



Comprehensive national child protection systems

**Legal basis and
current practice
in Latin America and the Caribbean**

Alejandro Morlachetti



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This document was prepared by Alejandro Morlachetti, consultant to the Social Development Division of the Economic Commission for Latin America and the Caribbean (ECLAC), in the framework of the ECLAC-UNICEF Project UNI/12/001, coordinated by María Nieves Rico, ECLAC Social Affairs Officer, and Nadine Perrault, Regional Child Protection Advisor at UNICEF TACRO.

The author is grateful for the contributions and comments of Laura Pautassi, Nadine Perrault, Marion Prats, María Nieves Rico and Laura Royo and of the UNICEF national offices in Brazil, Chile, Costa Rica, Honduras, El Salvador, Mexico, Peru and the Dominican Republic, as well as the persons interviewed for the case studies in Ecuador, El Salvador, Jamaica and Uruguay.

The opinions expressed in this document, which has not been submitted to an editorial review, are the exclusive responsibility of the author and may not coincide with those of the organization.

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Summary

The present document offers a comparative study of the legal child protection codes and practices in Latin America and the Caribbean, both in terms of the legal grounds for establishing a Comprehensive National Child Protection System (NCPS) and as a basis for examining current child-protection practice, institutions, functions and powers established within such legal frameworks.

The study also includes an analysis of the status of implementation and start-up of NCPSs in compliance with national mandates in four countries of Latin America and the Caribbean: Uruguay, representing the Southern Cone, Ecuador in the Andean Region, El Salvador for Central America, and Jamaica representing the Caribbean.

The wide diversity of organizational structures responsible for protecting the rights of children and adolescents in various countries justifies the conduct of this study, which is intended to give a general overview of existing systems and establish some conceptual elements to support the discussion of possible future models of a comprehensive child protection system for children and adolescents.

I. Introduction

The commitments undertaken by the States parties to the United Nations Convention on the Rights of the Child (CRC) and other international human rights instruments established obligations to adopt the necessary legislative measures and policies for making the acknowledged rights effective in guaranteeing the comprehensive protection of children and adolescents. Following the ratification of the CRC, many countries in Latin America modified their legislation to improve protection of the rights of children and adolescents, and some even introduced new, more comprehensive child-protection legislation. Most of these new laws and codes have included the creation of a comprehensive National Child Protection System (NCPS).

In this context, it became necessary to analyse the laws of Latin American and Caribbean countries—which have been undergoing a process of change since the adoption and ratification of the CRC—to identify whether they contemplated the creation of NCPSs and, if so, the scope of the decrees regarding their nature, structure, characteristics, functions and, even, the budgetary resources for their introduction and implementation.

Therefore, Chapter I includes some reflections on the process of adopting legislative frameworks for comprehensive child protection in several countries in the region, and on the importance of adopting child-protection systems as part of the obligations resulting from the ratification of the CRC.

Chapter II describes, country by country, the main aspects of the various child-protection systems created by each of the laws and codes for children in Latin America and, in particular, identifies the mandate, structure, composition, functioning, powers and resources assigned by national legislation. The analysis for the English-speaking Caribbean is more generalized, with less specific legislative detail. This is due mainly to the differences between the legal systems in Caribbean and Latin American countries, and to the scarcity of available information in several of the island States.

Subsequently, Chapter III examines four Latin American and Caribbean countries: Ecuador (Andean subregion), El Salvador (Central America), Jamaica (English-speaking Caribbean) and Uruguay (Southern cone). It looks at the state of implementation and functioning of the NCPSs and the gap between legislative mandate and practice, and analyses the main challenges presented by each model of protection system, based on the available documentary information and interviews held with key actors in each country.

Chapter IV contains a comparative analysis of the underlying legal framework for the creation of the child-protection system—especially those aspects that indicate whether it is truly

comprehensive— and comments on the most positive aspects, as well as those needing improvement, in the existing system models.

The last chapter presents a series of recommendations for the minimum elements that should be taken into account in evaluating existing child-protection systems, and proposes a model for the consideration of those countries still discussing the adoption, or the reform, of a comprehensive protection system for defending and promoting the rights of children and adolescents.

II. The Convention on the Rights of the Child and its incorporation into national laws

Children and adolescents are entitled to fundamental rights, as consecrated in various international human rights instruments such as the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, each of which enumerates a considerable number of rights essential for the protection of children.¹

The most significant, universal piece of legislation on the rights of children and adolescents is, unquestionably, the Convention on the Rights of the Child (CRC), which constitutes the minimum framework for the recognition of, and respect for, the rights of children and adolescents, combining in a single treaty the civil, political, economic, social and cultural rights considered interdependent and complementary for ensuring the comprehensive protection of children and adolescents. The impact of the Convention has been significant, for it is the one international instrument for the protection of human rights that has enjoyed the greatest international acceptance and recognition.

The Convention, like other human rights instruments, orients and limits the States parties and imposes duties that require the creation of the legal, institutional, social and economic conditions that would guarantee the full enjoyment and exercise of the rights recognized therein.

States parties, in ratifying the Convention, undertake to guarantee the exercise of the rights recognized therein by every means at their disposal. Therefore, each ratifying State not only must abstain from interfering in the exercise of individual rights, but also take on the ineluctable responsibility of positive action to guarantee access to those rights —and, in particular, to the education, health and social protection of all children and adolescents.

Among the obligations contracted by the States in ratifying the CRC is the duty of guaranteeing that its provisions and principles are reflected fully and have been given legal effect in national legislation (Art. 4 of the CRC). This has been the stance of the Committee on the Rights of

¹ The Preamble of the Convention on the Rights of the Child affirms that “Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children ...”.

the Child, in affirming that the complete review of all related internal legislation and administrative directives that guarantee the full compliance with the Convention constitutes an ineluctable obligation of the States parties to the Convention. (Committee on the Rights of the Child, General comment No.5, Art. 18).

Following the ratification of the Convention on the Rights of the Child, most countries in Latin America passed general child-protection laws or acts. Laws were passed in Argentina (2005), Bolivia (Plurinational State of) (1999), Brazil (1990), Colombia (2006), Costa Rica (1998), the Dominican Republic (2003), Ecuador (2003), El Salvador (2009-2010), Guatemala (2003), Honduras (1996), Mexico (2000), Nicaragua (1998), Paraguay (2001), Peru (1992), Uruguay (2004) and Venezuela (Bolivarian Republic of) (2000).

Most States have opted for the term “Child and Adolescent Protection Code” in referring to the legislation, although others have preferred to call it “Comprehensive Child Protection Law.” Although the nomenclature of the legislation has no effect on its content or legal status, the term “Code” seems the most adequate as, in general, it deals with efforts following the ratification of the CRC, which tend to bring together, in a single normative law, diverse legal dispositions on the rights of families and specific matters on children’s rights, such as, for example, custody and visiting schedules, protection and prevention of abuse, exploitation, child labour and even—in some cases—the juvenile justice system, as well as the administrative and judicial procedures and the public and private institutions that comprise a child-protection system. The main attribute of such legislation is that it brings together the diverse aspects that had depended previously on separate pieces of legislation.

A. The Convention on the Rights of the Child and the need to adopt comprehensive child-protection systems

The entire text of the Convention on the Rights of the Child embodies comprehensive child protection. The Convention contains a series of specific obligations for the States parties aimed at guaranteeing each and every recognized right of the children and adolescents under their jurisdiction, with no discrimination whatsoever. Although all the countries of Latin America and the Caribbean have ratified the CRC, and many have adjusted their national legislations to its principles and mandates, the systems of implementation and functioning of the national institutions comprising the protection systems are still being drafted and, therefore, generate heterogeneous situations with regard to compliance with the CRC.

The law cannot be perceived merely as an autonomous instrument immersed in the appropriate legal texts on a superficial, declaratory plane. The incorporation of international human rights instruments and the passage of legislation is an important—albeit insufficient—step towards achieving and fulfilling human rights, since these regulations must be complemented by the legal institutions empowered to enforce them effectively and corroborate their fulfilment. Indeed, once the legal bases relating to children and adolescents as subjects of rights have been established, then the duty of the State of concreting those legal standards, principles and requirements must prevail, in the interest of real, preventive protection of the human rights of children and adolescents.

The progressive incorporation of the concept of comprehensiveness proposed by the CRC and the introduction of a paradigm shift in the way children were viewed marked the need for drastic modifications in policies on children and adolescents, placing them centre stage as subjects of rights and making the protection of their best interests a priority for policy and programmes. To this end, there needs to be, in addition to incorporating the CRC into national law, a conceptual and operational model of child and adolescent protection which—taking the recognized rights and guarantees as an essential reference—requires abandoning some criteria that, traditionally, have oriented the practices of addressing and treating minors and, in this way, envisioning a comprehensive system for the protection of the rights of children and adolescents that consolidates them as true subjects of rights.

The consideration of children and adolescents as full subjects of rights and the establishment of the proper mechanisms for demanding those rights —as opposed to the consideration of children and adolescents as objects of State tutelage— is the main change characterising the transition to the paradigm of comprehensive protection upon which the entire protection system must rest.

That same conceptual and operational framework guaranteeing comprehensive protection should be applied equally to governmental and non-governmental organizations in the system, promoting critical reflection on their practices to generate new partnerships and proposals for action in favour of children and adolescents from a human rights and citizenship-building point of view. A comprehensive approach to child rights demands, not only a transversal view of public organizations and their various policies, programmes and practices, but also, a significant transformation in the design and implementation of those policies, including definition of the jurisdiction of specialized child-protection organizations.

In this context, the Committee on the Rights of the Child, in its General Comment N° 5 on General Measures of Implementation of the Convention on the Rights of the Child, has stated that

“...the general measures of implementation ... are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies—both governmental and independent, comprehensive data collection, awareness-raising and training, and the development and implementation of appropriate policies, services and programmes ...” (Committee on the Rights of the Child, General comment N° 5, Art. 9).

Consensus on the need for comprehensive protection systems also exists in political spheres, as has been reflected in the reiterated commitment by child welfare authorities in Ibero-American States, emphasizing the importance of comprehensive protection systems. The Declaration of Pucón, adopted by the Xth Ibero-American Conference of Ministers and Senior Officials Responsible for Children’s Affairs (2007), emphasized the importance of

“... promoting, stimulating and strengthening the implementation of comprehensive protection systems, based on the promotion of citizenship-building at the regional and local levels as part of a progressive decentralization programme aimed at facilitating the access of children and adolescents to the diverse services offered for their development in their own territorial environment, seeking to adapt these services to the particularities of each territory.”

Similarly, the XIIth Ibero-American Conference of Ministers and Senior Officials Responsible for Children’s Affairs (2010) affirmed that

“... the comprehensive protection system for children and adolescents requires an institutional structure that is strongly coherent and coordinated by adequately-endowed entities and public budgets that include investment in children to guarantee their rights fully and effectively.”

1. Comprehensive national child-protection systems

There are various definitions of what constitutes a child-protection system. In its child-protection strategy, the United Nations Children’s Fund (UNICEF) has determined that

“...protection systems include a set of laws, policies and necessary services in all social spheres — especially in the social welfare, educational, health and judicial spheres — that support the prevention of risks related to protection and response in this regard.” (UNICEF, 2008, p. 12).

According to the Inter-American Children’s Institute, a comprehensive protection system is, basically, an organizational and operational design conceived for the implementation of public policies on children and adolescents, whose paradigm is the CRC. This system is intended to structure and systematize the relations among all actors in order to make the rights recognized in the CRC effective. (INN, 2002).

Differences in definition aside, and for the exclusive purpose of the present study, comprehensive protection of children is understood to mean the set of organizations, entities, mechanisms and national, regional and local-level services oriented to respecting, promoting, protecting, restoring and re-establishing the rights of children and adolescents and repairing the harm done by the violation of these rights, as established in national legislation regarding children and adolescents. It also takes into consideration the country-level, inter-institutional mechanisms for coordination and interrelating between the public and private sectors, especially the link between the State and civil society organizations.

The present document does not intend to describe, or analyse, traditional, focalized and fragmented protection efforts focused on the most common problems or situations of greatest vulnerability of minors, such as the multiplicity of programmes or subsystems for the prevention of abuse, violence, child labour, alternative care for children in the street and/or youth in conflict with the law. On the contrary, this document aims to identify, through normative analysis, the existence of a protection system that actually is —instead of being simply a set of efforts and programmes— a set of organized and related parts that interact to achieve a common objective. The analysis, in determining whether this is a system —and not merely a name applied to the legislation around which the institutional framework is to be founded— should verify that the system be related to, and composed of, institutions that are interrelated and form an entity that serves the same purpose. In this case, the comprehensive child protection system should be at the service of the comprehensive protection of the rights of children and adolescents.

Since the CRC came into effect, most legal reforms have addressed matters of child protection on the basis of case-by-case analysis and identification, instead of adopting a comprehensive approach. A comprehensive approach does not negate the importance of addressing matters of protection of children in situations of vulnerability but, instead, seeks to ensure that these issues are placed within a comprehensive, systematic structure. These systems aim to protect all children and unite all actors around a set of common objectives and a response capacity that is not only immediate, but also long-range, well-coordinated and well-harmonized (Fluke, 2010).

Therefore, the description of the institutions created by child-protection legislation in the following sections takes particular note of the institutions comprising the system and, more than their specific function, emphasizes the relationships between these institutions and/or subsystems in order to understand their functions, powers and characteristics and whether or not they serve the common goal of protection. It also explains —in as much detail as possible— the specific mechanisms for interrelation, coordination and dialogue among the different elements of the system.

III. Legal basis for the creation of comprehensive national child-protection systems in the legislation of Latin American countries

This section contains a country-by-country description of the legislation on children and adolescents, identifying and analysing those laws and codes calling for the creation of a comprehensive NCPS, as well as the scope of that legislation and its codification —where it exists— in the regulation of the institutional structure, as well as its composition, functioning, competency and assigned resources. It also identifies and presents the tendencies in the legislation in terms of decentralization of functions, including the functioning of the federal and municipal and/or local councils that have been created by the national legislation.²

The present study has been performed through the study of the current laws in sixteen countries in Latin America and the Caribbean. It analyses the comprehensive protection laws and/or codes for children and adolescents in each country. It considers the country reports to the Committee on the Rights of the Child and the CRC Committee’s concluding observations, suggestions and recommendations to the States parties to the CRC. In addition, it takes into account the updated information produced by the organizations and institutions comprising each child-protection system. As a support tool, it has consulted the Web pages of the organizations and institutions for children and the Ministries in the social and development areas, depending on each country (see the bibliography by country, at the end of this document).

Table 1 shows the laws that will be analysed in the present study to determine whether they create comprehensive NCPSs and, if such be the case, identifies the model of the system adopted, its functions, competency and composition.

² The evaluation of each of the Federal States (Argentina, Brazil and Mexico) is based exclusively on the national/federal legal framework and the NCPS, and not on the provincial/state legal frameworks that may, or may not, have adhered to the national system.

TABLE 1
LATIN AMERICA: LEGISLATION AND CODES FOR CHILDREN

Country	Legislation and Codes for Children
Argentina	Law N° 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, and Decree N° 415/2006
Bolivia (Plurinational State of)	Code for Children and Adolescents. 2026 (October 1999)
Brazil	Statute of the Child and Adolescent. Law N° 8069 (1990) Law N° 8242 (1991) and Decree N° 5089 (2004). Creation of the National Council on the Rights of Children and Adolescents (CONANDA)
Chile	Decree-Law N° 2465 Ministry of Justice. Creating the National Service for Minors, SENAME LAW N° 20032 Establishes the System for the Protection of Children and Adolescents
Colombia	Law N° 1098 Code for Children and Adolescents (2006) Code regulated and corrected by Decrees N° 4840 of 2007, Decree N° 4652 of 2006, Decree N° 578 of 2007 and Decree N° 4011 of 2006
Costa Rica	Law N° 7739 Code for Children and Adolescents (1998) Decree N° 33028 (2006) which establishes the Regulation of the National Code for Children and Adolescents Decree N° 35876-S (2009) Guidelines for the social sector and fight against poverty: implementation of the local subsystems for protection of children and adolescents in the eleven priority communities
Cuba	Family Code of 1975 Child and Youth Code of 1978
Dominican Republic	Law N° 136-03 Code for the System for the Protection of the Basic Rights of Children and Adolescents
Ecuador	Code for Children and Adolescents, Law N° 100 (2003)
El Salvador	Law for the Comprehensive Protection of Children and Adolescents (March 2009) CONNA
Guatemala	Decree N° 27-2003 Law for the Comprehensive Protection of Children and Adolescents (PINA - 2003)
Honduras	Code on Children and Adolescents (1996)
Mexico	Law on the Protection of the Rights of Children and Adolescents (2000)
Nicaragua	Law N° 287 Code on Children and Adolescents (1998) (CONAPINA) Law N° 351 on the Organization of the National Council on Comprehensive Care and Protection of Children and Adolescents , and the Office of the Defender of the Rights of Children and Adolescents, and Decree N° 63-2000, General Regulation of the Law
Panama	Family Code
Paraguay	Law N° 1680/01 Code for Children and Adolescents (2001)
Peru	Code for Children and Adolescents (2000)
Uruguay	Law N° 17823 Code for Children and Adolescents (2004) Regulatory Decree N° 475/2006
Venezuela (Bolivarian Republic of)	Organic Law for the Protection of Children and Adolescents (2000)

Source: Prepared by the author.

The analysis in the cases of Ecuador, El Salvador and Uruguay has been done separately in the following chapter. These three countries —together with Jamaica— have been selected for more in-depth analysis of their comprehensive protection system models, based on the perceptions of key actors in each of these States regarding the level of implementation and functioning of the system.

The description of each country does not include existing child-protection policies, programmes and services, as these fall outside the scope of the current study. Neither does the study contain the description and analysis of each of the subsystems which, depending on the model adopted

by each country, may be part of the protection system, outside of it, or act in parallel —such as, for example, the (sub)systems of legal protection and social protection, etcetera. The legal (sub) system comprising the judiciary bodies, for example, tends to have a component corresponding to justice administration in charge of juvenile criminal responsibility, which regulates the situation of youths in conflict with criminal law. The analysis of the different juvenile criminal responsibility systems in Latin America and the institutional frameworks created for this purpose also exceed the scope of the present study.

However, existing (sub) systems are considered in analysing the laws that support the protection system, in order to gain an understanding of the way the organizations comprising the system interrelate, and how the system itself relates to other (sub) systems. The analysis considers whether an institution designated by the laws on children as the maximum authority actually is competent enough to be the lead agency for the entire system, or only to lead in the area of policies on vulnerable children.

A. Argentina

In 2005, Argentina passed Law N° 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, codified by Regulatory Decree N° 415 of 2006.

In Article 32, the law defines the Comprehensive System for the Protection of the Rights of Children and Adolescents as the system formed by all organizations, entities and services that design, plan, coordinate, orient, execute and supervise public policy —whether State- or privately run— at the national, provincial and municipal levels, intended for the enforcement, prevention, assistance, protection, defence and restitution of the rights of children and adolescents.

Law N° 26061 operates on three levels:

- (a) National: the National Secretariat for Children, Adolescents and Family is the specialized organization for the rights of children and adolescents under the Ministry of Social Development of Argentina, under the executive branch of the Federal Government.
- (b) Federal: The Federal Council on Children, Adolescents and Family is the entity responsible for coordination and consultation on the drafting, planning and implementation of public policy throughout the territory of the Republic of Argentina, and is comprised of the authorities of the administrative organizations for the protection of rights in each of the 23 provinces and the City of Buenos Aires.
- (c) Provincial: There is a child policy planning and implementation body, whose structure and hierarchy is determined by each province and the City of Buenos Aires, defining their areas of autonomy as well as that of pre-existing institutions.

The Secretariat of Children, Adolescents and Family (SENNAF) is the specialized governmental institution responsible for child and adolescent rights and, therefore, the lead instrument for public policy in this area. The role of the Secretariat is to contribute to the formulation of child-protection policy and the design, implementation, coordination, monitoring and evaluation of programmes that promote, protect, integrate socially and defend the rights of children and adolescents. It also participates actively in the preparation of the National Action Plan, in collaboration with the Federal Council.

In addition, SENNAF has its own administrative and financial system and a seat on the National Social Policy Coordination Council —an institutional forum for divisions of ministerial rank, where it can interact and coordinate with the Ministries of Social Development, Labour, Employment and Social Security, Education, Health, Economy and Production, Federal Planning, and Public

Investment and Services, in order to harmonize initiatives that guarantee the rights of all children and adolescents.

The Federal Council on Children, Adolescents and Family, whose structure and functioning came into force through Decree N° 416 of 2006, is intended to be a forum for discussion, consultation, formulation of proposals and policy coordination. The law decrees that the President's Office head SENNAF, and that this body must be comprised of persons representing the organizations in charge of protecting the rights of children and adolescents in each province.

Between 2006 and 2011, the Federal Council held 15 plenary sessions and work sessions, which were forums for participation, discussion and planning of federal policy on matters concerning children and adolescents. (Ministry of Social Development, 2010 and 2011). One of the important initiatives of the Federal Council was the implementation of a federal survey on the number of children and adolescents removed from parental care being placed in alternate care facilities, which shed light on their situation and led SENNAF to create a federal fund, to be distributed among the federal districts, to finance initiatives based on amounts agreed by mutual accord in accordance with a distributive index established by the Federal Council. (Ministry of Social Development – UNICEF, 2012).

In a federal State where power is decentralized to each province and not retained by the Federal Government, there needs to be a forum for legislative and policy harmonization at the national, provincial and municipal levels to ensure that the institutional and legal framework respect the rights, principles and guarantees consecrated in the CRC and in national legislation. The strengthening of the comprehensive national system for the protection of rights, and its real implementation throughout Argentina, depends to a large degree on the establishment, in each federal district, of a comprehensive local system for the protection of children.

This is an aspect emphasized by the Committee on the Rights of the Child, in requiring that the Argentine State guarantee the full enforcement of that State party's legal reforms in all federal provinces, and take all the measures necessary for the establishment, at the national and provincial levels, of a suitable institutional and administrative framework for the application of Law N° 26061 (Committee on the Rights of the Child, Argentina 2010, Paragraph 14).

Given the challenge posed by the federal system, the Law mandates that SENNAF and the Federal Council must guarantee the fair and equitable distribution of the budgetary allotments for implementing the objectives of the Law. (Art. 69).

Although the Law makes the standard assumption that the budgetary allotments will come from the National Budget, it does not establish any percentage or guaranteed source—which makes two aspects of Article 72 of Law N° 26061 significant. The first is that, in accordance with the principle of progressivity which applies to economic and social rights, Article 72 stipulates that:

“... the budgetary allotment must, in no case, be less to the largest provision or implementation of previous programmes.” (Article 72, Law N° 26061 on the Comprehensive Protection of the Rights of Children and Adolescents)

Secondly, the same article stipulates the inviolability of the funds intended for children, adolescents and the family, as established in the national budget.

Finally, Law N° 26061 creates the position of Ombudsman for the Rights of Children and Adolescents, responsible for overseeing the protection and promotion of the rights of children and adolescents consecrated in the Argentine constitution, the CRC and national law. (Art. 47). The Office of the Ombudsman has sweeping powers, among which are the defence of individual and collective rights, the presentation of lawsuits before the courts of justice, and the supervision of the public and private entities responsible for caring for children and adolescents—either by providing juveniles with transitory or permanent shelter, or developing programmes for their care, with the obligation of reporting any irregularity to the competent authorities. (Art.55). In addition, the Office of the Ombudsman for the Rights of Children and Adolescents must submit an annual report on its work to the National Congress before 31 May each year. (Art. 56).

The designation of the Ombudsman by the National Congress, which must be made by a bicameral congressional commission, is still pending. The Committee on the Rights of the Child, in its most recent evaluation of Argentina, recommended, in its final remarks, that the State party adopt the measures necessary to expedite the appointment of the Ombudsman for the Rights of Children and Adolescents. (Committee on the Rights of the Child, Argentina 2010, Para. 20).

B. Plurinational State of Bolivia

The Code for Children and Adolescents (Law N° 2026 of October 1999), regulated by Supreme Decree N° 27443 of 8 April 2004, originally established as the State entity responsible for policies on children and adolescents the Ministry of Sustainable Development and Planning through the Vice-Minister of Gender Affairs. However, the charge is currently held by the Ministry of Justice, through the Vice-Ministry of Equality of Opportunities and the General Directorate of Children, Youth and Older Persons. This change of instrument was made by Supreme Decree N° 29894 dealing with the organizational structure of the executive branch of the Plurinational State of Bolivia, which established the Vice-Ministry for Equality of Opportunities under the Ministry of Justice. Under Article 83 of Supreme Decree N° 29894, one of the faculties of this Vice-Ministry is to lead the national-level process of guaranteeing the rights of children and adolescents through the Directorate of Children.

This change led the Committee on the Rights of the Child, in its final observation, to express concern that the institution in charge of coordination had been reduced in status from a Vice-Ministry to a Directorate, which could affect its capacity for effective coordination. (Committee on the Rights of the Child, Bolivia [Plurinational State of] 2009, Para. 9).

The Code also created the National Council on Children as the body for consultation and coordination between the State and civil society. According to Articles 172 and 174, the Council has the authority to propose, consult, monitor and evaluate public policy. Its functioning is autonomous and independent of the State.

The Code set up a decentralized system by creating a Commission for Children and Adolescents in the Departmental Council of each Province, that would have a proactive and oversight function on policy and care services for children and adolescents in each Department (Art. 176). In addition, each Municipal Council was to create a Municipal Commission on Children and Adolescents as a proactive, consultative and oversight mechanism for policy and programmes that protected children and adolescents (Art. 192).

The Commissions on Children and Adolescents are comprised of departmental councillors and representatives of formal civil society organizations with legal status directly related to activities of prevention, care, protection and defence of the Department's children and adolescents. Regulatory Supreme Decree N° 27443 detailed the functions and authority to convene, and periodicity of, elections to the Commissions of the Departmental and Municipal Councils.

Likewise, the Office of the Ombudsman for Children and Adolescents was created under each Municipal Government to offer free municipal protection and social and legal defence services, and advocate for the protection and fulfilment of the rights of children and adolescents. Law N° 2028 on Municipal Government (1999) states that each Municipal Government is responsible for sustainable human development, the defence and protection of children and adolescents, and the organization and regulation of the Office of the Ombudsman.

According to the country report submitted by the Plurinational State of Bolivia to the Committee on the Rights of the Child, the establishment of the Office of the Ombudsman for Children and Adolescents throughout Bolivia has had a marked impact. At present, there are 303 Municipal Ombudsman's Offices. However, Bolivia reported a constraint inherent in the low level of institutional status of the Municipal Office of the Ombudsman for Children and Adolescents within the municipal government hierarchy, which undermines the quality and sustainability of the service.

The Offices have limited technical and managerial capacity with respect to the defence and restitution of rights, advocating for rights, or the prevention of social risk. (Bolivia Report, 2009).

In response to the Bolivia Report, the Committee on the Rights of the Child indicated the importance, both of gradually establishing Municipal Offices of the Ombudsman for Children and Adolescents, especially in rural communities, and of their being equipped with the necessary human, financial and technical resources. In addition, the Committee has recommended that the National Council and Commissions on Children and Adolescents be strengthened (Committee on the Rights of the Child, Bolivia 2009, Para. 10).

The Code established neither commitments nor specific percentages of budgetary resources that should be assigned for institutional functioning, nor did it decree the practice or implementation of public policy. Therefore, the Committee recommended that Bolivia assign the necessary resources for children at the national, departmental and municipal levels, in accordance with Article 4 of the Convention, and guarantee a transparent and participatory budgeting process based on dialogue and the participation of civil society, especially children. (Committee on the Rights of the Child, Bolivia 2009, Para. 16).

The Committee on the Rights of the Child indicated in its recommendation to the Plurinational State of Bolivia, the need for an National Ombudsman for Children, either as a separate entity or within the current Office of the National Ombudsman, that was accessible to children and their representatives at both national and local level, and that could register and process charges, as stipulated in that Committee's General Comment N° 2 (2002) on the role of independent national human rights institutions. (Committee on the Rights of the Child, Bolivia 2009 Par. 14).

C. Brazil

The Constitution of Brazil establishes expressly, in Article 227, the absolute priority of the rights of children, particularly with respect to their right to life, health, food, education, play, culture, dignity and liberty.

The Statute on Children and Adolescents (Law N° 8069) passed in 1990 made Brazil the first country in Latin America to modify its laws and institutions in accordance with the guidelines of the CRC, making it the legislative model for various countries in the region.³

In addition to the comprehensive defence of the rights of children, the Statute on Children and Adolescents established some principles that were significant in terms of the institutional framework required for fulfilling those rights:

- The policy of safeguarding the rights of children and adolescents will be developed through a concerted set of governmental and non-governmental actions at the national, state, federal district and municipal levels (Art. 86), that is, at all three levels of the country's political and administrative organization.

³ The Statute on Children and Adolescents is the result of an intense, participatory movement by civil society which, since the inclusion of Article 227 in the Constitution, lobbied for a specific national law guaranteeing the rights of children and adolescents. Inspired by this process, Parliament ratified the Convention in 1989 and, immediately following its passage, representatives of various social movements, civil society organizations, and legal and official institutions in public Ministries initiated a nationwide lobby for the creation of the Statute on Children and Adolescents that would adhere to the Convention on the Rights of the Child in public education. To this effect a commission was created to collect, analyse and incorporate all the suggested texts received from organizations and specialists throughout the country. More than a million signatures were collected throughout the country to support the creation of the Statute regulating Article 227, and its text was approved in full by Parliament on 13 July 1990.

