources publish annual comparative data on the ranking of most violent regions in the world, including the Secretariat of the Geneva Declaration on Armed Violence and Development - Publications and Resources. The Geneva Declaration on Armed Violence and Development is a diplomatic initiative aimed at addressing the interrelations between armed violence and development, adopted by 41 States on 7 June 2006 and now signed by more than 100 States.

At the regional level, see the UNDP reports on human development, especially: Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and Proposals for Latin America; Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development, and Caribbean Human Development Report 2012. Human development and the Shift to a Better Citizen Security.

world occur in this region,¹⁰ which accounts for roughly 12 percent to 14 percent of the world's population. The region averages 30 violent deaths per 100,000 inhabitants per year. According to the World Health Organization, homicide rates of over 10 per 100,000 qualify as epidemics.¹¹ Another study has a list of the 14 most violent countries in the world, half of which are in the Americas.¹² Among them, El Salvador¹³ and Honduras¹⁴ with rates of over the 65 homicides per 100,000 inhabitants in 2014, in addition to other countries regarded as being among the most violent on the planet are Belize, Brazil, Colombia, Guatemala, Jamaica, and Venezuela.¹⁵

42. The violence is mainly concentrated in certain social groups and age groups; the age segment most exposed to violence corresponds to the group between 15 and 29 years. A recent report, published in 2014 by the United Nations Office on Drugs and Crime (UNODC) and based on official statistics furnished by the States, found that the Americas were home to the highest rate of homicides among adolescents and youths aged 15 to 29 in the world, for both males and females. To put that information in perspective: more than one in every seven victims of all homicides in the world is a young person between the ages of 15 and 29 who lived in the Americas.¹⁶ UNICEF points out that, in 2010, more than 25,000 homicide victims were people in the Americas below the age of 20.¹⁷ While the statistics vary according to the age range selected, all point in the same direction as far as the trend is concerned and all of them are cause for extreme concern.¹⁸
43. In absolute figures, the countries of Latin America and the Caribbean have together lost more than 1.2 million people to homicides in a single decade: an average of more than 100,000 victims a year.¹⁹ In percentage terms, between 2000 and 2010

¹⁰ According to the United Nations Office on Drugs and Crime (UNODC), 36% of the world's homicides are committed in the Americas. [Global Study on Homicide 2013](#), pp. 11, 33 and 34.

¹¹ In the Latin American region, only Argentina, Bolivia, Chile, Costa Rica, Nicaragua, Peru, and Uruguay have national rates of fewer than 10 homicides per 100,000 inhabitants, although there are areas within those countries in which the rate is higher. UNDP, [Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and Proposals for Latin America](#), p. 48.

¹² The 14 most violent countries in the world, based on the average violent deaths rate in 2004 to 2009 are: El Salvador, Iraq, Jamaica, Honduras, Colombia, Venezuela, Guatemala, South Africa, Sri Lanka, Lesoto, the Central African Republic, Sudan, Belize and the Democratic Republic of Congo. See the report of the Secretariat of the Geneva Declaration on Armed Violence and Development, [Global Burden of Armed Violence](#). 2011, p. 6. [New edition: [Global Burden of Armed Violence 2015: Every Body Counts](#)]

¹³ Public information provided by Medicina Legal de El Salvador [Forensic Medicine of El Salvador], cited in [Insight Crime 2014](#).

¹⁴ The 2014 data have been published by the Minister for Security of Honduras. See: [Insight Crime](#).

¹⁵ See the UNODC data by the Secretariat of the [Geneva Declaration on Armed Violence and Development](#), and in [Insight Crime 2014](#).

¹⁶ UNODC, [Global Study on Homicide 2013](#), pp. 28 to 30.

¹⁷ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, p. 34.

¹⁸ The same regional trend in respect of the high rates of violent deaths among persons aged 15 to 29 can also be observed at the national level. See, for example, the figures for Brazil at [Anuário Brasileiro de Segurança Pública](#), pp. 36 and 37.

¹⁹ Organization of American States and the United Nations Development Programme (OAS-UNDP), [Our Democracy in Latin America](#), Fondo de Cultura Económica, Mexico, p. 182.

the homicide rate grew 12 percent,²⁰ accompanied by the growth of crime in general, its dissemination,²¹ and hence increased fear among citizens.²²

44. Each of the subregions—South America, Central America, North America, and the Caribbean—has its own particular contexts and momentum with respect to violence and insecurity. Thus, the average hemispheric per capita homicide rate disguises marked differences between the subregions. For example, the countries of North America and the Southern Cone have rates lower than the regional average, while those for Central America and the Caribbean are several times higher.²³ These aggregate rates also disguise differences between countries in the same subregion. Likewise, variations within countries are also considerable and show that violence in general and, in its most extreme form, murder, in particular, tend to be focused in certain cities, districts and zones or parts of the national territory.
45. One widespread phenomenon in Latin America and the Caribbean is that homicide rates in the most populous cities tend to greatly exceed the national homicide rates.²⁴ According to a ranking of the deadliest cities in the world, the vast majority (46 out of 50) are located in the Americas, and in Latin America in particular; 19 are in Brazil, 10 in Mexico, 5 in Colombia, 4 in Venezuela, 4 in the United States, 3 in South Africa, 2 in Honduras, and 1 in each of the following countries: El Salvador, Guatemala and Jamaica.²⁵ It is also worth noting that rates may vary considerably from district to district within the same city and tend to be concentrated in particular parts of cities. In Brazil, for instance, within one and the same city, say Rio de Janeiro or São Paulo, insecurity, violence, and homicide rates are far higher in some of their shantytowns or districts with low standards of living, poverty, and scant access to quality public services.²⁶

²⁰ 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. 47.

²¹ Organization of American States and the United Nations Development Programme (OAS-UNDP), Our Democracy in Latin America, Fondo de Cultura Económica, Mexico, p. 182 and Latinobarómetro, 2008. Based on the evidence for countries for which information is available, robbery (including theft and burglary) has almost tripled in the past 25 years.

²² It is worth pointing out that the figures for homicides per 100,000 inhabitants vary depending on the source, but the conclusions as to trends and the severity of the problem are the same for all. Discrepancies have been found in various studies and regional databases, which, despite the fact that they all cite government sources, cite figures that do not always match.

²³ See UNODC, Global Study on Homicide 2013, pp. 33 and 34.

²⁴ As a general rule, large cities have the highest homicide and violence rates. A study conducted in Latin America by the Inter-American Development Bank (IDB) estimated that households located in cities of more than one million inhabitants were 70% more likely to be victims of violence than those located in towns of between 50,000 and 100,000 inhabitants. Latin America is the most urbanized region of the world, with almost 80 % of the population living in cities. See 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, pp. 29 and 30, and Seguridad incluyente, ciudad incluyente published by the Secretariat of the Geneva Declaration on Armed Violence and Development, pag. 2. Also: UNODC, Global Study on Homicide 2013, p. 27 and 28.

²⁵ See, The World's 50 Most Violent Cities in 2014.

²⁶ A study in Brazil found that homicides of young people tend to increase in more populous municipalities and concludes that it is a problem associated above all with urban violence. See p. 10.

46. There is quite evidently a pattern of a higher concentration of violent crimes and homicides in big cities. What these cities have in common is that they have grown rapidly and chaotically; they have parts or districts with only precarious infrastructure; and they lack or have very limited access to basic services.²⁷ These districts or zones lack or have limited access to basic services, such as water and sanitation, street lighting, electricity, health and education services, public transport, roads connecting those areas to the rest of the city, and deficient infrastructure and open spaces for community use, and so on.²⁸
47. The low levels of development and scant institutional presence in these zones facilitate the rise and expansion of groups devoted to crime and of criminal organizations. The lack of security in turn hampers access to these communities by public services and scares off investors, thereby limiting the chances of generating opportunities and development.²⁹ There are evidently links between insecurity and social exclusion processes that are then reinforced and further embedded by additional factors relating to the State's institutional responses.³⁰
48. Combined with weak institutions and policies that rely exclusively on the suppression of violence, this set of factors frequently results in an increase in violations of the human rights of the inhabitants of those neighborhoods, including violations committed by State agents themselves. This further exacerbates the inequalities and social exclusion that gave rise to insecurity and violence in the first place. Thus, a vicious circle is created that is difficult to stop unless policies and interventions are pursued that do not rely exclusively on control and repression; that is to say, unless priority is attached to addressing the structural causes of violence through social investment programs and the advancement of rights.³¹
49. What becomes apparent in scenarios combining a low State presence through the services it is supposed to provide with high levels of insecurity and the lack of institutional capacity to confront the above-mentioned violence is that parallel and informal, social, economic, and political orders emerge. At times, the outcome is even social rejection of the authorities' policies and bodies, due to abuses and arbitrary acts committed by their agents. Circumstances such as these erode, to a worrying extent, the legitimacy of the State and its institutions in the communities

²⁷ See Seguridad incluyente, ciudad incluyente published by the Secretariat of the Geneva Declaration on Armed Violence and Development, UNICEF, The state of the world's children 2012. Children in an urban world, p. 44.

²⁸ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and Proposals for Latin America, p. 28 to 30, See also the U.N. Secretary General's Study on Violence against Children, p. 305.

²⁹ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, pp. 97 to 99.

³⁰ U.N. Secretary General's Study on Violence against Children, pp. 309 to 311, UNICEF, The state of the world's children 2012. Children in an urban world, p. 44, and UNICEF, Hidden In Plain Sight: A statistical analysis of violence against children, 2014, p. 42.

³¹ UNDP, Caribbean Human Development Report 2012. Human development and the shift to a better citizen security, pp. 5 to 7.

concerned.³² Similarly, due to the fierce territorial control exerted by certain groups, there are districts and zones where there is no permanent and effective presence of the State and which are known, because those groups are in control, as "lawless areas" (*zonas sin ley*).

50. Furthermore, the establishment of ties of this kind between criminal groups and the community creates a breeding ground for the recruitment of new members, including children and adolescents.
51. In the Caribbean,³³ one main characteristic that stands out in several countries is that criminal organizations have, in many cases, become parallel social, political, and economic structures that fill vacuums or replace the State in several areas; for example, they provide basic services and security and maintain codes of conduct among the population where situations are precarious or, in some places, where the legal and justice systems are ineffective. Often, for the reasons just stated, the heads of these organizations are seen as leaders in their communities and the dividing lines between criminal groups and community organizations may become blurred.³⁴ Furthermore, organized crime has often become intertwined with politics—different scandals involving the purchase of votes in areas controlled by leaders of criminal organizations in exchange for financial favors, usually through the granting of government contracts, have provided evidence of how organized crime has permeated the political and institutional structures of the State.³⁵
52. The IACHR observes that if one compares levels of human development and respect for human rights with homicide rates, it transpires that there is an inverse relation between them: the countries with lower homicide rates have better rates of human development and guarantees for human rights than countries with

³² Along the same lines, see UNDP, [Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America](#), p. 10; [Seguridad incluyente, ciudad incluyente](#), published by the Secretariat of the Geneva Declaration on Armed Violence and Development, pp. 2 and 3. The same trend can be seen in the Caribbean. See UNDP, [Caribbean Human Development Report 2012. Human development and the shift to a better citizen security](#), p. 6.

³³ For a deeper analysis of the presence of organized crime and of so-called "streets gangs" in the Caribbean, their characteristics and the impact they have on security conditions and peoples' rights as well as Caribbean countries' main responses thereto, see UNDP report, [Caribbean Human Development Report 2012. Human development and the shift to a better citizen security](#).

³⁴ UNDP [Caribbean Human Development Report 2012. Human development and the shift to a better citizen security](#), pp. 77 and 78, and Insightcrime, [Trinidad gang leader has 600 men under his command](#), August 21, 2013. Scandals tied to government contract concessions awarded to members of criminal organizations demonstrated that the ability of these criminal organizations to win contracts appears to be related not only to corruption, but also to the fact that these government contracting systems aimed at benefitting more at-risk populations are often handed over to "community leaders" to be managed and administered. With the State effectively absent in a number of communities, these groups may be the only source of effective justice and social services for the communities in which they operate and, as a result, crime bosses end up effectively becoming leaders in their communities.

³⁵ UNDP [Caribbean Human Development Report 2012. Human development and the shift to a better citizen security](#), pp. 77 and 78, and Insightcrime, [Jamaicas organized crime after the fall of Dudas Coke](#), January 21, 2014; [Gangs are the new law in urban Trinidad and Tobago, October 22, 2013](#), and [Trinidad gang leader has 600 men under his command](#), August 21, 2013.

higher homicide rates.³⁶ However, widespread contexts of poverty do not automatically lead to situations of insecurity and crime, though sharp social inequality existing in a particular community, coupled with other factors, such as the State's specific response, does seem to be more closely linked to violence and insecurity. In short, the relationships between insecurity and violence, human development, and human rights are complex, and are further mediated by many other factors that make the scenario even more complex, as will be examined more thoroughly throughout this report.

B. Children and Adolescents: A Group of Special Concern

53. As we will explain throughout this report, one of the groups hardest hit by situations of inequality and social exclusion, and by violent and insecure environments, are children and adolescents.
54. Throughout the region, children and adolescents are the primary victims of the aforementioned situations of poverty, inequality, social exclusion and the lack of equal opportunities. That is true both numerically—in general the countries in the region have very young populations—and in terms of the rights mostly infringed by such situations: for instance, the right to health, nutrition, quality education, and adequate provision of care by the family and by social institutions, among others, where access to the quality services that make it possible to enjoy these rights is particularly important in the case of children and adolescents because of their very condition as such. The lack of effective guarantee of a number of rights, which have been recognized for children and adolescents, places them in a situation of particular vulnerability. When violent and criminal groups are present, they run a greater risk of being captured, used, abused and exploited by these groups.
55. The climate of violence that is being experienced in some communities has a very negative impact on children and adolescents. As regards the most extreme form of violence, homicides, a breakdown of the figures by age, sex, socioeconomic status, and ethnic origin reveal high percentages of violence among adolescents and young people. The rates of violent deaths from firearms in adolescents and young persons, especially males pertaining to traditionally excluded groups that are vulnerable in terms of the exercise of their rights, are worryingly high.³⁷

³⁶ The literature on this topic is abundant. One title worth consulting is: *More Violence, Less Development. Examining the relationship between armed violence and MDG achievement (2010)*. Geneva Declaration. and another is: *Conflict and Fragility. Armed Violence Reduction. Enabling development*, of the OECD, 2009.

³⁷ UNODC, *Global Study on Homicide 2013*, pp. 28 to 30; UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, Introduction and pp. VIII to X; IACHR, *Report on Citizen Security and Human Rights*, para. 3 of the Executive Summary and para. 27; OAS, *Report on Citizen Security in the Americas 2012*, and *Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence against Children*, para. 29.

56. The risk of dying as a victim of homicide varies depending on one's age and sex. As a general trend, the data show that comparatively speaking, adolescents between the ages of 15 and 19 are one group at a great risk of becoming homicide victims and that the figures spike dramatically for young people (up to 24 or 29 years of age, depending on the sources consulted). For example, in Venezuela, according to 2012 figures, homicide rates climb from 1.2 per 100,000 inhabitants for children below the age of 10 to 39 per 100,000 inhabitants among adolescents aged 10 to 19. There are also striking differences according to sex: Again in Venezuela, the homicide rate is 74 per 100,000 inhabitants among adolescent males and 3 per 100,000 inhabitants among adolescent females.³⁸ In Brazil, the murder rate for children from birth to 9 is less than 1 per 100,000 inhabitants, but this rate skyrockets to 32 per 100,000 inhabitants for adolescents from 10 to 19 years of age, with figures that are more than 10 times higher for males compared to adolescent females (58 per 100,000 inhabitants and 5 per 100,000 inhabitants, respectively)³⁹. Despite the fact that children aged 10 to 14 are less affected by homicides than adolescents, this hemisphere has the highest rate of violent deaths, in comparison to other regions, among children of those ages.⁴⁰
57. Among the main victims of violence—and among its perpetrators—there are adolescents and young people, especially males in the 15 to 29 age range.⁴¹ The figures show that this segment of the population is one of the most exposed to violence. According to a study written in 2011, in El Salvador, the average rates of homicides among adolescents and youths aged 15 to 24 is 92.3 per 100,000 inhabitants; in Colombia is 73.4, in Venezuela 64.2, in Guatemala 55.4, and in Brazil 51.6. The aforementioned countries are also those with the highest juvenile homicide rates in the world.⁴² According to data from the OAS Hemispheric Citizen Security Observatory, based on figures provided by the States themselves, in Brazil, for instance, 43 percent of the victims of homicides were between 15 and 24 years of age.⁴³

³⁸ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 38.

³⁹ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 38.

⁴⁰ The Americas region is the one with the highest homicide rate of children aged 0 to 14 in the world. UNODC, *Global Study on Homicide 2013*. See the chart on p. 32.

⁴¹ UNODC, *Global Study on Homicide 2013*, pp. 28 to 30; UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. X; IACHR, *Report on Citizen Security and Human Rights*, para. 27; *Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence against Children*, para. 29 and UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, pp. 34 to 40.

⁴² The Commission makes reference to statistics, which use different age brackets, based on the particular source it cites. Several sources use the brackets of 0-9 years old, 10-14 years old and 15-20 years old, or other ages in the twenty-year-old range, in order to examine aspects pertaining to violence and victimization. These brackets coincide with formative periods in the lives of children and adolescents, which are regarded as relevant to their particular needs and to respect for their rights, in keeping with their level of biological, psychological, social and emotional development. UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 53. Cited in WHOSIS (the WHO's World Mortality Databases): UNDP, *Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development*, pp. 123 and 124.

⁴³ According to the OAS, *Report on Citizen Security in the Americas 2012*, p. 25.

58. The forms of violence to which children and adolescents are exposed also vary depending on gender and age. Although trends are not identical in all countries, generally speaking male adolescents are most exposed to physical violence, including homicides, and to being co-opted and exploited by organized crime in all kinds of activities, including acts of violence. Female adolescents suffer more gender-based violence, and sexual violence in particular, although homicides against women have become a growing and worrying problem in several countries in the region.⁴⁴ In this Hemisphere, male children and adolescents are estimated as being almost seven times more likely to die as a result of inter-personal violence than girls and female adolescents.⁴⁵
59. Homicides have become one of the leading causes of death among male adolescents and youths in Latin America and the Caribbean and have meant that the gains achieved in early childhood survival rates through public policies to protect children are wiped out in adolescence due to the homicide rates.⁴⁶ This situation has been identified and quantified, for example, in Brazil, Colombia, El Salvador, Guatemala, Panama, Trinidad and Tobago, and Venezuela.⁴⁷ According to the World Health Organization and UNICEF, in these seven countries in the region homicide is the leading cause of death among male adolescents.⁴⁸
60. The Commission, however, emphasizes that children and adolescents are subjected to manifold forms of violence, intensities thereof and settings in which the violence takes place. It further notes the existence of a disturbing phenomenon of successive forms of violation of the human rights and victimization of children and adolescents exposed to environments with high levels of violence and highly precarious living conditions. The scenario is complex, but some of the commonest forms of violence and rights violations to which children and adolescents are exposed in these environments are:
- i. abuse or violence within the family, at school, or in their community perpetrated either by adults or their peers;
 - ii. a lack of family care and of support from State institutions;
 - iii. inability to enjoy their right to quality education in a protective setting that offers them a chance to develop their full potential (some even give up studying altogether);
 - iv. stigmatization or some kind of discrimination based on their socioeconomic status and/or origin;

⁴⁴ [Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence against Children](#), paras. 30 and 31; UNDP, [Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America](#), p. 53. See also pp. 46 and 54-55 and OAS, [Report on Citizen Security in the Americas 2012](#), pp. 21 and 22.

⁴⁵ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, pp. 34 and 38.

⁴⁶ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, p. 38.

⁴⁷ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, p. 40.

⁴⁸ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, p. 40

- v. the absence of real opportunities to pursue their goals in life due to structural conditions of social exclusion, which often enough leads them to groups engaging in criminal activities as the nearest and most viable option;
 - vi. subjection to pressure, abuse, violence, or exploitation by groups devoted to criminal activities, who use and exploit children and adolescents to carry out their crimes;
 - vii. possible violence, abuse, and violations of their rights by the police or when they come into contact with the juvenile justice system and during detention.
61. The different forms of violence and other infringements of the rights of children are usually interconnected and overlapping, leading to successive victimization of children and often spiraling out of control over time. This spiral of violence and rights violations can be difficult to curb or stop if such situations are not identified early on or if the proper measures are not taken to redress the violations and restore the rights. The impacts of violence and infringement of rights during early childhood can have consequences later on during adolescence, and even during childhood as future adolescent aggressors. Therefore, indicators of violence and infringement of rights must not be viewed in isolation from each other during the different stages of the lives of children, adolescents and young people. The Commission also underscores the importance of bearing in mind that adolescents performing acts of violence have often themselves been victims of violence or abuse, or else they have witnessed them, or have had their own fundamental rights violated.⁴⁹
62. With respect to indices of violence against children, the IACHR notes with concern that diversification of the illegal activities of the criminal groups of the region has devastating effects on children and adolescents, who appear to be one of the major victims thereof. In this regard, we highlight activities linked to the production, distribution and trafficking and sales of drugs and illegal narcotics; human trafficking and sexual exploitation in a variety of forms, including sexual tourism, child pornography and child prostitution; trafficking for labor exploitation; and migrant smuggling associated with situations of abuse and violence at the hands of the smugglers. Additionally, these forms of exploitation may be interconnected to each other.⁵⁰
63. The Commission further notes that the phenomenon of juvenile gangs or bands of adolescents is widespread in the region and that society for the most part associates it with violence and crime. The ways in which adolescents and youths

⁴⁹ Along the same lines, and for a more in-depth analysis, see the [U.N. Secretary General's Study on Violence against Children](#) and the UNDP's human development reports for the region, [Human Development Report for Latin America 2013-2014](#). [Citizen Security with a Human Face: Evidence and Proposals for Latin America](#), and UNDP, [Caribbean Human Development Report 2012](#). [Human development and the shift to a better citizen security](#), (see p.34 regarding the successive forms of violence and victimization to which children and adolescents are exposed).

⁵⁰ See, for example, UNODC, [Transnational Organized Crime in Central America and the Caribbean. A Threat Assessment](#), 2012.

typically socialize are often perceived negatively and tend to be stigmatized. Even though these groups of youths and adolescents can be a source of vandalism, violence and crime, the fact of the matter is that this phenomenon is generally rooted in and prompted by other factors. Gangs or bands usually arise in response to the need of adolescents and young people to have opportunities for socialization in environments in which there are not many constructive options. Gangs also help generate a sense of identity, of belonging, and of social recognition in contexts marked by exclusion and scant opportunities for adolescents to take part in public life or pursue their interests.

64. Nevertheless, the Commission also notes that the phenomenon of the gangs is very diverse and heterogeneous. At times, gangs may, to a greater or lesser extent, be violent and contribute to the generation of conditions of insecurity and violence in their communities. In practice, the characteristics of the gangs and the levels of violence exercised by them vary. Authorities need to pay prompt attention to the main features of this youth phenomenon and its origins when they forge public policies and programs aimed at children and adolescents and the protection of their rights.

65. Currently, the Central American gangs, known as *maras*, are a source of grave concern because of the violence they trigger. The *maras* are what most often springs to mind when gangs are mentioned, even though, as pointed out above, there are other types of gangs of youths who, unlike the *maras*, do not commit crimes or use violence, or at least not usually or as one of their principal activities. The *maras* phenomenon has been evolving and becoming more complex. For example, almost all of them are controlled by adults and generally have become more violent.⁵¹ The reasons that lead adolescents and young people to join a *mara* may have to do with the same factors mentioned earlier with respect to gangs, but they may also be joining them because of threats and pressure from existing members of the *mara* or as a means of protecting themselves in very violent contexts. Adult members of *maras* and violent groups, who engage in criminal activities, usually use children and adolescents to do their own bidding. While there is large presence of violent gangs in the sub-regions of Central America and the Caribbean, they are also present in cities of the United States and South America.

66. The Commission notes with concern the existence of a widespread perception that adolescents and young people are the principal causes of insecurity and violence. Youths, especially the traditionally excluded males from impoverished social sectors, are generally perceived as a "social threat" and blamed for the atmosphere of insecurity and criminality. However, that perception is false. The statistics on persons deprived of their liberty show that the number of adults found guilty of committing violent crimes far exceeds the number of adolescents. According to police data in Honduras, a country with one of the highest homicide rates in the world and home to a number of *maras*, fewer than 5 percent of homicides are

⁵¹ UNODC, [Global Study on Homicide 2013](#), p. 42 et seq. See also: OAS, Department of Public Security, [Definition and classification of gangs](#).

committed by people under the age of 18.⁵² In Brazil, for instance, where there are 21 million adolescents, barely 0.013 percent have been convicted of murder or attempted murder.⁵³ In Colombia, 0.21 percent of the adolescent population (aged between 14 and 18) has run into problems with law enforcement, but only 0.05 percent has been convicted.⁵⁴ This social bias has sometimes led to discussion about lowering the age of criminal liability and tougher sentences for adolescents in conflict with the law. It has led to their rights being restricted and greater police monitoring of adolescents and young people from particular social groups. And it has also led to instances of arbitrary and illegal use of force against them by State agents and private individuals.

67. The IACHR acknowledges that children and adolescents suffer the consequences of violent social environments and have a wide range of their rights impaired, including the right to life, personal integrity, health, education, recreation, personal liberty, and participation in matters that involve them, and so on. The Commission would like to stress the fact that, under such circumstances, children and adolescents are utilized and exploited by adults. A core factor in the current situation is the absence of public policies to effectively safeguard children's rights and take into account their particular vulnerability in these environments and their need for protection. Without adequate prevention and protection measures, children and adolescents are exposed to circumstances in which their rights are infringed and they themselves are subjected to government repression, which is tantamount to double victimization.

C. Multiplicity and Complexity of the Causes and Effects of Violence

68. The Commission notes that the increase in violence, insecurity, and crime in the countries of the region is explained by a set of multiple, interrelated causes and effects. It is therefore a phenomenon that needs to be addressed after taking into consideration the complex set of concurrent and interacting factors.
69. One of the core aspects to be considered is the co-existence of several forms of violence in these environments, which are interconnected and reinforce each other, thereby exacerbating the atmosphere of insecurity. The existence of diverse manifestations of violence in both the public and the private sphere, and the limitations on the exercise and enjoyment of rights, propitiate the emergence of grave and more widespread forms of violence.
70. Thus, a recent United Nations Development Programme (UNDP) report analyzes and classifies the principal manifestations of violence and crime affecting the citizens of Latin America and concludes that the spiraling violence and crime in the

⁵² See, World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 16.

⁵³ [UNICEF press release](#).

⁵⁴ According to DANE (National Administrative Statistics Department) and UNICEF information.

region today is not just to be explained by transnational organized crime: "[transnational organized crime] operates in a complex context of local crime and violence that occurs both in private settings and the public spheres. The interwoven nature of these threats explains the deterioration of security in the region and the emergence of a spiral of violence in some cities and regions of Latin America."⁵⁵ The aforementioned UNDP study highlights these links between forms of violence. For instance: "[...] a person who has suffered or witnessed domestic violence during childhood has a greater risk of becoming a victim or perpetrator of this form of violence as an adult. Equally, qualitative studies on youth violence have consistently demonstrated the presence of domestic violence precedents among young people who participate in gangs."⁵⁶

71. The contexts in which violence emerges are not identical in all countries and the dynamics may vary even within a country. It is therefore essential to have sufficient and reliable information for a thorough diagnostic assessment that will in turn enable the State to intervene in an appropriate and effective manner.
72. The factors conducive to violent environments are structural, institutional, and situation-based. Causes or factors typically highlighted in replies to the questionnaire to explain the occurrence of violent settings in a society include:
 - i. The existence of organized groups with links to illicit or criminal activities from which they profit, such as drugs trafficking, arms trafficking, trafficking in and smuggling of persons, extortion, and so on;
 - ii. easy access to and the large number of firearms in the hands of private individuals, along with the existence of a significant illegal market and high incidence of unregistered weapons;
 - iii. the inequalities and social exclusion faced by certain groups and segments of the population;
 - iv. the lack of real opportunities for youths and adolescents to pursue their ambitions and lead a dignified and self-supporting life;
 - v. the existence of some degree of "normalization" and "social tolerance" of violence in its various manifestations and in a variety of public and private spheres;
 - vi. the "social legitimization" of criminal groups in instances in which they assume control over and de facto management of an area in which they act like authorities and provide the inhabitants with services and security;
 - vii. institutional weakness, especially among the police and in the justice system, reflected in their inability to effectively address the growing problem of insecurity, violence, and crime;

⁵⁵ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. IX.

⁵⁶ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. 7. See also: OAS, Department of Public Security, Definition and classification of gangs, p. 10.

- viii. the high levels of impunity in the investigation and punishment of crimes;
- ix. the scant capacity shown for the social reintegration of inmates by the penitentiary system in general and by the juvenile justice system in particular; and
- x. the ability of organized crime to permeate and co-opt State institutions, whether by influencing the decisions taken by authorities by paying bribes, corruption or through State agents' participation in organized criminal activities.

These factors create an atmosphere conducive to the existence and replication of scenarios marked by violence and insecurity, in addition to undermining confidence in the workings and capacity of democratic institutions to stand up to and address this phenomenon.

73. As regards the lack of sufficient institutional capacity to respond appropriately to the challenges posed by insecurity, violence, and organized crime, the Commission noted in its report "Citizen Security and Human Rights" that progress has been made in the countries of the region with strengthening the police and the justice sector, both of which are important sectors for dealing with the aforementioned insecurity issues. Both sectors have undergone a process of modernization, professionalization, democratization, transparency and accountability with a view to making them more effective and efficient and to making sure that they perform the functions assigned to them within the law, while observing and guaranteeing the observance of human rights. Nevertheless, as the Commission also noted in its report, those changes need to be maintained and reinforced. There are still challenges to be overcome, including the apparently low level of citizen confidence in the police and the justice system.⁵⁷
74. In the case of the police, the reforms being enacted in the region need to take account of the change in the citizen security paradigm. Thus, what is needed is a review based on an approach that gives due consideration to the new concept of security focusing on the protection of persons and their rights. That in turn will mean promoting a strengthening of efforts to prevent and reduce violence, along with the traditional police control and law enforcement functions. At the same time, the existence of cases of corruption; arbitrariness; the illegal, excessive, or disproportionate use of force; and other human rights violations, as well as the absence of sufficient mechanisms of transparency and of internal and external oversight continue to be matters of major concern with regard to police behavior.

⁵⁷ See UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. 115 (Table 6.2) and 120 (Table 6.4), Source: Latin America Public Opinion Project (LAPOP) and UNDP 2011. At the regional level, on average only 36% of those surveyed consider that the police offer protection against crime, while 43% believe that the police is involved in criminal activities. In other words, there is still a relatively widespread perception that the police participates in crime. See also p. 116.

For statistics on citizens' trust in institutions, see also World Bank, Crime and Violence in Central America: A Development Challenge, 2011, pp. 9 to 11.

75. In addition, other matters that need improvement have to do with the challenges of effective access to justice and judicial guarantees, in, particular for certain groups; the costs of obtaining justice; saturation of the judicial system; tardiness in judicial proceedings; the quality of the investigation and charging processes; and the high level of impunity when it comes to prosecuting crimes.
76. At a broader level, institutional capacity needs to be built and boosted with respect to violence prevention, the many aspects of which need to be considered and worked on. The Commission underscores the need to strengthen institutions for the promotion and protection of the rights of children and adolescents through National Child Protection Systems, especially at the local level. Among other things, interventions at the local level help enable members of the community to engage in dialogue and share information amongst themselves and with the authorities to identify and address—in the most protective way possible—the causes, types, and consequences of violence that affects children.
77. Of particular concern are the sequels of violence, the loss of human lives and the harm done in such contexts to people's bodily and mental integrity. At the same time, there are numerous other rights that are violated as a consequence of insecure and violent environments. While the violations of the rights to life and personal integrity may be regarded as extremely serious because they are irreparable, the interrelated violations of multiple rights that characterize environments of this nature renders individuals extremely vulnerable. The human costs they pay are very high because such violent surroundings constrain their ability to fulfill themselves at every level, lower their quality of life, and impair their human dignity.
78. In addition to the above, it is now well documented that violence and insecurity constitute a multidimensional problem, with implications and sequels for the exercise of human rights and for the economy and for society. They also erode the credibility and legitimacy of the institutional framework, and the rule of law. The effects or consequences of violence facilitate its replication by triggering vicious circles difficult to reverse, unless public policies are implemented to overcome the root, structural causes of violence.

D. Worrying Trends

79. Most citizens in the Hemisphere see violence and crime as the principal issues that States need to face. Within the countries of the region, social pressure to find answers to the lack of security have often led to short-term "hard line" policies being adopted in the quest for fast-track solutions based on control and repression. These kinds of policies have, broadly speaking, turned out to be ineffective, to have generated more violence, and to have exacerbated other already existing problems (such as the crisis in the prisons due to overcrowding and saturation of the justice system). In addition, on numerous occasions, they have entailed violations of human rights and effects that are counterproductive for the rule of law.

80. As for the effects on institutions, the Commission has voiced its concern, on other occasions, at the fact that "(...) violence and crime gravely impair exercise of the rule of law (...)." ⁵⁸ When States are incapable of quickly and effectively responding to a lack of security, citizens' trust in their institutions wanes and pressures mount for blunter acts of repression, sometimes even eschewing legality and human rights. ⁵⁹ In addition, in the areas or neighborhoods most lacking in security, if the State's response is exclusively repressive and cases occur of illegal or excessive use of force by the police, which leads the inhabitants of those areas to lose their trust in and reject public security agencies, in turn engendering further insecurity. It is vital that security policies cater to the security needs of all, in addition to acting in accordance with the law and being respectful of human rights.
81. The Commission has identified a series of worrying trends in the region with respect to some security policies as well as strategies to combat crime in general and organized crime in particular that involve limiting human rights or that in practice have led to abuses by State agents. The Commission highlights the following trends, which will be discussed more thoroughly throughout the report:
- i. the broadening of police powers to exercise social control and use force without due guarantees for human rights;
 - ii. the granting of a mandate to armies to perform citizen security tasks;
 - iii. the increase in the number of cases of illegal use of force by State agents, including cruel, inhuman and degrading treatment, torture, as well as the increase in the number of cases of arbitrary arrests, extrajudicial executions, and forced disappearances, tardiness in the investigation and high level of impunity in respect of such cases;
 - iv. the adoption of highly repressive penal approaches that are detrimental to guarantees of individuals' human rights, including the arbitrary and unlawful use of pre-trial detention;
 - v. drug policies associated with security policies and the disproportionate effects they have on the human rights of certain groups, including children and adolescents in excluded segments of the population;
 - vi. the stigmatization and discriminatory treatment meted out by State agents to certain social groups blamed for the lack of security, including male adolescents, persons pertaining to traditionally excluded and poor groups, and Afrodescendants;
 - vii. the criminalization of new forms of conduct with legal definitions and applications that are problematic with regard to human rights standards;
 - viii. the application of a coercive, essentially penal, rationale to actions carried out by children and adolescents that have to do with problems of attitude

⁵⁸ IACHR, Annual Report 2003, Ch IV, para. 33. IACHR, *Report on Citizen Security and Human Rights*, especially pars. 31 to 34.

⁵⁹ Likewise, the findings of the Organization of American States and United Nations Development Programme (OAS-UNDP, 2011), *Our Democracy in Latin America*, Fondo de Cultura Económica, Mexico. pp. 181 to 196, and the UNDP reports on Human Development in the region.

or behavior but do not constitute a violation of criminal laws (so-called "statutory offenses");⁶⁰

- ix. the adoption of programs for children and adolescents deemed to be "at social risk" that are implemented by the police or armed forces instead of being implemented by services and professionals with specialized training in the treatment of children;
 - x. proposals to lower the criminal liability age for adolescents and to hand down lengthier prison sentences; and
 - xi. discussions about adopting the death penalty in some countries in the Hemisphere.
82. The Commission notes with concern the increasingly frequent responses organized by private individuals, who faced with fear and mistrust of State institutions, form groups to deal with insecurity by taking matters into their own hands. This phenomenon of people "taking justice into their own hands" poses a challenge to democratic institutions,⁶¹ especially when these groups use force and violence. The Commission has learned of the formation of groups of private individuals or paramilitary groups arming themselves to combat drug cartels or armed criminal groups, in some parts of Mexico, for example. "Lynchings" are another manifestation of the "taking justice into one's own hands" phenomenon that has emerged in various countries in the region,⁶² that is to say, public acts of collective violence against the alleged perpetrators of crimes.
83. The Commission has also received information about cases in which groups of private individuals and "militias" using force to combat insecurity operate with the knowledge, acquiescence, or support of State agents. In general, the lack of diligent investigation to determine responsibilities for the violent acts carried out by groups of private individuals creates levels of impunity that make the State look as if it tolerates such deeds, which in turn fosters their replication. The Commission is also worried at the widespread social acceptance of the "taking justice into one's own hands" phenomena in the region,⁶³ which is a sign of growing lack of trust in the ability of government institutions to confront insecurity and violence.

⁶⁰ Here, the IACHR reiterates the concerns it voiced in its Report *Juvenile Justice and Human Rights in the Americas*, see paras. 9 and 66 to 74.

⁶¹ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, Chapter V.

⁶² This practice has been documented in several countries in the region, including *Argentina*, *Brazil*, *Chile*, *Ecuador*, *Guatemala*, *México*, and in parts of the *Peruvian* and *Bolivian* Andes. In Guatemala, for example, according to the Human Rights Attorney's Office (IPDH), between January and June 2014, there were 156 lynchings and attempted lynchings, which left 17 people dead and 136 wounded. See also UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 121.

⁶³ 23.9% of those surveyed by Latin American Public Opinion Project (LAPOP) - UNDP (2012) approve of people taking justice into their own hands when the State fails to punish criminals. UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 147. The percentage varies considerably depending on the specific offense posited in the question. For example, for rape the percentage is higher.

84. In other cases, the IACHR has been informed that civilians receive military training to then reintegrate into civilian life and assist in maintaining security and internal order. In the case of Venezuela, the Commission has monitored this situation and has indicated its concern on a number of occasions with respect to the integration of this “civilian-military” concept into citizen security activities as part of “homeland defense,” “counter-terrorism,” and “paramilitary” strategies.”⁶⁴ The Commission has stipulated that the fight against violence domestically should be limited exclusively to civilian police forces that have been duly trained and that act in strict adherence to human rights; it has further reiterated that military training is not appropriate for internal security control and that citizens who receive military training should not be made a part of domestic defense strategies, nor should society’s role vis-à-vis a nation’s security be distorted.⁶⁵
85. The public’s fear and mistrust has also triggered a boom in private security guard services. It is estimated that this type of services is growing at an annual rate of 10% in the region of Latin America. ⁶⁶ In addition, this has created a disproportionate number of private security officers, numbering 3,811,302 in the Latin American region, as compared to police officers, which total 2,616,753. ⁶⁷ In this regard, the Commission is concerned, as it has expressed in its report *Citizen Security and Human Rights in the Americas*, that citizen security could become privatized and, consequently, be stripped of a sense of human rights, and become a market-driven product which can only be afforded by well-off segments of the population. The IACHR has also voiced its concern over poor regulation and oversight by the State in several countries, particularly, with regard to: i) the functions that private security companies are allowed to perform; ii) the type of weapons and law enforcement equipment they are authorized to use; iii) adequate mechanisms to control their activities; iv) implementation of a public register of such companies and employees; and v) delivery of regular reports on contracts entered into and the type of activities performed by them.⁶⁸
86. The Commission is additionally concerned about the proliferation of laws that expand the scenarios that allow individuals to act in self defense, among them, those that authorize individuals to use lethal force in self defense outside the home, without requiring them to retreat, and the impact these laws have. Examples of this are the “Stand Your Ground” or “Shoot First” laws in the United States. The IACHR is particularly concerned about the information it has received with respect to the practical application and disproportionate impact that such laws reportedly have on certain groups of people who are perceived as being “dangerous” and are thus more likely to have violence committed against them under claims of

⁶⁴ IACHR. *Annual Report 2014*, Chapter IV, Venezuela, paragraphs 356 to 359.

⁶⁵ IACHR. *Annual Report 2014*, Chapter IV, Venezuela, paragraphs 356 to 359.

⁶⁶ UNDP, *2013-2014 Regional Human Development Report 2013-2014. Citizen Security with A Human Face: Evidence and Proposals for Latin America*, p. 150.

⁶⁷ UNDP, *2013-2014 Regional Human Development Report 2013-2014. Citizen Security with A Human Face: Evidence and Proposals for Latin America*, p. 150.

⁶⁸ See the IACHR *Report on Citizen Security and Human Rights*, pars. 70 to 73. In Guatemala, for instance, according to the General Directorate of Private Security Services, in January to December 2014, only 24 of 151 private security companies were considered as conforming to the rules governing private security services. Furthermore, of the estimated total of 46,000 private security guards, only 477 were certified.

legitimate exercise of defense. The IACHR draws attention to the potential unequal and discriminatory application of such laws and to the fact that they legitimize a “shoot first” mentality based on perceptions and prejudices. These types of laws could contravene the State’s duty to protect peoples’ lives and safety and should be revised so they adhere to the principles of need and proportionality in the use of lethal force in self defense and prevent situations of impunity in cases of lethal force used by individuals.⁶⁹

87. Social demand for immediate and forceful solution, such as incarcerating as many offenders as possible, has led to overcrowded prisons but not to a significant decline in violence and insecurity. In most countries in the region, there has been a tendency to criminalize most forms of conduct, to hand down longer sentences, and to use pretrial detention more extensively. In practice, this has filled prisons to well beyond their capacity and created conditions that are more often than not extremely precarious. That trend has also led to an increase in the number of people imprisoned for minor and/or non-violent offenses. One example is the huge number of people in prison for micro drug trafficking.
88. Additionally, countries have tended to criminalize adolescents at increasingly younger ages, usually in response to the pressure of public opinion and to the belief that adolescents’ impunity under juvenile criminal law is a factor driving crime. It is believed that criminal gangs use adolescents to a great extent in order to commit crimes because the sentences imposed on them are not harsh enough and adolescents do not feel that they face punishment commensurate with the seriousness of their acts.
89. In actuality, adolescents are accountable for the criminal acts they commit, even though they must commit them differently from how adults do, precisely because they are going through a process of personal growth and maturation. The logic behind intervention in juvenile justice should operate in such a way as to enable them to comprehend the consequences of their actions, and facilitate their rehabilitation and reentry into society.
90. Another widespread problem detected by the Commission throughout the region is the scant availability of alternatives to incarceration and measures of restorative justice for children in conflict with the law, with focus on restitution of rights, effective rehabilitation, and the reintegration of adolescents into society. In practice, this means that adolescents in conflict with the law are deprived of their

⁶⁹ For example, some concerns with respect to the disproportionate application and impact of “Stand Your Ground” or “Shoot First” laws in the United States on afro-descendants and other minorities can be seen in the IACHR’s press release, [Report on the 150th Session of the IACHR](#), as well as in the thematic hearing on the [Impact of ‘Stand Your Ground’ Laws on Minorities in the United States](#), 150th Session of the IACHR, Tuesday, March 25, 2014. Along the same lines, see [Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination, CERD/C/USA/CO/7-9](#), September 25, 2014, para. 16, and [Concluding observations of the United Nations Human Rights Committee on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4](#), April 23, 2014, para. 10.

liberty, when this should be an exceptional, last resort measure, and for the least amount of time possible, according to international human rights law.⁷⁰

91. In addition, it must be said that, in the region, the deficiencies of the adult penitentiary system are reproduced in facilities for adolescents in conflict with the law. In other words, it is the norm rather than the exception to find hazardous prison conditions in terms of health and security; overcrowding; the lack of suitably tailored social and educational programs promoting the rehabilitation of adolescents and reintegration into society; the availability of drugs; prison riots; abuse and violence among inmates and also inflicted by guards, sometimes as discipline or as a means of exerting control; cruel, inhuman, and degrading treatment; torture and the use of solitary confinement, and so on. The Commission has repeatedly expressed its concern at the fact that, for adolescents, coming into contact with the juvenile justice system means being exposed to violations of their rights and undergoing various forms of violence, instead of it affording an opportunity to restore positive and constructive ties with society.⁷¹
92. States tend to lengthen sentences of deprivation of liberty for adolescents as another response allegedly designed to reduce crime. Lengthening prison sentences for adolescents in conflict with criminal law may often involve confinement for protracted periods of time, even for as long as their entire adolescence, imprisoning them in the troubling conditions described above and without the proper interventions for their rehabilitation. Contrary to the claims of many States, this does not constitute an adequate measure for their social rehabilitation nor does it reduce the likelihood of criminal recidivism in the future.
93. Lastly, the IACHR notes that the failure to conceive and effectively implement restorative justice models and alternatives to incarceration is usually blamed on the following constraints; i) insufficient financial resources; ii) the absence of the social programs and methodologies tailored to the need for rehabilitation and social reintegration that would enable such a model to be implemented; and iii) the shortage of specialized personnel trained to carry out such programs. However, the Commission observes that the main explanation is that there has still not been a change in paradigm in the rules and in society regarding the status of adolescents with respect to crime and criminality. Still lacking is a comprehensive vision that places adolescents and the protection and restoration of their rights at the center of attention. Instead, we still have a rationale that prioritizes order and security, irrespective of, or with very little consideration given to, the special status of children and adolescents.

E. The Relationship between Violence and Drug Policies

94. There are close ties between the intense atmosphere of violence and insecurity experienced in some communities in the region and the market for illegal drugs

⁷⁰ See the IACHR, *Juvenile Justice and Human Rights in the Americas*.

⁷¹ See the IACHR, *Juvenile Justice and Human Rights in the Americas*.

and narcotics. One indication of that is that the majority of the most violent cities in the region in terms of homicides are located on the drug routes to markets in North America.⁷² Today, the countries of Central America and Mexico are the main route by which drugs reach the United States. The United States Government estimates that 90 percent of all the cocaine entering the USA comes via Mexico and the Central American corridor.⁷³ These countries are also those hardest hit by violence and the lack of security. Drug producing countries, including Colombia, also endure the violence associated with illicit drugs and turf wars. In addition, whole areas and districts in some of the region's largest cities, among them, prominently, cities in Brazil, are wracked by intense violence, much of it related to the illicit drug market. Furthermore, different sources concur that current conditions in Central America have tended to displace some drug trafficking routes toward the Caribbean and, at the same time, an increase in violence, a strengthening of local criminal groups and an increase in levels of corruption are being witnessed in some countries of the Caribbean.⁷⁴

95. States in the region are currently reviewing their illegal drug and narcotics policies. i.e., the policies pursued to reduce and eradicate the production, trafficking, and use of drugs.⁷⁵ They are being reviewed as a result of questions

⁷² See, [The World's 50 Most Violent Cities in 2014](#).

⁷³ World Bank, [Crime and Violence in Central America: A Development Challenge](#), 2011, p. 12.

⁷⁴ Seizures in the Caribbean in 2013 accounted for around 14 % of the cocaine that was bound for the United States. This shift is attributed to increased security on the southern border of the United States and from years of high incidence of drug-related violence in Mexico. A growing number of drug seizures are taking place in Puerto Rico, the Dominican Republic and Jamaica. Insightcrime, [Crimen organizado de Jamaica tras la caída de Dudus Coke](#), ['Jamaican Organized Crime after the Fall of Dudus Coke'], January 21, 2014. Also see, Insightcrime, [Reporte Anual de la JIFE: Agencias: Detectan cambio de ruta de drogas de Centroamérica al Caribe](#), ['Annual Report of the INCB: Agencies detect shift in drug routes from Central America to the Caribbean'], March 6, 2013; [Narcotráfico entre Estados Unidos y el Caribe se duplica en un año](#), ['Drug Trafficking between the United States and the Caribbean doubles in one year'], October 4, 2013; [Police killings on the rise in Dominican Republic](#), January 2, 2013. El País, [El tráfico de cocaína hacia EE UU y Europa se hace fuerte en la ruta del Caribe](#), ['Cocaine trafficking to US and Europe becoming heavy along the Caribbean route'], April 15, 2014.

⁷⁵ At the Sixth Summits of the Americas, held in Cartagena (Colombia) on April 14 and 15, 2012, the Heads of State of the region agreed to broaden the discussion of current drug policies. Accordingly, the OAS was mandated to produce a special report that would serve as a frame of reference for addressing this issue and establishing possible future policies. Pursuant to that mandate, the OAS delivered its report on [The Drug Problem in the Americas](#) in May 2013.

The States resumed their dialogue on the subject at the OAS General Assembly session held in Guatemala in 2013. In their Declaration of Antigua, Guatemala, "For a Comprehensive Policy against the World Drug Problem in the Americas," forty-third regular session of the OAS General Assembly, Guatemala 2013, the OAS Member States agreed to consult one another on drug policy-related matters, taking into account the OAS report submitted to the forty-third session. The OAS Permanent Council was instructed to convene a special session of the OAS General Assembly in 2014 to engage in an in-depth discussion of the drug policy issue.

Also in the inter-American context, the Member States of the OAS' Inter-American Commission of Women (CIM) followed up on agreements reached at a meeting of its Executive Committee, held in February 2013, and asked the CIM to carry out a study of women's participation at every level of the phenomena associated with the illicit drug trade. In January 2014, the CIM published its report [Women and Drugs in the Americas. A Policy Working Paper](#). This paper provides a review and analysis of the information available by country and includes reflections on the effectiveness of current drug policies and their consequences, as well as recommendations for formulating public policies from a gender, development, and human rights perspective.

raised regarding security and respect for human rights. One contribution to that debate is the report produced by the Organization of American States (OAS) entitled *The Drug Problem in the Americas*,⁷⁶ which puts forward a frame of reference for a critical review of current drug policies and examines possible scenarios for innovative and alternative approaches. The main criticism of current policies is the ineffectiveness of policies at achieving the objectives that had been set, which are: protecting public health and reducing violence and crime. Also called into question is that their main emphasis is on repression, that is to say on cracking down on all links in the chains through the criminal justice system and the police. Emphasis is also placed on the high social, economic, and institutional costs of the current intervention model and the negative repercussions for human rights, including, in particular, the disproportionately greater impairment of the human rights of certain social groups.

96. The production of and trafficking in illegal drugs drive violence in the region, in addition to having perverse impacts on levels of corruption and impunity by generating huge sums of money with which to pay bribes and co-opt State institutions, as well as threaten government officials in the performance of their duties.⁷⁷
97. The drug cartels and other groups connected with the production, distribution and sell of drugs use violence to further their interests and exert control over their "turf." Nevertheless, the relationship between drug trafficking and levels of violence and insecurity is affected by multiple contextual variable that can either exacerbate or lessen the violence. These include, for instance: i) rivalry between criminal organizations for control of the drug route and for shares of the illegal market; ii) relations between criminal groups and local communities; iii) possible ties between the authorities and the criminal organizations; iv) the ways in which the authorities intervene in those areas; and v) the State's strategies for confronting organized crime through its public policies.⁷⁸
98. The so-called "war on drugs"⁷⁹ forms part of an environment characterized by prohibitionist policies and primarily repressive approaches, with a marked tendency to resort to criminal justice and heavy police interventions, which result

At the international level, during the United Nations General Assembly, in September 2013, Colombia, Mexico, and Guatemala were among the countries that pointed to an urgent need to explore alternatives to the "War on Drugs." Drugs policies are on the agenda for the United Nations General Assembly Special Session (UNGASS) in 2016.

⁷⁶ OAS, *The Drug Problem in the Americas*, 2013.

⁷⁷ The price of a kilo of cocaine starts at around US\$1,000 on Colombia's Caribbean coast, and the same kilo can command a price of over USD\$100,000 in the United States. The money at stake in this trade is enormous. The 560 metric tons of cocaine shipped through the region is equivalent to 14 grams for each of the 40 million people in Central America—an amount that carries a street value in the United States of about US\$2,300 or more than half the US\$4,200 estimated 2009 per capita GDP of Honduras. See World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 12.

⁷⁸ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 33. Also, UNODC, *Global Study on Homicide 2011*, p. 49 to 55.

⁷⁹ The expression "war on drugs" was used by the administration of U.S. President Richard Nixon to refer to a prohibitionist and punitive position. More recently, it is again being used assiduously in connection with some countries' policy of using the armed forces "to fight drug trafficking."

in recurrent clashes with heavily armed groups of drug traffickers exerting control over large chunks of territory and the drug trafficking routes. In several countries in the region, the armed forces have taken over citizen security functions, which has generally led to an increase in the use of excessive force, arbitrary arrests, and even cases of torture, extra-judicial executions, forced disappearances, and other human rights violations.⁸⁰

99. As a result of the aforementioned policies with a predominantly repressive approach, the number of people in the Hemisphere currently incarcerated for drug-related crimes is vast and constantly growing.⁸¹ This growth stems from the recently expanded criminalization of a wide range of forms of behavior, accompanied by increasingly severe penalties for these kinds of crime, including prison sentences for users and the possession of small amounts and micro-trafficking.
100. According to information and figures at the Commission's disposal, there are adolescents and a growing number of women (many of them mothers looking after children) serving sentences for violating drug laws, usually for drug use, for possessing small amounts of drugs or for micro-trafficking.⁸² In the Commission's opinion, and as demonstrated later in this report, a review of the motives and consequences of this state of affairs points to underlying vulnerabilities and human rights violations that need to be analyzed in greater depth and adequately considered in public policies on drugs.
101. Drug trafficking groups use and exploit children for their purposes, using them either to keep watch, or to transfer and sell drugs, or in carrying out violent acts that serve the groups' interests. Children, including adolescents, have become the last link in the drug-trafficking chain, that is to say, the stage at which individuals can be disposed of or replaced more easily. When there is greater danger of being caught by the police, and when the rewards for carrying out activities are lowest. Many of the children and adolescents engaging in micro-trafficking are themselves drug users. Drug dependency and the traffickers' strategy of recruiting children and adolescents for micro-trafficking by having them use and become addicted to drugs are aspects that need to be duly considered by States when they craft their protection and rehabilitation policies. The fact that the big cartels pay local groups in kind for shipping, distributing and selling drugs, and for defending the cartel's interests in the area, has triggered an increase in drug use in some countries along with the practice of using drugs to pay the children and adolescents connected with those groups.
102. Regarding the use of drugs by children and adolescents, the Commission has heard direct testimony from such children living in districts or communities plagued by

⁸⁰ See, for instance, the [thematic hearing on Drug Policies and Human Rights in the Americas](#), during the 150th session of the IACHR, on Tuesday, March 25, 2014.

⁸¹ See the study [Systems Overload: Drug Laws and Prisons in Latin America](#), Washington Office on Latin America (WOLA), 2010.

⁸² See the study [Systems Overload: Drug Laws and Prisons in Latin America](#), Washington Office on Latin America (WOLA), 2010, for example, p. 36 and 37 and Inter-American Commission of Women (CIM), [Women and Drugs in the Americas. A Policy Working Paper](#), 2014.

insecurity and violence. The stories they tell reveal how easy it is to have access to drugs in their communities, even before they reach adolescent age. Some of the children testified that they had started trying drugs when they were 9 or 10 years old: an account supported by several studies on the subject. This state of affairs is especially worrying given the stage these children are at in their development and growth and given the negative effects that addictive psychotropic substances can have on their health and personal integrity. In general, current drug policies do not seem to have been successful at significantly reducing drug use and addiction and actions and strategies in this regard must be reassessed, particularly, those focused on children and adolescents, from a public health and rights perspective.

F. The Relationship between Violence and Arms Control Policies

103. Levels of violence and lack of security, as manifested in violent crimes, including homicides, are closely related to the number of firearms in circulation. In many countries of the region, access to firearms is easy due to the large number of arms legally and illegally in the hands of private individuals and deficient regulations to control and diminish both weapons and ammunition.⁸³
104. According to UNODC, approximately two-thirds of all the homicides committed in the Americas involve firearms,⁸⁴ and that figure increases to an average of 77 percent in Central American countries.⁸⁵ In El Salvador and Guatemala firearms were used in more than 80 percent of violent deaths;⁸⁶ in Brazil, firearms are used in 70.4 percent of homicides.⁸⁷ According to a UNDP study, a significant number of adult prison inmates admitted during interviews that they had been armed when committing the crime; almost all of them said they had had access to a weapon before they were 18 years old.⁸⁸ Given the data on the number of weapons out there and the use made of them in violent acts, the States in the region should make it a top priority to stop the flow of arms to criminal groups and drug traffickers.
105. The illegal firearms market in the region is intimately connected with drug trafficking because drug traffickers generate much of the demand for weapons. The relationship between levels of violence, firearms, and the drug trade is central to what is happening in the region. Drugs finance the purchase of firearms that are

⁸³ See, World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, pp. 20 to 22. See also the UNDP's Human Development reports for the region and the U.N. Secretary General's Study on Violence against Children, para. 302 at seq. and para. 331 et seq.

