

Northern Central America

Organized Crime and the Rights of
Children, Adolescents and Young People:
Current Challenges and State Actions





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** In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the discussion, research, deliberation or adoption of this report.*

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Introduction

Introduction

1. In its 2017-2022 Strategic Plan, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” the Commission” or “the IACHR”) decided to prioritize the subregion of Central America under three strategic pillars: technical cooperation; human rights awareness-raising and education; and special projects focused both on historically discriminated against groups, and on the crosscutting themes of the Plan itself, such as democratic and human rights institutions, independence of the judiciary, access to justice, security and institutional violence.
2. In the framework of this program, the IACHR conducted on-site visits and authored reports on the human rights situation of countries such as Guatemala (2017), Nicaragua (2018), Honduras (2019), and El Salvador (2021). Additionally, it released several publications on topics ranging from forced displacement in the northern triangle of Central America (2019), forced migration of Nicaraguans to Costa Rica (2019), the situation of persons deprived of liberty in Nicaragua (2020), and on issuing basic guidelines for the investigation of crimes against human rights defenders in the northern triangle (2021).
3. At the present time, the IACHR is engaged in drafting reports with specific recommendations for the countries of northern Central America on pressing issues such as the situation of economic, social and cultural rights of persons of African descent and indigenous peoples; the situation of human rights defenders; and the impact of organized crime on the human rights situation of women, children and young people. This report falls under this line of action of the aforementioned Strategic Plan.
4. The States of the region have acknowledged that organized crime is a new multidimensional threat to security, and several specialized agencies, such as the Guatemalan Institute of Comparative Criminal Science Studies, the Ministry of Justice and Public Security of El Salvador, the Inter-American Children’s Institute (INN), the Salvadoran Institute for the Integral Development of Children and Adolescents, the Honduran National Institute for the Care of Juvenile Criminal Offenders, the National Youth Institute of El Salvador, Save the Children, UNESCO, UNFPA, among others, have affirmed its inherent connection to the phenomenon of violence, as will be fleshed out in this report. As such, organized crime and the concomitant violence it spawns pose new human rights protection challenges to States, especially for the most vulnerable segments of the population, such as children, adolescents and young people, whose lives and development have been disrupted by crime. In this context, organized crime is most troubling, inasmuch as the impact it has on the rights of children, adolescents and young people is disproportionate, and findings of criminal liability can be vague, in some instances, when culprits have infiltrated the very core of the organs of the State.
5. Thus, the aforementioned concerns have become front and center in the States of northern Central America (El Salvador, Guatemala and Honduras), given that that region has come to be regarded as

one of the most violent and unsafe areas of the world,¹ with the greatest presence of criminal organizations, especially *maras* or gangs, which engage in a variety of unlawful activities including, but not limited to, drug trafficking, human trafficking and smuggling, sexual and labor exploitation, arms trafficking, robbery, and extortion. Marginalized, poor areas with limited access to basic services, lacking in opportunities and with a sparse presence of the State bear the brunt of their lawless actions. These criminal groups manage to gain a tight grip over these territories and populations imposing a parallel system of rules, which are at variance with the rule of law. As a consequence, the rights to life, humane treatment, personal freedom and security, property and movement are seriously infringed.

6. As for infringements stemming from the conduct of organized crime, the Commission has noted with concern the variety of manifestations of violence against children, adolescents and young people, as was laid out in the Report [Violencia, Niñez y Crimen Organizado. Violence, Children and Organized Crime](#). In this publication, the IACHR noted manifestations of violence in different settings and contexts of development of this segment of the population, which is exposed to manifold forms of violence, abuse, neglect and exploitation of a physical, psychological and sexual nature in their everyday lives, in both the private and public spheres. Additionally, the Commission has voiced its concern over the lack of adequate measures to prevent and provide a response to violence in order to protect victims and keep it from recurring. The Commission also noticed that States have opted for a punitive and retributive response through the penitentiary system and deprivation of liberty, to the detriment of social reintegration programs, while endeavoring to lower the legal minimum age of criminal liability and increase the length of prison terms for criminal offenders under the age of 18.
7. However, acts committed by organized crime groups, such as *maras* and gangs, can pose challenges when State agents are involved. State responsibility for possible acts of third parties – such as those committed by organized crime– may arise from a breach of an obligation *erga omnes* as set forth in Articles 1.1 and 2 of the Convention. Because of the duty to respect and ensure respect, the norms of protection “are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations.”²
8. Notwithstanding, the Court acknowledges that a State cannot be held responsible for all acts of private individuals.³ Thus, in order to determine such responsibility, it is necessary to: i) establish that the State was aware of a real and imminent danger and, ii) assess whether or not reasonable

¹ Save the Children, [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Crossfire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 9.

² IA Court of HR. Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C No. 140. Par. 113.

³ IA Court of HR. Case of López Soto et al v. Venezuela. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 362, par. 138. Also see: Case of Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, par. 123, and Case of Carvajal Carvajal et al v. Colombia. Merits, Reparations and Costs. Judgment of March 13, 2018. Series C No. 352, par. 161.

measures to prevent or avoid the danger in question were taken.⁴ Moreover, the IACHR finds that the analysis of State responsibility in organized crime-related cases must take into particular consideration the involvement of state conduct in criminal acts, which could give rise to the attribution of responsibility in specific instances stemming from a violation of its duty of respect either by direct action or acquiescence of its agents.⁵

9. Six years after the release of its Report on Violence, Children and Organized Crime [Violencia, Niñez y Crimen Organizado](#), the Commission has been observing challenges in the implementation of its recommendations. In particular, its different mechanisms have enabled the IACHR to detect that organized crime organizations and armed groups engage in the widespread practice throughout the region of capturing, forcibly recruiting and using children and adolescents to commit crimes.⁶
10. The Commission has further established that the violence perpetrated by organized crime also takes a particular toll on youth. Scarce opportunities for education, employment, social services and health care dash their life ambitions, put off their proper transition to adulthood and disrupt the progress of their life cycle.⁷ In such a context, young people may join the maras and gangs in response to the lack of opportunities. In addition, the Commission notes that young people tend to be the segment of the population most associated with violence, especially as victimizer.⁸ It must be made clear, however, no stigma or prejudice can be drawn in any way against young people

⁴ In this regard, in the context of the violence faced by women in Venezuela, see IA Court of HR. Case of López Soto et al v. Venezuela. Merits, Reparations and costs. Judgment of September 26, 2018. Series C No. 362, par. 141.

⁵ Regarding the determination of State responsibility for the duty to respect in relation to the acts of third parties, see the IA Court of HR. Case of Yarce et al v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 352, par. 180; IA Court of HR. Case of Vereda La Esperanza v. Colombia, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Series. C No. 341., par. 152.

⁶ In this regard, see: IACHR, Public Hearing “[México: Niñez, Reclutamiento Forzado y Desapariciones](#)” [Mexico: Children, Forced Recruitment and Disappearances] 175th Regular Session, March 9, 2020; IACHR [@CIDH]. (September 5, 2020). *La CIDH repudia la muerte de dos #adolescentes, el 2 de septiembre, en límite de los departamentos de Concepción y Amambay, en una acción de las Fuerzas Armadas del Estado en contra de miembros del grupo armado no estatal Ejército del Pueblo Paraguayo (EPP)* [“The IACHR condemns death of #adolescents, on September 2, on the border of the departments of Concepción and Amabay, in an operation of the Armed Forces of the State”] [Tweet]. Twitter. <https://twitter.com/cidh/status/1302219424313806848>; IACHR, Press Release No. 6421 - [La CIDH expresa preocupación por la muerte de una adolescente durante el operativo militar en Guaviare, y por la situación de vulnerabilidad de niñas, niños y adolescentes frente al reclutamiento forzado en Colombia](#), IACHR Expresses Concern Over Death of Adolescent Girl During Military Operation in Guaviare and Over Vulnerability of Children and Adolescents to Forced Recruitment in Colombia, March 18, 2021; Information provided to the IACHR by adolescents at the Third Forum of Adolescents, Honduran iteration, on April 9, 2021; and, IACHR, Press Release No. 9921 - [La CIDH rechaza toda forma de reclutamiento de niñas, niños y adolescentes por grupos armados, y urge al Estado mexicano a proteger la vida e integridad personal de esta población](#), IACHR Rejects All Forms of Recruitment of Children and Adolescents by Armed Groups and Urges the Mexican State to Protect the Life and Person Integrity of the This Population, April 22, 2021.

⁷ United Nations General Assembly, [Programa de Acción Mundial para los Jóvenes hasta el año 2000 y años subsiguientes](#). World Programme of Action for Youth to 2000 and Beyond. ARES/50/81, March 13, 1996, par. 9; UNFPA and PBSO, [The Missing Peace: Independent Progress Study on Youth, Peace and Security](#), March 2018, pg. 11.

⁸ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), [Youth, Population and Development in Latin America and the Caribbean] December 2000, pg. 183.

based on this statistic. On this score, ECLAC has noted that public education campaigns need to be conducted [...] inasmuch as young people tend to be overly stigmatized by society as a whole, which sees in each 'oddball' youth a potential delinquent.⁹ Likewise, in the face of this problem, it recommends promoting youth volunteer forces as a pillar of public policy on youth in order to "stimulate the consolidation of settings of participation."¹⁰

A. Objective, methodology and structure of the Report

11. The Commission presents this thematic report, the purpose of which is to advance in the analysis of the special situation of risk faced by children, adolescents and young people in this context of violence and insecurity in the countries of northern Central America, to follow up on the observations of the IACHR in the Report on [Violencia, Niñez y Crimen Organizado](#), Violence, Children and Organized Crime, but from a regional perspective and highlighting State responses to this situation of violence, in light of States' international obligations and Inter-American standards on the subject matter.
12. In drafting this thematic report, the IACHR has drawn on the information gathered and received through its different mechanisms of human rights monitoring, protection and defense. Thus, on February 24, 2022, pursuant to the powers vested in it under Article 41 of the American Convention, the IACHR requested information from the States of northern Central America on measures they have taken to reduce violence against children, adolescents and young people in response to the actions of organized crime. All references to conduct of the States of northern Central America are provided in descriptive form for purposes of analysis in the framework of the report and do not entail any determination of whether or not their actions abide by the American Convention of Human Rights. The Commission received the responses from El Salvador on April 8, 2022; Guatemala, on March 25, 2022; and from Honduras on August 11, 2022. In this regard, the Commission appreciates and is grateful for the information submitted by the States.
13. In addition, on March 15, 2022, a meeting was held with several civil society organizations on the topic of children, adolescents and young people and organized crime. The IACHR also submitted a questionnaire to civil society organizations on the same topic. The meeting and the questionnaire helped to identify the root causes of the widespread situation of violence perpetrated by organized crime in the countries of northern Central America, its impact on children, adolescents and young people in these contexts and the major challenges for effective comprehensive protection of children and adolescents. The Commission is grateful for the collaboration of the experts who took part in the meeting and the organizations who generously provided their input.
14. The instant report is divided into five chapters. The first chapter examines the human rights situation of children, adolescents and young people in the context of insecurity and violence in the countries of northern Central America. The root causes of the persisting climate of insecurity and violence, which in turn breeds criminal groups such as the maras and gangs, are analyzed. States'

⁹ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), *id.* December 2000, pg. 400.

¹⁰ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), *id.* December 2000, pg. 402.

obligations and international responsibility for organized crime is also laid out, as well as citizen security strategies deployed by El Salvador, Guatemala and Honduras. Statistical data is also provided on the violence perpetrated by these criminal groups in terms of the human rights of the inhabitants of the affected areas of the countries.

15. The second chapter specifically deals with the different impacts on the rights of children, adolescents and young people in the contexts of crime and citizen insecurity. In this chapter, the IACHR fleshes out for the first time a definition of the concept of youth, drawing on different definitions adopted by international organizations and other regional systems, as well as a variety of perspectives of the concept. In addition, the violence perpetrated in violation of the rights of this population in such contexts is addressed. Next, the special situation of risk from organized crime activities is discussed, examining how this population group is more vulnerable and susceptible to the diverse manifestations of violence caused by criminal groups.
16. The third chapter specifically describes the forms of violence against children, adolescents and young people in the context of organized crime. The fourth chapter addresses the States' efforts in the area of prevention, special protection and measures of restoration of the rights of children and adolescents vis-à-vis the actions of organized crime. Lastly, in the chapter 5, the IACHR offers its conclusions and its respective observations and recommendations to ensure the right of children, adolescents and young people to lead a life free of gender-based violence in these contexts.
17. In closing, the IACHR would like to thank the Swiss Agency for Development and Cooperation (SDC) for its support in producing this report, which is part of an ongoing project designed to coordinate strategies with key global, regional and national actors engaged in the oversight, promotion and protection of the human rights of vulnerable groups in the countries of northern Central America, focusing on human rights defenders, indigenous peoples, persons of African descent, women and youth.
18. The Commission approved the draft report on October 10, 2022, notifying the States pursuant to Article 60 of its Rules of Procedure. Observations on the draft report were received from El Salvador on November 29, 2022; Honduras on November 30, 2022; and from Guatemala, on December 15, 2022. The relevant portions of the observations it received were incorporated into the final version of the instant report, which was approved by the IACHR on February 16, 2023.

Chapter 1

**Phenomenon of crime in
the States of northern
Central America: Root
causes, criminal gangs,
and violence and human
rights**

Phenomenon of crime in the States of northern Central America: Root causes, criminal gangs, and violence and human rights

19. In this chapter, the Commission will discuss the context of violence and crime in El Salvador, Guatemala and Honduras (hereinafter, “the States” or “the States of northern Central America”). In this context, the Commission will describe the principal intersecting root causes underlying the ongoing and deepening phenomenon of crime in northern Central America, which spawned criminal gang activity. Next, the Commission will examine the phenomenon of criminal violence from a human rights perspective. In so doing, it will discuss general human rights obligations and State responsibility for organized crime activity; human rights infringements perpetrated in this context; and, lastly, it will provide an account of security policies adopted by the States of northern Central American to confront criminal violence.

A. Root causes of the violence committed by organized crime in northern Central America

19. The Commission has been monitoring the phenomenon of crime and its negative impact on the rights of children, adolescents and, also when relevant, of young people, through its different mechanisms, as provided for under the Convention. Accordingly, in 2015, it released its report *Violence, Children and Organized Crime* [[Violencia, Niñez y Crimen Organizado](#)] providing a very comprehensive account of the root causes of violence stemming from organized crime, as framed in the contexts of the social exclusion and poverty characterizing the affected segments of the population.

20. As a follow-up to the preceding line of action, in this section, the Commission will delve into approaches to the phenomenon of violence in the context of organized crime. For this purpose, it will address major concepts such as “violence,” “organized crime,” “macro-crime,” to help explain the domestic and transnational phenomenon of crime from a human rights perspective, focusing on the States of northern Central America. Next, drawing on information gathered by the IACHR, it will characterize the root causes of the phenomenon of crime in El Salvador, Guatemala and Honduras.

21. According to the World Health Organization (WHO), violence can be defined as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological, harm, maldevelopment or deprivation.”¹¹ This definition covers a wide range of acts including interpersonal violence, suicidal behavior and armed conflicts and encompasses the less obvious consequences of psychological injury, as well as deprivation and poor development, which

¹¹ WHO, [Informe mundial sobre la violencia y la salud](#), World Report on Violence and Health. Summary, 2002, pg. 3.

compromise the wellbeing of individuals, families and communities.¹² Thus, the WHO identifies that organized crime is “the instrumental use of violence by people who identify themselves as members of a group against another group or set of individuals, in order to achieve political, economic or social objectives.”¹³

22. The WHO acknowledges that violence is a multifaceted problem, requiring action on several levels and from many sectors of society. Along this line of thinking, it identifies that one level of action must be focused on children and youth, in order to address individual risk factors and take measures aimed at encouraging healthy attitudes and behavior as they grow up and changing attitudes and behaviors in individuals who have already become violent or are at risk of harming themselves.¹⁴
23. The Commission notes that the States of the Americas have expressed their commitment to combatting the new multidimensional threats to security faced by society, which include the danger posed by organized crime, as well as the overall problem of violence. The States of the Americas have acknowledged the connection of these problems to the phenomenon of corruption,¹⁵ which also has a political, economic, social, health and environmental dimension to it.¹⁶
24. Nonetheless, the Commission notes that concern with the issue of organized crime in international law has been focused on transnational organized crime.¹⁷ On this note, the international instrument that has come closest to addressing the subject matter is the United Nations Convention against Transnational Organized Crime (UNTOC), even though it does not provide a precise definition of the term “organized crime,” nor does it include a catalogue of offenses that could constitute it.¹⁸ The UNTOC only mentions crimes of a transnational nature, particularly offenses committed in more than one State; those that take place in one location but are carried out by groups operating in more than one State; and crimes committed in one state that have a substantial impact on another.¹⁹
25. In this vein, the United Nations Development Program (UNDP) has noted that most organized crime in Latin America and the Caribbean is transnational in nature. This includes not only international

¹² WHO, [Informe mundial sobre la violencia y la salud](#), World Report on Violence and Health. Summary, 2002, pg. 3.

¹³ WHO, [Informe mundial sobre la violencia y la salud](#), World Report on Violence and Health. Summary, 2002, pg. 6.

¹⁴ WHO, [Informe mundial sobre la violencia y la salud](#), Sinopsis, World Report on Violence and Health. Summary, 2002, pg. 7.

¹⁵ Declaration of Quebec, [Tercera Cumbre de las Américas](#), Third Summit of the Americas 2001.

¹⁶ [Declaración de Bridgetown: Enfoque multidimensional de la seguridad hemisférica](#), Declaration of Bridgetown: Multidimensional approach to hemispheric security. AG/DEC. 27 (XXXII-O02), June 4, 2002.

¹⁷ [Declaración sobre seguridad en las Américas](#), Declaration on Security in the Americas. Special Conference on Security, Mexico City, October 28, 2003.