- The public services planned, implemented and controlled by governmental or non-governmental organizations should be based on the norms of absolute priority and respect for the rights of children and adolescents (Art. 4).
- Priority assignation of public resources in areas related to the protection of children (Art. 4).
- Care decentralized to the municipal level (Art. 88).
- Creation of Municipal and State Councils on the Rights of Children and Adolescents (Art. 88).
- Equal participation of the citizenry through civil society organizations (Art.88).

Basically, the protection system is a system that guarantees the rights of children, defined as a set of policies, laws, institutions, services and mechanisms that involves the three powers of the State and civil society, and which, in addition to being part of the system, carries out the function of supervising it.

There are basically three levels of intervention and implementation. The first level of the system comprises basic social policy for all children and the competent entities that adopt and implement them. At this level, it is the State that intervenes, along with the partnership organizations formed by Government and civil society. The second level corresponds to the defence and protection against the violation of rights, the responsibility of the justice and public safety systems and their auxiliary organs (specialized courts for the protection of minors, Public Ministry, Federal Police and the Child Protection Police). Other bodies mentioned in the Statute for Children and Adolescents—such as Protection Councils and Offices of the Ombudsman, as well as State institutions— may also be called upon to intervene.

Finally, the third level of intervention corresponds to the social audit of the implementation of policy and the spending of public resources on matters of children's rights. That audit is performed by the Rights Councils, which are organs of civil society and the State.

The Secretariat of Human Rights in the Office of the President has the institutional mandate to coordinate and integrate the promotion, protection and defence of the rights of children and adolescents, and the role of policy coordination, especially through its Under-secretariat for the Promotion and Protection of the Rights of Children and Adolescents.

The National Council for the Rights of Children and Adolescents (CONANDA) was created through Law N° 8242 (1991) and Decree N° 5089 (2004). CONANDA is defined as a advisory arm under the structure of the Secretariat of Human Rights within the Office of the President of the Republic, whose functions include drafting the general regulations on national protection policy and overseeing their implementation. It should also support the actions taken by State and Municipal Councils and non-governmental entities to uphold the rights recognized by the Statute for Children and Adolescents. It must promote cooperation among states, municipalities and civil society for the formulation and implementation of national policy safeguarding the rights of children and adolescents, and stimulate and improve participation mechanisms.

CONANDA is comprised equally of representatives of governmental and national non-governmental entities involved in protecting the rights of children and adolescents. There are 14 representatives of governmental organizations—including the Ministries of Social Development, Culture, Education, Finance, Health, Foreign Relations, Labour and Employment, and Justice as well as representatives of the Secretariat of Human Rights and Policies for the Promotion of Racial Equality—and 14 representatives of organized civil society.

On 19 April 2011, the Ten-Year Plan for the Human Rights of Children and Adolescents was approved, containing the strategic objectives and guidelines agreed at the Eighth National Conference on the Rights of Children and Adolescents. The Ten-Year Plan established the guidelines of National Policy on the Rights of Children and Adolescents for the next ten years. Its main objective was to

orient and commit the Federal Government to the implementation of policies that guaranteed the rights of children and youths more, in the same way that State plans guide state and municipal governments.

In Resolution 116/2006, CONANDA established the parameters for the creation and operation of the Rights Councils, to function as advisory bodies on policies for the promotion of the rights of children and adolescents, to control activities at all levels on the application of that policy, and to be the parties responsible for establishing criteria for the utilization of the Fund for the Rights of Children and Adolescents.

The Rights Councils are advisory bodies with equal representation of members of governmental and non-governmental organizations, and are attached to the state or municipal government. Their functions are: (a) to formulate policy guidelines for the promotion, protection and defence of the rights of children and adolescents at the federal, state and municipal levels, in accordance with their respective spheres of activity; (b) to oversee the enforcement of public policy on children and adolescents established by governmental and non-governmental entities; (c) to monitor the preparation and operation of the public budget at the federal, state and municipal levels, in order to ensure that the necessary resources are budgeted for programmes aimed at recognizing the rights of children and adolescents, (d) to convene national, state and local conferences on the rights of children and adolescents; and (e) to promote coordination among the different actors in the comprehensive network for the protection of children and adolescents.

The Protection Councils are autonomous, permanent bodies in charge of overseeing fulfilment of the rights of children and adolescents. Each municipality will have at least one Protection Council comprised of five members elected by local citizens for a term of three years. (Arts. 131 and 132).

The role of the Protection Council is mainly to implement protection measures for children and adolescents (Arts. 136, 98, and 105) and ensure the implementation of their decisions; they have the authority to request public services in the fields of health, education, social service provision, work and security, to appear before legal authorities in cases of unjustified non-compliance with their decisions, and to inform the Public Prosecutor of acts that constitute administrative or penal infringement of the rights of children or adolescents (Art. 136). The Protection Council should also supervise the care-providing entities, whether governmental or non-governmental (Arts. 90 and 95).

CONANDA Resolution 139 of 17 March 2010 detailed the parameters for the creation and operation of Protection Councils throughout the country, in accordance with the Statute for Children and Adolescents. Resolution 139 established that there should be at least one Protection Council in each municipality and in the Federal District, and that, to ensure equality of access, the Municipalities and Federal District must create and maintain Protection Councils, preferably in the proportion of one Protection Council for every hundred thousand inhabitants.

According to CONANDA data, there are more than 5,400 Protection Councils, with more than 27,000 council members, operating in more than 98% of the country's municipalities (CONANDA, 2010). State Rights Councils have been set up in more than 27 federal units and around 92% of municipalities have Rights Councils.⁴

There has been an innovation in the area of budgetary resources in the Statute on Children and Adolescents that established the creation and maintenance of Funds (national, district, state and municipal, Art. 88.IV) for the respective Councils on the Rights of Children and Adolescents; these resources are for financing priority programmes intended specifically for children and adolescents whose rights have been threatened or violated. Among the different sources of financing for the Funds, Art. 260 decrees that taxpayers may deduct, from their income tax, the donations made to the Funds for Children's and Adolescents' Rights at the national, state or local level. (Businesses may

⁴ See [online]: <http://www.direitosdacrianca.org.br/conselhos/conselhos-dos-direitos-da-crianca-e-do-adolescente>.

donate up to 1% of their income tax to the Funds, and private persons up to 6% of their income tax, according to their tax bracket).⁵

CONANDA Resolution 37 of 2010 establishes the parameters for the creation and functioning of the Funds for the Rights of Children and Adolescents nationwide. It establishes that the Funds for the Rights of Children and Adolescents must be created by the budget of the Executive Branch and approved by the legislature of the respective levels of federal, state and municipal government; and that a Fund must be established by the same law that creates the Council on the Rights of Children and Adolescents, except in cases in which, when the Council was created, the Fund had not yet been established. Furthermore, the Funds must have their own record number so that they may be identified individually and transparently. The permitted uses of the Funds (the resolution enumerates the requirements for using the Funds) will be determined through deliberations at a Plenary Session of the Council on the Rights of Children and Adolescents, and will be established by an administrative act or resolution, permitting their audit and accountability.

Finally, although Art. 141 of the Statute for Children and Adolescents guarantees the existence of a national institution for the defence of the rights of children, the Office of the Public Defender of Children and Adolescents has only been set up in 796 municipalities. (CONANDA, 2010). The Committee on the Rights of the Child manifested its concern in this regard at the lack of an independent national mechanism, in accordance with the Paris Principles, to evaluate periodically progress in the implementation of the Convention, with the faculty to receive and handle individual allegations by children and adolescents. (Committee on the Rights of the Child, 2004, Para. 19).

D. Chile

Chile does not have a law on comprehensive protection and, therefore, has no national system of comprehensive protection. In consequence, the Committee on the Rights of the Child, in its last concluding observation on Chile, expressed regret that the reform of the Law for Minors (Law N° 16618 of 1967) had not yet been completed in order to establish a comprehensive law for the protection of children. It has recommended that Chile accelerate the reform process of this law for minors in order to provide comprehensive protection for all children. The Committee also recommended that a clear distinction be made, in legal proceedings and for all other purposes, between minors needing protection and those in conflict with the law. (Committee, Chile 2007, Par. 7 and 8).

A series of decrees has been passed oriented towards meeting the obligations Chile has contracted in ratifying the CRC. These include some reforms establishing institutional structures, such as Law N° 19968 (modified by Law N° 20286) which created the Family Courts, Law N° 20084 (modified by Law N° 20191) establishing a system of adolescent criminal responsibility, and Law N° 20379 which created the Intersectoral System of Social Protection of Children and *Chile Crece Contigo* (“Chile Grows with You”) which, by the law’s own definition, is a subsystem of Comprehensive Protection of Children, whose objective is to participate in the development process of children in the public health care system, from the first checkup during gestation until the child’s entry into the school system. The Ministry of Planning is responsible for the management, coordination, supervision and evaluation of the System’s implementation. However, most of these decrees are drafted from a perspective that does not enable the universal recognition of rights because it does not abandon the classic viewpoint of the guardian State.

The institutional framework is completed with the National Service for Minors (SENAME), a governmental organization under the Ministry of Justice. SENAME was created by organic law Decree-Law N° 2465 of 10 January 1979, and began to function on 1 January 1980. The Service functions in accordance with instructions from the country’s various courts. All the services, except

⁵ For more information see: FEBRABAN (Federação Brasileira do Bancos), Como o imposto e a participação das empresas e dos cidadãos podem beneficiar crianças e adolescentes. Outubro 2010.

for the Rights Protection Offices, are linked to the legal system, and children and adolescents under the care of SENAME have been received directly from the Family Courts—in other words, as a result of legal proceedings. (See [online]: <http://www.sename.cl>).

Chile faces the challenge of modifying its current legislation and drafting a law on the comprehensive protection of children's rights that would guarantee the effective exercise of the rights of all children and establish a true system for comprehensive child protection. Such a law should also provide legal support for the reformation of the current structure, capacities and resources assigned to the National Service for Minors, and the creation of an autonomous institution for the effective defence of the rights of children (UNICEF, 2012).

The Committee recommended, with respect to the existence of an autonomous institution for the defence of child rights, that the State of Chile establish an independent national human rights institution. Secondly, in light of General Comment No. 2 on the role of independent national institutions for human rights in the promotion and protection of the rights of the child and the Paris Principles, the Committee recommended further that Chile extend its coverage to the entire national territory, especially the most vulnerable areas, in order to guarantee that all children could access this independent mechanism easily for filing complaints in cases where their rights have been violated (Committee, 2007, Chile, Par. 15).

According to information provided by UNICEF-Chile in May 2012, a group of senators has presented a bill of law for constitutional reform to the National Congress, that would establish the position of Ombudsman for the Rights of the Child and incorporate it formally into national legislation at the highest level of Government. This initiative is currently in its first constitutional phase, that is, pending analysis and discussion.⁶

E. Colombia

The Constitution decrees that the rights of children must prevail over the rights of all other groups of persons. It also declares that the family, society and the State have the obligation to help and protect children by guaranteeing their harmonious, integral development and the full exercise of their rights (Art. 44).

In 2006, the Code for Children and Adolescents (Law N° 1098) entered into effect: Article 7 established that comprehensive protection is embodied in the set of policies, plans, programmes and actions that are implemented at the national, departmental, district and municipal levels with the corresponding assignation of financial, physical and human resources.

The Code calls for the creation and incorporation of a National Family Welfare System, responsible for the application and implementation of public policy on children and adolescents, a system of administrative protection with the corresponding measures for the re-establishment of rights, and a specialized judicial system for adolescent criminal responsibility.

The Colombian Family Welfare Institute (ICBF) is the harmonizing and guiding body of the National Family Welfare System, in charge of coordinating the entities responsible for guaranteeing rights, preventing their violation, and protecting and re-establishing rights at the national, departmental, district, and municipal levels and on indigenous reservations or territories (Art. 205). Currently, there are 200 area centres of the Colombian Family Welfare Institute in all departmental

⁶ The text of this project says: "Single article. The following new Chapter XV shall be introduced into the Political Constitution of the Republic, the present Chapter XV becoming XVI: "Chapter XV Office of the Ombudsman for Children and Adolescents. Article 126 – There shall be an autonomous institution denominated the Office of the Ombudsman for Children and Adolescents, which shall have the mission of safeguarding and promoting the rights of all minors, in accordance with the competence of, and in the manner established by, the law."

capitals with regional headquarters, that serve vulnerable populations throughout the country. (See [online]: <https://www.icbf.gov.co>).

The System created by the Code and described in the following text is complex and involves various institutional bodies at the national, departmental and municipal levels. Therefore, while the Committee on the Rights of the Child has not yet evaluated the Code for Children and Adolescents, and noting that the latest final observation was issued before the passage of Law N° 1098 —more recently, on the occasion of evaluating compliance with the two optional protocols on children in armed conflicts, child trafficking and child prostitution and pornography— it has commented on the Colombian Family Welfare Institute's harmonization role, expressing its concern at the insufficient coordination with other competent organizations like the Ombudsman's Office, the Office of the National General Public Prosecutor, the Office of the National Inspector General, the Judiciary, and regional and local authorities. Therefore, the Committee has requested, in its concluding observation, that the State of Colombia strengthen coordination between ICBF and other competent national, regional and local organizations. (Committee on the Rights of the Child, Colombia, 2010).

Chapter III of the Code sets forth the competent authorities that form part of the Family Welfare System for the restitution of the rights of children and adolescents:

- The Family Advocate's Offices, which are interdisciplinary in nature and are in charge of guaranteeing and re-establishing the rights of children and adolescents, and are divisions of the Colombian Family Welfare Institute (Art. 79).
- The Family Commissions, which are interdisciplinary district, municipal or inter-municipal administrative entities whose mission is to protect, guarantee, restore and make amends for the rights of family members infringed by situations of family violence. As the coordinating entity of the National Family Welfare System, the Colombian Institute of Family Welfare will be in charge of establishing the technical guidelines of the Commissions. (Art. 83).

The Code establishes the National Social Policy Council as the party responsible for designing public policy guaranteeing the rights of children and adolescents, and protection and restoration in cases where these rights are violated. The Council is also in charge of sourcing and assigning the resources for financing these policies, and is presided over by the President of the Republic or the Vice-President; other members include the Ministers or Vice-Ministers of Social Protection, Interior and Justice, Finance and Public Credit, Education, the Environment, Housing and Territorial Development, Culture, Communications, the Director of the National Planning Department, the Director of ICBF appointed as Technical Secretary, one Governor in representation of all the others, one Mayor in representation of all mayors, and one indigenous authority in representation of the Indigenous Territorial Entities (Art. 206).

According to the Code, Mayors, Governors and the President of the Republic are responsible for the design, implementation and evaluation of public policy on children and adolescents. This responsibility is not transferrable, and is subject to public accountability. (Art. 204). Furthermore, Social Policy Councils, presided over by the Governor and the Mayor, must be set up in each department, municipality and district. They will have the responsibility for coordinating the functions of the National and Regional Councils, must have the participation of organized civil society, and shall define their own regulations and composition. At all times, the competent authorities for the restoration of rights and the Office of the Public Prosecutor must be part of the Council. (Art. 207).

The Code stipulates explicitly that, within the first four months of their mandate, the Governor and Mayor must analyse the situation of children and adolescents in their region and municipality, to determine the priority problems that must be addressed in the development plan. Prior to its approval, the Assemblies and Councils must verify that the development and investment plan is in line with the results of this analysis. (Art. 204).

In those municipalities with no ICBF area centre, the coordination of the Family Welfare System is to be carried out by the Social Policy Council. The Council must meet at least four times a year and present periodic reports to the Departmental Assemblies and Municipal Councils.

There are monitoring mechanisms in place, at the national, departmental, district and municipal levels, for ensuring that the competent authorities fulfil their functions to guarantee the rights of children and adolescents and the adequate distribution of resources. Surveillance and control are exercised by the Office of the National Public Prosecutor, through the Office of the National Counsel Designate for the Defence of the Rights of Children, Adolescents and the Family. The Office of the Comptroller General of the Republic is in charge of the subsequent, in-depth audit of the management of finances, administration and results of the policies related to children, adolescents and the family. In turn, the Ombudsman's Office exercises its functions through the Ombudsman's Office for the Rights of Children, Youth and Women through the dissemination, protection and promotion of rights and through monitoring public policies concerning the Human Rights of children and adolescents. (Arts. 209 to 213).

For its part, the Code establishes a system of criminal responsibility for adolescents, which includes the Judiciary, the Judicial Police, the National Police, the Ombudsman's Offices of the National Public Defenders' System under the National Ombudsman's Office, which must assume the technical defence of adolescents, the Family Advocates' Offices of the Colombian Family Welfare Institute, the Family Commissions or Police Inspectors when measures must be taken to verify the guarantee of rights, and the Colombian Family Welfare Institute, which will be responsible for the technical guidelines for implementing the educational measures ordered within the framework of the penal process.

Article 215 establishes that the National Government, the Congress of the Republic, the Office of the Attorney General of the Nation and the Superior Judicial Council will determine the assignation, reorganization and redistribution of the budgetary resources for implementing the Code, under the coordination of the Colombian Family Welfare Institute. No percentage or progressive scheme of budgetary resources for the institutional structure of the protection system is assigned or committed. However, the single paragraph following Art. 204 decrees that all financial surpluses from ICBF activities shall be applied to financing public policy on children and adolescents as defined in the Code.

F. Costa Rica

In 1998, Law N° 7739 was passed, demarcating the Code for Children and Adolescents. This law establishes clearly the comprehensive protection of the rights of children and adolescents through public policy and the implementation of programmes through the governmental and social institutions comprising the National System for the Comprehensive Protection of the Rights of Children and Adolescents (Art. 168).

The Comprehensive System for the Rights of Children and Adolescents is comprised of:

- (a) The National Council for Children and Adolescents
- (b) The governmental institutions and civil society organizations represented on the Council for Children
- (c) Child Protection Boards
- (d) Child and Adolescent Rights Safeguard Committees.

At the national level, the System is headed by the National Council on Children and Adolescents, an entity created by the Code on Children and Adolescents (Art. 170). The National Council is stipulated as the forum for discussion, harmonization and coordination between the Government, decentralized State institutions and specialized civil society organizations.

The Council is a dependent, affiliate agency attached to the Office of the President of the Republic whose main competency is to ensure that the drafting and implementation of public policies are in line with the comprehensive protection policy for the rights of children and adolescents. Article 2 of Decree N° 33028 (2006), which regulates the functioning of the national Council, establishes that its objective will be to coordinate the bodies comprising the national Comprehensive Protection System of the Rights of Children and Adolescents.

The Council, which must meet at least once a month, is composed—in accordance with the Code for Children and Adolescents, modified by Law N° 9001—as follows:

- (a) One representative each from the Ministries of Public Education, Public Health, Culture and Youth, Labour and Social Security, Recreation and Sports, Justice and Peace, Public Security, National Planning and Economic Policy.
- (b) One representative each from the following institutions: The National Child Welfare Agency (PANI), the Joint Institute on Social Aid (IMAS), the Costa Rica Social Security System (CCSS), the National Training Institute (INA), and the National Institute for Women.
- (c) A single representative of the sector formed by the associations, foundations or non-governmental organizations working in care and assistance for children and adolescents.
- (d) A single representative of the sector comprising the associations, foundations or any other non-governmental organization dedicated to the promotion and defence of the rights of children and adolescents.
- (e) A representative of the National Council for Rehabilitation and Special Education.
- (f) A single representative of the National Directorate for Community Development (DINADECO).
- (g) One representative of the National Assembly of the National Consultative Youth Network.
- (h) One representative of business associations.
- (i) One representative of labour organizations.
- (j) A representative of the National Council of Rectors (CONARE).

Furthermore, by agreement of the Council, a representative of UNICEF and a representative of the Ombudsman's Office participate as observers.

The Child and Adolescent Protection Boards, attached to the National Child Protection Agency, comprise the National Comprehensive Protection System and will act as local coordination and public policy execution bodies, and collaborate with the local offices of the National Child Protection Agency in the implementation of the jointly-designed plans, projects and programmes. Each Board will have a representative of the community's adolescent population, who must be older than fifteen and will participate with voice and vote (Art. 179).

The main functions of the Protection Boards are: .a) to promote respect for the rights of children and adolescents on the part of public and private institutions implementing programmes and projects of care, prevention and defence of rights; .b) to promote respect for the corresponding due process guarantees in the administrative procedures in which they take part; and .c) to make recommendations and suggestions to local public and private entities and individuals implementing programmes and projects for care and protection.

The Code for Children and Adolescents also created Safeguard Committees for the Rights of Children and Adolescents, as organs of the community development associations which must (a) collaborate in caring for children and adolescents, (b) safeguard the rights and guarantees of minors in their community, and (c) function as mediation centres in any related conflict resolution.

In accordance with Article 26 of the Regulatory Decree on the Functioning of the National Council, the Child and Adolescent Protection Boards attached to PANI and the Safeguard Committees for Children and Adolescents—as parties in the National System for the Comprehensive Protection of the Rights of Children and Adolescents— will coordinate their actions with the National Council, and report periodically on their action plans and progress.

According to the information provided by Costa Rica in its periodic report to the Committee on the Rights of the Child, a total of 18 new Child and Adolescent Rights Boards were created between 2002 and 2006. By May 2008, there were 59 Boards and 420 Safeguard Committees attached to the National Directorate of Community Development (DINADECO), the governmental institution in charge of promoting the development of local communities. (Committee on the Rights of the Child—Fourth Periodic Report on Costa Rica, 2010. Para. 90).

The lead entity in matters of children, adolescents and the family is the National Child Welfare Agency (PANI), in accordance with the authority assigned to it under Law N° 7648 of 1996, and in its Article 55 of the Political Constitution. PANI is an autonomous institution with a decentralized administration and its own budget, and is responsible for the comprehensive protection of children and adolescents in the regional and local systems so that, together with the National Council on Children and Adolescents, it forms part of a National Protection System.

The Regional Directorates are attached to PANI at a decentralized, technical level, and under them are the Local Offices and the Child and Adolescent Protection Boards (See: [online]: <http://www.pani.go.cr/>). National coverage is ensured by nine regional directorates and 41 local offices. (PANI- UNICEF, 2009).

Costa Rica, in referring to the relationship between PANI and the National Council, communicated in the periodic report to the Committee on the Rights of the Child that the Council was responsible for inter-institutional and intersectoral coordination, was presided over by PANI, and also provided technical and logistical support for coordination activities. An example of this is the design and preparation of the National Policy on Children and Adolescents (PNNA, 2009-2021), the preparation of the Report on the State of Child and Adolescent Rights (EDNA), and the System of Information and Statistics on the Rights of Children and Adolescents (SIEDNA). The Council carries out the functions of orientation and coordination of the different organs involved in child and adolescent rights protection. (Committee on the Rights of the Child [2011]. Written responses by the Government of Costa Rica).

In its concluding observations on the Costa Rican National Protection System, the Committee on the Rights of the Child expressed its concern at the deficit of local comprehensive protection systems for children in some places, and the ineffective functioning of those in existence, which explained why programmes for the protection of child rights tended not to be applied locally and did not reach the most vulnerable communities. The Committee recommended that the State take measures to guarantee better-regulated and proper coordination among all the entities working in matters related to children, both at the national and local levels, and especially for the National Council on Children and Adolescents and its lead entity, the National Child Welfare Agency (PANI), to provide the technical and financial resources needed to guarantee the coordination and monitoring of the National Policy on Children and Adolescents (PNNA). It should also strengthen the Protection Boards and Safeguard Committees by equipping them with the necessary powers and resources. (Committee on the Rights of the Child [2011]. Costa Rica. Paras. 11 and 12).

The gaps in compliance with the Code were also confirmed at the local level in the VII State of the Rights of Children and Adolescents prepared jointly by the National Council on Children and Adolescents, the Universidad de Costa Rica, and UNICEF. That report affirmed that, more than ten years after the law was enacted, NCPS still operated without integrated structures relating it directly to children and adolescents at the local level. It also indicated that, given that the Safeguard Committees were a basic structural component of the Local Protection Systems, the Executive Directorate of DINADECO and the National Council on Children and Adolescents had to resolve the incapacity to

coordinate and harmonize the local committees. Apart from the aforementioned gaps, the National Council on Children and Adolescents' Accord Number 01-02-09 established the Local Systems in the framework of NCPS, and Executive Decree N° 35876-S, included them on the priority agenda of the social sector institutions and in the National Development Plan (CNNA – UNICEF, 2011).

The need for an independent mechanism for safeguarding the rights of children and adolescents led to the formal establishment of the Directorate for Children and Adolescents as a specific division of the Ombudsman's Office in April 1998. Article 7 of the Code for Children and Adolescents establishes that the Ombudsman's Office will safeguard the effective compliance with rights, and ensure that the member institutions of the National Comprehensive Protection System for Children and Adolescents safeguard the best interests of minors in all public or private decision making.

In recognition of the budget necessary for sustaining the National Protection System, the Code for Children and Adolescents calls for a Fund for Children and Adolescents to finance projects with community-based, comprehensive programmes, implemented exclusively and inter-institutionally by the community. The Code itself establishes the way to set up that Fund, to which will be earmarked at least one-eighth of four per cent (or 0.5%) of the resources of the Fund for Social Development and Family Assignations assigned to the National Child Welfare Agency by Law N° 7648 of 9 December 1996. The Fund for Children and Adolescents will be managed through a special account and may not be used for other purposes including administrative costs. (Art. 185).

Article 183 establishes the financing of the creation and operation of the Safeguard Committees through the Fund for Children and Adolescents. Nonetheless, the Committee on the Rights of the Child has manifested its concern at the persistent lack of an adequate, stable budget for all the public institutions responsible for the promotion and comprehensive protection of the rights of children at both the national and local levels. (Committee, 2011, Costa Rica, Para. 15).

G. Cuba

Article 40 of the Constitution of Cuba recognizes that children and adolescents enjoy special protection by both State and society.

Since the ratification of the CRC by Cuba, there has been no formal legislative amendment or new law passed for comprehensive child protection and, therefore, no functioning model of a comprehensive protection system based on legislation from the perspective being evaluated in the present study.

The legislation currently in force prior to the ratification of the Convention on the Rights of the Child is the Family Code of 1975. As established in its first Article, the Code regulates legally the institutions of the family —such as marriage, divorce, parent-child relations, the obligation to provide food, adoption and guardianship. The jurisdiction of the 1978 Code for Children and Youth, despite its name, includes all persons under the age of 30 and, consequently, may not be considered a specific legal instrument for children.

Therefore, in its concluding observations, the Committee on the Rights of the Child recommended that the State party intensify its efforts to carry out an exhaustive review of all legislation related to children, and adopt all necessary measures to harmonize its legislation —particularly the Code for Children and Youth— with the principles and dispositions of the CRC (Committee, Cuba. 2011. Paras 6 and 7).

The Commission on Youth, Children and Equal Rights for Women functions permanently in the National Assembly and is the lead entity in charge of formulating national policies and strategies and carrying out legislative initiatives related to children. However, the Committee voiced its concern both at the absence of a mechanism with full powers and capacity for coordinating the activities of all Government Ministries and other State organizations in the application of the CRC, and at the lack of

cooperation among the national, provincial and municipal authorities in safeguarding children's rights throughout the country (Committee, Cuba 2011. Para. 8).

Finally, the Committee expressed its concern at the lack of an independent national mechanism adhering to the Principles relating to the Status of National Institutions for the promotion and protection of human rights (Paris Principles) which guarantee systematic, comprehensive monitoring of the rights of minors (Committee, Cuba 2011. Para. 12 & 13).

H. Guatemala

Guatemala passed its Law on the Comprehensive Protection of Children and Adolescents (PINA Law) by Decree N° 27-3003. Under the title of Comprehensive Protection Organizations, Article 81 determines that, for the purposes of the law, the comprehensive protection policies shall be understood to mean the set of actions formulated by the National Commission and the Municipal Commissions for Children and Adolescents, respectively, to guarantee children and adolescents the full enjoyment of their rights and freedoms.

The PINA Law classifies comprehensive protection policies according to the following categories: basic social policies to guarantee all children and adolescents the full enjoyment of their rights; social assistance policies to guarantee the rights of children and adolescents in situations of extreme poverty or in an emergency situation; special protection policies to guarantee the physical, psychological and moral recovery of children and adolescents that are being threatened or have had their rights violated; and policies to guarantee the rights of children and adolescents who are subjects of legal or administrative procedures to minimum guarantees of due process (Art. 82).

Likewise, the law segregates the authority for the formulation and implementation of policies. At the national level, the formulation of comprehensive protection policies for children and adolescents would be the responsibility of the National Commission on Children and Adolescents, and at the municipal level, to the Municipal Commissions on Children and Adolescents; the implementation of comprehensive protection policies for children and adolescents falls to individual corresponding bodies, by area of competency (Arts. 81 and 85).

The National Commission on Children and Adolescents is comprised, in equal numbers, of representatives of State and non-governmental organizations. Its first session was held on 2 July 2004, at which it was sworn in by the congressional Commission on the Minor and the Family.

It is difficult to determine which is the lead entity for policies and protection of the rights of children and adolescents under PINA Law. In fact, the State of Guatemala, in referring to the role of the Secretariat of Social Welfare and the National Commission on Children and Adolescents, indicated in its report to the Committee on the Rights of the Child that there was a difference in the nature of the Commission and the Secretariat of Social Welfare. The Secretariat was an agency that supported the functions of the President of the Republic in matters of social assistance, whereas the National Commission was an institution created by law for comprehensive protection; therefore, the two institutions have different, complementary roles in the State's actions (Guatemala, 2010). Furthermore, in accordance with the legal code, the Secretariat of Social Welfare has the authority and responsibility for carrying out all actions related to the performance of protection measures (UNICEF, 2012).