⁸⁴ UNODC, *Global Study on Homicide 2013*, p. 15.

⁸⁵ UNODC, *Transnational Organized Crime in Central America and the Caribbean. A Threat Assessment*, p. 59.

⁸⁶ The figures for El Salvador are for 2006. Those for Guatemala refer to 2004-2007 and 2013. See, World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 20.

⁸⁷ Fórum Brasileiro de Segurança Pública *Anuário Brasileiro de Segurança Pública 2013*, p. 33.

⁸⁸ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 32.

then used to defend the interests of the drug traffickers in disputes between groups for control of territory and illegal markets and in clashes with the security forces. Arms trafficking flows and drug trafficking flows go in opposite directions: illicit drug trade flows go from South to North, while firearms are smuggled from North (the United States, in particular) to South.

106. Another consequence of the excessive number of firearms in circulation has been the gradual militarization of State security forces, on a scale that exacerbates the danger to people's lives and bodily integrity. The fact that groups of drug traffickers have huge arsenals at their disposal, including even assault weapons, has led to the police being more heavily armed, to the army being authorized to participate in citizen security operations, and to more widespread permission for State security forces to use force, including lethal force.
107. For the reasons outlined above, it is important that policies on the manufacturing, sale, and possession of firearms and initiatives to root out illegal arms trafficking are analyzed and crafted in such a way as to take a regional perspective into account, along with the relationship to drug trafficking, the governance problems that this context generates, and human rights violations. National efforts to reduce the number of illegal firearms in circulation would have limited effect if they are not backed by cooperation on the part of the United States, considering that it is the major manufacturer of arms and the fact that most of the region's illegal arms originate in that country⁸⁹. In particular, the United States needs to enhance controls on the sale and possession of firearms by private individuals, because a large number of legally acquired firearms are currently being diverted from there to illegal markets in Latin America and the Caribbean.
108. Moreover, in some countries in the region, it is easy to have access to firearms and ammunition. In some countries, the laws are so permissive that there is no limit on the number of guns an individual can own and bear, and the same applies to ammunition. Not all legislation pay enough attention to background checks or psychological testing, and such checks and tests may not be applied. Legislation is also lax when it comes to individuals bearing arms, allowing them to be borne in public places, with few restrictions. Some countries have implemented disarmament plans and conducted awareness campaigns, which in some cases are

⁸⁹ The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has published statistics for 2014 showing that the United States is still the main source of illegal firearms in Mexico. Of the 15,397 firearms seized by the Mexican authorities and submitted to the ATF for tracing in 2014, 11,061 (71.9 percent) were of U.S. origin. This means that, in one way or another, the firearms had been bought or acquired in the United States. The trend has become habitual given that, of the 99,000 weapons recovered by the Mexican police since 2007, almost 72 percent were traced back to U.S. manufacturers and importers. These figures reflect just the tip of the iceberg; according to some studies, arms traffickers attempted to bring 250,000 firearms into Mexico between 2010 and 2012. Of them, some 15 percent were seized by the authorities. How many actually made into Mexico is unknown. These firearms are feeding the violence that Mexicans live with and boosting the power of the drug traffickers. For the [Central American](#) and [Caribbean countries](#), the percentages of firearms of U.S. origin vary considerably from one country to another, but the figures are still surprisingly high. For example, 2014 data show that 97 percent of the arms seized in the Bahamas originated in the United States; in Jamaica, 57 percent; in El Salvador 49.3 percent; in Guatemala, 28.3 percent; and in Honduras, 46 percent. See, Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Strategic Intelligence and Information, Data Source: Firearms Tracing System. Also, [Washington Office on Latin America \(WOLA\)](#), and [Council on Foreign Relations](#).

directed at children and adolescents (exchanging toy weapons for other toys, for instance, or bans on advertising or selling toy weapons to children). All such efforts need to be redoubled and made more robust.

109. Guatemala is one of the countries in the region where controls on the ownership and bearing of firearms are lax. Currently, domestic laws are highly permissive when it comes to private individuals purchasing arms and ammunition and the Constitutional Court issued a very broad interpretation of the regulations, allowing an unlimited number of firearms per person.⁹⁰ According to the General Directorate of Arms and Ammunition Control (DIGECAM), as of April 2014, this agency had reported registration of only 56.7% of the almost 500,000 privately owned guns. The remaining 214,023 guns were awaiting regularization along with another 800,000 unregistered guns.⁹¹ For its part, the 2010 report of the International Commission against Impunity in Guatemala (CICIG) on Firearms and Ammunitions in that country found that Guatemala is one of the principal arms importers, after countries such as Mexico, Colombia, Venezuela, and Brazil.⁹² Nor does Guatemala have a firearms reduction policy. A national disarmament plan has yet to be formulated.⁹³ In 2014, 85.4 percent of violent deaths were caused by firearms, up 4.3 percent on the figure for 2013.⁹⁴
110. Likewise, Honduras, for example, is said to have 133,000 registered firearms, but the actual number is thought to be closer to 600,000.⁹⁵
111. The United Nations Study on Violence against Children found that certain groups of children and adolescents are particularly exposed to firearms and easy access to them means that at some time many will end up owning one.⁹⁶ This state of affairs stems partly from widespread acceptance of firearms, but also from a sense, on the part of many adolescents and youths, that they bring power, authority, respect, and control. A change in this social and cultural paradigm needs to be brought about by awareness campaigns from a very early age on about the harm wrought by firearms. Current fantasies regarding them need to be broken down, so that this

⁹⁰ Article 72 of the Arms and Ammunition Law (Decree 15-2009) establishes the obligation to obtain a license to bear arms, which may cover up to three different weapons, which have to have been previously registered with the Office of the Director General for Arms and Ammunition Control (DIGECAM). In May 2010, the Constitutional Court ruled that Article 72 does not preclude registering further firearms after three have been duly registered, so that resolution allows people to bear as many arms as they want, since no limit is set on the number of times individuals can file for licenses. At the same, the regulations on access to ammunition establish that individuals licensed to bear arms may purchase every month 250 units of ammunition for each of the weapons they are licensed to carry. That potentially allows excessive accumulation of ammunition by individuals. (Article 60 of the Arms and Ammunition Law).

⁹¹ OHCHR Guatemala. Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, [A/HRC/28/3/Add.1](#), of 12 January 2015, para. 43.

⁹² International Commission against Impunity in Guatemala (CICIG), [Fire Arms and Ammunition in Guatemala](#), 2010, p. 13, Response to the questionnaire, p. 26.

⁹³ OHCHR Guatemala. Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, [A/HRC/28/3/Add.1](#), of 12 January 2015, para. 43.

⁹⁴ OHCHR Guatemala. Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, [A/HRC/28/3/Add.1](#), of 12 January 2015, para. 43.

⁹⁵ World Bank, [Crime and Violence in Central America: A Development Challenge](#), 2011, p. 20.

⁹⁶ [U.N. Secretary General's Study on Violence against Children](#), p. 302.

segment of the population becomes less interested in them and in using them. The sale or facilitation of firearms to persons under 18 years of age should be specifically penalized by law.

112. The Commission urges States in the region to adopt effective legislative and political measures to comply with their obligation to take the necessary steps to protect the right to life and to personal integrity with regard to firearms. The Commission recommends all States that have not yet done so to ratify the international instruments relating to the eradication of illicit arms trafficking and to provisions applicable to the illicit trade in firearms, including the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA 1997),⁹⁷ the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (2001),⁹⁸ which complements the United Nations Convention against Transnational Organized Crime (known as the Palermo Convention) (2000),⁹⁹ and the United Nations Arms Trade Treaty (ATT), which entered into force on December 24, 2014.¹⁰⁰ States are also urged to consider the United Nations Resolution on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, (2006)¹⁰¹ and the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)¹⁰².
113. Furthermore, the countries in the region must take timely steps to exert appropriate control over legal access to firearms. At a minimum, such measures should include: i) a ban on certain types of firearms (for instance assault weapons), whose use should be restricted to State forces because of their lethal nature; ii) rules and regulations on license and registration requirements that limit the number of weapons in the hands of private individuals and place a reasonable cap on the number and amount of firearms and ammunition they can acquire; iii) tightening oversight of a person's aptitude to own firearms, through background checks, age requirements and psychological testing; iv) more vigorous restrictions on carrying firearms in public places, in order to protect other rights at stake; and v) rules for safe storage of arms¹⁰³.

⁹⁷ [Inter-American Convention Against the Illicit Manufacturing of And Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials](#), Adopted at the first plenary session, held on November 13, 1997.

⁹⁸ Resolution adopted by the General Assembly, [A/RES/55/255](#), of 8 June 2001.

⁹⁹ Adopted by United Nations General Assembly on November 15, 2000, through resolution [A/RES/55/25](#).

¹⁰⁰ [A/CONF.217/2013/L.3](#), of 27 March, 2013.

¹⁰¹ Resolución de las Naciones Unidas 2006/22, [A/HRC/Sub.1/58/L.11/Add.1](#).

¹⁰² [PoA United Nations, 2001](#).

¹⁰³ Some examples of national regulations can be viewed in the comparative study *States of security, Chapter 9 Balancing Act: Regulation of Civilian Firearm Possession*, Sarah Parker, Small Arms Survey 2011.

G. The Need for a Preventive and Holistic Approach

114. In short, the Commission observes that the high levels of violence and crime in the Hemisphere constitute, in and of themselves, a serious human rights problem by exposing people to a set of interconnected impairments to their rights. The Commission further notes with concern that the adoption of short-term measures that are highly repressive and restrictive of rights with a view to controlling and cracking down on violence and crime usually impacts a disproportionate number of individuals and groups who are in vulnerable situations with regard to the exercise of their rights in addition to being the people most exposed to violence and crime in their communities. Those kinds of responses tend to exacerbate and further reinforce differences and social exclusion. Those hardest-hit groups include children, adolescents, and young people.
115. As regards citizen security policies in the region, the Commission drew attention to its principal concerns in its 2009 report on *Citizen Security and Human Rights* and it has continued to do so based on its constant monitoring of the citizen security and human rights situation in the Hemisphere. Within that framework, the Commission has stated that "it considers that there is a pressing need for States to reflect on this matter and to adopt effective measures and public policies to guarantee the safety of the population and respect for human rights."¹⁰⁴
116. States' legitimate concerns regarding the lack of security, violence and the need to protect and respect human rights, are now also echoed in the regional agenda. In connection with the Organization of American States' (OAS) First Meeting of Ministers Responsible for Public Security in the Americas, the States declared that they recognized the need to do more to:
- [...] 1) Foster and strengthen comprehensive long-term public security policies, with full respect for human rights; 2) Strengthen, within the context of those policies, the capacity of our States to promote citizen security and to respond effectively to insecurity, crime, and violence, by adapting their legal framework, structures, operational procedures, and management mechanisms, as necessary; 3) Analyze citizen security problems from a comprehensive point of view, taking into account emerging threats, and to promote management instruments that enable the national authorities to evaluate, and, where necessary, improve the effectiveness of public security policies (...).¹⁰⁵
117. The Commission acknowledges that the scenario is complex due to the multiplicity of causal factors and the interrelationships between different forms of violence and

¹⁰⁴ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 55.

¹⁰⁵ *Commitment to Public Security in the Americas*, adopted at the First Meeting of Ministers Responsible for Public Security in the Americas, Mexico City, Mexico, on October 7 and 8, 2008, OEA/Ser.K/XLIX.1. MISPA/doc. 7/08 rev. 3, October 8, 2008, paragraphs 1, 2 and 3.

other human rights violations. For that reason, the Commission considers that the best way to confront violence, insecurity, and crime is through comprehensive and holistic public policies that take the various structural causes into account, address risk factors, and strengthen existing protections. This entails different sectors and institutions working together and coordinating the actions they undertake in security, justice, health, education, social services, vocational training and job finding services, culture, sports and recreation, urban development, finance, and so on. These policies must be capable of meeting short, medium, and long-term needs with respect to security and the effective exercise of human rights. Therefore, they will require consensus-building and efforts sustained over time as State policy. The aforementioned policies must take into account their intersection with drug and gun control policies.

118. The Commission also notes that strategies focusing exclusively on control and repression and basically rely on the police and the criminal justice system are not enough when it comes to addressing the underlying causes of violence. Use of the criminal justice system as a deterrent, supported by police actions to identify culprits, and as a means of trying and, where applicable, convicting them has not proved enough to reduce levels of insecurity and crime. Consequently, it is important that States devote more effort to violence prevention and reduction policies that attack its root causes, from a human rights perspective. Those policies also need to address the rehabilitation and reintegration into society of the perpetrators, as well as care and reparation for victims.

CHAPTER 3
CHILDREN AND ADOLESCENTS
IN INSECURE AND VIOLENT
ENVIRONMENTS

CHILDREN AND ADOLESCENTS IN INSECURE AND VIOLENT ENVIRONMENTS

A. Connections and Overlapping between Different Forms of Violence and Infringements of Rights

119. The Commission has repeatedly voiced its concern at the various forms of violence to which children and adolescents are exposed in the various environments and settings they live in, such as the family,¹⁰⁶ school,¹⁰⁷ the community,¹⁰⁸ institutions providing protection and care,¹⁰⁹ detention centers,¹¹⁰ and so on. Children and adolescents are exposed to multiple forms of violence, abuse, neglect, and exploitation, be they physical, psychological, or sexual, in both the public and private settings they frequent in the course of their day-to-day activities. The Commission has also voiced its concern at the high incidence of certain forms of violence against children in the countries of the region and at the lack of appropriate measures to effectively prevent them or to respond to them once they have occurred, with a view to protecting victims and preventing a recurrence of the violence.
120. The Commission considers that violence is a complex phenomenon, with multiple causes and manifestations, that not only impacts children's and adolescents' right to life and personal integrity but also impairs other rights.
121. Today, society continues to show tolerance of violence in general and of that practiced against certain groups, in particular, such as women and children. That permissiveness on the part of society is reflected in social codes and standards of conduct, which individuals then internalize, "own," and reproduce, thereby reinforcing vicious cycles of violence and discrimination. The absence of adequate legislation expressly and clearly prohibiting all forms of violence and of public policies promoting social changes contribute to this state of affairs.
122. The Commission notes that, although the United Nations Convention on the Rights of the Child represented a change of paradigm regarding the perception of children

¹⁰⁶ IACHR, *Report on Corporal Punishment and the Human Rights of Children and Adolescents*, 2009.

¹⁰⁷ IACHR, *Report on Corporal Punishment and the Human Rights of Children and Adolescents*, 2009, and IACHR press release regarding its 147th session and 149th session.

¹⁰⁸ See, for example, IACHR press release.

¹⁰⁹ 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. 32.

¹¹⁰ IACHR, *Juvenile Justice and Human Rights in the Americas*, 2011, and press release on the IACHR's 147th session and its 150th session.

as holders of rights, that rationale has not completely permeated legal systems, policies, and practices. The Commission has expressed its concern at the lack of an appropriate regulatory framework prohibiting all forms of violence against children and guaranteeing the adoption of policies, programs, and services to prevent and eradicate it. One example of that, already pointed out by the Commission is the absence of an appropriate framework to protect children from corporal punishment, and the legal and social acceptance of that form of violence, on the pretext that it is needed for upbringing and discipline.¹¹¹ In general, the legal systems in place in the countries of the region have not yet found ways to promote social change, in terms of perceptions and forms of behavior, in the form of an appropriate and sufficient measure to provide effective protection to children and adolescents against violence and to protect their rights.

123. The Commission has also drawn attention to the stigmatization of certain groups of children and adolescents based on their socioeconomic status, ethnic origin, the vulnerability they may be experiencing, and stereotypes and subjective judgments regarding their appearance or behavior, among other factors. Children and adolescents run much greater risk of being subjected to various kinds of violence and to violations of their rights, either by private individuals or the State itself and its agents. Children and adolescents—males in particular—who live in the areas, districts, and communities hardest-hit by violence and the lack of security are seen as "potential risks and are frequently discriminated against by State agents, the media, and society as a whole.
124. Violence is detrimental to a wide range of rights because the exercise and enjoyment of different rights are interconnected and interdependent. Violence not only impairs a child's physical and psychological integrity. It also infringes her or his right to health and overall development as well as the right to education, either because the violence is inflicted at school or because, if it is perpetrated elsewhere, it affects a child's ability to get on normally in school. Violence in the community may also have an effect on decisions taken by a child's caretakers or the child itself that restrict the child's personal liberty, for fear of incurring risks. Thus, more rights may be affected, such as the right to leisure, recreation, and culture, as well as others.
125. In addition to infringing multiple rights, the impacts of violence may be interdimensional: that is to say, what happens in one specific environment—the home, for instance—triggers negative consequences in other spheres, such as the school or in the public sphere. The impacts of violence have a strong endogenous component, with negative effects that reinforce and replicate each other.
126. In addition, the Commission has pointed out that infringements of children's rights and the various kinds of violence used against them are usually linked and superimposed, which leads to successive victimization of the children most exposed to these vulnerabilities.¹¹² For example, children who repeatedly

¹¹¹ See IACHR, *Report on Corporal Punishment and the Human Rights of Children and Adolescents*, 2009, especially para. 35.

¹¹² On these aspects, see, for instance the [joint IACHR/UNICEF press release](#).

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. Likewise, children and adolescents who suffer humiliations, bullying, and violence at school, at the hands of other pupils or teaching staff, usually have higher absentee or dropout rates and have learning problems due to the stress and tension they are subjected to. That impairs their right to education as well as limiting future opportunities open to them. Children who abandon school without having completed their compulsory education or without adequate training encounter fewer job opportunities and are more vulnerable to various kinds of exploitation, including recruitment and utilization by criminal groups, in addition to other possible infringements of their rights. The Commission notes that these connections have not always been sufficiently analyzed and taken into consideration by States when it comes to formulating comprehensive policies to protect children's rights and prevent violations of them.

127. Just as violence in its different guises and infringements of rights are inter-related and interlinked, policies and strategies to prevent and eliminate them must be holistic and comprehensive, if they are to be effective. Interventions limited to just one sphere or to a particular manifestation of violence can only partially achieve their objective. For instance, strategies to reduce peer violence in schools will be more effective if work is done with parents on positive upbringing models that do not involve the use of violence and thereby instill in children models of constructive, non-violent interpersonal relationships based on respect that the child can then reproduce in his relations with others. Initiatives to address the most extreme forms of violence need to take into account the above-mentioned factors involving the superimposition and interconnection of different forms of violence and to focus on the underlying factors of tolerance or social acceptance of certain forms of violence and of violence directed at certain groups.
128. Police statistics and a number of studies indicate that, starting with adolescence, the community is the sphere in which most violence against adolescents occurs,¹¹³ while at earlier ages children experience most violence in the private sphere, especially in the family. Thus a child's vulnerability to violence in the community increases as she or he grows older and more mature and contact with the outside world increases.¹¹⁴ As mentioned above, during adolescence—generally from age 15 on—there is a marked increase in the incidence of both adolescent victims of violence and adolescent perpetrators of violence,¹¹⁵ with most of the violence occurring in communal or public spaces.

¹¹³ U.N. Secretary General's Study on Violence against Children, p. 287 and 288.

¹¹⁴ U.N. Secretary General's Study on Violence against Children, p. 286.

¹¹⁵ UNODC, *Global Study on Homicide 2013*, pp. 28 a 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, IACHR, *Report on Citizen Security and Human Rights*, December 31, 2009, para. 27. Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence

129. In adolescence a number of factors combine and coincide to make adolescents more exposed to violence and to commit more acts of violence themselves. Theories on child-youth development stress that adolescence is a period of major physical, cognitive, emotional, and social changes and transformation for both boys and girls. That stage in life is associated with the building and reaffirmation of personality and individuality, the creation of interpersonal ties, and the quest for a position or role in society. It is also characterized by novelties and experimentation with different forms of behavior and of interaction with one's surroundings. These stages typical of adolescence occur in settings marked by certain social norms, roles, and stereotypes that shape the child.¹¹⁶ The rules of socialization linked to gender, power, social class or group relations impact children, who tend to reproduce them. Resorting to violence in society as a way to resolve conflicts and wield power in interpersonal relationships is something that children and adolescents learn, which increases 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 and interpersonal relations are based on power and submission, and to acquire skills with firearms, especially in contexts in which they are readily available.¹¹⁷
130. In light of the above, the Commission considers that steps should be taken during both childhood and adolescence to prevent the victimization of adolescents and violent behavior on their part,¹¹⁸ and that those steps give sufficient consideration to the part that the family and society play in the life of a child. Preventive measures need to be holistic and to contemplate, among other aspects, the impact that socialization norms have on children. The Commission underscores the importance of adopting awareness-raising and educational measures to promote change in social attitudes and patterns with respect to violence and to help families fulfill parental responsibilities for the upbringing of their children.
131. The Commission also draws attention to the precarious living conditions, lack of opportunity, limited access to services, and a weak State unable to guarantee the exercise and enjoyment of human rights are some of the typical features of environments likely to face insecurity, violence, and crime.¹¹⁹

against Children, para. 29; U.N. Secretary General's Study on Violence against Children, p. 287; UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 34.

According to the Report of the U.N. Secretary General's Study on Violence against Children: "Available data indicate that in most parts of the world, homicide rates among boys aged 15 to 17 are at least three times greater than among boys aged 10 to 14. This sudden increase in violence among children older than 15 years occurs even in regions with low overall homicide rates." United Nations, Report of the independent expert for the United Nations study on violence against children, Paulo Sergio Pinheiro, General Assembly, 29 August 2006, *A/61/299*, para. 71.

¹¹⁶ U.N. Secretary General's Study on Violence against Children, p. 285.

¹¹⁷ U.N. Secretary General's Study on Violence against Children, p. 287.

¹¹⁸ U.N. Secretary General's Study on Violence against Children, p. 288.

¹¹⁹ The Independent Expert for the U.N. Secretary General's Study on Violence against Children states that: "No community is free of violence. However, the risk of encountering violence, both against as well as by children, is much higher in some communities than in others. In some settings, especially those where weapons are in wide circulation, violence has today assumed frightening proportions. These are primarily urban areas in regions with high levels of poverty, economic disparity and social inequality, sometimes complicated by ongoing political or economic instability. At the same time, also in relatively wealthy and

132. In particular, the absence of equal opportunities and the lack of realization of human rights increase the risk of adolescents becoming involved in criminal activities, especially in environments in which criminal organizations operate, being an option for accessing to economic resources. Adolescents and youths unable to access educational and employment opportunities on the same footing as other young people of their age, and therefore unable to develop a life plan of their own, may feel more inclined to join criminal groups.
133. The Commission deems it imperative that States review the structural conditions that generate inequity and social exclusion in these settings. The lack of effective access for children and adolescents to the effective exercise of a wide range of — civil, political, economic, social, and cultural—rights, combined with social tolerance of violence toward them, do not just amount to infringements of their human rights; they also increase the risk of their being recruited by and joining a group devoted to criminal activities and hence the risk of their suffering successive violations of their rights.

B. Presence of Groups Devoted to Criminal Activities and Impact on Children

1. Utilization of Children and Adolescents in Criminal Activities

134. The presence of groups dedicated to crime in poor and marginalized communities poses a risk for adolescents from these areas. These groups take advantage of the vulnerability of these children and adolescents, and draw them in to use them in their various activities, ranging from "being on the lookout" to criminal activities (such as extortion or the transportation and sale of drugs) and acts of violence (such as kidnapping and murder). In some contexts of exclusion and poverty, adolescents can see ties to such groups as an opportunity to earn money and even recognition and respect. The image of drug trafficking conveyed in some social circles and some of the media as being associated with an opulent life style and power attracts some youths and adolescents, even though it is a distorted vision of what a life devoted to crime is really about.¹²⁰ It is also quite common in criminal environments for children and adolescents to know a relative, friend, or acquaintance who belongs to the criminal group, which makes it easier to establish

stable societies, especially where there are clear inequalities, alarming levels of violence against children have been documented." United Nations Secretary-General's Study on Violence against Children, p. 285.

¹²⁰ In its reply to the questionnaire, the Mexican State voiced its concern at the "cultural impact on children" after detecting a significant number of children who aspire to being leaders of criminal groups. Along the same lines, see Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, January 2011, p. 36.

contact with the group. The ubiquity of groups devoted to criminal activities is a fact of life for many children and adolescents of our region who live in such areas.

135. In the countries of the Caribbean, the social position of power and recognition touted by the heads of the criminal groups makes them comparable to community leaders [puts them on a par with] or a position similar to political leaders. This is, to a great extent, a result of their capacity to establish parallel, informal socio-economic systems, which replace the institutional framework of the State and make it easier for every criminal group to exert strong control over “their territory” and the inhabitants living therein. This reality draws children and adolescents to join the groups or, rather, it leaves them very little chance to remain on the sidelines.¹²¹ However, one of the major difficulties identified in the countries of the Caribbean is the lack of official statistics regarding the number of children and adolescents belonging to these organizations, how they come to join them, and an examination of the different impacts that this phenomenon has, especially on this population segment.
136. The Commission has also been told how various groups dedicated to criminal activities and organized crime operate and use deceit, threats, pressure, and violence to recruit children and adolescents. These groups,—especially those linked to drug trafficking—also encourage children to use drugs.
137. The criminal organizations responsible for the high level of insecurity in several countries in the region typically have markedly hierarchical structures. This means that they have strict rules, levels of command, and a division of functions and activities depending on one's place in the hierarchy, as well as a mechanism for moving up the ladder. The children and adolescents in such organizations are in hierarchically structured units when they obey orders from superiors. Severe punishments are meted out to adolescents who disobey orders or do not abide by the rules of the organization. The fact is: it is very difficult for adolescents to get away from these organizations once they are in. Desertion is usually viewed as a serious breach of the rules because it places the organization and its operations in jeopardy and it may have extreme consequences, with deserters being murdered as traitors.
138. Another feature of belonging to these organizations is that it is a full-time or virtually full time occupation, that is to say complete or a high degree of availability is demanded to carry out tasks assigned. That makes the children a constant target of rival criminal organizations and exposes them to clashes with the State's security forces. Belonging to the group also establishes the status that the community bestows on the child or adolescent who comes to be seen and treated like a member of the group. Thus, the way criminal organizations operate means that usually a child or adolescent cannot be a temporary or sporadic member of the group. They enter the group with little prospect of being able to leave it, which

¹²¹ UNDP, *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*. Also see, Insightcrime *Crimen organizado de Jamaica tras la caída de Dudas Coke*, [‘Organized crime in Jamaica after the fall of Dudas Coke’], January 21, 2014; *Gangs are the new law in urban Trinidad and Tobago*, October 22, 2013, and *Trinidad gang leader has 600 men under his command*, August 21, 2013.

places their personal integrity and rights constantly at risk, leaving them prey to extreme vulnerability.

139. The Commission believes that children and adolescents are systematically used and manipulated within the criminal structures, are deceived, coerced, abused and exploited by adults who have positions of greater leadership and dominance in the criminal organization. Coercion, deception and threats to integrate or collaborate with the group and the negative consequences if they do not; the strict internal rules with the use of violence as a form of internal discipline including extreme forms such as "executions"; ongoing risks to fundamental rights such as life and personal integrity in carrying out actions within the group; and risks for the life and integrity associated with the decision to leave the group, are all elements that contribute to create a situation of abuse and exploitation. According to several sources, the average age at which children are recruited by criminal groups, or join "maras" or criminal gangs is currently 13. There are, however, disturbing signs that they may now be joining at even younger ages.¹²²
140. In Brazil, the main criminal organizations, such as Primeiro Comando do Capital in São Paulo and Comando Vermelho in Río de Janeiro use adolescents and youths as labor for street violence and drug retailing.¹²³ According to research based on direct interviews with children and adolescents in the communities hardest-hit by violence, recruitment by these groups begins when children are about 8 years old, when they are given surveillance tasks. Later on, the children get to sell drugs and, by the time they are 15 to 17 years old, they start having access to firearms to defend the group's turf and activities from other criminal groups and State security force operations.¹²⁴
141. In Colombia, the existence of an internal armed conflict and connections between drug trafficking and non-State armed actors (guerillas and paramilitary) for financing purposes have had, and indeed still have, a very detrimental impact on the child and adolescent population.¹²⁵ Colombia's networks of drug traffickers and criminal organizations use and exploit children and adolescents in their activities, in tasks that range from intelligence and surveillance; the production, transportation, and sale of drugs; murder, extortion, robberies, kidnapping, sexual exploitation, and so on. The surge in some areas of the country of criminal structures, which formed subsequent to the process of demobilization of paramilitary groups, has given rise to children and adolescents, especially those living in marginalized urban areas, joining groups engaged in criminal activities. No exact or reliable figures are available on the number of children involved in

¹²² U.N. Secretary General's Study on Violence against Children, p. 304; UNICEF, *The state of the world's children 2012. Children in an urban world*, p. 44.

¹²³ Luke Dowdney, *El creciente involucramiento de niños y jóvenes en el crimen organizado en la ciudad de Río de Janeiro y más allá de ella*, pp. 201 to 229. Also, Luke Dowdney, "Children of the Drug Trade: a Case Study of Organised Armed Violence in Rio de Janeiro (Dowdney: 2003)", with the support of Save the Children Sweden.

¹²⁴ Luke Dowdney, *El creciente involucramiento de niños y jóvenes en el crimen organizado en la ciudad de Río de Janeiro y más allá de ella*, p. 224.

¹²⁵ IACHR, *Truth, Justice, and Reparation: IACHR, Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, pp. 273 to 297.

criminal structures; however, according to a study published recently, 50% of those operating in these criminal organizations are under the age of 18¹²⁶. According to the Office of the Ombudsman, the phenomenon is present in 26 of the 32 Departments of the country and this type of criminal organization is the actor, which uses children and adolescents the most in its criminal actions.¹²⁷

142. With regard to statistics, in Mexico, for instance, some analysts estimate that there are at least 30,000 children and adolescents under 18 years of age actively cooperating with organized crime, performing activities that range from extortion and trafficking in persons to piracy and drug trafficking.¹²⁸ From the information provided by the Mexican State in response to the questionnaire, it transpires that children join criminal organizations from the age of 10 or 11, or even earlier, "to work for traffickers, of either illicit products (drugs or firearms) or persons (*burreros*)," as well as to carry out assaults, attacks, and kidnappings. Civil society organizations involved in the defense of children's rights reported that:

(...) from the time they are 9 or 10 years old, children are involved in crime, above all trafficking in persons. The youngest children are used as lookouts or informants, or told to get onto trains to monitor the number of migrants arriving every day. Once they turn 12, they are used to guard safe houses and see that nobody escapes. The older children, of 16 years of age or older, do more violent work, such as kidnappings and murders, and all of them carry guns. As regards drug trafficking, children are involved at every stage. The youngest keep watch, the older ones transport the drug and when they turn 16 they begin to be used as hired assassins. Girls are most involved in packaging the drug.¹²⁹

143. In addition, the Commission was told how migrant children and adolescents are kidnapped on their way through Mexico by criminal organizations and, if the family cannot afford to pay for their release, they are forced to work for the criminal group, for example by transporting drugs across the border between

¹²⁶ National Center for Historical Memory. Book entitled *Like Lambs among Wolves. On the use and recruitment of children and adolescents in the context of armed conflict and criminal activity in Colombia*, 2012, by Natalia Springler. (This publication has the support of the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression), paras. 172 y 173.

¹²⁷ See Infobae, *Las bacrim son los principales reclutadores de niños en Colombia*, ["Bacrim are the main recruiter of children in Colombia"], February 12, 2015.

¹²⁸ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, 2011, p. 36.

¹²⁹ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, 2011, p. 37.

Mexico and the United States.¹³⁰ This mode represents another means employed by criminal groups to use and exploit children and adolescents to benefit their own economic interests.

144. According to figures provided to the Commission, between December 2006 and April 2010, 3,664 children were detained in Mexico during federal operations against organized crime.¹³¹
145. In a 2012 survey of children in Mexico, in which more than 500,000 children and adolescents between the ages of 10 and 15 participated, 10 percent of adolescents aged 13 to 15 said that criminal groups had asked them to take part in their activities. The survey concluded that invitations to join criminal group increase with age and are more common among males (13.5 percent) than females (7.8 percent) and more common among those who do not attend school (22.2 percent) than among those who do (10 percent). The survey also found that the states where invitations to join criminal groups are most widespread are Chihuahua (17.8 percent), Baja California (13.6 percent), Quintana Roo (12.5 percent), and Durango (12.3 percent).¹³² However, the State does not have accurate figures on the use of children by criminal armed groups.

2. Levels of Victimization of Children and Adolescents

146. The presence of criminal organizations exacerbates the climate of violence in the communities where they are present, which has negative impacts on the life and the enjoyment of human rights of individuals. Adolescents are one of the groups most affected in these contexts; their rights are affected by the climate of insecurity and violence that exists in their communities, in addition to them being at risk of being recruited and used by criminal organizations for their activities, endangering their lives, physical integrity and chances of overall development.
147. There is a correlation between the criminal armed groups with the level of violence, which is reflected in the number of homicides against children and adolescents. In Brazil, UNICEF estimates that on average one person under 18 years of age is murdered every hour. Between 2006 and 2012, 33,588 adolescents were murdered in a sample of 255 Brazilian municipalities with a population of

¹³⁰ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013.

¹³¹ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, 2011, p. 39.

¹³² Mexico's Federal Electoral Institute, *Propuestas para definir una agenda pública.[Proposals for setting a public agenda] Consulta infantil y juvenil [Child and youth survey] 2012. Democracia y vida digna [Democracy and decent life]*, p. 14.

100,000 or more.¹³³ If current levels of insecurity and violence persist, the outlook is devastating: 42,000 adolescents could die violent deaths between 2013 and 2019.¹³⁴ Violence and assaults were the main cause of death among adolescents over the past 12 years in Brazil; in 2012, for instance, 36.5 percent of adolescents who died between the ages of 10 and 18 lost their lives because of interpersonal violence. When compared to the 4.8 percent of the total population that died from violence in 2012, the figure for adolescents is stunning.¹³⁵

148. As regards the countries of the so-called northern triangle of Central America, in El Salvador there were 903 homicides of persons aged 0 to 19 in 2009, 806 in 2010, and 507 in 2011, according to the Office of the State Attorney for the Defense of Human Rights. In 2012, according to the same source, there was a marked reduction in the number of violent deaths, which is usually attributed, among other reasons, to the "truce" among the gangs (*maras*),¹³⁶ although in general the homicide figures in El Salvador increased again sharply in 2014 and alarmingly so far in 2015. In Guatemala, according to the Office of the State Attorney for Human Rights, for the past decade, violent deaths of children have averaged 477 per year, 86 percent of them caused by firearms. Most (80 percent) of the victims were males, although the number of female victims has been rising since 2011.¹³⁷ In Honduras, according to the National Commissioner for Human Rights, between 2010 and 2013, at least 458 children under 14 years of age had died a violent death, and, according to Casa Alianza, in just the first three months of 2014, 271 children and youths under the age of 23 were killed.¹³⁸ The figures for violent deaths in the 18 to 25 year old segment are even higher, confirming that adolescents and young people are especially affected by violence.
149. In Mexico, the highest death from homicide rates are found among young people, especially the segment aged 15 to 30;¹³⁹ between 2008 and 2012, the homicide rate in the 10 to 19 year old segment more than doubled, from 1,249 to 2,662.¹⁴⁰ In Mexico there have also been reports of massacres of children and adolescents, such as that which happened in Ciudad Juárez in January 2010, in which 12 adolescents and 3 youths were murdered. In October, in the same city, there was another

¹³³ Programa de Redução da Violência Letal (PRVL), *Índice de Homicídios na Adolescência. (IHA) 2012*, Human Rights Secretariat of the Presidency of the Republic (SDH/PR), UNICEF and the Observatório de Favelas, in partnership with Laboratório de Análise da Violência (LAV-UERJ), p. 57.

¹³⁴ See the UNICEF Brazil [press release](#). See also, *Homicídios na Adolescência no Brasil, 2009-2010*, p. 11.

¹³⁵ Programa de Redução da Violência Letal (PRVL), *Índice de Homicídios na Adolescência. (IHA) 2012*, Human Rights Secretariat of the Presidency of the Republic (SDH/PR), UNICEF and the Observatório de Favelas, in partnership with Laboratório de Análise da Violência (LAV-UERJ), p. 12.

¹³⁶ Office of the State Attorney for the Defense of Human Rights of El Salvador, *Informe Especial sobre el Impacto de la Violencia en los Derechos de las niñas, niños y adolescentes en El Salvador* [Special report on the impact of violence on the rights of children and adolescents in El Salvador], 2013, pp. 35 to 37.

¹³⁷ Response to the questionnaire, p. 4.

¹³⁸ Response to the questionnaire and [IACHR press release](#).

¹³⁹ INEGI, "Estadísticas a propósito del Día Internacional de la No Violencia". National Data. 2013.

¹⁴⁰ INEGI, *Defunciones por homicidio*. [Deaths from homicide] Deaths from self-inflicted wounds are also especially numerous among young people between the ages of 10 and 29 (47.9%) and above all (over 60%) females in that age group. See INEGI, "Estadísticas a propósito del Día Internacional de la No Violencia". National Data. 2013.

massacre in which 14 adolescents and youths were murdered. Another mass murder occurred in March 2010 in the hills of the state of Durango, with 10 youths murdered, seven of whom were under 18 years of age.¹⁴¹

150. As for Venezuela, based on figures released by UNICEF and the World Health Organization, this country ranks among the top three countries of the world with the highest annual homicide rate for children and adolescents, at 20 homicides per 100,000 children¹⁴² (figure for 2012). These figures can mostly be attributed to the context of insecurity and violence the country is currently experiencing, in addition to an alleged increase of excessive and illegal use of force by State security agents. According to civil society organizations, in 2014, there were a total of 912 homicides of children and adolescents, of which 27 cases involved victims under the age of 12.¹⁴³ These same sources caution that the number of cases may be under-reported inasmuch as official figures are not available. In 2013, the figure was 838 violent deaths in this population group for the entire year. Additionally, based on information from civil society organizations, the states recording the highest violent death rates are Carabobo, Aragua, Yaracuy, Lara, Nueva Esparta, Capital District, Miranda and Vargas, all entities with significant urban hubs, “which immediately points to the dynamic of urban bands,” as noted in the organization’s report. Of the total number of adolescent males who died in violent circumstances, 98% were aged 10 to 19. The figures for violent deaths among adolescents has increased sixfold over the past 20 years.¹⁴⁴
151. Apart from those who are the direct victims of violence, very many children and adolescents witness violence in the communities where they live, experience insecurity on a daily basis, and are affected by acts of violence done to their family members or friends. The evidence is overwhelming that children who witness violence in the community run a risk of suffering psychological, health, and behavioral problems, including stress, depression and inability to concentrate, memory loss, and aggressive reactions, all of which affect their academic performance, among other consequences.¹⁴⁵
152. Although there are figures and information that convey the gravity of the situation, it is very difficult to pinpoint the precise impacts that the presence of groups dedicated to criminal activities and organized crime have on children and adolescents, due to flaws in data management and analysis systems.

¹⁴¹ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, 2011, p. 9 and the State’s response to the questionnaire.

¹⁴² UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 36.

¹⁴³ Cocuyo Effect, *Asesinatos de menores de edad han marcado lo que va de 2015*, [‘Murders of juveniles have marked 2015 so far’], May 13, 2015.

¹⁴⁴ Diario Las Americas, *En Venezuela la primera causa de muerte entre los jóvenes es la violencia*, [‘In Venezuela the number one cause of death among youth is violence’], November 20, 2014.

¹⁴⁵ *U.N. Secretary General’s Study on Violence against Children*, p. 290.

153. Likewise, the Commission is very concerned that these criminal groups with connections to drug trafficking and the ability to create situations of grave insecurity and violence are gradually taking control over other criminal activities in which the victims are children and adolescents. These include trafficking for sexual exploitation; trafficking for the purpose of exploiting people's labor; and the smuggling of migrants.

C. Youth Gangs, Violent Youth Groups and Maras

154. Youth gangs have also become a major source of fear for people in a number of countries of the region, since they are perceived as responsible for committing some of the violence and crime. However, the Commission warns about making flawed generalizations about the phenomenon of youth gangs, and points out that there are considerable differences among gangs in the region, which change rapidly. For example, we may find temporary, unorganized groups such as neighborhood gangs with a small number of members who commit acts of vandalism and petty robbery; then there are sports fans (*barras deportivas*) who may become violent under certain circumstances, and there are gangs that are much more organized and violent, such as the Central American gangs - *maras*.¹⁴⁶ There are also cases in which some gangs, bands, and *maras* are used by organized crime to assist in criminal activities.¹⁴⁷
155. The Commission notes that when addressing the gang issue, it should be borne in mind that in many cases—contrary to the views of the general public—the goals of gangs are not primarily centered on crime and violence (although they may commit crime and violence), but rather there is an important underlying component of group identity and belonging that is very strong. However, the Commission also observes with concern that some gangs and youth groups are in fact responsible for violence and crime in the community and for violating the human rights of other people, including the rights of other adolescents and young people.
156. The growth of gangs is closely related to the adolescents' socioeconomic circumstances, the backdrop of violence in which they grow up, and the trampling of rights and social exclusion in which they live.
157. A number of studies point out that, in most cases, gangs function as "spaces" for socialization among peers by providing them with a sense of identity and belonging that they do not find in other spheres in the community.¹⁴⁸ Membership

¹⁴⁶ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. 81; UNDP, Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development, pp. 106 to 114.

¹⁴⁷ UNDP, Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development, pp. 106 to 114; UNODC, Global Study on Homicide 2013, p. 42; UNODC, Global Study on Homicide 2011, pp. 48 and 53.

¹⁴⁸ For example see, Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support.

in a gang is also associated with a reaction against the exclusion and stigmatization that adolescents and youths may suffer because of their socioeconomic, ethnic or other origin. The dearth of constructive opportunities for spending free time, in cultural, recreational, or sports activities in their communities, is another factor induce children and adolescents to join gangs. Gangs also function as self-protection mechanisms against the violence and pressures they feel in their environments—their home, school, community—that may be exerted by their peers or by adults, or even by State security agents. Feelings of exclusion and frustration tend to combine in many of the adolescents who join gangs, who perceive that they are not treated equally and not given equal rights and opportunities; they feel abandoned by government institutions, which they regard as impervious to their concerns and the needs derived from their circumstances.

158. In addition, the rules of violent socialization, a model of interpersonal relationships based on power-submission, identification with masculinity based on violence, and the pervasive tolerance of violence that exists in society are all factors that children and adolescents learn and reproduce. These factors have influence in the growth of youth gangs.
159. Furthermore, gangs can provide access to material resources obtained through theft, robbery, or other criminal activities; that factor may attract adolescents who find few alternative forms of income due to their low level of education, the lack of resources for a more advanced education and the absence of job opportunities offering them the prospect of a career of their own.
160. The Commission stresses that gangs are evidence of a complex relationship between youth, social exclusion, and violence in the region.¹⁴⁹ From this perspective, the Commission considers that the spread of gangs in itself constitutes an impact on society, because a large number of the children and adolescents who decide to join them take with them a heavy burden of violence in their own circles, exclusion and the infringement of rights.¹⁵⁰
161. The Commission considers that a proper approach to the gang phenomenon first requires recognition of the fact that gangs have emerged as a consequence of certain social contexts, situations of vulnerability with respect to the exercise of rights, and the lack of appropriate policies to protect children, in addition to filling other social lacunae. Second, it is worth recalling that non-violent gangs do not pose a risk to the community; on the contrary, with appropriate support to strengthen positive and constructive aspects, they could become useful points of reference for adolescents, contributing to their personal development, creating interpersonal ties, and a sense of belonging to and being connected with the community, as well as an opportunity for healthy leisure time. Third, the

2011; *The state of the world's children 2012. Children in an urban world*, p. 44; UNDP, *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*, p. 71.

¹⁴⁹ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 81 and the *U.N. Secretary General's Study on Violence against Children*, p. 304 et seq.

¹⁵⁰ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 94 and UNICEF, *The state of the world's children 2012. Children in an urban world*, p. 44.

Commission notes that violent gangs and *maras* are an important cause of concern for the safety of the people and the enjoyment of human rights, besides influencing and threatening other teenagers.

162. Already, *maras* constitute a major security problem in Guatemala, El Salvador, and Honduras. In Belize, there are signs that Central American gangs or *maras* engaged in criminal activities could join those already operating in the country and step up the recruitment of young people;¹⁵¹ there is also concern that the phenomenon is expanding in Panama. A security and violence issue is also arising with violent "street gangs" and criminal structures in the Caribbean.
163. An investigation into the *maras* phenomenon conducted in Honduras by the National Program of Prevention, Rehabilitation, and Social Reintegration, points out that:

like all social phenomena, the emergence of *maras* and gangs is not to be explained by a single factor. The convergence of a series of risk factors, such as unsatisfied basic needs; scant access to education, in terms of both coverage and quality; the breakdown of the community-based social fabric; the limited or nonexistent facilities for youth recreation and organization; the lack of job opportunities; and an inappropriate system for handling juvenile offenders, has propitiated the emergence of these groups that are now a matter of concern for society as a whole.¹⁵²

164. The aforementioned report cites the views expressed directly by the members and former members of *maras*, who were surveyed. The main findings may be summarized as follows:

Children and adolescents find themselves attracted to *maras* for reasons to do with power, the quest for an identity, relationships among individuals who maintain close ties of solidarity and group sentiment, social recognition, respect, admiration, access to goods and money, and because *maras* constitute a supposedly easy and fast way to support oneself and have the wherewithal to do so.¹⁵³

¹⁵¹ UNDP, Human Development Report for Latin America 2013-2014. *Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 81.

¹⁵² *Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras]*, National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 13.

¹⁵³ *Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras]*, National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 28. The *maras* adopt group and identity symbols that attract children and adolescents: The *maras* have their own idiom, aesthetics, rituals to reinforce a sense of identity, and cultural tools for socialization within the gang. Thus, an idiom is cultivated within the *mara* or gang with its own particular traits, that gives the members a feeling of belonging, exclusiveness, and secrecy. They possess a verbal language (a language that uses a coded alphabet, known as "la wila"); a body language (known as "el caloo", which is like a language of signs and shapes using the hands, arms, and body); and a graphic language (using tattoos to signal the particular gang a person belongs to and his or her merits and rank, and graffiti to show and demarcate the gang's "territory.") Currently the brand symbols most visible to outsiders are becoming more flexible and tending

165. Indeed, all these elements did play a part in the emergence of the Central American *maras*. Starting in the 1980s, and with increased intensity in the 1990s, large numbers of people from Guatemala, Honduras, and El Salvador migrated to the United States. There, many of the adolescents and youths had problems integrating into the new context in United States and some joined gangs devoted to criminal activities. One of the triggers of the replication of the Californian *maras* in Central American countries was the mass deportation of undocumented migrants as of the late 90's, since many of them knew of and belonged to the well-known gangs Pandilla 18 and Mara Salvatrucha.¹⁵⁴ The limited capacity of the Central American countries to incorporate these youths into society was another factor leading to the gangs becoming embedded in those countries. The current *maras* have a lot to do with the deportations that followed to the Central American countries of adolescents and youths associated with criminal gangs in the United States.¹⁵⁵
166. Furthermore, the *maras* phenomenon has evolved and become more complex over time. Most Central American *maras* are now controlled by adults, not adolescents.¹⁵⁶ They have become collective groups of children, adolescents, youths, and adults. Their members are usually seeking to forge their identity, a social group to which they relate and in which offers mutual support, or even a means of satisfying basic material needs in contexts bereft of opportunities.
167. Nowadays, it is by no means unusual to find youths and adults associated with a *mara* who are parents and whose children also have ties to the *mara*. Those who joined the *mara* when they were adolescents or youths are now adults with children. In those cases, joining a *mara* is almost natural, with either the whole

even to disappear, particularly since the adoption of anti- *mara* laws and the criminalization of membership in a *mara* or gang. See p. 31.

¹⁵⁴ See World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 15. Also see, Situación de *maras* y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 24: "When undocumented migrants arrive in the United States, to begin with they are poor and marginalized, and have little command of the English language. That situation induced some Hondurans, like other undocumented persons, to join Californian gangs, such as Pandilla 18 and Mara Salvatrucha, either out of fear or admiration, or because they found it a new way of belonging in an unfamiliar society, or as a means of quickly satisfying their material needs and expectations."

¹⁵⁵ "When these youths returned to Honduras, the situation was hardly encouraging: endless shortages, a country unprepared for the demographic explosion among youth in that decade and unable to meet the basic needs of a society undergoing rapid [demographic] growth. In addition, hundreds of excluded youth joined these groups in the quest for identity or to be part of a group of people meeting their various needs." Status of *maras* and other gangs in Honduras. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 24. OAS, Department of Public Security, *Definition and Classification of Gangs*, p. 1 and UNDP, *Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development*, pp. 106 to 114. There had already been gangs in Honduras in the 1950s and 1960s, operating as groups of adolescents and youths who joined together to form relationships and in the quest for identity, were district-based, and occasionally clashed and committed some crimes. Those traditional *maras* used to establish their own rules, punishments, codes, and rites. However, they came and went and never became a social problem as pressing as today's *maras* in terms of insecurity and serious human rights violations. Status of *maras* and other gangs in Honduras. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 23.

¹⁵⁶ UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 81.

family or several members of the family pertaining to it as well.¹⁵⁷ In a survey of teachers in five schools in Honduras located in areas where *maras* are influential, 48 percent said they had pupils with relatives in *maras* and other gangs.¹⁵⁸ In the survey conducted with members and former members of *maras* currently in prison, all were adults, most of them parents (47 percent had one child; 18 percent two children; 29 percent between 3 and 5 children; and 6 percent between 6 and 9 children). Two of the members said they had children in juvenile detention centers for adolescents in conflict with the law.¹⁵⁹ Of the 12 adolescents between the ages of 15 and 18 who agreed to take part in the interview, 6 were already parents.¹⁶⁰ The above goes to show that the *maras* phenomenon has moved on from being an adolescent/youth issue to become a more complex social and inter-generational phenomenon.¹⁶¹

168. Estimates as to how many people belong to *maras* and other gangs differ depending on the source and are unreliable. It is difficult, therefore, to come up with accurate information as to how many children and adolescents are associated with the activities carried out by the *maras*. That said, the various estimates for *maras* in Mexico and Central America range from 50,000 to 350,000.¹⁶² In the United States, it is estimated that there were about 273,875 children and adolescents enrolled in approximately 29,900 gangs in 2011.¹⁶³ In El Salvador, according to the Ombudsman Office, gang membership has not fallen and the trend is toward whole families joining, including children, adolescents, and adults.¹⁶⁴ In Honduras, the discrepancy in the data, depending on the source, is considerable and shows the important challenges in terms of getting an estimate number of possible gang members. One possible explanation is that following the amendment of Article 332 of the Criminal Code, which criminalized the mere association of people with those groups, the groups chose to go underground and their activities

¹⁵⁷ Office of the State Attorney for the Defense of Human Rights of El Salvador, [Informe Especial sobre el Impacto de la Violencia en los Derechos de las niñas, niños y adolescentes en El Salvador](#) [Special report on the impact of violence on the rights of children and adolescents in El Salvador], 2013, pp. 53 y 54.

¹⁵⁸ 24% said they did not know and 28% did not reply. [Situación de maras y pandillas en Honduras](#) [Status of "maras" and other gangs in Honduras], p. 62.

¹⁵⁹ [Situación de maras y pandillas en Honduras](#) [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 55.

¹⁶⁰ [Situación de maras y pandillas en Honduras](#) [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 61.

¹⁶¹ OAS, Department of Public Security, [Definition and Classification of Gangs](#), p. 5.

¹⁶² Organization of American States and United Nations Development Programme (OAS-UNDP, 2011) reports in [Our Democracy in Latin America](#), Fondo de Cultura Económica, Mexico, p.182. Another study places the number of members of *maras* as between 10,000 and 300,000 in the Central America and Caribbean region, while pointing out that most sources estimate the figure at around 70,000 members, the vast majority being in El Salvador, Guatemala, and Honduras. World Bank, [Crime and Violence in Central America: A Development Challenge](#), 2011, p. 15. The UNDP's [Human Development Report for Central America 2009-2010](#). Opening spaces to citizen security and human development states that in 2006 there were 920 groups with 69,145 members in the following group of countries: Belize, Costa Rica, Guatemala, Honduras, El Salvador, Nicaragua, and Panama, p. 108.

¹⁶³ UNICEF, [Hidden In Plain Sight: A statistical analysis of violence against children](#), 2014, p. 46.

¹⁶⁴ Office of the State Attorney for the Defense of Human Rights of El Salvador, [Informe Especial sobre el Impacto de la Violencia en los Derechos de las niñas, niños y adolescentes en El Salvador](#) [Special report on the impact of violence on the rights of children and adolescents in El Salvador], 2013, p. 74.

became more complex and less visible (for instance, the gangs gave up their traditional ways of dressing and speaking in order not to draw attention to themselves).¹⁶⁵ This situation makes it even more difficult to gain access to objective and reliable information.

169. As for Panama, the Human Development Report for Central America 2009-2010 estimated that, in 2006, Panama had 94 youth gangs and 1,385 youths enrolled in gangs.¹⁶⁶ At that time, Panama was the Central American nation with the fewest gang members. By early 2013, according to reports by the Integrated Criminal Statistics System (SIEC),¹⁶⁷ there were an estimated 7,500 youths enrolled in 334 youth gangs in Panama, which means that since 2006, some 1,000 youths per year had joined the youth gangs: an indication that current policies and the Anti-Gang law have failed to have the desired effect.¹⁶⁸
170. In the Caribbean, so-called "street gangs" come in various guises and cannot be lumped together in a single category. What is particularly worrisome is that some of them have become more violent and structured due to the presence of organized crime networks and easy access to firearms.¹⁶⁹ The Jamaican police has identified 268 "gangs" and roughly 3,900 members; in Trinidad and Tobago the police reckon there are 95 "gangs" with approximately 1,269 members; in Antigua and Barbuda, the number of gangs is estimated at 15 and members at between 264 and 570. For its part, Barbados has reported 150 "gangs" and 4,000 members.¹⁷⁰ According to a Trinidad and Tobago study, based on information provided directly by some 2,300 children and adolescents of school age, 42 percent had joined a gang for friendship, 29.4 percent were looking for security and protection, 8 percent for economic reasons, 5.9 percent because they already had a family member in the gang, and 14.7 percent for other reasons.¹⁷¹
171. Regarding the average age at which children and adolescents join gangs, in Honduras a survey of 99 detained former members of *maras* found that typically (80 percent of those interviewed) the entry age range was between 11 and 20. More specifically, the information elicited from those surveyed was that 36 percent joined *maras* when they were between 11 and 15 years old, while 44 percent did so between the ages of 16 and 20.¹⁷² In a few cases (4 out of the 99), children of just 8 years old had joined a *mara*, a situation they described as follows: "we were

¹⁶⁵ Situación de *maras* y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 39.

¹⁶⁶ See UNDP, *Human Development Report for Central America 2009-2010. Opening spaces to citizen security and human development*, p. 108.

¹⁶⁷ SIEC documents 201 gangs nationwide, April 3, 2013.

¹⁶⁸ See, UNDP, *National Report on Human Development, Panamá 2014*, p. 86.

¹⁶⁹ UNDP, *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*, p. 46.

¹⁷⁰ UNDP, *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*, p. 69.

¹⁷¹ UNDP, *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*, p. 71, Figure 3.1.

¹⁷² Situación de *maras* y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 57.

adopted";¹⁷³ a much small percentage (2 cases out of 99) admitted to joining when they were nearly 30 years old.¹⁷⁴ However, the same study found that first contact with a "mara" begins before actual entry, given that one starts as a sympathizer, then there is a process of induction prior to becoming a member.¹⁷⁵

172. Generally speaking, children and adolescents associated with Central American *maras* perform a variety of functions or tasks depending on the degree to which they pertain to the *mara*, according to its internal operational rules. The *mara* assigns tasks depending on the extent of a member's initiation. Thus "would-be" members are told to keep watch on entry points into the district or neighborhood, while "novices" (*novatos*) perform extortion duties, such as collecting the "war tax" on the streets from taxi and microbus drivers.¹⁷⁶ Children and adolescents associated with the *maras* may also be directly involved in acts of violence, such as kidnappings, assaults, and murders,¹⁷⁷ as well as clashes with members of other gangs and with the police and security forces.
173. There are often situations in which children and adolescents are pressured, threatened or beaten to force them to collaborate with the *mara* controlling the district where they live. According to the testimony of one male adolescent taken by the Office of the State Attorney for the Defense of Human Rights of El Salvador, "and there is pressure on young people who do not belong to that gang or are not part of it to become part of it because, the gang members tell us: if you live here you have to join us, otherwise you're one of the others."¹⁷⁸ Adolescents also point out that the security forces associate them with the *mara* controlling the neighborhood, just because they live on its turf. Girls and female adolescents are also pressurized and threatened into having emotional and sexual relations with members of the *mara* and are victims of sexual violence.¹⁷⁹ Children and adolescents living in violent communities are highly exposed to becoming victims of it because of the behavior of *maras* and violent gangs, operations by the security forces, and, in general, due to the insecurity created around them.

