Introduction

Recent decades show a wide diversity in the region with regard to understanding, applying and advocating for human rights. However, in days gone by – as from the late 19th century – there was emphasis on building our own sense of identity in this hemisphere. Opportunities were designed to disseminate a concept of Pan Americanism which, while displaying different features in Anglo Saxon and in Latin States, led to regional linkages and treaties that have driven shared commitments in relation to democratic governance.

The foundation of the OAS (30 April 1948) and the establishment of the Inter-American human rights protection system shared a mid-20th century time and setting, thus confirming that reaching “an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence”, the OAS’s main objective, as stipulated in Article 1 of its Charter, constitutes a task which is closely linked to the affirmation of human rights.

We should note that the process of acknowledging that children are rights holders began many years before these events, with the activities of the Pan American Child Congress and the progressive incorporation of the States to the recently founded (1916) Inter-American Children’s Institute (IIN). It may be held that over the course of the 20th century, the IIN shared and influenced reflections in America regarding the search for an approach that would ensure the well-being of children.

In 1989, and after working on it for ten years, the United Nations presented the Convention on the Rights of the Child (CRC), which was widely and quickly accepted by the member states of the Organization.

At the same time, the United Nations also showed a particular interest in fostering the concept of children as rights holders, by establishing specific regional treaties that connected the OAS more strongly in this field.

Today, 25 years after the adoption of the CRC and 55 years after the adoption of the Declaration of the Rights of the Child by the United Nations General Assembly, the IIN wishes to describe in this paper some of the developments that have taken place for Institutional Action Plan 2011-2015 in relation to participation, juvenile justice systems, and the sexual exploitation of children, as well as the work carried out in the Caribbean States.

With the Convention on the Rights of the Child (CRC), ratified by most of the States in the hemisphere, children’s right to participation basically became associated with the itinerary of the Organization, since in its Article 6, the Democratic Charter stipulates that: “It is the right and responsibility of all citizens to participate in decisions relating to their own development”, a concept that sustains the representative democracies that the Organization is committed to strengthening.

In the Americas, most of the States acknowledge child participation at least in their judicial and administrative settings, in their principal laws, and recognize the right to have access to information, and to freedom of expression and of association, as stipulated in the CRC. On the whole, we may say that attempts are made to include all of the dimensions of child and youth participation.

However, other areas fail to be borne in mind in most of the governments, such as in public policy, community and family settings. In this respect, we should particularly note that the marked separation between the legal framework and the reality that children experience is a widespread issue. Complying with human rights makes social, political, cultural and economic demands in a continent where inequality and exclusion persist to an alarming extent, as evidence of the gap between reality and the rights described in laws, an aspect of which the literature unceasingly reminds us. A number of human rights agencies have pointed out that the implementation of the rights provided for in national bodies of law is weak.

The basic question we should explore, in our capacity as duty bearers, is why, despite the progress we have achieved, is there still a gap between the provisions of the CRC and reality.

*All aspects of children’s daily lives should be prepared to include child participation in decision-making.*

There is a need to implement means of empowerment in relation to child participation, which should also target adults, as it is
they who must cede their own power and space to children, particularly with regard to decisions that affect them directly.

Still pending in the region is the development of a system that will encourage synergy between micro and macro public policy decision-making levels. As a system, it has experienced progress and setbacks without achieving a balance between its components.

Interaction between State and children should be smooth and the agencies that act as intermediaries should support and strengthen this interaction by supplying the resources that make it possible. The outcome of decision-making should, therefore, be a synthesis of the opinions of the children and adults involved in the different settings of daily life, including the State.

To this end, the key lies in verifying that legislation is based on international standards and ensuring that the necessary economic resources and political commitments exist, in order to make them a reality, with results which should be clearly evident.