¹⁸ [United Nations Convention against Transnational Organized Crime](#) adopted under Resolution 55/25 of the General Assembly of November 15, 2000, art. 2.a).

¹⁹ [United Nations Convention against Transnational Organized Crime](#) adopted under Resolution 55/25 of the General Assembly of November 15, 2000, art. 3 “Scope of Application”.

crimes, but those that, because of their nature, involve cross-border transfer as an essential part of the criminal activity. In the case of the Meso-American region, drug trafficking has an important impact; however, organized crime activities have expanded from drug trafficking to other illicit activities and criminal organizations have found in migration routes, inside and outside of national territory, an opportunity for kidnapping, extortion, murder, forced membership of migrants in criminal organizations, human trafficking and smuggling, sexual assault, charging of dues for use of transportation, among other offenses.²⁰

26. The United Nations Office on Drugs and Crime (UNODC) has noted that the States of northern Central America face levels of extreme violence, that are compounded by transnational organized crime and drug trafficking.²¹ On this score, the Commission notes that, in the countries of the region of Central America and the Caribbean, criminal groups can be divided into two major categories: organized crime linked to territory or territorial groups, on the one hand; and transnational trafficking groups or networks, also known as transporters, on the other hand.²² The first group includes predator rings or “*tumbadores*,” and the street gangs or “*maras*.”²³ Their goal is not profit in and of itself, but the crime from which material gain is obtained constitutes a means of dominating the territory.²⁴ The second group are “economic entities that operate similarly to a legal shipping company,”²⁵ whose purpose is not to control territory, but to transfer goods from one point to another.
27. In studying the phenomenon of organized crime and, in particular, gangs, the IACHR has taken stock of the different types of offenses that have been charged under criminal law in the countries of northern Central America. In general, when their activities go beyond the territorial scope of a State, transnational crimes attributable to the *maras* are also quite diverse: human smuggling and trafficking, drug trafficking, trafficking in firearms and uranium, contraband, cybercrime, illegal mining, illicit extraction of natural resources and wildlife, counterfeiting of currency, goods and brands, child pornography and sexual exploitation of children, adolescents and adults, modern

²⁰ Regional Program of the Spotlight Initiative for Latin America - UNDP. [La violencia contra las mujeres y niñas en contextos de crimen organizado. Centroamérica, Colombia, México y República Dominicana](#). [Violence against women and girls in contexts of organized crime. Central America, Colombia, Mexico and Dominican Republic]. 2021, pg. 8.

²¹ UNODC. [Delincuencia Organizada Transnacional en Centroamérica y el Caribe: Una Evaluación de las Amenazas](#). Transnational Organized Crime in Central America and the Caribbean: A threats assessment. September 2012, pg. 9.

²² Specifically, the Commission notes that, according to UNODC, the territorial groups are focused on controlling territory and demanding payment of quotas within it, while the trafficking groups are networks of suppliers, transporters and receivers. See: UNODC. [Delincuencia Organizada Transnacional en Centroamérica y el Caribe: Una Evaluación de las Amenazas](#). Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment. September 2012, pg. 21.

²³ UNODC. [Delincuencia Organizada Transnacional en Centroamérica y el Caribe: Una Evaluación de las Amenazas](#). Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment. September 2012, pg. 27.

²⁴ UNODC. [Delincuencia Organizada Transnacional en Centroamérica y el Caribe: Una Evaluación de las Amenazas](#). Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment. September 2012, pg. 27.

²⁵ UNODC. [Delincuencia Organizada Transnacional en Centroamérica y el Caribe: Una Evaluación de las Amenazas](#). Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment. September 2012, pg. 26.

slavery, robbery and trafficking of goods such as cell phones and automobiles, extortion, kidnapping, fraud and money laundering.²⁶

28. The IACHR has observed that in addition to transnational organized crime, conceptual approaches to the phenomenon of crime have also involved *de facto* power, macro-crime, macro-criminal networks and penetration of the State by organized crime.
29. According to the UNDP, “*de facto* powers” are “pressure groups whose habitual actions fall within the law and are often respected and supported by the people. They are national actors -influential families, businesspersons, trade unions, trade associations, churches, media outlets- or international actors -foreign governments, multinational firms, international banks- who defend their legitimate interests but engage in corruption when they misuse their influence on government officials to benefit from their decisions.”²⁷ However, as for influence on State actions, organized crime groups can also become “*de facto* powers”²⁸ pulling them away from their intended purpose of building the common good.
30. Along these same lines, macro-crime and macro-crime networks go well beyond the bounds of organized crime.²⁹ This form of crime is characterized by the quantity of individuals who commit the crimes and the territorial expanse (local and transnational) in which they operate.³⁰ In addition, from an international law perspective, the complexity of a criminal network is shaped, partly, by the variety of social agents involved, which includes the involvement of State agents.³¹
31. In this context, as UNDP has noted, organized crime needs to neutralize or coopt authorities in order to be able to carry out many of its activities. This process has been highly effective in Central America. Thus, in this region, alliances are forged between the State and the criminal entities, which “make it possible to launder the money, control the apparatus of the State at the local level,

²⁶ El Pacto. [Maras y Mujeres en Centroamérica: Problemas y Soluciones en Derecho](#). [Maras and women in Central America: Problems and Solutions in Law]. August 2020.

²⁷ UNDP, [Informe sobre Desarrollo Humano para América Central 2009-2010](#), Report on Human Development for Central America, December 9, 2013.

²⁸ Vázquez, Luis Daniel, [Captura del Estado, Macrocriminalidad y Derechos Humanos](#), [State Capture, Macro-Crime and Human Rights], Mexico City; FLACSO México: Fundación Böll-México y el Caribe: UNAM, Instituto de Investigaciones Jurídicas, 2019, pg. 47

²⁹ Salcedo-Albarán, Eduardo & Garay-Salamanca, Luis J., [Macrocriminalidad. Complejidad y Resiliencia de Redes Criminales](#), [Macro-crime, Complexity and Resilience of Criminal Networks], iUniverse, 2016, pg. 25.

³⁰ Vázquez, Luis Daniel, [Captura del Estado, Macrocriminalidad y Derechos Humanos](#), [State Capture, Macro-Crime and Human Rights], Mexico City; FLACSO México: Fundación Böll-México y el Caribe: UNAM, Instituto de Investigaciones Jurídicas, 2019, pg. 47

³¹ Salcedo-Albarán, Eduardo & Garay-Salamanca, Luis J., [Macrocriminalidad. Complejidad y Resiliencia de Redes Criminales](#), [Macro-crime, Complexity and Resilience of Criminal Networks], iUniverse, 2016, pg. 5

buy off police officers or the judicial system and political parties or candidates who need funding for their electoral campaigns.”³²

32. However, the IACHR gathered information through a consultation process with specialists on the root causes of the presence of criminal groups in northern Central America. Based on the information it gathered, the IACHR acknowledges that the principal factors for the existence of these groups are: (i) poverty and social exclusion; (ii) corruption and weak institutions; (iii) infiltration by the criminal structures into the formal institutions of the States; and (iv) impunity.³³ The identification of these factors is not foreign to the Commission and these criteria have already been highlighted by the IACHR in the past and have been associated with contexts of insecurity and crime in the region and northern Central America. The IACHR will now discuss these root causes based on the information it was provided in connection with its prior characterization in the Inter-American system.
33. With respect to the situation of poverty and inequality, the Commission has written that, “while widespread contexts of poverty do not automatically lead to insecurity and crime, situations of sharp social inequalities in certain communities, coupled with other factors, such as the State’s specific response or belonging to a historically discriminated group, are more likely to be linked to violence and insecurity.”³⁴ As the Commission notes, this would be the result of the obstacles that individuals, groups and communities, who live in a situation of poverty, must face on a daily basis, -such as hazardous or degrading working conditions, unhealthy housing, inadequate nourishment, exposure to violence – which are compounded in the case of historically discriminated groups. In other words, these conditions that limit the effective enjoyment of human rights affect those who live in a vulnerable situation to a greater extent. In light of this, in keeping with the principles of equality and non-discrimination, the Commission recommends States “ensure genuinely equal conditions for individuals, groups and collectives that live in poverty” and “eliminate discrimination stereotypes related to poverty in society.”³⁵
34. Thus, job insecurity, persisting inequality and the lack of social mobility are socioeconomic factors, which in specific contexts produce environments of vulnerability that curtail legitimate possibilities for social advancement. As the UNDP has written, such environments, along with the context of consumption-based economic growth, are fertile ground for the emergence of individuals or groups willing to challenge the legitimate order and rule of law by opting for crime as a way of life.³⁶ On this

³² UNDP, [Informe sobre Desarrollo Humano para América Central 2009-2010](#), Report on Human Development for Central America 2009-2010, December 9, 2013, p. 141.

³³ Information provided to the IACHR at the virtual meeting on Children, Adolescents and Organized Crime, March 15, 2022.

³⁴ IACHR. [Pobreza y derechos humanos](#), Poverty and Human Rights, .OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 183.

³⁵ IACHR. [Pobreza y derechos humanos](#), Poverty and Human Rights, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 543 and Recommendation 1.

³⁶ IACHR. [Pobreza y derechos humanos](#), Poverty and Human Rights, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 410.

note, low levels of development, a lack of opportunities, and scarce institutional presence in these areas pave the way for the rise and expansion of criminal organizations.³⁷

35. According to public information and information submitted to the IACHR, the three States of northern Central American experience dire situations of poverty and inequality. Based on recent statistics from ECLAC, in 2020, 30.7% of the population of El Salvador was living in poverty, while 8.3% lived in extreme poverty. Moreover, in 2020, El Salvador experienced a rise in inequality index after the decrease in income of the poorest population and the rise in income of the wealthiest.³⁸
36. In the case of Guatemala, according to ECLAC figures, in 2020, 47% of the population was living in poverty. Likewise, according to OXFAM International, in 2019, inequality in this country not only encompassed significant differences in income between the different strata of society, but also included inequality in the areas of health, education, security, employment, wealth, political participation and living conditions, with rural, indigenous and low-income women, being the most affected segment of the population.³⁹
37. Furthermore, Honduras is one of the most unequal countries of the Central American region, where the enjoyment of human rights is contingent upon one's sex, social stratum, ethnic membership and geographic area. In Honduras, marginalized segments of the population suffer the most violence, displacement and lack of access to security, justice, health care, education and other rights.⁴⁰
38. The Commission has asserted that poverty and inequality boost the presence and persistence of maras and gangs.⁴¹ The IACHR has acknowledged that maras and gangs take advantage of conditions of inequality, social exclusion and an absence of equal opportunity.⁴² In this way, criminal groups move in and attain social legitimization in a certain way.⁴³ In the next section, the Commission will examine the presence of maras and gangs in northern Central America.
39. With respect to corruption and weak institutions, the Commission has acknowledged that this has a negative impact on the rule of law and the enjoyment of human rights, making conditions ripe for

³⁷ IACHR. [Pobreza y derechos humanos](#), Poverty and Human Rights, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 409.

³⁸ ECLAC, [Panorama Social de América Latina 2021](#), Social Panorama of Latin America 2022, pgs. 53 and 54.

³⁹ OXFAM International, [Entre el suelo y el cielo Radiografía multidimensional de la desigualdad en Guatemala](#), [‘A top to bottom multidimensional snapshot of equality in Guatemala’], March 28, 2019, pgs. 4 to 7.

⁴⁰ IACHR. [Situación de derechos humanos en Honduras](#), Situation of Human Rights in Honduras. OEA/Ser.LV/II. Doc. 46, August 27, 2019, par. 128.

⁴¹ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 40.

⁴² IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 72.

⁴³ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 72.

criminal groups to attain hegemony in the absence of the State.⁴⁴ It has also noted that organized crime engages in corrupt practices with agents of the State to pave the way for or enable illicit acts.⁴⁵ In this regard, the phenomenon of corruption affects the legitimacy of public institutions, society, the comprehensive development of peoples, and the effective enjoyment of the human rights of a people as a whole.⁴⁶

40. In this same vein, the Commission has underscored that a sparse or weak presence of institutions in certain geographic areas can lead to criminal groups becoming parallel social, political and economic structures, filling the vacuum or replacing the State in several spheres, such as providing basic services, security and enforcing behavioral norms among the residents in contexts of precarious conditions or a lack of an effective legal or justice system. In this way, the dividing lines between criminal groups and community organizations could become blurry.⁴⁷
41. Additionally, the IACHR has held that corruption casts doubt on the independence of institutions and undermines confidence in public institutions and the rule of law. Based on the foregoing, States have the duty to establish and enforce all necessary measures to correct such situations⁴⁸ and prevent the loss of confidence in State institutions.⁴⁹
42. As for the infiltration of criminals into State institutions, the IACHR has advocated that this pernicious transfer of power delegitimizes the States' reason for existence in the eyes of society. Moreover, organized crime not only coopts individual government officials, but also captures entire institutions and places them at the service of criminals. This is a particularly harmful form of corruption inasmuch as it involves the State apparatus, completely diverting it from fulfilling its constitutionally-mandated purposes of striving for the common good and upholding the rule of law.⁵⁰

⁴⁴ IACHR. [Informe sobre seguridad ciudadana y derechos humanos](#), Report on citizen security and human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 167; IACHR, Annual Report, [Capítulo IV “Desarrollo de los Derechos Humanos en la Región: Ecuador”](#), Chapter IV “Development of Human Rights in the Region: Ecuador,” 2005, par. 132.

⁴⁵ IACHR. [Corrupción y derechos humanos: Estándares interamericanos](#), Corruption and Human Rights: Inter-American Standards. OEA/Ser.LV/II. Doc. 236, December 6, 2019, par. 99.

⁴⁶ IACHR. [Informe sobre seguridad ciudadana y derechos humanos](#), Report on citizen security and human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 167; IACHR, Annual Report, [Capítulo IV “Desarrollo de los Derechos Humanos en la Región: Ecuador”](#), Chapter IV “Development of Human Rights in the Region: Ecuador,” 2005, par. 132.

⁴⁷ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 51.

⁴⁸ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 410.

⁴⁹ IACHR. [Corrupción y Derechos Humanos](#), Corruption and Human Rights: Inter-American Standards OEA/Ser.LV/II. Doc. 236, December 6, 2019, par. 128.

⁵⁰ IACHR, [Corrupción y derechos y humanos](#), Corruption and Human Rights: Inter-American Standards OEA/Ser.LV/II. Doc. 236, December 6, 2019, par. 99.

43. Based on the information received by the Commission on this subject, it underscores that infiltrations take place in both the administrative and judicial spheres. As for the public administration, according to information, unqualified personnel working in government positions and individuals holding public office, mainly out of economic interests and to hold onto power, enable criminal groups to infiltrate the State apparatus.⁵¹ On this score, the Commission has established that, once these complex forms of relationships between State institutions and organized crime have been forged, corruption becomes part of everyday business, completely diverting the State from fulfilling its purpose.⁵²
44. In the judicial sphere, the United Nations Special Rapporteur on the Independence of Judges and Lawyers has asserted that criminal networks attempt to extend their reach into the institutions of the judiciary by imposing and wielding their power and influence under their own rules. This creates spheres of immunity within the State system itself, in particular, by using corruption as a means of gaining access to the judicial administration. All of this creates an enormous challenge for judicial systems, which may be affected by corruption and threats while also bearing the fundamental responsibility to combat such crime.⁵³ With respect to impunity, the IACHR has held that one of the main dimensions of state obligations under a human rights-based citizen security policy is for the judiciary to get to the bottom of criminal conduct.⁵⁴ On this topic, the Commission was informed that crimes relating to the actions of criminal groups in the States making up northern Central American are for the most part not prosecuted.
45. According to official statistics of the Ministry of Justice and Public Security of El Salvador, by late 2021, the impunity rate for the crime of homicide in the country was 68%.⁵⁵ Despite this high rate, the IACHR notes that this figure has reached 97% in the past. With respect to Guatemala, according to the Institute of Comparative Criminal Science Studies, from 2017 to 2021, 91% of all cases for which criminal investigations were opened have not been solved.
46. In the case of Honduras, the United Nations Rapporteur for the Independence of Judges and Lawyers noted that in 2020, the impunity rate in Honduras surpassed 90%, with crimes committed by agents of the State posting a high rate of impunity.⁵⁶ On its country visit in 2018, the IACHR ascertained high rates of impunity and inadequate and insufficient assistance to the victims of the

⁵¹ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁵² IACHR. [Corrupción y Derechos Humanos](#), Corruption and Human Rights. OEA/Ser.LV/II. Doc. 236, December 6, 2019, par. 100.

⁵³ United Nations, [Informe del Relator Especial sobre la independencia de los magistrados y abogados](#). Report of the Special Rapporteur on the Independence of Judges and Lawyers. A/72/140, July 25, 2017, par. 39.

⁵⁴ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), Report on Citizen Security and Human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 36.

⁵⁵ Ministry of Justice and Public Security, El Salvador, [“Impunidad en el delito de homicidio se ha reducido 30 puntos en 2021”](#), Impunity in the crime of homicide has decreased by 30 points in 2021. December 14, 2021.