¹⁷³ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011. p. 10.

¹⁷⁴ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 57.

¹⁷⁵ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 27-29. According to this report, "Young people joining a gang undergo, before they are accepted a socialization and indirect indoctrination process based on imitating the conduct and behavior of the gang groups. (...) Usually the "would-be" members are at the threshold between childhood and adolescence. (...) The process may last several years as the child assimilates the *mara's* patterns of behavior and values. The child is then evaluated to determine whether he or she can join and the level of trust and participation he or she will have within the structure of the gang. The steps are from "sympathizer" to "candidate" to "novice," before becoming a "full-time gangster" or, eventually, a "leader or head."

¹⁷⁶ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 28.

¹⁷⁷ U.N. Secretary General's Study on Violence against Children, p. 304.

¹⁷⁸ [Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador](#), issued by the Office of the State Attorney for the Defense of Human Rights, 2013, p. 53.

¹⁷⁹ [Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador](#), issued by the Office of the State Attorney for the Defense of Human Rights, 2013, pp. 54 and 55.

174. Gangs pose a threat of violence against children and adolescents in the community but also against the children and adolescents associated with the *mara*. That is to say, the existence of gangs leads to acts of violence and coercion not only directed at other children, adolescents, and adults outside the group, but also inside the gang, as evidenced by violent rites of initiation and violent acts against members considered to have betrayed the gang,¹⁸⁰ or to have not followed orders, or to have broken the gang's internal rules. Punishments for failure to comply with internal rules and codes and desertion from the gang or *mara* may even include murder of the member.¹⁸¹
175. The children and adolescents who join gangs or *maras* may also find themselves exposed to acts of violence by the police or army carrying out internal security operations, by individuals or groups of private individuals (self-defense groups, paramilitary, or "social cleansing" or extermination squads), as well by private security guards.
176. The Commission also notes that male adolescents and youths pertaining to poorer socioeconomic strata and living in areas under the control or influence of *maras* or violent gangs are typically assumed to be members of them, simply because they are adolescents or because of their physical appearance. There are a number of prejudices based on ethnic origin, skin color, and other stereotypes relating to clothing, tattoos, physical presence in a particular place, language, and adolescent codes of communication. In some environments, the mere presence of groups of adolescents in public spaces, such as parks, squares, or other open surroundings, at certain hours, leads to them being regarded by the community and by police as a "potential source of problems" or as a "danger." These stereotypes expose all children living in areas affected by violence to controls, abuse, violence, and discrimination.
177. In short, the Commission underscores the fact that children, adolescents, and youths are among the groups hardest hit by insecurity, violence, and crime. The relation between adolescence and various forms of violence is usually only analyzed from a "juvenile violence" aspect in which adolescents are depicted only as perpetrating the violence (victimizers). Nevertheless, the Commission stresses the need to emphasize that children and adolescents are victims deprived of the special protection to which they are entitled under the international human rights treaties for guaranteeing their rights. That does not preclude measures being taken to hold adolescents responsible when they commit acts against the criminal law: measures that are in accordance with international human rights standards, appropriate, and consistent with the objective of rehabilitation and reintegration into society.

¹⁸⁰ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), p. 30. The "rite of passage" or "baptism" usually consists of a violent act, such as being subjected to a beating by the permanent members of the *mara*, or it may be accompanied by other activities to prove bravery and loyalty to the *mara* that will become his or her "new family."

¹⁸¹ [Situación de maras y pandillas en Honduras \[Status of "maras" and other gangs in Honduras\]](#), p. 26. "There is strict discipline. There is no tolerance of disrespect in the group. If some code of the organization is violated, punishment is severe and may sometimes lead to the death of the transgressor." [U.N. Secretary General's Study on Violence against Children](#), p. 304.

178. In the Commission's opinion, the absence of public policies that address the risk factors in the emergence of violent gangs and the involvement in them of children and adolescents and that focus on boosting protection and prevention means that these kinds of violent gangs will continue to proliferate, become better organized, go on recruiting children and adolescents, and become more complex phenomena posing additional challenges to security, democratic institutions, and the protection of human rights.
179. The Commission considers that the various kinds of threats of citizen security need to be addressed through differentiated responses that take the specific characteristics and causes of each phenomenon into account. Moreover, the responses provided by the State under its prevention, control, and law enforcement functions must give priority to protection and effective guarantees for children and to the restitution of their rights.

D. Violence on the Part of State Security Forces

180. In the environments we have described, the activities undertaken by State security forces to control and crack down on insecurity often lead to clashes and violence. The Commission is concerned at the high levels of violence generated by State security forces themselves in a number of countries in the region, including violence resulting from illegal operations.
181. According to international human rights law and the position maintained by the Commission, security force operations must be conducted with strict adherence to rules and regulations governing the legitimate and proportional use of force and in compliance with protocols and standards for operations designed to guarantee protection for persons not involved in the confrontation. Accordingly, the Commission has urged States to regulate the use of legitimate force by State security bodies strictly in line with international human rights standards and to establish the conditions and limits on the use of force through provisions that have the force of law. The Commission also welcomes the fact that some countries in the region have adopted protocols and regulations to govern operation in scenarios in which children and adolescents are present, with a view to complying with the extra duty to protect that segment of the population. However, the Commission has received information indicating that the region still faces major challenges in this respect.
182. The illegitimate or excessive use of force and the discriminatory treatment of certain groups of adolescents by police officers have been reported as a concern in all the countries in the region. Common situations reported to the Commission include police controls and operations against certain people based on ethnical and socioeconomic profiling; acts of intimidation; arbitrary arrests; the illegitimate and excessive use of force; and cases of cruel, inhuman or degrading treatment. To a lesser, but extremely worrying, extent, in some countries in the region there are reports of cases of torture, forced disappearances, and extrajudicial executions. This is very largely due to deficiencies in the processes involving the recruitment

and hiring, training and equipping of police personnel (with a disturbing tendency to militarize some security units); the absence of protocols in line with international standards and insufficient supervision; and the lack of effective measures to prevent abuses and to investigate and punish their perpetrators.

183. The Commission observes with concern that in a number of countries of the region, there are situations in which State security forces commit violence against adolescents who belong to social groups that are associated with a lack of security, or against adolescents who are detained in the commission of a criminal offense. In this regard, the Inter-American Court of Human Rights (hereinafter the "Inter-American Court," "Court," or "I/A Court H.R.") has been emphatic in pointing out the obligations of the States in terms of respect for and promotion of the rights of children and adolescents:

(...) if the State had elements to believe that "street children" are affected by factors that may induce them to commit unlawful acts, or has elements to conclude that they have committed such acts, in specific cases, it should increase measures to prevent crimes and recurrence. When the State apparatus has to intervene in offenses committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to "allow them to play a constructive and productive role in society".¹⁸²

184. The Commission is aware that cases of police violence and abuses are probably under-reported, given that the official statistics do not faithfully reflect the level of violence that adolescents experience at the hands of State security forces because few complaints are filed and because of the absence of government offices keeping records of this kind of information.
185. The Commission also notes that the assignment of citizen security tasks to the army in some States has increased the levels of violence in those countries leading to more use of illegal or excessive force, more cases of torture, more arbitrary arrests, and more cases of extrajudicial executions and forced disappearances. In our region, citizen security tasks are assigned to the army in Mexico, Guatemala, Honduras, El Salvador, Trinidad and Tobago, and Venezuela, while in other countries, such as Brazil, several aspects of public security are entrusted to the military police (in some shanty towns, the highly militarized Police pacification Units, or UPP, are charged with combating organized crime). In Chile and Guyana, the police in charge of regular law enforcement are also a militarized structure. In other countries, such as the United States, while civilian police are responsible for internal security, in some municipalities and states it is highly militarized in terms of equipment and operational tactics, which is conducive to the use of force and the excessive use of force.¹⁸³

¹⁸² I/A Court of Human Rights, *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, Judgment of November 19, 1999 (Merits), para. 197.

¹⁸³ See the hearing *Reports of Racism in the United States Justice System (Ex officio)*, 153rd session of the IACHR, Monday, October 23, 2014.

186. Regarding police violence against adolescents, the Commission continues to be extremely concerned at cases occurring in Argentina, for instance, despite that country's policy of zero tolerance and its efforts to overcome the legacy in State security forces from the period of dictatorship. According to information received by the Commission, torture and cruel, inhuman, and degrading treatment by State agents (the police and prison personnel) continue, be it during detention of adolescents believed to have committed a crime, during police custody, during interrogation, in detention centers and prisons, or in public spaces. Public Defenders' Offices (*Defensorías Públicas*) in the provinces of Buenos Aires, Santa Fe, and Chubut have kept detailed figures on police violence in general and against adolescents in particular.¹⁸⁴ Between March 11 and July 10, 2014, the Public Defenders' Office for Buenos Aires Province recorded an increase of 241 percent in the numbers available for the previous six months of cases of torture and cruel, inhuman, and degrading treatment of persons under 18 years of age (100 cases in four months); of the total number of victims, 19 percent were under 18 years of age, but by the following period the figure had risen to 27 percent. These data are a sample of the level of police violence experienced by adolescents in districts and shantytowns hit by violence and poverty. However, the figures disguise considerable under-reporting, given that many adolescents prefer not to denounce police violence for fear of reprisals or because they have no trust in the justice system. According to data reported to the Commission, between July 11 and December 31, 2014, the Public Defenders' Office of Buenos Aires was informed of 485 cases of police violence in Buenos Aires Province. In 275 of those cases, the victims asked defense office to keep what had happened confidential.¹⁸⁵
187. Also, with respect to Argentina, that the Commission was told that in some provinces the police detain adolescents and take them to police stations to check their records. In addition, the Commission's attention has been told that adolescents are detained for allegedly having committed offenses and taken to police stations where signed statements are taken without the presence of a defense lawyer and that there is a risk of their being subjected to cruel, inhuman, and degrading treatment and torture during interrogation in the police stations, as is allegedly happening in some places.¹⁸⁶
188. In Brazil, the military police is responsible for several aspects relating to security. The number of deaths occurring during military police operations, especially in cities like Sao Paulo and Rio de Janeiro, is extremely high. Despite efforts by the Sao Paulo and Rio de Janeiro state authorities to implement measures to improve the performance of security forces and avoid abuses, the facts continue to give cause for concern. According to data published by a civil society organization and based on official figures, between 2009 and 2013, there were 11,197 civilian

¹⁸⁴ It is worth pointing out that the provinces of Buenos Aires, Santa Fe, and Chubut account for 48% of Argentina's total population.

¹⁸⁵ See the hearing on *Citizen Security and Reports of Torture in Argentina*, 154th session of the IACHR, Thursday, March 19, 2014.

¹⁸⁶ Written documentation provided by the Ombudsperson's Offices of the provinces of Buenos Aires, Santa Fe, and Chubut on the occasion of the hearing on *Citizen Security and Reports of Torture in Argentina*, 154th session of the IACHR, Thursday, March 19, 2014.

deaths at the hands of police, on and off duty.¹⁸⁷ In the first nine months of 2014, 436 people died in police operations in the state of Rio de Janeiro and 505 in the state of Sao Paulo.¹⁸⁸ In that violent environment, every year children and adolescents, above all in the shantytowns, are habitually wounded or killed in security forces operations. The Commission has been told that the police routinely report many of these deaths as the result of shoot-outs between the police and alleged members of criminal organizations or as legitimate acts of self-defense. In Brazil, such cases are known as *“autos de resistência.”* Given the atmosphere of violence triggered by criminal organizations, it is plausible that some police homicides result from legitimate use of force. However, others are said to be covered-up extrajudicial executions.¹⁸⁹ The deficiencies in the way investigations are conducted to throw light on the circumstances surrounding the deaths, despite the existence at times of circumstantial evidence pointing to the arbitrary or illegal use of forces, add to suspicions that a number of those deaths may constitute covered-up extrajudicial executions. Moreover, the high number of deaths reported during clashes, compared with the number of people wounded in them also suggests the possible existence of extrajudicial executions.¹⁹⁰ The Commission has been told that covered-up judicial executions are commonplace in the states of Sao Paulo and Rio de Janeiro, and also occur in other states in Brazil.¹⁹¹

189. In Brazil, too, torture and cruel, inhuman, and degrading treatment by State security agents continue to pose a very serious problem. Between January 2012 and June 2014, the National Human Rights’ Office (Ouvidoria Nacional dos Direitos Humanos) received 5,431 complaints of torture and of cruel, inhuman, and

¹⁸⁷ See Fórum Brasileiro de Segurança Pública *Anuário Brasileiro de Segurança Pública 2013*, p. 42.

¹⁸⁸ Human Rights Watch, *World Report 2015*, p. 115.

¹⁸⁹ See the hearing during the 153ed session of the IACHR, *Reports of Police Violence and Forced Disappearances in the state of Goiás, Brazil*, October 31, 2014, and the audience held during the 154th session of the IACHR, *Reports of Killings of Young People of African Descent in Brazil*, Friday, March 20, 2015; Human Rights Watch, *Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo*, and Amnesty International, *You killed my son. Homicides by military police in the city of Rio de Janeiro*, 2015.

¹⁹⁰ According to investigations carried out by Human Rights Watch, “The high number of alleged resistance killings—11,000 cases since 2003—is all the more dramatic when viewed alongside the comparatively low numbers of non-fatal injuries of civilians and police fatalities in those same incidents or areas of operation. (...) For example, the São Paulo Shock Police Command (Comando de Policiamento de Choque), a special operational branch of the military police containing the Rondas Ostensivas Tobias Lethal Force 4de Aguiar (ROTA), among other units, killed 305 people from 2004 through 2008 and left only 20 injured. In all of these alleged “shootouts,” the police suffered one death. Similarly, in Rio, units operating in 10 particular military policing zones were responsible for 825 “resistance” killings in 2008 while suffering 12 police fatalities. In one of the zones of operation, police “resistance” killings actually outnumbered all other intentional homicides in 2007.” Human Rights Watch, *Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo*, p. 4 and Amnesty International, *You killed my son. Homicides by military police in the city of Rio de Janeiro*, 2015, p. 99.

¹⁹¹ See the hearing during the 153ed session of the IACHR, *Reports of Police Violence and Forced Disappearances in the state of Goiás, Brazil*, October 31, 2014, and the audience held during the 154th session of the IACHR, *Reports of Killings of Young People of African Descent in Brazil*, Friday, March 20, 2015, and Human Rights Watch, *Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo*, pp. 1 to 8 and Amnesty International, *You killed my son. Homicides by military police in the city of Rio de Janeiro*, 2015, p. 99.

degrading treatment. Eighty-four percent of the incidents reported occurred in police stations, prisons, jails, and juvenile detention centers.¹⁹²

190. The Commission has also received troubling information about deaths that occurred in Brazil allegedly at the hands of off-duty military police officers. The patterns appear to be similar: massacres were carried out allegedly related to the death of a police officer days earlier. Amnesty International has gathered testimony that points to this.¹⁹³ The IACHR has recently shown grave concern over the events that took place on August 13, 2015, when 18 people were killed and six were wounded in attacks carried out by armed individuals in eleven places in the state of São Paulo, in the space of three hours. According to some testimony and what was caught on security camera videotapes, the unknown individuals carrying weapons went from one place to the next by automobile, and asked about criminal records; they fired on people who said they had such a record. According to reports from the authorities, the same vehicle was seen in several of the places where the crimes took place. One of the lines of investigation is about the possible responsibility of military policemen, in an alleged reprisal for the killing days earlier of a military police officer.¹⁹⁴
191. In the United States, the main concerns regarding excessive or arbitrary use of force have to do with militarization of the police in terms of the equipment they use, the type of training they receive, the operational protocols they follow, and the difficulties encountered in bringing to trial and establishing criminal liability in cases of officers guilty of abuses or excessive use of force. There is evidence, too, that the principal victims of police abuses are minorities, particularly persons of African descent and Latinos.¹⁹⁵
192. In El Salvador, the Ombudsman Office has documented abuses and of the illegal and arbitrary use of force by State security bodies—the Civilian national Police and the Army—against children, adolescents, and youths living in zones where *maras* are present and the army has been assigned public security duties.¹⁹⁶ The Ombudsman attributes this state of affairs to failure to apply operational protocols

¹⁹² Human Rights Watch, [press release](#); Human Rights Watch, [World Report 2015](#), p. 116; Amnesty International, [You killed my son. Homicides by military police in the city of Rio de Janeiro](#), 2015, p. 99.

¹⁹³ For example, in November 2014, in the city of Belém, state of Pará, at least 10 people died, allegedly at the hands of off-duty military police officers, according to Amnesty International. The residents of the neighborhood told Amnesty International that some military police vehicles had closed off the streets before the homicides took place, and that some unidentified automobiles and motorcycles had threatened and harassed the people living there. There were indications that the homicides could have been committed in reprisal for the death of a police officer: Amnesty International, [You killed my son. Homicides by military police in the city of Rio de Janeiro](#), 2015, p. 99.

¹⁹⁴ IACHR, [Press Release 92/15: IACHR Condemns Killings in São Paulo, Brazil](#), August 21, 2015.

¹⁹⁵ See the IACHR hearing on [Reports of Racism in the United States Justice System \(Ex officio\)](#), 153rd session, Monday, October 23, 2014 and IACHR [press release](#).

¹⁹⁶ The United Nations Committee on the Rights of the Child has voiced the same concern: "The Committee shares the concerns expressed by the Committee against Torture in 2009 about allegations of torture and ill-treatment of children, including at the hands of law enforcement officials, especially in the context of the fight against "maras". The Committee is also concerned at the allegations of ill-treatment against children in street situations as well as in centres of deprivation of liberty." Concluding Observations, [CRC/C/SLV/CO/3-4](#), 17 February 2010, para. 43.

and procedures guaranteeing observance and protection of the rights of children and adolescents, as well as to the stigmatization of children and adolescent living in neighborhoods controlled by *maras* or where *maras* are active. The Ombudsman notes that "they are mistreated by the police because they are accused of being members of gangs, the police constantly search, harass, and beat them."¹⁹⁷

193. In Guatemala, the National Institute of Forensic Sciences (INACIF) reported 5,924 violent deaths in 2014: an average of 16 homicides per day, 2.4 percent down on the figure for 2013.¹⁹⁸ Nevertheless, homicides increased by 8.8 percent in the capital, where most of the Task Forces (comprising National Civilian Police [PNC] and Army units) operate. The participation of the army in citizen security activities increased in 2014, over 2013, and the joint Army-PNC patrols were mostly manned by military personnel.¹⁹⁹ The presence of Citizen Security Reserve Squads expanded from 2 to 12 departments within the space of two years²⁰⁰ and the army officially assumed responsibility for helping to safeguard detention centers.²⁰¹ The Army's participation in joint task forces with the PNC does not appear to have resulted in visible improvements in security. Thus, homicides ("delitos contra la vida") increased by 5 percent and 38.8 percent, respectively, in the areas where the Maya task force (Zone 18) and the Kaminal task force Zones 7 and 12) operate, despite having declined in 2012 when those task forces started operations.²⁰²
194. Mexico has also witnessed the militarization of security tasks. Since 2007, the Federal Government has undertaken military operations against drug traffickers, for the express purpose of halting the expansion of their control over the national territory. However, the effects in terms of violence in the country show no reduction. Rather, the figures point to an increase in the number of homicides and in the number of violations of other human rights and procedural guarantees. At some point in recent years, some cities in the states of Chihuahua and Guerrero have been deemed to be the most violent in the world. All in all, some 34,000 murders are estimated to have been committed by a range of actors in 2007 to

¹⁹⁷ Office of the State Attorney for the Defense of Human Rights of El Salvador, Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador, 2013. The report states that the homicide rate for women (i.e. murders of women) doubled between 1999 and 2009, from 7.7 to 13,5 per 100,000 inhabitants, pp. 58 ff.

¹⁹⁸ INACIF data for January to December, 2013. See the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, A/HRC/28/3/Add.1, of 12 January 2015, paras. 41 and 42.

¹⁹⁹ Composition: 19,096 PNC personnel versus 20,113 army personnel, at September 2014. See the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, A/HRC/28/3/Add.1, of 12 January 2015, paras. 41 and 42.

²⁰⁰ Source: Ministry of Defense. See the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, A/HRC/28/3/Add.1, of 12 January 2015, paras. 41 and 42.

²⁰¹ Government agreement 301-2014 See the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, A/HRC/28/3/Add.1, of 12 January 2015, paras. 41 and 42.

²⁰² There were 32 more homicides in the areas patrolled by the Kaminal task force than in the period before it began its patrols. PNV, January to August, 2014. See the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, A/HRC/28/3/Add.1, of 12 January 2015, paras. 41 and 42.

2010. The victims included more than 1,000 children.²⁰³ Regarding the pervasive violence in Mexico, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the United Nations Working Group on Enforced or Involuntary Disappearances, have all expressed their concern at the levels of violence caused by State agents.²⁰⁴ Even though Mexico has introduced several promising reforms to avoid the excessive or arbitrary use of force by State security agents, implementation is still sluggish.

195. According to a study conducted by CECODAP, in 2014 in Venezuela, there was an 80% increase in the number of cases of children and adolescent victims of some type of assault by officers of the different State security bodies, which rose from 132 to 238 incidents between that year and the prior year. Most of the reported cases occurred within the context of confrontations with police (45%), 13% of the victims were physically or psychologically mistreated by an officer during the political protests, which took place over 2014, and 21 were killed (8.82%). Most of the victims were adolescent males.²⁰⁵ Extrajudicial executions of children and adolescents by firearms in Venezuela and the impunity in which a considerable number of these crimes remain are reason for deep concern.²⁰⁶
196. The use of excessive force and arbitrary actions by the police and the army results in a loss of the community's trust in the police as an institution and in the State security forces. Surveys conducted by several agencies, as well as interviews conducted by the IACHR's Rapporteurship on the Rights of the Child,²⁰⁷ reveal that for a considerable number of adolescents the police is an institution to be beware of, rather than an institution to go to in search of protection.²⁰⁸ This state of affairs makes it difficult to engage in activities designed to prevent and reduce insecurity and police violence because cooperation and trust are vital for work of that kind. Thus, abuses and arbitrary or illegal use of force by the police not only entail serious infringements of human rights. They actually hamper the ability of the State to reduce insecurity and violence.

²⁰³ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico]* Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts], January 2011, p. 9.

²⁰⁴ On the pervasive atmosphere of violence in Mexico and the alleged abuses and excessive or illegal uses of force perpetrated by State security bodies, see the Preliminary Observations on the visit to Mexico by the Rapporteur on Extrajudicial, Summary or Arbitrary Executions The report corresponding to the mission to Mexico of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [A/HRC/28/68/Add.3](#), 29 December 2014; The report on the Visit to Mexico of the United Nations Working Group on Enforced or Involuntary Disappearances, [A/HRC/19/58/Add.2](#), of 20 December 2011.

²⁰⁵ [CECODAP Año 2014. Somos Noticia. Un panorama sobre las diferentes formas e violencia contra niños, niñas y adolescentes \(2015\).](#)

²⁰⁶ El Universal, [Impunidad llega a la ONU](#), 28 de junio de 2015 y El Universal, [Violencia adolescente](#), 22 de marzo de 2015.

²⁰⁷ Conversations by the Rapporteur with groups of children and adolescents in Brazil, Honduras, and Mexico.

²⁰⁸ UNDP, [Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America](#), p. 182.

197. In Brazil, for instance, a study by a nongovernmental human rights organization found that 80 percent of Brazilians are afraid of being tortured if they are detained by the police. That was the highest percentage shown in that study comparing several States. It was followed by Mexico with 64 percent, Peru with 54 percent, and Argentina with 49 percent.²⁰⁹ Another study shows that in Brazil only 33 percent of interviewees went to the police when they were victims of a crime or witnessed one.²¹⁰
198. The Commission also observes that part of the problem lies with a perception in today's society of an alleged dichotomy between the observance of human rights and citizen security, which leads to a degree of acceptance of instances of police abuse . The nonexistence and/or failure to apply regulations and protocols in police operations that conform to human rights standards; the army's involvement in citizen security; the absence of adequate internal and external oversight mechanisms; and the impunity enjoyed in a large number of police abuse cases help to perpetuate this current, worrying state of affairs.
199. The Commission acknowledges and greatly appreciates the commitment and work of State security bodies and judicial authorities who work in sometimes dire conditions, including being subject to threats from organized crime and having to fear that they themselves or members of their family could end up as victims of attacks by those criminal groups, and it urges States to coordinate mechanisms to curb the abuse and corruption that discredit these authorities and cause a loss of trust in them.

E. Risk Factors and on Protection Factors against Violence

200. States' efforts to prevent and reduce violence against children and adolescents in the environments described above need to give due consideration to the complexity of the phenomenon and the concurrence of multiple causal factors and interconnected impacts. The abundance of cumulative vulnerabilities, rights violations, and different forms of victimization complicate interventions and the approach, and yet it is vital not to look at the different forms of violence and infringements of rights independently and in isolation from one another. To craft violence prevention and reduction policies, it is imperative to identify both risk and protection factors that impact the phenomenon. In addition, mechanisms are needed to gather sufficient and accurate information and the data required for a thorough analysis of the issues.²¹¹
201. Several risk factors have to do with the structural causes of social exclusion, so attention needs to be paid to the social conditions associated with the violence and

²⁰⁹ Information provided during a thematic hearing before the IACHR on Citizen Security and Reports of Torture in Argentina, 154th session of the IACHR, on March 19, 2014.

²¹⁰ Fórum Brasileiro de Segurança Pública Anuário Brasileiro de Segurança Pública 2014, p. 7.

²¹¹ See, for instance, UNICEF, Hidden In Plain Sight: A statistical analysis of violence against children, 2014, p. 46. See also, World Bank, Crime and Violence in Central America: A Development Challenge, 2011, p. 18.

widespread insecurity, such as the unequal distribution of social, economic, and political power. Thus the absence of the conditions needed to ensure effective exercise of civil, political, economic, social, and cultural rights violates the human rights of people, while at the same time sowing the seeds of insecurity and the root causes of violence.

202. The United Nations Global Study on Violence against Children concludes its analysis by saying: "In view of the strong relationship between poverty, inequality, social exclusion, and violence against and among children in community settings," it is clear that there is a pressing need for States to comply with their obligation to respect human rights, especially social, economic and cultural rights that have long been neglected.²¹² The strong and clear relationship between high levels of social exclusion, economic inequality and the high homicide rates and widespread violence suggests that policies that reduce social exclusion and economic inequalities, or minimize their effect, may be very useful to prevent that violence.²¹³
203. In addition to the foregoing, there are other factors that play a protective role for children, and when these factors are absent or weak, child protection may be at risk. The most important of these factors are the family; the school and education; the community, and the existence of activities and spaces set aside for young people to help recognize them as stakeholders in society. Several research studies indicate that the dismantling of social institutions close to the child that perform a protective and caring function, such as the family, the community, and school, constitutes a major risk factor for the child.²¹⁴
204. With respect to the family, normally it should be the principal unit for the protection and care of children. However, when adequate parental care is not available or the family faces challenges in providing it, it can expose the child to situations of vulnerability. The Commission has spoken of the need for States, pursuant to their duties under Article 19 of the American Convention and Article VII of the American Declaration (right to special protection for children) in connection with Article 17.1 of the Convention and Article VI of the Declaration (right to protection of the family), to formulate and implement policies that protect families with a view to helping them to comply with their responsibilities to protect and care for the children. Accordingly, the Commission has, for example, recommended making day care services available that make it possible to combine a job with parental responsibilities, as well as support and advisory services from the pre-natal phase and through the process of a child's upbringing.
205. Nevertheless, the Commission also acknowledges that a considerable portion of acts of violence occur within the family.²¹⁵ These multiple forms of violence within the family range from corporal punishment administered by the parents to other

²¹² U.N. Secretary General's Study on Violence against Children, pp. 310.

²¹³ U.N. Secretary General's Study on Violence against Children, pp. 328 and 329.

²¹⁴ World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 18.

²¹⁵ 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, October 17, 2013, paras. 115 to 129.

forms of abuse, neglect, and physical, psychological, and sexual violence. Domestic violence against children and adolescents is particularly serious because it violates their right to physical and psychological integrity, in addition to undermining the protection and comprehensive care a child should receive from his or her family. Domestic violence is one of the reasons children and adolescents may decide to leave their homes or join a gang, in the hopes of finding the respect, recognition, and support they do not get in their family. The IACHR welcomes the progress that has been made in many countries of Latin America in prohibiting corporal punishment in the home, but notes with concern that a high number of countries of the Caribbean keep laws and regulations on the books, which enable parents to exercise “moderate discipline” or discipline for child-rearing purposes, in other words, statutes lenient on physical violence against children, thus violating their right to physical integrity. The Commission urges States to change this type of legislation.²¹⁶

206. Certain groups are of particular concern, such as lesbian, gay, bisexual and intersex adolescents (hereinafter, LGBTI), who are vulnerable to rejection by their families because of deep-rooted social stereotypes and discrimination against them. Many LGBTI adolescents are compelled to leave their homes, making them vulnerable to a number of risks, and may view joining a gang as a protection measure and a chance to belong to something. Beyond these concerns, there is also evidence that *maras* and other criminal and/or violent groups commit violent acts against LGBTI persons, with those that are homeless or mostly living on the streets being the most at risk.²¹⁷
207. Adolescent girls, who are victims of sexual violence in their homes, often resort to leaving home as a measure to put an end to the abuse, when there is no other alternative left to protect themselves or other alternatives are inaccessible or unreliable. Many of these girls do not dare to report these incidents because of the stigma attached to them and because victims are blamed for this form of violence. This situation makes them vulnerable to other forms of violence and human rights violations. The IACHR notes with concern that this is one of the regions most affected by sexual violence and a high incidence of this violence takes place in the home.
208. In our region, migration has meant that a large number of children and adolescents live with only one of their parents or else with relatives because their parents have migrated. The dismantling of family structures caused by migration can affect the family's ability to provide a protective environment. Countries in the Caribbean and Central America have been hit particularly hard by migration. Caribbean societies have a high degree of mobility, exporting the largest proportion of its constituent population in percentage terms, in the world.²¹⁸ In many English speaking Caribbean small island States, the number of migrants per population

²¹⁶ See *End Corporal Punishment Initiative*.

²¹⁷ IACHR, *Violence against LGBTI persons in America* [in Spanish only], OAS/Ser.L/V/II.rev.1, parr. 168, 278 y 279.

²¹⁸ *The Impact of Migration on Children in the Caribbean*. UNICEF Office for Barbados and Eastern Caribbean. Paper No 4, August 2009.

outnumbers by ten the world's average figure. Migration in the region includes internal (rural-urban), intra regional as well as extra regional migration. Migration has long been utilized by Caribbean people as a strategy for economic survival. While remittances are significant for the majority of households in Caribbean and in Central American countries, increasing evidence is showing that migration has profound negative impacts on the family, and even more on the child in particular. The reality is that children in the Caribbean and in Central America are significantly affected by migration. Children who have been left behind as well as migrant children are placed in a particular vulnerable situation affecting their well-being, health and education. They are at a higher risk and more vulnerable to abuse, neglect and exploitation including sexual abuse, child labor and trafficking. Many children left behind by their migrant parents suffer from depressions, abandonment and low self-esteem that can result in behavior problems such as engaging in violence and crime or running away from home. In some cases these children face a permanent struggle against feelings of low self worth, insecurity and neglect throughout their childhood and well into their adulthood. They are at increased risk to suffer from health and nutritional problems, poor academic performance and interruption of schooling due to additional responsibilities at home²¹⁹.

209. Furthermore, in some countries, a pervasive lack of security and violence have meant that numerous children have lost one of their parents and for many one of the parents is in prison. The participation of the family, or of one or more of its members, in illegal activities also constitutes a risk factor for the child because it learns to regard such a situation as natural and routine.
210. There is an abundant literature, including health sector studies, analyzing family-related risk structures that influence aggressive behavior in children and adolescents. They point, in particular, to the fact of children having themselves been victims of physical, psychological, or sexual abuse; having suffered physical or emotional neglect; having had little parental supervision; being disciplined by the parents in an erratic, irritable, or explosive manner; having corporal punishment as a form of discipline; and having witnessed during childhood acts of domestic violence.²²⁰ All those circumstances violate the rights of children and adolescents.
211. Schools play a huge part as a protection factor for children, although under some circumstances they may turn into a significant risk factor. On the one hand, they provide one of the main environments for a child's social interaction and learning. Despite that positive role, however, schools are not always in a position to provide a protective environment for children, or one conducive to learning.

²¹⁹ *The Impact of Migration on Children in the Caribbean*. UNICEF Office for Barbados and Eastern Caribbean. Paper No 4, August 2009.

²²⁰ See, for instance, the article that resulted from research done by the Health System Research Center at Mexico's National Public Health Institute. The study examines the prevalence of harm to health done by interpersonal violence in adolescents and youths, using a sample of 48,000 primary school pupils and 52,000 secondary school students. Valdez-Santiago R, Hidalgo-Solórzano E, Mojarro-Íñiguez M, Rivera-Rivera L, y Ramos-Lira L, *Violencia interpersonal en jóvenes mexicanos y oportunidades de prevención* [Interpersonal violence among Mexican youths and opportunities for prevention], 2013.

212. Education is essential for all facets of a child's personal development and for generating opportunities for developing a career and self-sufficiency. Access to a quality education, on an equal footing with other children and adolescents of the same age, is vital for breaking the cycle of social exclusion and inequality. However, access to quality education is by no means guaranteed for the segments of the population most affected by inequities and exclusion.
213. Schools can be a decisive protective factor for children and adolescents when they provide an environment that not only takes care of a child's formal education but also heeds his or her rights and empowers and prepares the child to exercise and defend those rights. Schools also provide an important environment for socialization and interaction with others, in which a child can build positive and constructive interpersonal relationships. So, schools constitute a powerful protective factor when they manage to provide the wherewithal for children and adolescents to develop their own personality, both as individuals and as members of a group or community. Here, it is worth recalling that one of the features of gangs is that they function as points of reference, providing a sense of belonging to a social group for children and adolescents that cannot find it elsewhere.
214. Schools provide one of the principal spheres for a child's "social apprenticeship," a space where children acquire behavior patterns and learn social norms. Schools have the potential to correct the stereotypes and violent forms of relationship found in society, but they can also reproduce and reinforce them. That being so, every possible step should be taken to boost the quality of the education and training given to school personnel, so that they develop the ability to teach respectful and inclusive forms of relationship and ways of managing interpersonal conflict peacefully and constructively.
215. In addition to the above, schools have a part to play in early detection of other risks or vulnerable situations for children, for instance by spotting signs of domestic violence, or other forms of abuse, exploitation, or neglect a child may be experiencing. Schools can then coordinate timely intervention with other specialized services in the child protection system. The existence of counselors and/or social workers in schools affords greater protection for children and adolescents because they can identify situations of vulnerability early on, provide support, and ensure timely referral to other specialized services.
216. It is also true that schools may also pose risks for children, when they suffer violence at the hands of fellow students or school staff. Sometimes the treatment children receive from teachers or other schoolchildren can be humiliating, intimidating, or even violent, and lead to absenteeism or to a child dropping out of school altogether, which is an infringement of the child's right to personal integrity and to education. In countries in the region corporal punishment at school is not expressly prohibited by law; in many places it is still a common and accepted practice.²²¹ School violence is one form of expulsion and children and adolescents who do not attend school are more likely to join a gang and to be recruited by

²²¹ See current status of legislating [banning corporal punishment](#) in school.

groups engaged in criminal activities. The Commission observes that many schools in the region lack adequate plans for helping to prevent and respond to violence.

217. In Mexico, for instance, a survey of 48,000 primary school pupils and 52,000 secondary school students found that 19 percent of the children at primary school and 11 percent of the students attending secondary school admitted to using physical violence against their peers, and 11 percent and 7 percent, respectively, admitted to having stolen and used threats. It has also been documented that 30.9 percent of male students and 23 percent of female students are victims of bullying.²²²
218. Educational establishments are also vulnerable to pressures exerted by *maras* and other gangs, in which case they may become places where children are exposed to gangs and may join them. In other cases, the presence of security guards or police, as a mechanism to impose discipline in certain schools considered to be "problematic", can expose children to contact with the criminal justice system. In such situations, school becomes a risk factor rather than providing protection through measures and services tailored to the needs of children who are especially vulnerable due to their family and social circumstances.
219. Likewise, it is important to ensure that vocational and professional training is available to prepare adolescents and develop their skills for entry into the job market. It is also important to guarantee access to employment opportunities that meet basic minimum standards and benefits, and earnings that match the work done. Low quality education, barriers to entry into the labor market for adolescents, and job instability are all risk factors conducive to children and adolescents being recruited for illicit activities and joining criminal groups.²²³
220. In Guatemala, according to the 2013 Status Report of the State Attorney for Human Rights, 1,498,454 children between the ages of 4 and 17 (28 percent of the population in that age range) do not go to school: an alarming statistic.²²⁴ In Honduras, according to a survey conducted by country's National Institute of Statistics (INE), 48 percent of children aged 5 and 6 and 89 percent of those aged 7 to 12 attend school. For the group aged 13 to 15, the school attendance figure drops to 39.53 percent, and it fall further (to 27.6 percent) for adolescents aged 16 to 18.²²⁵ In Mexico, there are about one and a half million children between the ages of 5 and 17 who neither attend school nor work. They are the segment most easily recruited and exploited by drug traffickers and organized crime.²²⁶

²²² Valdez-Santiago R, Hidalgo-Solórzano E, Mojarro-Íñiguez M, Rivera-Rivera L, y Ramos-Lira L, Violencia interpersonal en jóvenes mexicanos y oportunidades de prevención [Interpersonal violence among Mexican youths and opportunities for prevention], 2013.

²²³ U.N. Secretary General's Study on Violence against Children, p. 328.

²²⁴ Response to the questionnaire, p. 12.

²²⁵ Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 23.

²²⁶ Red por los Derechos de la Infancia de México (REDIM), Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the

221. The authorities need to put more effort into preventing violence at school: both violence between peers and that practiced by teachers or others. All schools should have a plan for preventing and responding to violence. Several countries in the region have, accordingly, established the need to strengthen schools as a safe and protective environment for children, through action plans, programs, and protocols.
222. The community in which children live may also constitute a protective factor, provided there are social rules that respect children and their rights as well as ties of solidarity and cooperation among the members of the community.²²⁷ In contrast, pervasive violence in social norms, values and attitudes becomes a potent, structural risk factor for children and adolescents. A social culture that tolerates violence as a way of relating to others and resolving conflicts, together with the acceptance and ready availability of firearms, means not only that children and adolescents are exposed to high rates of violence: they will also be caught up in it. A UNDP report found that the use of weapons by adolescents in Caribbean countries had increased (it did not specify the type of weapons). The survey states that 359 adolescents (21.7 percent) of those surveyed bear arms at night, 269 (16.2 percent) bear arms in the daytime, and 538 (32.5 percent) keep arms at home, which creates greater insecurity conducive to more violence.²²⁸
223. In practice, public areas or spaces afford one of the settings in which children and adolescents are most exposed to violence, especially in certain communities, zones, and districts. The loss of public spaces for socialization due to violence makes it less likely for communities to develop social ties and be more protective and caring for children and adolescents. At the same time, the physical deterioration of those public areas in itself constitutes a risk factor when, for instance, there is no public lighting or children have to go through isolated areas.
224. Some risk factors have to do with less tangible elements, such as alienation or a sense of exclusion among certain groups, especially when it comes to children and adolescents. Dealing with those factors entails promoting opportunities for integration, the forging of positive identities, participation, empowerment and dialogue, as well as facilities and activities for constructive use of free time, leisure, cultural activities, and recreation. All of the above help create a sense of belonging, inclusion, and citizenship, as well as helping to overcome divisions and tensions based on social class, ethnicity, gender, and other factors.²²⁹
225. Situational factors that raise the risk of violent behavior include easy access to and abuse of alcohol and drug use, in addition to the fact that, being addictive, they are detrimental to the health of children and adolescents. Accordingly, policies and awareness and educational campaigns targeting adolescents and youths are

Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts], 2011, p. 36.

²²⁷ U.N. Secretary General's Study on Violence against Children, para. 285.

²²⁸ UNDP, Caribbean Human Development Report 2012. Human development and the shift to a better citizen security, p. 49.

²²⁹ UNDP, Caribbean Human Development Report 2012. Human development and the shift to a better citizen security, pp. 9 and 10.

important ways to make them conscious of the risks that certain habits pose for their health and induce them to diminish their use of these substances. Free and confidential information and counseling services for adolescents and young people reinforce this approach and should complement measures already in place in the region, such as bans on selling alcohol to children.

F. Groups Particularly Exposed to Violence

226. Some groups of children and adolescents run an especially high risk of suffering discrimination and violence, including those who live on the street, members of certain ethnic groups, as well as those from certain socioeconomic strata.²³⁰ Children and adolescents who live in marginal urban areas - and come from traditionally excluded and poor social sectors—and those from certain ethnic groups face discrimination and violence every day. Of them, male adolescents constitute the group most caught up in the violence. Adolescents are used and exploited by groups and organizations for their criminal activities or join *maras* and other violent gangs. The violence against these male adolescents is perpetrated by a variety of actors, ranging from armed groups present in the area or controlling the area and engaging in criminal activities to paramilitary or self-defense groups, extermination or social "cleansing" squads, private security guards, and even members of the State security forces. Violence against certain groups is to some extent socially tolerated and accepted, because those social groups are blamed for the overall lack of security; the impunity associated with many of these acts of violence encourages their replication as well as the persistence of discrimination against those groups.
227. The murders of and violence perpetrated against street children have been documented in several countries in the region, prompting the Commission to repeatedly voice its concern. The United Nations Global Study on Violence against Children found evidence that children and adolescents living on streets are easily recruited by criminal groups and drug traffickers,²³¹ are victims of police abuse and violence, and are targeted by extermination and self-defense squads. The Inter-American Court and the Commission consider that the rights of street children are infringed in two ways: first, because the State has been unable to guarantee effective exercise of their recognized rights—exposing them to extremely vulnerable situations—and, second, because of the violence perpetrated against them as street children, which the State has been unable to prevent.²³²
228. In several countries in the region, persons of African descent still have to contend with structural, institutional, and interpersonal racism. There are indications that racism is exacerbated toward youth and adolescents, especially males. Despite commitments by governments and the progress made in legal frameworks, in

²³⁰ U.N. Secretary General's Study on Violence against Children, p. 287.

²³¹ U.N. Secretary General's Study on Violence against Children, pp. 295 and 296.

²³² I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 191.

practice dismantling racial discrimination is still a slow process. The roots of this lie in the structural discrimination historically endured by Afro-descendants. But, in addition to that, negative stereotypes, reinforced by poverty and political, economic, social, and cultural marginalization, are still prevalent in the region. Adolescents and youths, are, in addition, perceived as being associated with "insecurity" and "dangerousness." All that means that Afro-descendant children and adolescents, especially males, are disproportionately subject to acts of violence. They are more at risk from gangs and groups dedicated to illicit activities, from acts of violence and discrimination by State security forces, and from violence by "cleansing" or extermination squads, paramilitary organizations, and private security guards.

229. Thus, in Brazil, a study conducted by the National Youth Secretariat and the Secretariat for Policies to Promote Racial Equality²³³ shows that today homicides are the chief cause of death among young Brazilians aged between 15 and 29²³⁴ and that most victims of homicides are young male Afro-descendants living on the outskirts of cities and in under-developed metropolitan areas.²³⁵ In 2002-2012 the overall homicide rate in Brazil remained fairly constant,²³⁶ but the percentage of homicide victims among the Afro-descendant population increased, especially among adolescents and youths, while the share of other population groups diminished.²³⁷ According to the Ministry of Health, in 2012 more than half the 56,337 victims of homicide were youths (30,072, or 53.37 percent). Of them, 77.0 percent were Afro-descendants and 93.3 percent were male.²³⁸ The study also reveals that while the number of murders of white people fell from 19,846 in 2002 to 14,928 in 2012 (a decline of 24.8 percent), the number of murders of Afro-descendants increased from 29,656 to 41,172 in the same period (an increase of 38.7 percent).²³⁹ The victimization of Afro-descendant youths index rose from 79.9 in 2002 to 168.6 in 2012: that is to say, for every white youth murdered, there were three Afro-descendant youths murdered. In some municipalities, the proportion was 5:1.²⁴⁰ Between 2002 and 2012, the number of homicides increased in 20 of Brazil's 27 states, and in seven of them the increase was huge: Maranhão, Ceará, Paraíba, Pará, Amazonas, Rio Grande del Norte, and Bahia, especially in the last two, where youth mortality rates due to homicide tripled. In the case of Rio de Janeiro, while homicide levels dropped, there were still 56.5 homicides for every 100,000 youths, a rate that is still very high. As regards female Afro-descendant adolescents in Brazil, between 1997 and 2007 homicides in this

²³³ National Youth Secretariat of the General Secretariat of the Presidency of the Republic and the Secretariat for Policies to Promote Racial Equality, *Mapa da Violência: Os jovens do Brasil, 2014*.

²³⁴ According to the 2013 Youth Ordinance (*Estatuto da Juventude*), a youth is someone aged between 15 and 29.

²³⁵ *Mapa da Violência: Os jovens do Brasil, 2014*, Preface.

²³⁶ In 2002, the national homicide rate was 28.9 for every 100,000 inhabitants; in 2012 it was 29.0 per 100,000 inhabitants.

²³⁷ In 2002, the national homicide rate was 28.9 for every 100,000 inhabitants; in 2012 it was 29.0 per 100,000 inhabitants. These overall figures do not reflect the changes relating to the victims of the homicides. *Mapa da Violência: Os jovens do Brasil, 2014*, p. 150.

²³⁸ *Mapa da Violência: Os jovens do Brasil, 2014*, Preface.

²³⁹ *Mapa da Violência: Os jovens do Brasil, 2014*, pp. 150 to 152.

²⁴⁰ *Mapa da Violência: Os jovens do Brasil, 2014*, pp. 150 to 152. See also, UNICEF, p. 42.

segment of the population, particularly in the 10-19 years of age range, also increased (by 55 percent).²⁴¹

230. At the end of its visit to Brazil in December 2013, the United Nations Working Group of Experts on Persons of African Descent stressed that institutional racism and discrimination continue to pervade every level of the security and justice systems. The members of the Working Group drew attention to the high level of violence and crime besetting Brazilian society and expressed its concern at the human rights violations perpetrated by the security forces, especially the military police, against Afro-descendant youths and adolescents. The Working Group highlighted the existence of extrajudicial or arbitrary executions, a disproportionate number of arrests and over-representation in the prison population, in addition to obstacles to access to justice for persons of African descent when their rights are violated. The Working Group also ascertained that many of those violations went unpunished.²⁴²
231. The Federal Government of Brazil told the Commission that part of its response to the problem was to implement the "Plan Juventud Viva" - A Plan to Prevent Violence against Black Youths,²⁴³ an initiative designed to promote and guarantee the rights of Afro-Brazilian young people and prevent violence against them. The Plan accords priority to interventions in the states and municipalities with the highest rates of homicides against Afro-Brazilian youths. In 2011, the Plan covered 142 municipalities, accounting for 70 percent of the homicides against Afro-descendant youths.²⁴⁴ The Plan testifies to considerable coordination among ministries (as many as 11 ministries are currently involved), states, municipalities, and civil society organizations. The Commission welcomes these major prevention efforts but considers that these initiatives need to be accompanied by decisive actions to eradicate police violence and abuse and eliminate impunity for acts of violence.
232. As regards the United States, the Commission is concerned at the high levels of armed violence in that country and its unequal impact on minorities, especially Afro-descendants and Latinos.²⁴⁵ A similar concern has been expressed by the United Nations Committee on the Elimination of Racial Discrimination.²⁴⁶ According to the information received, Afro-Americans comprise 13 percent of the population, but make up 50 percent of the victims of homicides, 82 percent of

²⁴¹ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 46.

²⁴² Preliminary Observations of the United Nations Working Group of Experts on Persons of African Descent, at the end of its visit to Brazil, from 3 to 13 December 2013.

²⁴³ Plano Juventude Viva – Plano de Prevencao a Violencia Contra a Juventude Negra. Plano Juventude Viva – Plano de Prevencao a Violencia Contra a Juventude Negra.

²⁴⁴ Mapa da Violencia: Os jovens do Brasil, 2014, Preface.

²⁴⁵ See IACHR press release after conducting its visit to Florida, Louisiana and Missouri, United States, October 16, 2015.

²⁴⁶ UN Committee on the Elimination of Racial Discrimination, Concluding observations of the combined seventh to ninth periodic reports of the United States of America, CERD/C/USA/CO/7-9, 25 September 2014, para. 16.

which are committed using firearms.²⁴⁷ Reportedly, Afro-American males are seven times more likely to be killed by a firearm than white males.²⁴⁸

233. With respect to the United States, instances have also been ascertained of illegitimate or disproportionate use of force by federal, state, and local police, and there is particular concern regarding the use of lethal force.²⁴⁹ The disproportionate use of force and the use of lethal force are more commonly used against ethnic minorities, such as Afro-descendants and Latinos. Nevertheless, there is a marked need for reliable and complete data regarding the victims of police actions, broken down by ethnic origin, age, social background, and gender, given that currently there are gaps in this kind of information that make it difficult to monitor what police do, including possible discriminatory practices based on ethnic origin and physical appearance.
234. In addition, regarding the United States, the Commission is concerned that on a day-to-day level unequal and discriminatory treatment continue to be meted out to certain groups by agents of the security forces and in the criminal justice system²⁵⁰. For example, the New York Police Department was recently found guilty of a pattern of racial profiling when "stopping and searching" individuals:²⁵¹ a practice replicated in other states and municipalities across the country. It is also clear that the discretionary powers granted to police and prosecutors under the current regulations exacerbate discrimination against certain groups.²⁵² According to information received by the Commission, the circumstances alluded to above particularly affect youths and adolescents, although the Commission notes once again that the lack of a data gathering and analysis system impedes proper monitoring of these issues and makes it difficult both to adopt appropriate measures to eliminate ethnic or racial discrimination and to evaluate their effectiveness.

²⁴⁷ [Press release](#) of the United Nations Committee on the Elimination of Racial Discrimination.

²⁴⁸ [Press release](#) of the United Nations Committee on the Elimination of Racial Discrimination.

²⁴⁹ See the IACHR hearing on [Reports of Racism in the United States Justice System \(Ex officio\)](#), 153rd session, Monday, October 23, 2014 and IACHR [press release](#). Along the same lines, see the Concluding observations of the combined seventh to ninth periodic reports of the United States of America. [CERD/C/USA/CO/7-9](#), 25 September 2014, para. 17, and Concluding observations of the United Nations Human Rights Committee on the Elimination of Racial Discrimination on the fourth periodic report of the United States of America, [CCPR/C/USA/CO/4](#), April 23, 2014, para. 11. See also the [views of civil society organization](#) on this subject in See [IACHR press release](#) after conducting its visit to Florida, Louisiana and Missouri, United States, October 16, 2015.

²⁵⁰ See [IACHR press release](#) after conducting its visit to Florida, Louisiana and Missouri, United States, October 16, 2015.

²⁵¹ The United Nations Human Rights Committee expressed a similar view in its Concluding Observations on the fourth periodic report of the United States of America, [CCPR/C/USA/CO/4](#), of April 23, 2014, para. 7.

²⁵² Likewise, see the concern expressed by the United Nations Committee on the Elimination of Racial Discrimination [CERD/C/USA/CO/7-9](#), 25 September 2014, para. 20, and Concluding observations of the United Nations Human Rights Committee on the fourth periodic report of the United States of America, [CCPR/C/USA/CO/4](#), April 23, 2014, para. 17. [Falling Further Behind: Combating Racial Discrimination in America](#), an alternative report submitted by civil society organizations following up on compliance with international obligations entered into by the United States under the International Convention on the Elimination of All Forms of Discrimination. Presented by the Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, the Lawyers' Committee for Civil Rights Under Law and the National Association for the Advancement of Colored People (NAACP).

235. In Panama, there is also a problem of racial disparity associated with the operations of State security forces. The Commission is concerned at the high levels of violence in Panama in recent times and at the "blame" being put on Afro-descendant adolescents and young people. Along the same lines, following its official visit to Panama from February 14 to 18, 2013, the United Nations Working Group of Experts on Persons of African Descent voiced its concern at the particularly vulnerable situation of adolescents and young people of African descent. In particular, it found that youths and adolescents of African descent encounter barriers to accessing a quality education and a lack of job opportunities that amount to social exclusion. Moreover, a gang culture is gaining ground in their communities due to the social exclusion. The Working Group also observed that they are victims of racial discrimination on the part of the security forces and enter prison at a very early age.²⁵³
236. In general, the countries in the region lack sufficient information to provide an accurate breakdown of the characteristics of both victims and victimizers. Security and justice institutions responsible for compiling homicide data in the countries of the region do not always gather pertinent information, or else the regulations do not clearly specify what kinds of data need to be recorded. In Guatemala, for instance, the Public Prosecution Service (*Ministerio Público*) reported 451 violent deaths of children in 2013, but in 60 percent of the cases it failed to record any information about a possible crime involved or other details that could help establish the profile of the victim.²⁵⁴ Better classification of victims and a description of the circumstances surrounding their death would be useful for formulating more effective public prevention and response policies, better tailored to protection needs. They would also help to detect possible patterns of discrimination against particular social groups.
237. The Commission is worried about stereotyped perceptions in society that lead to certain social groups being blamed for the insecurity and violence. Such perceptions exacerbate social exclusion and discrimination against those groups. The existence of possible cases of victimization of members of one social group by members of another, especially when they receive broad media coverage, may make divisiveness based on social class and ethnic origin worse, which in turn reinforces those perceptions and generalizations regarding those "responsible" for the insecurity and violence. Both factors replicate and reinforce the vicious circle of exclusion and violence.
238. The widespread existence of such stereotyped views may, as we have said, lead to violence, abuse, and arbitrariness toward these groups. The Commission is further concerned at the persistence of some degree of "social justification" of cases in which State security forces use force illegally or of acts of violence by individuals against persons belonging to these social groups. These situations only make discrimination against certain groups, violence and social instability worse.

²⁵³ [Press release](#) of the United Nations Working Group of Experts on Persons of African Descent at the end of its official visit to Panama from January 14 to 18, 2013.

²⁵⁴ Response to the questionnaire, p. 6.

G. Differences Based on Sex and Gender

239. Numerous studies have found that the types of violence experienced by children and adolescents vary according to age and gender.²⁵⁵ In general, while it is males that bear the brunt of the violence and activities of organized crime, both as victims and as aggressors, it should be noted that female adolescents are also seriously affected by violence and organized crime: female adolescents are victims of violence in these contexts, but at the same time, have roles that link them to the activities of organized crime, some are traditional gender roles such as caregiving, but others are as active members of criminal groups.
240. On this matter, The United Nations Secretary-General Study on Violence against Children detected gender differences in the infringement of children's rights in environments marked by insecurity and violence., in the following terms

Sex differences in adolescent homicide rates raise questions about how male socialization and norms regarding masculinity contribute to violence against children in community settings. In almost all countries (and with the exception of young children whose male/female homicide rates are similar), homicide rates among children are substantially higher among male than females. Homicide rates among boys aged 15 to 17 are nearly three times greater than those among girls of the same age. In the Americas, Africa, and Eastern Europe, where some of the highest adolescent homicide rates are found, the rates among 15 to 17-year-old boys are two to six times higher than those among girls of the same age group.²⁵⁶

241. Research shows that in many societies some violent conduct among male children and adolescents, whether in the form of physical or verbal aggression, is considered part of their learning process and a normal way for boys to prove or demonstrate their manhood. Stereotypes regarding masculinity, related to social tolerance of violence, foster relationships based on power and physical superiority among boys and male adolescents, especially at the onset of adolescence. This partly would explain why levels of violence are higher among boys and male adolescents, both as aggressors and victims, while girls and female adolescents are much more likely than males to be victims of sexual and gender-based violence²⁵⁷. The Commission notes that the principal victims of homicides due to interpersonal violence are still male adolescents and youths²⁵⁸. In some countries differences based on gender are very obvious, in Brazil, for instance, the risk of dying a violent

²⁵⁵ See UNODC, *Global Study on Homicide 2013*, pp. 13 and 14.