It is with the purpose of ensuring that the States promote this decisive right for the enjoyment and strengthening of children's citizenship, that the OAS has implemented a number of IIN-led initiatives. In April 2008, the Inter-American Children's Forum, “My Right to Participate” was organized in Querétaro, Mexico. The event was attended by 35 children, representing 13 OAS Member States. Its objective was to generate opportunities for expression and the sharing of experiences between children representing different social realities, which would allow them to discover each other's points of view and proposals regarding their active participation in the design of actions, plans, programmes and policies targeting children.

In acknowledgement of the contribution that children's essence and perspective make to the challenging task of ensuring that the right to participation is complied with, the matter became a mandate of the member States as from the 83rd Meeting of the Directing Council of the IIN, held in Ottawa, Canada, in October 2008.

One of the many initiatives in this regard was the Meeting of the Work Group for the Preparatory Survey on Participation, held in February 2009 in Quito, Ecuador. The event was attended by 23 children from 10 States in the region and as a result, it was agreed to hold the First Pan American Child Forum to ensure the active participation of adolescents.

This First Pan American Child Forum was held in September 2009 in Lima, Peru, at the time of the 20th Pan American Child Congress. It was a historic event that formalized the beginning of discussions between the most senior levels of political decision-making and adolescents.

The Forum was attended by 61 adolescents representing 22 OAS member States and its general objective was to promote child participation through an official activity in which children exercise
their right to give their views and be heard by the authorities responsible for the design and implementation of public policies for children in the region.

We should add that in 2010 (in Colombia) and 2011 (in Paraguay), the IIN organized two inter-generational meetings with the States’ technical liaison officers for participation, attended by youth delegates.

Child participation is a cross-cutting and mobilizing right. Enhancing children’s active and protagonistic social role is vital to the construction of their own life projects, citizenship and democracy in general.

To ensure that children and youth can participate, opportunities and means appropriate to their ages should be provided, which in addition make it possible for them to share opinions and engage in mutual listening with adults.

Because child participation is present on the agendas of OAS Member States, the 2nd Pan American Child Forum, to be held from 9 to 12 December 2014 in Brasilia, Brazil, during the 21st Pan American Child Congress, is an expression of the States’ recognition of children’s right to participate. They value the points of view of children in the construction of responsible citizenship and ensure the existence of means to facilitate inter-generational participation and participation between children, inasmuch as child participation is a principle that guides the development of public policies for children.

Child and youth participation should be understood as an inter-generational system of agreements and consensus between actors.

The task of promoting participation should focus mainly on awareness-raising and the acquisition of techniques for inter-generational work. In order to change children’s reality through child and youth participation, it is necessary to change the paradigms that still coexist in the mindset of children and adults, together with the rights perspective. Generating such a change should be a key objective, as a result of the assessment conducted 25 years after the enactment of the CRC. To this end, we should begin in everyday settings, such as the family, as it is there that identity is developed and citizenship and the right to decide are exercised for the first time. Thus, America and its multiple human rights scenarios can follow a common thread over the years to come, which will be added to future anniversaries of the CRC.
The Convention on the Rights of the Child (CRC) is a binding international treaty that specifically recognizes the right of the child to be protected from sexual violence. In its Article 34, say: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse".

In 2000, as an expression of the concern of the international community, the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography was adopted.

In keeping with the criteria applying to the Convention (Art. 44), States that ratify or accede to the Optional Protocol must submit, within two years following its entry into force, "a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol" (Art. 12).

The Committee on the Rights of the Child of the United Nations examines the progress achieved by each State Party. On the basis of the information it receives, the Committee issues its comments and requests that they be given the widest possible dissemination.

Between 15 January 2007 and 4 October 2013, the Committee received and analysed reports submitted by ten States in the region, after which it issued the relevant recommendations.

The most frequent comments that the Committee makes to the States in the Inter-American System are related to three focal points:

- Inter-agency coordination and linkages in the overall child protection system.
- Regular means of assessment for plans and programmes and data-collection.
- Training and awareness-raising.

