

EXECUTIVE SUMMARY

"BUILDING SYSTEMS IN THE AMERICAS: A DIALOGICAL STUDY OF THE REGULATORY FRAMEWORKS"

1. BACKGROUND:

The adoption of the 1989 Convention on the Rights of the Child entailed, inter alia, requiring States to set up a number of agencies and institutions involved in the promotion and protection of the rights of children and adolescents, in order to ensure the promotion and protection of their rights.

In its General Comment Nº 5, the Committee on the Rights of the Child points out 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 - governmental and independent” (Committee on the Rights of the Child, General Comment Nº 5, para. 9).¹

Thus, at different times and with different levels of intensity, changes were made to regulatory frameworks, incorporating the provisions of the Convention (principles, rights and obligations); mechanisms were established to give effect to the exercise of rights by children and adolescents in public policy (universal and targeted); administrative and judicial procedures were established, such as the allocation of budgets, etc. Giving way to a set of agencies of different levels and objectives, which began to operate in a more systemic way, giving rise to Protection Systems.

Similarly, in the Inter-American System, the Inter-American Court of Human Rights refers to the concept of “corpus juris”² in matters relating to children and adolescents, insofar as international human rights law consists of a series of international instruments with different contents and legal effects (treaties, conventions, decisions, declarations, etc.) issued by the Committee on the Rights of the Child within the framework of the universal system, and which, based on article 19 of the American Convention,³ incorporate and give content to the provisions on children and adolescents emanating from the inter-American system, allowing us to use the protocols, observations, and other decisions adopted, as tools of interpretation.

In this sense, although there has been progress at the regulatory level of the SIPPINNAs (for its acronym in Spanish: systems for the promotion and protection of child rights), they are “heterogeneous and unequal in their definition and implementation” (Quito, 2007),

¹ General Comment Nº 5, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWnOjExFVnWuhiBbqgAj0dWBoFGbK0c>

² I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99, of 01 October 1999. Series A No. 16, para. 115.

³ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, of 28 August 2002. Series A No. 17, para. 37, 53, and Case of the “Street Children” (Villagrán Morales et al.)- Judgement of 19 November 1999. Series C, No. 63, para. 194

indicating the need to continue to promote joint work among the countries, to strengthen existing systems and support the creation and implementation of those not yet created.

The SIPPINNA Inter-American Forums are events that are very well attended by Latin American and Caribbean States, as well as by representatives of international organizations, civil society, and children. The first SIPPINNA Forum arose at the initiative of the Government of Mexico and was held in 2017. It led to the identification of conclusions and areas of opportunity around six thematic focal points,⁴ which confirmed the need to continue reflecting on these issues.

The II SIPPINNA Forum was held in Montevideo, Uruguay, in 2018, giving rise to the declaration of Montevideo,⁵ which includes various principles developed on the following focal points: programmatic, institutional and normative. On the latter focal point, the following was specifically indicated:

“2.1. Strengthen and promote regulatory changes at the highest level to consolidate the SIPPINNA, through the mainstreaming of actions that identify common goals, problems and solutions to guarantee the rights of children. 2.2. Review existing regulatory frameworks in order to move forward in harmonizing and amending national and local legislation, bringing it into line with international standards for the protection of the human rights of children. 2.3. Move towards the design of systems for monitoring, evaluating and following up on the implementation of the regulatory framework, the operation of protection systems, and their impact, including indicators aligned with the 2020 Agenda and sustainable development goals.”

Both events were attended by the IIN-OAS, in compliance with the resolution of its Directing Council, and of the 2009 Pan American Congress held in Lima, Peru, which urges States to “renew their commitment to children by strengthening comprehensive protection systems for children, through close coordination among institutions and sufficient, timely resources to improve conditions for development and social inclusion and to ensure that their rights are fully respected”.