²⁵⁶ U.N. Secretary General's Study on Violence against Children, p. 289.

²⁵⁷ See Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence against Children, pars. 29, 30 and 31; OAS, *Report on Citizen Security in the Americas 2012*, pp. 21 and 22; UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, pp. 53, also p. 46 and pp. 54-55; UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, pgs. 34 and 38.

²⁵⁸ UNODC, *Global Study on Homicide 2013*, pp. 28 to 30.

death is 12 times higher for male youths than for young women²⁵⁹ while the hemisphere-wide average is 7 times more likely.²⁶⁰

242. However, the IACHR is concerned over the increase in the region of homicides of female adolescents that are allegedly linked to the activities of violent groups and organized crime. The main difficulty in understanding the factors underlying the increase in the murders of young women is that many of these cases are not duly investigated to establish the identity of the perpetrators or the motive for the crime, although many appear to be associated with organized crime.
243. According to some studies, the above elements would also explain the greater propensity among boys and male adolescents, as opposed to girls, to join gangs, *maras*, or criminal groups.²⁶¹ The entry of female adolescents into gangs is generally associated with their relationship with a gang member and with traditional gender roles, such as caregiving, or activities such as transporting or hiding drugs or arms, and surveillance. While it is true that there are some gangs made up exclusively of girls, there are usually not many of them. However, it is worth noticing that the IACHR has been informed of trends that would seem to indicate a greater level of active participation in and leadership of these groups by adolescent females.
244. In Honduras, according to data garnered in the study conducted by the National Program of Prevention, Rehabilitation, and Social Re-integration, approximately 20 percent of all active members of *maras* are female, meaning that there are 872 female members based on the figures used in that study. However, that same study points out that one would have to add to that figure an indeterminate number of female adolescents and women who are partners of members of the *maras* who may possibly conduct activities related to those of the *mara*.²⁶²
245. The functions performed by girls and female adolescents in a *mara* are generally related to specific tasks and it is not unusual for women to hold leadership positions. As a general rule, the functions assigned to female adolescents and women within a *mara* have to do with the transportation of drugs, arms, money, or messages; the sale of drugs; or with collecting taxes and acts of extortion. Carrying out these kinds of activities involves considerable exposure and the risk of being identified and detained by the police.²⁶³
246. Inside the *mara*, female adolescents are also subjected to violence. In Honduras, it was found that female adolescents "are the sexual object of any member of the

²⁵⁹ Programa de Redução da Violência Letal (PRVL), *Índice de Homicídios na Adolescência. (IHA) 2012*, Human Rights Secretariat of the Presidency of the Republic (SDH/PR), UNICEF and the Observatório de Favelas, in partnership with Laboratório de Análise da Violência (LAV-UERJ), p. 60.

²⁶⁰ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, pp. 34 and 38.

²⁶¹ *U.N. Secretary General's Study on Violence against Children*, p. 304. See also, UNDP, *Caribbean Human Development Report 2012*. Human development and the shift to a better citizen security, p. 47.

²⁶² *Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras]*, National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 43 and 67.

²⁶³ *Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras]*, National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 68.

mara or gang that wants to have sex with them, provided they agree to it, but room not to agree is limited according to who it is who asks for the sexual favor: if it is a head of a group, there is no freedom to decide, no option to refuse."²⁶⁴ The study also stresses that "if a woman has a sexual partner in the gang, she must above all be faithful to him. She cannot accept flirting from another male who is not her partner. If she does, she commits a serious offense, which is punished, often with death. The same is not true of males, who can have as many sexual partners as they please, provided that the head of the group permits it."²⁶⁵ Female members of a *mara* are not allowed to have a partner who is not a member of the *mara*. Disobeying this rule is also punished.²⁶⁶

247. The Commission has been told that female adolescents are frequently threatened by members of *maras* or other gangs, at school or in the community, in an effort to force them to have sexual or emotional relationships with them, and there are even reports of young and adolescent girls being murdered for refusing.²⁶⁷ In addition, the Commission has also monitored situations in which the level of physical and sexual violence against female adolescents and women in the community has increased or is high, due to the presence of armed groups engaged in criminal activities.²⁶⁸ For instance, in its reply to the questionnaire, Mexico stated that female adolescents are exposed to sexual violence and that that was a major problem in those environments, although the State says there is no exhaustive official information on the subject.
248. The IACHR has been monitoring the situation of adolescent girls and women in specific contexts, where there is a high incidence of violence, such as Ciudad Juárez, Mexico.²⁶⁹ The Commission was able to observe how conditions of discrimination and structural violence against adolescent girls and women are alarmingly aggravated when they exist side by side with the activities of criminal organizations. Adolescent girls and women are particularly at risk of different forms of sexual violence, exploitation, cruel, humiliating and degrading treatment, and homicides by members of criminal groups, who use their position of power to

²⁶⁴ Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 68. A UNICEF study found that girls and female adolescents associated with gangs were more likely to be victims of sexual violence. UNICEF, Hidden In Plain Sight: A statistical analysis of violence against children, 2014, p. 46.

²⁶⁵ Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 69.

²⁶⁶ Situación de maras y pandillas en Honduras [Status of "maras" and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 69.

²⁶⁷ Interviews of the Rapporteurship with young and adolescent girls during its visit to Brazil, Honduras, and Mexico, in connection with the preparation of this report. See also "Situación de maras y pandillas en Honduras"[Status of *maras* and other gangs in Honduras], National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 69. A UNICEF study found that girls and female adolescents associated with gangs were more likely to be victims of sexual violence. Hidden In Plain Sight: A statistical analysis of violence against children, 2014, p. 46.

²⁶⁸ Take , for example, the plight of female adolescents and women in Ciudad Juárez. IACHR, The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be free from violence and discrimination, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003.

²⁶⁹ IACHR, The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be free from violence and discrimination, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003.

commit violence against them. The Commission has found that these acts of extreme violence against adolescent girls and women are influenced by the culture of discrimination against women existing in society. The position of dominance held by some criminal organizations, in conjunction with the lack of capacity of the security forces and the justice sector to investigate and identify those responsible, creates a climate of impunity, which contributes to recurrence of similar fact patterns. Additionally, the Commission has voiced concern over the fact that authorities stigmatize and provide differential treatment to adolescent girls based on their socio-economic, ethnic origin, or alleged behavior and other stereotypes and, therefore, do not open investigations with the required rigor and diligence.

249. In Colombia, the Office of the Ombudsman estimates that among children and adolescents associated with criminal structures, approximately 30% are young and adolescent girls.²⁷⁰ According to this Office, there is evidence that different structures engaged in criminal activities sexually exploit persons under the age of 18, especially young and adolescent girls, in addition to using them in other illegal activities, such as drug trafficking and sales. Based on information from the Office of the Ombudsman, little girls under 14 years of age, including 10 to 12 year-olds, are being kidnapped by criminal gangs and forced to have sexual relations with the members of these bands, exposing them as well to pregnancy and sexually transmitted diseases.²⁷¹
250. There are also criminal groups in the region that engage in trafficking in persons for sexual exploitation purposes. According to statistics, girls and female adolescents are especially likely to be targeted by the networks engaging in trafficking in persons.²⁷² The socioeconomic and institutional factors underlying the insecure and violent environments in the region also affect the prevalence of cases of trafficking in persons and sexual exploitation and, in general, the high rates of violence against girls and female adolescents. The fact that violence against women is still systematic and widespread, socially tolerated, and often unpunished is, in the Commission's opinion, a matter of grave concern that needs to be adequately addressed in an holistic manner, particularly in settings where it interacts with the presence of organized crime. As the IACHR has found on many occasions, for States, the duty of due diligence in protecting human rights means the obligation to prevent, investigate, punish and provide redress for all acts of

²⁷⁰ Ombudsman's Report: "Transitional Justice: Children's Voices in Peace-Building in Colombia," November 2014, p. 62. According to information appearing in the press in 2015, the criminal gangs emerging after the process of demobilization of the paramilitary groups is making conditions ripe for a surge in sexual exploitation of young and adolescent girls; the modus operandi include a new phenomenon known as "express kidnapping," when young and adolescent girls are abducted for a few hours for purposes of sexual exploitation, as is occurring especially in Buenaventura and in the Department of Risaralda. El Espectador, May 4, 2015, [Bandas criminales también están reclutando a menores, según la Defensoría](#). ['Criminal gangs also recruiting minors, according to the Office of Ombudsman'].

²⁷¹ Ombudsman's Report: "Transitional Justice: Children's Voices in Peace-Building in Colombia," November 2014, p. 62. El Espectador, May 4, 2015, [Bandas criminales también están reclutando a menores, según la Defensoría](#). ['Criminal gangs also recruiting minors, according to the Office of Ombudsman'].

²⁷² UNDP, [Caribbean Human Development Report 2012](#). Human development and the shift to a better citizen security, pp. 31 and 32.

violence, including those that occurred with the participation of non-State actors in certain circumstances.

251. Migration flows in the region and the growing number of unaccompanied migrant children and adolescents are also factors that have led to the surge in trafficking for sexual exploitation purposes, especially affecting young and adolescent girls. The fact that so many children and adolescent travel unaccompanied makes them especially vulnerable and easy prey for traffickers.²⁷³ On the border between Guatemala and Mexico, for example, the drug cartels also control migration flows and human trafficking and sexual exploitation networks. Ironically, many of these children and adolescents are migrating precisely to escape violence in their countries of origin, only to end up in exploitation networks.²⁷⁴ In short, the lack of security and the violence experienced in some parts of the region, especially Central America, associated with organized crime and exacerbated by pervasive corruption and impunity, are having an extremely detrimental effect on the ability to protect children from human trafficking and sexual exploitation, especially in respect of young and adolescent girls.
252. According to information compiled by UNODC, in Guatemala almost 90 percent of human trafficking victims are under 18 years of age.²⁷⁵ In El Salvador, the percentage was over 50 percent, in Mexico over 40 percent, in Canada less than 40 percent, and in the United States over 20 percent.²⁷⁶
253. According to information received by the Commission, in the United States there are reportedly some 100,000 U.S. children and adolescent victims of sex trafficking every years, most of them girls and adolescents of school age, Afro-descendants (approximately 55 percent) and Latinas. These young and adolescent girls usually come from poor families or have no proper family support, have been victims of domestic violence, abandonment, or neglect and/or are street children, and hence vulnerable in multiple ways.²⁷⁷ The average age in which young and adolescent girls first become victims of trafficking and sexual exploitation is between 12 and 14. Although young and adolescent girls represent the majority of victims of this type of crime, transgender children and adolescents of both sexes are also victims

²⁷³ According to information in the public domain, between January 1 and May 31, 2014, the US Border Patrol detained a record 47,017 unaccompanied migrant children all along the southwestern border of the United States, That was an almost 50% increase over the previous year. Previously, officials in the US Department of Homeland Security had estimated that some 60,000 unaccompanied migrant children had arrived in 2014. After revising the figures, the estimate could go as high as 90,000. Of the 47,017 migrant children detained so far in 2014, the vast majority (46,188) came from El Salvador (9,850), Guatemala (11,479), Honduras (13,282), and Mexico (11,577); and the remained (829) from other countries. See, for example, IACHR [press release](#).

²⁷⁴ A recent report published by the United Nations High Commissioner for Refugees (UNHCR), entitled [Children on the Run](#) found, after interviewing undocumented migrant children from Mexico and Central America in the United States, that 58% said that had been "forcibly displaced" due to violence by armed actors engaged in organized crime.

²⁷⁵ For the situation in Guatemala, see also the information provided to the Commission in connection with the thematic hearing for 154th session of the IACHR [Reports of trafficking of women and children in Guatemala](#), Thursday, March 19, 2015, as well as the [report of the OHCHR in Guatemala](#).

²⁷⁶ See UNODC, [Global Report on Trafficking in Persons, 2014](#), p. 72.

²⁷⁷ FBI Law Enforcement Bulletin: [Human Sex Trafficking, March 2011](#).

of sexual exploitation, with initial victimization occurring on average between the ages of 11 and 13.²⁷⁸ Although not all cases of human trafficking and sexual exploitation are attributable to organized criminal groups, the existence of such criminal organizations exposes children and adolescents to the risk of becoming victims of various kinds of violence and exploitation, including sexual exploitation. The Commission is concerned at the high numbers involved and the lack of visibility surrounding the problem. It regards as a serious problem the fact that in some countries, like the United States, children and adolescents who fall victim to trafficking and sexual exploitation and are induced or forced to prostitute themselves are treated as offenders under the laws governing prostitution, arrested, placed in the juvenile justice system and deprived of their liberty, instead of receiving the treatment, support, and assistance they need as victims of serious crimes. The treatment under the anti-prostitutions laws are applied despite the fact that some of the girls have not even reached the age for sexual consent yet.²⁷⁹

254. The Commission stresses that children and adolescents who are victims of trafficking and sexual exploitation must be treated at all times as victims of serious crimes and must receive the treatment, support and assistance they need.²⁸⁰ According to information provided to the Commission, around 1,000 children and adolescents are arrested for prostitution each day in the United States. While there is Federal legislation that protects the victims of human trafficking and sexual exploitation, it is not effectively applied in a majority of the states:²⁸¹ only twelve states are currently effectively protecting them as victims and not as offenders to be locked up.²⁸² The Commission urges all the State of the region to guarantee the right of children to personal safety and not to be victims of any form of violence or sexual exploitation, and to that end, that they ensure that crimes of sexual violence, trafficking and sexual exploitation of children and adolescents carry sentences that reflect the seriousness of the offense. Also, that children be considered as victims when they are placed into prostitution, and that in no case can they be imprisoned, and that they be given care and appropriate medical, social and legal services to restore all of their rights.

²⁷⁸ FBI Law Enforcement Bulletin: [Human Sex Trafficking, March 2011](#).

²⁷⁹ See the hearing in the 154th Session of the IACHR [Human Rights Situation of Child Victims of Trafficking and Sexual Exploitation in the United States](#), Monday, March 16, 2015. See also Howard N. Snyder, Ph.D., BJS Statistician, Bureau of Justice Statistics, Office of Justice Programs, U.S Department of Justice, [Patterns and Trends: Arrest in the United States, 1990-2010](#) (October 2012), p.2 y FBI Law Enforcement Bulletin: [Human Sex Trafficking, March 2011](#).

²⁸⁰ See the hearing in the 154th Session of the IACHR [Human Rights Situation of Child Victims of Trafficking and Sexual Exploitation in the United States](#), Monday, March 16, 2015. See also Howard N. Snyder, Ph.D., BJS Statistician, Bureau of Justice Statistics, Office of Justice Programs, U.S Department of Justice, [Patterns and Trends: Arrest in the United States, 1990-2010](#) (October 2012), p. 2 y FBI Law Enforcement Bulletin: [Human Sex Trafficking, March 2011](#).

²⁸¹ The Federal law to protect victims of human trafficking, known as the Trafficking Victims Protection Act (TVPA), provides that any person under the age of 18 who is induced to engage in sexual activities in exchange for money is the victim of a serious form of human trafficking.

²⁸² See the hearing in the 154th Session of the IACHR [Human Rights Situation of Child Victims of Trafficking and Sexual Exploitation in the United States](#), Monday, March 16, 2015.

255. Guatemala is a country of the region seriously affected by trafficking in children and adolescents for purposes of sexual exploitation.²⁸³ According to statistics from the Office of the Ombudsman (Procuraduría de Derechos Humanos) and information received by the Commission, from 2012 to 2013, there allegedly was a 44.4% increase in the number of victims of human trafficking. It is also claimed that this increase has had a disproportionate impact on young and adolescent girls and women. At the root of the Guatemalan context of this phenomenon lies, for the most part, the factors of inequality; poverty and extreme poverty; situations of structural violence against women and other groups; the actions of criminal organizations; and the fact that the country is a migration corridor. As for factors hampering prosecution of crimes, some of the major issues that must be addressed by the State include lack of awareness by operators of justice of what the offense of human trafficking involves, a shortage of specialized personnel and inadequate institutional capacity. Additionally, the Commission underscores the need for the State to guarantee follow-up during victims' re-entry into their communities in order to ensure their safety, and prevent them from becoming institutionalized. Because at times the offenses involved are of a transnational nature, it is crucial for Guatemalan authorities to properly coordinate with the government authorities and agencies in charge of child protection in the countries of origin of the victim, in order to make sure that the victims do not end up under the power of the victimizer once they return to their communities or are again thrust into a situation of defenselessness, abuse or neglect. Cases of complicity or corruption of government officials, as well as the levels of impunity in which cases of human trafficking remain, are of concern to the Commission. Likewise, positive efforts made by the State such as the creation of the office of the prosecutor and a specialized police unit, as well as of several protection shelters, must be properly maintained and further strengthened.
256. The Commission has indicated its concern at the extent of sexual violence targeting especially young and adolescent girls in Honduras as a result, among other factors, of insecurity and violence.²⁸⁴ According to the Observatory on Violence, with regard to sex crimes, in 2013 the most vulnerable segment was among girls and adolescents aged 0 to 19: 2,480 cases or 87.6 percent of all cases of sexual violence in the entire country. In those cases, the most common age range is 10 to 14 years: 1,094 reported cases (38.6 percent). For boys, however, the age range is 5 to 9 (3.8 percent).²⁸⁵ Given the clandestine and often transnational nature of the sexual exploitation of children, the absence of centralized and disaggregated data, and the low number of cases reported for fear of reprisals or stigmatization, the actual scope of the phenomenon is difficult to measure. Despite the lack of accurate, disaggregated, up-to-date, and verifiable statistics, the United Nations Special Rapporteur on the sale of children, child prostitution, and child pornography ascertained, during her visit to Honduras in 2012,²⁸⁶ that the child sexual

²⁸³ See thematic hearing of the 154th Regular Session of the IACHR: Reports of trafficking in women, and children in Guatemala [Denuncias de trata de mujeres, niñas y niños en Guatemala], March 19, 2015.

²⁸⁴ See IACHR Annual Report 2012, para. 338.

²⁸⁵ Observatorio de la Violencia, Mortalidad y Otros [Observatory on Violence, Mortality and Other Matters], Bulletin for January-December 2013, Edition N° 32, February 2014, p. 11.

²⁸⁶ The visit took place from August 30 to September 7, 2012.

exploitation phenomenon in Honduras, in its multiple facets, is still extensive and she noted that socioeconomic disparities, insecurity and violence render children seriously vulnerable to multiple forms of economic and/or sexual exploitation.²⁸⁷ The Commission was advised that the State had adopted the Special Law on Trafficking in Persons in 2012, but prevention and protection measures need to be reinforced to ensure that the rights guaranteed by law are effective and real in practice.²⁸⁸

257. Although homicide rates are much higher for men than for women, it is important to stress that homicide rates for women have increased markedly in the past decade in several countries in the region, including El Salvador, Mexico, Honduras, and Guatemala. In El Salvador, for example, between 2003 and 2011, the homicide rate for women rose from 7.4 per 100,000 women to 19.1 per 100,000 women. This is one of the highest rates in the world. Of all the homicides of women in 2011, 27.3 percent of the women killed were aged between 10 and 19.²⁸⁹ In Guatemala, according to Judiciary figures, there were 1,236 denunciations of femicides in 2014 and 281 complaints of other forms of violence against women,²⁹⁰ while in Mexico, according to the National Human Rights Commission, there have been 4,419 femicides since 2007.²⁹¹ In Honduras, the information available also points to a significant increase in homicides of women.²⁹²
258. The Inter-American Court has observed that gender-based murders of women is a function of “a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets and that these situations of violence are founded in a culture of gender-based violence and discrimination.”²⁹³ Therefore, it is up to the State to adopt measures to prevent, investigate and prosecute these crimes. Here the Commission recommends that States develop standardized protocols for investigating homicides considering a gender perspective. The IACHR also

²⁸⁷ See the UNICEF [press release](#) and the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid, Follow-up Mission to Honduras, [A/HRC/28/56/Add.1](#), 18 December 2014.

²⁸⁸ Communication from the State of Honduras, Official Letter No. No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras on the Draft general Report on the Human Rights Situation in Honduras.”

²⁸⁹ See: [La situación de la seguridad y la justicia 2009-2014. \[The security and justice situation between 2009 and 2014\] Entre expectativas de cambio, mano dura militar y treguas pandilleras \[Between expectations of change, a military hard line, and gang truces\]](#): the product of an investigation directed by the Instituto Universitario de Opinión Pública (Iudop) of the Central American “José Simeón Cañas” University (UCA), between August 2012 and July 2014. The [Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador](#) issued by the Office of the State Attorney for the Defense of Human Rights, 2013, states that the homicide rate for women (i.e. murders of women) doubled between 1999 and 2009, from 7.7 to 13.5 per 100,000 inhabitants, p. 34 and 38.

²⁹⁰ Public Prosecution Service (*Ministerio Público*), data as of August 2013. See also the Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, [A/HRC/28/3/Add.1](#), of 12 January 2015, pars. 52 and 53.

²⁹¹ [Preliminary Observations on the official visit to Mexico of the Special Rapporteur on extrajudicial, summary or arbitrary executions](#), from April 22 to May 2, 2013.

²⁹² [IACHR Annual Report 2012](#), Chapter IV paras. 183 and 184.

²⁹³ I/A Court Human Rights, *González et al case (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs Judgment of Monday, November 16, 2009. Series C No. 205, paragraph 133.

considers important that States adopt with strict diligence appropriate measures for preventing any form of violence against girls, adolescents and women.²⁹⁴

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In a similar way, Preliminary Observations on the official visit to Mexico of the Special Rapporteur on extrajudicial, summary or arbitrary executions, from April 22 to May 2, p. 15.

CHAPTER 4
THE INTERNATIONAL LEGAL
FRAMEWORK FOR PROTECTION
OF CHILDREN AGAINST ALL
FORMS OF VIOLENCE IN
CONTEXTS OF INSECURITY

THE INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTION OF CHILDREN AGAINST ALL FORMS OF VIOLENCE

A. *The Corpus Juris on the Human Rights of Children and Adolescents*

259. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have consistently referred in their decisions to the *corpus juris* on the human rights of children and adolescents. The term *corpus juris* on children's rights refers to the set of related basic standards intended to ensure the human rights of children and adolescents.²⁹⁵
260. The Court and the Commission have held that the *corpus juris* of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations), as well as the decisions of international human rights organs.²⁹⁶ This conception pertaining to international human rights law, and the interpretation of treaties, is particularly important for the protection and defense of the human rights of children, which has advanced substantially by the evolutive interpretation of international protection instruments.²⁹⁷ In this regard, the Court has held that:

[t]his evolutive interpretation is consequent with the general rules of the interpretation of treaty embodied in the 1969 Vienna Convention. Both this Court [...] and the European Court of Human Rights [...] have indicated that human rights treaties are living

²⁹⁵ I/A Court Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, pars. 192 to 194, and *Juridical Condition and Human Rights of the Child*, para. 24. Advisory Opinion 21/14, para. 57.

²⁹⁶ I/A Court of Human Rights, *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 199 Series A No. 16, para. 115; IACHR, *The Rights of the Child in the Inter-American Human Rights System*. 2nd ed., OEA/Ser.L/V/II.133 Doc.34, October 29, 2008, para. 39; IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., doc. 78, July 13, 2011, para. 16. 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. 32.

²⁹⁷ I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 193; and *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 199 Series A No. 16, para. 114.

instruments, the interpretation of which must evolve over time in view of existing circumstances.²⁹⁸

261. The Court and the Commission have repeatedly and consistently applied this notion of *corpus juris* in their decisions on the rights of children and adolescents in order to interpret the provisions of the American Declaration and Convention in that regard and to determine the scope of States' obligations regarding children's rights.²⁹⁹ In that regard, the Court has highlighted that the *corpus juris* on children's rights is the result of important developments in international human rights law in this field, the milestone of which was the adoption of the United Nations Convention on the Rights of the Child. That convention acknowledged children as subjects of rights and recognized their dignity as persons, as well as the special protection they deserve because of their level of development. In this connection, the Court has indicated in its jurisprudence that:

Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.³⁰⁰

262. Specifically, the Court has noted that the Convention on the Rights of the Child is the international treaty closest to outright universal acceptance, which "shows a broad international consensus (*opinio iuris comunis*) in favor of the principles and institutions set forth in that instrument, which reflects current development of this matter,"³⁰¹ having been ratified by all the Member States of the Organization of American States, with the exception of one.
263. In addition, the Commission and the Court have stated that this combination of the regional and universal human rights systems for purposes of interpreting the American Declaration and the American Convention is based on Article 29 of the

²⁹⁸ I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 193, and I/A Court of Human Rights *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 199 Series A No. 16, para. 114.

²⁹⁹ I/A Court of Human Rights, *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, para. 121; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparation and Costs. Judgment of May 25, 2010. Series C No. 212, pars. 165 to 168; *Case of Contreras et al. v. El Salvador*. Merits, Reparation and Costs. Judgment of August 31, 2011. Series C No. 232, para. 107 and 112; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 166 to 168.

³⁰⁰ I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 194. In the same vein, see I/A Court of Human Rights *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 30.

³⁰¹ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child*, para. 29.

American Convention, the Principles of the Law of Treaties, and on the consistent practice of the Court and of the Commission in this sphere.³⁰²

264. Accordingly, to interpret the meaning, content and scope of the rights of the child, in particular, in relation to Articles 19 of the American Convention,³⁰³ VII of the American Declaration,³⁰⁴ and 16 of the Protocol of San Salvador,³⁰⁵ which guarantee the right of children to special measures of protection on the part of their families, society, and the State, it is important to make reference not only to the provisions of said instruments of the inter-American human rights system but also to other international instruments that contain more specific regulations on the protection of children.
265. Accordingly, and with regard to the subject of this report, the Commission considers that the legal framework for protection of the human rights of children should take into special account, for the purposes of interpretation of the content and scope of Article 19 of the American Convention and Article VII of the American Declaration, in addition to the attendant obligations for States, the United Nations Convention on the Rights of the Child as well as the numerous international norms and standards on prevention of and protection from crime and violence, including the following: Guidelines for the prevention of crime;³⁰⁶ Guidelines for cooperation and technical assistance in the field of urban crime prevention;³⁰⁷ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)³⁰⁸ Model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice;³⁰⁹ Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime;³¹⁰ Code of Conduct for Law Enforcement Officials³¹¹ and the Guidelines for the Effective

³⁰² IACHR. Report No. 41/99, Case 11.491, Minors in Detention, Honduras, March 10, 1999, para. 72. I/A Court of Human Rights, *Case of Contreras et al. v. El Salvador*. Merits, Reparation and Costs. Judgment of August 31, 2011. Series C No. 232, para. 112. 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. 35.

³⁰³ Article 19: “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.” American Convention on Human Rights, signed in San José, Costa Rica, on November 22, 1969, at the Inter-American Specialized Conference on Human Rights.

³⁰⁴ “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” American Declaration of the Rights and Duties of Man, adopted at the Ninth International Conference of American States, Bogotá, Colombia, 1948.

³⁰⁵ Article 16, Rights of Children: “Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.” Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador,” adopted in San Salvador, El Salvador, on November 17, 1988, at the eighteenth regular session of the General Assembly.

³⁰⁶ United Nations Economic and Social Council Resolution 2002/13.

³⁰⁷ United Nations Economic and Social Council Resolution 1995/9.

³⁰⁸ United Nations General Assembly Resolution 45/112.

³⁰⁹ Resolution adopted by the United Nations General Assembly on 18 December 2013, A/RES/68/189.

³¹⁰ United Nations Economic and Social Council Resolution 2005/20.

³¹¹ Adopted by the United Nations General Assembly in its Resolution 34/169 of 17 December 1979.

Implementation of the Code of Conduct for Law Enforcement Officials;³¹² and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³¹³

266. Furthermore, where applicable, consideration will be given to other international human rights instruments of a general scope, as well as to the relevant specific international instruments, under both the United Nations and the Inter-American Human Rights Systems.
267. For purposes of interpretation, the *corpus juris* also includes the standards developed in decisions adopted by the United Nations Committee on the Rights of the Child in furtherance of its mandate, and the decisions of other human rights bodies and special mechanisms under the universal system.³¹⁴ The aforementioned shows not only the existence of a common legal framework in the international human rights law applicable to children, but also the global interdependence of the different international systems for protection of the human rights of children, which has been reflected in the jurisprudence of the Inter-American Court.
268. Lastly, the Commission underscores that Member States which have not ratified the American Convention are equally bound by the *corpus juris* on children's rights, because Article VII of the American Declaration of the Rights and Duties of Man provides that all children have the right to special protection, care, and aid.³¹⁵

B. The Duty of Special Protection of Children and Adolescents

269. Article 19 of the American Convention establishes that “[e]very 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, the American Declaration states in its Article VII that “[a]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”
270. The Commission and the Court have clearly stated that children “have the same rights as all human beings ... and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.”³¹⁶ Consequently, Article 19 of the American Convention should be viewed as an additional and complementary right that the treaty establishes for children,

³¹² United Nations Economic and Social Council, 15th plenary session, 24 May 1989, Ref. 1989/61.

³¹³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³¹⁴ IACHR, *The Rights of the Child in the Inter-American Human Rights System*, par 43. IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 19.

³¹⁵ 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. 39. IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 14. See also, *The Rights of the Child in the Inter-American Human Rights System*.

³¹⁶ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54.

who, due to their state of development, require special protection;³¹⁷ Article VII of the American Declaration should be interpreted likewise. That special protection recognized to children under international human rights law is based on their conditions as growing persons and is justified by the different possibilities and challenges, relative to adults, as regards the effective exercise and full observance of their rights.³¹⁸

In the words of the Court:

As was pointed out during the discussions on the Convention on the Rights of the Child, it is important to highlight that children have the same rights as all human beings—minors or adults—, and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.³¹⁹

271. Thus the duty of special protection 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.³²⁰ This dependency on adults, and its intensity, is modified in accordance with the evolution of the capacities of the child and his or her degree of maturity. It is because of this special situation in which children find themselves with regard to the exercise of their rights that international human rights law

³¹⁷ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 18. 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 Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 152; and, in particular, I/A Court of Human Rights, *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 147; *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, Reparation 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 “Las Dos Erres” Massacre 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 vs. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 126 and 134; *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 146 and 185; and *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 172.

³¹⁸ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 51.

³¹⁹ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54.

³²⁰ I/A Court of Human Rights, *The “Street Children” Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 185; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparation and Costs. Judgment of May 25, 2010. Series C No. 212, para. 164; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 126; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 126 and 134; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 177; and *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 116. Committee on the Rights of the Child. General Comment No. 7: Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, September 20, 2006, fortieth session, para. 17.

reinforces the State's role as guarantor of rights, which entails the adoption of a series of measures of diverse types and content targeting children.³²¹

272. In this regard, in the Inter-American human rights system, Article 19 of the American Convention and Article VII of the American Declaration, give rise to the obligation of Member States to take all necessary measures to ensure the effective validity of the rights of the child, removing any obstacles, and taking into account the particular circumstances and challenges children face, in the enjoyment of their rights.³²²
273. In examining the scope and content of the duty of special protection, it must be taken into consideration that the condition of dependence of children evolves naturally over time in accordance with their growth, maturity level, and gradually increasing personal autonomy. This results in a corresponding change in the content of the duties and responsibilities of the family, community, and State toward children. Consequently, those duties and responsibilities must be consistent with the children's level of development and their gradually evolving ability to take decisions independently about themselves and the exercise of their rights.³²³ This rationale is consistent with the vision of children as subjects of rights that must be respected and promoted integrally, thus leaving behind the notion of children regarded simply as object and recipients of assistance and care.³²⁴
274. The obligation to provide special protection contained in Article 19 of the American Convention is linked to Article 1(1) of that treaty³²⁵ concerning the duty

³²¹ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 56 and 60; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 126 and 134; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 177; *Case of Servellón García v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 116; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparation and Costs. Judgment of May 25, 2010. Series C No. 212, para. 164; *Case of the Mampiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 152, and *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 25. *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 184.

³²² 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. 43.

³²³ The I/A 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 of Human Rights, *Case of Gelman v. Uruguay*. Merits and 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*, OEA/Ser.L/V/II., Doc. 54/13, October 17, 2013, para. 44. General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, paras. 84 and 85; and Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, September 20, 2006, fortieth session, para. 17.

³²⁴ 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. 44.

³²⁵ Article 1 of the Convention establishes the obligation to respect rights: "1. 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

to respect and ensure rights, and also with its Article 2³²⁶ as regards the duty to adopt such domestic legal provisions as may be necessary and appropriate to give effect to the duty of special protection for children.

275. Among the domestic legislative measures that the Member States must adopt to meet the obligations under Article 19 of the American Convention and Article VII of the American Declaration are (i) obligations of a general nature that are directed at children as a whole and are designed to promote and ensure the effective enjoyment of all their human rights; (ii) those of a specific nature directed at specific groups of children, established according to the particular vulnerable circumstances in which they find themselves and their special needs for special protection; and (iii) the Inter-American Court has also indicated that “it is necessary to weigh not only the requirement of special measures, but also the specific characteristics of the situation of the child,”³²⁷ in other words, this assumes that a special measure entailing suitable, appropriate, and individualized protection will be determined and implemented—one that takes account of the child’s need for protection as an individual in his or her specific context. Hence the Court has drawn a distinction between the different levels of obligations imposed on States under Article 19 of the Convention and Article VII of the American Declaration.³²⁸
276. Children and adolescents who live and grow up in circumstances in which insecurity, violence, and crime are a constant in everyday life, with high levels of intensity, prevalence, and recurrence, are continuously exposed to different risks that makes them especially prone to violations of all their rights, including the rights to life, humane treatment, physical and mental health, education, and integral development. Against that, the State must adopt appropriate and suitable special measures to protect the rights of all children in such situations. This protection obligation under Article VII of the American Declaration and Article 19 of the American Convention and the general responsibilities under Articles 1(1) and 2 of that treaty require the State to adopt a normative framework, public policies, programs, and services, to establish appropriate institutions and agencies, and to take any other necessary measure to protect and guarantee the rights of children in this group who are particularly susceptible to having their rights violated.
277. In addition, and considering that the Court has indicated that the obligations to protect and guarantee rights are determined in accordance with the protection

origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, “person” means every human being.”

³²⁶ Article 2 of the Convention establishes the obligation to adopt provisions under domestic law: “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.”

³²⁷ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 61.

³²⁸ 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. 46.

needs of the individual with rights,³²⁹ the obligation exists to take an individualized course of intervention to meet the specific protection needs of the child in a concrete situation that directly threatens his or her rights, when it has come to the attention of the State.

C. Citizen Security from a Human Rights Perspective

278. In its *Report on Citizen Security and Human Rights*, the Inter-American Commission on Human Rights outlined the main components of citizen security according to international human rights law and analyzed the attendant obligations for States in that regard. Citizen security is one of the dimensions of human security and therefore of human development and is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are: the history and structure of the State and society; the policies and programs of the governments; the relevance of civil, political, economic, social and cultural rights; and the international and regional level. Citizen security is undermined whenever States fail to protect their population from crime and social violence, signaling a breakdown in the relationship between those governing and the governed.³³⁰
279. The Commission recalls that “expression citizen security emerged, for the most part, as a concept in Latin America, as governments made the transition to democracy, as a way to distinguish the concept of security under a democracy from the notion of security under the earlier authoritarian regimes.”³³¹ Security has always been one of the main functions of the State. However, as authoritarian States have transitioned into democratic ones, the concept of security has also evolved. In the past, the concept of security only meant maintaining order and the security of the State or of a given political regime in power. However, in democratic regimes individuals and their rights are at the center of security policies.
280. The Commission has determined that where citizen security is concerned, States have a duty to protect and ensure the rights of all members of society, so that by guaranteeing a safe environment, people can go about their daily lives and exercise all their rights with as little threat as possible to their well-being, their human rights, and the enjoyment of their property.³³²

³²⁹ I/A Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 154. In that same connection see: I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 56 and 60; *Case of Fornerón and daughter v. Argentina*. Merits, Reparation and Costs. Judgment of April 27, 2012, Series C No. 242, para. 45; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, para. 121.

³³⁰ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 2 of the Executive Summary.

³³¹ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 21.

³³² IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 23.

281. Citizen security problems occur when the State fails, either in whole or in part, to discharge its function of providing protection against crime and violence that stems from its obligation to ensure rights under Article 1(1) of the American Convention.³³³ Indeed, an essential part of the guarantee of human rights is founded on the obligation of the State to protect those rights from violation by private parties. In the context of citizen security, public institutions must have sufficient capacity within the framework of the rule of law to ensure the exercise of human rights and to respond effectively when they are threatened or infringed.
282. At the same time, it is worth noting that international human rights law does not expressly recognize the right to security from crime or the right to security from interpersonal violence. However, the right to such protection can be inferred from the obligation of the State to guarantee the security of the individual, as set forth in Article 1 of the American Declaration of the Rights and Duties of Man: “Every human being has the right to life, liberty and the security of his person”; Article 7 of the American Convention on Human Rights: “Every person has the right to personal liberty and security”; Article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of person”; and Article 9 of the International Covenant on Civil and Political Rights: “Everyone has the right to liberty and security of person.”
283. The Commission also notes that the current basis of the obligations incumbent upon States is a larger normative core demanding the guarantee of human rights, in general, and of rights that are especially harmed by violent or criminal conduct, in particular. Protecting human rights and fundamental freedoms through prevention and control of violence and crime is the goal of citizen security policies.³³⁴ This group of rights includes, in particular, the right to life, the right to humane treatment, the right to liberty, and the right to peaceful use of one’s property.³³⁵ Furthermore, in a broad sense, citizen security includes measures for ensuring other rights. Thus, for example, the exercise of the right to education is related to conditions of security in communities, in the vicinity of schools, or in schools themselves, which may obstruct the enjoyment of that right.
284. Taking into consideration evidence that shows that socioeconomic conditions that restrict and hinder the enjoyment and exercise of human rights are both a cause and a consequence of violence and insecurity, in light of the guarantee contained in Article 1(1) of the American Convention, public security policies should make adequate provision for such situations. The IACHR has stated on a number of occasions that:

[F]rom the standpoint of human rights, when we speak of security today, we are not just talking about fighting crime; instead we are talking about how to create an environment conducive to peaceful

³³³ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 23.

³³⁴ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 18.

³³⁵ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 18.

coexistence. And so, the concept of security must place greater emphasis on activities to prevent and control the factors that generate violence and insecurity, rather than purely repressive or reactive behaviors to consummated acts.³³⁶

285. In other words, there is a relationship of mutual feedback between citizen security and effective enjoyment of human rights; citizen security is a necessary precondition for the enjoyment of human rights and for promoting social cohesion; conversely, limits on the exercise and enjoyment of human rights in addition to social exclusion are conditioners of citizen security. The Commission highlights the link between the security of persons, human rights, and democratic coexistence, which necessitates a comprehensive approach to the problem.³³⁷ On that understanding, States should implement a series of different measures aimed at both preventing and reducing violence, and deterring, controlling, and repressing violent and criminal behavior by legitimate means, all within a framework that respects and guarantees human rights and the rule of law.
286. In that context, while the legitimate use of the forces of public order to protect citizen security is essential for ensuring observance of human rights, on its own it is not enough. Creating the necessary conditions to reduce the risks of violence and insecurity to a minimum entails taking into consideration the various causal factors that lead to violence in each community. As previously noted, that entails giving priority consideration to and addressing the prevailing inequalities and social exclusion in society by means of appropriate laws, programs, policies, and services all coordinated to correct that situation. Measures of this type are the purview not of security forces but of specialized public agencies in different sectors. Consequently, for a policy to be both effective and respectful of human rights, a comprehensive, a national multisectoral violence prevention and response plan needs to be designed that considers more than just the role of the security forces.
287. We frequently see how insecurity is exploited for political ends by means of short-term or “get tough on crime” proposals that prey on public concerns about violence and crime to gain popular backing for them. However, bearing in mind the need to address the underlying structural factors of violence and not simply tackling it head-on by repressive means, it is essential that citizen security be constructed as a sustained State policy founded on protection of human rights that transcends administration term limits. The Commission believes that progress on citizen security will not come from a single isolated policy, but from a multisectoral approach and a set of policies in which prevention is a key component.
288. The IACHR has also recommended that States ensure the special standards of protection required by those persons or groups that are particularly vulnerable to

³³⁶ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 14.

³³⁷ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 14.

violence and crime, such as children and adolescents.³³⁸ In that regard, the IACHR has expressed its concern at the generalized dearth of efficient and effective citizen security policies designed to protect the rights of groups that have traditionally suffered discrimination and marginalization and of those who are particularly vulnerable in contexts of insecurity and violence.³³⁹ In light of these elements, the Commission believes that there is a need for States to make progress in meeting their obligation to protect human rights in situations of insecurity and violence and to implement the necessary measures to prevent such situations from occurring.

D. The Right of Children to a Life without Violence

289. The concept of the "right to a life without violence" speaks to the complexities typically associated with different forms of violence, in which a variety of issues to do with respect and protection of human rights are in play. As noted previously, violence is a complex, multi-causal, and multifaceted phenomenon that not only impacts the rights to life and well-being, but also impairs other rights. Furthermore the various forms of violence and other violations are often interrelated and interconnected, and result in successive victimization of children. The United Nations Global Study on Violence against Children,³⁴⁰ the Special Representative of United Nations Secretary-General on Violence against Children³⁴¹ and the United Nations Committee on the Rights of the Child³⁴² have alluded to the right of children and adolescents to a life without violence.

³³⁸ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 9 of the Executive Summary.

³³⁹ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 34.

³⁴⁰ The magnitude of the problem of violence and the severe impact the various types of violence have on the rights of children, their personal integrity, wellbeing, and integral development, as well as the need to learn more about the structural causes of this phenomenon, its various manifestations, and the consequences and impact it has on the rights of children, led the United Nations to carry out a Global Study on Violence against Children. The Global Study also produced a report which was adopted by the United Nations General Assembly and includes a summary of its main findings as well as a series of recommendations to States on prevention and appropriate responses to violence against children. The United Nations Secretary-General appointed Professor Paulo Sergio Pinheiro as the independent expert to draft the study and its report *The U.N. Secretary General's Study on Violence against Children* is the first holistic, exhaustive, global effort to identify, document and characterize the true scope of violence against children in all its forms across the world and identify what efforts are being made to prevent it, respond to it, and eradicate it. The U.N. Study concludes with a series of recommendations to Member States based on the findings. The official report on the Study, with its main findings and recommendations, was adopted by the United Nations General Assembly in 2006: [A/61/299](#) (29 August 2006).

³⁴¹ In 2009, the United Nations Secretary-General created the position of Special Representative of the United Nations Secretary-General on Violence against Children, whose mandate is to promote dissemination of the Global Study on Violence against Children and ensure effective follow up to its recommendations. Dr. Marta Santos Pais was appointed Special Representative of the Secretary-General of the United Nations on Violence against Children on May 1st 2009, and took office on September 1st 2009, position that holds to the date.

³⁴² In particular, see U.N. 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](#), 18 April 2011.

290. Violence has many different underlying causes. Therefore, a variety of approaches are needed to tackle them effectively, from legal prohibitions to interventions designed to change social views toward violence and toward children.
291. The Commission notes that the States of the region have been committed in moving forward with legal reforms to provide children and adolescents with adequate protection against violence. Having said that, the Commission has also observed persisting gaps and pending regulatory changes that are necessary for ensuring effective protection against all forms of violence. Furthermore, with regard to the prevention of violence, both the Commission and the Court have found that the legal prohibition of a certain conduct in order to satisfy the obligation to protect children is insufficient, particularly taking into consideration the duty of special protection derived from Articles 19 of the Convention and VII of the Declaration and to the challenges faced by children in realizing their rights because of their condition.³⁴³
292. The Commission has unequivocally asserted that States have an obligation to adopt all necessary and appropriate measures to prevent and confront the structural causes of violence; in other words, legal, political, administrative, and cultural measures, in addition to creating or adapting the necessary institutions to promote prevention of violence against children.³⁴⁴ However, for millions of children and adolescents enjoyment of the right to a life without violence remains a distant reality.
293. In the opinion of the Commission, critically important measures for ensuring the right to life without violence for children include advancing structural and institutional reforms as well as changing the social mores and cultural patterns that legitimize and perpetuate forms of violence against children and adolescents, as well as making sure that laws in this regard are effectively enforced.

³⁴³ 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, pars. 118 and 119. See also IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, pars. 92 and 116. Despite the urgency of legal prohibition of all the various forms of violence against children, the Commission has previously stated, specifically in reference to corporal punishment of children, that “legal prohibition must be complemented with other types of measures, whether judicial, educational, financial, among others, that, together, will make it possible to eradicate the use of that punishment in the everyday life of children and adolescents.” Also see, I/A Court of Human Rights, Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights, pars. 7, 11 and 12. Likewise, see U.N. Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/8, 21 August 2006, 42nd session.

³⁴⁴ 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, pars. 118 and 119. See also IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, paras. 92 and 116.

1. The Rights to Life and Humane Treatment

294. The American Declaration and the American Convention clearly recognize the right to life as well as the right of every person to have their physical, mental, and moral integrity respected and not to be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.³⁴⁵
295. The right to life³⁴⁶ is of fundamental importance in the instruments of the inter-American human rights system as it is the condition *sine qua non* for the exercise of all other rights.³⁴⁷ The right to humane treatment,³⁴⁸ like the right to life, is a basic

³⁴⁵ American Convention, Articles 4(1), 5(1), and 5(2).

³⁴⁶ American Convention on Human Rights:

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

American Declaration of the Rights and Duties of Man:

Article I. Every human being has the right to life, liberty and the security of his person.

³⁴⁷ I/A Court of Human Rights, *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Judgment of November 20, 2013. Preliminary Objections, Merits, Reparations and Costs. Series C No. 270, para. 217. I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations, para. 190.

³⁴⁸ American Convention on Human Rights:

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoner.

American Declaration of the Rights and Duties of Man:

Article I. Every human being has the right to life, liberty and the security of his person.

and fundamental human right, both being minimum prerequisites for the exercise of any other right.

296. The Inter-American Court has consistently held that the right to life and the right to humane treatment require not only that the State respect them but also that the State adopt all appropriate measures to protect and preserve them, in furtherance of the general obligation that the State undertook in Article 1(1) of the Convention.³⁴⁹ States, therefore, have the obligation to adopt all necessary measures to safeguard these inalienable rights. This active protection of the right to life by the State involves not only its legislators, but all State institutions, and the agents and bodies that must protect security.³⁵⁰
297. By virtue of the essential nature of both rights in the inter-American human rights system, neither the right to life nor the right to humane treatment may be suspended in time of war, public danger, or other emergency that threatens the independence or security of a State Party.³⁵¹ The existence of contexts of insecurity and widespread violence cannot, therefore, be claimed by States as justification for restricting or suspending these rights.
298. The rights to life and to humane treatment are violated not only by the arbitrary deprivation of life and unlawful infringements of a person's integrity by State actors, such as the security forces, but also by the incapacity of States to exercise due diligence and take reasonable measures in preventing deaths and attacks on

³⁴⁹ I/A Court of Human Rights, *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 158. IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 455. I/A Court of Human Rights, *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 129; *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs, Judgment of July 5, 2004, para. 153; and *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 153.

³⁵⁰ I/A Court of Human Rights, *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits, pars. 144 and 145; and *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations, para. 190; *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Judgment of November 20, 2013. Preliminary Objections, Merits, Reparations and Costs. Series C No. 270, para. 217.

³⁵¹ American Convention on Human Rights:

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

See also, IACHR. *Third Report on the Situation of Human Rights in Colombia*, 1999, Ch. IV, para. 24; See also, Bustios Saavedra Case, para. 59; see also Case 10.559, Report N° 1/96, Chumbivilcas (Peru) on Annual Report of the IACHR 1995, at 147-148; IACHR. Annual Report 1980-81, p. 112; See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 86.

the integrity of individuals by third parties and non-State actors.³⁵² This right is also abridged by the failure properly to investigate, prosecute and punish those responsible for violations of these rights and to provide reparation to victims and their families.³⁵³

299. It is also necessary to remember that when the State is in the presence of a child, in addition to the duties specified for every person, there are the additional duties under Article 19 of the American Convention and Article VII of the American Declaration. By virtue thereof, the State must assume its special status as guarantor with greater care and responsibility because a child is involved, and must adopt special measures guided by the principle of the child's best interest.³⁵⁴
300. Further to the above, it should be borne in mind that the Court and the Commission are of the view that when dealing with persons who are still developing, a higher standard must be applied in categorizing certain actions that infringe the right of children to have their physical, mental, and moral integrity respected as torture or cruel, inhuman, and degrading treatment or punishment.³⁵⁵ The Commission has stated that "in the case of children the highest standard must be applied in determining the degree of suffering, taking into account factors such as age, sex, the effect of the tension and fear experienced, the status of the victim's health, and his maturity, for instance."³⁵⁶ The Court and the Commission have also taken the personal circumstances of the individual into account when several conditions of vulnerability are present, such as the fact of being a child and having a disability.³⁵⁷
301. Children and adolescents who live in areas particularly affected by insecurity and violence are more exposed to violations of their rights to life and humane treatment because of the very conditions that exist in such contexts. Lethal violence used against children and adolescents by agents of the State and third parties is a paramount concern owing to the high numbers of fatal victims in that population group. However, the consequences of nonlethal physical violence are also cause for alarm because of how extensive it is and because the injuries caused,

³⁵² I/A Court of Human Rights, *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 158. IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 455. I/A Court of Human Rights, *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 129; *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs, Judgment of July 5, 2004, para. 153; and *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 153.

³⁵³ IACHR, *Report on Citizen Security and Human Rights*, para. 108.

³⁵⁴ I/A Court of Human Rights, *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paras. 124, 163, 164, and 171; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paras. 126 and 134; and *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, paras. 146 and 191. In that same regard, see I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 56 and 60. IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 456.

³⁵⁵ I/A Court of Human Rights, *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparation and Costs. Judgment of July 8, 2004. Series C No. 110, para. 170.

³⁵⁶ IACHR, Report No. 33/04, Case 11.634, Merits, Jailton Neri Da Fonseca, Brazil, March 11, 2004, para. 64.

³⁵⁷ I/A Court of Human Rights, *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparation and Costs. Judgment of August 31, 2012, Series C No. 246,

which range from light to serious, can result in disabilities and permanent health problems for the children concerned.

302. The Commission reiterates that States have the ineluctable duty to adopt, in keeping with their international human rights obligations, all necessary measures to protect the life and personal integrity of all those under their jurisdiction. This duty, enshrined in State obligations in matters of citizen security, also entails protecting people from the violence and crime perpetrated by armed groups and organized crime.
303. The Commission wishes to underscore that given their positive obligations to ensure and protect human rights, States, as part of their public policies on citizen security, must design and put into practice effective prevention plans and programs whose objective is to stop the spread of violence and crime while making available all the resources needed to pursue the perpetrators of crime and hand them over to the judicial system, especially those suspected of acts of violence against persons.³⁵⁸

a. Limits of the Use of Force by State Agents

304. The Commission has specified that the protection of the right to life may vary in certain contexts, but that the prohibition on arbitrary deprivation of life continues to be absolute. The Commission has stated that in situations where a State's population is threatened by violence, the State has the right and obligation to protect the population against such threats³⁵⁹ and in so doing may use lethal force in certain circumstances. However, the means that can be used by the State while protecting its security or that of its citizens are not unlimited. To the contrary, as specified by the Court, "regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends."³⁶⁰
305. Regarding the use of force by the State and its agents, the IACHR has found that because of the irreversible nature that the consequences of the use of force could have, the use thereof must be viewed as "a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that

³⁵⁸ IACHR, *Report on Citizen Security and Human Rights*, para. 109.

³⁵⁹ I/A Court of Human Rights, Neira Alegría Case, Judgment of January 19, 1995, Ser. A Nº 20. para. 75; Case of Velásquez Rodríguez, Judgment of July 28, 1988, Series C No. 4, para. 154; and Godínez Cruz Case, Judgment of January 20, 1989, Series C Nº 5, para. 162. See also IACHR, Case 11,291, Report No. 34/00, Carandiru (Brazil), 2000 Annual Report, para. 62. See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 87.

³⁶⁰ I/A Court of Human Rights, Neira Alegría Case, Judgment of January 19, 1995, Ser. A Nº 20. para. 75; Case of Velásquez Rodríguez, Judgment of July 28, 1988, Series C No. 4, para. 154; and Godínez Cruz Case, Judgment of January 20, 1989, Series C Nº 5, para. 162. See also IACHR, Case 11,291, Report No. 34/00, Carandiru (Brazil), 2000 Annual Report, para. 62. See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 89.

caused by the State's reaction."³⁶¹ In this context, characterized by its exceptional nature, both the Commission and the Court have concurred in that, for the use of force to be justified, the principles of legality, absolute necessity and proportionality must be satisfied.³⁶²

306. The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.³⁶³
307. Upon resorting to the use of force, the State must distinguish between innocent civilians and those individuals who constitute a threat.³⁶⁴ Indiscriminate uses of force may, as such, constitute violations of Article 4 of the Convention and Article I of the Declaration.³⁶⁵ However, in the above-mentioned contexts of widespread violence and insecurity, it is not uncommon for children and adolescents to often be victims in clashes between the State security forces and suspected members of criminal groups.
308. The operations of State security forces and their confrontations with armed groups that engage in criminal activities may result in injuries or death to persons not directly involved in such clashes. The Commission is concerned that frequently the operations of State security forces do not give due consideration to the duty to protect the lives and well-being of individuals, and it urges States to review their action protocols in order to protect and preserve the rights of individuals to life and well-being. At the same time, the Commission emphasizes that in operations concerning public security, States must adopt all necessary and appropriate

³⁶¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124., Doc. 5 rev.1, 7 March 2006, para. 64. Also see UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27, 1990, UN Doc. A/CONF.144/28/Rev.1, 112 (1990) and the United Nations Code of Conduct for Law Enforcement Officials, United Nations General Assembly, G.A. Res. 34/169, annex, 34 U.N. GAOR supp. (No.46) p. 186, ONU Doc. A/34/46 (1979).

³⁶² IACHR, *Report on Terrorism and Human Rights*, 2002, para. 87. IACHR, *Report on Citizen Security and Human Rights*, par. 114. IACHR, Report No. 26/14. Admissibility and Merits. *Luis Jorge Valencia Hinojosa*, Ecuador, November 4, 2014, para. 181. I/A Court of Human Rights, Case of Cruz Sánchez et al v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment April 17, 2015. Series C No. 292, para. 265. I/A Court of Human Rights. Case of Nadege Dorzema et al v. Dominican Republic. Merits, Reparations and Costs. Judgment October 24, 2012 Series C No. 251, para. 85.

³⁶³ See United Nations, Code of Conduct for Law Enforcement Officials. Adopted by General Assembly resolution 34/169 of 17 December 1979, Article 3.

³⁶⁴ IACHR, Report No. 136/99, Case 10,488, Ignacio Ellacuría, S.J. et al. (El Salvador), pars. 158-169. See also IACHR, Report No. 61/99, Case 11,519, Jose Alexis Fuentes Guerrero et al. (Colombia), para. 33-34 and 43; IACHR, Report No. 38/97, Caso 10,548, Hugo Bustios Saavedra (Peru), para. 58-63. See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 90.

³⁶⁵ IACHR, Report No. 26/97, Case 11,142, Arturo Ribón Avila (Colombia), para. 159, where the Commission, although not basing its conclusions on this principle, did refer to the fact that indiscriminate use of force could constitute a violation of Article 4. See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 90.

measures to protect the rights to life and well-being of children. Suitable measures in that regard include, at a minimum, introducing in protocols on the actions of security forces and on the use of force stipulations on the treatment that must be accorded to children and adolescents in order to ensure their rights.

309. The Inter-American Court has held that during an incident when a display of authority is deployed, “insofar as possible, State agents should assess the situation and draw up a plan of action before intervening.”³⁶⁶ Regarding this same obligation, the European Court has noted that the action of State agents that is “irregular and arbitrary, is incompatible with effective respect for human rights.”³⁶⁷
310. Similarly, in their law enforcement initiatives, States must not use force against individuals who no longer present a threat as described above, such as individuals who have been apprehended by authorities, have surrendered, or who are wounded and abstain from hostile acts.³⁶⁸ The use of lethal force in such a manner would constitute extra-judicial killings in flagrant violation of Article 4 of the Convention and Article I of the Declaration.³⁶⁹
311. Finally, as specified by the Inter-American Court and the Commission, the amount of force used must be justified by the circumstances,³⁷⁰ for the purpose of, for example, self-defense or neutralizing or disarming the individuals involved in a violent confrontation.³⁷¹ Excessive force,³⁷² or disproportionate force by law

³⁶⁶ I/A Court of Human Rights. Case of Nadege Dorzema et al v. Dominican Republic. Merits, Reparations and Costs. Judgment October 24, 2012 Series C No. 251, para. 81.