In this regard, the Committee on the Rights of the Child indicated, in its concluding observations, that it viewed with concern the insufficient application of the Comprehensive Protection System established under PINA Law, and regretted that there was no effective horizontal or vertical coordination among the State party's institutions. It also indicated that the Secretariat of Social Welfare appeared to have assumed the task of coordinating the Comprehensive Protection System. It therefore recommended that Guatemala consider the possibility of creating a high-level authority to act as secretariat for children and adolescents at the ministerial level, in order to coordinate the application of the CRC and its two protocols (Committee 2010, Guatemala Paras. 16 and 17).

The weakness of the mechanisms and procedures for effective child protection is reflected in a recent study by UNICEF, evaluating the application of the CRC and Guatemalan legislation. The study indicates that the PINA Law contains no specific regulations on the way the institutions responsible for the protection system should be coordinated. The Municipal and Departmental regulation procedures for ensuring that actions are taken for the protection, detection, care and family reintegration of children whose human rights have been violated were also weak (UNICEF, 2012).

There are independent safeguard mechanisms for the fulfilment of rights in PINA Law: Article 90 creates the Office of the Defender of the Rights of Children and Adolescents, with broad powers, as a division of the existing institutional structure of the Office of the Ombudsman for Human Rights.

Budgetary assignments for the functioning of the protection system are established by the law, wherein the National Commission shall function with resources from the Secretariat of Social Welfare. Therefore, the Committee on the Rights of the Child has recommended that Guatemala increase the assignment of human, technical and financial resources to the National Commission on Children and Adolescents, so that it may perform its functions and duties adequately and assign sufficient resources for children at the national, regional and municipal levels (Committee 2010, Guatemala. Paras. 22 and 25).

I. Honduras

The Code for Children and Adolescents was passed by the National Congress of Honduras by Decree N° 73-96 of 31 May 1996. The Code defines, as its objective, the comprehensive protection of children under the terms consecrated in the Constitution of the Republic and the Convention on the Rights of the Child, as well as the modernization and unification of legislation in Honduras. It also defines comprehensive protection as the set of measures designed to protect not only each child individually but also the rights resulting from interactions between children and adults (Art. 2).

Title I of the Code, on institutional matters and the administrative and judicial bodies, establishes that The National Social Welfare Board will be the organization in charge of coordinating the public and private sectors for the study, advancement, implementation and oversight of national policy for the comprehensive, preventive care and protection of children (Art. 269).

Article 274 establishes that the National Social Welfare Board shall create councils, public prosecutors' offices for children and adolescents or other organs of a local nature to collaborate in the task of protecting and promoting child and adolescent rights and detecting threats or violations to those rights.

The National Welfare Board was replaced by the Honduras Institute for Children and the Family by Decree N° 199-97 of the National Congress of the Republic. Articles 1 and 2 define the nature and power of this institution, which became the State's main technical authority on matters within its competency which, in accordance with the Decree, must consider the best interests of the child and the family as its supreme, fundamental goal.

However, in the presentation of its periodic report to the Committee on the Rights of the Child, Honduras recognized that:

"... the inability of IHNFA to implement the reforms that would enable it to assume the role assigned by law has had adverse effects, and has led repeatedly to public debate on its demise." (Committee on the Rights of the Child – Honduras Report, 2006).

The Honduras Report also emphasized that the former National Social Welfare Board had operated in a context of social service and charitable policy. In the process of institutional readjustment, programmes and services outside IHNFA mandate were cut back and/or eliminated, and new programmes defined. However, IHNFA has continued to implement social service

programmes and activities, to the detriment of its function as the lead organization on child policy (Committee on the Rights of the Child – Honduras Report, 2006).

Therefore, the Committee on the Rights of the Child emphasized in its concluding observations that it was concerned about the lack of an adequate institutional structure for IHNFA to enable it to fulfil effectively its mandate of coordination throughout the country, and at the lack of human and financial resources in the Institute. (Committee, Honduras, 2007).

The crisis of the institutional model that was visible in the State's report to the Committee must have deepened and led to the creation of the Office of the National Ombudsman for Children, an agency that would take on the role of the Honduran Institute for Children and the Family. To this end, on 27 August 2012, the Bill of Law for the Creation of the Office of the National Ombudsman for Children was presented to the National Congress by an inter-institutional commission comprising the Secretariat of Justice and Human Rights, the Honduran Institute for Children and the Family, the Special Investigator's Office for Children, the Network of Institutions for Children's Rights (COIPRODEN), the United Nations Children's Fund and the United States Agency for International Development (USAID). The commission appeared in full before the National Congress to present the bill for the closing of IHNFA and the creation of the Office of the National Ombudsman for Children.⁷

J. Mexico

Article 4 of the political Constitution of the United Mexican States, reformed in 2011, establishes that all decisions and actions of the State will safeguard, and comply with, the Principle of the Best Interests of the Child, fully guaranteeing their rights and, furthermore, that this principle must guide the design, execution, monitoring and evaluation of public policies focused on children. Additionally, the reform of Article 73 grants the right to pass bylaws to establish consensus at the state, federal district and municipal levels on the rights of children and adolescents, within the confines of their respective powers —while, at all times, striving to safeguard children's best interests and complying with international treaties on this matter to which Mexico is a party.

In 2000, the Congress of the United Mexican States passed the Law on the Protection of the Rights of Children and Adolescents, which establishes that its determinations are matters of public order, social interest and general observance throughout the Mexican Republic, and that their objective is to guarantee the protection and respect of the fundamental rights of children and adolescents recognized in the Constitution. According to this same Law, the Federation, federal district, states and municipalities may pass laws and take the necessary administrative measures within the sphere of their competency, in order to enforce the Law (Art. 1) and seek to implement the necessary mechanisms to promote a culture of protection of children's rights, based on the stipulations of the CRC (Art. 5). In accordance with this Law, the Federation, the federal district, the states and municipalities shall be specialized bodies with the authority to ensure the effective respect for these rights (Art. 48), and the Federal Government is responsible for promoting coordination agreements to take joint action for the enforcement, protection and defence of the rights of children and adolescents (Art. 50).

Clearly, the Protection Law of 2000 was a step forward in its day. However, even when it was passed, it was evident that there lacked mechanisms for ensuring both the effectiveness of its clauses, and the adequate coordination among different sectors and levels of government responsible for guaranteeing the rights of children and adolescents. In 2006, the Committee on the Rights of the Child voiced its concern that the application of the law was so complex, due to the State party's federal

⁷ See: [online]: http://www.sjdh.gob.hn/?q=20120822_Cierre_del_IHNFA_y_creacion_de_la_defensoria_Nacional_de_la_Ninez. See also [online]: <http://www.elheraldo.hn/Secciones-Principales/Al-Frente/Honduras-Defensoria-Nacional-de-la-Ninez-fungira-como-rector-de-derechos>; <http://www.hondudiario.com/content/presentan-propuesta-ante-el-cn-para-creacion-de-la-defensor%C3%ADa-nacional-de-la-ninez>. Information provided and corroborated by the UNICEF office in Honduras.

structure and the need to adopt measures to harmonize federal and state laws, which had led to the new law not being duly enforced in every state. The Committee noted the need both to take measures to harmonize federal and state laws with the CRC and pertinent international legislation in order to ensure their effective enforcement, and to bring all states to prioritize making the necessary institutional administrative reforms (Committee 2006, Mexico. Para. 7).

The entity in charge of child protection policy is the National System for the Comprehensive Development of the Family (SNDIF) whose main function is to coordinate social assistance services, and whose priority is the promotion and defence of the rights of the family, especially children and adolescents. SNDIF is a division of the Ministry of Health and functions as a social assistance institution without the authority to enforce and/or coordinate with other Ministries.

The current discussion is centred around the need to draft new legislation that can establish specific mechanisms for implementing a proper National System of Comprehensive Protection of the Rights of Children.⁸ The authority established in Article 73, on the occasion of the 2011 constitutional reform, should now grant Congress the faculty to pass a new law for comprehensive protection, that includes the establishment of a new institutional framework —both at the Federal level and at the decentralized, state level— that, as a whole, would constitute a truly comprehensive child-protection system.

K. Nicaragua

Article 71 of the Nicaragua Constitution establishes that children enjoy special protection and all the rights accruing to their condition, giving full validity to the CRC.

Law N° 287 establishes the Code for Children and Adolescents (1998) which, in Article 56, decrees that the National Policy on the Comprehensive Protection of the Rights of Children and Adolescents is a public instrument and will be drafted and implemented through a multisectoral Council established by the State, with responsibility shared by the Government and various civil society organizations.

That National Comprehensive Protection Policy would be comprised of basic social policies characterized by the universal services to which children and adolescents have the right: assistance policies for those living in extreme poverty, special protection policies for those whose rights are threatened, and policies on guarantees to safeguard rights regarding specialized criminal justice (Art. 57), which will be implemented in decentralized form in the autonomous regions, municipalities and communities (Art. 60).

In turn, Law N° 287 creates the National Council for the Comprehensive Care and Protection of Children and Adolescents, which will be comprised of governmental and civil society organizations (Art. 62). Its structure has been regulated by Law N° 351 of the National Assembly and, in July 2000, the general regulations of this law were approved by Decree N° 63-2000.

According to Law N° 351, the Council for the Comprehensive Care and Protection of Children and Adolescents is the lead entity for drawing up and coordinating the implementation of the national comprehensive care and protection policy on children and adolescents. The Council will be attached to the Office of the President of the Republic and will operate as an harmonization body among governmental institutions with other powers of the State and organized civil society.

According to Law N° 351, the Council must meet once a month. It should be comprised of nine representatives of Ministries and governmental institutions, including the Inspector General's Office for the Defence of Human Rights and three representatives of the Coordinating Federation of

⁸ Note in *El Universal* –“It is necessary to debate new legislation for children.” Susana Sottoli, UNICEF Representative in Mexico. 16 April 2012. See: [online]: eluniversal.com.mx

Non-Governmental Organizations that work with children and adolescents, one representative of children and adolescents, one representative of the Nicaraguan Red Cross and a representative of the Superior Council of Private Enterprise.

However, in the reforms to Law N° 290 of February 2007, and by Presidential Agreement N° 157-2007 of March 2007, the responsibility for implementing comprehensive action on behalf of vulnerable population groups, including children, was reassigned to the Ministry of the Family, Adolescents and Children.

This change led the Committee on the Rights of the Child, in its final observations, to express regret that the National Council for the Comprehensive Care and Protection of Children and Adolescents (established at the presidential level in the Code for Children and Adolescents and formerly responsible for coordinating child-protection policy) had lost its authority under Law N° 290, to become part of the Ministry of the Family, Adolescents and Children (MIFAN), with consequent repercussions in general coordination and other interactions with civil society. The Committee also expressed concern that the new National Social Welfare System had taken on the overall coordination of social policy, including that of children, and that, therefore, promotion and protection of the rights of children and adolescents had lost focus and transparency. Therefore, the Committee recommended that the State party consider intensifying the leadership and coordination of CONAPINA, as stipulated in the Code for Children and Adolescents, and integrating the functions and activities of MIFAN and National Social Welfare System, to guarantee the existence of a well-structured, comprehensive system for the promotion and protection of the rights of the child (Committee 2010, Nicaragua. Paras. 10 and 11).

According to a report by the Nicaraguan Coordinating Federation of Non-Governmental Organizations that works with children and adolescents, CONAPINA stopped functioning in 2008, and no sessions of the Council have been held (CODENI, 2012).

Finally, the Committee recommended that the Code for Children and Adolescents continue to be the general legal framework, complemented by specific new laws, such as the Family Code—which has not yet been adopted—and that adequate human, technical and financial resources be assigned for the full application of the Code for Children and Adolescents and all laws relating to the protection and promotion of the rights of children in Nicaragua (Committee, 2010. Nicaragua, Para. 9).

L. Panama

The Political Constitution of the Republic of Panama, in its latest reform in 2004, includes the protection of children and adolescents as one of the fundamental duties of the State (Article 56).

The last periodic report presented by Panama to the Committee on the Rights of the Child recognized the need to adopt a comprehensive system for the protection of the rights of children and adolescents in accordance with the commitments assumed with the ratification of the CRC. Panama also recognized the urgent need to pass a law for the comprehensive protection of children and adolescents and for the creation of a specialized organization in charge of coordinating and harmonizing national policy on children and adolescents. (Committee on the Rights of the Child. Third and fourth periodic report on Panama, 2011, Para. 5). Along these lines, the Committee on the Rights of the Child indicated, in its final observation on Panama, that the State party should take the necessary measures to pass a general law on the rights of the child, in which children are rights-holders instead of objects of protection (Committee, Panama 2011. Para. 10).

In addition to the lack of a comprehensive protection system, there have been repeated changes in the institutional framework related to children. In 2005, the Ministry of Youth, Women, Children and the Family became the new Ministry of Social Development. In addition, the National Council on Children and Adolescents was established as a division of the Ministry of Social Development (UNICEF, 2011). In 2009, the National Secretariat of Children, Adolescents and Family (SENNIAF) was created by Law N° 14 as a decentralized public entity with responsibility for

coordinating, harmonizing, implementing and monitoring policies on comprehensive protection. Executive Decree N° 201 of 27 November established the Advisory Council on Early Childhood, comprised of social sector institutions.

These institutional changes led the Committee to express its concern at the substitution of the Council on Children and Adolescents for the National Secretariat on Children and Adolescents and Family, whose mandate and power to coordinate all the State party's entities dedicated to the rights of children and adolescents was not clear. The Committee also indicated that the Secretariat had insufficient human and budgetary resources to carry out its responsibilities, including the fact that, despite its national mandate, its geographic scope was limited to the city of Panama (Committee, Panama 2011, Para. 11).

Finally, the Ombudsman's Office, by Resolution 10 of 2003, established the Special Section for Child and Youth Affairs, an independent mechanism to supervise the application of the Convention. However, the Committee on the Rights of the Child has expressed its concern at the information received regarding the lack of personnel specialized in child rights and the scarcity of financial resources assigned to this Section (Committee, Panama 2011, Para. 15).

M. Paraguay

In Article 54, the Paraguayan Constitution establishes that the family, society and the State have the obligation of guaranteeing the harmonious and comprehensive development of children, and the full exercise of their rights, and that, in cases of conflict, the rights of the child should prevail.

In 2001, the Child and Adolescent Protection Code was adopted with the passage of Law N° 1680/01, and a National System for the Comprehensive Protection and Promotion of the Rights of Children and Adolescents established, specifically regulated in Volume II, Article I of the Code, which creates the organizations that form part of the system and establishes its members and their functions.

Article 37 establishes the model of the National System for the Comprehensive Protection and Promotion of the Rights of Children and Adolescents, whose function is to prepare and supervise the implementation of national policy for guaranteeing the full implementation of the rights of children and adolescents. The System regulates, and is part of, the programmes and actions at the national, departmental and municipal levels, forming a decentralized structure.

According to the periodic report presented by Paraguay to the Committee on the Rights of the Child, the Comprehensive Protection System is comprised of the National Council on Children and Adolescents, Departmental Councils on Children and Adolescents, Municipal Councils on Children and Adolescents and Municipal Offices on the Rights of Children and Adolescents and, finally, the National Secretariat for Children and Adolescents, the central authority for harmonization and coordination among the institutions working on behalf of children (Committee, 2009. Periodic Paraguay Report. Para. 109).

The National Secretariat for Children and Adolescents (SNNA), created by Presidential Decree N° 15201 of 31 October 2001, was established as a dependent body of the executive branch with authority to coordinate the different levels of organization of the National System for Comprehensive Promotion and Protection, responsible for the implementation of plans, programmes and projects to foster public policies for effective attention to the social problems affecting the rights of children and adolescents (Art. 41, Child-Protection Code).

The Protection System is integrated with the National Council on Children and Adolescents, whose main function is the formulation of policies for the promotion, care and protection of the rights of children and adolescents and is comprised of representatives of the National Secretariat for Children and Adolescents, the Ministry of Public Health and Social Welfare, the Ministry of Education and Culture, non-profit non-governmental organizations for public welfare having national

coverage, the Ministry of Justice and Labour, the Public Ministry, the Ministry of Public Defence, and the Departmental Councils (Arts. 42 and 43).

The Code decrees the creation of Departmental Councils on Children and Adolescents to approve the plans and programmes for the Department, support their implementation, and support the Department's municipalities in implementing the respective programmes. These Councils are comprised of representatives of the Governor, the Departmental Board, the respective Departmental Secretariats of Health and Education, departmental non-profit, non-governmental organizations for public welfare, and Municipal Councils (Arts. 44 and 45). It also decrees the creation of Municipal Councils on Children and Adolescents in each Municipality (Art. 46).

The final tier of the Protection System is completed with executive bodies at the municipal level, namely, Municipal Councillors on the Rights of Children and Adolescents (CODENI), to provide care and protect the rights of children and adolescents. The Council will be interdisciplinary and headed by a Director. (Arts. 48 and 49). CODENI functions under the Municipality in each community subject to its requirements and the availability of human and material resources.

According to the information provided by Paraguay to the Committee on the Rights of the Child, Departmental Councils on Children and Adolescents may have been created in the 17 geographic Departments, to coordinate the programmes for this sector with the Municipal Councils and CODENI, and currently, 188 CODENI have been established in Paraguay's 231 municipalities (Committee, 2009. Paraguay Report, Paras. 109 and 110).

The model of the protection system created by the Child and Adolescent Protection Code has been well received by the Committee on the Rights of the Child. The Committee, in its concluding observations, expressed its satisfaction at the establishment of new institutions responsible for child rights, such as the National Secretariat for Children and Adolescents, and the Municipal Councillors' on the Rights of Children and Adolescents, acting in coordination with the National Council on Children and Adolescents and the corresponding Municipal and Departmental Councils. However, the Committee was concerned by the fact that many municipal and departmental councils had not yet been elected, that there were no Municipal Councillors' Offices in around 30 municipalities; and that there was no real coordination between these Councillors' Offices and the National Secretariat. It therefore recommended that Paraguay reinforce the implementation of the System, strengthen the role of the National Council for Children and Adolescents, and urge the Departments and Municipalities to appoint their respective Councils for Children and Adolescents and establish Councillors' Offices in each municipality in the country, in order to ensure their representation in the entire country and for all children (Committee, 2010. Paraguay. Paras. 10 and 11).

In view of the need for an independent human rights mechanism for the surveillance and protection of the rights of children and adolescents, the Department of Children and Adolescents was created in the Ombudsman's Office in October 2005. The head of the Department of Children and Adolescents is responsible for intervening in cases where the human rights of children and adolescents are violated, acting as the representative of children and adolescents in the Office of the Ombudsman, whether in legal or administrative matters or those concerning private individuals, overseeing the observance of human rights in legal processes, and responsible for the promotion of these rights in all matters. (Committee, 2009. Paraguay periodic report, Para. 122). Consequently, the Committee expressed its concern that the mandate was not clear enough to permit proper action in defence of the interests of children, and recommended that measures be taken to make the Ombudsman's Office function more efficiently, to disseminate its reports, especially those on children, more actively among the general population, and to ensure that the complaint mechanisms were easily accessible (Committee 2010, Paraguay Para. 15).

Finally, the Code for Children stipulates that the System will be financed with resources programmed in the General Budget of the Nation and in the respective departmental and municipal budgets, without specifying explicit percentages or sources of these funds. (Art. 38). This situation has led the Committee on the Rights of the Child to recommend that sufficient resources be assigned for

children at the national and municipal levels, in agreement with Article 4 of the Convention, and that the transparent and participatory preparation of the budget be ensured through dialogue and public participation, especially of children and adolescents (Committee 2010, Paraguay, Para. 17).

N. Peru

Following the ratification of the CRC by Peru by Decree-Law N° 26102 of 1992, the Code for Children and Adolescents was approved, replacing the former Juvenile Code. The new Code created a National System of Comprehensive Care for Children and Adolescents, responsible for designing policies and coordinating plans and actions on children. The System includes the cost-free service of the Office of the Ombudsman for Children and Adolescents, responsible for the promotion, protection and defence of the rights of children and adolescents.

The System was headed by an entity created in 1995 in the Ministry of the Presidency which, however, was short-lived due to the creation of the Ministry of Women and Human Development (PROMUDEH) in 1996, by Legislative Decree N° 866. Thus, the head entity was dismantled and incorporated into a General Directorate under PROMUDEH, losing its capacity for intersectoral harmonization. (UNICEF, 2009). Also, the need for a series of reforms to the 1992 Code led to the adoption of a new Code for Children and Adolescents in August 2000 by Law N° 27337, which maintained the National System of Comprehensive Care for Children and Adolescents. The Code confirmed that the lead entity of the System was PROMUDEH. Later on, however, Organic Law N° 27779 of 2002 created the ministerial structure of the Executive Branch, and the Ministry of Women and Social Development (MIMDES) to replace PROMUDEH. The dispositions of Law N° 28330 established that all mention of PROMUDEH in the framework of the competency for protective matters that had been assigned by Law N° 27337, would be understood to refer to MIMDES.

MIMDES Supreme Decree N° 003-2005 regulated the function of MIMDES as the lead entity of the National System of Comprehensive Care for Children and Adolescents, in order to comply with the stipulations of the Convention and the Code, and thus regulate the functioning of the public, private and community organizations that implemented programmes and actions protecting the rights of children and adolescents. Under this new structure, the General Directorate for Children and Adolescents became a Directorate under the General Directorate of Family and Community in 2007.

In consequence, the Committee's concluding observation voiced its concern that, in the restructuring of the Ministry of Women and Social Development, the General Directorate for Children and Adolescents had been reduced to the category of department, impairing its capacity and efficacy to coordinate activities related to the application of the Convention at all levels of government. (Committee, Peru 2006). Nonetheless, the Directorate of Children and Adolescents not only formulated and coordinated the implementation of the National Action Plan for Children—a concerted, multisectoral policy instrument—but also, promoted the creation of the Offices of the Ombudsman for Children and Adolescents and worked with a consultative National Council on Children and Adolescents.

In 2012, the name of MIMDES changed by Legislative Decree N° 1098, which created the Ministry of Women and Vulnerable Populations, MIMP, whose organic structure transformed the Directorate of Children and Adolescents into the General Directorate of Children and Adolescents. MIMP approved the National Action Plan for Children and Adolescents, which announces the policies in support of children for the period 2012-2021, and continues the process of creating and strengthening the service capacities of local Ombudsman's Offices. The Plan is aimed towards building local protection systems, but has limitations both in terms of budget and the capacity to sustain technical support at the national level.

Finally, according to an opinion published by the UNICEF Office in Peru, a Review Commission on the Code for Children and Adolescents was created which, after three years of work,

presented the Congress of the Republic with a bill of law in 2011, proposing that a new Code for Children and Adolescents be adopted, and that the country evolve towards a stronger legal instrument than the one currently in force.⁹ However, the bill, submitted for an opinion for approval by Congress, was approved with modifications, one of which violated children's and adolescents' right to participation, opinion and freedom of expression by subjecting their exercise to parental supervision. In addition, this bill for the code incorporated the creation of Consultative Councils on Children and Adolescents at the national, regional and local levels as an integral part of the System of Comprehensive Care for Children and Adolescents, which have been eliminated from the current bill of law.

The System also establishes the Office of the Ombudsman for Children and Adolescents, defined in Article 42 of the Code as a cost-free service functioning in local governments, public and private institutions and civil society organizations to promote and protect the rights of children and adolescents as recognized by law. Specifically, in accordance with the recommendation of the Committee, the Children's and Adolescents' Division of the Ombudsman's Office was created subsequently.¹⁰

O. The Dominican Republic

On 7 August 2004, the Government of the Dominican Republic passed Law N° 136-03, establishing the Code for the System of Protection and Fundamental Rights of Children and Adolescents, which established the legal basis and principles for the protection system and the fundamental rights of children and adolescents. The Code entered into full effect twelve months after being passed and made public. The legal and institutional framework established in Sections II, III, and IV of Law N° 136-03 is considered to be the National Protection System.

Article 51 defines the National System of Protection of the Rights of Children and Adolescents as the set of institutions, organizations and entities—both governmental and non-governmental—that formulate, coordinate, integrate, supervise, implement and evaluate public policies, programmes and actions at the national, regional and municipal levels for the comprehensive protection of the rights of children and adolescents.

The mission of the National Protection System is to guarantee the rights of children and adolescents and promote their comprehensive development through the coordination of intersectoral and inter-institutional policies and actions. (Art. 52). Its membership is defined as follows:

- (a) Organizations for the definition, planning, control and evaluation of policies: Directorates of National and Municipal Councils.
- (b) Policy-implementation organizations: National and Municipal Offices and public and private care-provision entities.
- (c) Organizations for the protection, defence and enforceability of rights: local boards for protection and restoration of rights.
- (d) Courts for children and adolescents, Enforcement Judges, Appellate Courts, Supreme Court of Justice.
- (e) Office of the Ombudsman for Children and Adolescents.
- (f) Public Ministry for Children and Adolescents.

Article 418 appointed the National Council for Children and Adolescents (CONANI)—already in existence before the Code—as the new lead entity in the National Protection System, to formulate,

⁹ See opinion article “Code for Advancing”, by Paul Martin, UNICEF Representative in Peru, at [online]: <http://www.unicef.org/peru>.

¹⁰ See: [online]: <http://www.defensoria.gob.pe>.

approve, evaluate, oversee, coordinate and provide follow-up on public policy on matters concerning children and adolescents. CONANI is to establish and govern the following bodies for these purposes:

- (a) A National Directorate
- (b) A National Office
- (c) Regional offices
- (d) Municipal Directorates
- (e) Municipal Offices
- (f) Local Boards for the Protection and Restoration of Rights.

CONANI, in turn, has a National Directorate comprising the Office of the President of CONANI and representatives of the Ministries of Education, Public Health and Social Assistance, Women, and Labour, the Office of the Inspector General of the Republic, the Dominican Municipal League, two representatives from NGOs working in the field of child protection, a representative of the Catholic Church and evangelical churches, and representatives of the business sector and labour unions.

The National Office is responsible for providing technical support to CONANI and implementing the decisions of the Directorate, coordinated by a general manager under the supervision of the Council president. (Art. 433). Its principal functions are the drafting of policies, plans and programmes for submission to the National Directorate, the preparation of regulations, and the design, promotion and implementation of mechanisms for the control, monitoring and supervision of plans and programmes run by public and private entities.

The Municipal Directorate is the counterpart municipal body of the National Directorate for coordinating with municipal offices and local protection boards, whose main function is approving the municipal adaptation of the policies, laws and regulations established by the National Directorate. (Art. 437 and 438). The Municipal Directorates are comprised, in equal parts, of governmental and non-governmental institutions (Art. 439).

The Municipal Offices are operational agencies in charge of providing technical support to the local offices of CONANI by enabling the application of the policies and norms approved by the National and Municipal Directorates, under the technical supervision of the National Office (Art. 445).

The last part of the System is made up of the Local Boards for the Protection and Restoration of Rights, which act as decentralized agents at the municipal level (Art. 464). These Boards receive complaints regarding threats, infringements or flagrant violations of the rights of children and adolescents in their vicinity, acting *ex officio* when there is suspicion of threat, infringement or flagrant violation of the rights of children and adolescents, and ordering measures for the protection or restoration of their rights (Art. 465).

Clearly, the model of the comprehensive protection system established by the Code is a complex one that creates several institutions at the national, regional and municipal levels.

A UNICEF study on the status of implementation of the Protection System created by the Code of 2007 found that all the Regional Offices had been set up, although several of them had had to function dually as Regional and Municipal Offices, especially in the municipal seats. The outcome was less positive in terms of the creation of Directorates. According to the country report to the Committee on the Rights of the Child,¹¹ CONANI has created and trained 34 Municipal Directorates, of which only nine have the other local structures that, by law, should exist to help them carry out their functions. Currently, there are 155 municipalities at the national level (UNICEF, 2008).

¹¹ Reports III, IV and V before the Committee on the Rights of the Child. The Dominican Republic, July 2010.

Resolution 02/2011 of the CONANI National Directorate approved the creation of nine Local Boards for the Protection and Restoration of Rights.¹²

In its concluding observations on the Dominican Republic, the Committee on the Rights of the Child expressed its concern at the slowness with which the administrative structures called for in Law N° 136-03 were being created, especially at the municipal and local levels. Therefore, it recommended that measures be taken to restructure the legal and administrative systems in particular, at the provincial, municipal and local levels (Committee, 2008, Dominican Republic Paras. 8 and 9).

In addition, the CRC has questioned whether CONANI was capable of coordinating the whole system, and has recommended that the State party take measures to reinforce the coordination of the protection system and the fundamental rights of children and adolescents in the legal and administrative sectors, and at all levels (Committee 2008, the Dominican Republic, Para.14).

The requirement of a mechanism for independent supervision led the Committee to note that, (as incorporated into the reformed Constitution of 2010), an Ombudsman's Office and an Assistant Ombudsman's Office for Children and Adolescents had been created in 2001; and it expressed its concern that both posts still remained vacant (Committee 2008, the Dominican Republic, Para.15).