⁵⁶ Human Rights Council, [Informe del Relator Especial sobre la independencia de los magistrados y abogados](#). Report of the Special Rapporteur on the Independence of Judges and Lawyers. A/HRC/44/47/Add.2, June 2, 2020, par. 20.

crimes and their family members in that State. On this score, it established by evidence that the lack of access to justice has created a situation of impunity of a structural nature, the effect of which is to perpetuate and, in certain instances, pave the way for gross human rights violations to be repeated. On this occasion, civil society organizations reported to the IACHR about a system they call “selective justice” that, on the one hand, is slow to act and fails to offer an effective response to human rights violations; while, on the other hand, issues favorable rulings to the interests of several actors linked to public officials, political power brokers and business leaders.⁵⁷

47. In conclusion, based on the root causes explained above by the IACHR, coupled with the information gathered to put together this report, the Commission finds that the context of poverty and inequality, insecurity and ineffective institutions all conspire to make criminal organizations in northern Central America strong. In this context of social exclusion, corruption and impunity pave the way for criminal organizations to develop and establish parallel power structures⁵⁸ by penetrating and twisting the true democratic purposes of the States to the detriment of respect and guarantee of human rights. The lack of security hinders access of communities to public services and investments, thereby limiting the chances of generating opportunities and development. Consequently, people are left defenseless in the face of violations of their human rights, further exacerbating inequality and social exclusion and fomenting a vicious cycle that is difficult to stop.⁵⁹

B. Crime and Gangs and Human Rights

48. The Commission has been paying close attention to the high crime and violence rates afflicting the States of the region, particularly in Latin America and the Caribbean.⁶⁰ Furthermore, it has acknowledged that heightened violence and insecurity in the region jeopardize the progress achieved in economic growth, social cohesion and respect for and the exercise of human rights.⁶¹ Building democratic, supportive, tolerant and human rights-abiding societies is a regional challenge that is up against the different forms of violence manifested in organized crime, the proliferation of firearms, violence against vulnerable population groups, juvenile delinquency, among other things.⁶²

⁵⁷ IACHR. [Situación de derechos humanos en Honduras](#), Situation of Human Rights in Honduras. OEA/Ser.LV/II. Doc. 46, August 27, 2019, par. 7.

⁵⁸ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), Report on Citizen Security and Human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 33.

⁵⁹ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, pars. 46 to 48.

⁶⁰ IACHR. [Informe sobre seguridad ciudadana y derechos humanos](#), Report on Citizen Security and Human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, pars. 26 and 28.

⁶¹ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 37.

⁶² IACHR. [Informe sobre seguridad ciudadana y derechos humanos](#), Report on Citizen Security and Human Rights. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 218.

49. On this note, the States of the region of the Americas have acknowledged that criminal gang activity is an issue that requires hemispheric cooperation due to the economic and social impacts it has. This crime phenomenon demands emergency action to be taken in order to promote crime prevention and punishment, as well as the rehabilitation and reentry into society of those responsible, and generate opportunities to pave the way for young people to access decent jobs.⁶³ Specifically, the IACHR has observed high rates of violence and insecurity in El Salvador, Guatemala and Honduras. The Commission has viewed with particular concern the widespread situation of violence in this region as a consequence of the actions of organizations such as gangs or maras, and the drug trafficking cartels, but also, in some instances, as a consequence of the conduct of States' agents.⁶⁴
50. By way of historical background, the IACHR has noted that over the 1980s and 1990s, there was a significant wave of migration to the United States from El Salvador, Guatemala and Honduras. Some of the migrant teenagers and young people, who had trouble assimilating into the United States, joined gangs in that country. Subsequently, around the end of the 1990s, with a mass expulsion of undocumented migrants from the U.S, including members of Barrio 18 and Mara Salvatrucha, the Californian mara model was replicated in these Central American countries. Further compounding the situation, these young people returning to their countries of origin were met with barriers to social reintegration, fueling the creation of these groups.⁶⁵
51. The IACHR has noted that in areas under the control of these groups, a parallel power structure that lays down its own system of rules in order to hold a tight grip over the territory and the individuals living therein by means of threats and extortion has emerged.⁶⁶ This informal system of rules governs important aspects of the lives of the residents and constrains the exercise of their rights, in addition to violating their right to personal security, and endangering their safety, should they not abide by the rules imposed by the gangs.⁶⁷

⁶³ Fourth Summit of the Americas, Declaration of Mar del Plata, November 5, 2005, par. 70.

⁶⁴ IACHR. [Desplazamiento interno en el Triángulo norte de Centroamérica](#), Internal Displacement in the Northern Triangle of Central America. OEA/Ser.LV/II. Doc. 101, July 27, 2018, par 29; IACHR. [Situación de los derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador. OEA/Ser.LV/II. Doc. 278, October 14, 2021, par. 29-31; IACHR, [Situación de los derechos humanos en Honduras](#), Situation of human rights in Honduras. OEA/Ser.LV/II. Doc. 146, August 27, 2019, par. 52 et seq; IACHR, [Situación de los derechos humanos en Guatemala](#), Situation of Human Rights in Guatemala. OEA/Ser.LV/II. Doc. 208/17, December 31, 2017, pars. 337, 362 et seq.

⁶⁵ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, December 11, 2015, par. 165.

⁶⁶ IACHR. [Situación de los derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador. OEA/Ser.LV/II. Doc. 278, October 14, 2021, par. 337; IACHR, [Situación de los derechos humanos en Honduras](#), Situation of human rights in Honduras. OEA/Ser.LV/II. Doc. 146, August 27, 2019, par. 236; IACHR, [Situación de los derechos humanos en Guatemala](#), Situation of Human Rights in Guatemala. OEA/Ser.LV/II. Doc. 208/17, December 31, 2017, par. 365 et seq.; Save the Children. [Otras Situaciones de Violencia Contra la Infancia y la Adolescencia en el Triángulo norte Centroamericano](#). Other situations of violence against children and adolescents in the northern triangle of Central America. 2018, pg. 10.

⁶⁷ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 334.

52. The Commission notes that estimates of the membership in the maras and gangs vary based on the particular source and, therefore, it is difficult to come up with a reliable count of the number of members and sympathizers. Nonetheless, according to statistical data available to the IACHR, in 2021, there were an estimated 60,000 members of maras and gangs in El Salvador,⁶⁸ operating in at least 247 of the 262 municipalities of El Salvador⁶⁹ and some 500,000 additional people providing social support.⁷⁰ Additionally, in 2020, there were an estimated 10,000 to 20,000 members of maras and gangs in Guatemala and from 25,000 to 30,000 in Honduras,⁷¹ who mostly operated in Tegucigalpa, San Pedro Sula and La Ceiba.⁷²

C. Violence and human rights in contexts of organized crime: States' obligations, international responsibility and citizen security policies

53. In this section, the Commission will discuss the response of the States of northern Central America to the context of insecurity and crime. Firstly, the IACHR will address the general obligations of the States vis-à-vis contexts of crime and citizen insecurity. Secondly, it will characterize the principal human rights infringements identified in the context of insecurity and crime in northern Central America. Lastly, the Commission will describe citizen security strategies being implemented by El Salvador, Guatemala and Honduras to confront crime

1. States' obligations and international responsibility for the action of organized crime

54. It is a complex undertaking to flesh out the general responsibilities of States for the challenges posed in contexts of crime and citizen insecurity. There are two factors at the core of this complexity: (i) often, criminal acts are committed with the express intent to wipe out any possible means of identifying the perpetrator or perpetrators of the crimes or to blur the identity within the greater criminal group; and (ii) State responsibility is not only incurred for acts of States' agents, but also for acts of private individuals when the State has not fulfilled its duty of due diligence. As such, taking into account that in order to ascribe international responsibility, international law requires determining whether the provenance of the responsibility-generating act is an agent of the State or whether it arose from the acts of third parties. Case by case examination of the specific scenario is

⁶⁸ IACHR, [Situación de derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador. OEA/Ser.LV/II. Doc. 101, October 14, 2021, par. 30.

⁶⁹ Human Rights Watch, [Informe Mundial 2021](#), World Report. 2021.

⁷⁰ IACHR, [Situación de derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador OEA/Ser.LV/II. Doc. 101, October 14, 2021, par. 30,

⁷¹ CIEN, [Análisis Reforma al Código Penal, modificación del Delito de Terrorismo](#), [‘Analysis of amendment to Criminal Code, change to the Offense of Terrorism’]. February 5, 2020, pg. 3.

⁷² OCHA, [Honduras: Plan de Respuesta Humanitaria \(Agosto 2021 - Diciembre 2022\)](#), [‘Honduras: Humanitarian Response Plan (August 2021 – December 2022)’]. August 9, 2021, pg. 10.

required in order to make an adequate determination of the type of general human rights obligation applicable to the situation.⁷³ Hereunder, both factors are further fleshed out for greater clarity.

Acts committed directly by agents of the State

55. In cases in which criminal acts are committed directly by State's agents and/or by third parties, it is not difficult to determine States' obligations and the consequent attribution of international responsibility.
56. When acts of State agents are involved, the analysis encompasses responsibility for the duty to respect human rights and, when applicable, also the duty of guarantee. With respect to this obligation to ensure, the Court has held that it means the duty of the States Party to organize the whole government apparatus and, in general, all the structures through which public authority is exercised, so that they are capable of juridically ensuring the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, additionally, if possible, attempt to restore the right violated and provide compensation, as warranted, for damages resulting from the human rights violation.⁷⁴

Acts committed by third parties

57. However, when acts committed by third parties alone are involved, the obligation to ensure is applicable in its different modalities of preventing, investigating and providing reparation for the human rights violations.
58. As for cases in which the acts are committed by third parties, among other factors as has been noted above, the State is responsible when it has not fulfilled its duty of due diligence. Thus, the Commission has held that a violation of the human rights protected by the Convention can give rise to the international responsibility of a State either because the violation is perpetrated by one of its own agents or when the perpetrator cannot be identified due to a lack of diligence of the State to prevent, within reason, the violation or to deal with it as prescribed under the provisions of the Convention. The important thing is to determine whether there has been involvement, support or tolerance of State's agents in that act or it has resulted from the State's breach of its obligation to prevent, within reason, violations of human rights, conduct a serious investigation in order to identify and punish those responsible, and provide adequate reparation to the victim or his or her family members for the damages caused to them.⁷⁵

⁷³ General Assembly. State Responsibility for Internationally Wrongful Acts. A/RES/56/83, January 28, 2002

⁷⁴ IA Court of HR. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29 1988. Fondo. Sentencia de 29 de julio de 1988. Serie C No. 4. Par. 166. Merits. Judgment of July 29, 1988. Series C No. 4. Par. 166.

⁷⁵ IACHR, Report No 65/01. Case 11.073. Merits. Juan Humberto Sánchez. Honduras. March 6, 2001, par.88.

59. Moreover, both the Commission and the Court have clearly held that these obligations are applicable to potential acts of non-state actors.⁷⁶ Specifically, the Inter-American Court has written that “the State’s international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State’s obligations to guarantee respect for those rights between individuals⁷⁷ (...) the obligations *erga omnes* to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention, extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations.”⁷⁸ These obligations devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case.⁷⁹
60. In order to determine State responsibility for acts of third parties, a connection to the conduct of State’s agents must be established. The Court has also held that “in order to ascribe responsibility to the State for the violation of the duty to respect in relation to the acts of third parties, a general context of collaboration and of acquiescence is insufficient on its own, but instead the State’s acquiescence or collaboration must result from the actual circumstances of the specific case.”⁸⁰ In this same vein, norms of custom-based law relating to the attribution of international responsibility for internationally wrongful acts committed by third parties require acting at the direction of or under the control of the State⁸¹ or acting in the absence or default of official authorities.⁸²
61. Likewise, regarding the scope of the duty to prevent with respect to private individuals, the Court has held that “a State may not be responsible for any human rights violation committed between private individuals under its jurisdiction. In fact, the *erga omnes* nature of the State’s treaty-based obligations of guarantee does not give rise to unlimited responsibility of the States for any act or crime of individuals,”⁸³ since its duties to take measures of prevention and protection in relations

⁷⁶ IACHR. Report 80/11. Case 12.626. Merits. Jessica Lehanan (Gonzales) et al. United States. July 21, 2011. Par. 119.

⁷⁷ IA Court of HR. Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C No. 140. Par. 113.

⁷⁸ IA Court of HR, Case of the “Massacre of Mapiripán.” Judgment of September 15, 2005. Series C No. 134. par. 111.

⁷⁹ IA Court of HR. Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006, par. 117.

⁸⁰ IA Court of HR. Case of Yarce et al v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 352, par. 180; IA Court of HR. Case of Vereda La Esperanza v. Colombia, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341., par. 152.

⁸¹ General Assembly, State Responsibility for Internationally Wrongful Acts. A/RES/56/83, January 28, 2002, Article 8: The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

⁸² General Assembly, State Responsibility for Internationally Wrongful Acts. A/RES/56/83, January 28, 2002, Article 9: The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

⁸³ IA Court of HR. Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006, par. 117.

between individuals are contingent upon i) whether the State was or should have been aware of a situation of danger; ii) whether that danger was real and imminent; and iii) whether the State adopted measures that could reasonably be expected to avoid that danger.⁸⁴

Acts violating human rights committed in contexts of organized crime or macro-crime

62. Additionally, contexts of macro-crime networks, characterized by a high degree of penetration of illegal structures into the formal institutions of the States is another situation where the lines between internationally wrongful acts committed by State's agents and acts committed by third parties are blurred. On this note, in the framework of the duty to investigate gross human rights violations, the IACHR has raised the need to established modus operandi and patterns of macro-criminal networks with multiple actors involved⁸⁵ in order to prevent impunity from arising.
63. When human rights violations are committed in contexts of macro-criminal networks, the IACHR deems it necessary for the State to diligently investigate *ex officio* the direct involvement of its own agents and elucidate "whether a specific violation [...] has been committed with the support or tolerance of the public authorities, or whether the latter have acted in a way that has allowed the violation to be committed without preventing it or with impunity"⁸⁶ amounting to a situation of acquiescence and, therefore, these acts are directly attributed to the State as a function of its duty to respect, as enshrined in the American Convention.
64. Moreover, the Commission finds that, in contexts of organized crime and macro-crime networks, certain acts are committed by criminal groups that could only have been carried out if the State was aware, or else it should have been aware, of the real and imminent danger that would arise if they took place and, despite this, it did not take any measures to stop it from happening. This specific scenario, would mean a disregard for its obligations to prevent and protect individuals in violation of international obligations enshrined as norms of human rights.

⁸⁴ The legal precedents of the European Court with respect to the elements laid out under the duty of prevention has been revisited by the Inter-American Court in several judgments. In this regard, see: IA Court of HR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, par. 124; IA Court of HR. Case of González et al ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No.205, par. 284; IA Court of HR. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 124.

⁸⁵ IACHR. [Compendio de la Comisión Interamericana de Derechos Humanos sobre verdad, memoria, justicia y reparación en contextos transicionales](#), Compendium on Truth, Memory, Justice and Reparation in Transitional Contexts of the Inter-American Commission on Human Rights. OEASer.LVII. Doc. 121, April 12, 2021, par. 71.

⁸⁶ IA Court of HR, Case of Velásquez Rodríguez v. Honduras. Merits, supra, par. 173, and Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014, par. 181.

2. Infringement of human rights committed in the context of crime in the States of northern Central America

65. The Commission has observed infringements of the rights to life, physical integrity, personal freedom and security, property and movement, which have taken place as a result of the conduct of criminal organizations and their operations of drug trafficking, arms trafficking, extortion or human trafficking for purposes of sexual exploitation; in addition to confrontations between rival groups over territorial hegemony to engage in their illegal activities. In their most serious forms, the acts occurring in these contexts of crime give rise to disappearances, torture, violence and sexual slavery, as well as forced disappearances. In relation to the human rights of children, adolescents and young people, the IACHR has voiced its deep concern over the recruitment of which they are victims.⁸⁷ Next, the IACHR provides information on these human rights infringements.
66. With respect to the right to life, humane treatment and personal security, the Commission notes that northern Central America has garnered the dubious distinction of being one of the most violent and unsafe areas in the world.⁸⁸ On this score, from 2013 to 2020, 128,944 violent acts were reported in El Salvador, Guatemala and Honduras.⁸⁹ Coupled with this statistic, in 2019, these countries placed among the top 10 countries with the highest homicide rates for every 100,000 inhabitants in the world.⁹⁰
67. Specifically, in El Salvador, according to official data from the Civilian National Police, in 2021, there were 1,140 homicides reported, which makes that year the safest since records of annual homicides in this country have been kept.⁹¹ Nonetheless, since March 25, 2022, there has been a sharp rise in reported violent deaths in El Salvador as a result of public disturbances by criminal groups, as will be explained later in this report.⁹² In its observations on the draft version of this report, the State of

⁸⁷ IACHR, Press Release No. 335/19 - [Observaciones preliminares de su visita in loco a El Salvador](#). Preliminary Observations following its *in loco* visit to El Salvador. Washington DC, December 27, 2019.

⁸⁸ Save the Children, [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Crossfire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 9.

⁸⁹ REDLAC, [Niños, niñas y adolescentes en situación de movilidad humana en el norte de Centroamérica, México y Panamá](#), [Children and adolescents in situation of human mobility in northern Central America, Mexico and Panama], March 31, 2022, pg. 7.

⁹⁰ Save the Children, [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Crossfire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 9.

⁹¹ PNC El Salvador [@PNCSV]. (January 1, 2022). *2021 cierra como el año más seguro desde que se tiene registro en nuestro país. 201 homicidios menos que 2020* [Tweet] [‘2021 closes as the safest year since records were kept in our country’]. Twitter. <https://twitter.com/PNCSV/status/1477482470064934914?s=20>

⁹² IACHR, Press Release No. 126/22 - [CIDH urge a El Salvador a cumplir sus obligaciones internacionales y garantizar políticas penitenciarias y de seguridad ciudadana con respeto a los derechos humanos](#). IACHR Urges El Salvador to Comply with Its International Obligations and Ensure Prisons and Law Enforcement Policies That Respect Human Rights. Washington DC, June 3, 2022.