³⁶⁷ ECHR, Case Makaratzis v. Greece . Application No. 50385/99/95, 20 December 2004, § 59.

³⁶⁸ IACHR, Report No. 55/97, Case 11,137, Juan Carlos Abella (Argentina), para. 204, 218, 245 (considering that the killing of individuals who had been involved in attacks on military barracks but who later surrendered constituted a violation of Article 4). See also IACHR, Report No.26/97, Case 11,142, Arturo Ribón Avila (Colombia), pars. 134 et seq. and 159 et seq, (concluding that the killing of individuals who were involved in an armed confrontation with security forces but later surrendered, were arrested or wounded and no longer participated in the armed confrontation constituted violations of Article 4 of the American Convention on Human Rights). Individuals who have fallen in the power of the adverse party (State agents in case of domestic disturbances), have surrendered, or who are wounded and abstain from hostile acts and from escaping also constitute combatants who have been placed hors de combat under international humanitarian law, as explained further below. See also IACHR, Report No. 61/99, Case 11,519, Jose Alexis Fuentes Guerrero et al. (Colombia), para. 33, 34 and 43. See also IACHR, Report No. 34/00, Case 11,291, Carandiru (Brazil) on IACHR Annual Report 2000, para. 63, 67 and 91. See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 91.

³⁶⁹ See, for example, IACHR, Report No. 26/97, Case 11,142, Arturo Ribón Avila (Colombia), para. 159 et seq. See also IACHR, Report No. 38/97, Case 10,548, Hugo Bustios Saavedra (Peru), para. 58-63. See also IACHR, Report No. 34/00, Case 11,291, Carandiru (Brazil), on IACHR Annual Report 2000, para. 63, 67 and 91. See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 91.

³⁷⁰ I/A Court of Human Rights, Neira Alegria Case, Judgment of January 19, 1995, Ser. A Nº 20. para. 74 (concluding that notwithstanding the fact that in the context of a prison riot, the Peruvian security forces were fighting armed and highly dangerous opponents, the amount of force used was unjustified). See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 92.

³⁷¹ See IACHR, Report No. 34/00, Case 11,291, Carandiru (Brazil), on IACHR Annual Report 2000, para. 63 (finding that several deaths caused by the use of force by the police during a riot in a Brazilian prison was not for purposes of self-defense or for disarming the rioters). See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 92.

enforcement officials³⁷³ that result in the loss of life may therefore amount to arbitrary deprivations of life.³⁷⁴

312. It is imperative that in their system of domestic laws, States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life³⁷⁵ and, in particular, regulate, by law, the use of force and lethal force by police.³⁷⁶ Such regulations should provide that the use of force, including lethal force, shall be informed by the principles of absolute necessity, reasonableness, moderation, and graduality, always taking into account: (1) the rights that are to be protected; (2) the legitimate end to be achieved, and (3) the risk that the police must face.³⁷⁷
313. In keeping with the foregoing points, the Inter-American Court has established that the duty to adopt an adequate legal framework to protect the right to life from the use of force by State security bodies is rooted in the following obligations:: i) the State must be “clear when defining domestic policies on the use of force and pursue strategies to implement the [United Nations] *Principles on the Use of Force and the Code of Conduct*; ii) it must provide agents with different types of weapons, ammunition, and protective equipment that enable them to adapt the elements used in their reaction proportionately to the incidents in which they have to intervene, restricting the use of lethal weapons that can cause injury or death as much as possible;³⁷⁸ and iii) it must train its agents to ensure that they know the legal provisions that permit the use of firearms and are properly trained so that if they have to decide on their use, they have the relevant criteria to do so.³⁷⁹
314. The Commission emphasizes that States have a specific obligation to provide permanent training and instruction to the members of their police forces so that when they use lethal force in their operations, they do so in strict accordance with internationally accepted standards. States have an obligation to provide their police with the means, weaponry and equipment that will enable them to use nonlethal force in the procedures they follow to lawfully deter and suppress violence and crime. As the Commission has mentioned on a variety of occasions, within the region, there have been multiple cases in which the right to life was

³⁷² I/A Court of Human Rights, *Neira Alegría Case*, Judgment of January 19, 1995, Ser. A Nº 20. para. 76. See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 92.

³⁷³ See, for example, Report No. 34/00, Case 11,291, *Carandiru (Brazil)*, on IACHR Annual Report 2000, pars. 63, 67 and 91. See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 92.

³⁷⁴ See also IACHR, *Report on Terrorism and Human Rights*, 2002, para. 92.

³⁷⁵ I/A Court of Human Rights, *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C No. 166, para. 81; *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 66.

³⁷⁶ IACHR, *Report on Citizen Security and Human Rights*, para. 115.

³⁷⁷ IACHR, *Report on Citizen Security and Human Rights*, para. 116. See also United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

³⁷⁸ I/A Court of Human Rights. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment October 24, 2012 Series C No. 251, para. 80.

³⁷⁹ I/A Court of Human Rights. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment October 24, 2012 Series C No. 251, para. 84.

violated by members of the State security forces. These deaths could have been avoided had the members of the State security forces been equipped with nonlethal means of deterrence and adequate protective equipment, rather than relying strictly on firearms to perform their assigned function.³⁸⁰

315. The duty to respect and ensure rights contained in Article 1(1) of the American Convention imposes an obligation to document all cases in which public security forces have used force, lethal or otherwise, in the performance of their duties, in addition to carrying out the necessary internal and external inquiries, including judicial inquiries, for the purpose of ensuring that the actions taken were done so lawfully. All such steps are necessary basic measures to prevent extrajudicial executions by agents of the State. The Commission is profoundly troubled by reports regarding instances in which homicides caused by State security agents have not been adequately investigated or the criminal penalties imposed have not been commensurate with the seriousness of the offenses.
316. The Commission underscores that when State agents make use of lethal force, the burden is on the State to prove that other less lethal means of intervention were attempted, which proved to be unsuccessful, and that the actions of the security forces was necessary and proportional to the exigencies of the situation, in particular, the threat they were facing.³⁸¹ Specifically, the Court has established that the use of force “must be used in keeping with the principles of legality, absolute necessity and proportionality.”³⁸²

b. Extrajudicial Executions, Torture, and Cruel, Inhumane and Degrading Treatment by State Agents

317. The Commission takes an extremely serious view of information that it has received concerning alleged cases of extrajudicial executions as well as torture and other cruel, inhuman, or degrading treatment committed by State and security agents. The Commission wishes to emphasize that no such actions can be justified simply on the basis of the fight against organized crime or widespread violence. Articles 4 of the Convention and I of the Declaration, and applicable standards, govern the use of lethal force by the State and its agents and prohibit arbitrary deprivation of life and summary executions;³⁸³ and Articles 5 of the Convention

³⁸⁰ IACHR, *Report on Citizen Security and Human Rights*, para. 115.

³⁸¹ I/A Court of Human Rights, *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C No. 166, para. 108.

³⁸² I/A Court of Human Rights. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment October 24, 2012 Series C No. 251, para. 85.

³⁸³ IACHR Case 10.559, Report N° 1/96, Chumbivilcas (Peru), on Annual Report of the IACHR 1995, at 147-148, (specifying that “[t]his prohibition against arbitrary deprivation of human life is at the core of the right to life. The use of the term “arbitrarily” might appear to indicate that the Convention allows exceptions to the right to life, on the mistaken assumption that life may be taken in certain circumstances provided this is not done arbitrarily. However, quite the opposite is the case, since the intent of this clause is rather to seek to ensure strengthening of the conditions governing application of the death penalty by those States which have not

and I of the Declaration protect the individual against torture and other cruel inhuman or degrading treatment.

318. The information received points to cases in which agents of the State are alleged to have used cruel, inhuman, and degrading treatment or punishment, including torture, on individuals, among them adolescents and young people, as a punitive measure or deterrent, or in order to extract information or a confession³⁸⁴. The Commission has also received information specifically about acts of this nature against young people and adolescents because they are suspected of being involved in criminal activities or belonging to gangs (or *maras*), or simply because of their appearance, skin color, or ethnic origin. Likewise, the Commission has been informed of extreme cases in which agents of the State are said to have carried out extrajudicial executions of adolescents and young people because they were presumed to belong to criminal groups or gangs or where caught *in flagrante delicto*. Cases have also been brought to the Commission's attention in which lethal force has been used illegally in spite of arguments—insufficiently substantiated—that it was used in legitimate self-defense by agents of the State's security forces, to protect others, or in the context of confrontations. The Commission roundly condemns such acts and wishes to underscore that States cannot justify actions of that type on grounds of combating organized crime or security threats. The IACHR supports the absolute prohibition of torture, summary and extrajudicial executions, and sexual violence by State security agents, regardless of the security threat faced by them. States must also put into practice the necessary measures to prevent any type of abuse or excess against the rights of children and adolescents by its agents.

c. Forced Disappearances

319. In relation to forced disappearance of persons,³⁸⁵ committed by agents of the State or by persons or groups that act with the authorization, support, or acquiescence

yet abolished it, and at the same time, to serve as a guarantee to prevent summary executions.”) See also IACHR. *Report on Terrorism and Human Rights*, 2002, para. 86.

³⁸⁴ The IACHR has received this type of information at thematic hearings, on country visits, as well as through the system of petitions, cases and precautionary measures.

³⁸⁵ The Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil on June 9, 1994, at the twenty-fourth regular session of the General Assembly of the Organization of American States, defines forced disappearance in its Article II:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

Article 2 of the International Convention for the Protection of all Persons from Forced Disappearance contains the following definition of forced disappearance:

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

of the State, different sources notes that it has increased in the countries worst affected by insecurity, violence, and organized crime activities. The Commission and Court regard all acts of forced disappearance as violations that encompass a plurality of offenses; that is, they infringe multiple rights of both the victim and their family, and continue to do so over time until the whereabouts or fate of the individual is determined. Forced disappearance places the victim outside the protection of the law and entails a violation of basic standards of international human rights law that are guaranteed to all. In the opinion of the Commission and the Court, forced disappearance of persons violates the rights to legal personality (Article 3 of the American Convention), a fair trial (Article 8 of the Convention), judicial protection (Article 25 of the Convention), personal liberty (Article 7 of the Convention), humane treatment and not to be subjected to torture or to cruel, inhuman, or degrading punishment or treatment (Article 5 of the Convention), and life (Article 4 of the Convention), in breach, therefore, of the general obligation to respect rights (Article 1 of the Convention). Furthermore, in certain cases, based on their particular circumstances, the Court has also found that forced disappearance entails related and continued violations or infringements of other rights and provisions, including the duty to adopt provisions under domestic law (Article 2 of the Convention), the rights of the family (article 17 of the convention That), the rights of the child (Article 19 of the Convention), freedom of movement and residence (Article 22 of the Convention), and the right to participate in government (Article 23 of the Convention), and the equivalent articles of the American Declaration, in addition to different provisions contained in the Inter-American Convention on Forced Disappearance of Persons.³⁸⁶

320. The disappearance of children (both in cases of allegedly forced disappearances or when attributed to a third parties) is a very troubling circumstance that should prompt immediate action by the authorities to investigate and determine their whereabouts. The disappearance of a child places it in a position of extreme vulnerability as it removes it from the customary protection that it receives from the adults that care for it and from that of the State, and potentially exposes it to violence, abuse, exploitation, and even the deprivation of its life.
321. The Commission underscores the need for public authorities to give consideration to the gravity and seriousness of the disappearance of a child or adolescent, as well as the need for them to introduce, where they do not already exist, clear and

For its part, Article 3 of the above international instrument provides:

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

³⁸⁶ I/A Court of Human Rights, *Case of Contreras et al. v. El Salvador*. Merits, Reparation and Costs. Judgment of August 31, 2011. Series C, No. 232, para. 80 and 82. *Case of Heliodoro-Portugal v. Panama*. Preliminary Objections, Merits, Reparation and Costs. Judgment of August 12, 2008. Series C, No. 186, para. 112; *Case of Ticona Estrada et al v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008, Series C, No. 191, para. 54. See also I/A Court of Human Rights, *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C, No. 212. As regards the right to life in its recent jurisprudence the Court has ruled that if the State puts someone in a grave situation of risk of suffering irreparable damages to their personal integrity and life, that is sufficient to declare those rights violated. See in that regard I/A Court of Human Rights, *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C, No. 209, para. 152.

effective protocols of urgent action whenever such an occurrence is reported. The promptness of the investigation and search in the initial hours and days is critical for establishing the child's whereabouts and safeguarding its well-being.

322. In that regard, the Inter-American Court has found that, above all, "it is essential that police authorities, prosecutors and judicial officials take prompt immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate."³⁸⁷
323. In that regard, both the Commission and the Court have stressed the obligation of States under Article 1(1) of the American Convention to conduct prompt, effective, and impartial investigations on an ex officio basis of forced disappearances of which they are aware, without the need for a formal complaint to be lodged.³⁸⁸ In addition, the Court has found that an investigation cannot be considered effective

³⁸⁷ I/A Court of Human Rights, *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. 283.

³⁸⁸ Article 12 of the International Convention for the Protection of all Persons from Forced Disappearance provides:

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.
3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:
 - a. Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;
 - b. Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.
4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

As regards children and adolescents who have disappeared, see General comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), *A/HRC/WGEID/98/1*, in particular paras. 37 and 38. See the position of the Inter-American Court in this connection in *I/A Court of Human Rights, Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C, No. 209, para. 143.

unless it produces concrete results or at least demonstrates that it is not a mere formality but that there is genuine interest in discovering the truth.³⁸⁹

324. The Commission urges all countries in the region that have not yet done so to criminalize forced disappearance in a manner consistent with the applicable international instruments and the case law of the Inter-American Court. Similarly, States should ensure the punishment of all “those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories,” be they agents of the State or “persons or groups of persons acting with the authorization, support, or acquiescence of the State.”³⁹⁰
325. The Commission recalls that no exceptional circumstances whatsoever, including a state of war or a threat of war, internal political instability, public insecurity, contexts of violence, or any other public emergency, may be invoked as a justification for forced disappearance. The use of forced disappearance by State agents to combat organized crime, gangs, or other armed groups, is completely unjustified.
326. In summary, the practice of forced disappearance implies a crass abandonment of the essential principles on which the inter-American human rights system is founded and both its prohibition and the correlative duty to investigate and, as appropriate, punish those responsible has attained the status of *jus cogens* according to the Inter-American Court.³⁹¹ The Commission also notes that the failure to carry out a proper investigation and bring the culprits to account creates a climate of social tolerance conducive to the reproduction of such phenomena, as well as constituting a breach of the State's obligation to respect and ensure rights in accordance with Article 1(1) of the American Convention.

d. Violations of the Right to Life and the Right to Personal Security Committed by Third Parties

327. A worrisome trend has been noted in several countries of the region toward an increase in recent years in the total number of homicides of adolescents, allegedly committed by groups involved in criminal activities. The reasons for the homicides are not always investigated or clarified by the authorities. However, the Commission has received information that the reasons for the homicides range from refusal to join the group, dropping out of the group, failure to obey internal orders, settling scores, suspicions of collaborating with the police, clashes with rival groups, to send a message, or for reasons of social control, among other

³⁸⁹ I/A Court of Human Rights, *Velásquez Rodríguez Case v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 4, para. 177.

³⁹⁰ I/A Court of Human Rights, *Case of Gómez Palomino v. Peru*. Merits, Reparation and Costs. Judgment of November 22, 2005. Series C, No. 136, para. 101. I/A Court of Human Rights, *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C, No. 209, pars. 321 and 322.

³⁹¹ I/A Court of Human Rights, *Case of Contreras et al. v. El Salvador*. Merits, Reparation and Costs. Judgment of August 31, 2011. Series C, No. 232, para. 83.

possible reasons. The number of homicides of adolescents in those communities most afflicted by insecurity and violence has also increased as an indirect result of clashes between rival groups.

328. The IACHR has also received information that homicides are carried out with torture or cruel, inhuman, and degrading treatment, including cases involving adolescent victims. The degree of violence and cruelty to victims is intended to instill public fear and send a message to rival groups.
329. Having noted the rise in the number of disappearances, the Commission observes that the practice of burying and concealing corpses has proliferated in several countries in recent years, as evinced by the increase in hidden graves and graveyards, making it more and more difficult to locate the corpses, identify the victims, and conduct a criminal investigation. In light of that, there are indications that the official figures on reported homicides in countries such as Mexico³⁹² and El Salvador³⁹³ may not reflect the real magnitude of the deadly violence that is taking place in those and other countries in the region.
330. The Commission has received reports of an increase in disappearances of children and adolescents in contexts where generalized insecurity and violence are rampant. Examples of this include the disappearance of child migrants at the hands of armed groups and organized crime conglomerates, as well as disappearances of girls and adolescents associated with trafficking for sexual exploitation or other forms of gender violence. The disappearances are attributed to different actors, including armed criminal groups, such as drug trafficking organizations, *maras*, and other groups; militias; paramilitary or "self-defense" groups; death squads or social cleansing groups; and agents of the State, either directly, or with their knowledge, support, or acquiescence.
331. Furthermore, the Commission is concerned about the activities of armed "social cleansing" and "self-defense" groups that use violence and execute children and adolescents regarded as a "danger to society." There are instances in which these groups of private citizens are said to have acted with the knowledge, assistance, or acquiescence of State security forces, which reportedly do not intervene to prevent such acts or pursue their perpetrators, but accept and even encourage them. The Commission has voiced similar concerns regarding other acts carried out by citizens, such as lynchings of young people and adolescents. The Commission stresses the need for States to take all necessary measures to root out such practices.

³⁹² IACHR press release, and United Nations press release signed by the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

³⁹³ See La situación de la seguridad y la justicia 2009-2014. Entre expectativas de cambio, mano dura militar y treguas pandilleras, Instituto Universitario de Opinión Pública (IUDOP), Universidad Centroamericana "José Simeón Cañas" (UCA), 2014, pp. 1 and 2.

2. The Rights to Personal Liberty and Security, and Freedom of Movement and Residence

332. In the communities worst affected by violence owing to the presence of armed groups, violent gangs or *maras*, or organized crime, such groups often impose informal rules of conduct that restrict and violate rights and freedoms, including the rights to personal liberty and security,³⁹⁴ and freedom of movement and residence.³⁹⁵ People are experiencing constraints on their ability to move freely,

³⁹⁴ Article I of the American Declaration of the Rights and Duties of Man provides:

Every human being has the right to life, liberty and the security of his person.

Article 7 of the American Convention on Human Rights recognizes the right to personal liberty in the following terms:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

³⁹⁵ Article VIII of the American Declaration of the Rights and Duties of Man provides:

Every person has the right to fix his residence within the territory of the State of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Article 22 of the American Convention on Human Rights recognizes the right to freedom of movement and residence in the following terms:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes.

out of fear of situations of insecurity, due to prohibitions imposed by criminal groups, and as a consequence of restrictions imposed by the authorities. Adolescents are particularly exposed to restrictions and violations of their right to personal freedom and right to freedom of movement. Also, the circumstances of lack of security and violence give rise to displacements within the territory of the State, in search of security and protection, and even abroad, to another country. Lastly, unlawful or arbitrary detentions of adolescents are also a source of concern in many of the aforementioned situations.

333. As regards Article 7(1) of the Convention, the Commission and the Court have held that, in general, it embodies the right to personal liberty and security, and that the other paragraphs of Article 7 recognize different guarantees that must be given when depriving someone of their liberty. Therefore, liberty is always the rule and the limitation or restriction is always the exception. The Commission considers that the State must prevent the liberty of the individual being violated by the actions of public officials and private third parties and must also investigate and punish acts that violate this right.³⁹⁶

a. Restrictions on Freedom of Movement and Norms of Social Control Imposed by Criminal Groups

334. In areas under the control of armed groups a parallel power emerges that installs its own system of rules in order to exert control over the territory and the people who live there. This informal system of rules governs important aspects of people's lives and limits the exercise of their rights, in addition to infringing their right to personal security and putting their well-being at risk if those rules are broken.
335. This informal system of rules includes restrictions on the movements of inhabitants of areas where criminal groups, *maras*, and other violent gangs operate. The curbs on freedom of movement are linked to the control that these groups exert over the territory. The territories under their influence are delimited by borders that are invisible to those who do not live there but well known to their inhabitants. *Maras*, other violent gangs, and organized crime groups mark and protect their territories, on occasion even making access difficult for the authorities who have a duty to provide security to their inhabitants. In such circumstances, citizens who cross these boundaries or refuse to abide by the rules on movement run the risk of incurring a penalty or even losing their lives.
336. Controls may restrict access for certain persons to the area or impose timetables on their inhabitants' movements. It is common, for example, for armed groups to declare "curfews" in such zones that prohibit people from being outside after a

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

³⁹⁶ I/A Court of Human Rights, *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. 247.

certain hour, usually nightfall. This is a way of controlling people's circulation, averting incursions by rival groups, and controlling the nightlife.

337. The rules of control are not confined exclusively to freedom of movement but generally also include rules governing people's behavior, codes of conduct, and a duty to respect the authority of the groups, with penalties for flouting them, sometimes even death. This regulation of social life supposes limits on personal liberty as well as the related impairment of many other rights. As regards the rights to freedom of expression, of association, and peaceful assembly and the right of children and adolescents to participate in matters of interest to them, their exercise is restricted in communities where maras or criminal organizations exert control over the territory and its population and do not allow organizational activities or the expression of any ideas that might challenge the status quo and their control. The rights to culture, recreation, and leisure are also truncated because of the climate of insecurity in the community and in public spaces where activities of this type occur.

b. Restrictions on Freedom of Movement Imposed by the Authorities

338. The Commission has also been made aware of restrictions on freedom of movement imposed by public authorities on children and adolescents, usually after a certain hour, unless they are accompanied by an adult. The Commission has been informed of measures restricting freedom of movement, usually known as "curfew," with the supposed aim of reducing insecurity and protecting children. In practice, such measures appeared to have a disproportionate impact on certain groups of adolescents and youth from certain sectors and areas, or who belong to particular ethnic and social groups. Such is the case, for instance, in Panama,³⁹⁷ where adolescents and youth from traditionally excluded social segments who live in poor neighborhoods and areas, usually of African descent, appear to be the group most impacted by measures of this type, their application, and their enforcement by police. Similar restrictions on the freedom of movement of children and adolescents are imposed in other countries in the region, such as

³⁹⁷ These concerns coincide with views expressed by the Committee on the Rights of the Child in its concluding observations (2011): "The Committee ... is also concerned at discrimination by police and other security forces against Afro-Panamanian children living in marginalized urban neighbourhoods, who are wrongly perceived as potential delinquents, as a result of such measures as curfew for children and campaigns through mass media linking adolescents to alleged increases in criminality" (para. 33); and "The Committee is strongly concerned that curfews for children have been put into place in three major Panamanian cities, which in 2010 alone resulted in the detention of 5,148 children, many of whom were simply found in the street during curfew hours. These children may spend the night in detention if their parents or guardian are not informed or pay the established US\$ 50 fine and not retrieve them. The Committee is particularly concerned that this measure is criminalizing children and further aggravates negative public perception about adolescents, especially if Afro-Panamanian or coming from low-income neighbourhoods." (para. 41.) Committee on the Rights of the Child, 58th session, 19 September-7 October 2011, [CRC/C/PAN/CO/3-4](#).

Colombia. In Paraguay, adolescents are detained for the mere fact of walking around at night or for not carrying their identity card.³⁹⁸

339. The Commission is of the view that, in keeping with Article 30 of the American Convention, restrictions on rights may not be applied except in accordance with the law, for reasons of general interest, and for the purpose for which such restrictions have been established. The Commission also states that, where such measures are necessary, proper mechanisms should be introduced to ensure that these norms and restrictions on human rights of this nature are temporary and that the right to equality and nondiscrimination in their application is respected. The Commission is also concerned at the fact that children and adolescents may be detained and taken to detention centers where their well-being and other rights may be at risk.

c. Kidnappings by Criminal Groups

340. On the subject of the right to personal liberty, one alarming phenomenon is kidnapping. Armed groups dedicated to criminal activities, *maras*, and organized crime conglomerates use on kidnapping as a means of extortion and obtaining funds in the form of ransoms, and the population in general is at risk. Kidnappings are not always reported by victims or their families because they fear reprisals or lack confidence in the success of the police investigation, so that ransoms are ultimately paid in exchange for freedom. The Commission is perturbed at the impunity in which many kidnappings remain and its effect on the continuation of the phenomenon.
341. The Commission has been informed that kidnapping of migrants by organized criminal groups has risen in recent times, sometimes with the tolerance or involvement of certain public officials.³⁹⁹ During their abductions, the migrants often become victims of acts of physical, psychological, and sexual violence, human trafficking, and even homicide and forced disappearance.⁴⁰⁰ Children and adolescents comprise an ever greater proportion of the victims of these crimes owing to the number of them that migrate, frequently alone, making them even more vulnerable to risks to their well-being.
342. Abduction of children and adolescents migrants has worsened in recent years in Mexico, where the purpose of their abduction is to extort money from their relatives in Central America or in the United States in exchange for their loved ones' release or to force the migrants to work for the organized crime groups.⁴⁰¹

³⁹⁸ Regional Observatory of Juvenile Criminal Justice, *Monitoring Report of October 2015* [Defensa de niñas y niños internacional 2015] p. 4.

³⁹⁹ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, 2013, pars. 109, 112, 118, 121 to 124.

⁴⁰⁰ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, pars. 99 to 104 and 109 to 130.

⁴⁰¹ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, para. 109.

Organized crime groups are more interested in abducting children and women, as these abductions tend to bring more money.⁴⁰² The irregular situation of the migrants and the fear of consequences in terms of their detention and expulsion from the country, as well as fear of reprisals by organized crime, makes it unlikely that relatives will report the abduction to the Mexican authorities.⁴⁰³ The fate of migrants whose ransom is never paid can vary; some end up becoming victims of sexual exploitation; others are forced to work for the organizations that kidnapped them, while still others end up dead.⁴⁰⁴ The mass abductions of migrants that occur are a prime example of the vulnerability and insecurity that migrants experience on their journey through Mexico.

d. Forced Displacement by Criminal Groups

343. Article 22(1) of the Convention recognizes the right of persons lawfully in the territory of a State to freedom of movement and residence within it and not to be forced to leave it, which are rights recognized as well under Article VIII of the American Declaration. The Court has ruled that freedom of movement is an indispensable condition for the free development of each person.⁴⁰⁵ In an evolutive interpretation of Article 22(1) of the Convention, the Court, taking into account the applicable rules on interpretation laid out in Article 29(b) of that treaty, has considered that that provision protects the right not to be forcefully displaced within a State Party thereto.⁴⁰⁶
344. The control that *maras*, organized crime groups, and other armed groups engaging in criminal activities exert over the territory and the lives of persons, in addition to the insecurity and violence, cause the forced displacement of many families, who feel threatened or unsafe in their places of residence. Indeed, the threats, extortion, abuse, violence, and pressure to join criminal groups and take part in their activities has brought about an increase in the number of people leaving their places of origin or habitual residence in recent years.

⁴⁰² IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, para. 110.

⁴⁰³ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, para. 112.

⁴⁰⁴ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II., Doc. 48/13, December 30, 2013, para. 111.

⁴⁰⁵ I/A Court of Human Rights, *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Judgment of November 20, 2013. Preliminary Objections, Merits, Reparations and Costs. Series C No. 270, para. 219; *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 15, 2005. Series C No. 124, para. 110, and *Case of the El Mozote Massacre v. El Salvador. Merits, Reparations and Costs*, para. 186.

⁴⁰⁶ I/A Court of Human Rights, *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Judgment of November 20, 2013. Preliminary Objections, Merits, Reparations and Costs. Series C No. 270, para. 219. *Case of the "Mapiripán Massacre" v. Colombia*, Judgment of September 15, 2005. Preliminary Objections, Merits, Reparations, and Costs, Series C No. 134, para. 188, and *Case of the El Mozote Massacre v. El Salvador. Merits, Reparations and Costs*, para. 186.

345. The Commission believes it is necessary to distinguish the problem of forced internal displacement from internal migration. In that regard, the Guiding Principles on Internal Displacement define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁴⁰⁷
346. Furthermore, persons who are internally displaced for reasons of security may find themselves in extremely vulnerable circumstances due to the loss of their livelihoods and because in seeking a safer place to live they expose themselves to new challenges in the areas of cities where they settle, which often lack adequate basic services. Another factor that increases the vulnerability of these persons is their invisibility, as they move because of fear or even direct persecution. As a result they try to remain inconspicuous in order to avoid falling into the hands of those from whom they are fleeing. These flows of internally displaced persons can be easy to confuse with other types of internal migration, which hampers the delivery of assistance and the design of adequate systems of protection for people displaced for reasons of security, violence, and threats.⁴⁰⁸ The Commission recommends that States redouble their efforts to identify victims of internal displacement and to create and implement protection mechanisms for these persons, in addition to taking necessary and effective steps to enable people to return to their homes once security is restored.

e. Other Considerations Regarding Human Mobility and the Activities of Criminal Groups

347. The Commission has obtained considerable information about, and has been able to observe during a number of visits it has made to the United States⁴⁰⁹ and Mexico⁴¹⁰, an increase in the numbers of individuals who are leaving their

⁴⁰⁷ United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Aeng, submitted pursuant to Commission resolution 1997/39. Addendum, Guiding Principles on Internal Displacement. 11 February 1998, [E/CN.4/1998/53/Add.2](#), Introduction, para. 2.

⁴⁰⁸ Similarly, according to the UNDP, forced displacement of persons is an impact of insecurity that has been little assessed in the countries of the region but which has serious implications for human development in Latin America UNDP, Human Development Report for Latin America 2013-2014. *Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 98, . See also the U.N. Secretary General’s Study on Violence against Children, p. 299. It is in this context that the flows of forced internal displacement that have acquired greater prominence in Central American countries, such as El Salvador, should be placed. See, [Informe El Salvador](#), executive summary, p. 2.

⁴⁰⁹ The Rapporteurships on the Rights of Migrants and on the Rights of the Child of the IACHR carried out an onsite visit to the southern border of the United States between September 29th to October 2nd, 2014, [press release](#). Also see, IACHR thematic report *Refugees and Migrants in the United States: Families and Unaccompanied Children*, OAS/Ser.L/V/II. 155, Doc. 16, 24 July 2015.

⁴¹⁰ The IACHR carried out an onsite visit to Mexico from September 28th to October 2nd, 2015, [press release](#); the Rapporteurship on the Rights of Migrants visited Mexico from July 25th to August 2nd, 2011, [press release](#) and [report](#).

countries of origin alleging deteriorating security conditions, threats, violence, attempts on their lives and safety. They also do so out of fear of forced induction of adolescents into gangs and criminal organizations, the risk of violence and sexual exploitation of adolescents by criminal organizations, among other circumstances related to the activities of gangs and organized crime, and the overall climate of insecurity and its impunity in their countries.

348. There has recently been a notable increase in unaccompanied migrant children and adolescents and migrant families with children and adolescents⁴¹¹. The most significant migration flows come from the Central American countries, particularly El Salvador, Honduras and Guatemala, and from Mexico to the United States. According to official U.S. figures, between October 1, 2013 and August 31, 2014,⁴¹² the U.S. Border Patrol detained 66,127 unaccompanied children and adolescents, far in excess of the already high number of 38,759 unaccompanied persons under the age of 18 who were detained during the whole of fiscal 2013. The same source reports that 66,142 family units were detained up to August 31, 2014 along the United States' southern border. This represents an increase of 412% over the 12,908 family units detained in fiscal year 2013.⁴¹³
349. Associated with this increase in the numbers of individuals who are migrating irregularly in the region, the UNHCR has since 2009 recorded a growing number of asylum seekers—both children and adults—from El Salvador, Honduras and Guatemala. The United States recorded the highest number of new applications for asylum from individuals from these three countries; in fiscal 2009, 5,369 individuals told immigration officials when they entered the United States or were apprehended along the southern border that they were afraid to return to their countries of origin, while in fiscal 2013, this figure rose to 36,174. People from El Salvador, Honduras, Guatemala and Mexico represent 70% of this increase. The number of applications for asylum has also increased in other countries of the region; together, Mexico, Panama, Nicaragua, Costa Rica and Belize recorded an increase of 435% in the number of applications for asylum by individuals from El Salvador, Honduras and Guatemala. At the same time, according to UNHCR, an alarming number of Mexican children have been entering the United States; the number of Mexican children has exceeded the number of children from any other of the three Central American countries: for example, in fiscal 2011, the number of Mexican children apprehended was 13,000; it reached 15,709 in fiscal 2012, and 18,754 in fiscal 2013.⁴¹⁴
350. In this respect, the Commission has stated that:

To understand the current influx of families and children migrating to the United States of America, it is essential to take into

⁴¹¹ See IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, OAS/Ser.L/V/II. 155, Doc. 16, 24 July 2015.

⁴¹² The U.S. fiscal year runs from October 1 through September 30, 2014.

⁴¹³ Information available in the IACHR's [press release](#) at the conclusion of its visit to the United States.

⁴¹⁴ United Nations High Commissioner for Refugees (UNHCR), [Children in flight: Unaccompanied children fleeing Central America and Mexico, and the need for international protection](#), pp. 4 and 5.

consideration the push and pull factors of migration occurring in the countries of the migratory corridor between the Northern Triangle of Central America, Mexico and the United States of America. Many of the persons who are migrating to the United States are fleeing various forms of violence, poverty, inequality, and also the effects of natural disasters in their countries of origin. These push factors combine with pull factors, such as family reunification, better job opportunities, and the chance for a better standard of living. The many factors that cause the migration of persons in this region explain why the influx of persons, mainly from the aforementioned Central American countries and Mexico, is a mixed migration flow composed of migrants, asylum seekers, persons in need of international protection, victims of human trafficking and children who are either unaccompanied or separated from their families, among others.⁴¹⁵

351. A recent report published by the United Nations High Commissioner for Refugees (UNHCR) after interviewing Mexican and Central American children who were in irregular migratory status in the United States found that in more than half the cases investigated, one of the causes was related to the lack of security and widespread violence caused by armed groups involved in illicit activities and gangs in their countries of origin. The motives mentioned included the fear and threats of being “recruited by the gangs”, direct attacks on personal safety, and threats, among other things. The investigation found that this reason usually went side by side with others, such as family reunification in the destination country or the search for better opportunities in life.⁴¹⁶
352. Most of the children interviewed from these four countries provided information that clearly showed they might be in need of international protection. UNHCR also warns that while these children’s replies were complex and multifaceted, it is striking that no less than 58% of the 404 children interviewed mentioned concerns related to protection. The UN agency notes that all migrant children from these four countries who leave their countries of origin may potentially have the same needs for international protection, and urges countries to ensure access, under their international obligations regarding asylum, refuge and international protection, to procedures for determining the need for international protection.⁴¹⁷

⁴¹⁵ IACHR, [press release](#) at the conclusion of its visit to the southern border of the United States on September 29 to October 2, 2014.

⁴¹⁶ United Nations High Commissioner for Refugees (UNHCR), [Children in flight: Unaccompanied children fleeing Central America and Mexico, and the need for international protection](#), pp. 4 and 5.

In this study, the UNHCR conducted individual interviews with 404 unaccompanied or separated children—approximately 100 from each country, namely, El Salvador, Honduras, Guatemala and Mexico—who entered the U.S. during or after October 2011, in order to learn the reasons why the children and adolescents are leaving their countries of origin and to determine whether they are in need of international protection.

⁴¹⁷ United Nations High Commissioner for Refugees (UNHCR), [Children in flight: Unaccompanied children fleeing Central America and Mexico, and the need for international protection](#), p. 7.

353. It should be noted that recently, the Inter-American Court of Human Rights in its Advisory Opinion on migrant children⁴¹⁸ interpreted a number of articles of the American Convention on Human Rights, the American Declaration on the Rights and Duties of Man, and the Inter-American Convention to Prevent and Punish Torture, as well as the expanded definition of the concept of refugee in the Americas in application of the Cartagena Declaration,⁴¹⁹ in order to determine more precisely the States' obligations vis-à-vis children and their migratory status, taking into consideration their possible need for international protection. The Court warns of the necessity of recognizing the need for international protection that may derive from the harm caused by organized crime.⁴²⁰
354. The IACHR has also warned of the very high level of vulnerability faced by unaccompanied children and adolescents during the migration process: they face harsh and grueling conditions during the trip, situations of violence, sexual violence and abuse, and are also at risk of becoming victims of human trafficking for purposes of sexual or labor exploitation, and kidnappings and extortion, and of being used to transport drugs and other organized crime activities.⁴²¹ The IACHR urges States to take all measures necessary to adequately protect migrant children and adolescents at all stages of migration, and to guarantee their right to a fair procedure to determine their potential need for international protection.

f. Other Consequences of Lack of Security

355. The rights of children and adolescents are also curtailed by restrictions that their own families place on them for their protection. The climate of insecurity leads families to set limits on the child's mobility so as not to expose them to situations of risk, thus limiting their opportunities to go out or participate in extra-familial activities. Children usually only go out to go to school, and only go to other places if accompanied by an adult owing because the insecurity and violence make public spaces dangerous. This means that families and children are locked in the dilemma of either restricting their own freedom of movement and, in so doing, impairing other rights, such as recreation, culture, and leisure, or exposing themselves to

⁴¹⁸ I/A Court of Human Rights, Advisory Opinion OC-21/14 of August 19, 2014, on the rights and guarantees of children in the context of migration and/or in need of international protection.

⁴¹⁹ Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems," held in Cartagena, Colombia, November 19-22, 1984. Although the Cartagena Declaration is not an agreement among States, it has been supported by the OAS since 1985: OAS General Assembly, Legal status of asylees, refugees, and displaced persons in the American hemisphere, resolution AG/RES. 774(XV-O/85), adopted at its third plenary session held on December 9, 1985, third operative paragraph. The Cartagena provides that: "...the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have serious disturbed public order."

⁴²⁰ See I/A Court of Human Rights, OC-21/14 of August 19, 2014, paras. 75-80, and particularly the end of para. 80.

⁴²¹ See also I/A Court of Human Rights, OC-21/14 of August 19, 2014, paras. 90 and 91.

becoming victims of violence. Thus, fear of victimization results in self-imposed restrictions on freedom of movement.⁴²²

356. For example, the State of Mexico reported in its response to the questionnaire that the National Insecurity Survey (ENSI for the Spanish, Encuesta Nacional sobre Inseguridad) found that, nationwide, 56 percent of those polled said that they had stopped letting their children under 18 years old go outside for fear that they might fall victim to crime. The percentage was even higher in cities such as Culiacán (64.9 percent) and Ciudad Juárez (79 percent).
357. This accumulation of restrictions on personal liberty also impacts the rights of children to integral development of their personality, since personal options are restricted by the above-described contexts.

3. Impacts of Violence on the Right to Health

358. Generally speaking, children who live in communities with high levels of insecurity and violence are exposed to violations of their personal integrity with repercussions on their physical and psychological health caused by the climate in which they live. They may also become victims of violence as a direct result of the actions of groups that are active in the area or the operations of police and other security forces. The obligations of the State with regard to the right to health of children stem from the right to have one's physical, mental, and moral integrity respected recognized at Article 5 of the American Convention, as well as the duty to respect and ensure rights contained in Article 1(1) of the same treaty.
359. The consequences that the contexts of insecurity and violence described above have on the right to health of children and adolescents vary according to the level of violence suffered and should be examined from the point of view of both their physical and their psychological effects on health. Violence may cause both slight and serious physical injuries that in the long term undermine the child's right to life, her or his personal integrity, and even life itself, such as when, for example, a permanent disability is entailed. In these contexts, the repercussions for the health of children, particularly their mental health, may be damaging and lasting: "Violence may result in greater susceptibility to lifelong social, emotional, and cognitive impairments and to health-risk behaviors,"⁴²³ severely hampering the development of children and adolescents by impacting them at a stage when they are growing and maturing. Exposure to violence may result in the abridgment of other rights, including the right to an education, by causing poor academic performance, high dropout rates, anxiety, aggressive behavior, depression and problems of self-control.

⁴²² UNDP, *Caribbean Human Development Report 2012. Human Development and the Shift to a Better Citizen Security*, p. 49.

⁴²³ Report to the United Nations General Assembly by the Independent Expert for the U.N. Secretary General's Study on Violence against Children, para. 36.

360. Direct and indirect exposure to repeated or severe episodes of physical violence in childhood are associated with an extensive range of mental health problems, including depression, anxiety, post-traumatic stress disorder, and psychiatric disorders.⁴²⁴ Physical violence has social ramifications as well, which can include aggression, social withdrawal and difficulty relating to others. Although not all children who experience such violence will exhibit future behavioral problems, the possibilities of their perpetrating violence against others are increased.⁴²⁵
361. For a full understanding of the impacts of violence on the physical and psychological health of children it is necessary to consider not only the direct harm, but also the indirect harm, such as the loss of a family member or of people close to them and the implications of that for the child. In that regard, it is worth noting the increase in the number of orphaned children in the region, and how that affects their integral development possibilities. In measuring the extent of violence and harm to children, Brazil's National Secretariat for Youth reported that as many as 51 percent of young people in urban areas in Brazil may have lost someone close to them in a violent way, and are saddled with the emotional impact that such an experience entails.⁴²⁶ In the case of Mexico, between 2006 and 2010, the climate of insecurity and violence resulted in more than 30,000 children losing either one or both of their parents as a result of violence.⁴²⁷ In such instances, in addition to the emotional toll taken on them, the child may find himself or herself with no other choice than to shoulder additional family burdens, which could limit the exercise of other rights, lead to being institutionalized, and even to serious situations of defenselessness and neglect.
362. The right to health of children and adolescents is also impaired by harmful practices such as alcohol and drug abuse. In that regard, children and adolescents are at risk of being more exposed to psychoactive substance abuse when there are drug traffickers associated with organized crime present in their neighborhoods and communities. Moreover, the modus operandi of some criminal groups entails luring and tying children and adolescents to their activities, including drug retail operations, through drug use.
363. As a rule, the areas or neighborhoods where the criminal armed groups have established themselves in large numbers are also those that have endemically suffered from a lack of adequate public investment in basic services, including healthcare. Similarly, insecurity causes services to deteriorate unless there are specific programs in place to strengthen them, which has repercussions on the community's access to healthcare services

⁴²⁴ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 31.

⁴²⁵ UNICEF, *Hidden In Plain Sight: A statistical analysis of violence against children*, 2014, p. 31.

⁴²⁶ National Secretariat for Youth of the General Secretariat of the Office of the President of the Republic and Secretariat for Policies to Promote Racial Equality, *Mapa da Violência: Os jovens do Brasil*, 2014, Preface.

⁴²⁷ Red por los Derechos de la Infancia de México (REDIM), *Infancia y conflicto armado en México. [Childhood and Armed Conflict in Mexico] Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados [Alternative report on the Optional Protocol of the Convention on the Rights of the Child with respect to the participation of children in armed conflicts]*, 2011, p. 30.

4. Impacts of Violence on the Right to Education and on the Rights to Recreation, Leisure and Culture

364. The right to education is particularly badly affected in contexts of widespread insecurity and violence. In that regard, information gleaned from responses to questionnaires and reports of several United Nations agencies indicate that in communities, neighborhoods, and areas exposed to violence, usually the education services are not of a good quality, school dropout and truancy levels are high, and the number of teenagers that go on to higher education after completing their compulsory education is low. Consequently, career opportunities are limited because of the low level of education received and the jobs that young people do get are often informal or in precarious conditions of employment, in terms of salary level, benefits, and stability. As a result, social mobility is low in such sectors and poverty and social exclusion is perpetuated.
365. Bearing in mind that social exclusion and economic inequalities are among the conditions that encourage social tensions, violence, insecurity, and crime to surface, the failure to provide a good-quality education that offers opportunities for entry to the job market serves to reproduce that context of exclusion, insecurity, and violence, as well as violating the right to education itself. Therefore, the policy of States in contexts where the conditions and challenges are of the sort just described must include investment of the necessary resources to ensure a good-quality education on the same footing as that offered to other students.
366. The presence of members of *maras* and other gangs in schools and their surrounding areas can have devastating effects on the exercise of the right to education, particularly if appropriate steps are not taken to prevent and stop certain behavior. Violence use by student members of gangs or *maras* in schools against fellow students and teachers, including fights, theft, robbery, coercion, extortion, and threats, as well as vandalism of educational facilities, harms the atmosphere in schools and breeds fear. This has a major adverse impact on children's right to education.⁴²⁸
367. In particular, physical violence and intimidation negatively impact the educational environment, the learning process, acquisition of socialization skills, and the creation of positive interpersonal relationships among students, all of which are basic elements of the educational and formative process. Violence entails violations of the physical integrity of children that are sometimes extremely serious, especially if weapons (knives or firearms) are brought into schools.⁴²⁹ It also generates tension and stress that cause psychological harm to children with a lasting impact. In addition, the presence of *maras* and other gangs creates the risk

⁴²⁸ *Situation of Maras and Other Gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 61 et seq. *Informe Especial sobre el Impacto de la Violencia en los Derechos de las niñas, niños y adolescentes en El Salvador* [Special report on the impact of violence on the rights of children and adolescents in El Salvador], Procuraduría para la Defensa de los Derechos Humanos [Office of the State attorney for the Defense of Human Rights] in El Salvador, 2013, pp. 63 to 66.

⁴²⁹ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 10 and 63.

of their recruiting new members at school, or rouse the interest of fellow students to join them. Some teenagers respond to pressure and violence with more violence, as a defense mechanism; others are subjected to extortion, and some join the *mara* or gang out of choice or as a means of protection.⁴³⁰ These contexts also prompt truancy, dropping out, and some students to change schools.⁴³¹ In such circumstances, the school can no longer fulfill its educational function or be a protective environment for children but, rather, exposes them to violence and other risks. In some countries in the region, particularly in Central America, there are reports of schools closing because of violence and threats from *maras*.

368. Situations that were reported to the Commission include girls and female adolescents being put under pressure at school to date gang members. Such situations induce absenteeism, dropping out, and changes of school or of place of residence, as a safeguard.
369. Another of the factors that interferes with children's rights to education is the presence of members of *maras* and other gangs in the immediate vicinity of schools and along the routes that children take from home to school. The Commission has been told that in some areas the routes to school are unsafe and expose the children to violence, extortion, or recruitment by groups involved in criminal activities. The intimidation that children experience on the way to school is also a cause of absenteeism, dropping out, and changing school.
370. The sale of drugs in schools is a phenomenon sometimes associated with the presence of *mara* and other gang members on school grounds. The sale of drugs to students in the immediate vicinity of schools by small-scale traffickers is also a cause for concern.
371. Situations of tension and violence at school often expand outward and give rise to tensions with and among parents.⁴³² The fact that adolescents have family members linked to gangs is an additional risk factor for interpersonal confrontations and violence that goes beyond the students themselves
372. Teachers are also victims of threats, damage to their property, and violence. On occasion, such situations have prompted disciplinary measures by teachers, as have poor grades by students linked to gangs.⁴³³ Some teachers have had to request a shift change or a transfer to another school because of situations of this sort,⁴³⁴ which has an impact on the quality of education.

⁴³⁰ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 11 and 63.

⁴³¹ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 10.

⁴³² *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 11.

⁴³³ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 10 and 63.

⁴³⁴ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 11 and 63.

373. For instance, according to research conducted at five secondary schools in Honduras located in districts with a gang presence, 91 percent of the 85 teachers that took part said that their school was being affected by the violence associated with *maras* and other gangs. The teachers said the violence was mostly directed against pupils (100 percent of the teachers responded as much), although teachers and parents were also affected (28 percent of teachers considered that the violence also affected them), not to mention the physical damage done to school installations (34 percent said that the school's installations were also harmed).⁴³⁵
374. In one of the schools that took part in the study in Honduras, 22 children had abandoned the school because of threats from gangs, with the tendency higher in girls aged 12 to 15 years old owing to pressures to become girlfriends of gang members, the research found. As a precaution, some parents take it upon themselves to take their children, particularly girls, to and from school.⁴³⁶
375. Faced with students that exercise antisocial and violent behavior, or students suspected to belong to a *mara*, not all schools were in a position to react and pursue a timely course of action guaranteeing all students both safety and their right to an education. Actions taken by the authorities must also give proper consideration to the support needs, as well as the right to education, of children or adolescents who originate violent situations. The kind of support needed entails a comprehensive response, which means coordinating with other authorities and services in the National System for the Protection of the Child. Suspension or expulsion of a student from school as disciplinary measures in response to violent conduct, without any additional steps, are not suitable means for addressing the situation. The measures adopted should include care and support for the adolescent involved in violent conduct and be applied in coordination with the family. Under that logic, disciplinary measures should be based on an eminently educational and constructive approach aimed at encouraging capacities for harmonious coexistence, nonviolent personal relationships, and a sense of responsibility, as well as reintegration in society and the education system. Disciplinary measures that involve suspension or expulsion cannot result in the denial of the child's or adolescent's right to education
376. The rules that govern conduct that gives rise to severe disciplinary measures in schools, infringing the right to education (for instance expulsion and suspension) must observe due process guarantees and previously envisage the applicable penalties and procedure for imposing them. They must respect the right of the child to a hearing and afford the possibility to appeal against the penalty to an impartial higher authority. Penalties cannot be discriminatory and must be objectively justified and proportional to the harm or act committed. The Commission is mindful that many teachers and educators work in schools in difficult conditions and that addressing certain complex situations is challenging. The Commission also notes that the education system and schools not only

⁴³⁵ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, pp. 10 and 62 to 63.

⁴³⁶ *Situation of "maras" and other gangs in Honduras*, National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 62.

guarantee the rights of the child to an education but also represent a preeminent factor in their integral development, personal growth, and protection. There are important benefits to be had from States' documentation and dissemination of successful intervention experiences and methodologies in the application of codes of conduct and conflict resolution techniques in schools that improve the classroom atmosphere and student-faculty relations. Various countries in the region have implemented and assessed innovative initiatives with regard to discipline. Such methodologies are inspired by principles of restorative justice and are more in tune with the goals of education than traditional punitive measures.

377. According to the aforementioned study in Honduras, when teachers were asked about the types of measures adopted by the education authorities in response to situations of violence or threats that adversely affected the school environment and the right to education, 52 percent said that the response was negligible or very limited, 31 percent said that the police were called, 37 percent said that the adolescent received counseling and follow-up, and 9 percent said that security measures at the school were enhanced.⁴³⁷ More specifically, upon being asked what steps were taken when a student was suspected of being a gang member, 60 percent of teachers indicated that the counseling department adopted measures such as speaking to the parents and following up on the student, 19 percent said that they did not know what was done, 17 percent said that no steps were taken, and 4 percent said that disciplinary measures were adopted, such as, *inter alia*, expulsion from the school.⁴³⁸
378. With regard to the United States, the Commission has received information about the application of the so-called "zero tolerance" policy in schools and its apparent effect in terms of increasing the number of children and adolescents that drop out of the education system as well as the number entering the juvenile justice system. This policy also has a disproportionate impact on minority children and those with learning disabilities and with certain forms of disability, especially, those of a mental and intellectual nature.⁴³⁹
379. The "zero tolerance" policy is an attempt to address the legitimate concern about the level of violence in schools. However, in practice, its application has entailed the automatic imposition of increasingly harsh penalties, denying many children and adolescents their right to education, as well as exposing them to a lack of protection and violations of other rights. According to this information, in some schools discipline is routinely enforced in an extreme and disproportionate way,

⁴³⁷ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 63.

⁴³⁸ *Situation of "maras" and other gangs in Honduras*. National Program of Prevention, Rehabilitation, and Social Reintegration, with UNICEF support. 2011, p. 64.

⁴³⁹ Suspension rates have reportedly increased in recent years in United States, from 1.7 million in 1974 to 3.1 million in 2000. See, Coalition for Juvenile Justice, *Ensuring School Engagement and Success vs. Exclusion for Youth at Risk of Delinquency*, 2009; Advancement Project, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK (Mar. 2005), p. 15, American Civil Liberties Union (ACLU), [What is the school-to-prison pipeline?](#) See also, New York Civil Liberties Union (NYCLU), and Rosemarie O'Conner, Allan Porowski, Aikaterini Passa, ICF International, [Disproportionality in school discipline: An assessment of trends in Maryland, 2009–12](#).

including suspension or expulsion of the child or adolescent from school.⁴⁴⁰ Suspension or expulsion from school increases the likelihood that the child or adolescent will be unable to meet academic goals, repeat the year, or abandon their studies, as well as negatively impacting their interpersonal relationships. Furthermore, in many cases the fact that the child or adolescent will be at home without adult supervision exposes them to other risks, including spending more time on the street and other behaviors that represent a risk to their well-being and safety.

380. In some schools in United States police officers are in charge of keeping order and discipline in the school. However, they are reportedly not trained to work with children and adolescents, nor are they apparently equipped with expertise in child-youth development and behavior or methodologies to guide their conduct. They are in the schools to keep order and enforce disciplinary rules. The responsibility given to police officers has resulted in increased referrals of children and adolescents to juvenile justice institutions for problems of conduct or indiscipline; in other words, not for criminal acts but for behavioral reasons, which should be addressed within the education system by specialized staff in collaboration with the family, as part of the child's or adolescent's upbringing. Children and adolescents affected by disciplinary measures of this nature are removed from the school environment and sometimes placed in settings with other adolescents who have committed criminal offenses. Such policies are commonly referred to as the "school-to-prison pipeline." The institutions worst affected by this situation are those considered "problem" schools located in less-developed neighborhoods, where certain groups are disproportionately impacted, particularly Afro-descendent and Latino students.⁴⁴¹
381. With regard to the situation in the United States, the Commission has also received information that students who have been suspended or expelled are completely denied their right to education⁴⁴². In other cases they are sent to alternative schools for students who have been disciplined. As to the way in which those schools operate, the Commission has received information that many are privately run and that there are gaps in their regulation and supervision by the State, such as, for example, the minimum amount of class time or syllabus requirements.⁴⁴³ The foregoing further complicates the children's return to their regular school as they may not necessarily be academically prepared to rejoin their year, which increases the likelihood of poor performance, absenteeism, dropping out, or fresh problems with conduct.
382. In general, in the region, for many students in poor and excluded neighborhoods, the environment at school is not consistent with the role that school and education should play in their lives: overcrowded classrooms, lack of qualified teachers,

⁴⁴⁰ According to the Commission's information, the enforcement of these policies has reportedly led to students being expelled for bringing nail clippers or scissors to school.

⁴⁴¹ These concerns have been echoed by the United Nations Committee on the Elimination of Racial Discrimination, CERD/C/USA/CO/7-9, 25 September 2014, paras. 14 and 21.

⁴⁴² See, American Civil Liberties Union, [what is the school-to-prison pipeline?](#)

⁴⁴³ See, American Civil Liberties Union, [what is the school-to-prison pipeline?](#)

insufficient funding for a quality education, or unavailability of services, such as counseling or special needs education, discourage and frustrate students and create a climate conducive to truancy and defiance of school rules. The lack of support provided to students that need it, in the form of counseling or special needs education, means that schools are unable to address the different needs of children and adolescents. Instead, some schools have responded by taking a more hard-line approach to discipline and placing police officers in school corridors.

383. In El Salvador and Honduras police perform educational tasks in schools, some of which involve the education in values, civic standards, and physical health. Although it appreciates the importance of education on such matters and the police's concern with strengthening trust between the police and adolescents, the Commission believes that educational functions should be carried out by qualified teachers trained to work with children and adolescents. The efforts of the police to engage with adolescents could be pursued in other settings, such as the community, which would preclude the need to use schools for that purpose.
384. In contexts of insecurity, the right to rest and leisure, to engage in play and to culture⁴⁴⁴ is abridged and the enjoyment thereof restricted. Public settings become unsafe and the activities, which are usually carried out in the recreational areas of the city are negatively affected. Sports, leisure and cultural facilities themselves undergo deterioration, and important settings of interaction for children and adolescents are lost. Children and child caretakers cut down on the number of times they go out for these purposes out of fear of violence and, consequently, constraints are placed on some aspects of the exercise of the aforementioned rights.
385. The IACHR notes that restrictions on the rights to rest and leisure, play and culture have a special impact when children and adolescents are involved because of the unique stage of physical and psychological development and growth they are going through and the importance of the exercise of these rights in order to realize full

⁴⁴⁴ The Convention on the Rights of the Child recognizes the rights of the child to rest and leisure, culture and play in Article 31: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity." Additionally, the Committee on the Rights of the Child has adopted General Comment 17, "On the Right of the Child to rest, leisure, play, recreational activities, cultural life and the arts" adopted at the 62nd session (January 14 to February 1, 2013). CRC/C/GC/17.