In the same vein, and faced with the health emergency context, extraordinary meetings were held, referred to as “inter-American dialogues” and “virtual SIPPINNA sessions”, in preparation for the III Forum that should have been held in Paraguay in 2019, and which is currently projected for 2021. These virtual sessions aimed to highlight the child rights situation in the context of the COVID-19 pandemic and generate opportunities for sharing and discussion among States, Civil Society and other actors involved in the system, based

⁴ 1. Design and implementation of public policies for the protection of child rights; 2. National coordination mechanisms; 3. Development and effective use of budgetary resources; 4. Mechanisms for protection and restitution of rights; 5 Strengthening information systems; and, 6 Child participation.

⁵ Retrieved from: <http://www.inau.gub.uy/documentacion/item/1764-declaracion-de-montevideo-avances-hacia-los-sistemas-nacionales-de-proteccion-integral-de-ninas-ninos-y-adolescentes>

on the actions that SIPPINNAs have been implementing in the region to safeguard the effective enjoyment of children's rights in specific situations.

At the same time, various international organizations of the universal and inter-American system issued declarations, reflections and initiatives aimed at the States in order to guide the new scenarios brought about by the pandemic and the challenges they pose for SIPPINNAs. One of these is the joint pronouncement issued by the IIN and the American members of the UN Committee on the Rights of the Child, called "Children First",⁶ which includes lessons learned and recommendations for the systems, among which, we highlight the following:

- ✓ Protect the budgets allocated to the promotion and protection of the rights of children and adolescents and, where necessary, increase them according to the circumstances, redirecting towards them the necessary resources, according to the best interests of the child, with a special focus on vulnerable groups.
- ✓ Strengthen systems for the promotion and protection of rights, improving their comprehensiveness, management, coordination and efficiency by prioritizing their presence in the region; establishing clear guidelines and providing them with the institutional strengths necessary to fulfil their function. In this sense, the task of promoting, protecting and restoring rights will require strong alliances and multi-sectoral cooperation, strengthening inter-institutional, cross-generational and interdisciplinary work.
- ✓ Rethink what we experienced during the crisis, the weaknesses and strengths of education systems, promoting the transformations necessary to achieve a kind of education reworked at a human scale; friendly, efficient, promoting responsible citizenship. This includes promoting the democratization of Internet access and training teachers, in addition to providing children with greater "digital literacy", as well as criteria and tools for the safe use of new technologies and the appropriate management of situations that, due to their vulnerability, threaten their online and offline rights.

On the basis of the above, the IIN-OAS has designed an "Inter-American Programme for the consolidation of National Systems for the Promotion and Comprehensive Protection of Children's Rights", with the following objective: "to contribute to the creation and/or strengthening of national systems to promote and comprehensively protect child rights (SIPPINNA for its acronym in Spanish) in the States in the region, by promoting inter-sectoral, inter-institutional, comprehensive and decentralized operations, with presence in the

⁶ Retrieved from: http://novedades.iinadmin.com/wp-content/uploads/2020/07/Pronunciamiento_La_Ni%C3%B1ez_Ante_Todo.pdf

territories, including the continued participation of children and youth organizations at different levels of complexity” (IIN-OAS 2020-2023 Action Plan).

In this scenario, the need for an updated and useful tool for the various actors of the systems was identified, which would make it possible to analyse the corpus juris of the SIPPINNAs, at the universal, inter-American and national levels, of the 35 countries of the Americas, in order to: identify legislative advances in the region, verify the models of existing protection systems, the institutions that compose them, and the functions and competencies provided for by these normative frameworks.

It is, therefore, with great satisfaction that the IIN makes this study available, in the hope that it will be used as a tool in which operators of the Systems for the Protection of the Rights of Children and Adolescents and other related actors find relevant and current information on the norms that make up the SIPPINNA.