El Salvador asserted that since it implemented a state of emergency (exception), it has managed to significantly reduce crime rates in the country through the operations that have been conducted, including more than 57,000 arrests of individuals allegedly involved in gangs.⁹³ Notwithstanding, the Commission notes that the mass arrest of individuals is not necessarily tantamount to a reduction in crime. In fact, the IACHR has received information to the effect that arbitrary detentions are being made based on anonymous phone calls and perception of belonging to criminal groups solely on appearance or place of residence.⁹⁴

68. With respect to Honduras, according to the Police's On-Line Statistical System (SEPOL), in 2021, there were 3,897 homicides reported, which represents a 7.57% increase over 2020.⁹⁵ Nonetheless, in its observations on the draft version of this report, Honduras noted that, from January to September 2022, the homicide rate had been 36.0 for every 100 thousand inhabitants, which represents a 13.2% decrease. It further clarified that the homicides are mostly attributable to reasons of social conflict crime. In this regard, from January to September of 2022, there were 1,251 homicides attributed to social conflict crime and 401 homicides, to organized crime, narco-activity, maras and gangs.⁹⁶
69. In Guatemala, according to official data from the National Economic Research Center, the number of homicides in 2021 rose by 10% as compared to 2020.⁹⁷
70. This context of violence can be attributed to several causes linked to mara and gang activities. The IACHR has recognized that the causes giving rise to these violations of the right to life include gang rivalry, extortion, settling scores, refusal to collaborate or become a member of the criminal group, quitting the group, intimidation for reasons of social control, suspected collaboration with the police, among other circumstances.⁹⁸ Notwithstanding, because of the high degree of impunity, the IACHR

⁹³ Republic of El Salvador, Observations of the State of El Salvador on the Draft Report Organized Crime and the Rights of Children, Adolescents and Young People: current challenges and actions taken by the States of Northern Central America, November 29, 2022, pg. 1.

⁹⁴ IACHR, Press Release No. 25422 - [Siete meses del régimen de excepción: CIDH recuerda a El Salvador cumplir sus obligaciones de derechos humanos](#), Seven Months into the Exceptional Framework, the IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights. November 11, 2022.

⁹⁵ SEPOL, [Comportamiento de los Homicidios en Honduras 2021](#), [Homicide Statistics in Honduras 2021]. 2021.

⁹⁶ Republic of Honduras, Observations of the State of Honduras on the Draft Report Organized Crime and the Rights of Children, Adolescents and Young People: current challenges and actions taken by the States of Northern Central America, November 23, 2022, pg. 5.

⁹⁷ CIEN [@CIENft]. (January 14, 2022) In 2021, the number of homicides increased by 10%, which amounts to 266 more homicides than in 2020. [Tweet]. <https://twitter.com/CIENft/status/1482146425228210176>

⁹⁸ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 327.

notes an absence of specific information about the actual involvement of these criminal organizations in these crimes.⁹⁹

71. In relation to the infringements of the rights to humane treatment, personal security and property, the Commission is concerned about the widespread use of extortion against individuals and their businesses. Extortion is used by criminal groups as a source of income and a means of territorial control. Thus, individuals are forced to pay a “rent” if they want to cross invisible boundaries drawn on the basis of territorial disputes between different criminal groups.¹⁰⁰ Moreover, business persons, whether small or large business owners, are forced to make payments to keep their businesses open, under threat of closure and murder of the owner him or herself or one of their family members, should they refuse.¹⁰¹
72. Guatemala is the Central American country with the highest number of extortions reported each year. According to official figures, from 2015 to 2019, extortion complaints rose continuously; however, 2020 saw a decrease of 11.6% as compared to 2019, which according to the Ministry of Government could be the result of restrictive measures imposed by the government in response to the COVID-19 pandemic.¹⁰² Additionally, in Honduras, the IACHR noticed that from 2014 to 2018, more than 10 billion was lost from the public treasury as a consequence of extortion, bribery and illegal transfers.¹⁰³ Lastly, based on data from the Global Initiative against Transnational Organized Crime, El Salvador also saw a 36% decrease in reports of extortion from 2019 to 2020 dropping from 2,114 to 1,345. Nonetheless, it must be noted that the complaint figure is of limited use inasmuch as a decrease could very well mean that the problem subsided or it could also mean that citizens confidence in filing complaints is down.¹⁰⁴
73. As for infringements of the right to human mobility or movement, the Commission has acknowledged that violence caused by maras and gangs, as well as violence perpetrated by agents of the State in northern Central America are the main causes of internal forced displacement and of

⁹⁹ IACHR, [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 390 and 391.

¹⁰⁰ Save the Children, [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Crossfire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 27.

¹⁰¹ OCHA, [Honduras: Plan de Respuesta Humanitaria \(Agosto 2021 - Diciembre 2022\)](#), [Honduras: Humanitarian Response Plan] August 9, 2021, pg. 18.

¹⁰² Ministry of Government, Guatemala, [Compendio Estadístico 2020 indicadores de seguridad ciudadana en acciones policiales](#) [‘Statistical Compendium 2020 indicators of citizen security in police operations’]. April 2021, pg. 37.

¹⁰³ REDLAC, [Desapariciones en el norte de Centroamérica y México](#), [Disappearances in Northern Central America and Mexico], November 2020, pg. 10.

¹⁰⁴ Global Initiative Against Transnational Organized Crime. [Renta o extorsión. Victimarios y víctimas de las maras en El Salvador](#), [‘Rent or Extortion. Victimiziers and Victims of the Maras in El Salvador’]. October de 2021.

migration flows to other countries.¹⁰⁵ Moreover, another cause is natural disasters. With respect to internal displacement, the Internal Displacement Monitoring Centre (IDMC) reported 114,000 internal displacements from violence and 17,000 from natural disasters in El Salvador. Additionally, in Guatemala and Honduras, only displacements from natural disasters were reported. The figures in Guatemala suggest that there were 339,000 displacements and in Honduras, 937,000.¹⁰⁶ Additionally, as for international migration flow, in 2020, the IOM reported 1,599,058 Salvadorian emigrants, 985,077 Honduran emigrants and 1,368,431 Guatemalan emigrants.¹⁰⁷

74. Regarding the alarming situation of the disappearance of persons, the Commission received information about the increased number of reports of such cases in El Salvador in 2019. According to information provided by the Office of the Attorney General of the Republic, in 2019, 3,030 reports were filed for disappeared persons, which on average is 10 disappearances per day.¹⁰⁸ Notwithstanding, as of November 2021, the Regional Group on Risks, Emergencies and Disasters for Latin America and the Caribbean reported 1,225 disappearances in that country.¹⁰⁹ The IACHR is deeply concerned that from 2012 to June 2020, 60% of disappeared women are young girls and adolescents ages 13 to 17.¹¹⁰ On this score, the Commission received information suggesting that the disappearances were connected to crime and militarized security policy and highlighted the lack of communication with next of kin about the status of the cases and a failure to take a gender-based approach to prevention efforts and state responses.¹¹¹ As for Guatemala, according to figures from the Civilian National Police, children and adolescents ages 12 to 17 accounted for 49% of the victims in reports of disappearances over the past 17 years, and ranked as the most affected age group. In this context, according to the Missing Children's Unit (Unidad de Niñez Desaparecida), disappearances of children from birth to 13 years of age usually results from family problems, while among adolescents ages 14 to 17, it tends to be related to forced recruitment by criminal organizations.
75. Additionally, criminal groups also engage in human trafficking for purposes of labor exploitation or sexual exploitation, mostly targeting women. Based on information received by the IACHR, it is

¹⁰⁵ IACHR, [Desplazamiento interno en el Triángulo norte de Centroamérica](#), Internal Displacement in the Northern Triangle of Central American. OEA/Ser.LV/II. Doc. 101, July 27, 2018, par. 51.

¹⁰⁶ IDMC, [Informe Mundial sobre Desplazamiento Interno 2021](#), Global Report on Internal Displacement. 2021.

¹⁰⁷ IOM, [Central de datos: Resumen de datos y tendencias migratorias en la Región](#), Central Data Base: Summary of migration data and trends in the Region. 2020, pg.2.

¹⁰⁸ IACHR, [Situación de derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador. OEA/Ser.LV/II. Doc. 101, October 14, 2021, par. 65.

¹⁰⁹ REDLAC, [Desapariciones en el norte de Centroamérica y México](#), Disappearances in Northern Central America and Mexico. November 2020, pg. 7.

¹¹⁰ REDLAC, [Desapariciones en el norte de Centroamérica y México](#), Disappearances in Northern Central America and Mexico. November 2020, pg. 7.

¹¹¹ IACHR, [Informe Anual, Capítulo IV. A "Desarrollo de los Derechos Humanos en la Región"](#), Annual Report, Chapter IV. A "Development of Human Rights in the Region. 2021, par. 525.

common for criminal organizations to take advantage of vulnerable conditions of people and lure their victims with bogus job offers.¹¹² In this regard, the Commission has noted that the socioeconomic and institutional factors that give rise to the contexts of insecurity and violence in the region have a bearing on the high incidence of human trafficking and sexual exploitation.¹¹³ By way of example, in 2021 in Honduras, 75 individuals were charged with the crime of human trafficking and sexual exploitation, including public officials.¹¹⁴ Moreover, the Secretariat for Human Rights of Honduras reported that each year it provides assistance to around 250,000 victims of human trafficking.¹¹⁵ Likewise, in Guatemala, it was reported that 96% of the trafficking cases involved women victims. In El Salvador, the Commission notes that there is no publicly available, official information about the number of cases of trafficking in persons. Notwithstanding, the State has reported to the Commission about the risk of internally displaced persons becoming victims of human trafficking and of contemporary forms of slavery.¹¹⁶

3. Citizen security policies toward organized crime

76. The IACHR has observed that there is a deep-rooted consensus in the States of the region that public security is an exclusive duty and obligation of the States, the purpose of which it is “to safeguard the integrity and security of persons and protect the enjoyment of all their rights.”¹¹⁷ The Commission has found that, in efforts to combat violence, it is key for citizen security to be construed as a State policy, that is sustained over time spanning terms of government, and is based on the protection and defense of human rights. The Commission has held that advancements in the area of citizen security have not been the result of a single, isolated policy, but of a multisectoral approach and of a string of policies that include prevention as an essential component.¹¹⁸

¹¹² UNHCR, Questionnaire for Civil Society Organizations, April 7, 2022, question 5.

¹¹³ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 250.

¹¹⁴ Republic of Honduras, Observations of the State of Honduras on the Draft Report Organized Crime and the Rights of Children, Adolescents and Young People: current challenges and actions taken by the States of Northern Central America, November 23, 2022, pg. 7.

¹¹⁵ SEDH, Honduras, [“En el Día Internacional de la Trata de Personas. Estudio destaca que se atiende anualmente a 250mil víctimas de trata en el país”](#), [“On the International Day of Trafficking in Persons. Study highlights that 250 thousand victims of human trafficking are assisted each year”]. July 30, 2021.

¹¹⁶ CIDH, [Informe Anual, Capítulo IV. A “Desarrollo de los Derechos Humanos en la Región”](#), Annual Report, Chapter IV. A “Development of Human Rights in the Region. 2021, par. 537.

¹¹⁷ OAS. Commitment to Public Security in the Americas. OEA/Ser.K/XLIX. 1 MISPA/doc. 7/08 rev. 4. First Meeting of Ministers of Responsible for Public Security in the Americas. Mexico D.F., Mexico, October 29, 2008. In this regard: OAS. Consensus of Santo Domingo on Public Security. OEA/Ser.K/XLIX. 1 MISPA II/doc. 8/09 rev. 2. Second Meeting of Ministers Responsible for Public Security in the Americas. Santo Domingo, Dominican Republic, November 5, 2009.

¹¹⁸ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 287.

77. Notwithstanding, the Commission also has noted that the citizen security policies historically pursued in several States of the Americas have, in general terms, diverged from international human rights standards and, in many instances, authorities have resorted to the illegal and arbitrary use of force in the name of crime and violence prevention and control.¹¹⁹ Specifically in northern Central America, the IACHR can point to the general context of repressive public security and penitentiary policies aimed at combating the maras, which resulted in a practice of automatically detaining youths fitting a certain profile.¹²⁰
78. In this same vein, the Commission notes that, at certain times, the States of this subregion have resorted to repressive-type policies, which fuel increased human rights violations by State actors. In this way, State responses backslide into states of emergency or “iron fist” policies and the deployment of armed forces for the control of citizen security. In these contexts, the IACHR has received reports of serious acts of repression, which would constitute human rights violations. The IACHR will now describe the aforementioned responses.
79. With respect to emergency regimes, the IACHR notes the risk posed by states of exception and limitations on guarantees in the exercise of human rights in order to combat crime. This risk stems from the numerous human rights violations that are consistently reported as a result of the indiscriminate effects of the suspension of treaty-based guarantees, aside from the fact that this approach is not a sustainable and effective response to address and fix the challenge of violence and crime.¹²¹
80. With respect to “iron fist” policies, the IACHR notes that State responses to combatting organized crime are often based, for the most part, on coercive control policies, which are implemented by the security forces, and on punitive repression. On this score, the IACHR has established that insecurity is used for political aims, through short-term or “iron fist” proposals, which are intended to win over the hearts and minds of the people in response to citizen concern over crime and violence.¹²² “Iron fist” policies yield only short term results, are unsuccessful at adequately addressing the underlying causes of crime, and do not focus enough on prevention, social investment programs and rights promotion, thus rendering them insufficient to adequately address the root causes of the violence. Additionally, their implementation quite often results in human rights violations, which leads to a lack of confidence in the institutions of the State and in the rule of law.¹²³

¹¹⁹ IACHR. [Informe sobre seguridad ciudadana y derechos humanos](#), Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, pars. 26 and 28.

¹²⁰ IACHR, Case 12.680, Rafael Arturo Pacheco Teruel et al (Deaths from fire at San Pedro Sula Prison). Honduras, Submission Note of March 11, 2011, pg. 2; Report on the Merits No. 118/10 of October 22, 2021, par. 116.

¹²¹ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 435.

¹²² IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 287.

¹²³ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 11.

81. On this note, the Commission has voiced its concern over the regime of exception installed in El Salvador in March 2022. The Legislative Assembly issued Decree No. 333 “Regime of Exception” to suspend rights and constitutional protections relating to freedom of association, the right of assembly, protection from arbitrary interference or abuses in private life, fair trial rights, among other ones, over a period of 30 days.¹²⁴ According to a report of FESPAD, following the declaration of the state of emergency in El Salvador, reports were filed for: i) arbitrary detention, ii) raids of residences without judicial warrants, iii) lack of information about the persons taken into detention and iv) use of excessive force in detentions.¹²⁵ Furthermore, the Office of the United Nations High Commissioner for Human Rights reported that on April 5, 2022, there were more than 5,747 individuals detained without any arrest warrant, some of whom were also subjected to allegedly cruel, inhuman or degrading treatment.¹²⁶
82. Based on the foregoing, the IACHR called attention to information suggesting that infringements of rights and judicial guarantees of the detained individuals were committed.¹²⁷ The Commission noted that judicial guarantees, which are so essential for the protection of the rights and freedoms enshrined in the Convention, must be kept in force at all times, including during states of exception. These guarantees are the ones that the Convention is expressly referring to in Articles 7.6 and 25.1, as substantiated under the provisions of Article 8 of the same instrument.
83. In its observations on the draft version of the instant report, El Salvador asserted that the framework of the regime of exception only provides for the temporary suspension of certain rights and constitutional guarantees that pertain to enabling the combatting of crime, in other words, not all guarantees that are subject to suspension under the Constitution were suspended. It further noted that since August 20, 2022, the constraints on the exercise of freedom of association, assembly and public protest were lifted.¹²⁸ The Commission has recognized the context of violence and insecurity linked to organized crime and gang activities in El Salvador, which limits and hinders the enjoyment and exercise of human rights in the country. However, it notes that public policies on citizen security must provide effective and efficient responses to the demands of a democratic society, through a

¹²⁴ IACHR, Press Release No. 82/22 - [CIDH urge a El Salvador implementar acciones en seguridad ciudadana de conformidad con los derechos humanos, incluyendo bajo el Régimen de Excepción](#). IACHR Urges El Salvador to Ensure that Law Enforcement and Any Exceptional Measures Comply with Human Rights. Washington DC, April 20, 2022.

¹²⁵ FESPAD, Informe de recepción de denuncias sobre abusos ejecutados por agentes de autoridad, [Report on complaints filed about abuses carried out by agents of authority]. April 27, 2022, pgs. 3 and 7.

¹²⁶ United Nations, [“El Salvador: Bachelet preocupada por las medidas del estado de excepción contra las maras”](#), [“El Salvador: Bachelet concerned over state of exception measures against maras”], April 5, 2022.

¹²⁷ The IACHR learned the defendants would have to prove their innocence and that the hearings were being held collectively, without individual examination of each case. FESPAD, Report on complaints filed about abuses carried out by agents of authority, April 27, 2022, pg. 10.

¹²⁸ Republic of El Salvador, Observations of the State of El Salvador on the Draft Report Organized Crime and the Rights of Children, Adolescents and Young People: current challenges and actions taken by the States of Northern Central America, November 23, 2022, pg. 1.

comprehensive approach to the root causes and consequences of crime, and within the bounds established by international and Inter-American human rights standards.¹²⁹

84. In Honduras, following its country visit in 2018, the IACHR received troubling information about the use of military personnel to conduct police operations, which has resulted in increased reports of human rights violations, including murders, torture and arbitrary detentions.¹³⁰ In this same vein, the UNHCR released information to suggest that, at times, civilian authorities have been unable to maintain effective control over the armed forces of the State and, therefore, the police and armed forces are reportedly involved in extrajudicial executions of alleged gang members.¹³¹
85. With respect to Guatemala, the IACHR notes that, since 2017, the “Operationalization Plan of gradual withdrawal of the Guatemalan Army from tasks of Citizen Security” began implementation. The object of this plan was to retire the Armed Forces from police duties. This plan was completed in April 2018 with the withdrawal of the Army from the streets.¹³²
86. In this context, the Commission notes that repressive policies have proven to be ineffective, have spawned further violence, worsened other existing problems, in addition to often being themselves human rights violations, the impacts of which stand at odds with the rule of law. In particular, these policies usually have a disproportionate impact on individuals and groups of individuals in vulnerable situations, specifically, on the exercise of their rights, among whom children and adolescents and young people bear the brunt. On this note, the IACHR underscores that it is imperative for security policies to meet the security needs of all persons while they must conform to the law and abide by human rights.¹³³

¹²⁹ IACHR, Press Release No. 25422 - [Siete meses del régimen de excepción: CIDH recuerda a El Salvador cumplir sus obligaciones de derechos humanos](#). Seven Months into the Exceptional Framework, the IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights. Washington DC, November 11, 2022.