These comments and recommendations constitute a guide for the States, allowing them to gauge the extent of their compliance with commitments undertaken and shedding light on critical issues in the implementation of protection policies.

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2 Also see Articles 19 and 39 of the CRC.
3 Henceforth, the Optional Protocol.
4 Henceforth, the Committee.
5 Costa Rica, Guatemala, Chile, United States, Ecuador, El Salvador, Argentina, Colombia, Guatemala, Paraguay.
Inter-agency coordination and linkages in the overall child protection system

This aspect was stressed at the three World Congresses (Stockholm 1996, Yokohama 2001 and Rio de Janeiro 2008) and reached a high point in the Rio Commitment, which recommended developing and implementing “National Plans of Action on the sexual exploitation of children and adolescents [...] based on a cross-sectoral approach which brings all stakeholders together in a coherent and comprehensive framework for action”.

Broadening the range of State and society sectors that take part in confronting the different forms of child sexual exploitation and are called upon to draft the plans is a significant development in the region. It shows the increasing concern of the various social stakeholders and implies a step forward in raising the awareness of the population as a whole.

However, the presence of multiple actors when drafting the plans does not always translate into their involvement when the time comes to implement them. This coordination does not always lead to parallel operational action.

To this is added the fact that the concept of SEC based on the rights perspective (the child as a victim), which has been consolidated in the States’ legal frameworks, has not always been equally well assimilated in the intervention protocols of the various agencies and, even more seriously, in the attitudes of the operators who come into contact with the victims.

This leads to the need for all stakeholders to share a single conception of SEC, based strongly on the rights perspective. That is, that the children affected are victims and that the State’s intervention should in all cases be conducted with the intention of making reparation and restoring rights. Penalties are exclusively for exploiters, be they “clients” or intermediaries.

The States have a number of different agencies working on issues connected to SEC, such as violence, child labour, gender and trafficking, which makes it necessary to establish the linkages between them clearly.

While SEC is not foreign to these and other subjects, we should not lose sight of the specific features entailed by the commercialization of children’s bodies as a violation of rights.

This is related to another of the Committee’s recommendations arising from the ten reports it analysed: To ensure that sufficient financial and human resources are allocated to develop the actions linked to the Protocol and to strengthen social welfare agencies. And thus prevent the States from letting their actions be determined by budget reallocations for other institutional priorities.

Territorial formulations constitute a further significant aspect. If Plans and the inter-agency linkages that sustain them are to have a real effect on the lives of people and communities, they must become apparent in daily life through local, territorial formulations.

Regular means of assessment for plans and programmes and data-collection.

The absence of reliable data to measure the problem and ena-
ble the identification of human groups and risk areas is a widespread weakness in the region. Although it is true that we are referring to illegal practices that are, to a certain extent, concealed, experience shows that they are more visible to the community than to the agencies that must intervene. The Committee recommends that the States should ensure that data are collected and analysed, as well as disaggregated by age, sex and minority and indigenous group, among other factors. This information is essential in planning and evaluating policy application. In particular, the Committee encourages States Party to increase their research into the nature and scope of commercial sexual exploitation of children, with a view to discovering its causes and the magnitude of the problem.

Similarly, the Committee recommends that regular assessment mechanisms be established for the application of the Protocol, ensuring the participation of children.

In the IIN’s experience, the notion that policies should be evaluated in order to draw lessons and adjust plans accordingly has gained strength in the region in recent years. However, there are still cases where Plans are replaced or expire without being systematically assessed.

**Training and awareness-raising**

The Committee recommends continuing to reinforce the systematic training of all relevant professional groups in relation to the application of the Protocol. This includes staff responsible for law enforcement, judges, lawyers, social workers and health workers, immigration and customs officials, religious and community leaders, civil society organizations, accredited adoption agencies and military personnel.