OBJECTIVES:

The objectives of this regulatory study are:

- ✓ To simplify and unify the search for normative and jurisprudential precedents from international courts or reports of the human rights treaty bodies on children.
- ✓ To provide an updated consultation tool with the main recommendations related to the creation and/or strengthening of SIPPINNAs, at the level of the universal and inter-American systems.
- ✓ To identify central aspects of the systems for the promotion and protection of the rights of children at national level in the 35 countries of the Americas.
- ✓ To highlight the importance of strengthening regulatory frameworks, and then to generate public policies that have an impact on the promotion and comprehensive protection of the rights of children.
- ✓ To facilitate the monitoring and evaluation of the operations of existing institutions.

2. METHODOLOGY EMPLOYED:

For the purpose of this study, the first aspect to point out is that we understand the concept of a Comprehensive Child Protection System to mean “a set of rights, principles, processes, entities (State, Society, Family, Children, Adolescents) acting in a differentiated, orderly, coordinated and complementary way in order to implement universal and targeted regulations and public policy and achieve the comprehensive promotion and protection of child rights in all areas of society” (working paper, IIN-OAS, 2018).

In this regard, the methodology used to carry out this study, is based on a conception of systems, from an approach based on international law and on the promotion and protection

of the rights of children, insofar as both the universal and inter-American systems emerge in order to substantiate a normative and institutional system that protects and contributes to the full realization of human rights.

The combination of national legal systems, plus the inter-American and universal systems, allows us to refer to a legal order aligned with the protection of human rights. In the case of the 35 countries of the Americas, for the most part, they interact at the international level through these two systems (universal and inter-American); therefore, in the application of regulations, we begin by applying a systemic, teleological and literal interpretation, insofar as both are part of the aforementioned corpus juris.

The information collected in this study shows evidence of jurisprudential dialogue between the universal system's committee, the inter-American court and the national regulations generated by each State. At the national level, it should be remembered that Anglo-Saxon and Graeco-Roman law affect the shaping of the systems; taking into account these nuances, 35 country data sheets were designed with the following information:

I. International regulatory framework

A. Universal system

- i. Committee on the Rights of the Child
- ii. CRC – Optional Protocols
- iii. Committee against Torture
- iv. Committee against Racial Discrimination
- v. Human Rights Committee
- vi. Universal periodic review

B. Inter-American system

- i. IACHR binding decisions

II. National regulatory framework

- National constitution
- ii. Laws, decrees, resolutions, etc.
- iii. Implementing agencies for the systems

III. Remarks / observations

3. **OUTPUTS:** This study has 2 outputs:

- ✓ **Country data sheets:** There are 35 country data sheets gathering regulatory information from the universal, inter-American, and national systems.
- ✓ **Summary chart:** There is a summary table that summarizes the significant data contained in the country data sheets. The importance of this table lies in the fact that it is easily updated, and in the annexes included with it, where we can graphically observe some of the conclusions arising from the study.

4. USEFUL ELEMENTS:

- ✓ We believe that this information will be important when determining priorities in the technical assistance to be offered to States and will constitute a guide for the production of tools and knowledge.
- ✓ It will facilitate the understanding of legal information through development and dissemination in clear language.
- ✓ It will strengthen and promote regulatory changes at the highest level to consolidate national SIPPINNAs.
- ✓ It will facilitate the review of the existing regulatory frameworks in order to move forward in harmonizing and amending national and local legislation, taking into account international standards for the protection of the human rights of children.
- ✓ It seeks to cooperate in the process of drafting National Reports, providing timely assistance to Member States, as well as to ensure greater access to information on the entire regulatory framework that makes up the SIPPINNAs.
- ✓ Based on a comparative analysis and from each country data sheet, a useful outline will be produced that will serve as a basic guide for States, Civil Society and other stakeholders in the system, expediting the review of provisions on administrative and judicial procedures in matters involving children and adolescents.
- ✓ It will make it possible to identify regulatory or procedural gaps, in order to strengthen and make more child-friendly the current mechanisms for reporting and gaining access to justice available to children.
- ✓ It seeks to strengthen and consolidate the concept of corpus juris in matters relating to children and adolescents, allowing us to visualize schematically the existing regulatory framework.
- ✓ And it will make it possible to measure and evaluate levels of progress in the implementation of Protection Systems, through the generation of indicators.