¹³⁰ IACHR. [Situación de derechos humanos en Honduras](#), Situation of Human Rights in Honduras. OEA/Ser.LV/II. Doc. 146, August 27, 2019, par. 60.

¹³¹ UNHCR, Questionnaire sent to civil society organizations, April 7, 2022, question 10.

¹³² WOLA. [El papel de las fuerzas armadas en la seguridad pública en Guatemala](#), The Role of the Armed Forces in Public Security in Guatemala. September 2020.

¹³³ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, pars. 79, 114 and 585.

Chapter 2

Children, adolescents and young people in contexts of crime and citizen insecurity: special situation of risk

Children, adolescents and young people in contexts of crime and citizen insecurity: special situation of risk

87. In its report *Violence, Children and Organized Crime* [[Violencia, Niñez y Crimen Organizado](#)], the Commission discussed the need for States to adopt a preventive and holistic approach to the phenomenon of criminal violence. It further established the link and overlap between different forms of violence and violations of the rights of children and adolescents, describing their situation of vulnerability to and risk of being victims of criminal violence.
88. In this chapter, the Commission delves deeper into its earlier considerations on the special situation of risk of children, adolescents and young people in contexts of violence and criminal insecurity. In particular, violence perpetrated against this population will be addressed, as well as the principal impact on rights in such situations and the special situation of risk faced by this group from organized crime activities.
89. For this purpose, the IACHR will first address the definition of youth in accordance with international standards and international law, as applied to the situation of risk of violence and crime. Next, it will examine violence against children, adolescents and young people in contexts of crime, the principal rights impacted, and the special situation of risk faced by this population.

A. Young persons and contexts of crime

90. Hereunder, the Commission will define the concept of youth that will be used in this report. To this end, the Commission will examine the definitions adopted by different international organizations, as well as by regional human rights protection systems. It will further examine different perspectives of the notion of youth. In this way, we can flesh out a useful definition that captures the different legal and social dimensions of youth, that are relevant to the context of this report.
91. By way of context, according to the United Nations, in 2019, there were around 1.2 billion people between the ages of 15 and 24, accounting for 16% of the total world population.¹³⁴ Moreover, in 2021, the Americas reported 155,731,000 persons aged 15 to 24, of which 68.8% were from Latin American and the Caribbean.¹³⁵ In this context, the Commission acknowledges the importance of profiling this population in order to properly recognize and protect their rights.

¹³⁴ United Nations, [International Youth Day](#), August 12, 2019.

¹³⁵ United Nations Population Division. [Perspectivas demográficas mundiales](#), World Population Prospects. 2021.

1. Definitions adopted by international organizations and regional systems

92. The Commission notes that there are several ways of defining and characterizing young persons. From a legal perspective, there is no international consensus on the initial age of this stage of life or on the range of ages it covers.
93. The UN General Assembly has established that, for statistical purposes, young people are individuals ages 15 to 24.¹³⁶ Nonetheless, the Convention on the Rights of the Child (CRC), defines childhood or children as the group of persons as old as 18 years of age. Furthermore, the Ibero-American Convention on the Rights of Young People, which is the only international treaty focused specifically on the civil, political, economic, social and cultural rights of young people, considers anyone from ages 15 to 24 to be young people.¹³⁷ Additionally, according to ECLAC, in the Americas the age range of youth varies according to particular contexts, but using a demographic approach it is usually from ages 15 to 24. Notwithstanding, in rural contexts or contexts of acute poverty, the bracket slides down to include children in the age group of 10 to 14 years; while, in urbanized, middle and upper socioeconomic strata, the bracket expands upward to include persons aged 25 to 29.¹³⁸
94. In addition, many countries set the upper age limit on the bracket of youth based on when a person reaches legal age and is therefore recognized as an adult under the law. In many countries this age is 18; however, this can vary from country to country.¹³⁹ By way of example, the Commission has been informed that in Guatemala a legislative bill was introduced in congress to call persons ages 13 to 18 “adolescent youth,” with age 18 being the legal threshold of adulthood,¹⁴⁰ and to call persons aged 18 to 30 “youths.”¹⁴¹ While, in El Salvador, legal age is also reached at age 18;¹⁴² persons ages 15 to 35 are considered ‘young people.’¹⁴³ Nonetheless, in Honduras, legal adulthood

¹³⁶ United Nations General Assembly, [Programa de Acción Mundial para los Jóvenes hasta el año 2000 y años subsiguientes](#), World Programme of Action for Youth to 2000 and Beyond. A/RES/50/81, March 13, 1996, par. 9.

¹³⁷ International Youth Convention, [Convención Iberoamericana de Derechos de los Jóvenes](#), Ibero-American Convention on the Rights of Youth. March 1, 2008, Articles 1 and 2.

¹³⁸ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), Youth, Population and Development in Latin America, December 2000, pg. 29.

¹³⁹ United Nations, [Paz, dignidad, igualdad en un planeta sano](#), Peace, Dignity, Equality on a Healthy Planet. s.f.

¹⁴⁰ Guatemala, [Código Civil Decreto-Ley Número 106](#), Civil Code Decree-Law Number 106, October 7, 1963, Article 8.

¹⁴¹ Congress of the Republic, Guatemala, [Iniciativa de Ley: Ley Nacional de la Juventud](#), Legislative Bill: National Youth Law. s.f., Article 3.

¹⁴² Legislative Assembly, El Salvador, [Código Civil](#), Civil Code, April 14, 1860, Article 26.

¹⁴³ Republic of El Salvador, Observations of the State of El Salvador on the Draft Report Organized Crime and the Rights of Children, Adolescents and Young People: current challenges and actions taken by the States of Northern Central America, November 23, 2022, pg. 1.

is attained at age 21.¹⁴⁴ Notwithstanding, in this country, persons aged 12 to 30 are considered young people.¹⁴⁵

95. On this score, the Commission finds that States and studies on youth are tending to expand the period of youth up to the age of 29.¹⁴⁶ By way of example, the UN Security Council has been using the age range of 18 to 29 to define youth. Nonetheless, it has acknowledged the different definitions of the term at the national and international levels, including the definition cited above that is used for statistical purposes.¹⁴⁷ Furthermore, in the United Nations Human Settlement Program, youth has been understood as persons ages 15 to 32.¹⁴⁸

2. Perspectives on the concept of youth

96. The IACHR notes that the notion of youth is more complex than a mere reference to a chronological period of life, inasmuch as it encompasses a wide diversity of economic, social and cultural realities, as well as needs and interests of young people. In this context, it acknowledges that youth is a social concept and not a mere biological, demographic or chronological category.¹⁴⁹ Next, the Commission will examine the different perspectives from which the concept could be defined.
97. From a development perspective, UNESCO defines youth as a period of transition from the dependence of childhood to the independence of adulthood. Through this prism, youth is a more fluid period than other fixed age groups.¹⁵⁰ On this note, the UN General Assembly has held that the transition from infancy to adulthood, from dependence to independence and to autonomy, takes place at different points in time in relation to different rights. As such, in the job market, in education, and in sexual and reproductive health, independence and autonomy are reached at different times.¹⁵¹
98. Notwithstanding, the UN has also noted that viewing youth as a transient stage and as having no significance in its own right, except to serve as a bridge to adulthood, undermines its importance. In other words, it's important to regard youth, not just as a phase of life, but rather as an essential pre-

¹⁴⁴ National Congress, Honduras, [Código de Familia](#), Family Code, August 15, 1984, Article 16.

¹⁴⁵ National Congress, Honduras, [Ley Marco para el Desarrollo Integral de la Juventud](#), Framework Law for the Integral Development of Youth, January 16, 2006, Article 2.

¹⁴⁶ Legislative Assembly, El Salvador, [Ley General de Juventud](#), General Law on Youth, November 17, 2011, Article 2; Brazil, [Ley N° 12.852](#), Law No. 12.852, August 5, 2013, Article 1; Mexico, [Ley del Instituto Mexicano de la Juventud](#), Law of the Mexican Youth Institute, June 22, 2006, Article 2; UNFPA, [Adolescencia y Juventud](#), Adolescence and Youth, s.f.

¹⁴⁷ Security Council. [Resolución 2250 \(2015\)](#). Resolution 2250 (2015), S/RES/2250, December 9, 2015, par. 4.

¹⁴⁸ General Assembly of the United Nations, [La juventud y los derechos humanos](#). Youth and Human Rights, A/HRC/39/33, June 28, 2018, par. 13.

¹⁴⁹ UNFPA and PBSO, [The Missing Peace: Independent Progress Study on Youth, Peace and Security](#), March 2018, pg. 10.

¹⁵⁰ UNESCO, [TVETipedia Glossary](#), 2016.

¹⁵¹ UN General Assembly, [La juventud y los derechos humanos](#) Youth and Human Rights, A/HRC/39/33, June 28, 2018, par. 15.

condition and an indefinite postponement of adulthood.¹⁵² In turn, the United Nations Population Fund (UNFPA) and the United Nations Peacebuilding Support Office (PBSO) assert that young people often have no access to the formal civil, political and economic rights, that they should enjoy as adults, which means that establishing their status as subjects entitled to rights should be given a high priority.¹⁵³ Additionally, from a psychological perspective, according to ECLAC, there is no exact age when an adolescent reaches maturity in all of its psychological capacities, given that these capacities come to fruition at different ages. Furthermore, youth is lived in many different ways, based on the circumstances in which the particular individual grows up and matures.¹⁵⁴

99. In this context, the UN General Assembly has noted that the diversity of approaches reflects the fact that youth is a fluid and not homogenous category or a fixed age group. It has further established that, unlike other forms of identity, such as gender, ethnic group or race, youth is a transient phase of life which makes it hard to define, when focusing only on chronological age, inasmuch as the term may differ depending on socio-cultural scenarios.¹⁵⁵

3. IACHR's definition of youth

100. The IACHR acknowledges that youth is an important stage of life when full autonomy is attained. As such, the Commission welcomes the perspective of growth, as laid out above, to the effect that youth is a period of transition toward the independence and autonomy that characterizes adulthood. In this vein, the Commission finds that the process of achieving autonomy does not abruptly come to an end when a person reaches the legal age. When adolescents turn 18 years old, or reach the majority age in accordance with the law of each State, they may become civilly autonomous. However, in most instances, they find themselves at a stage in their lives when they need to reach important milestones, such as completing training or entering the labor force, in order to attain a degree of actual autonomy.
101. The Commission notes that the value of this stage of life does not only lie in its role as a “bridge” between adolescence and adulthood. Youth is, in and of itself, an important stage of life that cannot be rendered invisible. To this end, pursuant to the findings of the UNFPA and the PBSO, young people must be acknowledged as holders of rights in order to avoid the creation of a gap in access to their rights during this period from childhood to the full autonomy and independence of an adult person.
102. Additionally, the Commission underscores that young people should not be viewed as a homogenous group, given that their characteristics vary according to age, stage of growth, ethnic

¹⁵² United Nations, [Young people, Participation, and Sustainable Development in an Urbanizing World](#), 2012, pg. 13.

¹⁵³ UNFPA and PBSO, [The Missing Peace: Independent Progress Study on Youth, Peace and Security](#), March 2018, pg. 14.

¹⁵⁴ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), Youth, Population and Development in Latin America, December 2000, pg. 30.

¹⁵⁵ United Nations General Assembly, [La juventud y los derechos humanos](#) Youth and Human Rights, A/HRC/39/33, June 28, 2018, par. 15.

origin, disability, sexual orientation and gender identity, among other factors. The IACHR further acknowledges that these factors must be considered as a whole along with the particular needs of the young person in accordance with his or her stage of growth.

103. In light of the foregoing, for the purposes of this report, the Commission will define youth as any person ages 15 to 29, after establishing the trend toward setting the cut off of youth at 29 years of age in the definitions examined above and recognizing the challenges relating to organized crime and violence, which impact people in this age range to a greater extent. Notwithstanding, the IACHR acknowledges the validity of other definitions encompassing different age ranges.
104. Additionally, it emphasizes that youth is not a formal category, given that it changes the context of protection applied to adolescents. Therefore, the IACHR will use the range of 15 to 29 years of age, taking into account that persons ages 15 to 18 are, at the same time, adolescents who have the protection established under international human rights law, and it will use youth for purposes of the principle of development of autonomy.
105. The Commission also notes that the degrees of responsibility for committing criminal acts vary over this stage and are not only contingent upon the age of criminal responsibility. Thus, the older a young person is, the higher is the level of maturity for purposes of criminal liability for his or her acts. In this regard, the IACHR understands that the responsibility for committing criminal offenses of young people ages 24 to 29 must be viewed differently from younger age brackets.
106. Thus, the Commission has chosen the age range from 15 to 29 years old in order to cover a population group that includes the age ranges examined above and to encompass people who are impacted by the contexts of violence and organized crime. Nonetheless, it acknowledges that youth is a living concept that may vary according to context and that must adapt to a differentiated and intersectional approach, in keeping with the stages of growth and needs for adequate protection of human rights.
107. Lastly, the use of the term “youth” or “young people” in the context of this report does not amount to a denial of the special treatment that must be afforded to persons age 18 and under in accordance with international human rights law. The term is used in this report in order to shed light on how specific situations have a particular or different impact on people based on their age, personal development stage, and their particular biological point in time, which overlaps with an age range encompassing both under and over 18 years of age.

B. Violence against children, adolescents and young people

108. The IACHR acknowledges that children, adolescents and young people are at particular risk in contexts of violence. As such, the Commission underscores that this population group can be affected by violence in a variety of ways. Violence has a negative impact on a wide range of rights, inasmuch as the exercise and enjoyment of rights is interconnected with and interdependent on one

another. Consequently, violence does not only impact the physical and psychological integrity of a child, but also hinders his or her access to a host of other rights.¹⁵⁶

109. On this note, the IACHR has established that children and adolescents suffer in their own particular way the consequences of violent social settings and a wide range of their rights are violated in such settings, including the rights to life, physical integrity, health, education, recreation, personal liberty, participation in matters affecting them, among other rights.¹⁵⁷ Additionally, it notes that, according to UNICEF, violence against children and adolescents is widespread throughout the countries of Latin America. Specifically, it underscores the frequency with which physical, emotional and sexual violence against children arises at home, in school, in the community and online.¹⁵⁸
110. According to the Inter-American Children's Institute (INN), violence against this population is more frequent in contexts of poverty and extreme poverty. This has a bearing on the the everyday life of children, which is marked by inequality, exclusion, lack of goods and services and of the most fundamental conditions of security and survival. The most basic rights are only ensured in a most precarious way and are often violated, jeopardizing the right to life itself.¹⁵⁹ On this score, the IACHR has noted that poverty makes children and adolescents more vulnerable to violence, exploitation, abuses and mistreatment. Children and adolescents who live and grow up in neighborhoods and contexts with limited access to basic services and with a presence of groups engaged in criminal activities are at risk of being captured, used and exploited by the criminal groups for their criminal pursuits.¹⁶⁰
111. In this same vein, UNICEF has also noted that living in neighborhoods with high levels of violence makes violence against children more likely, not only in public settings, but also in their schools and homes. Likewise, witnessing violence or being a direct victim of it in a community is a risk factor that perpetuates it during adolescence. Furthermore, community risk factors not only increase the likelihood of violence in that setting, but also have a bearing on the use of corporal punishment in the home.¹⁶¹

¹⁵⁶ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, December 11, 2015, par. 224.

¹⁵⁷ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, December 11, 2015, par. 67.

¹⁵⁸ UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021. October 12, 2021, pg. 7.

¹⁵⁹ Inter-American Children's Institute, [Niñez y Violencias: El desafío de garantizar derechos en los contextos cotidianos infantiles](#). Children and Violence: The challenge to guarantee the rights in the Children's daily contexts, 2018, pg. 13.

¹⁶⁰ IACHR. [Pobreza y derechos humanos](#), Poverty and Human Rights, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 346.

¹⁶¹ UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021. October 12, 2021, pg. 14.

112. The Commission has also established that, most of the time, different forms of violence and other violations of the rights of children are interconnected or overlap, giving rise to successive victimization of children, which often extends over time and is difficult to restrain or stop when such situations are not identified early or when adequate measures of reparation and restoration of rights are not taken.¹⁶² In this context, the Commission has noted that the situation of greater vulnerability faced by this population compels the States, when law enforcement agents are involved in committing such violations, to adopt special practices and procedures to effectively ensure their rights.¹⁶³
113. With respect to young people in the context of organized crime organizations, UNFPA and PBSO have asserted that violent conflicts, humanitarian crisis, political and criminal violence, natural disasters, health crises, migration and urbanization, and deep-seated gender inequality can disrupt the transition of young people to adulthood, diverting advancement in their life cycle and tearing them away from spaces of a feeling of belonging and social cohesion. Furthermore, although violence and social dislocation often force young people to prematurely take on some adult roles, they can also shut down educational and employment opportunities,¹⁶⁴ which can have a dramatic impact on the scope of lasting solutions.¹⁶⁵
114. Furthermore, according to ECLAC, the difficult circumstances that people experience in many developing countries are often even more difficult for young people, because of limited opportunities for social and health services, as well as a growing incidence of substance abuse and juvenile delinquency.¹⁶⁶ Thus, young people often resort to violence when no other effective option is available to them, from their viewpoint, for their demands to be heard and met or to gain access to certain goods and services. Thus, violence is used as a mechanism for them to stand out when they feel unable to achieve their goals by another means.¹⁶⁷ This feeling clouds the minds of young people into thinking that violence is the only way left for them to cease to be invisible and prove that they are capable of influencing social and political processes, even though violence will not serve to close the economic and social gaps affecting them. On this same topic, the UN has noted that the intensity and gravity of juvenile delinquency depends mostly on social, economic and cultural conditions in each country.¹⁶⁸

¹⁶² IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, December 11, 2015, par. 61.