Clearly, the Committee proposes that training should move beyond merely the teams specializing in the subject and reach everyone who comes into contact with SEC-related situations. It emphasizes the following points:

- Promote changes in attitudes towards children, and a shift to the rights-based perspective.
- Information and awareness-raising activities. These should target the public at large, including children, through information by all appropriate means, education and training in preventive measures and the harmful effects of the offences referred to in the Protocol.
- Encourage the community, and in particular, child victims, to take part in this kind of information, education and training programme. In this respect, retrieving the victims’ own words and strengthening them as social actors is part of the process of restoring their rights.

- The participation of children and youth organizations in SEC prevention campaigns and actions, as well as promoting self-protection behaviours in the face of risk, is a strategy that is gaining ground in the region and is bolstered by one of the guiding principles of the Convention: acknowledging children as active social stakeholders who are called upon to participate in subjects that are related to their lives.
Brief considerations on progress and challenges in juvenile justice. Twenty-Five Years after the Adoption of the Convention on the Rights of the Child

One of the subjects concerning children, which is addressed by the Convention on the Rights of the Child (CRC) is the matter of the rights of young people who have committed a criminal offence. Together with other international treaties, Articles 37 and 40 of the CRC indicate the paths that the States should take when addressing the administration of justice for juveniles in this area.

In addition to the articles of the CRC cited above, the following articles are also related to these issues in general terms, and particularly as regards the application of non-custodial penalties:

Art. 2. Refers to non-discrimination.

Art. 3. On the best interest of the child.
Art. 4. Refers to effective compliance with economic, social and cultural rights.
Art. 6. Refers to the right to life, survival and development.
Art. 17. Refers to access to information.

Art. 20. On the right to protection and special assistance.
Art. 24. On access to healthcare.
Art. 26. On access to social security.
Art. 28. Access to education.
Art. 31. Access to rest and leisure.
Art. 39. Refers to physical and psychological recovery and social reintegration.

Thus the Convention establishes new basic paradigms, such as the acknowledgement of children as holders of rights, the recognition of their rights and responsibility for their actions, that they might violate criminal law and be found guilty, and the possibility of legal intervention in an ancillary capacity. In this way, the Convention modifies the legal scenario in place before it came into force


The Convention on the Rights of the Child is based on the recognition of children as rights-holders, and is characterized by the:

* Reinforcement of the legal status of juveniles, from a perspective that safeguards their rights.
* Identification of rights and safeguards within the framework of due process.
* Provision of specialized jurisdictions when juveniles must be brought to trial.
* Establishment of a list of penalties to be executed in non-custodial environments, viewing deprivation of liberty as a measure of last resort6.

6 Extraído del documento del Instituto Interamericano del Niño, la Niña y adolescentes, Los Sistemas de Responsabilidad Penal Adolescente en las Américas 2012.
In this context, the participation principle is essential to comply with the rights of all children who are alleged to have, accused of or found guilty of having infringed a criminal law, in order to promote "the child's reintegration and the child's assuming a constructive role in society".

In its General Comment Nº 12 (2009), the Committee on the Rights of the Child points out that "Article 12, paragraph 2, of the Convention requires that a child alleged to have, accused of, or recognized as having, infringed the penal law, has the right to be heard. This right has to be fully observed during all stages of the judicial process. The Committee underscores the fact that this provision applies to all relevant administrative and judicial proceedings affecting the child, with no restrictions and including, for example, children in conflict with the law. Both types of proceedings can include alternative means of resolving differences, such as mediation or arbitration.

Certain key elements can be derived from the Committee's General Comment, with regard to specific responsibilities relating to the right to be heard in criminal judicial proceedings, in the case of children who are alleged to have, accused of or found guilty of having infringed a criminal law:

* The right should be fully respected throughout every stage of the process of juvenile justice (stages: pre-trial, adjudication and disposition, as well as the implementation of the imposed measures).
* In case of diversion, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.
* Every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court.
* The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely. The court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited.