5. CHALLENGES:

- ✓ The States must identify a policy to establish clearly the position that children occupy in their project for society, and the responsibilities that the various stakeholders, as duty bearers, must shoulder in relation to that position. This identification is necessary insofar as it is the starting point for the coherence of the system.
- ✓ The regulatory focal point of a SIPPINNA is one of the most important focal points; however, in its implementation and management, it must go hand in hand with programmatic and institutional focal points, which continues to be a challenge, due to multiple factors, such as: financial resources, trained human resources, institutional design, etc.

- ✓ The diversity of contexts and the existence of various systems and subsystems in the region make it necessary to work on standards and principles to guide their management and implementation. We have observed that in many countries where a protection system is in operation, it is applied inefficiently, in the light of the observations made by the universal and inter-American system.
- ✓ Some of the countries that have signed the American Convention have not signed the jurisdiction of the court and, therefore, the court cannot act; likewise, certain countries have denounced the American Convention, so it is not applicable.
- ✓ In addition, in the Americas there are many States that have not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the communications procedure, which needs to be further promoted.
- ✓ In the same vein, more information is needed on the existence of mechanisms to enable children, once national channels have been exhausted, to lodge a complaint with the inter-American and universal systems. There is also a lack of child-friendly information intended for children themselves.
- ✓ It is necessary to continue to promote the mainstreaming of the concept of rights and their expression in all institutions and their practices.
- ✓ Training opportunities for human resources are required, according to the needs of the policies established in each State.
- ✓ Based on this study, it has emerged that it is necessary to generate indicators to allow the evaluation of processes and impacts, as well as indicators showing access to disaggregated rights in order to shed light on inequity gaps. This information should be accessible and in formats that are friendly to different age groups, ethnicities, etc.
- ✓ It is necessary to generate opportunities for the participation of children throughout the public policy cycle, according to their different evolutionary stages.

The protection thus conceived cannot be the task of a single agency, but requires the synchronized action of various bodies, of different levels and functions. But it also requires public policy, programmes and actions targeting children and adolescents, which can overcome the fragmented operations that are characteristic of modern States, in order to attempt to function as a SIPPINNA.

Finally, recalling the recommendations drawn up by the eighty (80) children representing the States and civil society of: Argentina, Barbados, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay; Children's Villages, Chic@snet-pasc, Renacer Foundation, FUNDASIL, LUMOS, MOLACNATS, Plan International, REDNNYAS, Save the Children, Students Commission and World Vision, who took part in the III Pan American Forum, held in Cartagena, Colombia in 2019, we bring this executive summary to a close and hope that the study on the regulatory survey and the

tools generated, will constitute a contribution to the systems for the promotion and protection of rights in the Americas.

“We recommend that the States, the national protection systems, and regional and local governments should strengthen and generate programmes for the integration, protection and promotion of child rights, leading to further awareness of the rights of children and adolescents and the reduction of child abuse and thus, the eradication of domestic violence. This must be synchronized with the creation of new institutions, the allocation of a higher budget to protect children and adolescents within the family in cases of domestic violence, and the development of areas to enable children who are on the committees and adults to monitor these institutions and thus ensure that they function appropriately. Finally, we recommend that State legal frameworks be strengthened in order to protect children and adolescents”⁷ (Extract from the summary of the panel discussion on focal point 3, National Systems for the Promotion and Protection of Children’s Rights, XXII Pan-American Congress. Cartagena – Colombia, 2019)

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⁷ Retrieved from: <http://sitiosiin.org/xxii-congreso/wp-content/uploads/2020/09/Eje3-Sintesis.pdf>