¹⁶³ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), Report on Citizen Security and Human Rights, OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 87.

¹⁶⁴ UNFPA and PBSO, [The Missing Peace: Independent Progress Study on Youth, Peace and Security](#), March 2018, pg. 11.

¹⁶⁵ United Nations Security Council, [Resolución 2250 \(2015\)](#), S/RES/2250 (2015), December 8, 2015, pg. 1.

¹⁶⁶ United Nations General Assembly, [Programa de Acción Mundial para los Jóvenes hasta el año 2000 y años subsiguientes](#). World Programme of Action for Youth to 2000 and Beyond, A/RES/50/81, March 13, 1996, par. 9.

¹⁶⁷ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), Youth, Population and Development in Latin America, December 2000, pg. 186.

¹⁶⁸ United Nations General Assembly, [Programa de Acción Mundial para los Jóvenes hasta el año 2000 y años subsiguientes](#). World Programme of Action for Youth to 2000 and Beyond, A/RES/50/81, March 13, 1996, par. 86.

115. In particular, in Latin America, young people tend to belong to the population segment most connected to violence both as victims and victimizers.¹⁶⁹ Conflict, crime and other forms of violence have an impact on young people's lives in more ways than mortality,¹⁷⁰ such as repeated victimization, psychological trauma, discrimination based on identity and social and economic exclusion.¹⁷¹
116. Specifically, according to the most recent data available to the Commission, the countries of northern Central America have reported high numbers of uneducated, unemployed and untrained young people. More specifically, El Salvador reported a rate of 26.7% in 2020,¹⁷² while in 2019, Honduras and Guatemala reported rates of 28.1%¹⁷³ and 28.2%,¹⁷⁴ respectively. With respect to the school drop-out rate, a study in El Salvador indicated that after age 15, leaving school has become a much more common practice.¹⁷⁵ It has also been reported that people age 29 or under have a harder time obtaining a decent job.¹⁷⁶ In this regard, the Commission has previously established that social exclusion of young people who are not in school or working, limits their chances and, in turn, makes them more vulnerable to joining criminal groups. In this same vein, the lack of opportunities to realize one's life ambitions is an important risk factor for youth.¹⁷⁷
117. Additionally, the Commission has been able to establish that young people often join maras or gangs to make up for what they lack as a consequence of the absence of opportunities. The transition to adult life that is experienced during youth, brings pressure to bear on young people to find a way to make a living and can lead them to joining criminal organizations. By way of example, according to information gathered by the Commission, the median age of gang members is 25 years old.¹⁷⁸

¹⁶⁹ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), Youth, Population and Development in Latin America, December 2000, pg. 183.

¹⁷⁰ United Nations General Assembly, [La juventud y los derechos humanos](#) Youth and Human Rights. A/HRC/39/33, June 28, 2018, par. 9.

¹⁷¹ ECLAC, [Juventud, Población y Desarrollo en América Latina](#), Youth, Population and Development in Latin America, December 2000, pg. 183.

¹⁷² World Bank, [Datos](#), 2020.

¹⁷³ World Bank, [Datos](#), 2020.

¹⁷⁴ World Bank, [Datos](#), 2020.

¹⁷⁵ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), Report on Human Development El Salvador 2018 I am young! So now what? 2018, pgs. 43 and 44.

¹⁷⁶ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), *supra.* 2018, p. 42.

¹⁷⁷ IACHR. Press Release: [Comunicado de prensa 117/18 - Observaciones Preliminares de la Visita de la CIDH a Honduras](#). Preliminary Observations following the IACHR Visit to Honduras. Washington DC, August 3, 2018, pg. 13.

¹⁷⁸ Human Rights Council, [Informe de la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de su misión a El Salvador](#). Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on her Mission to El Salvador. A/HRC/38/44/Add.2, December 7, 2018, par. 65; International Crisis Group, ["Vivir bajo el control de las pandillas"](#). Life under Gang Rule, November 26, 2018.

Likewise, the age of recruitment tends to be from ages 13 to 15.¹⁷⁹ In El Salvador, it was found that 60% of gang members had joined prior to turning 15 years old.¹⁸⁰

C. Principal rights infringed in contexts of violence

118. According to available information, the Commission notes a marked normalization of different forms of violence against children, adolescents and young people in society and the cultural mindset.¹⁸¹ In some instances, particularly those associated with economic disadvantage and social exclusion,¹⁸² the Commission has acknowledged that violence has become an integral part of the life plans of young people, especially in contexts of mara and gang crime or of the organized crime groups they end up joining.¹⁸³
119. In this vein, the Commission will specifically discuss the situation of violence affecting children, adolescents and young people. It will then explain the phenomenon of criminal capture of these population groups in the face of the situations of social exclusion and lack of opportunities experienced by children, adolescents and young people. The IACHR will draw on these considerations to characterize the situation of risk these population groups face in light of the States' international obligations.
120. The IACHR finds that, in the context of crime in northern Central America, children, adolescents and young people are exposed to different forms of violence. Civil society organizations, research institutes and international human rights protection bodies, such as ECLAC, UNICEF and the IIN (Inter-American Children's Institute), DINAF (Directorate of Children, Adolescents and Family) of Honduras, Red Lac (Regional Group on Risks, Emergencies and Disasters for Latin America and the Caribbean), the Women's Rights Center of Honduras, International Plan, *inter alia*, have reported different infringements of human rights experienced by this group in different settings where their lives take place, which is compounded by the presence of crime. Thus, situations have been described to the IACHR in which there are infringements of the rights to life; physical, mental and

¹⁷⁹ IDB, [Promoviendo la permanencia escolar en El Salvador y Honduras: lineamientos para el desarrollo de incentivos](#), ['Promoting staying in school in El Salvador and Honduras: Guidelines for the development of incentives'], December 2021, pg. 13; ASJ, PNPRRS, UNDP, [Estudio de la situación de las Maras y Pandillas en Honduras – 2019](#), [Study on the Situation of Maras and Gangs in Honduras-2019], 2020, pg. 38.

¹⁸⁰ IDB, [Promoviendo la permanencia escolar en El Salvador y Honduras: lineamientos para el desarrollo de incentivos](#), *supra*, December 2021, pg. 13.

¹⁸¹ IACHR. [Informe Violencia, niñez y crimen organizado](#), Report Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 55; UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean. October 12, 2021, pg. 14; Inter-American Children's Institute, [Niñez y Violencias: El desafío de garantizar derechos en los contextos cotidianos infantiles](#), Children and Violence: The challenge to guarantee the rights in the children's daily contexts, 2018, pg. 20.

¹⁸² Inter-American Children's Institute, [Niñez y Violencias: El desafío de garantizar derechos en los contextos cotidianos infantiles](#), Children and Violence: The challenge to guarantee the rights in the children's daily contexts, 2018, pg. 13.

¹⁸³ IACHR. Report [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 132.

sexual integrity; eradication of stereotypes; access to justice and combatting impunity, among other ones. By the same token, infringements of economic, social and cultural rights have also been observed, such as the right to education and access to employment.

121. In relation to the right to life, the IACHR notes that the death rate of children under 5 years of age is used as a principal indicator of progress in child wellbeing.¹⁸⁴ The death rate of children in this age group in Latin American and the Caribbean, in 2019, was 16 deaths for every 1,000 live births. More specifically, according to UNICEF, in 2019, the death rate of children age 5 and under in El Salvador was 13; in Honduras, 17; and in Guatemala, 25.¹⁸⁵ As for the death rate of children, adolescents and young people ages 10 to 19, the figure in El Salvador is 14 cases; in Honduras, 7; and in Guatemala, 8;¹⁸⁶ with the average in the region being 7 deaths for every 1,000 people in this age range. Likewise, REDLAC has reported that in El Salvador in the past five years, 16,327 young people age 18 and under have died a violent death, which stands as one of the highest homicide rates of children and adolescents in the world, noting in particular that the relative percentage of the deaths of little girls went from 15.2% in 2019 to 32.3% in 2020.¹⁸⁷ Similarly, in Honduras, from 2018 to 2021, 29 cases of murders of children and adolescents were reported.¹⁸⁸ In particular, in 2021, 10 victims of femicide of girls ages birth to 9 were reported; 46, ages 10 to 19; and 76 were reported of women ages 20 to 29.¹⁸⁹ As of May 2022, the Commission observed the same trend, with 7 deaths of girls ages 0 to 9; 12 deaths of young women ages 10 to 19; and 26, among women ages 20 to 29.¹⁹⁰ With respect to Guatemala, from January to October 2021, more than 300 murders of children and adolescents, mostly from firearms, were reported.¹⁹¹ However, a progressive decrease in child deaths can be noted in these States since 2018 when child deaths totaled 9,036 cases and then, in 2020, decreased to 8,530 cases.¹⁹²

¹⁸⁴ UNICEF, [Estado Mundial de la Infancia 2021](#), *Prospects for Children: A global outlook 2021*, January 2022, pg. 175.

¹⁸⁵ UNICEF, [Estado Mundial de la Infancia 2021](#), *Prospects for Children: A global outlook 2021*, January 2022, pgs. 192-193.

¹⁸⁶ UNICEF, [Estado Mundial de la Infancia 2021](#), *Prospects for Children: A global outlook 2021*, January 2022, pgs. 204-205.

¹⁸⁷ REDLAC, [Niños, niñas y adolescentes en situación de movilidad humana en el norte de Centroamérica, México y Panamá](#), *Children and adolescents in situation of human mobility in northern Central America, Mexico and Panama*, March 31, 2022, pg. 13.

¹⁸⁸ DINAF, Honduras, Response of the State of Honduras to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights regarding measures to reduce violence against children, adolescents and young people from organized crime activities, August 11, 2022, pg. 4.

¹⁸⁹ Centro de Derechos de Mujeres, [Observatorio de Violencias Contra las Mujeres 2021](#), [Observatory on Violence against Women 2021], December 31, 2021.

¹⁹⁰ Centro de Derechos de Mujeres, [Observatorio de Violencias Contra las Mujeres 2022](#), [Observatory on Violence against Women 2022], March 16, 2022.

¹⁹¹ IACHR, [Informe Anual. Capítulo IV.B "Guatemala"](#), Annual Report, Chapter IV.B "Guatemala," 2021, par. 229.

¹⁹² ECLAC, [Número de muertes infantiles – Guatemala](#), Number of child deaths – Guatemala. 2020.

122. As for the disappearance of persons in northern Central America, the IACHR has voiced its concern over the impact of this phenomenon with respect to children and adolescents.¹⁹³ Thus, regarding El Salvador, the IACHR received information about the disappearance of at least 211 young girls in the first quarter of 2021.¹⁹⁴ As for Guatemala, the number of cases of child disappearances rose to a total of 4,621 alerts for active searches as of September 2021; in other words, an average of 513 cases per month and 17 per day.¹⁹⁵ Additionally, in Honduras, in the first quarter of 2020, 345 disappearances were reported, 77% of which were children and adolescents. These cases are mostly reported in San Pedro Sula, Tegucigalpa, Tocoa, La Ceiba, El Paraíso, Comayagüela, Juticalpa, El Progreso and Trujillo.¹⁹⁶ In its observations on the draft version of this Report, Honduras noted that in 2019 a Missing Persons Unit of the Investigative Police Directorate was created to handle cases of the disappeared persons, which has reported a high success rate in locating and recovering the individuals alive.¹⁹⁷
123. With respect to the right to physical integrity,¹⁹⁸ according to UNICEF, violence against children and adolescents is a challenge in all of the countries of Latin America and the Caribbean.¹⁹⁹ Violence involving violations of the rights to life and humane treatment perpetrated by individuals or gangs, which may or may not take place in settings of conflict, is one of the most prevalent types of violence in the world today. Forms of violence vary greatly, although according to available information, the Commission notes that there is a clear prevalence of physical violence against children and adolescents, especially, emotional and sexual violence. Notwithstanding, sexual violence against children in the region is measured ineffectively and is not up-to-date, although the data show that

¹⁹³ IACHR, [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 320.

¹⁹⁴ IACHR, [Informe Anual, Capítulo IV. A “Desarrollo de los Derechos Humanos en la Región”](#) Annual Report, Chapter IV. A “Development of Human Rights in the Region, 2021, par. 538.

¹⁹⁵ IACHR, [Informe Anual, Capítulo IV.B “Guatemala”](#) Annual Report, Chapter IV.B “Guatemala”. 2021, par. 226.

¹⁹⁶ REDLAC, [Desapariciones en el norte de Centroamérica y México](#), [Disappearances in northern Central America and Mexico], November 2020, pg. 14.

¹⁹⁷ Republic of Honduras, Observations of the State of Honduras on the Draft Version of the Report Organized Crime and the Rights of Children Adolescents and Young People: current challenges and actions taken by the States of northern Central America, November 2022, pg. 7.

¹⁹⁸ The IACHR reiterates that, while violence has a clear connection to the right to physical and mental integrity, it underscores that it also has an impact on the integral development of children, impairing rights to health, education, leisure time, recreation and culture, among other ones. [IACHR, [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime], OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 70]. Additionally, the Committee on the Rights of the Child has associated violence against children and adolescents with the rights enshrined in Articles 19 (protection from abuse), 24.3 (abolishing traditional practices prejudicial to health), 28.2 (school discipline consistent with the dignity of the child), 34 (protection from sexual abuse and exploitation), 37.a) (protection from torture, and cruel, inhuman or degrading treatment or punishment) and 39 (adoption of measures to promote physical and psychological recovery of child victims of abuse) of the Convention on the Rights of the Child.

¹⁹⁹ UNICEF, [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021, October 12, 2021, pg. 7.

girls and adolescent females report experiencing more sexual violence than men.²⁰⁰ The IACHR reiterates that qualitative studies on juvenile violence have consistently showed the presence of a history of intrafamily violence among young people belonging to gangs.²⁰¹

124. With regard to sexual violence, while the IACHR has observed the different forms it manifests itself, the victims are mostly young girls and young women.²⁰² On this score, the UNHCR has reported situations ranging from sexual assault to sexual slavery. Sexual assaults, or the threat of such assaults, take place as a form of attack on women and girls because of their condition as such, to force them into sexual slavery or to force members of their family to engage in illicit activities. Additionally, the UNHCR has reported that when women and girls are perceived to be linked to a specific gang, they become targets for rival criminal groups.²⁰³ The Commission finds it particularly troubling that women and girls can be victims of sexual assault or murders as part of gang initiation rites.²⁰⁴
125. The United Nations Special Rapporteur on Extrajudicial Executions noted that, in El Salvador, women and girls are at risk of being victims of femicide, rape and sexual exploitation, all of which are acts that gangs perpetrate at times as retaliation.²⁰⁵ Moreover, less than 10% of all complaints filed in 2018 for sexual abuse and assault against children and adolescents resulted in a conviction.²⁰⁶
126. Meanwhile, in Honduras, according to official government statistical data, the most reported criminal offense against children and adolescents from 2018 to 2021 was rape, with a total of 3,475 cases.²⁰⁷ In this same vein, according to State statistics, in 2019, 850 “institutional births”²⁰⁸ from girls age 14

²⁰⁰ UNICEF, [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#), Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021, October 12, 2021, pg. 7.

²⁰¹ IACHR, [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 70.

²⁰² IACHR, [Pobreza y derechos humanos](#), Poverty and Human Rights. OEA/Ser.LV/II.164 Doc. 147, September 2017, par. 184.

²⁰³ UNHCR, Press Release: [“ACNUR insta a que se emprendan acciones más eficaces contra la violencia de género en el norte de Centroamérica”](#). UNHCR urges more effective action against gender-based violence in the north of Central America. December 6, 2021.

²⁰⁴ UNHCR, Press Release: [“ACNUR insta a que se emprendan acciones más eficaces contra la violencia de género en el norte de Centroamérica”](#). UNHCR urges more effective action against gender-based violence in the north of Central America. December 6, 2021.

²⁰⁵ Human Rights Council, [Informe de la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de su misión a El Salvador](#), Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on her mission to El Salvador, A/HRC/38/44/Add.2, December 7, 2018, par. 7.

²⁰⁶ OCHA, [El Salvador: Plan de Respuesta Humanitaria \(Agosto 2021 - Diciembre 2022\)](#), August 18, 2021.

²⁰⁷ DINAf, Honduras, Response of the Honduran State to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, August 11, 2022, pg. 4.