In its Technical Institutional Guidelines for the implementation of non-custodial penalties and measures for juvenile offenders, the IIN refers to this principle by pointing out that:

As in all criminal law, juvenile criminal justice has, in general terms, punitive provisions associated with the offence, but, at the same
time, it is imbued with educational features related to the purpose of making juveniles responsible and promoting the accountability and reintegration of juveniles into their communities.

This aim, which entails a process, cannot be reached unless, at some stage, the juvenile offender becomes a protagonist; that is, an active participant in his or her experience. This cannot be too strongly stressed, in view of the fact that participation in intervention processes involving juvenile offenders is not merely the noble wish of some naive theory, but a requirement that issues from practice itself. There is no accountability and social integration process that can endure over time, without the subject becoming part of the intervention, without his or her active participation in some part or the process’s activities. Similarly, intervention processes should be open and generate suitable conditions for this participation, in keeping with the special features that each juvenile will undergo when fulfilling his or her penalty or measure.

In order to implement this principle, it is essential to bear in mind at all times some of the key components of the participation process. Namely, to keep adolescents informed, establish an atmosphere conducive to effective listening, provide opportunities for them to express their opinions and take them into account and consider their decisions. It is by putting these components into practice throughout the intervention that it becomes possible to help juveniles to assume “a constructive role” in their communities, as stipulated by the Convention.

The 25th anniversary of the Convention, to be celebrated on 20 November, is, without a doubt, a date that calls for reflection upon the progress we have achieved. Above all, however, we should reflect upon the challenges that we are still facing in relation to the human rights of children. We should revisit our strategies and learn from our successes, particularly in relation to justice for juveniles in conflict with the law, in order to develop actions to trigger in-depth analysis and debate on the challenges that implementing this body of law implies in the region.

The CRC considers participation to be one of its core principles and explicitly states that “…the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child…” (Art. 12).

Maintaining that participation is a right implies the need to have access to tools with which to monitor its fulfilment and ensure its enforceability.

Technical institutional guidelines for the implementation of non-custodial penalties and measures for juvenile offenders.
The Convention on the Rights of the Child 25 Years after its Approval: Highlighting OAS-CARICOM member states

A twenty-five years since approval of the UN Convention on the Rights of the Child (CRC). The Inter American Children`s Institute highlights some of the developments in this area by OAS-CARI- COM states.

These fourteen states are: Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago aside from Haiti whose independence dates from 1804.

The various CARICOM states gained independence from colonial powers relatively recently, from the 1960s and 70s. The regional integration movement of the CA- RICOM states was formed in 1973, building on previous efforts - see www.CARICOM.org. 1981 saw the formation of the Organization of Eastern Caribbean States, OECS. (see www.OECS.org) whose states (Antigua and Barbuda, Dominica, Grenada, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines) form a sub-regional grouping within CARICOM.

GENERAL IMPACT OF THE CRC

The particular vulnerabilities of these states, documented in development literature, include small population, limited resource base, high debt to GDP, fragile economies, ecosystems threatened by phenomenon like climate change and natural disasters. Yet individual CARICOM and OECS states had ratified the CRC by the early 1990s.

Ratification was undertaken along with numerous other international commitments, for example the UN Millenium Development Goals. In the context of the OAS, the CARICOM states adopted the Inter American Democratic Charter at a special OAS General Assembly in September 2001. This Charter is the first regional instrument to provide an integrated vision on democratic governance, which includes respect for the human rights and fundamental freedoms of all individuals.

Adoption of the CRC by a significant number of states in the international community has contributed to child rights by promoting awareness and new attitudes, as well as enhanced institutional arrangements by governments and stakeholders for children and the family. Arguably one of the most noteworthy developments relates to child participation because, traditionally, children have been without voice. The right of child participation is a basic tenet of the CRC which has posed challenges in terms of public policy, institutional arrangements and effective implementation.

The states of CARICOM and OECS have undertaken the commitments of the CRC with determination.

* They have promulgated legislation in areas such as adoption and legal enforcement of child maintenance.