The Committee links Article 31 and the rights set forth therein to the rest of the rights and principles enshrined in the Convention on the Rights of the Child, especially, Article 6 (Life, survival and development) and Article 24 (health) and finds that the realization thereof must take place in the framework of the principle of progressiveness. In the realm of the Inter-American human rights system, Articles 19 of the Convention and Article VII of the American Declaration recognize the right to special protection to which children and adolescents are entitled because of the evolving nature of childhood and the Court has linked them to the concept of "corpus juris" in order to define their content and scope by notably taking into consideration the Convention on the Rights of the Child. Additionally, Article 14 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) recognizes the right to the benefits of culture for all persons.

individual development, the evolution of their cognitive capacities and social competences and, in general, of their health and wellbeing.

386. The Committee on the Rights of the Child has also highlighted the importance of these rights to the health, wellbeing and full development of the child, because of the special evolving nature of childhood.⁴⁴⁵ According to the Committee, these are rights, which fundamentally aid in creating the conditions necessary to protect the evolving nature of the capacities of children and adolescents, by reinforcing learning and physical, social, cognitive and emotional skills. They are essential rights at every age and stage of life of children and adolescents. The Committee has established that participation in cultural life is also an important element of a child's sense of belonging and contributes to forging their right to their own sense of identity. The Committee links Article 31 of the Convention of the Rights of the Child (right to recreation, culture, play and leisure), to the rest of the rights and principles provided for in the Convention on the Rights of the Child, especially Article 6 (life, survival and development) and Article 24 (health). Restriction on the rights set forth in Article 31, therefore, has an impact on other rights, particularly the right to personal integrity and health and wellbeing.

E. The Fight against Impunity: the Duty to Investigate and Punish

387. One dimension of the State's obligations is the judicial investigation of criminal conduct that violates human rights with view to ensuring justice, providing reparation to victims and their families, eliminating impunity, and preventing the recurrence of such conduct. The Commission and the Court have determined that the general obligation to respect and ensure rights contained in Article 1(1) of the American Convention gives rise to the duties to investigate violations of human rights recognized in the Convention, to establish responsibilities, and to punish the culprits. Adequate and effective investigation of criminal acts and judicial prosecution are key components in building confidence in public institutions, consolidating the rule of law, and confronting criminality within a framework of legality.⁴⁴⁶
388. The State should ensure that the necessary inquiries are carried out in a serious and impartial way. However, in the contexts examined in this report, homicides and other human rights violations go unpunished in a high number of instances. The reasons for that vary and should be addressed by States as a priority.
389. The Commission notes that victims, their families, and witnesses do not always report crimes. Such situations often arise because of a lack of confidence in the police and other forces of public order, or in the judicial system, either because

⁴⁴⁵ See, UN Committee on the Rights of the Child, General Comment Number 17, "on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts," adopted at the 62nd Session (January 14 – February 1 2013) CRC/C/GC/17.

⁴⁴⁶ In that regard, see, IACHR, *Report on Citizen Security and Human Rights*, para. 36.

they consider them corrupt, complicit with organized crime, or inefficient. On other occasions, victims, their relatives, and witnesses do not dare to file a complaint for fear of reprisal by the perpetrators of the criminal acts. Furthermore, the families affected are usually of limited means and poorly educated, which makes it difficult for them to institute judicial proceedings to seek justice. In circumstances where violence has been illegally used by the security forces, the Commission has been told of situations in which State security agents have allegedly assaulted or threatened victims, witnesses, and or relatives to dissuade them from making a complaint. In addition, there are weaknesses in the majority of victim and witness protection systems, which are sometimes not regarded as sufficiently secure by those whom they are supposed to protect due to alleged connivance of the security forces and/or justice sector with organized crime.

390. The Commission is troubled by information that it has received concerning lack of due diligence on the part of the authorities in investigating murders of children and adolescents when the suspected perpetrators are members of organized crime groups, without the necessary efforts made to apportion individual responsibilities and identify the culprits. The Commission has also been informed that, on occasion, officials responsible for investigating crimes give less consideration to cases that are thought to concern a "settling of scores" or disputes between members of criminal groups or of gangs. The same apparently occurs when the victims belong to particular social groups or are associated with certain behavior. Likewise, the Commission is concerned at the levels of impunity surrounding acts of violence perpetrated against adolescents from certain socioeconomic sectors or ethnic groups, those who are members (or perceived members) of a gang or a group involved in criminal activities, or those regarded as "dangerous," based on stereotypes, such as adolescents who live on the streets and/or have problems of drug addiction. The Commission notes that violence perpetrated against these groups of children and adolescents is not always investigated.⁴⁴⁷ Investigations are not carried out as rigorously and swiftly as they should in order effectively to uncover the facts. As yet, in few cases is the matter brought to trial, responsibilities apportioned, and appropriate penalties imposed in line with the seriousness of the violation.⁴⁴⁸ The level of impunity that such behavior enjoys clearly contributes to its recurrence.
391. In some cases, the perpetrators of violent acts are the State's own security forces. The Commission is troubled by the levels of impunity that shroud such situations. The existence has been disclosed of cases in which public officials have tampered with and in some cases even falsified scenes of crime when a State agent has been implicated in illegal use of force. States should ensure that efforts to guarantee citizen security and address organized crime are always carried out within a

⁴⁴⁷ The Special Rapporteur on extrajudicial, summary or arbitrary executions reached a similar conclusion following his visits to Mexico from April 22 to May 2, 2013: "I was alerted to the concern that security forces may believe that people involved in drug-related activities are disposable in the State's efforts to address organized crime. There often seems to be a presumption that those killed were involved in crime and thus less worthy of protection."

⁴⁴⁸ See, in this regard, the findings of the U.N. Secretary General's Study on Violence against Children, p. 297.

framework of legality and the rule of law. In that sense, independent, impartial, and effective investigation and prosecution mechanisms are essential.

392. In Argentina, for example, according to information received from the public defender's offices of the provinces of Buenos Aires, Santa Fe, and Chubut, alleged cases of torture and other cruel, inhuman, and degrading treatment of adolescence by State security agents still enjoy high levels of impunity. In large measure, impunity appears to be attributable to failure to file a complaint for fear of reprisals, a lack of effective protection mechanisms for persons making complaints and witnesses, and lack of confidence in the system of justice. According to records kept by the Public Defender's Office of the Province of Buenos Aires, in 62 percent of cases that came to the attention of public defenders, the adolescents preferred that the information go no further than their defenders, who are unable to bring any kind of judicial action without the consent of their clients. In cases that were officially reported, only a very small number led to the establishment of responsibilities; the Office of the Public Defender for the Court of Cassation of the Province of Buenos Aires found that of a group of 57 complaints of torture or other cruel, inhuman, and degrading treatment or punishment that were examined, none resulted in a conviction, and the judicial proceedings barely progressed beyond the initial stages.⁴⁴⁹
393. Initiatives have been implemented in Argentina to remedy this situation, such as those of certain public defender's offices to create registers of torture and other cruel, inhuman, and degrading treatment or punishment, the purpose of which is to gather information on complaints in cases of torture and mistreatment allegedly committed by police and corrections officers.⁴⁵⁰ Such documentation helps to increase transparency about the number of cases of police abuse and violence as well as the circumstances and places in which they occur, thereby affording a closer understanding of the scale of the problem, its variables, and levels of impunity. The Committee on the Rights of the Child had already expressed its concern "at the absence of reliable data, at the national level, on allegations of inhuman and degrading treatment" and at the "the absence of any information on prompt investigations into these allegations, their results, including sentencing of those responsible, and on putting an end to the practice."⁴⁵¹ For its part, in its concluding observations, the Human Rights Committee urged Argentina to "establish registers of cases of torture and other cruel, inhuman or degrading treatment or punishment, or, where appropriate, strengthen existing registers with a view to maintaining reliable information on the real scale of the problem throughout the country, monitoring developments in this connection and taking adequate measures to address it."⁴⁵² The documentation and dissemination of information of this type allows a new approach to traditional forms of prevention of police violence by highlighting and drawing public attention to such situations,

⁴⁴⁹ See IACHR, hearing on Citizen Security and Reports of Torture in Argentina, 154th regular session, March 19, 2014.

⁴⁵⁰ See IACHR, hearing on Citizen Security and Reports of Torture in Argentina, 154th regular session, March 19, 2014.

⁴⁵¹ Committee on the Rights of the Child. Concluding Observations, CRC/C/ARG/CO/3-4, 21 June 2010, paras. 42 and 43.

⁴⁵² United Nations Human Rights Committee, Concluding observations, CCPR/C/ARG/CO/4, para. 18.

acting as a deterrent, assisting in the design of prevention and response policies, and monitoring levels of impunity. Other initiatives implemented by the Argentine State to remedy the situation of police violence and impunity are the creation of the Office of the Government Attorney against Institutional Violence (PROCUVIN) within the framework of the Office of the Attorney General of the Nation; the creation of a Register of Convictions for Torture by the Supreme Court of the Province of Buenos Aires, which will function in the Under Secretariat for Human Rights of Persons Deprived of Liberty; the creation of institutionally independent public defender offices at the national and provincial level; the creation in the Secretariat for Human Rights of the Nation of an area to advance implementation of the Optional Protocol to the United Nations Convention against Torture at the national level and in various provinces.⁴⁵³

394. In Brazil, so-called “resistance” killings (“*autos de resistência*”) are suspected of being covert extrajudicial executions by State security forces. When such a shooting occurs, the police usually claim that it was the result of an act of “resistance” (“*autos de resistência*”) during a confrontation with alleged criminals, without those actions then being properly investigated. Human rights organizations and officials in the criminal justice system have reported that in the wake of supposed “resistance” killings there are failures in terms of preservation of the scene of the crime, its alteration, and even destruction, concealment, substitution, and falsification of evidence or proof that would incriminate police officers in an excessive or illegal use of force.⁴⁵⁴ Public officials at the state and federal level have taken a number of steps to address this situation, including installation of cameras in police vehicles and a prohibition against police moving victims from the scene in order to take them to a medical facility, and only allowing medical services to take them.⁴⁵⁵ These measures are designed to boost transparency and accountability in police actions. The Commission has been informed of the positive effects that these measures appear to be having. For example, as a result of the prohibition against police removing victims’ corpses from the scenes of the shootings, police killings subsequently fell by approximately 34 percent in the first six months of 2013, according to government figures.⁴⁵⁶
395. Another problem identified in Brazil is that police investigators do not offer adequate guarantees of independence, impartiality, and effectiveness in investigations. Although investigations into the use of lethal force by the military police are carried out by the civilian police, the level of impunity in which these

⁴⁵³ See IACHR, hearing on [Citizen Security and Reports of Torture in Argentina](#), 154th regular session, March 19, 2014.

⁴⁵⁴ See thematic hearing at the 153rd regular session of the IACHR and Human Rights Watch, [Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo](#), pp. 1 to 8.

⁴⁵⁵ Information provided at a thematic hearing during the 153rd regular session of the IACHR. According to Human Rights Watch, “[a]fter fatal shootings by police, officers routinely manipulate, disrupt, or fail to preserve evidence that is vital for determining whether or not the killing was lawful. One common cover-up technique is to remove a shooting victim’s corpse from the crime scene, deliver it to the hospital, and claim that the removal was an attempt to “rescue” the victim. These false “rescues” serve to destroy crime scene evidence while providing a veneer of good faith on the part of the police.” Human Rights Watch, [Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo](#), p. 5.

⁴⁵⁶ Human Rights Watch, [Country Summary](#), January 2014, p. 2.

inquiries remain raises concerns about the existence of a conflict of interest.⁴⁵⁷ According to a number of human rights organizations, basic principles on the investigation of homicides are frequently infringed or ignored. Such shortcomings mean that criminal investigations almost never clarify the facts or produce sufficient evidence to establish criminal responsibilities for the illegal use of lethal force. Other cases are simply set aside without even being brought before a judge or criminal charges presented.⁴⁵⁸ In the decade from 1999 to 2009, for example, over the past decade, the Rio Police Ombudsman's Office recorded over 7,800 complaints against police officers concerning criminal conduct; yet those complaints generated only 42 criminal charges by state prosecutors and only four convictions.⁴⁵⁹ In connection with the foregoing, another of the measures adopted in the country to deal with the situation described was the creation of a police ombudsman, which, though an invaluable step, is not sufficient to overcome the problem. In spite of the efforts made, the need still remains to enhance measures to prevent police abuse and investigate, prosecute, and appropriately punish those responsible for human rights violations. In Brazil, according to information from the Brazilian Criminology Association, in 2011 only between five percent and 8 percent of homicides were cleared, making it possible to identify those responsible.⁴⁶⁰

396. Some of the measures recently adopted by the State of Brazil to rectify the situation of impunity include a resolution by the National Council of Justice setting out basic guidelines that judges must follow when investigating possible cases of torture, and the creation by a law of the National Committee on Prevention and Combating Torture, as part of the National Mechanism for the Prevention of Torture,⁴⁶¹ to conduct unannounced visits to detention centers.

⁴⁵⁷ Human Rights Watch, Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo, pp. 1 to 8. Amnesty International, You killed my son. Homicides by military police in the city of Rio de Janeiro, 2015, p. 99.

⁴⁵⁸ According to Human Rights Watch, the police inquiries that it reviewed revealed "serious shortcomings, such as failure to question all police officers involved in a killing, failure to seek out and interview non-police eyewitnesses, and failure to conduct basic forensic tests, such as crime scene analyses. A detailed examination of 29 inquiries into "resistance killings" by one Rio military police battalion from 2007 through 2008 found that every one of them suffered from all—or nearly all—of these failings." Human Rights Watch, Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo, pp. 1 to 8. Amnesty International, You killed my son. Homicides by military police in the city of Rio de Janeiro, 2015, p. 99.

⁴⁵⁹ Human Rights Watch, Lethal Force. Police Violence and Public Security in Rio de Janeiro and Sao Paulo, p. 6. Amnesty International, You killed my son. Homicides by military police in the city of Rio de Janeiro, 2015, p. 99.

⁴⁶⁰ National Secretariat for Youth of the General Secretariat of the Office of the President of the Republic and Secretariat for Policies to Promote Racial Equality. Homicídios e Juventude no Brasil. Mapa da Violência 2013, p. 97.

⁴⁶¹ The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment urges States Parties to create a national preventive mechanism against torture. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. The objective of the Protocol is "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment"

397. As regards the State of El Salvador, according to official data, from 2006 to 2009 more than 80 percent of cases reported to the Office of the Prosecutor General of the Republic were set aside by that agency. Another troubling fact is the high number of cases entering the courts that end in dismissal with prejudice; that is, without a judgment establishing responsibility for the investigated facts. In the period from 2009 to 2013, 15 percent of criminal proceedings concluded in a final judgment, be it a conviction or an acquittal; 8.4 percent of judgments resulted in a conviction, with 5.4 percent in the acquittal of the accused. These data reflect a range of problems in the administration of criminal justice, which are rendered more acute by the increasing demand generated by the serious situation of violence and criminality. The fact is that the weaknesses in the justice system have been a major factor in perpetuating the impunity and rampant crime in the country.⁴⁶²
398. In Guatemala there is a persistently high level of impunity in decisions and penalties in homicide cases. The Public Prosecution Service has made efforts to advance the investigation and prosecution of serious crimes that violate the rights to life, with the result that the number of indictments and convictions rose by 7.3 percent on average in 2013 relative to 2011. According to the Public Prosecution service, the Crimes against Life Investigation Unit boosted its effectiveness from 5 percent to 28 percent between 2009 and 2012. While these efforts are significant, they need to be sustained and enhanced.
399. In Honduras, levels of impunity in terms of decisions in homicide cases are also cause for alarm. Information received by the Commission indicates that, at the national level, of the 27,272 homicides committed between 2010 and 2013, only 1,009—equivalent to 3.7 percent of cases—resulted in convictions.⁴⁶³ According to public statements made in 2014 by the Special Prosecutor for Crimes against Life in Honduras, of the 2,363 homicides recorded to that point in the year in the cities of San Pedro Sula and Tegucigalpa, only 129 cases were judicialized.⁴⁶⁴ The Honduran justice system is underfunded and needs to undergo a process of modernization and professionalization. The main challenge appears to have to do with the State's incapacity to conduct quality criminal investigations because the

(Article 1). The Protocol provides that “[e]ach State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)” (Article 3). It also sets out the obligations, saying that “[e]ach State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment” (Article 4.1). For the purposes of the Protocol, deprivation of liberty is defined as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority” (Article 4.2).

⁴⁶² See *La situación de la seguridad y la justicia 2009-2014. Entre expectativas de cambio, mano dura militar y treguas pandilleras*, Instituto Universitario de Opinión Pública (IUDOP), José Simeón Cañas Central American University (UCA), 2014, Executive Summary, p. 2.

⁴⁶³ Alianza Paz y Justicia, *Estudio de impunidad: homicidios en Comayagua, San Pedro Sula y Tegucigalpa*.

⁴⁶⁴ See Alianza Paz y Justicia, *Estudio de impunidad: homicidios en Comayagua, San Pedro Sula y Tegucigalpa*, and the article InSight Crime, *Honduras resuelve el 1% de los casos de homicidio: Informe*.

personnel responsible lack the necessary training and there is an absence of adequate procedural protocols. The current situation is one of lack of justice for victims and their relatives with the implication that, in practice, there is no deterrent against groups that engage in violent and criminal activities.

400. The IACHR during its onsite visit to Mexico, September 28th to October 2nd, 2015, has been able to confirm on the ground “the serious human rights crisis Mexico is experiencing, which is characterized by a situation of extreme insecurity and violence; serious human rights violations, especially forced disappearances, extrajudicial executions, and torture; critical levels of impunity; and inadequate and insufficient attention to victims and their families.”⁴⁶⁵ Such circumstances also have a detrimental effect on children and adolescents. The IACHR alerts that “there are high levels of impunity regarding disappearances and forced disappearances in the present. The deficiencies in the investigation of disappearances are many and serious. Many cases of disappearance are not reported due the distrust of family members in the capacity of the State to respond, or for fear of retaliation, and in cases in which complaints are filed, the response from the authorities falls seriously short.”⁴⁶⁶ The lack of access to justice has created a situation of structural impunity that perpetuates and in some cases encourages the repetition of serious human rights violations. The threats, harassment, killings, and disappearance of persons who seek truth and justice have had a chilling effect on Mexican society, which leads to serious underreporting in official statistics.
401. The Commission values the measures the State has taken to address this situation, without prejudice to the insufficiencies and obstacles in the implementation. Specifically, the Inter-American Commission recognizes significant human rights reforms that have been introduced in Mexico beginning in 2011, including the constitutional reforms and the recently approved protocols for the investigation of cases of torture and forced disappearance. Nevertheless, the Inter-American Commission confirmed the profound gap between the legislative and judicial framework, and the daily reality that millions of people in the country experience. Again and again, throughout the country, the Commission heard from victims that the process of justice is a “simulation.” In addition, the Inter-American Commission received reports in many areas of the country regarding the lack of justice for victims of gross human rights violations and their families. Particularly, there is an alarming number of criminal proceedings that have remained stagnant for years in the investigation phase without criminal charges being brought and, therefore, without a conviction or final judgment. The number of legal processes for gross violations that have concluded with convictions is extremely low. The lack of access to timely, effective, and reliable justice significantly weakens the culture of legality and the rule of law in the country.⁴⁶⁷

⁴⁶⁵ IACHR, [Press release](#), onsite visit to Mexico, conducted from September 28th to October 2nd, 2015.

⁴⁶⁶ IACHR, [Press release](#), onsite visit to Mexico, conducted from September 28th to October 2nd, 2015.

⁴⁶⁷ IACHR, [Press release](#), onsite visit to Mexico, conducted from September 28th to October 2nd, 2015. [Press release](#). Preliminary Observations on the official visit to Mexico by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 22 April to 3 May 2013.

402. It must also be noted that the presence of groups of drug traffickers and the drug market has had an impact on several countries of the region in terms of increased levels of corruption in the institutions of the State, especially on the security forces and the judiciary. The reasons for this situation are connected to a variety of factors, including the power of these criminal organizations, the large sums of money generated by their activities, and threats and coercion of public servants. In the Dominican Republic, the prosecuting attorney for the National District has claimed that a high number of cases of drug trafficking involve corrupt officers of the State security forces, who aid and abet in the commission of these crimes.⁴⁶⁸ Charges have also been made of involvement of agents and former agents of the State security forces in murders over control of the drug business.⁴⁶⁹ Cases of corruption have also reached into the judiciary branch of government, affecting investigations and leading to impunity. In light of this scenario, the State is making efforts to elucidate responsibility and combat corruption, in addition to modernizing the security forces in order to restore the trust of citizens in them and improve their performance.⁴⁷⁰ However, despite these initiatives, corruption linked to drug trafficking in this country continues to pose a challenge to the rule of law and legitimacy of institutions, and deepens impunity.
403. As to the context in the Dominican Republic described above, the organization Amnesty International has documented a great number of cases which, in the opinion of the organization, involve excessive use of force, mistreatment and abuse and arbitrary detention, in addition to instances of extrajudicial execution and forced disappearances.⁴⁷¹ The National Police of this country are allegedly responsible for a high number of deaths each year: based on police statistics, from January 2005 to July 2011, 2,542 persons died at the hands of the police and, from January to September 2014, some 136 people died in confrontations with the police.⁴⁷² Amnesty International claims that police agents are responsible, on average, for 15% of all homicides in the Dominican Republic. The great majority of these deaths were supposedly reported by the police as occurring in the course of “exchange of fire” with alleged criminals. However, the human rights organization believes that, in many instances, these were actually extrajudicial executions intended to get rid of repeat criminal offenders in order to send a clear message to the criminals: or they were retaliation by corrupt officials against their former

⁴⁶⁸ See Insightcrime, [Police involved in 90 per cent of Dominican Republic organized crime cases](#), March 20, 2015; [Dominican anti-drug chief accused of stealing cocaine](#), January 13, 2015; Noticia al Dia, [Republica Dominicana decomisa 450 paquetes de droga en avion procedente de Venezuela](#), [‘Dominican Republic seizes 450 packets of drugs on a plane from Venezuela’] March 19, 2015; El Nacional, [Caso de dican es mas grave de lo revelado](#), [‘Dican Case is more serious than revealed’], December 31, 2014.

⁴⁶⁹ Insightcrime, [Majority of contract killings in Dominican Republic involve expolice: inspector general](#), June 9, 2014 and Amnesty International [Dominican Republic: Submission to the UN Human Rights Commission](#), 104th Session of the United Nations Human Rights Committee, 12-30 March 2012.

⁴⁷⁰ Insightcrimen, [500 dominican officials dismissed in 5 years for drug ties](#), October 8, 2012 and Insightcrime, [Police involved in 90 per cent of Dominican Republic organized crime cases](#), March 20, 2015. Impacto Digital, [Dominguez Brito revela sicarios son mayoria policias cancelados](#), [‘Dominguez Brito reveals most dismissed police officers are hired hitmen’] June 4, 2014.

⁴⁷¹ Amnesty International [Dominican Republic: Submission to the UN Human Rights Commission](#), 104th Session del United Nations Human Rights Committee, 12-30 March 2012, pp. 8 to 10.

⁴⁷² Amnesty International [Dominican Republic: Submission to the UN Human Rights Commission](#), 104th Session of the United Nations Human Rights Committee, 12-30 March 2012, pp. 8 to 10.

criminal associates, among other hypothesis. In its 2014 annual report on human rights, the State recognizes that deaths at the hands of police is “a persistent problem,” but claims that they are decreasing.⁴⁷³ Amnesty International has also received several reports of torture and other abuses committed by the police, most of which are alleged to take place in the context of interrogations of alleged criminals. It should also be noted that these observations are made in the context of crime and organized crime activities existing in the country, although the IACHR has not had access to information, which is broken down by age, to enable it to identify the number of persons under 18 years of age affected by the situations described above.⁴⁷⁴

404. In the countries of the Caribbean, an average of 53% of the inhabitants of Antigua and Barbuda, Barbados, Guyana, Jamaica, Santa Lucia, Suriname and Trinidad and Tobago believe that criminals with political connections go free; around 50% think that the judiciary is corrupt; 47.3% believe that powerful criminals stay out of jail; and 37.2% find that judges are corrupt. In light of the results of this survey and of these figures, it would seem that organized crime has seriously undermined public trust in the rule of law in the countries of the Caribbean.⁴⁷⁵
405. In Trinidad and Tobago, the bar association (Law Association of Trinidad and Tobago) called attention in 2007 to the limitations existing in the criminal justice system of the country, as witnessed by the a conviction rate of around 1% in homicides cases. According to this association, the capacity of the justice sector must be boosted by hiring more suitable and qualified staff and by developing forensic services. The association also emphasized the need to create and strengthen programs for the protection of victims and witnesses, given that one of the major challenges faced by justice in investigating homicides and other crimes is that victims and witnesses are reluctant to testify out of fear of retaliation.⁴⁷⁶
406. In general, the Commission believes it is important to make sure that investigators and forensic institutes have sufficient statutory guarantees to be able to perform their duties independently. It is also critical to adopt standardized practices to ensure that investigations are prompt, rigorous, impartial, and reliable. However, there is a concern that, even when there are protocols in place, guarantees are insufficient or not correctly observed. In that regard, the Commission urges States to enhance the professionalization of security organs, strengthen the technical capabilities of personnel in charge of investigations in the police and judiciary, and make appropriate and sufficient resources available to that end. The introduction of specialized investigation and prosecution units to address organized crime are

⁴⁷³ See Report *Informe 2014 de Republica Dominicana sobre Derechos Humanos*. [2014 Human Rights Report Dominican Republic].

⁴⁷⁴ Amnesty International *Dominican Republic: Submission to the UN Human Rights Commission*, 104th Session of the United Nations Human Rights Committee, 12-30 March 2012, pgs. 8 to 10.

⁴⁷⁵ UNDP *Caribbean Human Development Report 2012. Human development and the shift to a better citizen security*, pgs. 78 and 79.

⁴⁷⁶ Trinidad and Tobago *Newsday*, *TT facing breakdown*, November 25, 2006 and Insightcrime, *Las pandillas son la nueva ley en la Trinidad y Tobago* [‘Gangs are the new urban law in Trinidad and Tobago’], October 22, 2013.

an initiative that several States have implemented to increase the quality of investigations and indictments, as well as to reduce corruption and impunity.

407. With regard to the above, investigators should be able to count on protocols and elements for processing and preserving scenes of crime, as well as for adequately conserving, classifying, and transferring evidence, so that it is not lost, tainted, or insufficient either for identifying the victim or for the judicial proceedings conducted to establish the facts and apportion the resultant responsibilities. The Commission has been informed of the adoption in several countries of protocols to investigate homicides and other serious crimes. Protocols that a number of States have adopted include ones for investigating homicides and femicides, and for activating immediate search and recovery efforts for missing persons, with special procedures for when forced disappearance is suspected or the missing person is under 18 years old.
408. For the purposes of investigating certain crimes, the creation of digital databases, in particular that contain fingerprint, DNA, and ballistic records that can be shared by officials and States, are critical and allow new technologies to play an important role.
409. As regards the investigation of possible human rights abuses and violations by State security bodies, the Commission considers that specialized investigation units should be set up with the necessary personnel, resources, and expertise to ensure an independent, impartial, and effective investigation in such cases. Such units should systematically examine all allegations of abuse and violations by security forces. The Commission also believes that a protocol should be established and strictly applied that, *inter alia*, allows persons injured as a result of the use of force by police as well as victims of armed confrontations between police and suspected criminals to receive adequate medical care, and that prevents police officers from altering any evidence at the scene of the crime.
410. Corruption in public security forces and the judiciary, as well as their co-option by organized crime, cast doubt on the independence of institutions and undermine confidence in public institutions and the rule of law. States have a duty to establish and enforce all necessary measures to correct such situations. The percentage of cases in which a final decision is not reached or that remain in impunity is an indicator that States should take into account for pinpointing shortcomings in investigation procedures and prosecutions, identifying corruption, and taking corrective steps. The Commission believes it necessary for States in the region to establish and strengthen oversight and monitoring measures by which to combat corruption and lower impunity. It is necessary to establish internal and external supervision procedures, citizen oversight, and effective reporting and sentence administration mechanisms against acts of corruption in the security forces and the justice administration. Measures that States could adopt include the enactment of a broad surveillance and monitoring mandate for independent human rights institutions, as well as recognition of the citizen oversight role played by civil society organizations. Use of new technologies, such as cameras, helps to strengthen police transparency and accountability (dashboard and body cameras).

411. The Commission reasserts the need immediately to initiate *ex proprio motu* effective investigations into homicides, disappearances, illegal use of force, and other serious human rights violations alleged to have been committed by agents of the State. Whenever a State security agent discharges their firearm, it should be immediately reported in writing and investigated. In that regard, the Commission notes the need to revise regulations that accord a presumption of legitimacy in the use of force by State security forces and ensure that all such cases are brought to the attention of the judicial authorities for their effective investigation. In that regard, police should have an obligation to report all killings immediately after they occur.
412. Citizen reporting and collaboration with the authorities are critical elements for tackling insecurity. For that purpose, it is necessary to have in place readily accessible, secure, reliable, and effective systems for reporting complaints that guarantee protection for, and the security of, the victim, the whistleblower, and witnesses. It is also important for such systems to be staffed with trained personnel in order to avoid the revictimization of persons.⁴⁷⁷ There should also be specialized complaint-reporting mechanisms designed for children and adolescents. Toll-free 24-hour hotlines and the use of technology to report crimes help to increase complaint reporting by the public. The capacity to respond instantly is critical for solving crimes and providing care to victims. Protection programs for victims and witnesses should be assessed and where necessary strengthened to ensure confidence in them and in the protection they provide.
413. Without question, facilitating access to free and quality justice is an important element in reducing impunity. In that regard, the initiatives of a number of States, such as Argentina, that consist of siting judicial offices near slum districts and neighborhoods worst hit by violence to enable complaints and judicial actions to be lodged, are a positive measure that facilitates access to the right to justice for populations in the most vulnerable circumstances.

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UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. 69 and 70.

CHAPTER 5
THE STATES' RESPONSE TO
LACK OF SECURITY, VIOLENCE,
AND ORGANIZED CRIME

THE STATES' RESPONSE TO LACK OF SECURITY, VIOLENCE, AND ORGANIZED CRIME

A. *Repressive Responses by States of the Region*

414. The IACHR recognizes that, in compliance with their duty to ensure human rights, Member States must assume the functions of prevention, deterrence and suppression of crime and violence; however, most citizen security policies in the region today are heavily focused on the security forces exercising coercive control and punitive crackdowns by the criminal justice system. These policies seek short-term results but they do not address underlying causes and pay insufficient attention to prevention. As a result, they fail to provide effective and lasting solutions to the problem. While they are being implemented, moreover, they often end up violating human rights and contravening international human rights law.
415. Several States apply so-called "zero tolerance" policies to combat crime, organized crime, and the *maras*. These policies have led to the adoption of so-called "anti-*mara* laws," which entail altering Criminal Codes and stepping up police operations, including those known as "firm hand" or "iron fist" plans. The common denominator shared by all zero tolerance policies in the countries of the region has been: the granting of additional powers to State security forces (police and army); harsher prison sentences; increased use of pre-trial detention; lowering the age of criminal liability for adolescents and increasing police control over them; and the characterization of new offenses, such as "conspiracy to commit a crime" or "criminal association" (*asociación ilícita*).
416. Eminently repressive policies have revealed other problems such as the saturation of the justice system. The prosecution of alleged violators of laws –especially laws against micro-drug traffickers -- has, because of their numbers and the limited human and financial resources of the region's justice systems, contributed to a worsening of the capacities of the criminal justice system in some countries. In turn, these constraints on the justice sector have meant that a significant number of people are in preventive detention for long periods of time awaiting trial. Furthermore, judicial and political corruption and co-optation linked to organized crime and drug trafficking have meant that high-profile cases have gone unpunished.
417. Another issue highlighted is overcrowding in the region's prisons, where conditions are extremely precarious. As the IACHR has pointed out, such conditions may themselves constitute serious violations of human rights. Nonetheless, the number of inmates continues to grow due to harsher sentencing policies and an increase in the number of those convicted of drug offenses; to excessive and illegal use of pre-trial detention; and to the characterization of new

criminal offenses, such as "criminal association" or "conspiracy to commit a crime," which has led to an increase in the number of people coming into contact with the penitentiary system.

418. The IACHR also observes that the policies to promote and facilitate severing the ties of children and adolescents to criminal groups and gangs are too restricted to even think about providing effective protection to the children directly affected by those environments. Both coverage and resources, based as they usually are on programs designed and implemented by civil society organization, are insufficient. Much the same can be said of the policies for the rehabilitation and social reintegration of the children and adolescents caught up in those groups and gangs. The fact that our States' response has largely focused on criminal justice and imprisonment has impeded implementation of appropriate rehabilitation and social reintegration interventions. Shortcomings in the structure and workings of the juvenile justice system have hindered most such efforts.
419. Lastly, the IACHR also notes that in some countries of the region, El Salvador in particular,⁴⁷⁸ lawmakers have started to look closely at possibly using anti-terrorist laws against the alleged members of the *maras*. The Inter-American Commission has previously expressed some of its main concerns about anti-terrorist laws. In this regard, it has said that the principle of legality in anti-terrorist laws is one of the fundamental guarantees of due process and of a fair trial, which must be closely observed by the States in the course of implementing anti-terrorist strategies.⁴⁷⁹ In the words of the IACHR, the right to respect for fundamental principles of criminal law is "of particular pertinence in the context of terrorism (...) ambiguities in laws proscribing terrorism (...) undermine the propriety of criminal processes that enforce those laws."⁴⁸⁰
420. With regard to legally defining terrorist offenses in the criminal code, the IACHR also raises the alarm that the principle of legality is violated when national legislation codifies criminal offenses in diffuse, abstract or imprecise terms, in contrast with modern criminal law systems, which employ rigid wording and do not allow for a broad interpretation; especially, when crimes of terrorism can be confused with each other or with other criminal offenses, allowing for a wide range of interpretations, thus undermining the necessary legal certainty that must be ensured by the State in this area.⁴⁸¹

⁴⁷⁸ See Insightcrime [Corte Suprema Justicia de El Salvador declara pandillas grupos terroristas](#), ['Supreme Court of El Salvador declares gangs terrorist groups'] August 27, 2015, and [El Salvador usa ley antiterrorista para enfrentar pandillas](#), ['El Salvador uses anti-terrorist law to confront gangs'] August 13, 2015.

⁴⁷⁹ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, pars. 225-226, and Executive Summary, para. 17.

⁴⁸⁰ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 261(a).

⁴⁸¹ IACHR, Application and Pleadings before the I/A Court of Human Rights in the case of Castillo Petruzzi et al v. Peru; referred in: I/A Court of Human Rights, Case of Castillo Petruzzi et al, judgment May 30, 1999 (merits, reparations and costs), Series C No. 52, para. 114. IACHR, Application and Pleadings before the I/A Court of Human Rights in the case of De la Cruz Flores v. Peru; referred in: I/A Court of Human Rights, Case of De la

421. The Commission recognizes that to date there has been no consensus reached among States on a comprehensive international legal definition of “terrorism.”⁴⁸² In the absence of a generally accepted definition, the international community has identified certain acts under treaties, which have either been ratified or acceded to by a high number of States, including the Inter-American Convention against Terrorism.⁴⁸³
422. The IACHR has generally emphasized that States have the international obligation to fully respect human rights in the course of the anti-terrorist struggle. Fully ensuring fundamental human rights in these situations is not at odds with States’ obligation to protect their people from terrorist violence.⁴⁸⁴ It constitutes a fundamental principle that the campaign against terrorism and the protection of human rights and democracy are complementary responsibilities: “the very object and purpose of anti-terrorist initiatives in a democratic society is to protect democratic institutions, human rights and the rule of law, not to undermine them.”⁴⁸⁵ States are obligated to respect human rights as well as the guarantees of due process and the principle of legality and freedom from *ex post facto* application of criminal law.

1. Militarization

423. Generally speaking, in their efforts to address the challenges posed by the lack of citizen security, the States in our region have shifted toward increasingly militarized police forces and the assignment of internal security tasks to the army. As pointed out above, this approach has increased the number of complaints of alleged human rights violations. In general, in those countries in which internal security tasks have been assigned to the Armed Forces or militarized police units, there have been increases in the indiscriminate and illegal use of force, in cases of cruel, inhuman and degrading treatment and torture, and in the number of arbitrary arrests, extra-judicial executions, forced disappearances, and other human rights violations.⁴⁸⁶ Furthermore, this approach to citizen security,

Cruz Flores v. Peru, judgment of November 18, 2004 (merits, reparations and costs), Series C. No. 115, para. 74.

⁴⁸² IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 15; and Executive Summary, para. 6.

⁴⁸³ AG/RES. 1840 (XXXII-O/02), June 3, 2002.

⁴⁸⁴ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, Preface.

⁴⁸⁵ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 15; and Executive Summary, para. 2.

Similarly, in several different treaties and international instruments, including the Inter-American Convention against Terrorism (General Assembly, Resolution AG/Res.1840 (XXXII/O-02), June 3, 2002).

Likewise, the Commission has issued many rulings incorporating these principles. See. IACHR, *Ten Years of Activities 1971-1981*, OAS General Secretariat, 1982, p. 339. IACHR Annual Report *1990-1991*, Chap. V, p. 512. IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, Executive Summary, para. 3. IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 22.

⁴⁸⁶ See, for instance, IACHR press release [IACHR Wraps up Onsite Visit to Mexico](#) and the [information on the visit to Mexico](#) of the United Nations Rapporteur on Extra-Judicial Executions.

emphasizing repression and increasingly militarized interventions by the State security forces, has not yielded significant and sustained results over time in terms of improved security. The States that, to the best of the Commission's knowledge, have assigned internal security and anti-drug tasks to the army or military police are: Argentina (where, in 2013, the Armed Forces were, for the first time, put in charge of border control operations), Brazil, Chile, Colombia, El Salvador, Guatemala, Guyana, Honduras, Mexico, Peru (in the Apurimac, Ene, and Mantaro River Valleys or VRAEM zone), Trinidad and Tobago and Venezuela.

424. Regarding use of the army for citizen security work, the Court has held that "(...) the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces."⁴⁸⁷ Along those same lines, the Commission has repeatedly stated that matters that have to do with citizen security, crime, and violence on the domestic front fall within the exclusive purview of properly organized and trained, efficient civilian police forces, respectful of human rights. The Armed Forces are trained to defend a country against an external enemy and therefore lack appropriate training for law enforcement, a task that requires working with a country's inhabitants. For that reason, it is essential to make a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces. The history of the Hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances.⁴⁸⁸
425. Assigning citizen security tasks to the army has brought other challenges. The application of military jurisdiction or the use of military tribunals to try military for homicides involving civilians or for other human rights violations committed by the military are matters of grave concern to both the IACHR and the Inter-American Court. On this, the IACHR and the Court have pointed out the need for cases of human rights violations against civilians committed by the military to be tried exclusively by the civilian justice system and not by military courts.⁴⁸⁹ On numerous occasions, the Court has stated that "[w]hen the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent tribunal and, *a fortiori*, to a due process," which is, at the same time, intimately related to the right to a fair trial/access to justice. "The judge in charge of hearing a case shall be competent, as well as independent and impartial."⁴⁹⁰

⁴⁸⁷ I/A Court of Human Rights, *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006, Series C No. 150, para. 78.

⁴⁸⁸ IACHR [press release](#) and IACHR [Report on Citizen Security and Human Rights](#), pars. 100 a 105.

⁴⁸⁹ See: I/A Court of Human Rights. *Case of Radilla Pacheco v. United Mexican States*. Judgment of November 23, 2009 (Preliminary Objection, Merits, Reparations and Costs., pars. 272 to 275. I/A Court of Human Rights. *Case of Rosendo Cantú et al. v. Mexico*. Judgment of August 31, 2010 (Preliminary Objection, Merits, Reparations and Costs.), para. 160. IACHR [press release](#).

⁴⁹⁰ See: I/A Court of Human Rights, *Case of Radilla Pacheco v. United Mexican States*. Judgment of November 23, 2009 (Preliminary Objection, Merits, Reparations and Costs., para. 273; *Case of Castillo Petruzzi et al. v. Peru*, para. 128; *Case of Palamara Iribarne v. Chile*, para. 143; and *Case of Tiu Tojín v. Guatemala*, para. 118.

426. Furthermore, according to information provided to the IACHR, in some countries citizen security strategies include authorizing State security forces to enter schools and teach certain subjects, such as physical education and civic values. In the case of Guatemala, the Commission was told of armed soldiers teaching, among other subjects, family planning.⁴⁹¹ Having State security forces personnel teach parts of the academic curriculum does not conform to the State's duty to provide quality education imparted by professionals trained to educate children and adolescents. The quest for strategies to foster trust between the State security forces and children and adolescents needs to pursue other paths that do not impair the right to education.
427. The Commission was also told of plans executed by the army and police specifically targeting children and adolescents deemed to be at risk and aimed at preventing them from associating with organized crime and the *maras*. With respect to such plans, the Commission considers that the identification of and support for children and adolescents living in conditions in which their rights are likely to be infringed should be left to institutions specializing in child protection. What worries the Commission is that such initiatives, undertaken by State security forces, may lead to the stigmatization of certain groups of children and adolescents as potential "social risks" and that the measures adopted as part of those initiatives may not be based on appropriate and carefully crafted actions carried out by professionals implementing a support and follow-up plan tailored to individual needs. Along the same lines, the IACHR⁴⁹² and the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography have expressed grave concern regarding the "Guardians of the Country" program implemented in Honduras, an initiative designed to nurture patriotic values among vulnerable populations, especially children and adolescents, through sport, culture and art. The Special Rapporteur voiced her concern "about the role the State has assigned to the Armed Forces in this initiative. The Special Rapporteur believes that the transfer of functions from State to Army reflects a devaluation of public service. The Special Rapporteur understands that these initiatives are framed in a context of insecurity and high crime rates, and reflect the State's efforts to combat them. However, the fight against this scourge must be focused on prevention, that is, on addressing the structural causes and risk factors (poverty, dysfunctional families, lack of access to services, among others), investing in social policies and development, building neighborhoods with proper infrastructures, providing opportunities and lasting alternatives for children at risk, offering high-quality vocational training and adopting reintegration measures, among others."⁴⁹³
428. The IACHR has also been closely tracking the introduction of "civilian-military" models in the field of citizen security, in countries such as Venezuela, where citizens are alleged to receive military training in order to later cooperate as civilians in law enforcement activities. On this score, the IACHR has received

⁴⁹¹ Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala 2014, para. 41.

⁴⁹² IACHR. [Press release](#), onsite visit to Honduras, conducted from December 1st to 5th, 2014.

⁴⁹³ Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat Maalla M'jid. Follow-up visit to Honduras. [A/HRC/28/56/Add.1](#), December 18, 2014, para. 43.

information on the functioning of the Bolivarian Workers Militia, which is made up of citizens, who sign up as volunteers, are organized and trained by the General Command of the National Bolivarian Armed Forces (FANB) and then empowered to intervene in tasks of citizen security control and public order maintenance.⁴⁹⁴ During 2014, the government issued public appeals to continue advancing the creation of the so-called “combatant corps” of the workers militia,⁴⁹⁵ which later became part of the System of Protection and Safety of the Homeland in order to “guard the economic units of services and strategic production of the country, such as electricity, transportation and oil” to prevent sabotage.”⁴⁹⁶ In April 2015, the government approved the expansion of the “combatant corps;”⁴⁹⁷ as of March 2015, approximately 30,000 new militia members had signed up.⁴⁹⁸ On this score, civil society organizations have denounced that there exists in the country a process of “militarization of citizen security policies.”⁴⁹⁹

429. The IACHR is also concerned about reports that it has received regarding excessive and illegal use of force by the State security agents –police and army- in the context of declarations of states of emergency or exception. The declarations of states of emergency have been issued in some States to confront organized crime in areas where these groups have a strong foothold and control over the territory.
430. With regard to Argentina and, in particular, the province of Buenos Aires, the IACHR was informed about a troubling surge in the number of persons, who have died in confrontations with the State security forces and of arbitrary detentions, especially of young people belonging to vulnerable segments of the population, in connection with the declaration of emergency. Decree No.220/14 of April 4,

⁴⁹⁴ Organic Law of the FANB. 2011 Annual Report. Chapter IV on Venezuela, para. 411; IACHR, 2012 Annual Report, Chapter IV on Venezuela, para. 382; and IACHR, 2013 Annual Report, pars. 474-475.

⁴⁹⁵ Correo del Orinoco, Working class of the Bolivarian National Militia received a promotion to the rank of First Lieutenant, April 13, 2014. Since 2013, the Bolivarian National Militia reactivated the creation of this type of concept in public and private institutions as provided for in the reform to the Organic Law of the Bolivarian National Armed Forces. Venezuelan News Agency. Militia reactivates creation of combatant corps in public and private institutions, August 14, 2013. In August 2014, following instructions from the President of the Republic, the “combatant corps of the Bolivarian Labor Militia,” for example, has been activated in the state of Anzoátegui. Noticiasdeaquí.net, Activated in Anzoátegui combatant corps of the Bolivarian Militia, August 9, 2014.

⁴⁹⁶ AVN. Milicia Obrera Bolivariana se integrará al Sistema de Protección e Integridad de la Patria, [‘Bolivarian Workers Militia will become part of the National System of Protection and Safety’], November 17, 2014.

⁴⁹⁷ VdT. Aprueban ampliación de los cuerpos combatientes de la Milicia Obrera, [‘Expansion of the combatants corps of the Workers Militia approved’] April 16, 2015.

⁴⁹⁸ Based on information from different Venezuelan daily newspapers, the head of the Ministry of Defense Vladimir Padrino Lopez reported that approximately 30,000 men and women on national territory have signed up in the Bolivarian Militias. El Informador. Hay 30 mil nuevos milicianos desde el Decreto de Obama, [‘There are 30,000 new militiamen and women since the Obama Decree’], March 23, 2015; Globovision. 30 mil milicianos se alistaron para defender Venezuela, [‘30,000 militia members enlisted to defend Venezuela’], March 21, 2015 and Últimas Noticias. Hay 30 mil nuevos milicianos desde el decreto de Obama, [‘There are 30,000 new militia members since the Obama decree’], March 24, 2015.

⁴⁹⁹ PROVEA, ONG’s venezolanas entregarán informe ante el Comité contra la Tortura de la ONU, [‘Venezuelan NGOs deliver report to the UN Committee against Torture’], November 4, 2014. Also see:: IACHR, 2013 Annual Report. Chapter IV on Venezuela, para. 453.

2014⁵⁰⁰ declared a security emergency for a period of 12 months, which included: i) calling up retired public security personnel, ii) assigning private security companies to assist the State security forces in their functions, and iii) empowering municipalities to adopt measures aimed at restricting vehicular movement. The authorities have often resorted to detentions in order to verify the identity of persons, a practice generally conducted on public transportation units (buses) and targeting adolescents and youths. The IACHR also received reports of militarization involving declaration of states of emergency in Guatemala associated with an increase in alleged human rights violations in these areas.⁵⁰¹ In Trinidad and Tobago, the declaration of a “war zone” in 2010, as a result of social protests over the killing of a young man at the hands of police, triggered a number of incidents of violence and allegations of brutality in the actions of the public security forces against the population.⁵⁰² As for Venezuela, the IACHR learned of the state of exception decreed by the President in August 2015, which resulted in the deployment of the public security forces, forced evictions, collective and summary deportations of Colombian citizens.⁵⁰³

431. The IACHR is aware that in the face of certain exceptional situations of crisis and instability, which generate situations of violence and seriously threaten the human rights of individuals, States are permitted to adopt measures of this nature. The Inter-American Court has held that “the suspension of guarantees may be the only way to deal with emergency situations and, thereby, to preserve the highest values of a democratic society.”⁵⁰⁴
432. On this issue, Article 27 of the American Convention allows for suspension of guarantees of protection and enjoyment of human rights “in time of war, public danger, or other emergency that threatens the independence or security of a State Party,”⁵⁰⁵ but it does not authorize suspension of the following rights, among others: right

⁵⁰⁰ Province of Buenos Aires, *Decreto No.220/14, de Emergencia en Materia de Seguridad Pública*, [‘Decree number 220/14, on Emergency in the area of Public Safety’], April 4, 2014.

⁵⁰¹ IACHR, thematic hearing, *Denuncias sobre militarización en Guatemala*, [‘Denunciation of militarization in Guatemala’], 153rd Regular Session, October 28, 2014.

⁵⁰² Insightcrime, *Las pandillas son la nueva ley en la Trinidad y Tobago* urbana [‘Gangs are the new urban law in Trinidad and Tobago’], October 22, 2013.

⁵⁰³ IACHR, press release 100/15, *CIDH expresa preocupación sobre deportaciones arbitrarias de colombianos desde Venezuela*, [IACHR expresses concern over arbitrary deportations of Colombians from Venezuela,], August 28, 2015.

⁵⁰⁴ I/A Court of Human Rights. *El hábeas corpus bajo suspensión de garantías (arts. 27.2, 25.1 y 7.6 Convención Americana de Derechos Humanos)*. Opinión Consultiva OC 8/87, [Habeas corpus in Emergency Situations] (Arts. 27.2, 25.1 and 7.6 American Convention’), Advisory Opinion OC 8/87, January 30, 1987. Series A No. 8, para. 20.

⁵⁰⁵ Article 27 of the ACHR:

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child),

to life (Article 4 ACHR), right to humane treatment (Article 5 ACHR) and the rights of the child (Article 19 ACHR), nor of the judicial guarantees essential for the protection of such rights. Regarding the interpretation of this article, the Court has established that:

[...] any legally sound analysis of [...] Article 27 and the function it performs is the fact that it is a provision for exceptional situations only. It applies solely “in time of war, public danger, or other emergency that threatens the independence or security of a State Party.” And even then, it permits the suspension of certain rights and freedoms only “to the extent and for the period of time strictly required by the exigencies of the situation.” Such measures must also not violate the State Party’s other international legal obligations, nor may they involve “discrimination on the ground of race, color, sex, language, religion or social origin.”⁵⁰⁶

433. It is an obligation of the State to determine the reasons and grounds for domestic authorities to declare a state of emergency. Additionally, these authorities must adequately and effectively ensure that the situation and the suspension declared by them are consistent with the Convention, “to the extent and for the period of time strictly required by the exigencies of the situation.”⁵⁰⁷ The IACHR also emphasizes that in any declaration of a state of emergency, any rights subjected to limits must be defined as to the duration, geographic coverage and material scope of restrictions on those rights.⁵⁰⁸
434. The Inter-American Court has noted that in certain states of emergency or in situations of disturbance of public order, States use the armed forces to control the situation. In this regard, the Court finds it absolutely essential to emphasize the extreme caution, which States must observe in using the armed forces as an element of control over social protest, disturbances and violence within their borders, emergency situations and common crime. In the words of the Court: “States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not protect and control civilians, a task that is typical of police forces.”⁵⁰⁹ Likewise, the

Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

⁵⁰⁶ I/A Court of Human Rights. *Habeas Corpus in Emergency Situations* (Articles. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8. para. 19.

⁵⁰⁷ I/A Court of Human Rights. *Habeas Corpus in Emergency Situations* (Articles. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8. para. 19.

⁵⁰⁸ I/A Court of Human Rights. *Case of Zambrano Vélez et al v. Ecuador*. Merits Reparation and Costs. Judgment July 4, 2007. Series C No. 166, para. 48.

⁵⁰⁹ I/A Court of Human Rights, *Case of Montero Aranguren et al (Detention Center of Catia)*. Judgment July 5, 2006. Series C No. 150, para. 78.

bodies of the Inter-American human rights system have held that the suspension of guarantees is not meant “as a means to fight common crime.”⁵¹⁰

435. The IACHR urges States to limit declarations of states of emergency to situations of extreme gravity and stresses the impropriety and danger to decreeing states of exception and restricting guarantees of the exercise of human rights in order to fight crime, because of the countless human rights violations that consistently occur as a consequence, in addition to not providing a sustainable and effective response to address and meet the challenge of violence and crime. The IACHR also recommends that States take into account the standards of international human rights law to review domestic laws regarding declarations of states of emergency restricting human rights protection, and that when such states are declared, it must be done with strict adherence to the aforementioned standards.⁵¹¹

2. Juvenile Justice: Lowering the Age of Criminal Liability, Lengthening Prison Sentences, Precariousness of the Conditions of Imprisonment and Absence of Restorative Justice

436. The IACHR has noted with concern a recurrent tendency for States in the region to react by debating a reduction of the age at which adolescents can be held criminally liable and given harsher sentences because they are wrongly blamed for the insecurity and violence. It is also widely believed that human rights law protects adolescents from deservedly being punished for their actions and that those norms are being used to let adolescents who commit crimes go unpunished. The Commission reiterates that this belief does not correspond with reality, because in fact juvenile justice systems in the region do hold adolescents responsible for their actions, in some countries from the age of 12.
437. The above is not meant to imply that law enforcement, deterrence, and crackdowns on organized crime are not important for the rule of law. However, the Commission does wish to stress that the current repression-oriented approaches are not enough to deal with the problem of the recruitment, use, and involvement of children and adolescents in criminal activities and that it is necessary to address the whole range of underlying factors and situations in which rights are not protected and are often violated, including situations of violence and exploitation.
438. Measures geared to holding adolescents responsible for their acts need, in each case, to address the particular circumstances of the adolescent concerned and to take social and educational measures into consideration within the framework of a restorative justice model. Currently, the responses of States in the region are focused on retribution and penalization, with imprisonment as the tool of choice. The widespread use of incarceration for adolescents in conflict with the law is

⁵¹⁰ I/A Court of Human Rights. *Case of Zambrano Vélez et al v. Ecuador*. Merits Reparation and Costs. Judgment July 4, 2007. Series C No. 166, para. 52.

⁵¹¹ Also see, IACHR, *Report on Terrorism and Human Rights*, in particular, paragraph 49 et seq.

contrary to human rights standards. It is also inefficient and counterproductive as a means to deal with violence and insecurity, given that prisons have turned into centers of greater vulnerability and exposure to violence and crime. Holding adolescents criminally liable at increasingly younger ages and imposing prison sentences on adolescents, who are in a stage of full-fledged development and individual growth, and confining them for protracted periods of time in very precarious conditions and without providing them with the necessary suitable support for their rehabilitation and reentry into society comes at a high cost in the long run. In actuality, prison facilities have turned into factors of greater vulnerability and exposition to violence and crime for these adolescents, in view of the fact that *maras* and criminal organizations exert a strong influence at prison facilities and on those imprisoned in them. Current prison conditions generally exacerbate the problem they are meant to resolve⁵¹² and do not offer the necessary conditions to prevent recidivism of criminal activities.

439. The IACHR cautions that, generally speaking, penitentiary systems do not in practice perform an inmate rehabilitation and social reintegration function. Even though their regulations envisage such a function, in practice, juvenile justice systems in particular do not fully abide by those principles due to the limited availability of restorative justice programs and to the internal management model of facilities, which is inconsistent with these principles, including a lack of trained staff to deal with adolescents in conflict with the law. Some States, moreover, including the United States, have yet to incorporate those principles of international human rights law into their domestic laws.
440. In 2013, some 1,700 adolescents were in prisons in Guatemala,⁵¹³ and about 1,500 in Honduras.⁵¹⁴ El Salvador provided official statistics showing that the principal offense for which adolescents were charged in 2010 and 2011 was participation in illegal groups.⁵¹⁵ In 2012, Peru had approximately 5,200 incarcerated adolescents,⁵¹⁶ while the number of adolescents deprived of liberty in Colombia in 2014 surpassed 3,500.⁵¹⁷ According to the UNICEF office in Mexico, in 2012 there were more than 10,000 adolescents being held in that country's specialized detention centers.⁵¹⁸ In 2011, Brazil had nearly 20,000 adolescents in jail.⁵¹⁹
441. The widespread use of pre-trial detention, without a conviction having been handed down by a judge is another serious problem identified by the IACHR. As a

⁵¹² A survey of inmates in El Salvador, conducted by the UNDP, shows that 37% of them were gang members at the time they were detained. Of the remaining 63%, 10% joined gangs while in prison. UNDP, *Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America*, p. 82.

⁵¹³ Guatemalan State's response to the IACHR questionnaire.

⁵¹⁴ State of Honduras' response to the IACHR questionnaire.

⁵¹⁵ State of El Salvador's response to the IACHR questionnaire.

⁵¹⁶ Honduran State's response to the IACHR questionnaire.

⁵¹⁷ *Defensa de niñas y niños internacional, DNI, Regional Observatory of Juvenile Criminal Justice. Monitoring Report October 2015*, p. 4.

⁵¹⁸ INEGI, *Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales 2013*.