Article 448 of the Code stipulates explicitly that, with respect to resources for financing the multiple institutions of the Protection System, in the Income Budget and the Law on Public Spending, a specific annual budget equivalent to a minimum of 2% of the national budget will be assigned to CONANI. It also establishes that all city councils nationwide will receive, by budgetary assignation, the equivalent of at least 5% of the usual total resources received annually, to be designated for the implementation of programmes and specific actions to protect the rights of children and adolescents in their municipality (Art. 449).

P. The Bolivarian Republic of Venezuela

Article 78 of the Constitution of the Bolivarian Republic of Venezuela establishes that children and adolescents are full subjects of rights and shall be protected by legislation, agencies and specialized courts. Their protection must be ensured with absolute priority, taking their best interests into account in decisions and actions concerning them. Finally, the Constitution decrees that the State shall promote their progressive incorporation into active citizenship, and shall create a national system governing the comprehensive protection of children and adolescents.

Subsequent to the passage of the Organic Law for the Protection of Children and Adolescents (LOPNA) in 2000, and its later reform in 2007, a new administrative structure was created for the National System for the Protection of the Rights of Children and Adolescents.

The System for the Protection of Children and Adolescents is defined as the set of bodies, entities and services that drafts, coordinates, incorporates, guides, supervises, evaluates and oversees the policies, programmes and actions in the public interest at the national, state and municipal levels, intended for the protection and care of all children and adolescents; and that establishes the means for ensuring the effective enjoyment of their rights and guarantees, and the fulfilment of the obligations established in that Law (Art. 117).

The Protection System is comprised of:

- (a) Ministries of the Government with competency in matters of comprehensive protection of children and adolescents.

¹² According to the information provided by CONANI on its web page, there are only 11 Municipal Offices in existence at present. See [online]: <http://www.conani.gov.do/Nosotros/regionales.html>

- (b) Councils on the Rights of Children and Adolescents and Councils for the Protection of Children and Adolescents.
- (c) Courts for the Protection of Children and Adolescents, and the Social Repeal Chamber of the Supreme Court of Justice.
- (d) The Public Prosecutor's Office.
- (e) The Ombudsman's Office.
- (f) Independent Public Defence Service.
- (g) Child-protection organizations.
- (h) Offices of the Ombudsman for Children and Adolescents.
- (i) Community Councils and other forms of social organization.

Article 133 (2007 reform) decrees that the lead entity shall be the Ministry of People's Power, with competency in matters of comprehensive protection for children and adolescents, having the faculty to define the policies of the National Guidance System for the Comprehensive Protection of Children and Adolescents, and to approve the imperative and binding guidelines and general directives of the System. According to the information provided by the Bolivarian Republic of Venezuela in its report to the Human Rights Council for the Universal Periodic Review, the ultimate governance of LOPNA is exercised by the Autonomous Institute National Council on the Rights of Children and Adolescents, attached to the Ministry of People's Power for Communities and Social Protection. (See [online]: <http://www.idena.gob.ve/>). (Consejo de Derechos Humanos, 2011).

Chapter IV of LOPNA establishes the Council on the Rights of Children and Adolescents as a legally-constituted, autonomous institute with its own patrimony attached to the Ministry of People's Power with competency in matters of comprehensive protection of children and adolescents in order to guarantee their collective and independent rights. As an administrative entity of the Comprehensive Protection System, the Council has advisory, comptrolling and consultative functions (Art 134, 2007 reform). The State Councils on Rights, created by order of the Law on Protection of 2000, were revoked in the reform of the law in 2007.

LOPNA creates Municipal Councils on the Rights of Children and Adolescents, whose functions include presenting the Mayor with the Municipal Plan for the Comprehensive Protection of Children and Adolescents, in strict compliance with the policy and National Plan for the Comprehensive Protection of Children and Adolescents approved by the lead entity and the guidelines and directives deriving wherefrom, and coordinating and providing technical support at the municipal level for the members of the Comprehensive Protection System (Art. 147, 2007 reform).

LOPNA also creates the Councils on the Protection of Children and Adolescents —requiring one in each municipality— which are administrative bodies in each municipality that, by social mandate, are in charge of ensuring protection in case of threat to, or violation of, the rights and guarantees of one, or various, children or adolescents, considered individually. These Councils are permanent and autonomous. (Art.158). They are authorized to dictate protection measures, (except those covering adoption and family or foster care placement, which are exclusive to the Court for the Protection of Children and Adolescents), implement protection measures and administrative decisions —with the power to summon public services or the use of public force— or the inclusion of the child or adolescent, and his or her family, in one or several programmes, and file complaints before the Public Prosecutor's Office of situations of administrative, disciplinary, criminal or civil infringement against the rights of children and adolescents (Art.160).

LOPNA also created the Office of the Ombudsman for Children and Adolescents, defined as a service in the public interest, organized and implemented by the municipality or civil society, with the aim of promoting and defending the rights of children and adolescents. The Law enables children and adolescents themselves to request the services of this Office.

The Fund for the Protection of Children and Adolescents was assigned by this Law to provide the economic resources for sustaining the Comprehensive Protection System; the Fund consists of a set of financial and/or non-financial resources at the national, state and municipal levels for the implementation of programmes, actions or services of protection and care for children and adolescents. The resources of the Fund for the Protection of Children and Adolescents may only be used to finance specific programmes whose goal is to protect and care for children and adolescents (Arts. 331 and 333). Article 335 also stipulates that there must be a line item in national, state and municipal budgets for the aforementioned Fund in each respective jurisdiction, to which sufficient resources for the protection and care of children and adolescents must be assigned.

Q. Legislation on children and adolescents in Caribbean countries

The Caribbean subregion includes thirteen independent, island States, of which nine are English-speaking, former British colonies. There are also three independent countries in the Caribbean basin—Belize, Guyana and Suriname—that have close cultural and historical ties with the island States. There is also a series of British, Dutch, French and United States of America territories and protectorates. Cuba and the Dominican Republic, although in the Caribbean subregion, are usually—and for the purposes of the present study—considered part of Latin America, in accordance with linguistic and historical criteria (O'Donnell, D., 2004).

In addition to the abovementioned diversity, there exist some fundamental contrasts between the legal systems of the English-speaking countries of the Caribbean and those of the countries of Latin America. The majority of the countries of the Caribbean have legal systems based on Anglo-Saxon Law—that is, with a major component of common law and marked by a progressive and incremental definition of rights, through successive sectoral and partial reforms.

The majority of Latin American Constitutions establish explicitly the general protection of civil, political, social and economic rights. By contrast, the Constitutions of the countries of the Commonwealth Caribbean (Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago) are limited to establishing the structure and form of government and to recognizing civil and political rights, whereas the recognition of social rights remains quite limited, or completely non-existent (Morlachetti, 2010).

While all the States of the Caribbean have, in fact, ratified the Convention on the Rights of the Child, most of them continue the Anglo-Saxon system of law found in most States of the British Commonwealth: as a result, international conventions and agreements are not invoked directly before domestic courts, that is, are not, in themselves, applicable in internal law. In order to apply international conventions, these must be transformed into national law, either by Parliament or by disposition of the administrative branch of Government. Unless applied by virtue of national legal proceedings, an international law, in itself, does not become part of internal legislation (O'Donnell, D., 2004 and Morlachetti 2010). Haiti is an exception to this rule, in that its legal system corresponds to the civil system, and its constitution recognizes that treaties ratified by the country are incorporated into current legislation and replace any conflicting legislation (Morlachetti, 2010).

Unlike Latin America, where specific, comprehensive laws and/or codes for the protection of children and adolescents were being adopted, the tendency in the Caribbean has been to pass some laws gradually—and only in some countries—while adjusting legislation slowly to the Convention on the Rights of the Child. For example, in the case of Trinidad and Tobago, the Committee on the Rights of the Child (2006) recognized the State's willingness to adopt legislation to adjust its legal framework to the CRC, through (a) the Children's Authority Act (N° 64 of 2000); (b) the Miscellaneous Provisions (Children) Act (N° 66 of 2000), which harmonizes a series of laws affecting children; (c) the Children (Amendment) Act N° 68 of 2000, which defines the child as a person under the age of 18 years; and (d) the Adoption of Children Act (N° 67 of 2000), designed to regulate

adoption procedures. However, these were evidently compartmentalized efforts to go about adopting legislation gradually to cover different aspects of the rights of children and adolescents, without any legal framework to guarantee the indivisibility and interdependence of all civil, political, economic, social and cultural rights of children and adolescents.

Belize would be one of the cases of greatest receptivity of the CRC, with the adoption of the Families and Children Act of 1998, revised in 2002, which creates a committee with the specific function of promoting and monitoring the implementation of the Convention on the Rights of the Child to ensure that the Government meets the obligations acquired with the ratification of that treaty (Morlachetti, A., 2010). The incorporation of the Principle of the Best Interests of the Child in the Constitution of Guyana was a positive amendment in the constitutional reform of 2003,¹³ as was the adoption of specific legislation for the protection of children, which established a specific agency for the protection of children and the recognition of their rights, and the primacy in the legislation on the Principle of the Best Interests of the Child in all decisions made concerning children and adolescents.

In the case of Jamaica (analysed in greater depth in a later chapter), the adoption of the Child Care and Protection Act represents a step forward in the modification of legislation to accommodate some the rights recognized in the CRC; however, the Act is limited to representing the traditional themes of children in situations of neglect, victims of abuse, child labour, and adolescents and youths in conflict with the law and juvenile justice, to which a timely alert was issued by the Committee on the Rights of the Child (Committee, 2003, Jamaica, Paras. 7 and 8). A much more serious matter is that the law still in force establishes some precepts clearly contrary to the standards of human and child rights, such as section 24, which gives parents the power to bring their children before juvenile justice with the claim that they are “uncontrollable”, in which case, the court may decide to send the child, or adolescent, to a juvenile correction centre, or place them in the care of another person or under the supervision of a probation officer.

The Committee on the Rights of the Child has expressed repeatedly its concern that Caribbean legislation does not incorporate adequately the general principles recognized in the Convention. In general, Caribbean countries have no child-protection legislation except in a focalized and abuse-prevention sense in the case of children, or for the adolescent in conflict with the law. Thus, the laws do not address the rights of children and adolescents in their totality, but only in fragmented fashion and from a single perspective (O’Donnell, D., 2004).

In this regard, the Committee on the Rights of the Child, in its concluding observations, has requested Antigua and Barbuda (2004),¹⁴ the Bahamas (2005),¹⁵ Barbados (1999),¹⁶ Belize (2005),¹⁷

¹³ “The best interests of the child shall prevail in all judicial proceedings and decisions and in all matters concerning children, whether undertaken by public or private social welfare institutions, administrative authorities or legislative bodies.” Art. 38.b. Amendment 2003 to the Constitution of the Cooperative Republic of Guyana.

¹⁴ CRC Committee Antigua and Barbuda, 2004. Para.10. The Committee welcomes the Family Law and Domestic Violence Reform Initiative, involving a comprehensive review of all laws to ensure compliance with the Convention. However, given the fact that a study for such a comprehensive review was completed in 1992, the Committee expresses some concern about the slow pace of the review. 11. The Committee recommends that the State party continue and strengthen its undertakings with regard to the comprehensive legislative review, with a view to expediting the process of ensuring that its legislation complies fully with the principles and provisions of the Convention. 15. The Committee recommends that the State party use the planned restructuring of the NICRC not only to strengthen its functions, but also to establish a single inter-ministerial and intersectoral mechanism for the coordination and evaluation of all activities relating to the implementation of the Convention. Such a body should be given a strong mandate and sufficient human and financial resources to carry out its coordinating role effectively, and should include members of the civil society, child rights experts and other professionals, as well as government representatives.

¹⁵ CRC Committee The Bahamas, 2005. Para. 11. The Committee recommends that the State party expedite its action to include children’s rights in the Constitution and take further measures to ensure that the existing legislation conforms fully with the principles and provisions of the Convention, and to ensure its effective implementation. 12. The Committee notes the information contained in the State party report (Para. 14) that the Department of Social Services of the Ministry of Social Services and Community Development has responsibility for coordinating policies relating to children and for monitoring the implementation of the Convention. However, the Committee is concerned at the absence of an inter-ministerial coordinating mechanism. 13. The Committee recommends that the

Grenada (2010),¹⁸ Dominica (2004),¹⁹ Suriname (2007),²⁰ Saint Lucia (2005),²¹ and Saint Kitts and Nevis (1999)²² to take all measures necessary to adjust their legislation and/or its implementation fully

State party establish an inter-ministerial body with a strong mandate and sufficient human and financial resources in order to ensure effective coordination between all actors involved in the implementation of the Convention.

- ¹⁶ CRC Committee Barbados, 1999. Para. 8, The Committee is concerned that the State party has not yet given adequate attention to the need to review existing legislation thoroughly to examine its conformity with the provisions of the Convention. The Committee notes that inconsistencies remain, especially with regard to the definition of the child, the acceptability of certain forms of physical abuse, and in the area of juvenile justice. The Committee recommends that the National Committee for Monitoring the Rights of the Child proceed with its planned review of existing legislation and encourages the National Committee to consider carefully the principles as well as all provisions of the Convention, and in particular article 3. The Committee recommends that the State party give full support to the National Committee in this task and that it pay careful attention to the implementation of any recommendations for review of legislation that the National Committee may identify. 9. The Committee takes note of proposed changes in administrative arrangements which should improve coordination and efforts to implement the Convention. The role that the Child Care Board plays in overall coordination of government activities dealing with children is not clear. The Committee encourages the State party to give careful consideration to the need to provide adequate resources to, and define clearly the roles and responsibilities of the new Ministry of Social Transformation and its different units, the Child Care Board, and the National Committee for Monitoring the Rights of the Child, so as to ensure the most effective coordination and monitoring of the implementation of the Convention.
- ¹⁷ CRC Committee Belize, 2005. Para. 9 The Committee appreciates the State party's ongoing efforts to bring its domestic law into conformity with the provisions and principles of the Convention, resulting in recent legislative reforms and amendments, proposals to reform the Criminal Code and the Evidence Act and the review of the laws of Belize completed in 2003 by the National Committee for Families and Children, which will be used as the basis for further reforms. 10. The committee recommends that the State Party continue to strengthen its efforts to ensure full conformity of its domestic law with the Convention, e.g. by enacting one comprehensive children's code.
- ¹⁸ CRC Committee Grenada, 2010. Para. 8. The Committee urges the State party to take, as a matter of priority, all appropriate measures to expedite the adoption of the Status of the Child Bill, the Childcare and Adoption Bill, the Domestic Violence Bill and the Juvenile Justice Bill and to ensure adequate human and financial resources for full implementation of the provisions of these laws when adopted. 9. The Committee notes that the State party assigned the Ministry of Social Development to coordinate and implement child rights-related activities with other ministries and non-governmental organizations. However, given the multiple roles played by staff of the Ministry of Social Development due to a severe shortage of human resources, the Committee is concerned that there is no entity to focus specifically on coordination between the different ministries and between the national, provincial and local levels, as well as on the harmonization of national policies and plans of action related to child rights. 10. The Committee recommends that the State party enhance coordination and implementation of the Convention by establishing a national coordinating body that could develop a national plan of action and institutionalize and strengthen coordination.
- ¹⁹ CRC Committee Dominica, 2004. Para. 5. While noting the efforts undertaken by the State party to harmonize its legislation with regard to children, the Committee is nevertheless concerned that the existing legislation does not reflect fully the principles and provisions of the Convention. 6. The Committee recommends that the State party take all measures necessary to ensure that its legislation conform fully with the principles and provisions of the Convention, and ensure its effective implementation.
- ²⁰ CRC Committee Suriname, 2007. Para. 8 The Committee recommends that the State party consolidate its efforts to bring domestic laws into full compliance with the Convention. It urges the State party to take, as a matter of priority, all appropriate measures to expedite the adoption of bills pending with Parliament and to submit as soon as possible the draft laws or amendments to Parliament for a speedy discussion and adoption of these legislative proposals. The Committee also recommends that the State party ensure adequate human and financial resources for the full implementation of laws when approved. 10. The Committee welcomes the establishment in 2001 of the National Child Rights Bureau with the mandate, *inter alia*, to coordinate the implementation of the Convention. The Committee also welcomes the decision of the State party to reactivate the National Commission on the Rights of the Child, which will take up a coordination, advocacy and monitoring role. The Committee notes with concern, however, that the National Child Rights Bureau does not currently have sufficient human or financial resources and that also the National Commission for the Rights of the Child may not have adequate financial and human resources. The Committee is also concerned that it is not clear how these two coordinating bodies are going to cooperate. 11. The Committee recommends that the State party implement its decision to reactivate the National Commission on the Rights of the Child as soon as possible and that it ensure by all means possible that both the National Commission on the Rights of the Child and the Child Rights Bureau have adequate financial and human resources to carry out their work efficiently. The Committee further recommends that the State party ensure that these two agencies cooperate with each other in order to establish the most effective coordination of the implementation of the Convention.

to the principles and dispositions of the Convention, and oversee their actual application. Furthermore, the Committee has expressed its concern at the lack of an entity with sufficient political mandate to perform officially the tasks of leadership and harmonization of the various Ministries handling matters related to children.

In any case, it is clearly difficult to analyse current progress in legislation, institutional systems and their effectiveness in the countries of the Caribbean region through information deriving from the work of the United Nations, given that the majority of the countries in the Caribbean region are quite overdue in their obligation to report to the Committee on the Rights of the Child. (UNICEF. Eastern Caribbean, 2011). At the same time, there are serious difficulties in gaining access to data for each country, which also indicate significant institutional weakness and complicate seriously efforts both for coherent legislative and policy development, and for its implementation. Priority should be given to facilitating access to information, developing pertinent data, and building the States' technical capacity for decision making. The preparation of data systems and information production will permit, *inter alia*, the unification of efforts for the alignment of the legal frameworks, policies and institutions with the Convention on the Rights of the Child and, therefore, improve the protection of the rights of children further, including the participation of civil society in the design of policy and the monitoring and surveillance of actions in the Caribbean States (UNICEF. Eastern Caribbean, 2011).

The countries with the greatest lag in reporting their progress in the implementation of the CRC are Barbados, (the last Committee analysis was in 1999), Saint Kitts and Nevis (1999) and Saint Vincent and the Grenadines (2002). Yet, as may be observed from the analysis presented herein, the majority of Caribbean countries were analysed by the Committee prior to 2005: in other words, more than seven years have passed. Not only is this situation serious —because it implies non-compliance with a concrete obligation of those countries that have ratified the CRC²³— but also, because it indicates exclusion from the conventional United Nations surveillance and monitoring mechanisms provided for in treaties, which would enable constructive dialogue between the international organizations and the States, and include the active participation of civil society.

²¹ CRC Committee Santa Lucia, 2005. Para. 10. The Committee recommends that the State party take all necessary measures to ensure that its legislation conforms fully to the provisions and principles of the Convention. 11. The Committee takes note of the several ministries and organizations that deal with matters pertaining to children, but remains concerned that there is no established body fulfilling an official coordinating and reporting role on the Convention. 12. The Committee recommends that the State party establish a body, for example a national inter-ministerial committee on the rights of the child, which has a clearly-outlined political mandate and implementation process in order to coordinate the activities of the various ministries dealing with matters pertaining to children. In this regard, the Committee recommends that the State party seek technical assistance, from, *inter alia*, the United Nations Children's Fund (UNICEF).

²² CRC Committee Saint Kitts and Nevis, 1999. Para. 8. The Committee notes the recent efforts by the State party to undertake a review of existing legislation regarding children and the family. It is concerned, however, that domestic legislation still does not reflect fully the principles and provisions of the Convention. The Committee recommends that the State party seek to ensure that its domestic legislation conform fully with the principles and provisions of the Convention. The Committee also encourages the State party to consider the possibility of enacting a comprehensive children's rights code.

²³ Convention on the Rights of the Child. Art. 44. 1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights: a) Within two years of the entry into force of the Convention for the State Party concerned; b) Thereafter every five years. 2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned. 3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 b) of the present article, repeat basic information previously provided. 4. The Committee may request from States Parties further information relevant to the implementation of the Convention. 5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities. 6. States Parties shall make their reports widely available to the public in their own countries.

IV. Analysis of comprehensive protection system models and their functioning in selected countries of Latin America and the Caribbean

The current section of the report analyses the legislation of selected countries belonging to four subregions of Latin America and the Caribbean: Ecuador (the Andean area), El Salvador (Central America), Jamaica (the Caribbean) and Uruguay (the Southern Cone), and conducts an exploratory qualitative study through key observers to identify the critical bottlenecks in the models of comprehensive protection system in these countries. Field work was done in these countries to identify the positive aspects and the constraints presented by each comprehensive protection system model for the effective enforcement of the rights of children and adolescents. Information was compiled from a variety of sources: interviews with civil servants and civil society opinion leaders, and personnel of national human rights mechanisms, UNICEF and other international organizations. An interview handbook was used for each country, with guidelines that were flexible enough to capture the national problems identified through the various interviews, which also were influenced by the role of the observer party interviewed. In addition to the identification of critical bottlenecks in the comprehensive system models, the analysis aimed to identify the degree to which these problems might be derived from weaknesses in the underlying child-protection laws.

This current chapter is based on information collected and analyses made of the legal principles in force in each country supporting its model of comprehensive protection system for children and adolescents, and the main challenges facing comprehensive protection systems for children's rights.

A. Ecuador²⁴

The Political Constitution of Ecuador, in force since 2008, establishes a series of principles and rights for children and adolescents. In Article 15 of the Constitution, children and adolescents are included in the group that are to receive priority specialized care in both public and private matters.

The Constitution reinforces the recognition of children and adolescents as subjects of rights and obligates the State, society and the family to prioritize their comprehensive development above all, to ensure the full exercise of their rights, specifying that the best interests of the child will be heeded and their rights shall prevail over those of other persons (Art. 44).

Furthermore, the Constitution stipulates that children and adolescents shall enjoy the common rights of all human beings, in addition to the ones specific to their age, and enumerates their rights to physical and psychological integrity, an identity, name and citizenship, comprehensive health and nutrition, education and culture, sports and recreation, social security, to a family and the enjoyment of living in a family and a community, to social participation and respect for their freedom and dignity, to be consulted on matters affecting them, to receive education in their own language as a priority and in cultural contexts specific to their peoples and nationalities, and to receive information about their absent parents or family members, unless that would be harmful to their well-being. The State shall guarantee their freedom of expression and association and the free functioning of student councils and other forms of association (Art. 45).

The Constitution of 2008 represents a clear step forward in guaranteeing the rights of children by recognizing their rights and the principles of the CRC at the highest level of the legal pyramid, and therefore, should orient other legal norms of lesser hierarchy.

1. The Code for Children and Adolescents of 2003 and the decentralized comprehensive protection system

On January 3, 2003, the National Congress adopted the Code for Children and Adolescents, which, in its first article, establishes, as its general purpose, the comprehensive protection that the State, society and the Family must guarantee to all children and adolescents living in Ecuador, in order to achieve their complete development and the full enjoyment of their rights. In consequence, the Code regulates the exercise of rights, duties and responsibilities of children and adolescents and the means for making them effective, guaranteeing and protecting them in accordance with the Principle of the Best Interests of the Child and the doctrine of comprehensive protection.

Article 12 of the Code for Children and Adolescents establishes the absolute priority of children and adolescents in the formulation and implementation of public policies and the provision of resources, ensuring their preferential access to public services and to any kind of attention they might need. It also establishes clearly that children and adolescents are subjects of rights, and that the rights of children and adolescents are matters of public policy, interdependent, indivisible, inalienable, and non-negotiable (Arts. 15 and 16).

The Code for Children and Adolescents reflects the CRC adequately, in recognizing the principles of best interests, participation, progressive exercise of rights according to the degree of development and maturity, and survival and development. Also, Section III —on rights, duties and

²⁴ We are grateful for the cooperation, information and opinions of the following persons who were consulted and/or interviewed for the preparation of this chapter on Ecuador a) Sara Oviedo, Executive Secretary of the National Council on Children and Adolescents, and Ecuador's current candidate for the Committee on the Rights of the Child, b) Tamara Merizalde, Executive Director of INFA-National Institute for Children and the Family – Ministry of Economic and Social Inclusion, c) Catalina Mendoza Eskola, Executive Secretary of the Cantonal Council for Children and Adolescents of the city of Cuenca, d) Berenice Cordero. Investment, policies and protection, UNICEF Ecuador, e) Santiago Cruz, Technical Director of CNNA, f) Lorena Chávez Ledesma, General Coordinator of Special Protection of the MIES INFA, and g) Rossana Viteri, Director of Plan International Ecuador.

guarantees— is divided into chapters on rights related to survival, rights related to development, rights to protection and rights to participation.

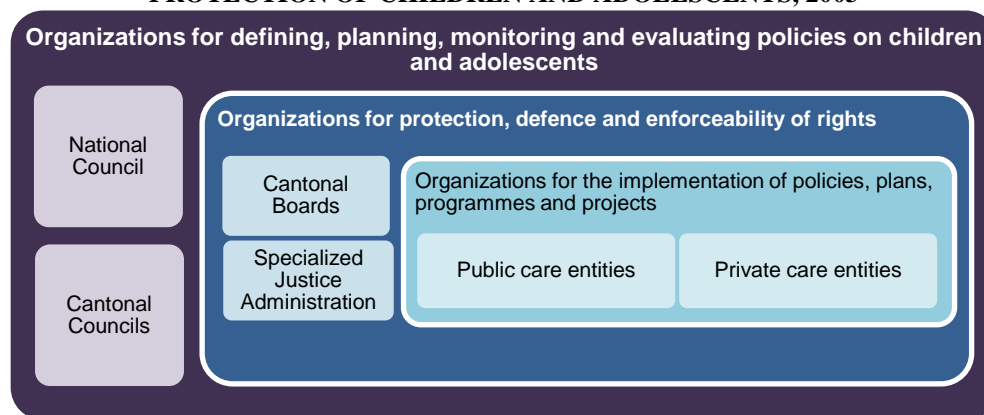
The Third Book of the Code for Children and Adolescents establishes the Decentralized National System for the Comprehensive Protection of Children and Adolescents, which it defines as a harmonized and coordinated set of organizations, entities, and public and private services that define, implement, control and evaluate policies, plans, programmes and actions with the intention of guaranteeing the comprehensive protection of children and adolescents.

The Code for Children and Adolescents establishes five types of comprehensive protection policy: (1) Basic, fundamental social policy referring to the universal conditions and services to which all children and adolescents have a right; (2) Policies on emergency care with respect to services for children and adolescents in extreme poverty, severe socioeconomic crisis, or affected by natural disaster; (3) Policies for special protection, aimed at preserving and restoring rights in situations of threat of maltreatment, abuse and/or sexual exploitation; (4) Policies for the defence, protection and enforceability of the rights of children and adolescents; and (5) Policies on participation, oriented towards the construction of citizenship.

The Code for Children and Adolescents establishes that the Decentralized National System for the Comprehensive Protection of Children and Adolescents is comprised of three levels of organization (Art. 192):

- Organizations for the drafting, planning, monitoring and evaluation of policies on children and adolescents: the National Council on Children and Adolescents, and the Cantonal Councils on Children and Adolescents.
- Organizations for the protection, defence and enforceability of rights: Cantonal Rights Protection Boards, Administration of Specialized Justice for Children and Adolescents, and the Community Defenders of Children and Adolescents.
- Organizations for implementing policies, plans, programmes and projects: public and private welfare entities.

FIGURE 1
ECUADOR: CODE FOR CHILDREN AND ADOLESCENTS,
DECENTRALIZED NATIONAL SYSTEM FOR THE COMPREHENSIVE
PROTECTION OF CHILDREN AND ADOLESCENTS, 2003



Source: Prepared by the author.

The National Council on Children and Adolescents is a national collegiate body comprised equally of representatives of the State and civil society, in charge of overseeing the fulfilment of the rights established by law. It enjoys legal status under public law, and organizational, functional and budgetary autonomy. It is represented legally by its President, who is the Minister of Economic and

Social Inclusion (replacing the former Ministry of Social Welfare) and will have a Vice-president who will be elected from among the four representatives of civil society (Art. 194).

The Code establishes that the decisions of the National Council are binding for component institutions within the System (Art. 194 *in fine*).

The Council is constituted as the lead organization of the Decentralized National System of Comprehensive Protection of Children and Adolescents, whose main function is the definition and surveillance of compliance with public policy for the comprehensive protection of children and adolescents. In October 2004, the National Council on Children and Adolescents approved, by Resolution N° 022, The National Ten-Year Plan for the Comprehensive Protection of Children and Adolescents, 2004-2014 —the first planning document to incorporate the rights approach (Commission on the Rights of the Child. Fourth periodic report that the States parties were required to present in 2007. Ecuador, 2009, Para. 26).

Its functions, *inter alia*, include: (1) formulating the universal national directives for the organization of the Decentralized National System for Comprehensive Protection and coordinating its application with the Cantonal Councils; (2) promoting the creation and strengthening of the Cantonal Councils on Children and Adolescents and the Cantonal Boards for the Protection of Rights; (3) ensuring that all executive, judicial, legislative and administrative acts respect and guarantee the rights of children and adolescents; (4) ensuring that the budgetary assignments by the State and other sources are sufficient for the execution of policies set by the National Council, and formulating recommendations in this regard; and (5) managing the National Fund for the Protection of Children and Adolescents, and making timely transfers of resources corresponding to Cantonal Protection Funds (Art. 195).

The National Council has an Executive Secretariat that is a non-decision-making, technical-administrative body in charge of coordination between the National Council and public and private organizations and institutions (Art. 199).