* Child friendly schools have been introduced in some states.
There is a focus on social services to ensure protection of children and their rights.

Efforts to comply with CRC commitments have also brought a review of legislation.

For example the OECS states implemented the Family Law and Domestic Violence Reform Project which developed harmonized models on family legislation, and domestic violence, producing five pieces of model legislation. These states are now implementing a project on juvenile justice systems.

Across the region is the increased awareness the need for ministries to forge partnerships with other agencies, including courts and law enforcement agencies, or private sector organizations, NGOs or other groups. States are also focusing on disseminating information, facilitating discussion and promoting forums, such as the National Children’s Summit held this August in Jamaica (see http://www.cda.gov.jm).

REGIONAL AND INTERNATIONAL PARTNERSHIPS

As indicated, beyond national initiatives, CARICOM states are implementing the CRC through regional policies and collaboration within the Regional Framework of Action 2002-2015.

In October 2002, the Seventh Meeting of the COHSOD (CARICOM Council on Human and Social Development) approved regional priorities on child protection, early childhood development and child health.

These policies were developed during the Special Meeting of CARICOM Ministers with Responsibility for Children on October 22, 2002 in Guyana, and by the COHSOD meeting on October 23 – 25, 2002. Regional priorities were identified, taking into account the socio-economic conditions which impacted negatively on the well-being of the children of the Community. Thus a Regional Framework for Action was developed with the support of the CARICOM Secretariat to guide ongoing regional action.

A follow-up to the Recommendations of the United Nations Study on Violence against Children was held in Kingston, Jamaica in May, 2012 to encourage dissemination of the UN Study and renewed commitments to following up recommendations at sub-regional and national levels.

The meeting, held to raise awareness of violence against children in the Caribbean, was hosted by the Government of Jamaica, and organized with partners such as the Global Movement for Children in Latin American and the Caribbean, the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos País.

Strategic alliances with key institutions were promoted, and priorities identified included strengthening institutional links with Caribbean states, United Nations agencies, international and regional organizations, and civil society organizations, including the media, religious leaders, research institutions and children and adolescents themselves. The CARICOM Plan of Action 2002–2015 was seen as key in tracking the annual performance of states in the area of child rights.

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In late 2013 challenges associated with child sexual exploitation and abuse prompted UNICEF in the Eastern Caribbean to partner with states to reintroduce the “Break the Silence against Child Abuse” Campaign, first launched three years earlier. This renewed action is aimed at addressing issues such as the safety of children within the family and providing necessary tools.
The Rapporteur on Child Rights of the Inter American Commission on Human Rights, Rosa María Ortíz has analyzed and made recommendations on relevant issues in CARICOM states, for example corporal punishment.

The IIN has also been collaborating with these states, by providing training and a space for reflection on child rights for officials. In 2012 and 2014, IIN organized online courses in English for analysis of the CRC, progress and challenges for implementation. The second edition of the course was attended by officials from Grenada, Jamaica, Saint Lucia, St. Kitts and Nevis, Trinidad and Tobago.

In the framework of the XXI Child Congress to be hosted by the Government of Brazil in December 9-12, 2014 the IIN is working with the Open Campus of the University of the West Indies (Caribbean Child Development Center in Jamaica) to organize a Caribbean Virtual Forum.

The Forum include the range of stakeholders such as ministries, academics, experts, representatives of children’s organizations from seven centers of the UWI Open Campus across the Caribbean (Antiguan and Barbuda, Barbados, the Commonwealth of the Bahamas, Jamaica, Saint Lucia, St Vincent and the Grenadines, Trinidad and Tobago) examine the theme of the XXI Congress “Violence against Children: Building Peaceful Environments”.

Conclusions of the Forum will be transmitted to the Congress. The foregoing illustrates some of the work of CARICOM states in the area of child rights since adoption of the CRC. IIN continues to strengthen its actions and forge partnerships to provide support to those states.