⁵¹⁹ Reply by ANCED (Associação Nacional dos Centros de Defesa da Criança e do Adolescentes), a Brazilian NGO, to the IACHR questionnaire.

strategy to combat organized crime, several countries of the region have introduced exceptions to the maximum length of time provided by law for pre-trial detention, when certain offenses are involved (for example, drug offenses), thus lengthening the permissible length of time for holding a suspect in custody, and for some crimes pre-trial detention has been made mandatory (such as “criminal association” or “conspiracy to commit a crime,” *‘asociación ilícita’*).

442. The IACHR notes with concern that this trend toward excessive use of pre-trial detention infringes the general principle of *ultima ratio* of deprivation of liberty for persons under the age of 18, in addition to amounting to violations of the right to personal liberty, due process, the presumption of innocence, to be heard within a reasonable period of time by a judge and of the right to a fair trial. As a general rule, deprivation of liberty must be avoided when persons under 18 years of age are involved prior to final judgment of a court, unless the law provides for certain exceptions, which justify limited use of pre-trial detention, for a definite period of time, and with the maximum length of time previously defined by law. Any decision on pre-trial detention of a person under 18 years of age must be made by a judicial authority, and subject to periodic review by a judge to ensure that the length of time does not exceed maximum duration as established by law. The States Parties also must provide for several alternatives to pre-trial detention in order to limit the use thereof and in order to fulfill their obligation to use deprivation of liberty only as a measure of last resort.⁵²⁰ In addition to the foregoing, the IACHR also expresses concern that the increase in the use of pre-trial detention has contributed to raising the number of detained adolescents in the hemisphere. Likewise, the IACHR notes its concern over the fact that in some countries adolescents continue to be held in preventive detention together with convicted adolescents serving sentences, without the two groups being segregated from each other, as is required. One of the consequences of these repressive measures and mass detentions is overcrowding in prisons.
443. As for pre-trial detention, the Bolivian State indicated that more than 90 percent of the adolescents incarcerated in 2012 were in pre-trial detention,⁵²¹ although it appears that this figure decreased over the following years, it continues to represent a very high rate.⁵²² In Chile, the figure was around 33%, at the time information was reported.⁵²³ Brazil holds almost 5,000 adolescents in pre-trial detention, out of a total of more than 20,000 adolescents deprived of liberty in the whole country.⁵²⁴ Paraguay is one of the countries with the highest pre-trial

⁵²⁰ IACHR Report on Juvenile Justice and Human Rights. Pars. 247-306. Likewise, see, Committee on the Rights of the Child, General Comment No. 10, The Rights of the Child in Juvenile Justice, CRC/C/GC/10, April 25, 2007, 44th Session, paras. 78- 81.

⁵²¹ Bolivian State's response to the IACHR questionnaire.

⁵²² Defensa de niñas y niños internacional, DNI, *Observatorio Regional de Justicia Penal Juvenil. Informe de Monitoreo* [‘Regional Observatory of Juvenile Justice. Monitoring Report’] October 2015, pgs. 5 and 8. Out of a total of 269 adolescents deprived of liberty, 162 were being held in pre-trial detention, according to a report of 2015.

⁵²³ Chilean State's response to the IACHR questionnaire.

⁵²⁴ Defensa de niñas y niños internacional, DNI, *Observatorio Regional de Justicia Penal Juvenil. Informe de Monitoreo* [‘Regional Observatory of Juvenile Justice. Monitoring Report’] October 2015, p. 5.

detention rates of adolescents. Out of a total of 387 adolescents deprived of liberty, 356 are in preventive detention.⁵²⁵

444. As was mentioned earlier in other sections of the instant report, patterns of discrimination can be identified in policing in several countries of the region, which often gives rise to arbitrary detentions of adolescents, which are inconsistent with the principle of legality and non-discrimination. The IACHR stresses that when a child or adolescent is detained, it is an obligation of the police officer to ensure the rights of the child, so he or she is immediately brought before a competent and specialized judge, for his or her parent or guardian to be notified as soon as possible, to contact his or her family, and to speak with a defense attorney as soon as possible. When persons under 18 years of age are involved, there is a heightened standard to bring them before a court without delay and to respect the rest of the fair trial rights. The IACHR underscores that it is fundamental to ensure immediate judicial oversight or control in order to prevent arbitrariness or illegality in detentions, as well as to prevent threats to life and safety.⁵²⁶
445. The treatment generally given to adolescents recruited and used by criminal organizations under a preeminently repressive logic of criminal law has also been questioned by the United Nations Committee on the Rights of the Child. For example, the Committee on the Rights of the Child⁵²⁷ recently called attention to the fact that adolescents used by criminal organizations in Colombia should be treated, for the most part, as victims and special efforts should be made to help them to quit and sever their ties to these groups, and for their rehabilitation and social reintegration.⁵²⁸ On this issue, the Ombudsman of Colombia also held in a recent report that the State must treat children and adolescents, who are used and exploited by criminal organizations for unlawful activities, as victims, instead of as delinquents or criminal offenders.⁵²⁹ In this regard, both the Committee and the Ombudsman draw a parallel between the violations of rights of child and adolescent victims of being recruited and used by criminal structures and those recruited by non-State armed actors in the context of internal armed conflicts. Both the Committee and the Ombudsman stress the need to strengthen responses to this problem through programs, which provide incentives to sever ties with the criminal groups and promote rehabilitation and social reintegration, in conjunction with prevention policies.

⁵²⁵ Defensa de niñas y niños internacional, DNI, *Observatorio Regional de Justicia Penal Juvenil. Informe de Monitoreo* [‘Regional Observatory of Juvenile Justice. Monitoring Report’] October 2015, p. 5.

⁵²⁶ IACHR Report on Juvenile Justice and Human Rights. Pars. 251, 252 and 253, in particular, and pars. 247-306 in general.

⁵²⁷ UN. Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Colombia, Approved by the Committee at its 68th Session (January 12-30, 2015), CRC/C/COL/CO/4-5.

⁵²⁸ Office of the Ombudsman. Ombudsman’s Report. “Informe Defensorial “Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia”, [‘Transitional Justice: Children’s Voices in Peace-Building in Colombia’] November 2014, p. 65 b).

⁵²⁹ Office of the Ombudsman. Ombudsman’s Report. *Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia*, [‘Transitional Justice: Children’s Voices in Peace-Building in Colombia’] 2015.

446. The IACHR has called attention on several occasions to the treatment, still received by children and adolescents in juvenile justice systems in some countries, particularly, in the Caribbean, who are in a defenseless situation and have not committed any violation of criminal law. The IACHR has reminded States that:

(...) children and adolescents who are the victims of poverty, abuse, abandonment and neglect, and those suffering from disorders or learning disabilities or other health problems, cannot be deprived of their liberty or be made to face the juvenile criminal justice system when they have not violated any law; nor should children who have engaged in behavior that would not constitute violations of criminal law if committed by an adult. In particular, States must avoid “status” offenses that label certain minors as “delinquent,” “incorrigible,” or “unmanageable” on the basis of complaints, sometimes by parents, that the children need discipline and supervision due to behavioral or attitude problems that do not amount to criminal conduct.⁵³⁰

447. The Commission reiterates that children coping with social or economic problems, or who are considered at-risk or present difficulties of adaptation or conduct, must be helped by the appropriate social or child protection services, while preserving the children’s material and procedural rights,⁵³¹ but not subjecting them to the juvenile justice system and urges States to review their legislation and practices, especially the countries of the Caribbean. For example, Trinidad and Tobago continues to treat children and adolescents regarded as beyond control, under the juvenile justice system,⁵³² and Saint Lucia still criminalizes truancy and vagrancy as “status offenses.”⁵³³

448. The Commission has also repeatedly mentioned its concern regarding the violence that adolescents come into contact with in the juvenile justice system. The violence used by officials in charge of the units and that triggered by the inmates themselves, riots, prolonged periods of being locked up, the existence of solitary confinement cells, and the administering of psychiatric drugs as a means of control are all aspects that, as the Commission has stated, need the immediate attention of States.⁵³⁴ In many countries in the region, mistreatment and torture are regarded as chronic features of the penitentiary system. Mismanagement and corruption mean that, on the inside, some detention centers are in practice run by the inmates. In others, prisoner classification and separation protocols have had to be revised to avoid violence between members of rival *maras* or gangs. The Commission reminds States that they have an obligation to guarantee the life, integrity, and security of all persons deprived of their liberty and to maintain prison conditions

⁵³⁰ See IACHR, *Juvenile Justice and Human Rights in the Americas*, paragraph 73.

⁵³¹ See IACHR, *Juvenile Justice and Human Rights in the Americas*, paragraph 74.

⁵³² Response to the questionnaire from the State of Trinidad and Tobago, pp. 9-11.

⁵³³ Committee on the Rights of the Child of the United Nations, Concluding observations to Saint Lucia, CRC/C/LCA/CO/2-4, July 8, 2014.

⁵³⁴ See the IACHR *Juvenile Justice and Human Rights in the Americas*.

in line with international standards and to take particular care to do so, in the case of inmates under the age of 18.⁵³⁵

3. Newly Defined Offenses: The Crime of Unlawful Association

449. States have also defined new criminal offenses in an effort to boost security and bring those responsible for creating insecure environments to justice. However, the corresponding enabling regulations and the enforcement of the laws establishing the new offenses have posed new human rights protection problems and led to arbitrariness and injustice in the enforcement thereof by the security forces and justice system. Specifically, the Commission and the Court have expressed their concern over issues, which have arisen regarding application of the offense of so-called "unlawful association" or "membership of a criminal organization."

450. As of the time when the Commission received the information needed for this report, Brazil,⁵³⁶ El Salvador,⁵³⁷ Honduras,⁵³⁸ Jamaica,⁵³⁹ Mexico,⁵⁴⁰ Panama,⁵⁴¹

⁵³⁵ I/A Court of Human Rights, *Matter of the Socio-Educational Internment Facility regarding Brazil*. Order of the I/A Court of Human Rights of November 20, 2012.

⁵³⁶ Brazil. Law No.12.850 of August 2, 2013.

Art. 1^o This Law defines a criminal organization and regulates criminal investigation, means of proof, correlated criminal offenses, and the criminal proceedings to be instituted. § 1^o An association shall be deemed criminal when it comprises four (4) or more people, is structurally ordered and characterized, even informally, by a division of tasks designed, directly or indirectly, to obtain advantages of any kind through the commission of criminal offenses for which the maximum sentences exceed four (4) years' imprisonment or which are transnational in nature. [...]

Art. 2^o For promoting, constituting, financing, or belonging to a criminal organization, either personally or through a third party: The punishment shall be imprisonment for between three (three) and eight (8) years, and a fine, without prejudice to the penalties imposed for the commission of other offenses.

⁵³⁷ El Salvador. Decree No. 393 of July 30, 2004.

Art. 345 - Whoever pertains to an illegal group, association, or organization shall be punished with imprisonment of between three and five years. The organizers, bosses, heads, or leaders shall be punished with imprisonment for between six and nine years. Temporary or permanent groups, associations, or organizations shall be deemed to be illegal when they comprise two or more people, with some degree of organizations, whose objective, or one of whose objectives, is to commit crimes. Groups, associations, or organizations that resort to violent acts or means to recruit, retain, or expel shall likewise be deemed illegal.

⁵³⁸ Honduras. Criminal Code.

Article 332.- Unlawful association. The heads or leaders of *maras*, gangs, and other groups that associate with the constant intention to commit any criminal act shall be punished with imprisonment of between twenty (20) and thirty (30) years and a fine of between one hundred thousand lempiras (L. 100,000.00) and three hundred thousand lempiras (L. 300,000.00). The other members of the aforementioned Unlawful associations shall be subject to the same penalties reduced by one third. Heads or leaders shall be those who stand out or identify themselves as such and whose decisions influence the group's mindset and actions.

⁵³⁹ In this regard, see Chapter V of the 2014 IACHR Annual Report on [follow-up to the recommendations issued to the State of Jamaica in its report following the *in loco* visit to that country](#), see paragraph 26 et seq.

⁵⁴⁰ Mexico. Federal Criminal Code. Chapter IV - Criminal associations.

Article 164. - Whoever pertains to an association or gang of three or more persons with criminal intent shall be sentenced to between five and ten years in prison and a one-hundred to three-hundred-day fine.

If the member of the association is or was once a civil servant employed in any police force, the sentence referred to in the foregoing paragraph shall be increased by one half. In addition, he or she shall be

Peru,⁵⁴² Saint Lucia,⁵⁴³ and Trinidad and Tobago⁵⁴⁴ had all enacted laws of this type. Some of these characterizations explicitly mention *maras* as an Unlawful association,⁵⁴⁵ other regulations refer to “temporary or permanent” groups of “two or more persons,” which possess some type of organization” and “whose objective or one of their objectives is the commission of crimes,” or to join in a group “for the purpose of committing a crime,” though under any of these definitions of the criminal offenses, it is not necessary for these groups to have committed any other unlawful act yet, such as against the integrity of a person or against property. Among the statutory elements of these criminal offenses, other regulations include organizations of two or more persons who “conduct acts or use violent means for members to join, remain in or quit.” Under any of these statutory offenses currently in force, two adolescents who intend to conduct several robberies in their neighborhood, even without having committed any of them, in theory could be fall under the definition of the crime of “unlawful association.”

451. The regulation of the aforementioned criminal offenses is characterized by criminalizing membership in an organization that is considered criminal in nature; nonetheless, the definition of what is regarded as a criminal organization poses in some instances problems of precision of the elements of which the definition is made up. That has led, in practice, to a determination of the presence of these elements that is arbitrary and left to the discretion of law enforcement officers. In particular, the IACHR is concerned about the fact that these kinds of regulations have created a huge margin of discretionary authority, thereby permitting arbitrary arrests without a prior warrant from a competent authority and, sometimes, even mass raids on adolescents and youths based on the suspicion or

dismissed from public employment, office, or commission and disqualified from any such job for between one and five years.

If the member of the association is a retired, reserve, or active member of the Mexican Armed Forces, his or her sentence shall likewise be increased by one half. In addition, he or she shall be definitively dismissed from the Armed Force in question and disqualified for between one and five years from holding any public office or job.

⁵⁴¹ Panama. Criminal Code.

Article 330. Whoever constitutes or forms part of a gang shall be punished with between four and six years' imprisonment. The sentence shall be to between seven and fourteen years in prison if the purpose of the gang is to commit homicide, kidnapping, extortion, robbery; steal cars or car parts; or commit crimes relating to drug trafficking, money laundering, forbidden financial transactions, sexual violence, trafficking in persons, child pornography, terrorism or arms trafficking. For the purposes of this article, a gang shall be defined as a group of three or more people who habitually get together in advance with intent to commit crimes and who meet at least two of the following criteria: 1. The bearing, possession, or use of arms. 2. The use of personal or collective symbols to identify members. 3. Control of "turf." 4. Hierarchical ranking.

⁵⁴² Peru. Criminal Code. Amended by Law Nº 30077, of August 20, 2013.

Article 317. - Unlawful association. Anyone who constitutes, promotes, or is part of an organization of two or more individuals assembled in order to commit crimes shall be punished with no fewer than three nor more than six years of imprisonment.

⁵⁴³ Anti-Gang Act, No.4 de 2014.

⁵⁴⁴ Republic of Trinidad and Tobago, [Act No. 10 of 2011](#). With regard to Trinidad and Tobago, the statute known as the “Anti-gang Act” poses other difficulties such as the wording of Article 9, which reads: (“A person who has in his possession or under his care or control a bullet-proof vest, firearm or ammunition, whether lawfully obtained or not, which he intends to use or ought to know may be used for the benefit of or at the direction of a gang, or any gang member, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years”).

⁵⁴⁵ Article 332 of the Criminal Code of Honduras.

subjective perception that they belong to a *mara*, because of their use of tattoos, their physical appearance, the place where they live, or other factors.⁵⁴⁶

452. The Commission and the Court are of the view that some of these regulations are too open ended in their wording and pose problems with the requirement to take every precaution needed to ensure that the exercise of the punitive powers of the State respects human rights. In this regard, the Court has recalled that:

(...) the principle of criminal legality requires that the definition of an offense must use clear, precise terms that plainly describe the conducts liable to punishment, establish their elements, and allow them to be distinguished from conducts that are not punishable or unlawful conduct penalized by non-criminal measures. Any ambiguity in the definition of offenses leads to doubts and allows the authority to use its discretion, which is particularly undesirable when establishing the criminal responsibility of the individual and penalizing this with punishments that severely affect fundamental rights such as life or liberty. This has particular significance for the role of the judge who, when applying criminal law, must adhere strictly to its provisions and observe the utmost rigor in matching the conduct of the accused to the definition of the offense, in order not to punish acts that are not punishable by law.⁵⁴⁷

453. In addition, the Court has established that to comply with the basic requirements to restrict the right to personal liberty, the State must justify and prove, in the specific case, the existence of sufficient indications that would allow for reasonable suspicion of the criminal conduct of the individual and that the detention is strictly necessary. Consequently, "this cannot be based on mere suspicion or personal perceptions that the accused belongs to an illegal group or gang."⁵⁴⁸ Accordingly, based on the Court's rulings, "the Convention prohibits arrest or imprisonment by methods that may be legal but, in practice, are unreasonable or disproportionate."⁵⁴⁹
454. As regards en masse arrests of adolescents, the Court has ruled that States must ensure that there are no "massive arrests of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the

⁵⁴⁶ IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 131 and I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, paras. 100 and 102. United Nations Human Rights Committee, Concluding Observations, Honduras, UN Doc CCPR/C/HND/CO/1, 13 December 2006, para. 13. Status of *maras* and other gangs in Honduras, p. 74.

⁵⁴⁷ I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, para. 105.

⁵⁴⁸ I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, para. 16.

⁵⁴⁹ I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, para. 106.

commission of a crime."⁵⁵⁰ Consistent with the aforementioned, in the Bulacio and Servellón García cases, the Court established that so-called "razzias [raids] are not compatible with the respect for fundamental rights, among others, the presumption of innocence, the existence of a legal arrest warrant –except in the case of a crime detected in the act."⁵⁵¹ Consequently, said norms should not justify mass and arbitrary arrests of groups living on the margins of society.⁵⁵²

455. Furthermore, some countries require mandatory detention on remand for these kinds of offenses. Both the Commission and the United Nations Committee against Torture have voiced their concern in this regard because of its incompatibility with the presumption of innocence principle,⁵⁵³ the right to personal liberty and due process, and the principle of exceptionality with respect to incarcerating persons under the age of 18. In addition, the sentences imposed for the commission of these offenses are harsh: in some cases a minimum of three years imprisonment for allegedly belonging to a *mara* and a maximum of 30 years for the leaders. The Commission considers that the punishments contemplated for these offenses in some instances are disproportional, considering that they might be as harsh or harsher than those contemplated for the commission of the crimes for which the unlawful association was allegedly formed.⁵⁵⁴
456. These concerns have also been voiced by several United Nations and national human rights bodies. The UN Working Group on Arbitrary Detention wrote that the practical application of these types of criminal offenses raises serious concerns. These concerns include the fact that "illicit association" is a continuous offence and, as such, the practical effect is that certain young people belonging to certain socio-economic segments remain under constant suspicion of belonging to *maras* or other criminal organizations and, therefore, allegedly remain in a permanent *in flagranti* situation and at risk of being detained by the police.⁵⁵⁵ Along those same lines, the Honduras' National Commissioner for Human Rights has pointed out that since merely belonging to a *mara* or gang constitutes a crime, when it suspects a person of belong to such an organization, the police acts as if it were in a flagrante delicto situation, which "is not restricted to a specific act, but becomes a status."⁵⁵⁶ The United Nations Committee on the Rights of the Child has also expressed its concern at systematic use of pretrial detention based on these criminal provisions and at the fact that many adolescents are arrested and detained on the mere

⁵⁵⁰ I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, paras. 108. *Case of Servellón García et al.*, para. 93.

⁵⁵¹ I/A Court of Human Rights. *Case of Bulacio vs. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 137 and *Case of Servellón García et al.*, para. 93.

⁵⁵² I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, para. 108.

⁵⁵³ IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 128. United Nations Committee against Torture, *Concluding Observations, Honduras*, UN DOC CAT/C/HND/CO/1, 23 June 2009, para. 19.

⁵⁵⁴ Also see United Nations Human Rights Council. Mission to Honduras, 23 to 31 May 2006, Report of the Working Group on Arbitrary Detention, A/HRC/4/40/Add.4, 1 December 2006, paras. 87 and 88.

⁵⁵⁵ Working Group on Arbitrary Detention, Report on the Mission to Honduras, A/HRC/4/40/Add.4, 1 December 2006, paras. 86 to 92.

⁵⁵⁶ Report of the National Commissioner for Human Rights of Honduras (CONADEH) of 2003, Chapter II: Security and Justice (file of annexes to the Commission's report on the merit, Volume II, folio 981).

allegation that they may belong to a *mara* because of their appearance, e.g. due to the way of dressing or to the presence of a tattoo or a symbol.⁵⁵⁷

457. In practice, these laws in many instances have elicited a discriminatory, discretionary, and disproportionate reaction on the part of the police, in addition to stigmatizing adolescents and violating their human rights.⁵⁵⁸ As a result of this legislation, numerous adolescents were remanded in custody and subsequently acquitted by the courts for lack of evidence, which suggests that they were detained merely on the basis of stereotypes regarding their appearance, irrespective of what they were doing and regardless of whether or not there was circumstantial evidence of criminal activity.⁵⁵⁹ The Commission underscores the obligation of States to eliminate all norms and practices that involve arbitrary differences in treatment or discrimination and violation of the human rights of children and adolescents.⁵⁶⁰ The Court has warned that "(...) in attention to the principle of equality and nondiscrimination, the State cannot allow that its agents, nor can it promote in the society practices that reproduce the stigma that poor children and youngsters are conditioned to delinquency, or necessarily related to the increase in public insecurity. That stigmatization creates a climate propitious so that those minors in risky situations are constantly facing the threat that their lives and freedom be illegally restrained."⁵⁶¹

B. Drug Policies from a Children's Perspective

458. As mentioned earlier, the illegal drug market and the high returns generated by it trigger high levels of violence due to struggles to control it. The drug policies pursued in the region attempt to deal with the problem by adopting a primarily prohibitionist and repressive approach to drugs at every stage in the chain (production, distribution, and sale), whereby the chief tools used are the criminal justice system and government security forces.⁵⁶²

⁵⁵⁷ United Nations Committee on the Rights of the Child, Concluding Observations, Honduras, UN DOC CRC/C/HND/CO/3, 2 May 2007, para. 41 and 80.

⁵⁵⁸ I/A Court of Human Rights. *Case of Pacheco Teruel et al. v. Honduras*, Merits, Reparations and Costs, Judgment of April 27, 2012, para. 105.

⁵⁵⁹ IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 133. See also, the OAS, Department of Public Security, *Definition and classification of gangs*, p. 3. In El Salvador, 17,540 cases (91%) of persons detained under the Crackdown Plan (*Plan Mano Dura*) were dismissed.

⁵⁶⁰ IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 137.

⁵⁶¹ I/A Court of Human Rights, *Case of Servellón García v. Honduras*. Merits, Reparations, Costs. Judgment of September 21, 2006. Series C No. 152, paras. 110 and 112.

⁵⁶² The principal international instruments on drugs are the 1961 United Nations Single Convention on Narcotic Drugs (and its 1972 Protocol of amendments), which basically cover the production and distribution of opium and its derivatives, coca and its derivatives, especially cocaine, and cannabis; the 1971 United Nations Convention on Psychotropic Substances, which includes a wide range of manufactured psychiatric drugs used as medicines, including amphetamines and benzodiazepines, as well as LSD and other psychedelic substances; and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which focuses especially on efforts to eliminate illicit trafficking and includes provisions against

459. Recently the OAS Member States recognized that:

that the world drug problem, including its political, economic, social and environmental costs, has become an increasingly complex, dynamic, and multicausal challenge that creates negative effects on health, social relations, citizen security, and on the integrity of democratic institutions, public policies, development, and economic activities and that, under the principle of common and shared responsibility, which requires a comprehensive, balanced, multidisciplinary approach, built on a framework of full respect for human rights and fundamental freedoms.⁵⁶³

460. In the "war on drugs" in the Hemisphere, the security forces, and in some cases even the Armed Forces, have played a prominent part. The security forces and the operations they undertake have become increasingly militarized, unleashing spiraling violence and complaints of grave human rights violations by agents of the State. Against this backdrop, the number of children and adolescents killed or physically or psychologically impaired by the violence has increased exponentially. In recent times, a growing number of adolescents have joined the ranks of drug traffickers to defend territory under the control of criminal groups, take part in clashes with the State security forces, and conduct other activities, such as the transportation and sale of drugs. Some cases have been detected of the forced recruitment of migrant children and adolescents, who are victims of human trafficking networks run by the same drug groups of drug traffickers; in Mexico, for instance.
461. Heavy-handed social control and reprisals by drug trafficking groups against the population are commonplace in many communities. At the same time, the security forces treat adolescents living in districts or neighborhoods exposed to drug trafficking activities as if they were members of those groups. The circumstances most adolescents face in such environments are completely overwhelming.
462. Above all, the predominantly repressive approach has impacted the criminal justice system and the prisons. The bias toward criminal sanctions as a means of controlling the drug market has led to a significant increase in the number of people incarcerated for drug-related offenses, among them adolescents. Nevertheless, the constant increase in the number of individuals imprisoned on drug-related charges in recent decades, including adolescents, has not diminished the production, trafficking, sale, and use of drugs. What is more, it has had negative repercussions in terms of saturation of the courts and overcrowding and deteriorating conditions in prisons, exacerbating an already existing crisis, at an enormous human cost to inmates. The vast majority of the adolescents serving prison sentences for drug offenses were charged with micro retailing, possession, and, in some cases, the use of drugs. The consequences of current drug policies, in

money laundering and the precursors of drugs controlled under the 1961 and 1971 United Nations Conventions.

⁵⁶³ Declaration of Antigua, Guatemala "For a Comprehensive Policy against the World Drug Problem in the Americas," forty-third regular session of the OAS General Assembly, held in Guatemala in 2013. Preambular paragraph of AG/DEC.73 (XLIII-O/13).

their multiple dimensions, have disproportionately impacted the most vulnerable segments of society, living in poverty and without any safeguard for their rights. In countries such as Brazil and the United States, moreover, these policies have had a disproportionately hard impact on sectors that are traditionally excluded and discriminated against, such as the Afro-descendant population, thereby reinforcing already existing conditions of exclusion and violence.

463. A significant number of adolescents in the region come into contact with the juvenile justice system because of drug dealing and street sales of narcotics.⁵⁶⁴ In Brazil, 26.6% of adolescents deprived of liberty are incarcerated for drug-trafficking related offenses; additionally, a survey conducted in 2014 by the National Justice Council on adolescent females in conflict with the law revealed a significant proportion of adolescent females incarcerated for offenses analogous to drug trafficking in several states of Brazil, such as the Federal District (25%), Pernambuco (slightly more than 20%) and Sao Paulo (over 40%).⁵⁶⁵ In Colombia, 2012 statistics from the Colombian Institute of Family Wellbeing indicate that 31.1% of the adolescent males and 25% of the adolescent females, who were deprived of liberty were incarcerated for trafficking, manufacturing or carrying drugs.⁵⁶⁶ In Paraguay, according to statistics provided by the Criminal Court for Adolescents of Lambaré, 85% of the adolescents who enter the juvenile penal system do so for crack use; however, drug use is not codified as a criminal offense.⁵⁶⁷ According to the information provided to the Commission, the fact that in the region in general, the disproportionate criminalization of non-violent drug-related crimes, especially drug dealing and the possession of small quantities of drugs, compared to other serious crimes that involve physical violence and harm to individuals, has a major impact on adolescents, who are increasingly being used by criminal organizations to transport and sell drugs.⁵⁶⁸
464. It also bears noting that the regulations regarding drug and narcotics-related offenses do not always distinguish between minor offenses, such as micro-trafficking, and the crimes associated with control over the production, distribution, and money laundry by the leaders of drug-trafficking criminal groups or cartels, and that therefore the penalties do not adequately reflect the gravity of the various offenses committed. Thus, in general, the norms lack a clear and appropriate distinction between minor and serious offenses.

⁵⁶⁴ Defensa de niñas y niños internacional, DNI, *Observatorio Regional de Justicia Penal Juvenil. Informe de Monitoreo* [‘Regional Observatory of Juvenile Justice. Monitoring Report’] October 2015.

⁵⁶⁵ Defensa de niñas y niños internacional, DNI, Regional Observatory of Juvenile Criminal Justice. Monitoring Report October 2015 pp. 11 y 12.

⁵⁶⁶ Defensa de niñas y niños internacional, DNI, Regional Observatory of Juvenile Criminal Justice. Monitoring Report October 2015 p. 12.

⁵⁶⁷ Defensa de niñas y niños internacional, DNI, Regional Observatory of Juvenile Criminal Justice. Monitoring Report October 2015 p. 12.

⁵⁶⁸ According to information provided to the IACHR by a number of countries, the offenses associated with physical violence against persons may carry the same sentence or a similar sentence as crimes of drug dealing or possession of small quantities of drugs. See the study *Systems Overload: Drug Laws and Prisons in Latin America*, Washington Office on Latin America (WOLA), 2010, p. 52, for example. Also, the thematic hearing on *Drug policies and human rights in the Americas* during the 150th period of sessions of the IACHR, Tuesday, March 25, 2014.

465. In practice, the bulk of State security force efforts have been directed at small fry, that is to say, the micro-traffickers and possessors/users, who constitute the most conspicuous and exposed parts of the chain. The vast majority of those deprived of liberty on account of drugs pertain to the lowest levels in that chain. In Mexico, a study shows that 75 percent of all those arrested for drug offenses were arrested for being in possession of a tiny amount of the substance.⁵⁶⁹ In contrast, court sentences for money laundering are blatantly low in Latin America and the Caribbean.⁵⁷⁰ The emphasis placed by criminal investigations on the lowest links in the chain (micro-trafficking and drug use) and the lack of investment and efforts to develop criminal investigative and prosecutorial capacity in respect of more complex and sophisticated crimes relating to the economics of the drug market is one of the weaknesses of current drug policy.⁵⁷¹ The Commission has been told that this situations stem partly from the fact that a widely used indicator of the success of drug policies is the number of arrests carried out. Corruption in both the police and the judiciary is another factor influencing the scant success obtained with arresting the leaders of drug-trafficking rings and bringing them to trial. Application of the discretionary principle (*principio de oportunidad*) would make it possible to channel the limited resources available to identifying and prosecuting the leaders of drug rings, instead of the individuals devoted to selling small quantities, who are often forced to do so by their social and economic circumstances, and users, who could benefit from interventions directed more at their health than at criminalization.
466. The Commission regards it as especially worrisome that drug users in the region are still dealt with repressively as criminals, rather than being treated in accordance with a public health perspective. This is all the more worrying in the case of adolescents who are still growing and developing and merit special care and protection, instead of being stigmatized as criminals. It should also be borne in mind that the strategy often employed to establish ties between adolescents and groups of drug traffickers consists of facilitating drug use and addiction among them. In addition, the Commission has been informed that in countries that have decriminalized drug use, there is still an environment of stigmatization and discrimination against adolescents drug users.⁵⁷²
467. It is likewise worth pointing out that the fact that a number of countries do not criminalize the possession of small quantities for personal use has not precluded difficulties in implementing the corresponding legal provisions. Criteria on

⁵⁶⁹ Center for Research and Teaching in Economics (CIDE).

⁵⁷⁰ Some experts attribute the low incidence of criminal investigations and sanctions in connection with money laundering, by comparison with convictions for micro-trafficking, to the technical complexity of the investigations required, which have to be conducted by specialized units. Nevertheless, actions to monitor and dismantle the drug trafficking-related money laundering and financial circuits of criminal groups would, by depriving them of economic benefits, have a far greater impact on the illicit drug trade than the arrests of individuals possessing small amounts of a drug. What happens is that micro-traffickers are easily replaced by ever younger and more vulnerable individuals, so that, despite the high number of arrests and convictions, the illegal market has not been affected.

⁵⁷¹ UNDP, Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, p. 161.

⁵⁷² See, for instance: The Research Consortium on Drugs and Law (CEDD), In Search of Rights: Drug Users and State Responses in Latin America.

possession for personal use vary: in some countries, the criterion is "up to a certain amount" or else depends on the type of drug. In other countries, no limit is specified in respect of possession for personal use, which leaves it up to prosecutors and judges to determine what quantity might be considered as being for personal use. That has led to subjective interpretations, arbitrary application of the law, and discriminatory treatment of some users based on stereotypes.⁵⁷³ Another problem detected in some countries is that individuals found in possession of drugs are immediately arrested and the burden of proof falls on the accused to show that they are drug users rather than distributors.

468. Based on the information it has received, the Commission observes that in most countries, the laws have barely developed the distinction between drug user and trafficker, thereby leaving room for interpretation by the police and the courts. In practice, the police and the criminal justice system are still arresting users and in some cases charging them with micro trafficking. One explanation for this is that the police and judges still have a margin of discretion to determine in a concrete case whether what they are seeing is possession of a small quantity for personal use or for micro-trafficking.⁵⁷⁴
469. The Commission draws attention to the fact that the characterization and criminalization of certain behaviors associated with drugs may not meet the requirements of the Inter-American body of law and of the American Convention because they fail to comply with minimum prerequisites in terms of legality, legitimacy, necessity, reasonableness, and proportionality. In particular, norms may contravene the American Convention if punishments are disproportionate, or if the application and outcomes of the norms cannot be reasonably predicted or may give rise to cases of discrimination. The Commission further notes that questions have arisen in society regarding the justice and legitimacy of anti-drug policies in connection with the high costs paid in human terms and the greater impact of such policies on certain social groups, particularly the least privileged segments of society, the Afro-descendant population and some minorities. Some countries' laws specify mandatory minimum prison sentences for drug offenses, adding to the concerns already expressed regarding the proportionality and length of sentences. The Commission reiterates that in exercising its punitive powers through imprisonment that State must always abide by the above-mentioned principles of legality, legitimacy, necessity, reasonableness, and proportionality.
470. The Commission further observes abuse of pre-trial detention for those suspected of drug offenses, sometimes for prolonged periods of time. The Commission has pointed out that the American Convention and Declaration and international human rights law require that States use pre-trial detention exceptionally and only when strictly necessary. According to a study of drug policies in several countries in the region in some countries pre-trial detention is mandatory in drug offense

⁵⁷³ See, for instance, the information compiled in [Systems Overload: Drug Laws And Prisons In Latin America](#).

⁵⁷⁴ Thematic hearing on [Drug Policies and Human Rights in the Americas](#), during the 150th session of the IACHR, on Tuesday, March 25, 2014. and the paper submitted, p. 10. See also [IDPC briefing paper – Drug policy and incarceration in São Paulo, Brazil](#).

cases, regardless of whether the offenses are minor or serious.⁵⁷⁵ Some countries allow people to be detained for long periods of time while investigations are conducted until charges are brought. Moreover, those accused or convicted of drug offenses are frequently denied access to alternative sentences that are, however, available to persons accused of other crimes.⁵⁷⁶

471. The Commission has also been told that anti-drug laws may be used to harass and exert control over certain groups. Thus, the Commission has been told of cases in which the police are said to have "planted drugs" on individuals pertaining to certain groups, in other words falsifying evidence of the commission of a crime.⁵⁷⁷ Acts like this have reportedly occurred in connection with adolescents and young people gathering in public places, particularly if they are youths from poor districts, with a certain ethnic origin (Afro-descendant, Latinos or indigenous, for example), of if they match certain stereotypes based on physical appearance, tattoos, identifying symbols, and so on. Situations like these have also been reported for other groups, such as lesbians, gays, and bisexual and transgender persons (LGBTI), sex workers, street vendors, street adults and children, migrants, and others.
472. In recent decades, the number of children involved in drug-trafficking-related offenses has grown considerably, which suggests that they are being more frequently used and exploited by criminal organizations in that segment of the population due to their vulnerable circumstances. This trend is common to all countries in the region and was acknowledged by States in the Declaration of Antigua, which recognizes that "women and minors may be victims of exploitation by illicit drug trafficking networks."⁵⁷⁸ That state of affairs is reflected in the numbers of adolescents imprisoned for micro-trafficking; in Brazil, for instance, between 1991 and 1994 drug use and trafficking accounted for between 8 percent and 13 percent of all adolescents remanded to detention centers. By 1995, that figure had risen to 24 percent and, one year later, to 36 percent: a higher percentage than for offenses against property. Between 1991 and 1997, there was a 700 percent increase -- from 204 adolescents to 1,648 -- and the upward trend has continued.⁵⁷⁹

⁵⁷⁵ See the study Systems Overload: Drug Laws and Prisons in Latin America, Washington Office on Latin America (WOLA), 2010, for example, p. 6 of the Executive Summary. The study cites Bolivia, Brazil, Ecuador, Mexico, and Peru.

⁵⁷⁶ See the study Systems Overload: Drug Laws and Prisons in Latin America, Washington Office on Latin America (WOLA), 2010, for example, p. 6 of the Executive Summary and the information presented in connection with the thematic hearing on drugs (p. 17 of the document submitted by those requesting the hearing).

⁵⁷⁷ Thematic hearing on Drug Policies and Human Rights in the Americas, during the 150th session of the IACHR, on Tuesday, March 25, 2014, paper submitted, p. 13 and interviews with children and adolescents conducted by the Rapporteurship on the Rights of the Child.

⁵⁷⁸ Declaration of Antigua, Guatemala "For a Comprehensive Policy against the World Drug Problem in the Americas," forty-third regular session of the OAS General Assembly, held in Guatemala in 2013. Preambular paragraph of AG/DEC.73 (XLIII-O/13).

⁵⁷⁹ See the study Systems Overload: Drug Laws and Prisons in Latin America, Washington Office on Latin America (WOLA), 2010, for example, pp. 36 and 37.

473. The Commission finds this increase in the number of children exploited by drug traffickers and their criminalization by legal provisions and the justice system particularly worrisome. International human rights law recognizes that children and adolescents caught up in drug trafficking must, primarily, be treated as victims. Thus, Convention 182 of the International Labour Organization (ILO) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,⁵⁸⁰ establishes as one of the worst forms of child labor "the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties,"⁵⁸¹ because it sees it as exploitation of children and adolescents and one that places their personal integrity,⁵⁸² overall development, and the exercise and enjoyment of their rights at grave risk. The same Convention obliges States Parties to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."⁵⁸³ The Commission is concerned that despite their duty to afford special protection to children and adolescents against violations of their rights and exploitation, States still mainly respond by enforcing criminal laws against them.
474. In addition to the above, it is important to underscore the fact that the vast majority of children and adolescents engaged in micro-trafficking are themselves drug users and that addicting them is one of the strategies used to recruit and retain them as micro-vendors. Part of their remuneration is in the form of drugs.
475. Typically, those involved in micro-trafficking tend to live in underprivileged parts of a city in which organized crime and drug-trafficking are rampant and where access to basic public services and employment is limited. They are usually poor, with a low level of education and scant access to the formal labor market and/or a non-precarious job. The socio-economic status of most of those convicted of drug offenses and the reasons underlying their involvement in drug trafficking have led some to argue that the implementation of current drug policies is helping to "criminalize poverty," without any major progress in reduction of either the number of offenses or the violence and insecurity associated with the drug-trafficking networks. What can be seen is a substantial increase in the number of women and adolescents incarcerated for offenses of this nature.
476. Children and adolescents are easily recruited by adults who use them for micro-trafficking and for other activities associated with the trafficking and sale of drugs, such as keeping watch in the places where drugs are distributed or attracting new customers. The payments that children and adolescents receive induce them to join in drug-trafficking activities. Generally speaking, these are children and adolescents from the same community where the drug trafficking takes place, so that they grow up with this illegal business around them and learn to see it as both

⁵⁸⁰ [Convention adopted at the 87th session of the International Labour Organization \(ILO\) Conference in June 1999.](#)

⁵⁸¹ Article 3.c of ILO Convention 182.

⁵⁸² For the Convention, the term "child" applies to all persons under the age of 18 (see Article 2), pursuant to Article 1 of the United Nations Convention on the Rights of the Child.

⁵⁸³ Article 1 of ILO Convention 182.

normal and as the easiest option for obtaining an income, in a context with few job market opportunities. The initiation into micro-trafficking exposes children and adolescents to other criminal activities carried on by criminal organizations, to contact with firearms, acts of violence, and drug use.

477. The Commission considers that it is incompatible with international human rights law to criminalize and imprison children and adolescents who are being used and exploited by adults in micro drug-trafficking and other drug-related activities. The Commission considers that the regulatory approach should above all be based on protecting the child from all forms of abuse or exploitation, and on protecting her or her right to life, personal integrity, overall development, and health, along with other rights that might be impaired, such as the right to education. Interventions need to be primarily protective, not repressive, and aimed at achieving full restitution of rights, including rehabilitation and reintegration into society.⁵⁸⁴ Children and adolescents caught up in micro-trafficking or other drug-related activities should be regarded as being in particularly vulnerable circumstances and at risk of suffering various infringements of their rights. For that reason, interventions need to be developed through specialized programs taking the different causal and contextual factors into account.
478. It is also worth highlighting the fact that between 2006 and 2011, the female prison population in Latin America almost doubled, from 40,000 female inmates to over 74,000.⁵⁸⁵ Even though the percentage of women deprived of their liberty is far below that of men, this sudden increase is disturbing. A high percentage of these women were imprisoned for non-violent drug-related offenses and a large number of them are in pre-trial detention awaiting judgment.⁵⁸⁶ A recently conducted OAS study, *The Drug Problem in the Americas*,⁵⁸⁷ points to an overall figure for women in prison in the region on non-violent micro-trafficking charges of almost 70 percent of the total number of women deprived of liberty;⁵⁸⁸ most of them had children to look after when they committed the offense and many were women heads of single-parent households.
479. According to the aforementioned studies, the vast majority of female inmates are mothers and a large number of them reported having three or more children.⁵⁸⁹ The incarceration of women usually has major repercussion on the family,

⁵⁸⁴ Along the same lines as those developed by the IACHR, see also the United Nations Report on Violence against Children, p. 335. Recommendations section: "Children who are trafficked or used to traffic drugs and weapons are usually victims themselves of several violations of their rights, and should not be re-victimised as criminals. They should be carefully assisted to get out of these situations, with a focus on safe and viable alternatives."

⁵⁸⁵ International Drug Policy Consortium, *Women, Drug Offenses and Penitentiary Systems in Latin America*, p. 12.

⁵⁸⁶ Report by the Inter-American Commission of Women (CIM), *Women and Drugs in the Americas. A Policy Working Paper*, p. 32 and International Drug Policy Consortium, *Women, Drug Offenses and Penitentiary Systems in Latin America*, pp. 11 to 14.

⁵⁸⁷ OAS, *The Drug Problem in the Americas*.

⁵⁸⁸ OAS, *The Drug Problem in the Americas*, p. 62.

⁵⁸⁹ UNDP Report, *Citizen Security with a Human Face*, p. 126. CIM Report *Mujeres y drogas en las Américas. Un diagnóstico de política en construcción*, [Women and Drugs in the Americas. A Policy Working Paper], and International Drug Policy Consortium, *Women, Drug Offenses and Penitentiary Systems in Latin America*.

especially the children. Usually the closest relative, or the extended family, becomes responsible for looking after the children, whereby brothers and sisters are sometimes separated. In most instances, social services are needed to support the children's education and welfare, and sometimes they are placed in protection and foster care institutions.⁵⁹⁰ The laws in some countries allow women to have their children in prison with them, although there have also been difficulties with that approach due to precarious prison conditions, the loss of the children's social contact with the outside world, and situations in which violence, abuse, and exploitation have been detected against the children of female inmates. In the case of Bolivia, for example, the authorities decided to begin a process of withdrawing children from mothers in prison due to serious cases of sexual violence against girls in those detention centers.

480. In some countries, such as the United States, persons with a criminal record may be considered ineligible for food stamps or cash allowances, without taking into consideration the needs of their families, even those of dependent children. Such policies impair the rights of children and help reproduce the cycle of poverty and socio-economic exclusion factors, which can lead to recidivism.⁵⁹¹
481. The Commission considers that, based on the principles of exceptionality of criminal law and proportionality of sentences, the countries of the region should contemplate alternatives to incarceration for cases of non-violent drug-related offenses committed by adults. In particular, priority should be given to measures that do not involve deprivation of the liberty of mothers with children in their care, for the sake of the principle of the best interests of the child and its well-being.⁵⁹² Imprisoning mothers should be regarded as a measure of last resort and alternatives should be developed such as probation or other less restrictive measures, leaving mothers free to look after their children.⁵⁹³ In the event that

⁵⁹⁰ The serious risks attached to the institutionalization of children and adolescents as a means of protection in the absence of parental care have been described by the IACHR in its report on *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.

⁵⁹¹ Report by the Inter-American Commission of Women (CIM), *Women and Drugs in the Americas. A Policy Working Paper*, pp. 29, 32, and 33. Also Kensey, J. et al., *Drug Policy and Women: Addressing the Negative Consequences of Harmful Drug Control*, Washington, D.C.: International Drug Policy Consortium, 2012.

⁵⁹² United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, March 2011, Rule 64: "Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offense is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children." In the Declaration of Antigua, the OAS Member States committed to strengthening actions and alternative policies to incarceration, where applicable, especially by increasing access to rehabilitation, comprehensive health care, and social reintegration programs, in addition to promoting, in accordance with their domestic laws, respect for proportionality between the harm done by an offense and the sentence handed down and the inclusion of a gender perspective in drug policies. Declaration of Antigua, Guatemala "For a Comprehensive Policy against the World Drug Problem in the Americas," forty-third regular session of the OAS General Assembly, held in Guatemala in 2013. AG/DEC.73 (XLIII-O/13). Item 18.

⁵⁹³ See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

mothers are deprived of their liberty, priority must be given to the rights and protection of the children, who must be treated in a manner and under conditions that guarantee observance of their rights⁵⁹⁴.

482. A recent study in Latin America shows evidence of how the children of inmates endure stigmatization and discrimination by society, have fewer opportunities for self-fulfillment, suffer more infringements of their rights, and, as a result, if they do not receive the necessary support, are more likely to commit crimes themselves.⁵⁹⁵ Another study revealed that: "the children in families affected by incarceration exhibit a lower life expectancy than other children and are six to seven times more likely than other children to end up in prison themselves."⁵⁹⁶ Given the large numbers of women in prison for micro-trafficking and the consequences that has on the way their children grow up and develop, there are countries in the region that are looking into the introduction of measures to allow house arrest for women convicted of micro-trafficking offenses who have children to look after.
483. Finally, the Commission notes that, in general, when it comes to drugs, no coherent and comprehensive public health strategy has been developed to inform people and avert the risks and harm stemming from narcotic drug use. The States in the region have declared the importance of allocating more public and private resources to implementation of prevention, treatment, rehabilitation, and social reintegration programs directed at the most vulnerable populations,⁵⁹⁷ especially children and adolescents.

⁵⁹⁴ Also see *Mujeres, delitos de drogas y sistemas penitenciarios en América Latina*, IDPC, Consorcio Internacional sobre Políticas de Drogas; UNICEF and Ministry of Defense of Argentina, *Mujeres presas. La situación de las mujeres embarazadas o con hijos/as menores de edad. Limitaciones al encarcelamiento*, 2008.

⁵⁹⁵ See the report entitled *Niñas, niños y adolescentes con referentes adultos encarcelados en América Latina y el Caribe*.

⁵⁹⁶ Report by the Inter-American Commission of Women (CIM), *Women and Drugs in the Americas. A Policy Working Paper*, p. 30.

⁵⁹⁷ Declaration of Antigua, Guatemala "For a Comprehensive Policy against the World Drug Problem in the Americas," forty-third regular session of the OAS General Assembly, held in Guatemala in 2013. AG/DEC.73 (XLIII-O/13).

CHAPTER 6
CITIZEN SECURITY FROM
A CHILDREN'S RIGHTS
PERSPECTIVE

CITIZEN SECURITY FROM A CHILDREN'S RIGHTS PERSPECTIVE

A. The Need to Give Greater Priority to Prevention Policies

484. Citizen security policies should center on protecting people and ensuring their rights. Accordingly, they should focus more on violence prevention and reduction, in addition to traditional forms of controlling and suppressing crime. As noted previously, the majority of crime control and repression policies in the region have not given adequate consideration to protecting the rights of children and adolescents; indeed, they actually have adverse effects on them.
485. The Commission also notes as a positive trend that progressive efforts are underway in all countries to advance violence prevention and reduction policies, acknowledging the importance of addressing the underlying causes of violence. In that regard, the Commission received copious amounts of information in the responses to the questionnaire that included concrete examples of actions being undertaken. In all cases, policies, programs, and services are designed to strengthen protective factors while seeking to limit risk factors. The majority of the examples that were shared with the Commission were promising and pointed in the right direction in terms of seeking to reduce violence that affects children and adolescents as well as reducing the number who take part in criminal and violent activities.
486. However, despite recognizing the progress in this regard, the Commission notes the need to continue to broaden and deepen public policies of this type. The Commission observes that, by and large, prevention policies are supplemental and subsidiary in nature with limited resources and coverage. Very often the prevention programs implemented are pilots or are not stable or sustained over time. Furthermore, authorities do not evaluate the impact of these programs as a matter of routine. As a result it is difficult to assess their efficacy, make the necessary adjustments, or take the decision to expand or replicate them. In addition, in spite of broad recognition of the need to design comprehensive multisectoral policies that involve government at all levels, in practice initiatives continue to suffer from a lack of coordination.⁵⁹⁸
487. In the following section the Commission examines a number of components that should be included in the design and application of citizen security policies that

⁵⁹⁸ See, for example, 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. 133.

give particular emphasis to an approach that prioritizes protecting and ensuring the rights of children and adolescents.⁵⁹⁹

B. Comprehensive, Holistic, and Intersectoral Public Policies

488. Ensuring effective violence prevention first requires a broad, comprehensive, and holistic approach that combines legal, social, educational, and economic strategies to reduce risk factors and strengthen protective factors. As noted previously, such policies must take into account the complexity, variety, and interconnection of causes of violence and above all address the factors that affect it. Therefore, long-term, integrated prevention efforts are called for that link contributions from different sectors through an array of choreographed approaches.⁶⁰⁰
489. Whereas previously the only actors that were regarded as relevant in security policy were the police and the courts, increasingly a more comprehensive view is being taken of the efforts needed to tackle an enormously complex, multicausal problem, which requires the involvement of other institutions. An intersectoral approach entails coordination among multiple sectors, some of the most obvious ones being security, justice, economics, social development, health, education, industry and employment, culture, and sport, among others. The multiplicity of factors has compelled the design of systems involving diverse sectors and tiers of government that allows them jointly to plan, coordinate, and implement public policies.
490. To be effective, such public policy transformations require time, medium- and long-range planning, and investment of sufficient resources. The above requires coalescing sufficient political will around a national prevention policy, which ideally should encompass more than one government's administration. Indeed, the transition from short-term policies with crime repression goals to medium- and long-term ones that focus on addressing the social and economic causes of violence and insecurity tends to take time and call for a broad and social and political consensus.
491. More and more countries in the region have a national citizen security plan or policy that sets out objectives, guidelines, and strategies for reducing and preventing violence, and adopts a coordinated, intersectoral approach involving the different tiers of government. They also envisage the establishment of

⁵⁹⁹ See also the general recommendations contained in the U.N. Secretary General's Study on Violence against Children, pp. 335 to 338, and United Nations, Committee on the Rights of the Child, Consideration of reports submitted by States Parties under article 44 of the convention, Concluding Observations: El Salvador, CRC/C/SLV/CO/3-4, 17 February 2010, paras. 80 and 81, and Concluding Observations: Guatemala, CRC/C/GTM/CO/3-4, 25 October 2010, paras. 92 and 93.

⁶⁰⁰ See, in this regard, the findings and recommendations of the U.N. Secretary General's Study on Violence against Children, p. 316, and 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. 87.

multisectoral committees or agencies to implement the national citizen security policy in a coordinated way.

492. For policies to succeed, they must include strategies and plans with clearly defined targets, institutional responsibilities, deadlines, and sufficient budgetary resources, in addition to progress and results indicators to enable monitoring and evaluation. In practice, although States' efforts have undoubtedly been invaluable, it is necessary to continue advancing and accelerating progress in the area of violence prevention policies that take the above elements into account.
493. While national citizen security plans or policies usually recognize children and adolescents as an especially vulnerable population segment in contexts of insecurity and violence, it is necessary to move forward with identifying concrete strategies that specifically target children and their protection. Current plans and policies tend to suffer from a lack of specificity in this respect, with the result that the children's rights-based approach is often long on rhetoric and short on concrete practical implementation. National systems for advancement and protection of children rights have a critically important role to play specifically where children and adolescents are concerned, and should be an integral part of the planning and implementation of policies and strategies to address violence and citizen security.

C. Social Policies and Access to Public Services

494. The adverse socioeconomic conditions that some communities face are at the foundation of problems to do with violence. The lack of a State presence in any dimension, particularly the social one, impedes addressing these problems and their causes. The challenge persists of coming up with effective social policies that combine universal interventions that foster social cohesion and ensure access for all to basic services and the exercise of their rights, with those policies designed specifically to assist especially vulnerable populations that face greater hurdles when it comes to enjoying their rights.
495. The Commission believes that ensuring access to quality public services in poverty-stricken areas guarantees the human rights of the individuals that live in those communities as well as being a key component of security strategies. Failure to allocate sufficient budget funding to adequately finance public services is at the root of the problem.
496. In addition, programs aimed at reducing poverty and inequality, including inequalities and discrimination on gender and ethnic grounds, augment social integration and help to lower tensions, insecurity, and violence. Better State services with more equitable coverage encourage and stimulate more-egalitarian growth. Governments should also use specific programs to deal with risk factors that tend to accumulate in certain areas and their inhabitants.

D. Decentralization and the Role of Local Governments

497. Violence represents a challenge not only to national governments, but also to local authorities, particularly in urban areas where the highest levels of violence and criminality to concentrate. Local governments have had to contend with the problems associated with fast urban population growth and the challenges posed by rapid, uncontrolled urban sprawl. The main challenges of disorderly urban growth have to do with the possibility of delivering basic public services to those communities, so as to ensure their rights, and maintaining public security. The institutional presence of the State in such communities is usually very limited and needs to be bolstered.⁶⁰¹
498. At the same time, the expansion of democracy at the local level has meant an increase in municipalities' responsibilities as regards provision of public services and ensuring their inhabitants well-being. Municipalities are assigned responsibility for a significant number of aspects that have to do with violence prevention even if their authority in the area of security (security forces) usually occupies a central position. The responsibilities associated with violence prevention include policies or programs on youth, sport, leisure and culture, professional training, social services, assistance to vulnerable groups, and family services, among others. Many of those policies, and the services, have been decentralized to the local level. The ability to implement some initiatives in certain municipalities may be constrained by limited funding and a lack of personnel with the necessary expertise and experience.
499. However, because of their proximity to their citizens, municipal authorities are in a prime position to harness citizen participation in the management of public affairs and identifying problems and possible solutions. Every municipality and locality has its own dynamics, and experience shows that responses are more effective and meaningful when they take into consideration these peculiarities, and approach problems at the community level. At any rate, local government initiatives must always be guided—and limited—by the obligation to respect and ensure human rights.
500. Furthermore, in cities violence and insecurity levels can be mitigated with social policies and urban planning that reduce exclusion, marginalization and social fragmentation. It is essential to expand public services coverage in the poorest communities, invest in decent-housing programs, recover safe public spaces, and integrate areas disconnected from the city by investing in public infrastructure projects. Interventions such as these improve quality of life for people in those communities, promote the enjoyment of their rights, and help reduce and marginalization and vulnerability. It is a proven fact that the city model affects

⁶⁰¹ For instance, 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](#), pp. 97-99 and 107-108.

insecurity: one of the priorities of local governments should be to promote safe, inclusive cities that contribute to a reduction in violence and crime.⁶⁰²

501. National violence and crime prevention policies should take into consideration the position of local governments and their potential limits in terms of technical and budgetary capacity to design and apply holistic and comprehensive violence prevention policies. Collaboration and cooperation among the various tiers of government is an important element in such policies.