The Cantonal Councils on Children and Adolescents are canton-level, collegiate organizations comprised in equal numbers of representatives of the State and civil society, in charge of preparing and proposing local policies to the Cantonal Council. They have formal legal status under public law and organizational, functional and budgetary autonomy, and the municipal government is responsible for their establishment. They are presided over by the mayors, and have vice-presidents which, as in the National Council, are elected from among the representatives of civil society (Art. 201).

Among the main functions of Cantonal Councils are the preparation and proposal of local policy and plans for the protection of the rights of children and adolescents, and the evaluation of the application of national and local policy on protection. They must also denounce, before the competent authority, any action or omission that may attempt against those rights whose protection they defend, and propose policies for the communication and dissemination of information on the rights of, and guarantees, duties and responsibilities to, children and adolescents (Art. 202).

There are now Cantonal Councils on Children and Adolescents functioning in 217 of the 221 cantons currently in existence; these are specialized organizations that have become local models for the protection of the human rights of children and adolescents (CNNA, 2012a).

The creation of the National Consultative Council of Children and Adolescents —comprised of children and adolescents, and recognized by the Code for Children and Adolescents in Article 198— has been of special importance. The National Consultative Council is comprised of five children and/or adolescents elected from among members of the National Children's and Adolescents' movement which, in turn, is composed of one member plus an alternate representing each province. Article 2 of Resolution N° 001, CNNA 2005, declares that, "The members of the National Consultative Council of Children and Adolescents are elected through a democratic, participatory process implemented in each of the country's provinces, beginning at the national level. Each Consultative Council shall function for a period of two years." (See [online]: <http://www.sndpina.gob.ec/>).

Three Consultative Councils have been created since July 2007, with the participation of more than 180 cantons, the Third Council taking office in June 2012 (CNNA, 2012). There also are numerous Cantonal Consultative Councils. The Ecuador Report to the Committee on the Rights of the Child in 2007 stated that there were around 80 Cantonal Consultative Councils for Children and Adolescents in the country (Committee on the Rights of the Child. Fourth periodic report that the States parties must present in 2007. Ecuador, 2009, Para. 60).

Title IV of Book III of the Code places the Cantonal Boards and other organizations in charge of the protection of the protection, defence and enforceability of rights, and Title X establishes the Administration of Specialized Justice for Children and Adolescents.

The Cantonal Boards for the Protection of Rights are operational bodies with administrative and functional autonomy whose public function is the protection of the individual and collective rights of children and adolescents in their respective cantons. These shall be organized and financed by each municipality (Art. 205).

The Boards for the Protection of Rights are responsible for: (a) Preparing the administrative protection measures that are necessary for protecting threatened rights or restoring violated rights; Investigating, ex officio or upon request; (b) Overseeing the implementation of their measures; (c) Taking the necessary action before the competent authorities in cases of non-compliance with their decisions; and (d) Denouncing before the competent authorities any violations, whether administrative or penal, committed against children and adolescents (Art. 206).

The Administration of Specialized Justice for Children and Adolescents is comprised of the Children's and Adolescents' Courts whose actions and resolutions must adhere strictly to the principles, rights, duties and responsibilities established in the Code for Children and Adolescents (Arts. 255 and 256). A Technical Office —comprising medical doctors, psychologists, social workers and professionals specialized in working with children and adolescents— will operate in each judicial district as an auxiliary body to the Administration of Specialized Justice for Children and Adolescents (Art. 260).

Finally, the Code establishes that the Ombudsman's Office, the Community Ombudsman's Offices for Children and Adolescents, and the Specialized Police for Children and Adolescents form part of the Comprehensive National Protection System (Art. 208).

The public and private care-provision entities in the National Protection System —defined as organizations for the implementation of policies, plans, programmes and projects— are in charge of implementing policies, plans, programmes, projects, actions, and protective and punitive measures, in accordance with the policies and plans defined by the competent organizations and the instructions of the authority that legalized their functioning (Arts. 212 and 213).

Articles 298 and 304 give detailed explanations of the origin of the budgetary resources for financing the State institutions of the National Protection System created by the Code for Children. The budget of the National Council for Children and Adolescents shall be financed with resources from the State's National Budget, and it is explicitly established that the State must provide the funding for the operation of the National Council. At the level of the Cantonal Council, the financing must come from the Municipality.

The National Fund for the Protection of Children and Adolescents is created as well, with the main function of financing programmes and projects for the care of children and adolescents. The Fund is to be created through donations —both private and public— deriving from rates and taxes and international cooperation.

The report presented by Ecuador to the Committee on the Rights of the Child stated, with respect to the level of implementation of the Decentralized Protection System, that a total of 106 Cantonal Councils on Children and Adolescents had been created by 2008, along with 18 Cantonal Boards for Rights Protection (Committee on the Rights of the Child. Fourth periodic report that the States parties should present in 2007. Ecuador, 2009, Para 56). The 2011 accountability report stated that, during the reporting period, another fifty-eight cantons had set up Cantonal Councils for Children

and Adolescents, Cantonal Boards for the Protection of the Rights, and Community Ombudsman's Offices (CNNA, 2012).²⁵

2. National Equality Councils and the possible reform of the institutional framework for the decentralized national comprehensive protection system

Article 156 entered into effect with the approval of the Constitution of 2008, establishing the creation of the National Equality Councils as the organizations responsible for ensuring the full enforcement and exercise of the rights consecrated in the Constitution and in international human rights instruments. The National Equality Councils will have faculties under law for the formulation, mainstreaming, observance, monitoring and evaluation of public policies related to gender, ethnic, generational, intercultural, disability and human mobility -related issues. The Councils, in the implementation of their missions, will coordinate with the lead executing entities and organizations at all levels of Government specializing in the protection of rights.

Concurrently, the Sixth Transitory Disposition of the Constitution establishes that the National Councils for Children and Adolescents, Disabilities, Women, Indigenous Peoples and Nationalities, Afro-Ecuadorians and Montubios, will become National Councils on Equality.

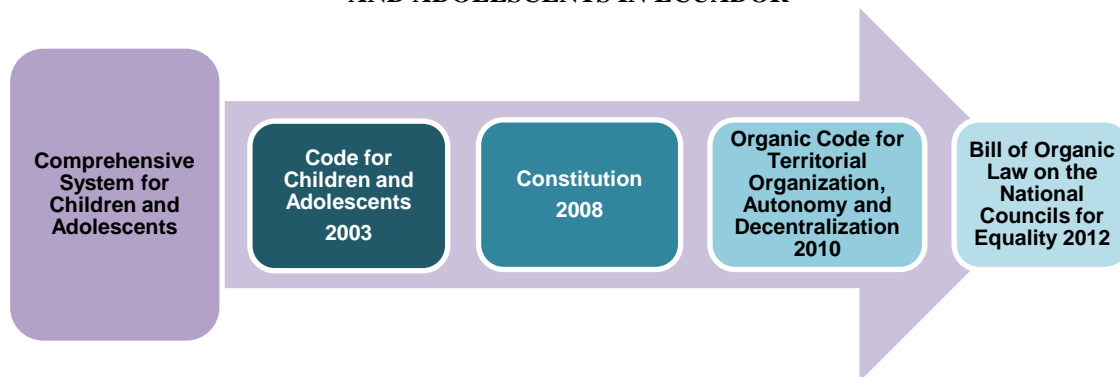
In compliance with the constitutional mandate, the Government of Ecuador presented before the National Assembly in 2012, a Bill of Organic Law on the National Equality Councils to regulate their constitution and functioning. The bill of law on the Equality Councils is intended to regulate the new institutional structure that will replace the Councils for the different population subgroups, including the cohort of children and adolescents. The project stipulates specifically that the assets and liabilities, staff and duties of the National Council on Children and Adolescents shall be transferred to the respective National Equality Council.

The functions of the Cantonal Boards for the Protection of Rights created by the Code for Children and Adolescents will be exercised by the Ombudsman's Office, and the functions of the Cantonal Councils on Children and Adolescents will be transformed into Cantonal Councils for the Protection of Rights. Furthermore, the Organic Code on Territorial Organization, Autonomy and Decentralization establishes, in Article 598, that each decentralized, autonomous metropolitan and municipal government shall organize and finance a Cantonal Council for the Protection of Rights consecrated in the Constitution and international human rights instruments. The Cantonal Councils for the Protection of Rights will have the following functions: the formulation, mainstreaming, observance, monitoring and evaluation of municipal public policy for the protection of rights, harmonized with the public policies of the National Councils on Equality. Moreover, Article 148 establishes that decentralized autonomous governments will exercise the powers necessary for ensuring the rights guaranteed to children and adolescents, both by the Constitution and according to the law regulating the Decentralized National System of Comprehensive Protection for Children and Adolescents. It also establishes that the organization and proactive participation of children and adolescents will be guaranteed.

The bill of law before the National Assembly also establishes various dispositions reforming and/or abrogating parts of the Code for Children, distributing the functions corresponding to the National Council on Children and Adolescents among various Ministries. Most of the functions would be transferred to the Ministry in charge of matters of economic and social inclusion as the lead entity for public policy on comprehensive social protection.

²⁵ According to information provided by the key actors interviewed for this study, up to now 222 Cantonal Councils, 80 Cantonal Boards and 800 Community Defenders of Children and the Family have been created.

FIGURE 2
CHANGES IN THE LEGAL PRINCIPLES SUPPORTING THE DECENTRALIZED MODEL OF
THE SYSTEM OF COMPREHENSIVE PROTECTION OF CHILDREN
AND ADOLESCENTS IN ECUADOR



Source: Prepared by the author.

The Agenda for the Equality of Children and Adolescents 2012-2013, approved on 26 July 2012 by the National Council on Children and Adolescents,²⁶ establishes that the National Council for Generational Equality would be structured along the same lines as the National Council on Children and Adolescents. It also makes it clear that, until the National Council for Equality is up and running, the National Council on Children and Adolescents shall continue in the full exercise of all its functions. (CNNA, 2012a). The accountability report 2011 of the National Council on Children and Adolescents also manifested that it was in a phase of transition towards the transfer of functions to the Council for Generational Equality (CNNA, 2012).

If the bill of law under consideration were to be passed—and the National Council on Children and Adolescents become the Council on Generational Equality—it should be stipulated that, no matter what organization should exercise the function of leadership in matters of children and adolescents, the Council on Generational Equality shall exercise the functions of formulation, mainstreaming, observance, monitoring and evaluation of public policy, except that of leadership currently held by the National Council on Children and Adolescents. This means that the necessary powers currently assigned to the National Council on Children and Adolescents by the Code for Children and Adolescents for the National Council on Children and Adolescents must be assumed by the new lead entity—probably the Ministry of Economic and Social Inclusion—since Art. 154 of the Constitution states that the Ministers of State shall exercise the leadership of public policy in the area under their responsibility.

Under the current institutional structure, the lead entity for public policy on special protection, family and social protection is the Ministry of Economic and Social Inclusion (MIES). The branch that manages public policy on children and adolescents is the current Institute for Children and the Family (INFA). INFA, created as a result of the reform of the former INNFA, is attached to MIES, whose fundamental mission is to guarantee the rights of children and adolescents, and to apply the plans and implement the measures which the Government ordains in the area of care and comprehensive protection for children and their families, especially the national policies on child development (population aged 0-5 years), special protection and participation (Decree 1170 of 2008). These changes led the Committee on the Rights of the Child to state, on the occasion of the adoption of its concluding observations on Ecuador, that it viewed with satisfaction the reform of the Institute of Children and the Family (INFA), its public nature, the support it receives from the national budget and the participation of civil society (Committee, 2010. Ecuador Para.15).

²⁶ The Agenda for Equality is defined as the technical-political instrument that formulates public policy on equality and the proper treatment of children and adolescents.

Some of the sources consulted expressed their concern at the proposal to replace the powers of the Cantonal Councils on Children and Adolescents and the Cantonal Boards for the Protection of Rights by other institutions, according to the Bill on National Equality Councils. They mentioned the ambiguity that has been present since 2008 with respect to the possible reform and replacement of the institutional structure comprising the protection system. This ambiguity has had repercussions in the creation and/or correct functioning of the Cantonal Councils on Children and Adolescents and the Cantonal Boards for the Protection of Rights, because of the proposals by the Government to replace these institutions.

Specifically, with respect to the possible changes to the Protection System, the Committee on the Rights of the Child, in its 2010 concluding observation and prior to the presentation of the bill of law on the Equality Council, manifested its concern at the information provided by Ecuador, in the sense that the National Council and the Decentralized National System for the Protection of Children and Adolescents, created in 2003, would be subordinate to a system of inclusion and equity in the general sphere covering all areas of social policy, as stipulated in the Constitution of 2008.

TABLE 2
MAIN CHALLENGES TO THE DECENTRALIZED ECUADOR MODEL OF A NATIONAL SYSTEM FOR THE COMPREHENSIVE PROTECTION OF CHILDREN AND ADOLESCENTS

National Council on Children and Adolescents	Duplication of powers, as the 2003 Code for Children and Adolescents determines the function of formulation of public policy for the National Council and the Cantonal Councils, while there are other legal bodies that also carry out this function for some Ministries. With the Ministry of Economic and Social Inclusion (MIES) exercise of the presidency of the National Council on Children and Adolescents, the frequent changes of the political nature of MIES affect different directives and policies of the National Council.
Cantonal Councils for Children and Adolescents	The organizations' process of implementation established in the Code for Children and Adolescents has been characterized as unequal. Not all the cantons have the necessary conditions and economic resources to guarantee the adequate creation of these institutions called for in the Code.
The Cantonal Boards for the Protection of Rights (JCPD)	The functional autonomy the Code for Children and Adolescents provides means that each Cantonal Board acts independently, with varied responses by the different boards in similar cases. There have not been enough accountability mechanisms created to determine the incidence of their actions in favour of the restoration of rights. 86% of the Cantonal Boards responded that they did not have enough support, with the majority of the provinces around the country sharing this difficulty. The possible reform of the Protection System and possible replacement of the boards in various municipalities has detained their process of constitution.
Legal	In the creation of the system, some key actors of the justice administration system with important roles in certain areas were not included: for example, the Criminal Court Judges that try sexual crimes against children and adolescents or the specialized Attorneys General in sexual and intra-family violence.
Budget	Lack of mechanisms for coordination with other organizations outside the Protection System that are key for financing the system – for example, the Ministry of Finance, INEC, etc. Difficulty in acquiring and/or maintaining the municipal budgetary assignation for the implementation and/or functioning of organizations like the Cantonal Councils on Children and Adolescents and the Cantonal Boards for the Protection of Rights, due to the lack of comprehension on the part of municipalities that the exercise of public policy on comprehensive protection of children and adolescents is their responsibility.
General	There is no exhaustive, systematic evaluation and monitoring of the performance of the system If the National Council on Children and Adolescents were to be replaced by the Council on Inter-Generational Equality, there would be an underlying concern that, in universalizing the policies, the work on specificity could be lost. If the bill of law on the Equality Councils were to be passed, the Consultative Councils of Children and Adolescents would disappear from the project, with no contemplation of their being replaced with another, similar organizational entity. The process of passing the Law on Councils has been delayed, generating setbacks in the progress of the Comprehensive Protection System for Children and Adolescents.

Source: Prepared by the authors.

The Committee recommended that special attention be paid to the need for the policy, programmes and human resources for children to be specific and specialized, without prejudice of aspiring to a greater institutional and budgetary rationale. It also requested that high priority and clearly identifiable consideration be given to the rights of children within the central governmental structure and the decentralized government system, all of whose competent departments should have concrete faculties and powers in matters of child rights. In this regard the Committee recommended that, in the new national system for inclusion and social equity, the existing Decentralized National System for Comprehensive Protection of Children and Adolescents be respected and strengthened. The Committee basically urged that the specificity of the Decentralized National System for the Comprehensive Protection of Children and Adolescents be maintained (Committee, 2010. Ecuador Para. 12).

B. El Salvador²⁷

In 2009, El Salvador passed the Law on Comprehensive Protection of Children and Adolescents (LEPINA), the first article of which establishes as its purpose the guarantee that all children and adolescents enjoy the full exercise of their rights, to which effect it creates the National System of Comprehensive Protection of Children and Adolescents, through the shared participation and responsibility of the family, the State and civil society, based on the Constitution of the Republic and the International Human Rights Treaties in force in El Salvador, especially those of the CRC.

Specifically, LEPINA recognizes that children and adolescents are subjects of rights. Some of the main principles of the CRC are adopted in LEPINA, in its affirmation that the rights and guarantees recognized for children and adolescents shall be exercised progressively by them, taking into consideration the gradual development of their faculties (Art. 10); the principle of non-discrimination, equality and equity, including the possibility of establishing special measures of positive action in favour of specific groups or collectives of children and adolescents (Art. 11). Furthermore, the Principle of the Best Interests of the Child is expressly recognized, not only in the interpretation, application and integration of all laws, but also in the pronouncement of juridical and administrative decisions, the implementation and evaluation of public policies, and the consideration of this principle as obligatory for all legal, administrative or private authorities (Art.12).

With respect to the maximum assignation of resources required by Article 4 of the CRC, LEPINA establishes the principle of absolute priority, by which the State must prioritize the guarantee of all the rights of children and adolescents through their preferential consideration in public policies and the budgeting of resources (Art. 14).

Article 110 decrees that the best interests of the child shall be the principle that must guide State decisions in the National Policy on the Comprehensive Protection of Children and Adolescents, with guidelines being set to guarantee the effective priority assignation of State resources, at both the national and local levels.

LEPINA recognizes the rights of children and adolescents extensively, under the following groupings: Section I guarantees the right to comprehensive survival and growth, which includes life and health, social security and the environment; Section II recognizes the right to protection, including personal integrity and freedom and the protection of working adolescents; Section III recognizes the

²⁷ We are grateful to the following persons who were consulted and/or interviewed in the preparation of this chapter on El Salvador: a) Carlos Rafael Urquilla Bonilla, Secretary of Social Inclusion, b) Matilde Guadalupe Hernández de Espinoza, Executive Director of the Secretariat of Social Inclusion and President of the Board of Directors of the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), c) Zaira Navas, Executive Director of the National Council on Children and Adolescents, d) Luis Enrique Salazar Flores, Executive Director of ISNA, e) María Teresa Delgado de Mejía, Protection Specialist UNICEF- El Salvador, f) Claudia Robles, UNICEF Social Policies Specialist – El Salvador, and g) Verónica Simán UNFPA Deputy Representative, El Salvador.

right to development, which includes the right to personal development, education and culture; and Section IV, the right to participation.

Therefore, it may be said that the comprehensive protection paradigm is reflected in the legislative model proposed by LEPINA, as it emphasizes these four groups of rights —to survival, to development, to participation and to protection.

Book II establishes the National System for the Comprehensive Protection of Children and Adolescents, which is defined as the coordinated framework of organizations, entities and institutions —public and private— whose policies, plans and programmes have as their main objective the guarantee of the full enjoyment of the rights of children and adolescents in El Salvador (Art. 103).

LEPINA establishes the typology of public policies in the following way:

- (a) Basic social policies: establish the minimum, universal conditions to guarantee the development of the population, such as health, housing, social security and employment.
- (b) Social assistance policies: for the protection of children and adolescents in situations of social exclusion.
- (c) Special protection policies: consisting of State actions for the protection of children and adolescents and the restoration of their rights that are threatened or have been violated.
- (d) Legal protection policies: designed to establish or maintain the legal mechanisms permitting the defence of the rights of children and adolescents.
- (e) Policies on participation: intended for involving children and adolescents directly in their own development and that of their community or State.

LEPINA (Art. 112) decrees that the following principles must be heeded in the National Policy on the Comprehensive Protection of Children and Adolescents:

- the best interests of the child and adolescent;
- absolute priority;
- comprehensiveness of the protection of rights;
- social participation that includes children and adolescents;
- equality and non-discrimination;
- gender equity.

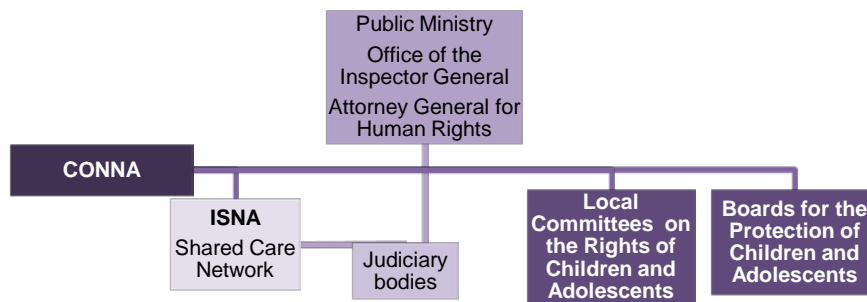
Additionally, LEPINA establishes, in Article 113, the minimum essential contents of child protection policy, including the implementation of mechanisms guaranteeing the effective and efficient coordination of State decisions with public administration, at both the national and local levels, the immediate and permanent decentralization of care services for children and adolescents, and the gradual decentralization of the mechanisms for preparing and overseeing public decisions on matters of comprehensive protection, and the implementation of State mechanisms guaranteeing the assignation of the necessary material and financial resources for the comprehensive protection of children and adolescents.

The composition of the Protection System is defined explicitly by LEPINA:

- The National Council on Children and Adolescents
- Local Committees on the Rights of Children and Adolescents
- The Boards for the Protection of Children and Adolescents
- The Promotion and Assistance Associations

- The El Salvadoran Institute for the Comprehensive Development of Children and Adolescents
- The Judiciary
- The Office of the Inspector General of the Republic
- The Office of the Attorney General for the Defence of Human Rights
- Members of the Shared Care Network.

FIGURE 3
THE LAW ON COMPREHENSIVE PROTECTION OF CHILDREN AND ADOLESCENTS
(LEPINA), EL SALVADOR NATIONAL COMPREHENSIVE PROTECTION SYSTEM
FOR CHILDREN AND ADOLESCENTS



Source: Prepared by the author.

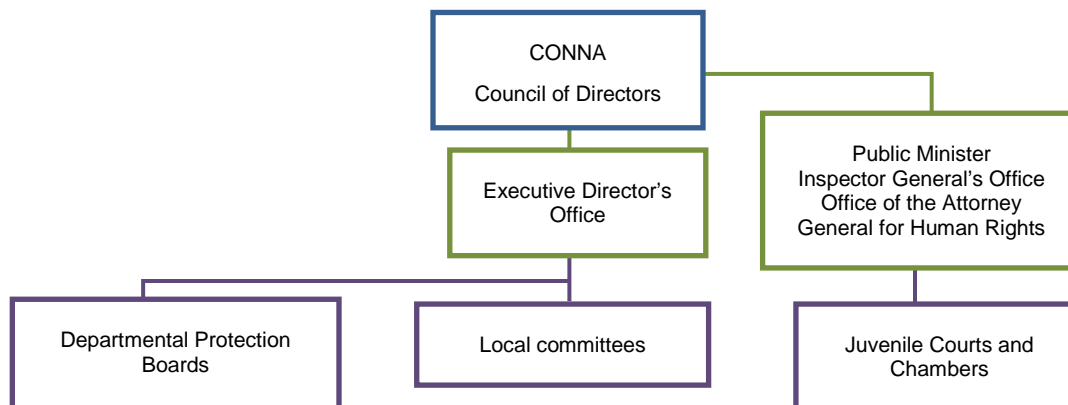
LEPINA declares the functioning of the National System for the Comprehensive Protection of Children and Adolescents to be in the public interest, and that both the Central Government and the Municipalities are obligated to collaborate in the implementation of the Protection System. Furthermore, it stipulates that all Government and Municipal civil servants, organizations, institutions and agencies are obligated to collaborate with and support the National Council on Children and Adolescents, its Local Committees and Protection Boards, and provide them with any information that might be requested relating to the current status of children and adolescents (Arts. 106 and 107).

The National Council on Children and Adolescents (CONNA) is the maximum authority of the Comprehensive Protection System, an institution with formal legal existence in public law, its own patrimony, and autonomy in technical, financial and administrative matters. The primary functions of CONNA are the design, approval and oversight of the National Policy on Comprehensive Protection of Children and Adolescents, coordination of the National System for the Comprehensive Protection of Children and Adolescents, and the effective defence of the rights of children and adolescents (Arts. 134 and 135).

In addition, CONNA must report periodically to the Ministry of Foreign Affairs, in order to provide data on compliance with the commitments acquired under the CRC and other international instruments in force (Art. 136).

The supreme body of CONNA is the Council of Directors, headed by an Executive Director who is the executive and administrative agent. The Council of Directors is comprised of the Ministers of Public Security and Justice, Finance, Education, Labour and Social Welfare, and Public Health and Social Assistance, and the heads of the Office of the Inspector General of the Republic, the Corporation of Municipalities of the Republic of El Salvador, and four representatives of civil society elected by the Shared Care Network (Art. 135).

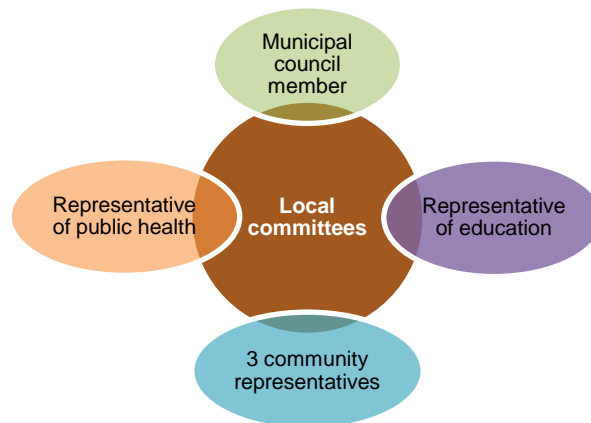
FIGURE 4
THE NATIONAL COUNCIL ON CHILDREN AND ADOLESCENTS
AND THE PROTECTION SYSTEM



Source: Prepared by the author.

The Local Committees on the Rights of Children and Adolescents are municipal administrative bodies —which are supposed to function in all municipalities and whose primary functions are to develop local policies and plans in the area of child and adolescent rights, and oversee the guarantee of the collective rights of all children and adolescents (Arts. 153 and 154). They also shall oversee the implementation of national policy, and may propose the creation of new protection boards and denounce rights violations committed by care-providing entities (Art. 155).

FIGURE 5
EL SALVADOR: APPOINTED MEMBERSHIP TO LOCAL COMMITTEES
ON THE RIGHTS OF CHILDREN AND ADOLESCENTS



Source: Prepared by the author.

The Boards for the Protection of Children and Adolescents are departmental administrative units of CONNA, with technical autonomy, whose primary function is to protect the rights of children and adolescents at the local level (Art. 159).

LEPINA Article 160 establishes that CONNA must create, organize, maintain and finance at least one Protection Board per Department. The Protection Boards are comprised of three or more members, with at least one lawyer and members involved in social work, who will be selected and appointed to their positions by CONNA.

The Protection Boards have the following functions: (a) to be knowledgeable in their field of competence —ex officio or upon request— of the threats or individualized violations of the rights of children and adolescents; (b) to dictate, and oversee the application of, the protective administrative measures necessary for protecting the threatened or violated rights; (c) to record the decreed protective measures; and (d) to require the care-providing entities, Local Committees or other social actors to take the necessary actions to guarantee the rights of children, adolescents or their families (Art. 161).

The funding of the Local Committees and Protection Boards shall be included in the budget prepared by CONNA, which will be submitted, through the corresponding authorities, for the respective approval of the Legislative Assembly (Art. 151).

Chapter IV of LEPINA establishes the Shared Care Network, defined as the coordinated set of care-providing entities. Its members' main functions are the protection, care, defence, study, promotion and dissemination of the rights of children and adolescents. The members of the Shared Care Network participate in the execution of National Policy on Comprehensive Protection of Children and Adolescents, local policies, and in cases authorized by this Law, the enforcement of protection measures (Art. 169).

The Shared Care Network and the actions of its members shall be coordinated and supervised by the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA) (Art.170).

The entities involved in comprehensive care in the Shared Care Network may be of a private, public or mixed nature. All the care-providing entities must be registered and their programmes accredited before CONNA. This registration of care entities denotes the administrative authorization for their operation (Arts. 171 and 172).

ISNA shall supervise the performance and functioning of the programmes of the care-providing entities, specifically to verify the status of the rights of children and adolescents admitted to temporary foster care. Furthermore, CONNA shall supervise the actual fulfilment of the responsibilities conferred to ISNA by this law (Art. 178).

FIGURE 6
THE SALVADORAN INSTITUTE FOR THE COMPREHENSIVE DEVELOPMENT OF CHILDREN AND ADOLESCENTS (ISNA) AND THE SHARED CARE NETWORK



Source: Prepared by the author.

LEPINA establishes the continuity of the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), created by Legislative Decree N° 482 of 1993 and transformed into a public care-provision entity, fully integrated into the Comprehensive Protection System through the Shared Care Network. ISNA is a legal body governed by public law with autonomy in technical, financial and administrative matters (Art. 179).

The main functions of ISNA, *inter alia*, are: (a) coordinating and supervising the members of the Shared Care Network, and informing CONNA of infringements and irregularities committed by the Network; (b) disseminating and promoting knowledge concerning the rights of, and commitments to, children and adolescents, as well as the reports of the United Nations Committee on the Rights of the Child; (c) implementing programmes for the protection, care and education of children and adolescents whose rights have been violated or are being threatened; and (d) providing the services necessary for the implementation and supervision of the protection measures established by the administrative authorities.

ISNA must act in conformity with the directives of the National Policy on the Comprehensive Protection of Children and Adolescents, which must be reflected in its programmes and services.

The system is complemented by the Specialized Courts and the Specialized Chambers for Children and Adolescents that intervene and are authorized to apply LEPINA in legal processes.