²⁰⁸ Term used by the State.

and under as a product of sexual violence were reported. Notwithstanding, from 2019 to 2022, a drop in the teen pregnancy rate was reported, with 4,390 fewer institutional births.²⁰⁹ Additionally, from 2018 to 2021, 26 cases of sexual exploitation, 11 cases of sexual violence, 1,482 cases of lewd behavior, 23 cases of sexual harassment and 684 sexual assaults were reported.²¹⁰

127. In Guatemala, according to statistics of the Office of the Ombudsman for Children and Adolescents of the Public Prosecutor's Office, out of the total number of complaints received from April 2020 to March 2021, 22.87% were for sexual violence; 35.32%, for missing children; and 41.81% for mistreatment.²¹¹ In 2021, 76% of the total number of sexual abuse cases assessed by officials of the protection system involved sexual abuse involving children and adolescents and, 77% of these assessed cases of female victims were of girls.²¹²
128. On the subject of forced marriage, it can be identified that in northern Central America adolescent girls and young women are widely at risk of forced or premature marriage and domestic partnership as a form of violence against women and stereotyped gender-based biases. Reports suggest that 26% of women ages 20 to 24 were married or entered into unions before age 18 in El Salvador; 34%, in Honduras; and 30%, in Guatemala, which are the highest rates in the region.²¹³ While some of these women may be truly exercising their own autonomy, the IACHR deems it necessary for unions in this age range be viewed in light of structural, cultural, social, economic factors, that could lead a young woman to enter into such unions at such a disadvantage.²¹⁴
129. In relation to ESCERs, the IACHR has linked contexts of exclusion and poverty to the lack of education in northern Central America. In this context, as for the right to education, the Commission has previously noted that, in some Central American countries, 2% to 4% of school age children have never been able to exercise this right. Moreover, the IACHR also has noted that 5.6% of the children of the Americas have dropped out of school (10 million), with this situation being particularly widespread in some States of northern Central America.²¹⁵ On this note, the IDB has said that

²⁰⁹ Republic of Honduras, Observations of the State of Honduras on the Draft Version of the Report Organized Crime and the Rights of Children Adolescents and Young People: current challenges and actions taken by the States of northern Central America, November 23, 2022, pgs. 7 and 8.

²¹⁰ DINA, Honduras, Response of the Honduran State to the request for information of Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, August 11, 2022, pgs. 4 and 7.

²¹¹ IACHR, [Informe Anual, Capítulo IV.B "Guatemala"](#) Annual Report, Chapter IV.B "Guatemala," 2021, par. 228.

²¹² IACHR, [Informe Anual, Capítulo IV.B "Guatemala"](#), Annual Report, Chapter IV.B "Guatemala," 2021, par. 229.

²¹³ Plan International, [Child, Early and Forced Marriages and Unions in Latin America and the Caribbean](#), August 27, 2019, pg. 15.

²¹⁴ Plan International, [Child, Early and Forced Marriages and Unions in Latin America and the Caribbean](#), August 27, 2019, pg. 17.

²¹⁵ IACHR, [Pobreza y derechos humanos](#), Poverty and Human Rights, OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, par. 354.

school dropout rates have reached 35%; and in Honduras, 48%, with these figures soaring to 55% and 72%, respectively, in the poorest quintile of these countries.²¹⁶

130. Additionally, the IACHR notes obstacles for young people to exercising their right to work. In this regard, the percentage of working age young people, who were uneducated, unemployed and untrained in El Salvador reached 27.9% in 2019 and 26.7% in 2020. In Honduras, the figure for this segment of the population was 26.7% in 2018 and 28.1%, in 2019.²¹⁷ In Guatemala, this group comprised 27.3% of the total population of young people in 2018; and 28.2%, in 2019.²¹⁸

D. Special situation of risk of children, adolescents and young people from organized crime activities

131. With respect to the special situation of risk of children, adolescents and young people in contexts of organized crime, the Commission has identified several structural factors that breed situations of violence and, in turn, pave the way for criminal groups, such as maras and gangs, to act. In this regard, the Commission will discuss these factors and the impacts organized crime activities have on children, adolescents and young people.
132. The IACHR has noted that the presence of criminal organizations exacerbates the climate of violence in the communities most affected by their actions, which has negative impacts on respect for and protection of the human rights of individuals. On this score, UNICEF has reported that high levels of crime create environments where people live in fear, mistrust and sparse social capital and networks. According to the information reviewed, “insecurity reduces the use of public spaces and causes the displacement of people and communities, as well as weakening or disarticulating social networks.”²¹⁹ In this vein, the Commission is concerned that living in such environments could increase the likelihood of violence against children.²²⁰ The IACHR also notes that adolescents are one of the groups most affected in these contexts; their rights are impacted by the climate of insecurity and violence that exists in their communities, in addition to them being at risk of being recruited and used by criminal organizations for their activities, endangering their lives, physical integrity and chances of overall development.²²¹

²¹⁶ IDB, [Promoviendo la permanencia escolar en El Salvador y Honduras: lineamientos para el desarrollo de incentivos](#), *supra*, December 2021, par. p.5.

²¹⁷ World Bank, [Datos](#), 2020.

²¹⁸ World Bank, [Datos](#), 2020.

²¹⁹ UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021, October 12, 2021, pg. 14.

²²⁰ UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#). Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021, October 12, 2021, pg. 14.

²²¹ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 146.

133. The IACHR has recognized that due to rejection by their own families, stemming from deep-rooted social stereotypes and discrimination against them, LGBTI adolescents are more prone to feel compelled to leave their homes, making them vulnerable to violence from organized crime groups' actions. Beyond these concerns, there is also evidence that *maras* and other criminal and/or violent groups commit violent acts against LGBTI persons, especially against those that are homeless or mostly living on the streets.²²² The IACHR noted in its Report [Informe sobre Violencia contra personas LGBTI](#) [Report on Violence against LGBTI Persons], that “LGBTI persons are more vulnerable to extortion and violence on the part of organized crime.”²²³
134. Additionally, as was been noted by the Commission in its Report on Violence, Children and Organized Crime [Violencia, niñez y crimen organizado](#), the dire concurrent situations of social exclusion and the phenomenon of crime surged side by side. By the same token, the lack of effective guarantee of a number of rights, which have been recognized for children and adolescents, places them in a situation of particular vulnerability. And when violent and criminal groups are present, they run a greater risk of being captured, used, abused and exploited by these groups.²²⁴ In this regard, the Inter-American Children’s Institute (IIN) has noted that “the precariousness of the life conditions of children intensifies their vulnerability, generating abandonment, ill-treatment, situations of exploitation on the part of adults, caretakers and institutions. At the same time, it has repercussions in school failure and abandonment” and leads to the phenomenon known as child poverty.²²⁵
135. Likewise, the IACHR is concerned that the development of children and adolescents in such settings introduces violence into their life plans and distorts their perception of legality. According to UNICEF, “living in scenarios with high rates of insecurity may lead people to ‘adapt,’ which could influence their attitudes and beliefs around violence and increase the possibility of normalizing the use of violence as a method of resolving conflict.”²²⁶ On this score, the Commission was informed that children, who grow up in families with gang members, often perceive that law enforcement is out to get their parents, due to their inability to fully grasp the import of criminal behavior, thus having a psychological impact on them and creating distortions in their minds about the rule of law.²²⁷

²²² IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), Report 40/15. Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 206.

²²³ IACHR. [Informe Violencia contra personas lesbianas, gays, bisexuales, trans e intersex en América](#), Report Violence against Lesbians, Gays, Bisexuals, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II. rev.1, November 12, 2015, par. 279.

²²⁴ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), Report 40/15. Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 54.

²²⁵ Inter-American Children’s Institute, [Niñez y Violencias: El desafío de garantizar derechos en los contextos cotidianos infantiles](#), Children and Violence: The challenge to guarantee the rights in the children’s daily contexts, 2018, pg. 14.

²²⁶ UNICEF. [Violencia contra niños, niñas y adolescentes en América Latina y el Caribe 2015-2021](#), Violence against Children and Adolescents in Latin America and the Caribbean 2015-2021, October 12, 2021, pg. 14.

²²⁷ Information provided to the IACHR at the virtual meeting on Children, Adolescents and Organized Crime. March 15, 2022.

136. Likewise, gang presence breeds ambivalence among young people. The United Nations Development Program (UNDP) has noted, by way of example in El Salvador, that gang control over territory keeps young people from being able to lead a normal life (visiting friends, moving between communities, playing or going outside on the streets) out of fear of falling under the influence of or being threatened by the gang members. The other side of the coin is that gangs are enticing because of their display of power, the environment and feeling of belonging they create.²²⁸ Regarding Honduras, the Commission had access to information suggesting that people perceive the maras as protecting the community against robbery and crime, and people resort to them to impart justice, even though it may be arbitrary; and children and adolescents ask for their support when they face bullying or drop out of school.²²⁹
137. In addition, the Commission was informed of the connection between increased organized crime and the reduced presence of the States of northern Central America in providing services and protecting rights. Thus, organized crime has moved in to replace the State, positioning itself as a relevant social actor belonging to the community. Accordingly, any strategy that only addresses criminalization is perceived as hostile to the civilian population, which lacks services and is unable to meet its own needs. Hence, the criminal groups boost their potential to recruit children and adolescents seeking a sense of belonging, connection and opportunity in the face of a lack of development incentives and opportunities through education and employment.²³⁰
138. Additionally, when life transpires from an early age in an environment overrun by organized crime, it may have irreversible effects on children and adolescents. On this note, the Commission has said that violence against children may spiral out of control, if such situations are not detected early or adequate measures of reparation and restoration of rights are not taken. Thus, the impacts of violence and violation of rights during childhood can have a future impact, turning children into adolescent aggressors.²³¹
139. The IACHR has voiced its concern over the human rights situation of thousands of children and adolescents who are or have been members of maras or criminal gangs.²³² The Commission has highlighted the impact of repressive public security and penitentiary policies on the rights of young

²²⁸ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), Report on Human Development El Salvador 2018 I'm Young! So now what? 2018, pg. 99.

²²⁹ Inter-institutional Commission for the Protection of Persons Displaced by Violence, Honduras, [Estudio de caracterización del desplazamiento interno por violencia en Honduras 2004 – 2018](#), Study on the Characterization of Internal Displacement by Violence in Honduras 2004-2018. December 11, 2019, pg. 68.

²³⁰ Information provided to the IACHR at the virtual meeting on Children, Adolescents and Organized Crime. March 15, 2022.

²³¹ IACHR. [Informe Violencia, niñez y crimen organizado](#), Report Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 54.

²³² IACHR, Press Release No. 26/04 [Comunicado de prensa No. 26/04](#), "IACHR and UNICEF express concern over situation of boys, girls and adolescents involved with gangs in El Salvador, Guatemala, and Honduras," December 4, 2004.

people in northern Central America.²³³ This does not mean that when adolescents violate criminal law, they should not be held responsible, but rather that the measures taken must be in line with international human rights standards and serve the purpose of rehabilitation and reintegration into society.²³⁴ The IACHR has in the past stressed the need to emphasize that children and adolescents are victims deprived of the special protection to which they are entitled under international human rights treaties for guaranteeing their rights, as opposed to depicting them only as perpetrators of violence and victimizers.²³⁵

140. By the same token, children and adolescents linked to gang activities who enter the criminal justice system are more vulnerable. The IACHR has reported that when children and adolescents involved in maras and gangs are deprived of liberty, their conditions of detention are by far inferior to those of the other inmates.²³⁶ Likewise, REDLAC has noted that, in the countries of northern Central America, standards of protection for juvenile offenders may result in a higher degree of vulnerability in the current context of violence. Furthermore, it reports that, in Honduras, juveniles receive differentiated treatment in the form of shorter prison terms, which has led to gangs gradually recruiting younger and younger members to do their bidding. According to the information reviewed by the IACHR, in 2015, 28% of individuals arrested for extortion in Honduras were children and adolescents; and in El Salvador, 15% of mara or gang members arrested in 2015 and 2016 were children and adolescents.²³⁷

141. Based on the foregoing considerations, the IACHR concludes that the phenomenon of violence against children, adolescents and young people in contexts of organized crime places this population group in a particular situation of risk. In the Inter-American system, as has previously been pointed out, a State's duty of prevention entails the obligation to identify real and imminent dangers of human rights violations and to adopt measures to mitigate such risks.²³⁸ Thus, in cases involving real and imminent situations of risk of potential infringement of the rights of children and adolescents, diligent measures of protection must be taken by the State in its heightened duty as

²³³ IACHR, Case 12.680, Rafael Arturo Pacheco Teruel et al (Deaths by Fire at San Pedro Sula Prison). Honduras, Note of submission of March 11, 2011, pg. 2; Report on the Merits No. 118/10 of October 22, 2021, par. 116.

²³⁴ IACHR. [Violencia, niñez y crimen organizado](#) Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 177.

²³⁵ IACHR. [Violencia, niñez y crimen organizado](#), Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 177.

²³⁶ IACHR, [Justicia juvenil y derechos humanos en las Américas](#), Juvenile Justice and Human Rights in the Americas. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 436.

²³⁷ REDLAC, [Desapariciones en el norte de Centroamérica y México](#), Disappearances in northern Central America and Mexico. November 2020, pg. 6.

²³⁸ The case law of the European Court with respect to the elements set forth in the duty to prevent have been revisited by the Inter-American Court in several judgments. In this regard, see: IA Court of HR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, par. 124; IA Court of HR. Case of González et al ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No.205, par. 284; IA Court of HR. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 124.

guarantor in light of the unprotected situation of this population.²³⁹ Along with this, the IACHR finds that the infringements of the specific and individualized rights of children and adolescents caused by the actions of organized crime, maras and gangs, as a function of the State's duty of prevention, also entails a concurrent violation of the duty to guarantee the right to personal security enshrined in Article 7.1 of the American Convention.

142. Nonetheless, with respect to the special situation of risk faced by young people from actions of organized crime, maras and gangs, the Commission finds that an assessment of any situation of risk must include an examination of the context, as was explained above in this report. On this score, when the State has knowledge of the risk of violations of the human rights of young people in such a context, it must take immediate measures to neutralize the imminent human rights violations in light of its obligation of prevention, as set forth in Article 1.1 of the American Convention. Furthermore, the IACHR understands that, should the actual violation materialize, the right of personal security would also be infringed as described in the preceding paragraph.

²³⁹ Also see: IACHR, [Informe El derecho del niño y la niña a la familia. Cuidados alternativos. Poniendo fin a la institucionalización en las Américas](#), Report The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013, par. 328.

Chapter 3

Forms of violence against children, adolescents and young people

Forms of violence against children, adolescents and young people

144. In this chapter, the Commission will address the recruitment of children, adolescents and young people by organized crime groups as a form of gross violation of their human rights. Likewise, it will characterize the way in which the context of violence and insecurity places this group at a special risk. It will also examine the criminalization of children, adolescents and young people in contexts of organized crime, as a response of the States of northern Central America. In particular, we will discuss the negative impact of crime policies on this population group when its members face the penal system for their involvement in criminal acts that they were forced to engage in or because they belonged to a criminal gang.
145. Based on the foregoing information, the Commission will also examine the national juvenile criminal justice systems, particularly, the use of custodial and non-custodial measures of punishment. Additionally, with respect to the incarceration of children, adolescents and young people, the special situation of risk from violence on the part of prison guards as well as members of other maras, gangs or rival groups will be addressed; as well as conditions of detention; and their reintegration into society.

A. Recruitment of children, adolescents and young people by organized crime groups

145. One of the most serious ways in which the special situation of risk described above materializes is when children, adolescents and young people are recruited by organized crime, maras or gangs. The IACHR has noted that in northern Central America this vulnerable population, after entering maras or gangs, tends to live together in urban communities, for the declared purpose of taking care of each other and mutually defending themselves, as well as defending the neighborhood where they live from rival “maras” or “gangs.” Moreover, many of the people recruited carry weapons and engage in criminal activities, which include homicides, robberies, thefts and armed confrontations with other “maras” or “gangs,” which often result in fatal outcomes.²⁴⁰ The IACHR underscores that the Special Rapporteur on Contemporary Forms of Slavery has said that, on the face of it, the practice of forced recruitment is analogous to slavery.²⁴¹
146. The serious violations resulting from the recruitment of children and adolescents do not fall outside the scope of protection of international human rights law. Next, the IACHR characterizes international human rights obligations relating to the protection of children and adolescents from

²⁴⁰ IACHR, Press Release No. 26/04 [Comunicado de prensa No. 26/04](#), “IACHR and UNICEF express concern over situation of boys, girls and adolescents involved with gangs in El Salvador, Guatemala, and Honduras,” December 4, 2004.

²⁴¹ Human Rights Council, [Recopilación sobre El Salvador: Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos](#), Compilation on El Salvador: Report of the Office of the United Nations High Commissioner for Human Rights. AHRC/WG.6/34/SLV/2, August 22, 2019, pgs. 44-46.

recruitment by organized crime. And finally, the Commission will describe the principal characteristics of recruitment in northern Central America.

147. The American Convention does not specifically mention the recruitment of children, adolescents and young people. However, the Inter-American Commission and Court have understood that in order to analyze Article 19 of the American Convention, it is important to refer to other international instruments, which more specifically provide for the protection of children and comprise the *corpus juris* of the human rights of children and adolescents.²⁴²
148. In this regard, protection for the activities carried out by children and adolescents is longstanding in international law. The 1924 Geneva Declaration of the Rights of the Child itself sets forth that “the child must be protected against every form of exploitation.” The first and most advanced protections pertaining to the recruitment of children are reflected in their participation in armed conflicts. Thus, the two 1977 Protocols Additional to the 1949 Geneva Conventions prohibit the recruitment of children under the age of 15 years in international²⁴³ and non-international conflicts.²⁴⁴ In turn, the Convention on the Rights of the Child establishes, also in the factual context of armed conflicts, that States shall not recruit children under the age of 15 years, and that any individuals recruited ages 15 to 18 shall not participate in the hostilities or priority will be given to the participation of older individuals.²⁴⁵
149. Complementary protections in this subject matter have been laid out under the Optional Protocol of the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts and ILO Convention 182. The Protocol raises the age of recruitment and participation in hostilities to 18 years old as an obligation of States in the framework of their armed forces, but also with a general

²⁴² IACHR. Report on the Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc.54/13del October 17, 2013, par. 31 et seq.

²⁴³ Protocol I Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of the Victims of International Armed Conflicts, June 8, 1977. Article 77.2: 2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

²⁴⁴ Protocol Additional II to the Geneva Conventions of 1949 and relating to the Protection of the Victims of Non-International Armed Conflicts, June 8, 1977. Article 4.3. Children shall be provided with the care and aid they require, and in particular: (...) c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or armed groups nor allowed to take part in hostilities; d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph c) and are captured (...).