E. Professionalization and Specialization

502. The Court and Commission have repeatedly indicated the need to apply the principles of specialization and professionalization in interventions that address children and adolescents.⁶⁰³ Applying such principles entails having specialized units, trained personnel, and child-specific protocols in sectors and entities called upon to operate in contexts of insecurity and violence, particularly the State's security forces and the justice sector.
503. The Commission notes from the information provided by the States that there is clearly a recognition of these principles even if their application remains limited in practice. In several States it is mandatory for police to receive training in children's rights as well as on how children and adolescents must be treated; others have introduced intervention protocols for the security forces adapted to children; some States have provided for the establishment of specialized units within the police staffed with specially trained personnel. As regards the justice sector, the Commission has also received information about the progressive spread in the region's countries of specialized courts and justice operators educated and trained in children's rights, who also have trained multidisciplinary support teams available to them.
504. The Commission is of the opinion that a greater effort is needed to ensure the necessary knowledge and training in children's rights for State security agents and the justice sector, including the fact of having multidisciplinary support teams available to them. The Commission stresses that it is important for States to strengthen or develop systematic, comprehensive training plans for both the police and justice sector operators with an emphasis on children's rights and protection of children as part of broader citizen security policies. The design of intervention and referral protocols is also essential for ensuring adequate protection for children's rights. The Commission also recommends the creation of units, of a multidisciplinary nature, that specialize in children in the security and justice sectors, and that their human and financial resources of those sectors be strengthened so that they can function effectively.

⁶⁰² Also see, UN HABITAT, *Safer Cities Programme*.

⁶⁰³ 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, *para.* 32, *pars.* 201 *et seq.* I/A Court of Human Rights Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 de 28 August 2002. Series A No. 17, *pars.* 78 and 79.

F. Information, Monitoring, and Evaluation Systems

505. When States adopt public policy decisions, it is critical that they have sufficient and reliable data with which to make a meaningful and thorough assessment of the situation, the causes of violence, and the consequences thereof. Thus, the assessment should make it possible to design, implement, monitor, and evaluate comprehensive policies for prevention, reduction, control, and repression of violence that address its multifaceted dimensions from a human rights perspective. The information should also help facilitate reasoned decisions on the amount of financial resources needed adequately to fund such policies.
506. The Commission notes from the responses of the States to the questionnaire that large gaps in terms of the availability and accuracy of data and statistics are common in the great majority of countries. The reasons for this include an absence of reliable data-gathering systems, insufficient institutional capacity, and not enough trained human resources to collect and analyze relevant data on violence, crime, victimization, and institutional performance. There are, however, marked differences among the countries in terms of the use and quality of information systems on violence and crime.
507. The increasing complexity of citizen security policies requires ever more sophisticated information systems with which to design and assess interventions. In that regard, the intersectoral coordination effort to gather data and statistics for designing public policies is still in its infancy in many countries. A constant dialogue is needed, as is an information system that cross-references data from a variety of institutions, such as ministries of security, justice, health, labor, social development, and education, among others.
508. Data generation is also important for the purposes of transparency with regard to citizen security policies and the results obtained from them. To that end, it is crucial to generate and distribute clear and accessible information on the situation of violence and crime, the public policies implemented in the area of prevention and their results, and measures adopted by security and justice agencies. Having information of this type regularly available entails democratizing public security, encouraging an informed discussion by the public, and an element of deterrence and oversight against possible human rights violations on the part of State agents.
509. Specifically with respect to the design, implementation, and evaluation of citizen security policies in the region, the Commission has identified a basic frame of reference by which to build and apply public policies that take the principles of participation, accountability, and nondiscrimination into consideration.⁶⁰⁴ The Commission recommends that discussions on matters of public interest be strengthened based on the principle of active transparency; that is, by proactively distributing objective, adequate, sufficient, current, and reliable information to society, and disclosing the results obtained from policies that are being applied.

⁶⁰⁴ IACHR, *Report on Citizen Security and Human Rights*, para. 51.

510. Among the challenges that States face when it comes to precisely measuring levels of violence and criminality are the sources used and the information gathering methods employed. As a rule, police data are relied upon as an information source for determining levels of violence and crime. However, there are shortcomings in using that source, such as, for example, the fact that some victims do not report violence for fear of reprisal or lack of confidence in the system. Increasingly, States look to cross-reference statistics and information from a variety of sectors, including justice, health, education, social services, and child protection, in order to obtain a more reliable approximation of the actual situation. Self-perception and victimization surveys are also included, as they have the advantage of providing first-hand information on violence, crime, and victimization, although polls of this type are costly and logistically complicated to carry out.
511. The IACHR acknowledges that States are making efforts to improve existing information, monitoring, and evaluation systems, however these efforts need to be enhanced. From the information presented to it, the Commission has learned of the establishment of a national-level body that acts as a clearinghouse for information; the creation of observatories at the local, national, and regional level; the introduction of systems of standardized security indicators; methodologies and protocols to safeguard data quality; the inclusion of the topic in population surveys; longitudinal studies; and qualitative studies and research.
512. The Commission believes that States should adopt or improve their systems for collecting information and data on child and adolescent victims of violence, abuse, exploitation, and homicide. At a minimum, data registries should record the circumstances in which incidents occur and the characteristics of both victims and perpetrators, so that that data can serve as inputs to inform public policies on protection of children against violence. Self-perceptions surveys are also a highly useful tool for identifying the circumstances in which children and adolescents live as well as the challenges they face in exercising their rights. In addition, qualitative research should involve children and adolescents in order to learn their opinions on their circumstances and initiatives that the authorities could adopt to better protect their rights.
513. The countries of the region do not usually have information on the approximate number of children who are members of violent gangs or recruited by criminal groups, the ways in which they are used in different activities, and the factors that lead to their recruitment and membership of those groups. In that same connection, the Committee on the Rights of the Child has recommended to several States that they improve the system of collection and analysis of data on recruitment of children and adolescents by non-State armed groups (including criminal groups) disaggregated, *inter alia*, by age, sex, ethnicity, socioeconomic background, and municipality.⁶⁰⁵ The Committee also considers that not having such information curtails the ability of the State to meet its obligation to take all

⁶⁰⁵ Committee on the Rights of the Child. Concluding Observations on Mexico, [CRC/C/OPAC/MEX/CO/1](#), 7 April 2011, para. 14.

the necessary measures to ensure that no children or adolescents are recruited by non-State armed groups and organized crime groups.⁶⁰⁶

G. Citizen Participation and Proactive Involvement of Children and Adolescents

514. The Commission has noted that "to be truly effective, any public policy on citizen security must be supported by a strong political consensus and enjoy the support of broad sectors of the population, which is also central to strengthening democratic governance in the region."⁶⁰⁷ Such a policy must also abide strictly by human rights, democratic principles, and the rule of law.
515. The participation of the inhabitants in the management of public affairs and the design, implementation, monitoring, and evaluation of public policies, especially at the local level, is part of their civil and political rights as well as being a valuable strategic approach for reducing levels of insecurity and violence.
516. Engagement of communities in the design, follow-up, and evaluation of security programs is key to their ownership, effectiveness, and monitoring. The communities worst affected by violence are also those most familiar with the context, the risks that they face, and violence reduction strategies that could work. Their opinions are essential for identifying risk factors and the type of interventions needed in the community, on the part both of the police and other State institutions. Furthermore, the societal oversight or citizen audits that people in these communities carry out are indispensable for preventing abuse of authority, corruption, and impunity for the State's agents and security forces. It is crucial to strengthen and advance citizen participation and oversight initiatives in the area of security and justice policies.⁶⁰⁸
517. In addition, to be effective, violence prevention and reduction strategies inevitably must include a number of social transformations. Policies on equitable social development and social inclusion as well as those that seek to ensure human rights and strengthen democracy are fundamental for overcoming the problem of violence. Encouraging participation in the management of public affairs by traditionally sidelined or discriminated-against groups is an essential component for advancing social inclusion and building those policies.
518. The Commission believes it a priority to give singular attention to children and adolescents themselves and to their opinions on citizen security.⁶⁰⁹ At present,

⁶⁰⁶ Committee on the Rights of the Child. Concluding Observations on Mexico, [CRC/C/OPAC/MEX/CO/1](#), 7 April 2011, para. 22.

⁶⁰⁷ IACHR, *Report on Citizen Security and Human Rights*, para. 53.

⁶⁰⁸ 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. 154,

⁶⁰⁹ As regards the right of children to participate in matters that affect them, see 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.

there is a tendency to regard children and adolescents as lacking necessary capacity or sufficient maturity to participate and play a more proactive role in decisions that affect them. At the same time, adolescents and youth from certain social sectors are stigmatized and viewed as potential "social risks," with the result that neither they, nor their views and opinions about the reality in which they live, nor the challenges with which they contend daily, nor their recommendations concerning initiatives to mitigate their situation, are taken into consideration.

519. Although States in the region are making efforts to create programs specifically targeting adolescents, more needs to be done to strengthen the involvement of adolescents in the design, implementation, monitoring and evaluation of those programs, at the municipal, regional and national level.
520. Furthermore, regarding and acknowledging children and adolescents as relevant actors, as well as consulting their opinion, helps to strengthen their recognition as citizens and their right to participation. It also helps to overcome feelings of exclusion while reinforcing a sense of belonging in society, in spite of differences in terms of the ethnicity, gender, and socioeconomic background. In addition, it bolsters respect for institutions and increases their sense of responsibility and ownership of initiatives. It is worth noting that precisely some of the risk factors that lead children and adolescents to join violent groups or be recruited by organized crime are alienation, social exclusion, and a lack of a sense of belonging and social recognition.

H. Family Strengthening and Social Assistance Policies

521. International human rights law accords a special position to the family where the protection, care, upbringing, and welfare of children are concerned.⁶¹⁰ The court has 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."⁶¹¹ The Commission, for its part, in its interpretation of the scope of, and the obligations arising from, the special protection to which children are entitled under Articles 19 of the American Convention and VII of the American Declaration, has associated them with the

⁶¹⁰ See, in particular, Articles 17(1) of the American Convention, VI of the American Declaration, and 3(2), 18(2), and 27 of the United Nations Convention on the Rights of the Child.

⁶¹¹ I/A Court of Human Rights, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 de 28 August 2002. Series A No. 17, para. 66. See also I/A Court of Human Rights, *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 156; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, para. 125.

obligation to protect the family recognized in Articles 17(1) of the American Convention⁶¹² and VI of the American Declaration⁶¹³ and established that:

the protection measures to be provided for them by the State, recognized in Article 19, prioritize strengthening the family as the principal unit for protecting and caring the child. States are obligated to act in favor of, in the broadest form possible, the development and consolidation of the family nucleus, as a protecting measure of the child. From the former, it is inferred that States require a National Child Protection System that includes policies for family support and assistance, which 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.⁶¹⁴

522. The State has the duty to adopt a domestic legal framework as well as social policies, programs, and services, in addition to adapting its institutions and practices in order to ensure that families have the possibilities and the minimum means necessary to perform their role and provide their children with adequate care.⁶¹⁵ The Convention on the Rights of the Child also requires States Parties to render appropriate assistance to parents and legal guardians in the performance of their childrearing responsibilities.⁶¹⁶

⁶¹² Article 17. Rights of the Family: 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

⁶¹³ American Declaration of the Rights and Duties of Man, Article VI. "Every person has the right to establish a family, the basic element of society, and to receive protection therefor."

⁶¹⁴ 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. 64 (for more details, see paras. 49 to 64). See also I/A Court of Human Rights, Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 de 28 August 2002. Series A No. 17, paras. 66, 71, 72, 73, and 76; Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, para. 17, operative paragraph 5 and para. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 157. IACHR, Report No. 83/10, Case 12.584, Merits, Milagros Fornerón and Leonardo Aníbal Fornerón, Argentina, November 29, 2010, para. 105. See also, United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 12 and 13. See, likewise, Articles 1 to 3 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by United Nations General Assembly resolution 41/85, 3 December 1986. See, furthermore, U.N. Secretary General's Study on Violence against Children, pp. 336 to 338, and Report of the independent expert for the United Nations study on violence against children, A/61/299, 29 August 2006, para. 110. 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. See also Human Rights Committee, General Comment 17, Article 24 (Thirty-fifth session, 1989), U.N. Doc. HRI/GEN/1/Rev.1 at 23 (1994).

⁶¹⁵ 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, paras. 84 to 89.

⁶¹⁶ CRC, Article 3.2: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures"; 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,

523. In the contexts referred to in this report the family plays a prominent role in protecting children. However, just as the family may be an important source of protection for children, it may also represent a risk factor. For example, according to the UNDP, more than one third of prison inmates left home before the age of 15 because they were victims of violence or neglect.⁶¹⁷
524. Social assistance policies for families, especially those aimed at families that face severe challenges and limitations in caring for their children, contribute to the protection of the child and their rights. As regards family protection policies, the Commission has indicated that governments should support initiatives to strengthen families' knowledge of skills for a nonviolent upbringing that respects children's rights.⁶¹⁸ The family has a key role to play in the child's education, their process of socialization, and transmitting social standards of conduct. Children learn what is and what is not socially permissible within the environs of the family; they learn how to form relationships with others, but also come into contact with social stereotypes, prejudices, and negative conduct that they may themselves then reproduce. The United Nations Global Study on Violence against Children found that good parenting, the development of affective bonds between parents and children, and affirmative, nonviolent discipline are some of the factors that tend to favor the protection of children against violence, both in the home and in other environments, preventing children from becoming either victims or aggressors.⁶¹⁹ Other studies have highlighted positive results from programs that are initiated early, during pregnancy, and continue through early childhood.⁶²⁰
525. The family performs basic material and physical protection functions that ensure the child's support and personal protection. However, some families have very limited capacities to provide the kind of care and attention required. Many children and adolescents spend long parts of the day alone unsupervised by an adult because there is no relative to take charge of them. At such times, when the

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 implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

⁶¹⁷ 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. 25.

⁶¹⁸ 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, October 17, 2013, pars. 76 to 141, in particular paras. 115 to 129.

⁶¹⁹ U.N. Secretary General's Study on Violence against Children, pp. 33 and 34. According to the above-cited study, policies of this type have proved not only to have an impact in terms of the well-being and protection of children, but also considerable medium- and long-term effects as regards reducing violence in the community; in other words, efforts to prevent violence in the family and the home help in the long-term to prevent violence in the community, both against children and in general, para. 33.

⁶²⁰ In the area of social assistance policies for families, programs targeted at future parents and early childhood development programs have had a positive impact in terms of protection of children and reducing domestic violence, as well as showing clear and consistent signs of reducing the risk of children later engaging in antisocial and violent behavior. Programs that provide coaching from early pregnancy and promote healthy habits and positive, nonviolent interpersonal relationships in both parents have produced positive results in the level of protection and enjoyment of children's rights and in reducing domestic violence. See, World Bank, Crime and Violence in Central America: A Development Challenge, 2011, pp. 24 and 25.

children are not in school and there is no one at home to look after them, they are exposed to situations or conduct that could potentially pose a risk to them.

526. In recent years, an array of changes has impacted families and diminished their potential as a protective environment. Violence and crime prevention policies should take these changes into consideration in order to strengthen families' capacities and protection for children.
527. The available data indicate that the number of single-parent, female-headed households in Latin America has increased significantly, while in the Caribbean, the number of single-parent, female-headed households has traditionally been high. With regard to Latin America, the percentage of births in single-parent, female-headed households doubled in 30 years, from 7.3% in 1970 to 15% in 2000. The demographic profile of single mothers continues to show a concentration in the youngest sectors, the least educated, and those with the least economic resources, partly caused by structural exclusion and discrimination against women. This phenomenon poses important challenges for the parenting and development of children, particularly when women lack a social support network to facilitate minimum conditions; many of these women are compelled to work more than one shift per day, hold several jobs or work every day of the week in order to be able to support their children and, in many instances, have to leave their children alone at home. It also contributes to what has been termed "feminization of poverty" as well as to reproducing conditions and social exclusion and discrimination⁶²¹. In the case of single-parent families, programs such as free public day-care facilities allows mothers to find work or engage in productive activities, with the result that the care of her children is not neglected or acts as an obstacle to employment. Conditional money transfers and material assistance is another contribution that positively impacts the possibilities of providing care and protection for children.
528. In terms of adolescent pregnancies, Latin America and the Caribbean have the second-highest number of pregnancies in adolescents aged 15 to 19, second only to Africa. Adolescent pregnancies reflect and reproduce some of the socioeconomic vulnerabilities that a large portion of young women face in the region. Because of those vulnerabilities, it is likely that a high adolescent pregnancy rate will translate into households that need assistance through a variety of social policies to enable them to carry out their parental functions and responsibilities of protecting, rearing, and caring for their children.⁶²² These data should highlight the need to develop prevention and protection mechanisms aimed at alleviating the conditions of poverty and socioeconomic exclusion affecting this group, including sexual and

⁶²¹ 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. 24, "According to CEPAL, the proportion of female-headed households would be: Argentina and Brazil with more than 26%, Honduras, Panama and Paraguay with more than 28%, Colombia 29%, Venezuela 33%, El Salvador 34.7%, and Nicaragua 37.8%, gender Statistics Database, CEPALSTAT, 2011.

⁶²² 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. 25.

reproductive education, health services, educational opportunities for the prevention of adolescent pregnancy, and support for single-parent households.⁶²³

529. As regards the phenomenon of migration and its impact on families and the protection of children, it is worth noting that migration is very high in certain countries in the region, particularly in Central America and the Caribbean countries. Many children and adolescents have one or both parents living far away because they have migrated. Children are left in the care of one of the parents or other relatives or acquaintances, which may mean that the family has limited capacities to supervise and care for the child. In some cases, the child may even be abused, neglected, or abandoned.
530. All the States in the region reported in their responses to the questionnaire that they are implementing various social services and programs targeted at families. This tendency 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 ways to reduce subsequent risk behaviors among youth.⁶²⁴ Another type of program used by many States is conditional cash transfers to families and other forms of material and financial assistance, especially for low-income families living in poverty. The Commission celebrates the fact that in this way States are meeting their obligations under Articles 17(1) and 19 of the American Convention and VI and VII of the American Declaration. 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.

I. The Right to Education and Schools as Safe and Protective Environments

531. As was previously mentioned, the school plays an important role as a learning and socialization environment for children, not only in terms of supplying the right to education and transmitting knowledge, but also because it is one of the main protective spaces for children, for promoting their rights, and for their personal growth and integral development.⁶²⁵
532. It is important for States to address the still-considerable gap that exists in in the coverage and quality of education in the poorest and most excluded urban

⁶²³ 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. 26.

⁶²⁴ U.N. Secretary General's Study on Violence against Children, pp. 318.

⁶²⁵ 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: 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.

communities as well as in rural areas. It is also essential to ensure that education is pertinent, with syllabus contents adapted to the context where the child grows, including programs for developing life skills and strengthening the connection between school and the world of work. Initiatives aimed at boosting education quality contribute to expanding opportunities for children, including those for job market entry and professional development for adolescents. In that regard, education is a key factor for social mobility and overcoming social exclusion, poverty, and discrimination.

533. The Commission believes that there is a need to redouble efforts to ensure primary and secondary school access and retention, as well as offering vocational training and skills development opportunities. The evidence shows that the longer children and adolescents spend in an educational environment, the greater their protection. Policies that promote school enrollment are one of the most important preventive investments that a country can make in at-risk youth, in terms both of improving their education, and of reducing almost every kind of conduct considered risk behavior, including violence and crime. Conversely, scholastic failure and dropping out are risk factors for juvenile violence and crime.⁶²⁶ A number of countries reported an increase in the length of the school day, particularly in contexts of violence and insecurity in the community, as a strategy to keep children and adolescents safe, protected, and away from possible risks. However, it is important that this be done in consultation with the educational community and parents.
534. The school plays a prominent role in the socialization process of children and adolescents because of its formative function, because it creates a space for them to interact with their peers, and because of the amount of time that children spend in the classroom. The school is an environment for transmitting social norms and

⁶²⁶ [U.N. Secretary General's Study on Violence against Children](#), p. 317: Research suggests that one of the most effective means of preventing violence and crime among certain high-risk children is to provide incentives for them to complete schooling, obtain vocational training and pursue higher education. [...] In the Caribbean, a nine-country study by the Pan-American Health Organization (PAHO/WHO) found that truancy was one of the strongest risk factors for the involvement of young people aged 10–18 in violence. See also, World Bank, [Crime and Violence in Central America: A Development Challenge](#), 2011, p. 25. According to information gathered by the UNDP, in Mexico, for example, least educated youth are most at risk for being victims of violence: the homicide rate for men between the ages of 18 and 40 without a primary school education is well above the national average, at 300 homicides per 100,000. By contrast, the homicide rate for males aged 26 to 40 who finish university was 26 per 100,000 in 2011. 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. 27. Surveys in prisons indicate that the vast majority of inmates had abandoned school at a very young age. It was found that the education level attained by prison inmates was as follows: Did not finish primary school: Argentina 23.8%, Mexico 15.2%, Peru 24.8%, El Salvador 38.1%, Chile 40.2%. Did not complete all 12 years of basic education: Argentina 84.7%, Mexico 85.9%, Peru 87.1%, El Salvador 87.3%, Brazil 83.6%, Chile 84.4%. UNDP, p. 27. In Latin America, 51 percent of young males and 45 percent of young females do not finish secondary school. Nicaragua, El Salvador, and Guatemala, show the highest dropout rates (ECLAC). This makes it both a mechanism of social control and an ideal space for the expansion of opportunities. Of the richest 20% of the population, almost all finish high school, 86% of females and 81% of males, while for the poorest 20%, only 26% of females and 23% of males finish secondary school. Without a doubt, dropping out of school continues to be a challenge for schools in the region, with serious consequences for the transmission of intergenerational poverty and for levels of victimization and violence in general. 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. 26.

values. Therefore, it is crucial for the school to give priority to the creation of safe, violence-free environments that promote positive attitudes and behaviors in children, while fostering awareness of their rights and the development of life skills with a view to their responsible participation in society. School rules on coexistence should reflect that approach and seek to shape children without resorting to the application of disciplinary measures that penalize and exclude them.

535. Schools should have in place prevention and response programs for dealing with violence and promote alternative mechanisms for resolving conflicts peacefully. The evidence shows that violence prevention programs in schools are a very effective way to reduce risk behaviors. School-based violence prevention programs have better success indicators than programs implemented in other settings as they can be adjusted to the particular ages, environment, experiences, and culture of each group of children and adolescents. It is noteworthy that the deficiencies and gaps in education can be seen as vulnerabilities in the face of crime, and at the same time, insecurity in educational environment affects the performance and retention of students in school, creating a vicious circle. Based on all the information received, the Commission notes that the levels of violence in the region's schools, whether between peers or inflicted by faculty members on students, are alarming and need urgently to be addressed.
536. States should ensure that education and schools do not reproduce stereotypes based on gender, socioeconomic background, ethnic origin, or other factors, or perpetuate exclusion and discrimination, abuse, or violence. On the contrary, States should encourage the educational process to be inclusive and foster the human rights of, and protection for, children. According to the recommendations of the United Nations Committee on the Rights of the Child, school curricula should encourage the formation of responsible citizens and promote awareness and the exercise of human rights.⁶²⁷
537. Among the necessary measures for ensuring that education performs the above functions are enhancing the quality of teacher education and training, including in the area of children's rights and peaceful dispute settlement mechanisms.
538. States need to strengthen the ties between the school and the family, and between the school and the health system in order to increase and enhance protection for children. In the education sector, teachers or other specialized personnel often identify possible situations in which the child is at risk at home, requiring the

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The United Nations Committee on the Rights of the Child has expressed its position in similar terms. In its concluding observations on Mexico, it stated the following: "The Committee notes that human rights education and peace education is insufficient in the school curricula." para. 23. The Committee is concerned at the high level of violence in the State Party, affecting children including in schools and the communities, and particularly at the violence suffered by children who are excluded from the education system, para. 24. The Committee recommends that the State Party strengthen its efforts to provide human rights education and, in particular, peace education for all children in school, and train teachers with a view to including these themes in children's education. The Committee recommends that the State Party reinforce its efforts in the various sectors of government and society to practice forms of mediation for peaceful resolutions to conflicts, with an emphasis on violent conflicts that involve children." Committee on the Rights of the Child. Concluding Observations on Mexico, [CRC/C/OPAC/MEX/CO/1](#), 7 April 2011, paras. 23 and 24.

intervention of social services to protect the child and assist the family. The detection of other possible situations of risk, such as negligence, neglect, or violence, should lead to the child's referral to specialized services in the health sector for appropriate treatment. States should create protocols for identification of situations of vulnerability or risk, timely intervention, and referral to specialized services.

539. The majority of States that responded to the questionnaire pointed to the existence of incentive programs for the most at-risk families to send their children to school, for example, via conditional cash transfer targeted either at the family, or at the young persons themselves at more advanced educational levels. Poverty and need to contribute to the household economy or family responsibilities, such as caring for younger siblings, leads to a significant number of school dropouts in the region.⁶²⁸ States have also implemented initiatives to increase parental involvement in their children's education process and in school management, which generates and reinforces parental ownership of their children's education, strengthening family-school ties and reducing dropping out.⁶²⁹
540. Although States have made progress in promoting child and adolescent participation in the management and operations of schools, the Commission underscores the importance of enhancing and enforcing standards and regulations that envisage such participation. In that regard, the Commission recommends that education centers have participative structures and mechanisms that allow the children to express their opinions and views concerning the operations, activities, and how they are treated at school, as well as to make suggestions. The participation and opinions of the children will help improve the school environment and is an important factor in reducing discrimination and violence by providing formal and permanent channels for the children to express their views and share their concerns as to how the school operates. In that same regard, the Committee on the Rights of the Child has stated that:

Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child-centred interactive learning. Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures.

⁶²⁸ Numerous research efforts link dropping out of school to socioeconomic factors; the need to work forces children and youth in economically precarious circumstances to leave school to support their families. According to the ILO, 70 percent of male boys and youth point to the need to work as the reason for dropping out, while 97% of girls and female youth give domestic obligations, maternity, and housework as reasons for dropping out. 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. 26.

⁶²⁹ In this regard, see 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. 107.

The Committee welcomes the expansion of peer education and peer counselling.⁶³⁰

Steady 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 behavior. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.⁶³¹

541. Children at risk of abandoning school should receive additional attention and assistance in order to prevent them dropping out and ensure their right to education. That may entail, *inter alia*, organizing remedial classes and mechanisms to support the child's learning process. For children and adolescents who have abandoned formal education, opportunities should be created for them to rejoin the education process as should "second chance programs" so that they can achieve the necessary education level and qualifications, particularly at compulsory education levels.⁶³²

J. Professional Training and Access to Decent Work

542. Labor market insertion policies need to be strengthened for the most excluded and at risk population segments, particularly among young people and adolescents. Such policies are not only designed to ensure equal opportunity of access to employment, but are also an important strategy for reducing violence and crime. Young people's weak labor market integration is a risk factor in the region, often coupled with low levels of education. Without a complete secondary school education or professional qualifications, the opportunities for employment in the formal labor market are limited, which gives rise to high rates of youth unemployment, unstable contracts, and low pay. According to the ILO, this reality is reflected in the high levels of youth unemployment—between 2.3 and 5.5 times higher than that of adults—as well as unstable and low-income jobs (ILO 2012). Among youth of the poorest quintile, almost 25 percent—especially women—are neither economically active nor enrolled in school.⁶³³ In that context, education and vocational training policies for adolescents as well as assistance in transitioning from school to the labor market are essential.

⁶³⁰ 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. 109.

⁶³¹ 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. 110.

⁶³² See, for example, U.N. Secretary General's Study on Violence against Children, pp. 318.

⁶³³ See situation analysis, 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. 28.

543. As regards employment, States should ensure jobs with decent working conditions and that the most vulnerable adolescents and young people finding work for the first time are not abused or exploitation. The Commission notes that, in spite of considerable efforts made by States in the region, unstable jobs and informal employment continue to account for a substantial amount of the work that adolescents and young people manage to obtain. This explains why employment cannot be equated with overcoming poverty or vulnerability. Access to quality employment to overcome situations of vulnerability and socioeconomic exclusion continues to be a challenge for the economic structure of the region, social mobility, and the enjoyment of a decent life.⁶³⁴

K. Recreation, Leisure, and Culture

544. As part of strategies to reduce violence, States are pursuing programs for the prevention of risky behaviors in girls, boys and adolescents of both sexes that consist of extracurricular activities at the end of classes, as well as programs offering arts, music, culture, recreation, and sports during free time. The function of these programs is to ensure the right of children to play, rest, engage in and enjoy leisure and culture.⁶³⁵ There is also evidence that activities of this type reduce the vulnerability of children and adolescents as well as diminishing their participation in antisocial, violent, or criminal behavior.⁶³⁶
545. Such activities and other structured forms of rest and recreation are vital to the child's development. Properly supervised and community-based activities for children and adolescents, such as sports and youth clubs, community centers, and social and cultural groups, among others, are useful protective factors against violence. These spaces channel constructive use of free time, create positive role models and a sense of belonging, allow interpersonal relationships to be built, and create opportunities for participation and expression. All of that contributes to the personal development of the child and adolescent.⁶³⁷ These spaces should recognize and value the various manifestations of youth identity and culture rather than stigmatize and dismiss such expressions.

⁶³⁴ 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*, pp. 21 and 22.

⁶³⁵ The Convention on the Rights of the Child recognizes children's right to recreation, culture, play and leisure activity in Article 31, which states: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity." In addition, the Committee on the Rights of the Child has adopted General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31), Adopted by the Committee at its sixty-second session (14 January – 1 February 2013). CRC/C/GC/17.

⁶³⁶ See *U.N. Secretary General's Study on Violence against Children*, pp. 319 and 320. World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 27.

⁶³⁷ *U.N. Secretary General's Study on Violence against Children*, pp. 319 and 320. World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 27.

546. Experience shows that, generally speaking, these programs achieve better results when they are combined with other strategies in an holistic and comprehensive intervention approach, rather than independently. In particular, research has found that leisure programs that include adult attention can act as strong protective factors for at-risk youth, especially those who come from families that need assistance of that nature in rearing their children, or who lack positive adult role models at home. Mentoring and tutoring programs also furnish opportunities for interaction with, and counseling and guidance from, trusted adults, who act as positive role models in the child's development process.⁶³⁸ On the other hand, children and adolescents who are left without adult care or supervision during after-school hours are more likely to engage in risk behaviors.⁶³⁹
547. In recruiting adults to supervise recreational, leisure, or cultural activities, or for tutoring/mentoring programs with children and adolescents, the Commission recommends that the professional background and references of candidates be taken into account in order to screen for any history of abuse, neglect, or any other form of violence or violation of children's rights. Caregivers and other persons in direct contact with children should be assessed in order to determine their suitability for work with children. Confidential complaint mechanisms known to the children should also be established so as to enable situations of inappropriate treatment of children and adolescents by adults to be brought to the attention of the relevant authorities.

L. The Policing Model: Community or Proximity Policing

548. The Commission has repeatedly noted the need for countries in the region to implement a process of professionalization, modernization, and democratization of State security forces. In its *Report on Citizen Security and Human Rights*, the Commission put forward a string of recommendations in that regard. One of the Commission's concerns is that the reforms that have been made, though important, are still insufficient, nonetheless. The transition from dictatorial regimes to democratic systems has demanded deep-seated police reform in several States. However, many existing policing models continue to be afflicted by throwbacks to the past. In particular, it is important to implement a model change under which the purpose of citizen security is protection for all persons, their rights, and the conditions in which they can enjoy those rights.
549. In this reform process, many countries are developing the community or proximity policing model as a means to adapt to the new security paradigm and to prevent and reduce violence in communities⁶⁴⁰. The new policing model requires a kind of

⁶³⁸ U.N. Secretary General's Study on Violence against Children, pp. 319 and 320. World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 27.

⁶³⁹ U.N. Secretary General's Study on Violence against Children, pp. 319 and 320. World Bank, *Crime and Violence in Central America: A Development Challenge*, 2011, p. 27.

⁶⁴⁰ For a community policing model approach and the implementation thereof in the region, see several reports written by the UNDP on citizen security in the region, including: *United Nations Development Program (UNDP) Regional Report on Human Development 2013-2014. Citizen Security with a Human Face: Evidence*

organization starkly opposed to the militarized one, with its vertical and centralized structure, and does away with interventions based chiefly on use of force and repression. Assault and combat strategies to recover areas under the control of criminal groups by force, which have more in common with the army warfare approach to defeat the enemy, have proved that they are insufficient on their own in the medium and long term to maintain security and curb violence in those communities. Rather, the sustained implantation of the State's presence in these communities through its forces of law and order along with a range of public and social services, has been much more successful in dealing with the structural causes of the problem, mitigating the consequences of organized crime, and sustaining the basic conditions for security and the exercise of rights.

550. Most of the literature indicates that the model of community policing originated in the Anglo-Saxon countries, in particular, the United Kingdom and the United States, and started spreading to all continents. While there is no single standard model of community policing, the model usually pursues the following specific objectives. Firstly, the model places emphasis on preventive type policing focused on a very limited geographic area: the neighborhood. Secondly, it promotes establishing close community ties with a view to consulting or conferring with the residents on a permanent basis, in order to ensure that the police are taking into account their perceptions and priorities. Thirdly, it focuses police efforts on mobilizing the community to engage in preventive actions. And fourthly, it is based on the strategy of the police successfully detecting conditions and circumstances favoring crime or minor offenses, which disrupt the lives of persons. Another central element of this model is recognition that the community plays a fundamental role in the identification and resolution of the problems of the security of a neighborhood or a delimited community.⁶⁴¹
551. This new security concept requires closer relations with the community in order to understand the problems of insecurity and crime as well as the various factors that influence them. It should also be accompanied by new prevention and problem-solving strategies, which requires degrees of coordination with different public institutions and social services. The new preventive policing models regard the citizen as the object of protection, encourage citizen participation, and require greater police transparency. Citizens, thus, become security co-producers as well as monitoring the actions of the security forces.
552. Community or proximity policing is being implemented in several countries of the region in keeping with the new security paradigm. Community policing implies a broad change in the organizational structure, the decision-making process, and the institutional culture of the police in its relationship with communities. This change

and Proposals for Latin America and Caribbean Human Development Report 2012. Human development and the shift to a better citizen security, Additionally, see the report on the systematized study conducted in the countries of El Salvador, Guatemala, Honduras and Nicaragua, with the participation of the police departments of these countries, at *Sistematización de Experiencias de Implementación de Policía Comunitaria en cuatro países de Centroamérica*.

⁶⁴¹ See, *Sistematización de Experiencias de Implementación de Policía Comunitaria en cuatro países de Centroamérica*, p. 1.

includes operative decentralization in smaller territories and closer ties with the community for investigative work, prevention and oversight of police work.

553. Community policing work is based to a large extent on the relationships of trust and collaboration with the community that the police serve. That is why it is essential in many cases to rebuild the legitimacy of the police in these communities, generating transparency, accountability, credibility, and certainty that the police will act lawfully and respect human rights, and that arbitrary acts, abuse, and corruption will not be tolerated.
554. The military police forces that persist in the region as remnants of bygone eras do not conform to these new needs. Necessary reforms include modifications to ensure civilian command of the police, changes in the recruitment process, an insistence on education to professionalize these forces, and adequate pay. It is important to democratize the processes of recruitment and to work systematically in the incorporation of a greater percentage of women and minorities in all areas of the police. In addition, internal and external oversight of the organization and its members need to be strengthened. That requires legal provisions to ensure an efficiently functioning internal disciplinary system; reliable and secure independent complaints mechanisms; facilitating external oversight by the legislature, the ombudsman's office, civil society organizations, the press, academia, and society at large; and access to justice for victims of police violence.⁶⁴²
555. One priority is to establish a police presence in the most vulnerable areas, with units specially trained in prevention, addressing problems of social coexistence, and work with young people. Likewise, it is critical to establish specialized units to assist vulnerable groups such as children and adolescents, and to design police protocols for dealing with them in order to ensure that their rights are protected. The Commission considers it essential to train police to work with children and adolescents and to eliminate impunity when their rights are violated. States should ensure that police are trained in children's rights and in handling specific groups, such as street children or gang members.⁶⁴³

M. The Need to Advance Restorative Justice

556. International human rights law requires the creation of a specialized juvenile justice system for treating juvenile offenders built on the principles of restorative justice and rehabilitation of the youngster through socio-educational measures, rather than the traditional punitive and retributionist approach of criminal law.⁶⁴⁴

⁶⁴² The UNDP arrived at similar conclusions in Human Development Report for Latin America 2013-2014. Citizen Security with a Human Face: Evidence and proposals for Latin America, pp. 113 and 114.

⁶⁴³ See, in this regard, U.N. Secretary General's Study on Violence against Children, pp. 321, 322 and 337.

⁶⁴⁴ See IACHR, Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II., doc. 78, July 13, 2011). See also Article 40 of the Convention on the Rights of the Child.

557. Where adolescents are concerned, deprivation of liberty should only be used as an exceptional measure of last resort and for the least time necessary.⁶⁴⁵ In spite of the fact that these precepts have been recognized in the Convention on the Rights of the Child for the past 25 years, their application has hardly advanced at all in practice. As things stand, the Commission observes that the majority of countries in the region have gradually incorporated these principles in their domestic laws; however, that formal recognition remains utterly at odds with reality. The main reason for this is that there has still not been a change in paradigm regarding the status of adolescents with respect to crime and criminality. As yet, a vision has not been fully adopted that focuses on the adolescent, her or his rights, and protection needs as the priority; rather, the logic persists of the apparent contradiction between protecting children's rights and the primacy of order and security.
558. Thus, on the normative plane, measures envisaged by domestic legal systems to comply with the principle of restorative justice include the following: (i) referral or alternatives to adjudication to avoid adolescents being caught up in the criminal justice system or a judicial proceeding; and (ii) introduction of regulatory provisions on a variety of noncustodial alternative measures, such as, for example, (a) a reprimand or warning, (b) conciliation or mediation proceedings, (c) assisted release, (d) supervised release, (e) community service, and (f) other socio-educational measures designed to build awareness in the adolescent of the harm caused by the offense and to promote their reintegration in the community using a positive and constructive approach. While the Commission acknowledges the importance of formal recognition of such measures in law, the possibility of their effective enforcement depends on a series of conditions that States have not adequately addressed.
559. One of the main stumbling blocks in the application of the restorative justice model is that in many countries the measure of "last resort" (i.e., locking up the adolescent) is often the only measure considered by the judge or the only one available in practice. Justice operators routinely do not have programs available that would allow them to order alternatives to deprivation of liberty. Even where such programs do exist, they are scarce and fall foul of limitations in supervising their execution, which renders the measures ineffective or even puts the rights of the children at risk. In addition, the margin of discretion that some rules afford judges in ordering noncustodial measures has led, in practice, to alleged instances of arbitrary use of that discretionary power to the detriment of the rights of adolescents and the principle of the child's best interests.
560. In that regard, it is essential, above all, to further strengthen protection systems for children at the local level so that they may offer and supervise and family- and community-based alternatives to deprivation of liberty. At present, one of the main shortcomings is the weakness of protection systems at the local level, which on one hand do not manage to reduce the risks of juveniles breaking criminal laws, and on the other lack the capacity to apply and coordinate socio-educational and social

Article 37 (b) of the Convention on the Rights of the Child: "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

reintegration measures for adolescent offenders. The principal actors in alternative measures should be the family, the school, health services, and community-based care services. However, for the above to be effective there has to be national and municipal coordination that ensures that services are provided under a rights-based approach and with full respect for the rights of the child.

561. One of the main aims of the restorative justice model and noncustodial measures is to assist the adolescent's reintegration in the social system and life in his or her community. In essence, alternative measures consist of organized socio-educational activities that prepare adolescents for a responsible life in society and foster positive behavioral changes, while at the same time guaranteeing full observance of their rights. These measures, which in essence are aimed at their resocialization, necessarily entail a comprehensive and holistic intervention involving the family, the community, and the intimate circles in which the adolescent moves, in addition to the active participation of a variety of services and professionals from different disciplines.
562. In practice, this socio-educational process is usually carried out through a series of educational activities and actions that strengthen the adolescent's ties and interaction with his or her environment. In some cases, as part of the measures, the adolescent may be required to attend education and training programs; in other instances they will be asked to spend time doing social work or performing activities of benefit to their community in order to bring them closer to it.
563. The family has a leading part to play in implementing noncustodial alternative measures due to the primary role it plays in the upbringing, protection, and care of children and adolescents. Accordingly, assistance and guidance to the families of these adolescents should be treated as a priority in implementing measures of this type and be provided by specialized personnel. Usually this implies the involvement of the child protection and social welfare services. Socio-familial interventions of this type are useful for strengthening the family as a protective nucleus for the adolescent, as well as preventing it from becoming a risk factor for their involvement in antisocial activities and crime.
564. Establishing programs of this type for adolescent, their family, and their community requires multidisciplinary teams made up of specialized, trained professionals with the capacity to implement these processes. They include professionals in different fields, including social work, education, and child-youth psychology, among others.
565. The application of alternative measures demands close cross-sectoral coordination and cooperation between the justice system and the child protection, social welfare, education, health, and other systems involved in the application of noncustodial alternative measures. The coordination and application of these measures should be headed by the agency in charge of child protection and implemented by expert personnel trained for that purpose.
566. In sum, to date, the enactment alone of legal provisions by States has stopped short of developing and effectively implementing restorative justice as a model to replace the traditional punitive and retributionist model. To overcome this

situation of noncompliance clear and specific implementation strategies need to be created for each noncustodial alternative measure, and responsibilities defined for the various actors and institutions that should be involved. States should have an implementation plan for the restorative justice model that has sufficient resources at its disposal and time-sensitive goals. This plan should be coordinated with the National Child Protection System, and enhance it.

567. Finally, it is worth noting that an awareness-raising effort is needed in society to change public attitudes toward juvenile offenders, ideas concerning appropriate responses by the State, and the role of society in that process. To effectively bring about a paradigm shift in the treatment of juvenile offenders, it is essential to promote a change of opinion in society at large. Without that, the restorative justice model will continue to fail to take root in the region's countries. States should choreograph and implement such public awareness-raising campaigns as are necessary to achieve that objective.

N. The Media

568. News about violence and citizen insecurity has grabbed the attention of a significant number of media outlets. However, covering such topics is not without issue in view of the need to protect children's rights without infringing upon media outlets' right to freedom of expression and opinion.
569. In this regard, the Inter-American System of Human Rights guarantees the full scope of the right to freedom of expression and its two dimensions: individual and collective. The Commission and the Inter-American Court have reaffirmed the importance of the freedom of expression and the freedom of the press in a democratic society. Media outlets can play an important role in promoting transparency and information, and they facilitate social control over public affairs, with the potential to help further democracy in the area of citizen security. While fulfilling said role, media outlets must adhere to Principle 6 of the IACHR Declaration of Principles on the Freedom of Expression, which was adopted in the year 2000 and stipulates, inter alia, that journalistic work must be conducted in an ethical manner.
570. Along these lines, the United Nations Children's Fund (UNICEF) has stated that "journalistic work that affects the lives and well-being of children should always be performed with an eye to the vulnerability of children. Journalists and media outlets shall endeavor to adhere to the highest ethical standards of the moment when reporting on issues that concern children."⁶⁴⁶
571. Likewise, in its recent ruling in *Marcel Granier et al (Radio Caracas Televisión) vs Venezuela*, the Inter-American Court remarked on the importance of maintaining a balance between the rights and duties of print journalism, as it enumerated the

⁶⁴⁶ UNICEF (2007) *Children's Rights and Journalism Practice – A Rights-Based Perspective*. UNICEF - Dublin Institute of Technology.

duties incumbent upon journalists and established that these duties were, to a certain extent, subject to self-regulation. In this vein, various ongoing initiatives provide self-regulatory practices for print journalism, similar to professional codes of ethics.

572. According to the Court's ruling, journalists have an ethical duty to do the following while performing their work: authenticate information in a reasonable but non-exhaustive manner; be impartial and diligent when verifying sources and maintain a critical distance vis a vis sources; act in good faith and express viewpoints in an objective manner. The ruling also notes that fostering a responsible and ethical media is particularly important in today's world where in addition to reporting information, the media can influence the way in which information is interpreted by adjusting how it is presented.⁶⁴⁷
573. For example, the ethical use of information can be encouraged, especially when children are discussed, by proscribing stigmatizing language and value judgments against particular groups of young people and adolescents who have been affected by violence. While these initiatives are important and necessary, in many ways they are not enough to fulfill the duty to respect and guarantee the rights derived from Article 1.1 of the American Convention, and the rights of children derived from Article 19 of the same treaty as well as Article VII of the American Declaration.
574. When a topic is as susceptible to public opinion as is the case with citizen security, media outlets and the manner in which they present the news influence perceptions and society's viewpoint. The Commission is particularly concerned about the level of sensationalism in the news on insecurity, which exacerbates people's fears, and the stigmatization of vulnerable persons and groups, mainly adolescents and young people, who are viewed as criminals and often held responsible for the climate of insecurity. This issue is particularly concerning in cases where media outlets present adolescents as presumed perpetrators when they have yet to be tried, which violates children's rights to special protection and the principle of presumption of innocence. In some instances, pictures, recordings or videos of the victims or the people who witnessed the violence are shown despite the risk they may present for them.
575. As a result, the Commission believes that a regulatory framework needs to be established to guarantee the respect of children's rights and the special protection under article 19 of the American Convention and VII of the American Declaration, while at the same time ensuring the right to freedom of expression and the right to information of journalists and media outlets.⁶⁴⁸ Accordingly, for example, any

⁶⁴⁷ Inter-American Court. Marcel Granier *et al* (*Radio Caracas Televisión*) vs Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs. June 22, 2015 Ruling Series C No. 293, paragraph 139.

⁶⁴⁸ Article 13 of the ACHR. Freedom of Thought and Expression: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.; 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b)

States that have not yet done so must regulate and ensure effective protection of victims and witnesses of violence and of adolescents in conflict with the law, as a basic protection measure, and promote other measures to ensure the rights of children and adolescents in the coverage of news pertaining to the climate of violence and insecurity.⁶⁴⁹

the protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

⁶⁴⁹ The IACHR is in the process of writing a Thematic Report on the media and the rights of children and adolescents, which will explore these and other aspects in greater depth.

CHAPTER 7
CONCLUSIONS AND
RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

A. *General Conclusions*

576. The rights of children and adolescents are particularly affected in contexts of insecurity, violence, and organized criminal activity. They are, however, primarily viewed as the perpetrators and instigators of the climate of insecurity. Poor male adolescents belonging to groups that are traditionally excluded and discriminated against, including afro-descendants and other minorities, are particularly stigmatized in these contexts and are those that most suffer from the consequences of violence and insecurity.
577. Children and adolescents are victims of various forms of violence and violations of their rights. They are victims of abuse, violence, and negligence in their homes, schools, and their communities at the hands of adults, peers, and State security forces. The diverse forms of violence and rights violations overlap and feed one another; public policies should not view or treat them independently or as silo issues. This host of rights violations places children and adolescents into extremely vulnerable conditions and exposes them to being recruited by criminal organizations.
578. The limitations adolescents face in exercising and enjoying their rights, in conjunction with the lack of education and work opportunities that would enable them to develop an independent life project with dignity, further expose them to criminal organizations and their activities. The Commission believes that children and adolescents linked to criminal groups is an outgrowth of the lack of State measures to guarantee the rights of children and to protect them from the rights violations, exclusion, and violence that they face at each turn. According to Article 19 of the ACHR and Article 7 of the American Declaration of the Rights and Duties of Man, States must take special measures to protect children, taking proper consideration of their development and vulnerability. This duty entails taking measures to prevent the violation of their rights and guaranteeing the equal exercise of said rights for all children and adolescents.
579. In actuality, children and adolescents are constantly exposed to threats and trickery to get them involved in criminal organizations. They are typically used and exploited by adults for a broad range of activities within criminal structures, which operate based on pressure, threats, and violence. Given this exploitation, States must adopt the necessary measures to prevent this situation and protect victims. However, the primary response of States is the criminalization of this group and repressive intervention through the criminal justice system.

580. There is a close relationship in the region between insecurity and inequality and social exclusion. Areas with miniscule levels of development and a scarce State presence are prone to the emergence and expansion of criminal groups and organized crime. Inequality and social exclusion are among the structural causes of violence. This demonstrates the need to pay attention to the social conditions associated with violence and insecurity and ensure respect of civil, political, economic, social, and cultural rights.
581. However, in terms of citizen security, priority has been given to policies heavily focused on coercive enforcement carried out by security forces, in addition to punitive repression within the criminal system. These policies aim to show short-term results, but do not address the underlying causes, nor do they pay sufficient heed to prevention. As a result, these policies do not provide effective, lasting solutions to the problem. There are often human rights violations in the implementation thereof. The common denominator of these policies has been: granting greater powers to State security forces (police and military); harsher prison sentences; proposals to lower the age of criminal responsibility for adolescents; increased use of pre-trial detention; and the classification of new crimes, including “conspiracy to commit a crime” [asociación ilícita]. Likewise, instances have been identified when there has been consideration of applying anti-terrorist laws to members of the *maras*, as well as using declarations of states of exception, which allow for restrictions on the enjoyment of human rights and grant greater powers to the State security forces, such as states of emergency.
582. There has been a generalized progressive militarization of citizen security in the region. The police have been militarized in terms of the equipment they are using, the type of training they receive, and their enforcement protocols; these make the police more prone to use force illegally and excessively. In several countries across the region, the military has been granted greater powers in national territory. This strategy has increased the number of alleged human rights violations, such as the indiscriminate and illegal use of force; the number of cases of cruel, inhumane, and degrading treatment and torture; arbitrary detentions; extrajudicial executions; forced disappearances; and other human rights violations. Many cases of violence at the hands of State security agents are not subject to expeditious, impartial investigations and, thus, are not punished. This situation contributes to a State approach of tolerance towards these incidents, which influences repetition of the crimes, impairs trust in State institutions, and weakens the rule of law.
583. The State’s use of harsher enforcement as a key strategy in its security policies and policies for combatting crime and organized crime has exacerbated the penitentiary crisis in the Americas. This crisis stems from a marked deterioration of incarceration conditions in terms of safety, health standards, overcrowding, violence, and the system’s inability to socially reintegrate persons who have broken criminal laws.
584. There is a widespread, pressing problem in the region regarding the limited availability of diversion measures as alternatives to deprivation of liberty and restorative justice for adolescents coming into conflict with criminal law. These programs must be geared towards the effective rehabilitation and social

reintegration of adolescents. What happens in practice is adolescents in conflict with the law enter detention centers, but this should be an exceptional measures of last resort, lasting the least amount of time necessary.

585. The Commission reiterates that States must ensure that the change in the citizen security paradigm is comprehensive, meaning that the concept of security must be centered on protecting people and their rights. This requires promoting the strengthening of prevention and violence reductions efforts, in conjunction with traditional crime control and repression duties. It is imperative for security policies to meet the security needs of all people, in keeping with the law, in respect of human rights.
586. The Commission underscores the need to highlight the condition of child and adolescent victims, who are not receiving the special protection called for in international human rights treaties guaranteeing their rights. The foregoing does not mean that when children and adolescents commit a crime that measures cannot be taken, in keeping with international human rights standards, to hold them accountable for their actions. These measures must be appropriate and meet the objectives of rehabilitation and social reintegration.
587. The IACHR also observes that the policies to disassociate children and adolescents from criminal groups and gangs (maras) are too limited to effectively protect the children directly impacted by these contexts. The coverage and means for these efforts are insufficient. They are typically based on programs designed and implemented by civil society organizations.

B. General Recommendations

588. Review current citizen security policies and their effective implementation to ensure that they are respectful of human rights and the law. Promote the reinforcement of the functions responsible for preventing and reducing violence alongside the traditional ones of controlling and repressing crime.
589. Develop and implement National and Local Plans for preventing and addressing violence and insecurity, taking into account citizen's input as well as children and adolescents' opinions and experiences regarding their lived realities. Increase the attention given to the underlying socio-economic conditions and causes of violence, its prevention, and the identification of risk factors and measures for protecting the youth affected by violence.
590. Promote complete, holistic, and multi-sectorial policies that involve all the sectors that influence security conditions. For this to happen, various sectors have to collaborate and coordinate their efforts, sectors such as: law enforcement; the justice system; the health system; the education system; social services; bodies providing professional training and access to employment; the culture, sports, and recreation sectors; urban-planning services; the financial sector, among others.

591. Strengthen national systems that promote and protect children's rights, particularly at the local level. Create protocols for the early detection and handling of instances of violence, abuse, neglect, and other violations to the rights of children. Reinforce collaboration among the sectors that are in direct contact with children and adolescents, especially the education, health, and social services sectors.
592. Strengthen families' ability to care for and protect their children through programs that support them in the exercise of their parental responsibilities, taking into account the level of assistance families need to meet their duty of care.
593. Create a safe and protective environment in schools that helps guarantee the right to an education, the overall development of the child, children's understanding of their rights, and their protection. Emphasize education and education policies as some of the most important tools for investing in vulnerable children and adolescents, be it for improving their education, reducing most types of risky behaviors, including violent behavior and the commission of crime, or facilitating their access to employment.
594. Conduct an in-depth study of the police's modernization, professionalization, democratization, transparency and accountability processes, so as to improve the effectiveness and efficiency of its work. Create internal and external control mechanisms and accessible and trustworthy reporting mechanisms so as to ensure the development of the responsible authorities designated under the legal framework and in observance of the respect and guarantee of human rights; as well as to ensure that violations are investigated. Establish protocols for the use of force and lethal force.
595. Develop and strengthen a community or local policing model that helps establish violence prevention and reduction tasks at the local level. Prioritize having a police presence in the most vulnerable areas, with units that have received specific training on preventative measures, handling of social coexistence problems, and working with young people. Design police action protocols for interventions involving children and adolescents, with a view to ensuring the protection of their rights
596. In order to end impunity, ensure that investigations are immediately initiated and adequately carried out when it comes to homicides, disappearances, alleged use of unlawful levels of force by State agents, and other serious violations to the human rights of children and adolescents. The use of firearms by State law enforcement must be immediately reported in writing and investigated. Moreover, regulations that provide the presumptions under which State law enforcement can legitimately use force should be reviewed, and measures should be taken to ensure that all cases are brought to the attention of judicial authorities to be properly investigated—using special procedures when children and adolescents are involved. The police should be required to report deaths immediately after they occur. The number of cases, the investigations conducted and their outcomes should be made public so they are available for public scrutiny.

597. The army should not be involved in internal law enforcement tasks, and violations to human rights committed by servicemen should be investigated in an impartial manner by civil judges instead of the military justice system.
598. Strengthen the judicial sector by hiring an adequate number of staff that is trained to handle cases, ensuring careful processing and investigation of violent crimes, as well as alleged abuse and arbitrary violence committed by State law enforcement agents.
599. Classify as criminal offenses the capture, use, and exploitation of children and adolescents by adults and criminal groups for the purpose of carrying out illegal activities.
600. Revise the regulatory classification of the offense of "unlawful association" in accordance with the guidelines established by the Inter-American Court of Human Rights and in the instant report, and monitor its effective application by the police.
601. Children and adolescents should primarily be considered victims that criminal groups use and exploit for their own criminal ends. States must start from the premise that the children and adolescents who join criminal organizations have faced disenfranchisement and vulnerabilities against which States were unable to provide adequate protection. States' response when interacting with children and adolescents who were captured by criminal organizations must be based on a mindset of fully protecting their rights, as well as rehabilitating and reintegrating them into society, rather than one of repression and criminalization.
602. The Commission requests that States in the region increase the age of criminal liability to 18 years old in accordance with established international human rights standards, and that persons under 18 years of age who come into conflict with criminal law be put under the purview of a specialized juvenile justice system.
603. Progress should be made in the application of international human rights standards relating to juvenile justice, especially compliance with the principle of exceptionality when it comes to depriving individuals of freedom, as well as in establishing a restorative justice model. Ensure that Juvenile justice is geared towards the social rehabilitation and reintegration of adolescents, and that the necessary social and educational measures, as well as those of any other kind, are created to achieve this goal.
604. The gender-based repercussions of dealing with organized crime and conditions of insecurity and violence on children should be taken into consideration. The IACHR urges States that have yet to do so to consider children and adolescents who have been victims of trafficking and sexual exploitation as victims rather than offenders who have infringed upon criminal law and prostitution-related norms.
605. Design and implement policies and programs to disengage children and adolescents from the activities of criminal groups; these policies and programs should be primarily geared towards right restoration.

606. Revise drug policies with young people's well-being in mind, especially as regards penal norms that classify children and adolescents involved in drug dealing and adolescents who consume drugs as criminals. This revision must take into account the fact that children and adolescents are used and exploited by criminal organizations in the illegal drug market that put them in the riskiest positions. In general, encouragements should be given to States that continue to make strides in their assessment and evaluation of current drug policies in the hemisphere and their impact on security, human rights, and health care.
607. Current policies on the on the sale and possession of firearms should be modified with a view to improving control over the number of weapons and ammunitions in circulation, and preventing them from entering the illegal firearms market.
608. Information systems should be created to gather and analyze data relating to violence, crimes, victims, and the institutional response to violence and crime in order to obtain relevant and reliable information that helps develop and implement public policies in the domain, as well as follow up on these policies and their outcomes. Facilitate transparency and access to public information relating to citizen security, as well as society's ability to monitor security policies and their outcomes.