The Public Prosecutor's Office is empowered to request legal protection of the rights of children and adolescents. The Office of the Inspector General of the Republic provides legal assistance to children and adolescents, representing them before the law in defence of their rights, when required by legal disposition or when the mother, father, representative or guardian cannot, or should not, do so in the best interests of the child or adolescent. Furthermore, it shall ensure that due assistance is provided to child and adolescent victims of crimes. The Office of the National Counsel for the Defence of Human Rights shall duly inform the Office of the Inspector General of the Republic when it becomes aware of the violation of, or threat to, the rights of children and adolescents, so that the relevant legal action may be taken (Arts. 219 and 220).

There exists an independent human rights mechanism for overseeing the fulfilment of human rights, both through the work of the Office of the National Counsel for the Defence of Human Rights, and that of the Deputy National Counsel for the Defence of the Rights of Children and Youth, a branch of the Office for the Defence of Human Rights. The Committee on the Rights of the Child has recognized the work of this mechanism in its observations, and the fact that it has developed a methodology for working with children in the Juvenile Units for the Dissemination of Human Rights, in which juveniles participate, and which has had repercussions on communities, schools and universities (Committee 2010, El Salvador, Par. 15).

There is no annual assignation or specific commitment established in LEPINA for the financial and budgetary functioning of the Protection System, but rather, the usual formula with an annual assignation for its operations dispensed through the National Budget, in addition to other funding sourced either privately or from international cooperation (Arts. 149 and 150).

1. Delays in the implementation of the protection system

As may be seen, LEPINA establishes a System of Comprehensive Protection which, on one hand, supplants an existing institution like ISNA and, on the other, creates a new institutional structure: CONNA, the Local Committees (of which some local institutional structure already existed in some municipalities) and the Protection Boards. The complexity and, above all, the need for resources for installing and implementing the system have been the main reasons for the delay in its introduction.

The system should have come into operation at the beginning of 2010. However, on 15 April 2010, at the request of the Government, which argued that it could not provide the resources for installing the system, the Legislative Assembly issued Legislative Decree 320 stipulating that Book I of the Law covering the rights of children and adolescents would enter into force, while all of Book II — that established the creation of CONNA as the lead entity for the law and the National System of Comprehensive Protection of Children and Adolescents— would be postponed until 1 January 2011. At the same time, it also gave ISNA the faculty to take administrative protection measures until 1 January 2011. Although CONNA should have been installed at the beginning of 2011, the delay has continued. The Council of Directors was created, but has no budget. According to the Executive Director

of CONNA, although the first budgetary assignation was received at the end of 2011, yet on that date, the institutional structure for creating the Comprehensive Protection System had not yet been created. So, in order to fill the institutional gap, the Legislative Assembly issued another transitory legislative decree —N° 581 of 6 January 2011— in which the competency for deciding on administrative protection measures was assigned to ISNA until such time as the Board were created and until 1 January 2012.

In 2012, the process was accelerated and, finally, on 6 May 2012, the Executive Director of the National Council on Children and Adolescents (CONNA) was sworn in and the new civil society representatives to the Council of Directors were selected.

The implementation and complete functioning of the system is going to pose a major challenge, given that CONNA, in its role as lead entity and maximum authority of the National System of Comprehensive Protection, is at the phase of installing its organizational structure and preparing the National Policy on Comprehensive Protection of Children and Adolescents²⁸ and developing the procedures and instruments to govern the bases of the System, involving all its actors. On 1 March 2012, the Council of Directors of CONNA approved the Regulation for the Organization and Functioning of the Shared Care Network, and adopted the regulations on the Protective Boards for Children and Adolescents.

According to the sources consulted, around fifty per cent of the institutional structure established by LEPINA is expected to be set up in 2013. Protection Boards are now functioning in five of the fourteen departments. According to the source consulted at CONNA, nine Protection Boards would have been installed by the end of 2012. The creation of the Local Committees would take longer, as more budgetary resources were needed and bylaws must be passed to regulate their functioning. CONNA is working on technical tools for those committees. Despite the fact that a Local Committee should be functioning in each of the country's 262 municipalities, the first phase of the plan creates only between twenty and thirty Committees.

2. Challenges posed by the comprehensive protection model created by LEPINA

There are problems related to the model of the system that legally supports LEPINA other than its implementation. One of the aspects presenting the greatest challenge is the link between CONNA, as the lead entity for national policy and authority of the system, and ISNA, which is part of the Protection System and is in charge of implementing and providing child protection services through the Shared Care Network. There are opposing views on the roles that should be played by these two autonomous institutions.

On the one hand, ISNA is perceived as an institution that has represented the protection system in the past and still retains some practices that do not adapt to the LEPINA comprehensive protection perspective. Some of the persons consulted for the present study expressed their agreement and satisfaction that, while LEPINA assigns ISNA the coordination and supervision of the members of the Shared Care Network, that organization at the same time must report to CONNA any infringements and irregularities committed by members of the Network, in order to determine the extent of their liability. They affirm that CONNA registers the members of the Shared Care Network, certifies their programmes, and issues sanctions against them when necessary (Art. 135, clauses 5 and 6) in the exercise of its function as maximum authority.

²⁸ According to information provided by CONNA, the process of constructing the National Policy on Children and Adolescents has already begun, and is being implemented through training and awareness-raising campaigns with staff of the National System for the Comprehensive Protection of Children and Adolescents, a consultation in 55 municipalities where problems and situations threatening the rights of children and adolescents in their localities, and focal groups with children and adolescents in conditions of high social vulnerability will be analysed. Also, specific sectors like churches, private businesses, universities, the Legislative Assembly, educators and communication media will be consulted.

TABLE 3
MAIN CHALLENGES FACING THE EL SALVADOR COMPREHENSIVE PROTECTION
SYSTEM MODEL IN THE LAW ON COMPREHENSIVE PROTECTION
OF CHILDREN AND ADOLESCENTS (LEPINA)

Functions of The National Council on Children and Adolescents (CONNA)	<p>Some key actors have argued that The National Council on Children and Adolescents (CONNA) retains the executive powers that should belong to the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA) such as, for example, the registration and supervision of entities and their investigation and sanctioning; furthermore, its competency in the area of adoption of children and adolescents is imprecise.</p> <p>The Boards for the Protection of Children and Adolescents are departmental administrative agencies of CONNA, detracting from the functions and resources allocated to stewardship of the System, which should be the Council's sole function.</p> <p>Decision-making in CONNA is not a joint process, in contrast to the equitable representation on local Rights Committees.</p> <p>Various actors consulted expressed their concern at the CONNA-ISNA relationship, and argued that the Law on Comprehensive Protection of Children and Adolescents (LEPINA) should have assigned the greater supervisory, surveillance and sentencing powers to CONNA rather than to ISNA.</p>
Functions of the Salvadoran Institute for the Comprehensive Development of Children and Adolescents. (ISNA)	<p>LEPINA did not include the necessary programmatic and budgetary components to support the ISNA programmes needed to comply with its legal mandate.</p> <p>Some of the key actors interviewed pointed out the conflict of interests created by placing ISNA in charge of some functions for the protection and promotion of the rights of vulnerable children, as well as of the enforcement of legal action against youth in conflict with the law.</p> <p>LEPINA did not foresee transition funding for ISNA because it already existed. However, during the transition period, ISNA was mandated by temporary decree to create (temporary) Protection Boards, which functioned throughout 2011. The Protection Boards did not function adequately in accordance with LEPINA, and ISNA had to assume functions additional to the ones it already had, without receiving additional resources.</p> <p>Some of the key actors interviewed expressed their concern at the relationship between ISNA and CONNA, arguing that LEPINA should have given exclusive competency to ISNA for the Shared Care Network and the Protection Boards.</p> <p>LEPINA should have programmed a gradual conversion from the previous scheme based on a plan for the progressive transfer of functions, especially the transfer of functions from ISNA and their conferral on CONNA. (For this transition, a transitory decree had to be issued for ISNA to be able to create the [temporary] Protection Boards, which functioned throughout 2011).</p> <p>As part of the Protection System, the Shared Care Network constitutes the basis for care and services for children and adolescents through its different programmes. Therefore, the guarantee of its adequate registration, harmonization, coordination and supervision is fundamental to the proper functioning of this new Protection System. However, there was no consideration given to the transition of the System up to the point where CONNA had completed the definition of all the procedures and mechanisms for registering the entities and accrediting their programmes.</p>
Protection Boards	<p>The Protection Boards are departmental and not municipal, thus limiting the decentralization of their functions.</p> <p>It has not been sufficient to address the needs of the population to have a single Protection Board per department in the most populous departments and the capital city. More Protection Boards should have been programmed for the more populated areas.</p>
Budget	<p>LEPINA did not provide specific line items and did not establish percentages or reserve funds to ensure the implementation, installation and functioning of the entire system.</p>
Relation with the Judiciary	<p>The incorporation of the judiciary component as another actor within the Protection System should be accompanied by mechanisms for harmonization with the actors of the administrative component to achieve common purposes.</p> <p>CONNA, as the maximum authority of the Protection System, should have had more mechanisms to coordinate with the judiciary branch for complying with LEPINA and to eliminate the tutelary system and doctrine completely. (In fact, an opportunity does exist in the stipulations of Art. 254 of the Code for Children, which establishes that the National Council of the Judiciary, through the School for Judiciary Training, will oversee education and continuous training in the application of the Law on the Rights of Children and Adolescents for all justice system operators, in order to raise awareness and update current understanding in this field).</p> <p>The Code should specify explicitly the powers of the specialized judges for children and adolescents. and strengthen the competence of the judges.</p>

Source: Prepared by the author.

On the other hand, some of the persons interviewed for this study declared that there were some functions and powers established by LEPINA for both autonomous institutions that duplicated each other and might confuse the roles of the lead organization and the implementing organization. Some stated that CONNA should focus exclusively on policymaking and harmonization, and that LEPINA should not assign it other functions —such as those of promoting constitutional and mediation functions in case certain laws/regulations, actions or omissions violated the rights of children and adolescents, or promoting protective actions in cases of violations or threats to the collective and individual rights of

children and adolescents. Nor should CONNA exercise the functions conferred to it in clauses 4, 5, 6, 7 and 8 of Article 135 —basically, the coordination of the System’s implementation, the registration of entities, and the faculty of sanctioning care-providing entities.

There is some conjecture that identical functions would be assigned to both institutions which, those consulted believe, should be functions of CONNA and not of ISNA, which should be limited to pure implementation. For example, Art. 135, clause 19 and Art. 180, letter c, both establish the same function of disseminating and promoting knowledge of the rights and duties of children and adolescents to both ISNA and CONNA, and assign the preparation of the reports to the Committee on the Rights of the Child to CONNA —a function identical to that assigned to ISNA.

Another of the themes arising in the interviews is that, in the legislative discussion of the model of the comprehensive protection system, it had been established originally that Protection Boards and Local Committees were to be created in each municipality. However, it was decided eventually to create one Board per department (in each of the 14 departments) and one Local Committee per municipality (in each of the 262 municipalities). This would support decentralization and the proximity of the Protection Boards for the purpose of protecting the rights of children and adolescents.

Finally, it may be concluded that the delay in implementing the system is due, not only to the necessarily gradual process of installing a complex institutional system and to budgetary restrictions, but also to political matters pending resolution. As may be seen in the following table, there are diametrically opposed versions of some issues, depending on the role and function of the key informant interviewed —especially regarding the distribution of functions and powers of CONNA and ISNA, which have given rise in contradictory interpretations of LEPINA regarding the role of each institution.

C. Jamaica²⁹

Jamaica has ratified the Convention on the Rights of the Child. However, as in most British Commonwealth States, treaties in the area of human rights —although ratified by the State— have no internal binding effect until incorporated into domestic law. Therefore, the CRC and other human rights treaties ratified by Jamaica only have internally binding effect once incorporated into legislation. Furthermore, the application of the tenets of the treaty falls outside the competency of the courts of Jamaica, unless these dispositions fit within internal laws (UNICEF, 2004).

Parliament passed the Child Care and Protection Act in 2004, with the intention of recognizing the Convention in domestic law. In addition, the April 2011 amendment to the Constitution, by adopting the Charter of Fundamental Rights and Freedoms, included the specific protection of children and their right to free primary and pre-primary education.

The Child Care and Protection Act covers some aspects of the rights recognized by the Convention, particularly those referring to children requiring care and in situations of neglect, victims of abuse, child labour, and youths in conflict with the law and juvenile justice. This characteristic of the 2004 law —whose focus was limited to a few aspects of child rights— was noted by the Committee on the Rights of the Child in its concluding observations in 2003, when this still was a bill of law under discussion. The Committee indicated its concern that the new bill of legislation did not cover sufficiently the principles and rights recognized by the Convention —particularly the right to participation— and emphasized the importance of having the new legislation refer to all the rights of the child, and not only those dispositions related to protection, and of guaranteeing that all the rights of children be included in national legislation (Committee 2003, Jamaica Paras. 7 and 8).

²⁹ We are grateful for the cooperation, information and opinions of the following persons who were consulted and/or interviewed for the preparation of this chapter on Jamaica: a) Mary Clarke, former Children’s Advocate, b) Carla Francis-Edie, Chief Executive Officer of the Child Development Agency, c) Andrea Shepherd-Stewart of the Planning Institute of Jamaica, d) Shelly-Ann Edwards, Social Security Analyst, Planning Institute of Jamaica and e) Janet Cupidon-Quallo, Child Protection Specialist, UNICEF Jamaica.

Additionally, the Child Care and Protection Act does not reflect adequately the economic, social and cultural rights recognized by the Convention on the Rights of the Child (UNICEF, 2004). It also establishes some precepts typical of tutelary laws that are contrary to the CRC: for example, its section 24 gives parents the power to bring their children before juvenile justice with the argument that they are “uncontrollable”, in which case the court may decide to remit the child to a juvenile correction centre or place him or her in the custody of another person or under the supervision of a parole officer.³⁰

On a positive note, Section 3 of the Child Care and Protection Act does recognize as its objective the promotion of the best interests of the child. In fact, Section 2 (3) establishes that, in the interpretation and administration of the law, the best interests of the child shall always be the primary consideration.

In the institutional structure created by the 2004 law, the Office of the Children’s Advocate was created as a parliamentary commission. Almost two years after the law’s passage, the Office of the Children’s Advocate finally began to function at the beginning of 2006.

One of the main functions of the Children’s Advocate is to represent children legally in cases where the Ministries, departments or governmental entities have violated their rights. The Office of the Children’s Advocate is also in charge of providing legal representation for children that cannot afford it otherwise. The Advocate must supervise the law and its practice related to the rights and best interests of the child, advise and make recommendations to Parliament or to any Ministry on matters related to the rights or best interests of the child, and initiate legal actions — except in criminal cases — in any court or tribunal in the capacity of *amicus curiae* (‘friend of the court’) or in any action related to the right or rights and the best interests of the child.

The Law on Child Care and Protection also creates the Office of the Children’s Registry (Art. 5) to keep the records in conformity with the legal obligation of presenting a report when there is information or suspicion that a child has been, is, or probably will be, abandoned, neglected, physically or sexually abused, or in need of care and protection (as defined in Art. 8 of the law). The Office of the Children’s Registry began to function in 2007. There is a group of persons that, due to the nature of their work, have the obligation to provide care for children and adolescents; they include doctors, nurses, dentists and mental health professionals, hospital/health centre administrators, school principals, teachers and other education professionals, social workers or other professionals providing social services, the proprietors, operators and employees of child-care centres or other types of child-care institutions, and any other persons who, by virtue of their job or occupation, have the responsibility of providing care services for a child.

In 2004, the Child Development Agency was established, initially as a department of the Ministry of Health and now under the more recently-created Ministry of Youth and Culture. The implementation of the Child Care and Protection Act is the responsibility of this Agency, which must develop strategies for the implementation, coordination and regulation of national policies and programmes to promote children’s rights. The creation of the Agency has reduced the level of fragmentation and enabled a more systematic, problem-centred approach. However, according to the information emerging from the interviews held for the present study, the Agency has neither the characteristics nor the competence needed to become the lead organization capable of coordinating and harmonizing the policies and programmes on children and adolescents in Jamaica. In fact, the Agency, on its Web page defined its main function as related to the legal responsibility for children in need of care and protection —that is, those that have been abused, neglected or abandoned, as well as children with behavioural problems (<http://www.cda.gov.jm/index.php>).

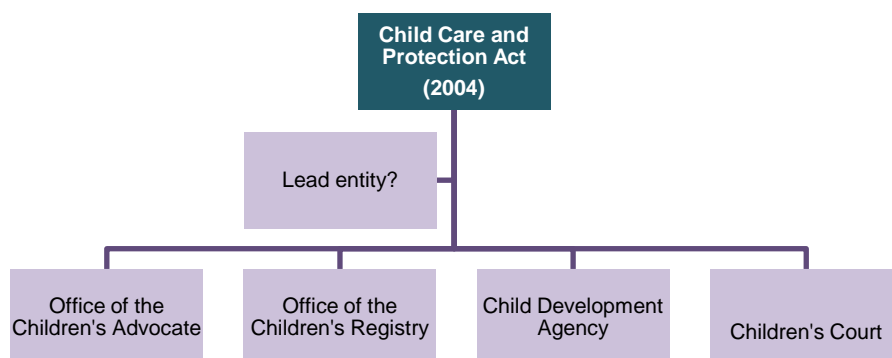
An important development regarding the right to participation is the recent creation of the Children’s Advisory Panel. This group, comprised of 15 members ranging in age from 12 to 17, has been created to provide its point of view and orient the Agency to the children’s perspective on a

³⁰ Article 24. The Child Care and Protection Act 2004. “*The parent or guardian of a child may bring parent or the child before a juvenile court and where such parent guardian or guardian proves to the court that he is unable to bring control to the child...*”.

broad range of themes, including national policies centred on children, new and emerging issues affecting children and adolescents, and other themes. Panel members serve for two years, and are elected from a broad sector of society.

According to Jamaica's latest report to the Committee on the Rights of the Child, the Government has not yet established an identifiable government agency to coordinate all the activities related to the application of the CRC, in compliance with Committee's recommendations in its concluding observations in 2003 (Child Development Agency, 2011).

FIGURE 7
THE CHILD PROTECTION SYSTEM IN JAMAICA



Source: Prepared by the author.

TABLE 4
MAIN CHALLENGES FACING THE JAMAICAN CHILD PROTECTION SYSTEM
(THE CHILD CARE AND PROTECTION ACT OF 2004)

Lead entity	There is apparently no lead entity coordinating policies and programmes on children and adolescents. There would need to be an entity with a cross-cutting, systematic and universal mandate and the capacity to harmonize care of all of Jamaica's children.
Office of the Children's Advocate	Although its mandate is universal, in reality the children and adolescents that most probably will come into contact with the Advocate's Office are those in situations of greatest vulnerability.
Child Development Agency	Potentially, this would be the lead entity, but its efforts are focused on children in situations of greatest vulnerability. The Ministry of Education, the Ministry of National Security and the Ministry of Justice prepare and implement their own policies on children, without necessarily coordinating with institutions in the child protection system. More clarity is needed with respect to the roles of the Development Agency and the Department of Correctional Services, with respect to children and adolescents in conflict with the law.
General	The Child Care and Protection Act contains dispositions and institutional mechanisms of a tutelary nature, and does not reflect all the rights in the Convention on the Rights of the Child. A revision of certain aspects of the law is necessary – for example, the possibility of institutionalizing youths at the request of their parents, based on their being “uncontrollable”. A process of review and formulation of recommendations for the revision and reform of the Child Care and Protection Act is expected.

Source: Prepared by the author.

D. Uruguay³¹

Uruguay ratified the Convention on the Rights of the Child in 1990, and its Optional Protocols in 2000. In September 2004, the Code for Children and Adolescents was approved through the passage of Law N° 17823.

The Code for Children and Adolescents consecrates a series of civil, social, and economic rights in summarized form in Article 9. It establishes explicitly that, as human beings, all children and adolescents are holders of rights, duties and guarantees, and that they have the right to special protection measures that their condition as subjects in the process of development requires from the family, society and the State (Arts. 2 and 3).

The essential, cross-cutting principles consecrated in CRC Articles 3, 5 and 12 are reflected in the Code, as it affirms that the best interests of the child is the basis for interpreting and incorporating the Code, that their rights shall be exercised in accordance with the development of their faculties, and that each child has the right to be heard and to obtain responses when decisions affecting their life are being made (Arts. 6 and 7, Code). Nonetheless, there are some contradictions, or areas in which the Code does not incorporate all the precepts and principles of the Convention, and continues some practices typical of the tutelary systems (for more information, please see *Fundación de Cultura Universitaria*, 2004).

The Code for Children emphasizes the role of the State in the adoption of social promotion policies that favour the comprehensive development of all the potential of children and adolescents, viewed as persons in the process of development. It establishes the promotion of equity — avoiding the generation of inequalities due to discriminatory concepts based on sex, ethnicity, religion or social condition — and policies for the protection of, and comprehensive attention to, the rights and duties of children and adolescents, and the guarantee of special care by the State and society in response to the need to offer personalized care in specific situations (Art. 18).

The Code, while it does define an institutional structure for the protection of the rights of children and adolescents, does not define it as a system of comprehensive protection. Article 20 does establish, however, that the regulations governing the effective validity of the rights of children and adolescents in the areas of survival and development will require the implementation of a comprehensive system of social policies that are basic, complementary, provide special protection, are far-reaching enough to respond to diverse realities, and include coordination between the State and civil society.

The Code establishes that leadership on the policies on children and adolescents will be exercised by the National Institute for Minors, a pre-existing institution created in 1988 by Law N° 15977 which, following the adoption of the Code, was renamed The Institute for Children and Adolescents of Uruguay (INAU) (Arts. 68 and 223).

This policymaking body must determine, through its specialized services, how to implement policies through different programmes, projects and modalities of social intervention —public or private— focused on strengthening families with children and adolescents.

According to the Code for Children, the main functions of INAU are, as follows:

- To safeguard the adequate admission, incorporation, care, referral and subsequent release of the children and adolescents in its care.
- To ensure that the child is not incorporated into the different households, programmes, projects and modes of care until the child or adolescent has been heard, while seeking to foster the full enjoyment and comprehensive protection of their rights.

³¹ We are grateful to the following persons that were consulted and/or interviewed for the preparation of this chapter on Uruguay: a) Jorge Ferrando, Director, INAU, b) Lucia Vernazza, Planning and Monitoring, UNICEF in Uruguay, c) Juan Miguel Petit, UNDP Uruguay, d) Gonzalo Salles, Executive Secretary, Gurises Unidos (NGO), and e) Luis Pedernera - Instituto de Estudios Legales y Sociales del Uruguay.

- To orient and support adolescents under its care in reaching adulthood prepared to take charge of their lives independently.
- To supervise the private institutions treating children and adolescents, as well as all private, community or non-governmental institutions with which it implements programmes through agreements.
- To formulate observations and bring the relevant complaint before the competent authorities upon verifying violations of the rights of children and adolescents.
- To regulate the functioning of establishments where sentences of deprivation of liberty are executed.
- To take measures involving medical advice directly, whenever the intervention corresponds to a situation threatening the life of a child or adolescent, or the physical integrity of other persons.
- To develop the National Information System for Children and Adolescents, which should include data on the child or adolescent in its care, and the institutions treating them.

According to the information provided by INAU, the main objective of the current administration is institutional transformation, in order to maintain the level of protection achieved under the various comprehensive protection modalities, gradually improving the quality and promoting the transformation of the care model, promoting changes through the diversification of non-institutionalization options: the Family and Small Homes Alternative. It also mentions the need to decentralize institutionally and coordinate with the Ministry of Social Development (MIDES), the Ministry of Public Health (MSP), The National Agency for Assessment and Forecasting (ANEP), regional governments and non-governmental organizations, and promote the social integration of youths in the care of INAU, in coordination with policies on housing, labour, education and health (<http://www.inau.gub.uy/>).

In July 2011, Law N° 18771 was passed, approving the creation of a new institutional structure to provide care for youths in conflict with the criminal justice system. The Penal Responsibility System for Adolescents (SIRPA) replaced part of the system established by the Code for Children and Adolescents, in terms of measures for adolescents and youths in conflict with the law. Under Law N° 18771, INAU will be in charge only until the Institute for Adolescent Criminal Responsibility has been created as a decentralized service. That Institute will assume the implementation of the socio-educational measures established in the Code for Children and Adolescents with respect to adolescents found guilty in an enforceable court decision, once the competent judge has determined the measures (Arts. 77 and 78 of the Code), and implement the security measure determined in the sentence in order to achieve the rehabilitation and education of the adolescent offenders (Art 2. of Law N° 15977).

The transition will be made by a Delegate Commission of the Office of the Director of INAU; the aim is to increase the levels of specialization with a high degree of technical autonomy through five programmes: The Entry, Study and Referral Programme, the Community-Based Socio-Educational Programme, the Curative Measures Programme, the Programme of Deprivation of Liberty and Day Release, and the Programme on Social and Community Insertion and Care upon Release.

The institutional system established in the Code for Children and Adolescents is completed by the National Honorary Consultative Council on the Rights of Children and Adolescents. This body is consultative, comprised of state and non-state entities and attached to the Ministry of Education and Culture. As established in the Code, this Council is composed of two Government representatives (one of whom presides the Council), one representative from INAU, one from the Judiciary, one from the National Public Education Administration, one from the Congress of Governors, one from the Luis Morquio Paediatric Institute, one from the Association of Lawyers and two from non-governmental organizations involved in the protection and care of children and adolescents (Art. 211, Code).

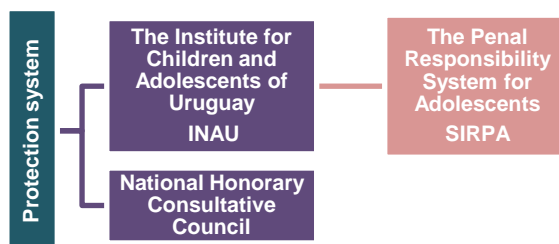
The Government representatives will coordinate directly with the Ministries of Sports and Youth, Labour and Social Security, Education and Culture, Public Health, and the Interior. The representatives of the NGOs shall be designated by the National Association of Non-Governmental Organizations (ANONG) (Art. 212).

The purposes of the National Honorary Consultative Council on the Rights of Children and Adolescents are (Art. 214):

- (a) To promote the coordination and integration of the sectoral support policies for children and adolescents, drawn up by the various public entities involved in child protection policy, and prepare an annual status report on its activities.
- (b) To express its views during the drafting of the report that the State must present to the United Nations Committee on the Rights of the Child.
- (c) To issue, upon specific request, opinions on budget laws, accountability and other regulations and programmes related to children and adolescents.

The resources and infrastructure for the functioning of the Council are to be provided by the Ministry of Education and Culture, in accordance with Art. 215 of the Code for Children.

FIGURE 8
URUGUAY CHILD AND ADOLESCENT PROTECTION SYSTEM MODEL



Source: Prepared by the author.

In its concluding observation in 2007, the Committee on the Rights of the Child expressed its satisfaction at the adoption of the new legal structure, incorporating a comprehensive protection system and the principles of the Convention on the Rights of the Child. However, the Committee observed that there were problems with the practical application of the Code, and requested that Uruguay guarantee its effective application with adequate institutional structures and the assignment of sufficient human and financial resources (Committee 2007, Uruguay, Paras. 7 and 8).

In addition, the Committee recommended, with respect to the Consultative Council, that Uruguay ensure that this Council receive sufficient, stable funding to carry out its mandate and that efforts be made to decentralize the Institute for Children and Adolescents in order to provide services to the entire country, and that this Institute be assigned sufficient, stable funding (Committee 2007, Uruguay Paras. 12 and 13).

The Committee also pointed out the absence of a national human rights institution, despite the fact that Decree N° 18446 of 2008 had created the National Institute for Human Rights and the Public Defender's Office, for the defence, promotion and protection nationwide of the human rights acknowledged in the Constitution and in international law (Art. 2, Law N° 18446). Finally, after a prolonged delay, members were appointed in May 2012 to the Institution's Directive Council to set up this body.

The point was raised in several interviews that, whereas the lead organization should exercise the leadership and harmonization of policy for all children and adolescents, in practice, INAU dedicated most of its efforts to abandoned or highly vulnerable children, through its work with the Child and Family Assistance Centres (CAIF), foster care homes, children's clubs, prevention of child labour, work authorizations, and children deprived of their liberty. Thus, basically, INAU was seen as having literally replaced the former National Institute for Minors in its classic function that represented the tutelary system in Uruguay. The institutional framework has not changed a great deal, and the transformation of institutions and practices has been quite slow. In fact, the impression was that most of the efforts of INAU were concentrated on the implementation of, and compliance with, the numerous functions assigned to it by the Code, rather than on the necessary coordination and formulation of social policies for all children and adolescents.

A study made shortly after the passage of the Code for Children expressed concern that, in terms of organizational architecture, the appointment of INAU as lead organization was problematic because, as a decentralized service within the hierarchical structure of the Ministry of Education and Culture, it had neither the functions nor the autonomy to exercise that leadership (*Fundación de Cultura Universitaria*, 2004).

The institutions and persons consulted indicated that the general policies and programmes for children have come predominantly under the umbrella of MIDES, where the *Infamilia* programme has operated since 2005. One specific example mentioned was the Committee on Strategic Coordination (CCE), whose mission—as defined by MIDES itself—was to ensure the strategic coherence, sustainability and efficiency of actions for this population subgroup at the highest level of governmental hierarchy. CCE is comprised of undersecretaries of the Ministries of Social Development, Public Health, and the Interior, as well as authorities from the National Public Education Administration, the Council on Early and Primary Education, the Council on Secondary Education, the National Institute for Youth, INAU, and a representative of civil society (<http://www.infamilia.gub.uy>).

What is more, there are various areas of collaboration where MIDES, through the INFAMILY programme, has provided technical and financial support to INAU, such as that agency's coverage of the early childhood support system through the Child and Family Assistance Centres (CAIF) Plan and through the agreement between the Council for Pre-school and Primary Education, the CAIF Plan and the Ministry of Social Development, to strengthen and ensure the continuity of the educational process for children attending the CAIF Plan Centres and public schools. Furthermore, MIDES has provided technical and financial support for the creation and improvement of the Child Information System (SIPI)—a dependency of INAU—as well as other areas.

Many of the sources consulted agreed that the Honorary Consultative Council was an important innovation which, however, had not met expectations since it lacked the necessary support and had no budget or infrastructure of its own. The Council has received support in terms of human resources from the Ministry of Education and Culture and the Ministry of Social Development (MIDES), but these resources are shared, and there are no personnel dedicated exclusively to carrying out its functions.

Several of the sources also stated that, although the Council meets and has broad representation of the Ministries and civil society, it plays no significant role in the policy and legislative discussions in Uruguay concerning children and adolescents. As evidence of this, they pointed out that the Council had played no major role in the preparation of the National Strategy for Children and Adolescents 2010-2030 (ENNIA), in which the Committee for Strategic Coordination took on the role of focal point and coordination.

Finally, all the actors consulted considered the creation of SIRPA positive, as it would be an independent institutional structure for adolescents in conflict with the law, even though it still remained a branch of INAU during the transition phase.

The statements in the previous paragraphs affirmed the conclusions of a study by UNICEF in 2010, which asserted that the implementation of the Code in its six years of existence has been a true challenge for the institutions and operators, due to a number of factors originating from different causes: legal deficiencies in the Code itself, structural unsuitability of some institutions for fulfilling their roles in child protection, and the persistence of tutelary practices on the part of some operators (UNICEF Uruguay, 2010). The singularity of this process has been the extremely weak implementation of the new regulations, a situation that was fostered initially by the lack of material resources —human and financial— for the implementation of the new model.

Unlike what has occurred in other countries, in Uruguay the Code began to be applied without thought having been given to how institutional and professional practices should be reformulated. This context left the sensation that much should change with the [Code for Children and Adolescents] CCA but did not change much, and the passage of time has shown the existence of a risk that the process of change could halt, that the current situation might be perpetuated, or in the worst of cases it might begin to slip backwards. Therefore, there is an evident gap between the objectives and guarantees explicitly established by law and the means — material, personal, institutional and technical — that have been made available for its application (UNICEF Uruguay, 2010. Page 11).

A final reflection on the protection model created by the Code for Children and Adolescents of Uruguay is that it leaves the impression —despite the good intentions and progress implicit in the adoption of that Code in replacing the legislation and institutional models typical of tutelary systems— that the reform has stalled midstream. Not only has the Code retained some of the vices of the tutelary systems in its articles, but the institutional structure and functions it has created do not support the affirmation that it is a model of a comprehensive protection system. As such, it would be necessary to construct a different model of a comprehensive child protection system capable of focusing on human and child rights and the harmonization and leadership of policies and programmes applied across all the institutions in Uruguay.

Furthermore, it would be fundamental to have a Council on the Rights of Children and Adolescents that is not merely consultative, but has the function of drafting, designing, monitoring and evaluating public policies. This Council, given autonomy, infrastructure, faculties and sufficient resources, could exercise the needed leadership and coordination that, together with INAU performing its current tasks of implementation, could form a true protection system. Finally, the Council —ideally —should have decentralized local councils, while having the necessary decision-making faculties at the central level to exercise adequately the coordination of the strategies of all the State institutions with specific responsibilities in this area.

TABLE 5
MAIN CHALLENGES FACING THE URUGUAY MODEL
OF PROTECTION SYSTEM

Lead entity	<p>The Institute for Children and Adolescents of Uruguay (INAU) has an institutional history prior to the Code for Children and Adolescents, based on an organizational culture of care in critical situations and a management model adding other functions that lead to fragmented responses. The Code for Children and Adolescents assigns INAU a multiplicity of functions that call for dedicating most efforts to implementation, predominantly to the care of the most vulnerable children.</p> <p>The Code would not give INAU sufficient faculties to function as the lead entity and coordinator of policies and programmes for children and adolescents.</p> <p>INAU dedicates most of its efforts and resources to children in situations of vulnerability (street situations, victims, conflict with criminal law).</p> <p>INAU exercises real leadership functions only in some areas: adoptions, adolescent labour and public spectacles (rating of spectacles, sale of alcohol to persons under the age of 18).</p> <p>The coordinating role is performed more by the Ministry of Social Development (MIDES) as the ministry created to coordinate and lead social policies.</p> <p>There are spheres for policy coordination on children like the Strategic Coordination Committee which are not considered in the Code for Children, and in which INAU participates but does not coordinate, and which has a more universal scope for all children.</p> <p>There is open debate on the role of INAU. Some believe that it should concentrate on leadership and leave implementation aside, while others believe it should continue to be fundamentally a service-providing institution, and that leadership should be reassigned as part of a new institutional structure.</p>
The National Honorary Consultative Council on the Rights of Children and Adolescents	<p>The Code does not assign the National Honorary Consultative Council on the Rights of Children and Adolescents a clear role in the coordination of sectoral policies for the care of children and adolescents, or the faculties for exercising that coordination.</p> <p>The Consultative Council is basically a consultative body without binding power to sanction the institutions responsible for implementing child-protection policy.</p> <p>The Code only gives the Consultative Council a secondary role of commenting, when required, on laws concerning budget, accountability and other regulations and programmes related to children and adolescents.</p> <p>It does not have its own resources, infrastructure or personnel.</p> <p>Its is not represented equally in number by members of the Government and civil society.</p>
General	<p>There is evident need for reform to achieve a true system of comprehensive protection that redefines institutional roles, powers and functions of coordination, leadership and management.</p>

Source: Prepared by the author.

V. Comparative analysis of comprehensive national child-protection system models in the domestic laws of the countries of Latin America and the Caribbean

The present section, based on research into the laws and codes for children described in the preceding chapters, highlights the main aspects and challenges deriving from the institutional structures and the models of comprehensive child protection system based on the legal frameworks of the countries analysed in the present study.

A. Comprehensive protection systems and institutional frameworks

As has been expressed throughout this document, the majority of countries in Latin America with comprehensive child protection laws and/or codes for children have created new institutions or reformed existing ones. However, the solutions they have provided are quite varied with respect to the institutions exercising leadership, those formulating and designing policies for children, and those that execute and/or coordinate the implementation of policies and programmes for children and adolescents. In some countries, the protection laws and/or codes have sought to provide the solution through legal support for the creation of national councils on which ministers, vice-ministers and authorities of key autonomous institutions and civil society organizations may participate. Other countries have opted for institutions attached as divisions of a government ministry.

Table 6 shows the ways in which the leadership, formulation and implementation of policies and programmes on children and adolescents is exercised in each country by a diversity of institutions, ranging from national councils to general directorates, ministries and specialized institutions — all at different levels of hierarchy and varying degrees of policymaking, technical and financial autonomy.

TABLE 6
LATIN AMERICA: NATIONAL CHILD PROTECTION SYSTEM INSTITUTIONS

Country	Coordination and system leadership	Public policy implementation	Formulation, proposal, regulation and evaluation of public policies
Argentina	National Secretariat for Children, Adolescents and the Family (SENNAF)	SENNAF Provincial institutions (Federal System with provincial autonomy)	Federal Council on Children, Adolescents and the family and SENNAF Provincial institutions (Federal System with provincial autonomy)
Bolivia (Plurinational State of)	Vice-Minister for Equal Opportunities (General Directorate for Children, Youth and Older Persons)	Vice-Ministry of Equal Opportunities (General Directorate for Children, Youth and the Elderly) Decentralized institutions	National Council for Children and Young Persons
Brazil	National Council on the Rights of Children and Adolescents (CONANDA)	States (Federal system with provincial autonomy)	National Council on the Rights of Children and Adolescents (CONANDA) Councils on Rights
Colombia	Colombian Family Welfare Institute	Colombian Family Welfare Institute, Social Policy Councils	National Social Policy Council
Costa Rica	National Child Welfare Agency (PANI)	PANI Decentralized system	National Council on Children and Adolescents
Ecuador	MIES – National Institute for Children and the Family (INFA)	MIES – National Institute for Children and the Family (INFA) Decentralized institutions	National Council for Children and Adolescents
El Salvador	National Council for Children and Adolescents (CONNA)	Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA) Salvadoran Institute for Child Protection	CONNA
Guatemala	Secretariat for Social Welfare	Specialized organizations, by area	National Commission for Children and Adolescents, at the national level. Municipal Commissions for Children and Adolescents, at the local level
Honduras	Honduran Institute for Children and Families (IHNFA)	IHNFA	-
Nicaragua	National Council for the Care and Integral Protection of Children and Adolescents Ministry of the Family	Ministry of the Family	Ministry of the Family
Paraguay	National Secretariat for Children and Adolescents (SNNA)	SNNA Decentralized institutions	National Council on Children and Adolescents
Peru	Ministry of Women and Social Development – General Directorate on Children and Adolescents	MIMDES	
Dominican Republic	National Council for Children and Adolescents (CONANI)	CONANI Decentralized institutions	CONANI
Uruguay	National Institute for Children and Adolescents of Uruguay (INAU)	INAU Specialized ministries	Honorary National Consultative Council on the rights of Children and Adolescents
Venezuela (Bolivarian Republic of)	Ministry of People’s Power, through the National Council on the Rights of Children and Adolescents National Institute	Council on the Rights of Children and Adolescents Decentralized institutions	Ministry of People’s Power

Source: Prepared by the author.

Table 6 does not include some countries that are considered not to have protection systems based on comprehensive protection laws, and which clearly lack any institution with sufficient authority, power or capacity to coordinate the comprehensive protection system effectively or harmonize it with other systems —such as social protection, health, the judiciary, and others that are extremely important for the promotion and protection of the rights of all children and adolescents. Thus, in the case of Chile, the existing institutional structure is not based on a law for comprehensive protection, and consists basically of the National Service for Minors, a governmental organization that is a branch of the Ministry of Justice, that acts mostly in accordance with instructions received from various courts of justice. At the same time, Chile has a series of systems and subsystems, such as the Intersectoral System for Social Protection, with its subsystem for comprehensive protection (*Chile Crece Contigo*) and the criminal responsibility system. In other words, there is no paramount system to lead and coordinate these institutions and subsystems with the universe of children and adolescents.

In the case of Mexico, there is a Law for the Protection of the Rights of Children and Adolescents which, however, does not establish a Protection System. Policies and programmes for children come under the National System for the Comprehensive Development of the Family, which is a social assistance institution under the Ministry of Health, without competency to enforce and/or coordinate with other Ministries.

B. Leadership of the system

Several of the protection laws and codes define the leadership of the system explicitly, beyond its correct implementation and practical effectiveness. For example, in the case of Argentina leadership is exercised by the National Secretariat for Children, Adolescents and the Family; in Costa Rica, by the National Child Welfare Institute; in El Salvador, by the National Council on Children and Adolescents; in Paraguay, by the National Secretariat for Children and Adolescents; in the Dominican Republic, by the National Council for Children and Adolescents; and in the Bolivarian Republic of Venezuela, by the Autonomous Institute attached to the Ministry of People's Power.

In contrast, it is not clear which institution exercises leadership in some of the other countries, or whether the powers established by law are sufficient for exercising this leadership and harmonizing the comprehensive protection of children and adolescents in regional and local systems to consolidate a National Protection System. For example, in the case of the PINA Law of Guatemala, it is not easy to tell which would be the lead entity and what would be its powers.³² A similar situation is found in the Honduran Institute for Children and the Family, which replaced the Social Welfare Board established by the Code of 1996.³³ The situation is similar in the English-speaking Caribbean: for example, in Jamaica, the Child Development Agency would not be a lead entity with powers of coordination and harmonization of all the policies and programmes for children and adolescents implemented in other Ministries.

In the case of Uruguay, while the Code for Children and Adolescents expressly establishes that the leadership of policies for children and adolescents is exercised by the Institute for Children and Adolescents of Uruguay, the analysis of the legislation and the sources consulted would indicate that it does not have the competency and structure for exercising the policymaking and coordination role for all policy on children and adolescents, and that, in fact, it is the same institution that existed previously as the National Institute for Minors whose main function historically was to care for the most vulnerable children and children in conflict with the law, with practices that have remained tutelary. This would mean that, in reality, it would not exercise leadership on policies for all children, but only for a segment of them. It would seem that MIDES, the *Infamilia* Programme and the Strategic

³² See: *Comité de los Derechos del Niño. Observaciones finales: Guatemala 25 Octubre 2010 - CRC/C/GTM/CO/3-4*. Paras. 16 and 17.

³³ See: *Comité de los Derechos del Niño. Observaciones finales: Honduras CRC/C/HND/CO/3. 2 May 2007*.

Coordination Committee have had more influence on the strategic and sustainable discussion of actions for this segment of the population.

In various countries, the protection laws and codes assign the leadership of the protection system to secretariats, directorates and institutions for children that are divisions of ministries. This is the case of the Ministry of Social Development (Argentina), Ministry of Justice (Bolivia), Ministry of Economic and Social Inclusion (Ecuador), Ministry of Women and Social Development (Peru) and the Ministry of People's Power (Venezuela). In such cases, the legal nature of these institutions must be considered, as must their dependency and hierarchical position within the administrative organizational chart of the ministry. These hierarchical positions could either empower or weaken leadership capacity, especially in the case of directorates or departments whose hierarchy and lack of autonomy could jeopardize their faculty for policymaking, harmonization and coordination of policies and programmes for children and adolescents.³⁴

Finally, in the cases of Brazil, El Salvador and the Dominican Republic, the Comprehensive Protection System recognizes as policymaking bodies, those national councils of children and adolescents that are essentially multifunctional bodies of a advisory nature. For example, LEPINA, which provides the legal foundation of the Comprehensive Protection System of El Salvador, recognizes expressly the Directive Council of the National Council on Children and Adolescents as the maximum authority of the Comprehensive Protection System whose functions are to design, approve and oversee the National Policy on Comprehensive Protection of Children and Adolescents, the coordination of the National Comprehensive Protection System for Children and Adolescents, and the effective defence of the rights of children and adolescents.

The most important aspect of the laws that establish National Councils as the policymaking and harmonizing authority is that they are forums for the cooperation and participation of different organizations and ministries from public and private sectors and non-governmental entities dealing with the rights of children. In the case of Brazil, the Council is a joint body, with 14 representatives of governmental organizations and 14 representatives of organized civil society, giving maximum expression to the concept of civil society participation on equal terms with governmental institutions in the drafting of the general norms of national policy on child protection, and in the oversight of their implementation.

C. Decentralization and the role of local governments

One characteristic aspect of a comprehensive protection system is the institutional decentralization that cedes part of the policymaking and technical responsibility for the preparation of the public policy on children and adolescents, its execution and supervision, to the regional, departmental and municipal levels.

The codes for children and laws on comprehensive protection of Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Nicaragua, Paraguay, the Dominican Republic and Venezuela, establish diverse levels of decentralization, with different levels of responsibility for the regional, departmental or municipal institutional structures.

³⁴ As an example, this was the motive of the Committee's express observation on Peru: "The Committee is concerned that, due to a recent restructuring of the Ministry for Women and Social Development (MIMDES), the General Directorate on Children and Adolescents has been downgraded as a sub-unit within a new unit for family and community, which may impact negatively on its potential and effectiveness in the coordination of activities regarding the implementation of the Convention at all levels of Government." See: Committee on the Rights of the Child (2006). Concluding observations: Peru. CRC/C/PER/CO/3 14 March 2006. Para. 13. The Committee's observation on Bolivia is similar: "The Committee notes the establishment of new institutions relevant to the rights of the child ... However, it is concerned at the weakness of the institutions created, and that the new strategy of decentralization poses a number of difficulties in the coordination between national, departmental and municipal levels. Also, the Committee is concerned that the institution in charge of coordination has lost status by moving from a Vice-Ministry to an Office" See: Committee on the Rights of the Child (2009). Concluding observations: Plurinational State of Bolivia. CRC/C/BOL/CO/4. 16 October 2009.

TABLE 7
LAWS ON DECENTRALIZED ACTION IN CHILD-RELATED MATTERS IN 11 COUNTRIES
OF LATIN AMERICA

Country	Functions of the decentralized government in child-related matters
Bolivia (Plurinational State of)	<p>Law 2028 on Municipalities (1999). Indicates that sustainable human development, the defence and protection of children and adolescents and the organization and regulation of the Ombudsman's Offices are within the competency of the Municipal Government. Code for Children and Adolescents. Art 192. Municipal Commission for Children and Adolescents. Art.195. Child Defenders' Offices are a free municipal protection service.</p>
Brazil	<p>Statute of the Child and Adolescent. Art. 86 The policy on care for the rights of children and adolescents will be developed through a harmonized set of governmental and non-governmental actions by the Union, the States, the Federal District and the municipalities. Art. 88 Directives on care policies are: I. Municipalization of care. II. Creation of Municipal, Provincial and National Councils on the Rights of the Child and the Adolescent, advisory bodies for the control of actions at all levels. Law 8242 (1991) and Decree 5089 (2004). Creation of the National Council on the Rights of the Children and Adolescents (CONANDA); a system of Rights Councils at the federal, national and municipal levels; and Tutelary Councils for the promotion and protection the rights of children and adolescents.</p>
Colombia	<p>Code for Children and Adolescents. Art. 204. Parties Responsible for the Public Policies on Children and Adolescents at the national, departmental, district and municipal levels. Art. 207. Departmental and Municipal Councils.</p>
Costa Rica	<p>Code for Children and Adolescents. Art. 179. Boards for the Protection of Children and Adolescents. Art. 181. Tutelary Committees.</p>
Ecuador	<p>Code for Children and Adolescents. Arts. 190 to 195. Functions of the National Council. Formulate the general directives at the national level, for the organization of the Decentralized National System for Comprehensive Protection of Children and Adolescents and coordinate its application with the Cantonal Councils. Promote the creation and functional organic strengthening of the Cantonal Councils (Art. 201) for Children and Adolescents, and the Cantonal Boards for the Protection of Rights (Art. 205).</p>
El Salvador	<p>LEPINA Art. 153. The Local Committees on the Rights of Children and Adolescents are municipal administrative bodies whose primary functions are to develop local policies and plans in the area of children's and adolescents' rights, and safeguard the collective rights of all children and adolescents. Art. 154. In all municipalities, Local Committees should be set up in accordance with the regulations, agreements and other relevant legal instruments. Art.159. The Boards for the Protection of Children and Adolescents are departmental administrative dependencies of CONNA with technical autonomy, whose primary function is the protection of the rights of children and adolescents at the local level. Art. 160. CONNA must create, organize, maintain and finance at least one Protection Board per department</p>
Guatemala	<p>PINA Art.81. The policies on comprehensive protection will be understood as the set of actions formulated by the National and Municipal Commissions on Children and Adolescents, respectively, to guarantee children and adolescents the full enjoyment of their rights and liberties.</p>

Table 7 (concluded)

Country	Functions of the decentralized government in child-related matters
Nicaragua	<p>CONAPINA</p> <p>Art. 60. The implementation of the National Policy on Attention and Protection and the services derived there from will be promoted in a decentralized fashion in the Autonomous Regions, municipalities and localities.</p> <p>Law 35. Law for the establishment of the National Council for the Comprehensive Care and Protection of Children and Adolescents.</p> <p>Art. 6. The goal of the Council is to create Councils for Children and Adolescents at the national, municipal and Autonomous Region levels.</p> <p>Art. 7. The National Council will have the following functions: Create the Ombudsman's Office as a national-level service in the municipal and Autonomous Regions. The Ombudsman's Offices will be created by the Municipal Commissions for Children and Adolescents with guidance and support from the National Council.</p>
Paraguay	<p>Code for Children and Adolescents.</p> <p>Art. 37. The System will regulate and incorporate programmes and activities at the national, departmental and municipal levels.</p> <p>Art. 41. The Secretariat's functions include: Creating the National Council on Children and Adolescents and promoting the integration of the Departmental and Municipal Councils for Children and Adolescents</p>
The Dominican Republic	<p>Law 136-03.</p> <p>Art.53. National System for the Protection of the Basic Rights of Children and Adolescents: (a) Organizations for the drafting, planning, auditing and evaluation of policies: directorates of the national and municipal councils; (b) Policy implementation organizations: national and municipal offices and public and private care provision entities; (c) Organizations for the protection, defence and enforceability of rights: local boards for the protection and restoration of rights.</p> <p>Art. 418. National Council for Children and Adolescents (CONANI). Comprised, inter alia, of other regional offices and municipal directorates.</p>
Venezuela (Bolivarian Republic of)	<p>LOPNA</p> <p>Art. 134. The National Council on the Rights of Children and Adolescents will be the maximum authority of the Child and Adolescent Protection System. In each state and municipality, State or Municipal Rights Councils, respectively, will be created. These councils will be governed by the stipulations of this law, and by the stipulations of the pertinent state or municipal laws or ordinances.</p> <p>Art.35. In the exercise of their functions, the Rights Councils must observe the following principles: (a) Respect for, and promotion of, state and municipal administrative decentralization in matters regarding the protection of children and adolescents; (b) Respect for municipal autonomy; (c) Consideration of the municipality as the primary entity for the protection of children and adolescents.</p> <p>147. Municipal Councils</p>

Source: Prepared by the author.

Generally, the laws for children establish two types of institutional structure at the regional, departmental and local level:

- (a) Bodies that are advisory and charged with the formulation, control and evaluation of policies, and that are usually the local arm of the National Council.
- (b) Bodies for the enforcement and protection of rights.

TABLE 8
LOCAL PUBLIC POLICY ADVISORY BODIES

Local public policy advisory bodies	Rights Councils	Brazil, Venezuela (Bolivarian Republic of)
	Municipal Commissions on Children and Adolescents	Bolivia (Plurinational State of), Guatemala
	Honorary National Consultative Council on the Rights of Children and Adolescents	Uruguay
	Municipal Office	Dominican Republic
	Social Policy Councils	Colombia
	Departmental Council on Children and Adolescents	Paraguay
	Cantonal Councils on Children and Adolescents	Ecuador
	Local Committees on the Rights of Children and Adolescents	El Salvador

Source: Prepared by the author.

There are some Councils, Committees and Commissions whose composition guarantees the presence of civil society organizations, in many cases with an equal number of representatives, as shown later in the section on participation.

The local institutions for the protection, implementation and adoption of local child and adolescent rights protection measures that comprise the protection systems—supported by the comprehensive codes and laws on children—are diverse in their composition, nature, hierarchical dependency and powers. Some are organizations with greater administrative and functional autonomy, like those defined in the laws creating the Tutelary Councils in Brazil, the Cantonal Boards for the Protection of Rights in Ecuador, and the Councils for the Protection of Children and Adolescents in Venezuela. In the Dominican Republic, the Local Boards for the Protection and Restoration of Rights are defined as decentralized institutions at the municipal level, with independent decision-making faculties. In other cases, they are dependencies or are attached to the lead entity, as in the case of the Costa Rican Protection Boards, which are attached to the National Child Welfare Agency, and in El Salvador, where the Boards for the Protection of Children and Adolescents are departmental administrative dependencies of CNNA.

The legislation in each of these countries mandates the creation and maintenance of local institutions in each municipality, with the exception of LEPINA in El Salvador which only establishes the obligation to create and finance at least one Protection Board per department, leaving CONNA the option to create as many new Protection Boards as necessary, or increase the number of members of those already in existence.

1. The special case of federal States

Countries with Federal Government systems—like Mexico,³⁵ Argentina,³⁶ and Brazil³⁷—delegate to the (local) states or provinces the legislative, regulatory and political autonomy—within the confines of the federal constitution—in specific areas referred to as “not delegated to the central Government,” including the setting up of institutional structures for the implementation of laws and policies. Yet, at the same time, such countries face an added challenge—despite the advantage of a federal system with the autonomy of local states—in terms of the harmonization of federal, state and municipal laws. This means that there might be progress at the level of federal legislation that is not reflected in all the states/provinces of a country, or cases in which some local institutions within a country have laws that comply with the international rights treaties, while others have not adopted the needed legislative reforms to guarantee their fulfilment. (Morlachetti, A., 2010).

In the Federal Government system of Argentina, Article 4 of Law N° 26061 on Comprehensive Protection of the Rights of Children and Adolescents, decrees the decentralization both of the implementing organization and of the specific plans and programmes for the protection of rights, and requires that the Policy on Comprehensive Protection of the Rights of Children and Adolescents be implemented through a harmonized set of programmes at the national, provincial and

³⁵ “...at the complexity of implementation due to the federal structure of the State party, which may result in new legislation not being fully implemented in practice as the state level. In particular a number of laws such as the Act on the Protection of the Rights of Children of 2000 are not fully integrated in state laws” (Committee on the Rights of the Child. Concluding Observations: México: CRC/C/MEX/CO/3. 8 June 2006. Para. 6).

³⁶ “The Committee encourages full implementation of the State party’s legal reforms to all remaining provinces and urges the State party to take all necessary measures for the application of the Convention and its Optional Protocols in the entirety of its territory.” (Committee on the Rights of the Child, Concluding Observations: Argentina. CRC/C/ARG/CO/3-4. 21 June 2010. Para. 14).

³⁷ “The Committee also notes that the application of a considerable part of the Convention falls within the competence of the federal states and municipalities, and is concerned that this may lead, in some instances, to situations where the minimum standards of the Convention are not applied to all children due to legal, policy and financial differences at the state and municipal levels. (Committee on the Rights of the Child, Concluding Observations: Brazil. CRC/C/15/Add.241. 3 November 2004. Para.13).

municipal levels and in the Autonomous City of Buenos Aires. (Art.32). In addition, the Comprehensive Protection System has a national level, a federal level of negotiation, and a provincial level. This is the case with the planning and implementation entity for policies on childhood and adolescence, whose structure and hierarchy is to be determined by each province, respecting the respective autonomies and the pre-existing institutions.

This explains the importance of the clause in Article 45—which creates the Federal Council on Children, Adolescents and the Family, to be comprised of the representatives of the entities—already in existence or pending creation—for the protection of the rights of children, adolescents and the family, in each province and the city of Buenos Aires—to enable to negotiate uniformity in the drafting and implementation of legislation and policies on minors.

In Brazil, the Statute on the Child and Adolescent decrees that the policy on protection of the rights of children and adolescents shall be implemented through an harmonized set of governmental and non-governmental programmes at the national, state, federal district and municipal levels. (Art. 86). It also establishes a system with a national-level Council and councils under the state and municipal governments to facilitate negotiated agreement and coordination for coherence of the protection system.

Finally, the Mexican Law for the Protection of the Rights of Children and Adolescents decrees that the Federation, the federal district, the states and the municipalities may pass the laws and take the administrative measures necessary to ensure compliance with the Law, and seek to implement the mechanisms necessary for the protection of the rights of children. In the case of Mexico, the Law does not establish coordinating bodies as in Brazil and Argentina. Instead, Article 50 authorizes the Federal Government to draw up coordination agreements with the governments of the federal districts, states and municipalities in order to implement joint programmes for the enforcement, protection and defence of the rights of children and adolescents.

D. Participation

The Committee on the Rights of the Child has indicated that the effective application of the Convention to recognize and enforce the rights of minors requires clear intersectoral coordination throughout the public sector, and between the public sector and civil society, particularly involving the children and adolescents themselves, and that strict surveillance of its application is necessary, and should be incorporated into the government process at all levels. This will require the real, active participation of civil society, and the promotion of mechanisms for formulating, monitoring and oversight of the policies and practices that impact the rights of children (Committee 2003, General comment N°5, Para. 27).

In the models of protections systems that were evaluated, there were various laws establishing advisory institutional bodies that included civil society organizations formally, in some cases even jointly under equality of conditions with the governmental institutions. This represents a paradigmatic change, as the State apparatus had never previously considered civil society organizations as external actors with the capacity to interact formally in the drafting and audit of public policy. The fact of being included currently as part of the workings and functioning of the System permits—and requires—that conditions for including civil society's views of children be generated from within the State's institutional structure.

Brazil has played a pioneering role in this paradigm shift through its Statute for Children and Adolescents, that provides the legal foundation for a protection system based on the guiding principle of the equitable participation of civil society organizations. (Art. 88). Moreover, the advisory forums for the preparation of national policy on child protection and oversight give civil society organizations participation on an equal footing with governmental organizations, establishing that the National Council on the Rights of the Child and Adolescent shall consist of equal numbers of representatives of the Government and national non-governmental organizations campaigning for children's rights.

Similarly, the Rights Councils at the local, state and municipal levels are also advisory bodies equally represented by members of governmental and non-governmental organizations.

That same model of equitable composition of lead organizations and organizations for the formulation and oversight of policies has been adopted by the PINA law in Guatemala for the composition of the National Commission on Children and Adolescents, the LOPNA in Venezuela (Bolivarian Republic of) for the Councils on Rights, and the Code for Children and Adolescents in Ecuador.

The models adopted in Paraguay with the Code for Children and Adolescents, and in El Salvador with LEPINA, coincide in their national-level councils not having equitable representation, most seats being filled by representatives of Ministries and governmental institutions. However, in the local bodies —at the level of the Local Committees on the Rights of Children and Adolescents in El Salvador, and on the Municipal Councils on Children and Adolescents— non-governmental organizations and organizations of children and adolescents are well represented. The situation of the Dominican Republic is similar, where the Municipal Offices (Directorates), whose main function is to approve the municipal adaptation of national policies, are to be comprised of equal numbers of representatives of governmental and non-governmental institutions.

The regulations created by the Council on the Comprehensive Care and Protection of Children and Adolescents in Nicaragua, the National Council on Children and Adolescents in Costa Rica, and the National Honorary Consultative Council on the Rights of Children and Adolescents in Uruguay —while they do incorporate non-governmental organizations on children’s issues— all coincide in having a model that tends to have a majority of members of Ministries and governmental organizations, ensuring the prevalence of their views over those of civil society.

E. Independent human rights mechanisms

The Committee on the Rights of the Child, in its General comment 2 (2002) on the role of independent national human rights institutions in the promotion and protection of children’s rights, places especial emphasis on their role as an important mechanism for promoting and guaranteeing the application of the Convention. It is important to examine whether these institutions have a specific mandate to protect the rights of children, and whether that mandate is established by law.

There are several countries in Latin America whose protection system model incorporates the figure of an independent rights-protection mechanism with various functions and powers, one that —to a greater or lesser degree— acts in compliance with the Paris Principles.³⁸ Most countries have tended to create a specific mechanism for promoting and protecting the human rights of children and adolescents, or to incorporate issues on children and adolescents in national human rights institutions already in existence —like the Ombudsman’s Office— or even to designate an special Adjunct Ombudsman within the framework of the comprehensive mandate of these human rights institutions.

In Latin America, most of the legislation on children has opted for the figure of a general Defender or Ombudsman to defend the totality of human rights consecrated in the legislation, with offices, areas, divisions, programmes or specialized units (each institution uses a different designation) responsible for matters relating to children and adolescents. In some cases, these parties are also responsible for other, related priority populations —mainly women and adolescents (INN, 2011 Page 22).

- In Colombia, the Ombudsman’s Delegate for the Rights of Children, Youth and Women in the National Ombudsman’s Office.
- In Costa Rica, the National Directorate for Children and Adolescents, formally established as a specific area in the Office of the Ombudsman.

³⁸ Principles Related to the Status and Functioning of the National Institutions for the Protection and Promotion of Human Rights. Approved by General Assembly Resolution 48/134 of 20 December 1993.

- In Guatemala, the Office of the Defender of the Rights of Children and Adolescents, as a division within the existing institutional structure of the Attorney General for Human Rights.
- In Paraguay, the Office of the Defender of Children and Adolescents under the Ministry of Public Defence.
- In Nicaragua, there was call for the establishment of the Office of the Defender of Children and Adolescents, to be exercised by the Office of the Special Attorney General for Children and Adolescents.
- In the case of Peru, the Code having established the creation of the Office of the Defender of Children and Adolescents, the Division for Children and Adolescents was set up eventually within the Ombudsman's Office.
- In El Salvador, the constitution created the Office of the Attorney General for the Defence of Human Rights that, in its Organic Law, created the Adjunct Attorney General's Office for the Human Rights of Children and Youth.

The approach to comprehensive protection taken by the majority of countries in this group is different to that of Argentina that, in Law N° 26061, established the Defender of the Rights of Children and Adolescents with sweeping powers for defending individual and collective rights, but whom still has not been designated; and from Jamaica, whose Child and Adolescent Protection Act created the Children's Advocate, in the nature of a parliamentary commission—that is, answerable to Parliament.

F. Budget

Each State, in order to be able to protect the rights of children established in Article 4 of the CRC,³⁹ should assign as many resources as possible to the implementation of the rights recognized in the Convention and, therefore, must allocate a proportion of national and local budgets to guarantee, both directly and indirectly, the enforcement of those rights.

The majority of framework laws on children and adolescents establish budgetary line items deriving from ordinary budgets and incomes, but no specific percentage of budgetary assignment—which, clearly, can affect the institutional structure and the proper financial backing and implementation of the system established in the legislation for children. This can affect the setting up of the protection system and the necessary flow of resources for the functioning of the institutions comprising the system, by requiring a yearly political negotiation to commit the necessary annual budgetary assignments.

However, there are some normative provisions worth considering, that can serve as models for other laws regarding the importance of guaranteeing more predictable budgetary minimums for the functioning of comprehensive protection systems for children:

- Argentina: Law N° 26061, in accordance with the principle of progressivity, establishes that “the budgetary provision under no circumstances may be inferior to the largest allocation or execution of preceding programmes.” Secondly, the same article establishes the inviolability of funds earmarked for children, adolescents and families in the national budget.

³⁹ Convention on the Rights of the Child. Article 4 “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

- Costa Rica: The Code for Children establishes a Fund for Children and Adolescents, and also establishes the way that Fund is to be constituted, dedicating a minimum of one-eighth (0.5%) of four per cent (4%) of the resources of the Fund for Social Development and Family Assignations assigned to the National Child Welfare Agency by Law N° 7648 of 9 December 1996. The Fund for Children and Adolescents will be managed through a special account and may not be used for any other purpose, nor used to cover administrative costs.
- Ecuador: The Code states explicitly that it is the State's obligation to provide financial resources for the operation of the National Council on Children and Adolescents. At the level of the Cantonal Council, the obligation of financing falls to the municipality. The National Fund for the Protection of Children and Adolescents also was created, with private and public contributions from taxes, contributions and international cooperation.
- The Dominican Republic: The Code establishes explicitly that the Budget of Income and the Law on Public Spending shall assign a specific annual budget to the National Council for Children and Adolescents, equivalent to a minimum of 2% of the national budget.
- Venezuela (Bolivarian Republic of): The Child and Adolescent Protection Fund has been created for the exclusive purpose of financing specific programmes for the protection and care of children and adolescents. It stipulates that the national, state or municipal budgets must include a line item for the Fund for the Protection of the Child and the Adolescent in each jurisdiction, to which sufficient resources for the protection and care of children must be assigned.

G. Sustainability of the protection systems and evaluation of their functioning

There have been repeated changes in the institutional structures created and planned for in the codes and legislation on children in some countries, especially changing the lead entities' administrative hierarchy, specificity and technical and political autonomy.

The delay in installing the comprehensive protection systems (for example, in El Salvador) and the partial and slow implementation of the systems in local institutions — as may be seen in the individual country descriptions in Chapter II and the recommendations made by the Committee on the Rights of the Child (for example, to Argentina, Costa Rica, Bolivia, Guatemala and Paraguay) — is compounded in countries that have changed—or plan to change—their institutions, through legislation that modifies their ministerial organization or the hierarchies of their institutions, subsuming them to a different Ministry or eliminating the existing institution completely and assigning its responsibilities to another sector.

- (a) Plurinational State of Bolivia: The Vice-Ministry of Gender Affairs, a subdivision of the Ministry of Sustainable Development and Planning, was replaced by the Vice-Ministry of Equal Opportunities and the General Directorate for Children, Youth and Older Adults, under the Ministry of Justice.
- (b) Ecuador: There is a bill of law, with a good probability of being passed, for the establishment of Equality Councils, whereby the Council on Generational Equality would replace the National Council on Children and Adolescents and part of the decentralized system.
- (c) Honduras: The National Social Welfare Board gave way to the Honduran Institute for Children and the Family (IHNFA), and currently, a project has been presented to the National Congress to create the Office of the National Children's Ombudsman, that would replace that agency.

- (d) Nicaragua: The National Council for the Comprehensive Protection of Children and Adolescents was subsequently incorporated into the Ministry of the Family, Adolescents and Children (MIFAN).
- (e) Peru: The lead agency, PROMUDEH, was replaced by the Ministry of Women’s Affairs and Social Development (MIMDES), which was replaced in 2012 by the Ministry of Women’s Affairs and Vulnerable Populations, under which the General Office for Children and Adolescents now falls.
- (f) Bolivarian Republic of Venezuela: Reform 2007 established that the Ministry of People’s Power, with competency in matters of comprehensive protection of children and adolescents, will be the lead entity.

This, clearly, makes it quite difficult to evaluate each protection system in terms of its efficiency and efficacy, or to suggest any modifications that it might need, either because it has not been in operation long enough, or its component institutions may even have been replaced or modified shortly after beginning to function.

VI. Suggestions for the design, implementation and evaluation of a comprehensive child protection system

The comparative analysis of the legislation supporting the institutional structures and the models of child protection system in the countries of Latin America and the Caribbean made over the course of the present study form the basis for the suggestions formulated in this section for the creation, reform and evaluation of a comprehensive protection system for children, in order to achieve the best possible institutional structure for designing, formulating, implementing and supervising public policy on the protection and promotion of the rights of children and adolescents.

TABLE 9
PROPOSAL FOR A COMPREHENSIVE NATIONAL CHILD PROTECTION SYSTEM

Themes	Suggestions
Comprehensive Protection System and Institutional Structures	<p>Adjust and harmonize national legislation—in those countries that have not already done so—in accordance with international human rights commitments, especially the United Nations Convention on the Rights of the Child, through the passage of laws and/or codes that include the creation of a National Comprehensive Protection System for the rights of children and adolescents.</p> <p>Reaffirm, as guiding principles of the comprehensive protection system, the best interests of the child, the right to participation, respect for the opinions of children and adolescents in line with their progressive age and maturity, and the right to survival and development.</p> <p>Adopt a system of decentralized protection in which all institutions work together harmonized under the general direction of a lead entity, and are organized internally and in their relations with other (sub) systems around the common objectives of respect for, and promotion and protection of, the rights of children and adolescents.</p> <p>Establish, through legislation and/or pertinent regulations, the basic guidelines which, based on the functions of the various competent State entities on matters of children and adolescents, contribute to the systematic and harmonized action of the State's sectors and organizations involved at the national and local level, in the defence and comprehensive promotion of the rights of children and adolescents.</p> <p>Interrelate, through formal bodies, the system of comprehensive protection of children with the set of institutions in other systems, such as social protection, health, education, etc.</p> <p>Distinguish clearly, in the legislation supporting the protection system, between those organizations that design and formulate public policies on children and those that implement it and are in charge of providing services and care.</p>

Table 9 (continued)

Themes	Suggestions
Leadership and Coordination of the System	<p>Establish distinctive intersectoral coordination for recognizing and enforcing the rights of children and adolescents in the entire public sector, among the different levels of administration, and between the administration and civil society — especially including children and adolescents themselves, as stipulated by the Committee on the Rights of the Child in its General comment N° 5 on general measures for application.</p> <ul style="list-style-type: none"> • That coordination requires the selection of a coordinating body as the maximum authority in the child protection system, and the strengthening of its role of policy and technical coordination, by making it a forum for dialogue among all the sectors of Government and (sub) systems empowered with the faculty to act on matters concerning children and adolescents.
Decentralization and Role of Local Governments	<p>Promote, stimulate and strengthen the implementation of decentralized systems of comprehensive protection, based on the construction of institutional structures at the regional and municipal levels, to transfer part of the technical responsibility for the development, implementation and supervision of public policy on children and adolescents to the regional, departmental and municipal levels.</p> <p>Involve autonomous and decentralized governments at the departmental and municipal levels in the formulation and implementation of public policies on children and adolescents.</p>
Federal States	<p>Reaffirm the obligation of legislative harmonization and its homogeneous enforcement throughout the Federal States, in order to guarantee the recognition and compliance with the rights of children and adolescents in all state jurisdictions.</p> <p>Establish a forum for universal consultation to further legal and policy coordination at the federal level, to ensure that the provincial and/or state systems are in line and that the legal frameworks operate in harmony and are respectful of the rights, principles and guarantees consecrated in the CRC.</p> <p>Establish a federal fund to be distributed among the provincial and/or state jurisdictions for financing the creation of state and/or provincial protection systems, respecting the comprehensive system model at the federal level.</p>
Participation	<p>Establish advisory bodies for the protection of children and adolescents (for example, National Councils) that are forums for coordination, with the participation of the various civil society organizations, Ministries of the public sector and private national non-governmental organizations, working in the field of child rights.</p> <p>Form advisory bodies composed equally of representatives of governmental entities and civil society organizations —to achieve the maximum expression of the concept of civil society participation as equals of the governmental institutions, in the preparation of the general regulations of national policy on the child protection system, and surveillance of its implementation.</p> <p>Install, and/or strengthen, legal and institutional structures to promote the participation of children and adolescents. (For example, forums for the participation of children and adolescents through the creation of Consultative Councils for decision-making on local public policy) in accordance with General comment N°12 on the right to be heard, and the Committee on the Rights of the Child's General Comment N° 5 on general measures for the application of the CRC, which states that, "It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions."</p>
National Human Rights Institutions	<p>Establish, through pertinent legislation, an independent mechanism for the protection of the rights of children in accordance with the Paris Principles and the Committee on the Rights of the Child's General Comment N°2 (2002) on the role of Independent Human Rights Institutions in the Promotion and Protection of the Rights of the Child.</p> <ul style="list-style-type: none"> • This might be a specific national mechanism for the promotion and protection of the human rights of children and adolescents —such as a Children's Ombudsman— or the incorporation of the issues of children and adolescents into existing general national human rights institutions —like the Ombudsman's Office— or even, the designation of an Adjunct Ombudsman within the framework the comprehensive mandate of these human rights institutions. • This independent human rights institution —despite the designation of Defender's Office, Ombudsman, Public Defender of Child and Adolescent Rights— is not the entity responsible for fulfilment of the CRC, but instead, has a role of rights enforceability through the receiving of complaints, surveillance of actions by authorities, and the emission of recommendations to the corresponding public or private entities. <p>The national institution for enforcing the human rights of children should be authorized to require information from the various entities comprising the State administration, examine individual complaints and petitions, and carry out the corresponding investigations, either in the case of complaints presented in the name of children and adolescents, or directly by children and adolescents, and have the power to provide them with support in recourse to the courts, particularly the power to: (a) submit cases of problems affecting children in their own name; and (b) intervene in judicial causes to inform the court on pertinent matters of human rights.</p> <p>Promote national human rights institutions' preparation of monitoring plans and indicators based on the recommendations made in the concluding observations of the Committee on the Rights of the Child.</p>

Table 9 (concluded)

Themes	Suggestions
Budget	<p>Assign the maximum amount of resources available for the implementation of the rights recognized in the CRC, and earmark a portion of the national budgets and local budgets that, either directly or indirectly, may be required to guarantee those rights in accordance with Article 4 of the Convention.</p> <p>Make budgetary decisions considering the best interests of the child, especially the least favoured and most vulnerable groups of children.</p> <p>Establish, in the pertinent legislation, that the budget for children be protected by the principle of non-regression and progressive realization, by which the budgetary provision may, under no circumstances, be less than the largest sum or allocation of previous programmes.</p> <p>Establish, in the pertinent legislation, that the budget for children be protected by the principle of inviolability against any such disturbance as economic crises, natural catastrophes or other emergencies, in order to maintain the sustainability of the comprehensive protection of children (for example, through the creation of an autonomous Fund for Children outside the country's general budgetary accounts).</p> <p>Establish, in pertinent legislation and to the greatest degree possible, explicit percentages of resources from the budget and/or fund to guarantee the establishment and maintenance of the national and local systems.</p> <p>Establish a system by which the national authorities can duly render accounts, openly and transparently, to permit the participation of communities and children in the preparation and scrutiny of the relevant budgets.</p>
Monitoring and evaluation mechanisms	<p>Create and/or strengthen monitoring and evaluation mechanisms for the comprehensive child protection system to monitor and evaluate meticulously the achievements and results of the protection system, along with its difficulties and constraints.</p> <p>Create and/or strengthen a (sub) system of statistical information on children and adolescents, with the aim of obtaining quality statistical data disaggregated to serve as a foundation for formulating specific policies adequate for the needs of the children and adolescents of different ages, sex, ethnic origin and place of residence.</p> <p>Consider the creation of an oversight body on children which, in cooperation with civil society, can analyse, evaluate and monitor the functioning, implementation, and efficiency of the comprehensive child protection system.</p> <p>Strengthen the system of human rights indicators, incorporating the perspective of children and adolescents, with the aim of monitoring the most relevant policies in the field from a rights perspective.</p>

Source: Prepared by the author.

A. Some final reflections on comprehensive child protection systems

The concept of comprehensive protection implies a set of actions, policies, plans and programmes that can be implemented by the State, or jointly by State- and civil society organizations, in order to guarantee that all children and adolescents can enjoy their human rights freely and without discrimination, while at the same time focusing their attention on special situations, either of individual children and adolescents or in a determined sector, of children whose rights have been violated. The criterion of comprehensiveness is essential in the design of a system described as *comprehensive*, in the sense that it requires guaranteeing the rights of all children and adolescents, without any discrimination, and not only of those considered to be in situations of social risk or danger.

A comprehensive protection approach promotes a holistic vision of child protection that necessarily involves all pertinent actors in the protection of the rights of children. Of course, there are situations that require focused interventions to address situations of urgency and the greatest violations of rights. However, if these matters are not addressed from a more inclusive view —making it possible to work in a coherent manner to attack the root of the problem— then it is not a comprehensive approach from the human rights perspective. For example, if the responses to the problems of youths in conflict with the criminal justice system are approached only from a perspective of security policies and criminalization, then no substantial progress can be made in the reduction of the number of young

persons in the juvenile criminal system. For example, the Committee on the Rights of the Child has affirmed in its General Comment N°10 that:

“...a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings.”

That means that, inter alia, special attention should be given to:

“...prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.” (Committee (2007). (General Comment 10, Paras. 17 and 18).

Attention should be given to the protection system’s capacity—or lack thereof—to design and/or coordinate with other institutions and/or (sub) systems for the design of universal public policies intended to generate the social and economic conditions that would guarantee the rights of all children and adolescents, and not only special policies aimed specifically at addressing determined circumstances that produce situations of vulnerability for certain groups. (For example, youths in conflict with criminal law, victims of child labour, or abuse victims). The concept of a comprehensive protection system must incorporate each and every right of children and adolescents. This is possible if public policy on special protection is conceived of as an integral element of the general policy on comprehensive protection. Above all, special protection programmes aimed at the restoration of rights should be comprehensive and be aligned with general public policy on child protection and with public social and development policy, in general.

A protection system, to be considered comprehensive, must promote and protect the rights of the entire universe of children and adolescents. Therefore, it must have a clear association and interaction with other (sub) systems, with potential overlapping of programmes and interventions. The boundaries and structural interfaces between a comprehensive child protection system and other systems like education, health, social protection, etc. are important aspects to be considered in a comprehensive child protection system, with implications for the way functions, faculties, policymaking and accountability processes are to be defined.

Instead of treating each problem separately, the different components of the system should interact with each of the other components, so as to commit all actors that—directly or indirectly— have to do with the protection of the rights of children and their family members. Of course, the interactions among the parts of the system require coordination and other actions that are organized or formed with respect to the system’s objectives (Wulczyn, 2010). Each of the (sub) systems adapts to, and is influenced by, the other parts. It is the responsibility of each component to seek mutual reinforcement with respect to the goals and common objectives and the jurisdiction of the other (sub) systems.

One of the challenges posed in the models of comprehensive protection system would appear to be finding the point of equilibrium between the specificity and autonomy of the institutions for children and their capacity for policymaking, harmonization and coordination with other organs of the State. The balance must be found that ensures that the system for children is not relegated to a role dedicated exclusively to children considered to be in situations of vulnerability, leaving the design, surveillance and evaluation of the universal policy on social protection, education and health entirely in the hands of the other sectors of the State.

In the legislation of some countries surveyed for the present study, there is no true system of comprehensive protection, beyond the titles the law or code may bear with respect to the existence of a protection system, along with the institutional structure it creates. Clearly, a true protection system must have—at least— a policymaking body, an institution or forum offering a deliberative process and equitable participation of public sector and civil society organizations, a decentralized institutional framework, a well-regulated and properly coordinated structure with a clear distribution of powers among all public and private entities involved in matters related to children and adolescents at both the

national and local level, and be equipped with the necessary technical and financial resources for the functioning of the entire institutional structure.

Indeed, while there has been a healthy tendency on the part of child-related legislation to create a specialized institutional structure for children—in many cases autonomous and independent (for example, National Councils on Children, Local Committees, Rights Protection Boards, Children's and Adolescents' Ombudsman Offices, etc.)—these also must act jointly and coordinate with other State institutions. One of the difficulties facing some of the protection systems has been their isolation from the overall planning of social policies—as if they were totally independent, and as if individualized protection for children and adolescents in situations of conflict, violation of, or threats to, their rights were conceptually removed from overall public policy.

Therefore, it is fundamental that norms on children have protection mechanisms to guarantee adequate coordination, not only within the protection system itself, but also between that system and others. For example, the design of policies and benefits for children in the social protection systems of some countries in Latin America is performed by different actors autonomously (such as education and, notoriously, conditioned cash transfer programmes) without any reference to others, and without the child protection system having any role whatsoever in the formulation and evaluation of those policies.

The essential elements of a system for the protection of children have been presented in this study. They have certain basic functions, capacities and structures, and what is reflected in the following figure is only an indicative model for discussion by the States parties of what might be the most adequate model for the comprehensive protection of the rights of children and adolescents. Clearly, each society must define not only the institutional structures and the powers, capacities, functions and inter-institutional interrelationships that are most convenient for the specific social, cultural and political context in which they operate, but also the existing institutional structure and the available resources, while bearing in mind their commitments in the ratification of the CRC and other human rights instruments.

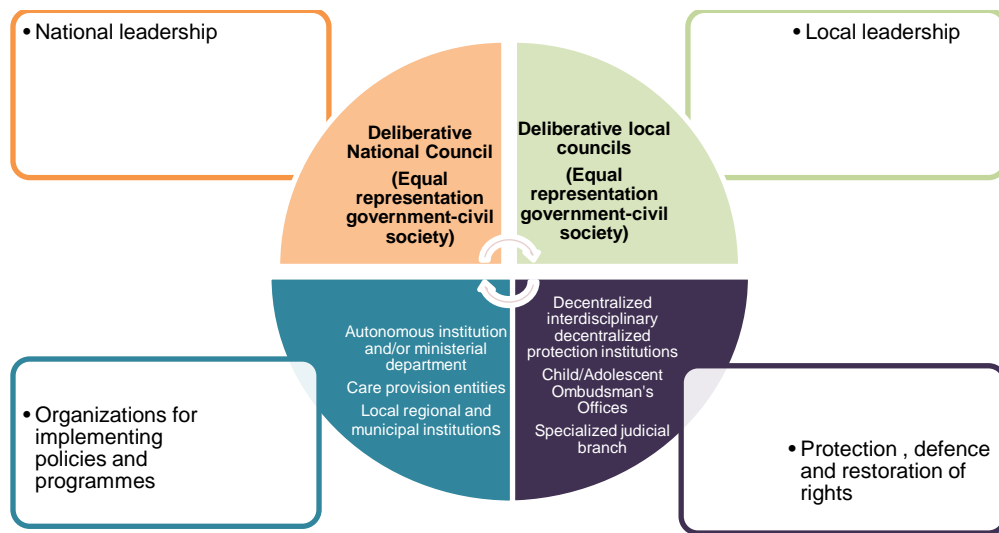
The proposed model emphasizes a policymaking body which, in addition to being clearly determined, is exercised by a advisory entity with equal participation of governmental and civil society organizations. Furthermore, that leadership is replicated in a decentralized fashion at the local level, maintaining in the advisory representation the equal footing between government and civil society. This leadership represents the maximum authority in terms of drafting and monitoring national and local-level public policy.

The proposed system also incorporates an institution that is autonomous and/or attached to a Ministry, which is the body that implements public policy and legislation for children gradually, through the care-providing, decentralized entities at the regional, departmental and municipal levels.

Finally, the system includes measures for the protection, defence and restoration of rights in cases where these are violated, which can be implemented by the institutional structure of each State through its rights protection administrative bodies, specialized legal branch, and specialized ombudsman's offices.

In conclusion, the importance of a comprehensive protection system for children based on, and supported by, framework legislation on child protection, cannot be underestimated. While a protection system can find legitimization in both formal and informal relationships—depending on the diverse cultural, institutional and legal contexts of the multiplicity of countries and societies—generally, the existence of an overall legal framework generates a consensus about the rights of children and adolescents that expresses and consecrates their comprehensive protection as a deliberate and obligatory responsibility of the State. Moreover, a legal framework helps to clarify the formal limits of the protection system, along with its functions, powers and real capacity to coordinate and obligate other institutions, and also lays the foundation for accountability and creates a basis for formulating lawsuits against those responsible for children and adolescents. Without that legitimacy, the child protection system can lack the institutional—and political—faculty necessary for defining and exercising its authority and jurisdiction.

FIGURE 9
POSSIBLE MODEL OF A COMPREHENSIVE CHILD PROTECTION SYSTEM



Source: Prepared by the author.

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Annex

Working methodology

The working methodology for this study was based on the analysis of documents and on semi-structured interviews with key individuals in the selected countries. The consulted documents are listed in detail in the general bibliography section and in the bibliography by country. Interviews for the selected countries were performed by collecting the data based on the findings from each specific document on Ecuador, El Salvador, Jamaica and Uruguay. The selection of the key individuals for obtaining information, and data on the evaluation of the national comprehensive protection system for children, was made in consultation with the UNICEF Regional Office for Latin America and the Caribbean, the ECLAC Social Development Division, and the UNICEF offices in Ecuador, El Salvador, Jamaica and Uruguay.

In Ecuador, the following persons were consulted and interviewed: a) Sara Oviedo, Executive Secretary of the National Council on Children and Adolescents and current Ecuadorian candidate for the Committee on the Rights of the Child; b) Tamara Merizalde, Executive Director of INFA — Institute for Children and the Family— Ministry of Economic and Social Inclusion; c) Catalina Mendoza Eskola, Executive Secretary of the Cantonal Council on Children and Adolescents in the city of Cuenca; d) Berenice Cordero, Investment, policies and protection, UNICEF Ecuador; e) Santiago Cruz, Technical Director of the CNNA; f) Lorena Chávez Ledesma, General Coordinator of Special Protection of MIES INFA and g) Rossana Viteri, Director of Plan International Ecuador. In El Salvador, the following persons were consulted and interviewed: a) Carlos Rafael Urquilla Bonilla, Secretary of Social Inclusion, b) Matilde Guadalupe Hernández de Espinoza, Executive Director of Social Inclusion and President of the Board of directors of the Salvadoran Institute for Child Protection (ISNA); c) Zaira Navas, Executive Director of the National Council on Children and Adolescents; d) Luis Enrique Salazar Flores, Executive Director of ISNA, e) María Teresa Delgado de Mejía, Protection Specialist, UNICEF El Salvador; f) Claudia Robles, Social Policies Specialist, UNICEF El Salvador; and g) Verónica Simán, Auxiliary Representative of UNFPA El Salvador. In Jamaica the following persons were consulted and interviewed: a) Mary Clarke, former Children's Advocate, b) Carla Francis-Edie, Chief Executive Officer of the Child Development Agency, c) Andrea Shepherd-Stewart of the Planning Institute of Jamaica, d) Shelly-Ann Edwards, Social Security Analyst Planning Institute of Jamaica and e) Janet Cupidon-Quallo, Child Protection Specialist, UNICEF Jamaica. In Uruguay, the following persons were consulted and interviewed: a) Jorge Ferrando, Director of INAU, b) Lucia Vernazza, Planning and Monitoring, UNICEF office in Uruguay; c) Juan Miguel Petit, UNDP Uruguay, d) Gonzalo Salles Executive Secretary of Gurises Unidos (NGO); and e) Luis Pedernera, Institute of Legal and Social Studies of Uruguay.

The interviews were made by telephone and/or via Internet conference and/or in writing. After explaining the purpose of the study, the following initial questions were asked:

- What is your vision of the model national system of protection established in legislation?
- Have the institutions forming part of the protection system called for in the legislation been implemented in their totality? What have been the main obstacles to their implementation?
- If you were to be consulted by another country that is preparing a new Code for children, would you recommend following the comprehensive protection model chosen for your country? What aspects of the protection system would you recommend, and what others would you change?

These questions were complemented with additional ones, depending on the country and the occupation of the person interviewed.



The commitments undertaken by the States parties to the United Nations Convention on the Rights of the Child (CRC) and other international human rights instruments established obligations to adopt the necessary legislative measures and policies for making the acknowledged rights effective in guaranteeing the comprehensive protection of children and adolescents. Following the ratification of the CRC, many countries in Latin America modified their legislation to improve protection of the rights of children and adolescents, and some even introduced new, more comprehensive child-protection legislation. Most of these new laws and codes have included the creation of a comprehensive National Child Protection System (NCPS).

Notwithstanding the wide range of organizations commissioned to monitor respect for the rights of children and adolescents in the different countries, this document presents a comparative study of the relevant laws and codes in the region in terms of the legal grounds for establishing a national child protection system and as a means of monitoring existing protection systems, the institutions that comprise them, the functions and spheres of competence established by these regulatory frameworks and the budgetary resources available for bringing them on stream and implementing them. The functioning of the national child protection systems of Ecuador, El Salvador, Jamaica and Uruguay is analysed with respect to their national legislations. On the strength of these analyses, a number of recommendations are put forward, the minimum elements to be borne in mind for assessing the functioning of the national systems have been identified and a model is suggested for those countries currently discussing the adoption or reform of a comprehensive advocacy and promotion system.