²⁴⁵ Convention on the Rights of the Child, November 20, 1989. Article 38.2. The States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 38.3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

mandate for “armed groups that are distinct from the armed forces of a State.”²⁴⁶ On this score, the aforementioned Protocol establishes a norm of human rights targeting not only States Parties, but also armed groups. Meanwhile, ILO Convention 182 establishes as one of the worst forms of child labor the recruitment of children for use in armed conflicts or to carry out illicit activities, particularly, for the production and trafficking of drugs.²⁴⁷

150. In this regard, the Commission²⁴⁸ issued the following recommendations to all parties in conflict (States, paramilitary groups and dissident armed groups) regarding the eradication of the recruitment and participation of children in armed conflicts:

1. To observe, implement, and enforce, through their command and supervision structures, humanitarian and international law on the rights of children, committing themselves to and implementing strong measures that prohibit within their ranks the use of minors in any war activity, including information, tactical or logistical support, or surveillance activities.
2. To refrain from any form of violence, pressure, or compensation designed to persuade families to facilitate access to or surrender their minor children for participation in armed or war activities.
3. To release all their under-age members from any obligation and facilitate the reintegration of such minors into family and social life.

151. The IACHR notes that the first protections relating to the recruitment of children and adolescents deal with their potential participation in international or non-international armed conflicts. However, today, the forms of child abuse and minors’ involvement in activities that jeopardize their comprehensive development have substantially changed. Recruitment into the military services, militias and paramilitary groups is not the only type of recruitment to which children and adolescents are subjected. While the phenomenon of the “child soldiers” continues to be a top concern,²⁴⁹ the

²⁴⁶ Optional Protocol of the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, Resolution A/RES/54/263, February 12, 2002. Article 3.1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection; Article 4.1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

²⁴⁷ C-182, Worst Forms of Child Labor Convention, 1999, Article 3. For purposes of this Convention, the term **the worst forms of child labour** comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (...) (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; (...).

²⁴⁸ IACHR, Annual Report 1999, Recommendation on the eradication of the recruitment and involvement of children in armed conflicts, OEA/Ser.LV/II.106, Doc. 3, April 13, 2000.

²⁴⁹ IACHR, Annual Report 1999, Recommendation on the eradication of the recruitment and involvement of children in armed conflicts, OEA/Ser.LV/II.106, Doc. 3, April 13, 2000.

IACHR deems it necessary to address the situation of children recruited by organized crime, maras and gangs and the specific protection provided for under international law in order to put an end to this practice.

152. In fact, the IACHR understands that the specialized protection bodies of the rights of children and adolescents have concluded that this population group endures comparable abuses and faces similar risks to their physical and mental health as do children associated with non-state, organized armed groups in contexts of armed conflicts, who are motivated by political, religious or other ideological goals. In addition, according to Child Soldiers, maras and gangs may be organized with a command and disciplinary structure and the capacity to commit armed violence and exercise significant control over territory, as are organized armed groups.²⁵⁰
153. For its part, the United Nations Committee on the Rights of the Child has associated the participation of children in maras and gangs of northern Central America with a set of protections enshrined in the Convention on the Rights of the Child.²⁵¹ In this regard, the Commission asserts that the participation of this population group in mara and gang activities, including recruitment, must be compared to protections from violence against children. These provisions have been linked to the content of Articles 19 (protection against ill-treatment), 24.3 (abolishing traditional practices prejudicial to health), 28.2 (school discipline consistent with the dignity of the child), 34 (protection from sexual abuse and exploitation), 37.a) (protection from torture, and cruel, inhuman or degrading treatment or punishment) and 39 (adoption of measures to promote physical and psychological recovery of child victims of abuse).
154. Furthermore, the Commission notes that there are treaty-based norms that give concrete form to these mandates of child protection against recruitment for engagement in illegal activities. Thus, ILO Convention 182 clearly establishes that the recruitment of children and adolescents for illicit activities, such as drug trafficking, must be prohibited and urgently stopped by the States Parties to this Convention. Prohibiting and ending this type of recruitment, from the standpoint of the IACHR, includes a mandate not only to the States for the eradication of this type of child labor, but also entails compelling non-state actors to refrain from engaging in such recruitment.
155. By the same token, the American Convention and American Declaration provide that children are entitled to special protection measures as can be gleaned from Articles 19 and VII, respectively, in the two instruments. Accordingly, the IACHR finds that these special protections include the prohibition of the recruitment of children and adolescents to carry out illicit activities, such as those performed by organized crime, the maras and gangs. This prohibition means that the States must take immediate, effective action, on an emergency basis, to eradicate this type of recruitment.

²⁵⁰ Child Soldiers International, [Alternative report to the Committee on the Rights of the Child : Guatemala](#), June 2017, pg. 9.

²⁵¹ CRC. Concluding observations on the combined periodic 4th and 5th reports of Honduras, CRC/C/HND/CO4-5, July 3, 2015, pars. 37 and 38; CRC, Review of the reports submitted by the States parties under Article 44 of the Convention, concluding observations: Guatemala, CRC/C/GTM/CO3-4, October 25, 2010, par. 37 et seq; CRC, Concluding observations on the combined periodic 5th and 6th reports of El Salvador, CRC/C/SLV/CO5-6, November 29, 2018, pg. par. 22 et seq.

Consequently, children and adolescents that are recruited by organized crime, the maras or gangs must be treated, for the most part, as victims.²⁵²

156. Nonetheless, the IACHR notes that the cycle of recruitment, including carrying out activities for organized crime, maras and gangs, involves several ongoing violations during childhood. Thus, in the context of northern Central America, the Commission will discuss the final aim of the recruitment, the modalities and strategies of recruitment and the type of activities carried out by children once they are recruited. Lastly, the IACHR will address the specific recruitment of young and teenage girls by maras and gangs.
157. As for its ultimate aim, the recruitment of children and adolescents is part of a criminal strategy of the maras, gangs and organized crime. Special reports suggest that, in countries such as El Salvador and Honduras, the recruitment of this population group is part of a strategy to make the most of differential sentencing treatment that this group is afforded based on its age, focusing on children age 12 and under, who cannot be criminally charged, as they have not yet reached the age of criminal liability.²⁵³ Likewise, to this type of criminal organizations, persons under the age of 18 are easier to manipulate and make them lose their own identity, eventually objectifying them for use in criminal pursuits, as well as internal exploitation through servitude or sexual abuse. Furthermore, children and adolescents go unnoticed by authorities and are just not usually associated with criminal conduct.²⁵⁴ Lastly, these criminal structures need to recruit young age people to make up for the accelerating pace of generational turnover, as casualties mount among the older generation members who die in confrontations or are deprived of their liberty.²⁵⁵
158. With regard to the modalities and strategies of recruitment, it is a recurring practice in northern Central America to seek recruits on the way to schools or on school premises. The IACHR has gathered information suggesting that refusing to join a mara or gang can mean death for a young boy or girl who

²⁵² IACHR. [Informe Violencia, niñez y crimen organizado](#), Report Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 473.

²⁵³ DINAF, Honduras, Response of the State of Honduras to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, August 11, 2022; UNHCR, Questionnaire to civil society organizations, April 7, 2022, question 2; Human Rights Council, United Nations, [Informe de la Relatora Especial sobre las formas contemporáneas de la esclavitud, incluidas sus causas y consecuencias, sobre su misión a El Salvador](#), *supra*. A/HRC/33/46/Add.1, August 3, 2016, par. 35.

²⁵⁴ IDB, [Promoviendo la permanencia escolar en El Salvador y Honduras: lineamientos para el desarrollo de incentivos](#), [Promoting school retention in El Salvador and Honduras: guidelines for the development of incentives], December 2021, pg.13.

²⁵⁵ ILO, [Nuevas formas de trabajo infantil. Utilización y reclutamiento de niños, niñas y adolescentes para la realización de actividades ilícitas en las pandillas de El Salvador](#), [New forms of child labour. Use and recruitment of children and adolescents to engage in illicit activities in the gangs of El Salvador], January 24, 2019, pg. 39; Inter-institutional Commission for the Protection of persons displaced by violence, Honduras, [Estudio de caracterización del desplazamiento interno por violencia en Honduras 2004 – 2018](#), *supra*. December 11, 2019, pg. 42.

is targeted for recruitment.²⁵⁶ Additionally, recruitment takes place in high poverty areas with little opportunity, precisely the maras' area of operation.²⁵⁷ Another context where the recruitment of children and adolescents in maras and gangs takes place is while parents are in the United States after emigrating, with some of the children often remaining behind in their towns of origin.²⁵⁸

159. Hand in hand with the foregoing techniques, the IACHR has noticed that strategies of persuasion and coercion are used as well in recruitment. In the case of Guatemala, the Commission noted that the recruitment of children and adolescents is based on pressure, threats, violence and deceit to press the victims into joining or collaborating with the gangs, and the way in which they are used and abused by these groups for their activities exposes them, in turn, to contact with the criminal justice system.²⁵⁹ With respect to El Salvador, the gang members persuade the children and adolescents offering them material gain to entice them into the group, such as shoes, money, cellphones, food, and other things.²⁶⁰ In the case of Honduras, reports indicate that the fear, threats, constraints on mobility, bodily harm or murder could also be the result of “extortive processes, failed recruitment or breaches of codes and rules imposed by the maras on the communities.”²⁶¹
160. Children or adolescents may accept being recruited as a way to seek protection or a place to run away to. Thus, in El Salvador and Guatemala, this population group is recruited by force as a result of the harassment to which it is exposed in the areas controlled by these criminal organizations, or children or adolescents join the maras with the intention of protecting themselves from violence.²⁶² Moreover, in Guatemala, publicly available information from shelters for displaced children indicates

²⁵⁶ Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Cross Fire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 23.

²⁵⁷ Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Cross Fire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 26.

²⁵⁸ REDLAC, [Niños, niñas y adolescentes en situación de movilidad humana en el norte de Centroamérica, México y Panamá](#), [Children and adolescents in situation of human mobility in northern Central America, Mexico and Panama]. March 31, 2022, pg. 14.

²⁵⁹ IACHR, Press Release No. 114/17 - [Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala](#). Preliminary Observations to the IACHR's on-site visit to Guatemala. Washington DC, August 4, 2021.

²⁶⁰ ILO, [Nuevas formas de trabajo infantil. Utilización y reclutamiento de niños, niñas y adolescentes para la realización de actividades ilícitas en las pandillas de El Salvador](#), [New forms of child labour. Use and recruitment of children and adolescents to engage in illicit activities in the gangs of El Salvador], January 24, 2019, pg. 45.

²⁶¹ Inter-Institutional Commission for the Protection of Persons Displaced by Violence, Honduras, [Estudio de caracterización del desplazamiento interno por violencia en Honduras 2004 – 2018](#), [Characterization study of internal displacement by violence in Honduras 2004-2018], December 11, 2019, pg. 43.

²⁶² UNICEF, [Desarraigados en Centroamérica y México](#), Uprooted in Central America and Mexico, August 2018, pg. 6.

that, 18 of a total of 48 children seeking care are related to forced recruitment.²⁶³ Furthermore, refusal to join criminal structures can prompt the children's family groups to abandon their homes and communities as a way to survive.²⁶⁴

161. The activities that recruited minors engage in are varied and increase depending on their age and as they take part in increasingly more violent situations. The IACHR has received accounts of children in Honduras and El Salvador as young as eight years of age being forced to take part in surveillance, information, extortion collection and retail drug trafficking support. The information available suggests that this surveillance often involves what is known as “*banderitas*” or “*postes*,” which are little boys or girls riding bicycles to warn of the entry of individuals or vehicles into the gang-controlled territory.²⁶⁵ In Guatemala, the Commission has learned about the use of children as young as 6 years of age recruited to transport drugs, weapons and messages between gangs, and adolescents ages 13 to 17 years old to commit homicides.²⁶⁶
162. Adolescents are used, exploited and trained by these criminal organizations to perform a variety of jobs, including as hitmen. After first being assigned surveillance and tracking, increasingly more violent jobs are entrusted to them. In addition, the Commission has received information suggesting that, at only 15 or 16 years of age, adolescents begin to work as hitmen. Initiation rites for this type of job often require the adolescent to murder someone as proof of their allegiance to the gang.²⁶⁷
163. Little girls and adolescent females play traditional gender roles and are victims of diverse forms of violence within the gangs. The jobs they perform, for the most part, are associated with roles of

²⁶³ State of the Nation Program. [La Migración de Niñas, Niños y Jóvenes en Honduras: Desplazamiento Forzado, Deportaciones y Derechos Humanos](#). [Migration of Children and Youth in Honduras: Forced displacement, deportations and human rights], February 19, 2021, pg. 26.

²⁶⁴ State of the Nation Program. [La Migración de Niñas, Niños y Jóvenes en Honduras: Desplazamiento Forzado, Deportaciones y Derechos Humanos](#). [Migration of Children and Youth in Honduras: Forced displacement, deportations and human rights], February 19, 2021, pg. 34; Human Rights Council, [Informe de la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de su misión a El Salvador](#), Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, AHRC/38/44/Add.2, December 7, 2018, pg. 7.

²⁶⁵ DINAf, Honduras, Response of the State of Honduras to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, August 11, 2022, pg. 3; Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Cross Fire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 23; Save the Children, [Atrapados: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#), Trapped: The impact of mara and gang violence on education in the Northern Triangle of Central America. May 2018, pg.19.

²⁶⁶ Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Cross Fire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 24.

²⁶⁷ Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). In the Cross Fire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 24.

caring or surveillance, transport or concealment of drugs or weapons.²⁶⁸ Membership in a gang is contingent upon a relationship as a couple with a member of the organization, and such relationships are wholly controlled by men through structures of care and surveillance in the neighborhoods themselves, such as in the case of El Salvador.²⁶⁹ Additionally, the IACHR finds that it has been widely documented and reported that young girls and adolescent females are forced to engage in sexual relations or “*noviazgos*” [‘engagements’] with members of the criminal groups. In such roles, they endure sexual abuses, are offered up as “gifts” to the leaders, and even become victims of trafficking for purposes of sexual exploitation²⁷⁰ and are often used to carry out conjugal visits in prisons.²⁷¹

164. Nonetheless, the IACHR notes it has received reports to the effect that young girls and adolescent females who join gangs are taking on new roles in the execution of criminal activities. The information gathered shows that young and adolescent girls now carry out extortion collection or drug trafficking.²⁷² On this score, the IACHR has noted that women and girls carry out some of the same activities as their male counterparts such as robbery; collecting “rents;” transporting, concealing and selling drugs and weapons; organizing kidnappings and murders; as well as the activities especially entrusted to women, such as prison visits; maintaining communication between imprisoned leaders and the members in their *barrio*; or acting as partners or “*compañeras*.”²⁷³

²⁶⁸ IACHR. [Informe Violencia, niñez y crimen organizado](#), Report Violence, Children and Organized Crime. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 226.

²⁶⁹ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), Report on Human Development El Salvador 2018. I’m young! So now what? 2018, pg.100.

²⁷⁰ IACHR. [Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe](#), Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean, OEA/Ser.LV/II. Doc. 233, November 14, 2019, par. 195; IACHR. [Informe Violencia, niñez y crimen organizado](#), *supra* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 226; Human Rights Council, [Recopilación sobre El Salvador: Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos](#), Compilation on El Salvador: Report of the Office of the United Nations High Commissioner for Human Rights, AHRC/WG.6/34/SLV/2, August 22, 2019, pg. 44; Human Rights Council, [Recopilación sobre El Salvador: Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos](#), *supra* AHRC/WG.6/34/SLV/2, August 22, 2019, par. 71; Human Rights Council, United Nations, [Informe de la Relatora Especial sobre las formas contemporáneas de la esclavitud, incluidas sus causas y consecuencias, sobre su misión a El Salvador](#), Report of the Special Rapporteur on Contemporary Forms of Slavery, including their Causes and Consequences, on her mission to El Salvador, AHRC/33/46/Add.1, August 3, 2016, par. 33.

²⁷¹ ILO, [Nuevas formas de trabajo infantil. Utilización y reclutamiento de niños, niñas y adolescentes para la realización de actividades ilícitas en las pandillas de El Salvador](#), *supra*, January 24, 2019, pg. 48.

²⁷² Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). *Supra*. June 25, 2019, pg. 25.

²⁷³ IACHR. [Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe](#), *supra*, OEA/Ser.LV/II. Doc. 233, November 14, 2019, par. 196.

B. Criminalizing children and adolescents involved in organized crime

165. In this section, the Commission discusses the impact of criminalization on the enjoyment and exercise of the rights of children, adolescents and young people in contexts of organized crime. For this purpose, it will address the challenges facing the juvenile criminal justice system and the principal infringements of the human rights of this population. Next, the IACHR will closely examine the pernicious effects of prejudices and stigmatization of children and adolescent victims of crime. Lastly, it will discuss the major problems caused by misleading labeling of children, adolescents and young people, in this situation, as guilty of criminal activity. All of this will be based on the international protection standards of the human rights of children, adolescents and young people in vulnerable situations, as well as on information gathered by the IACHR through its monitoring mechanisms.

1. Juvenile criminal justice and “heavy handed” policies against children and adolescents as a response to the crime phenomenon in northern Central America

166. The Commission observes that the systems that seek to protect and readapt children and adolescents who are recruited and exploited by criminal groups need to be redesigned in light of the principles of the best interests of the child and comprehensive protection. For this purpose, the IACHR deems it necessary for States to review their “heavy handed” or “iron fist” policies, which aim to reduce the legal age of criminal liability and lengthen prison sentences of criminal offenders age 18 and under. Next, the Commission will discuss the alleged participation of children and adolescents in criminal organizations and “heavy handed” policies in contexts of crime in northern Central America.

167. With respect to the participation of persons under age 18, the Commission has noted that the most common response of the government to the involvement and use of children and adolescents in criminal activity and organized crime is through the juvenile justice system. It has further asserted that this system does not see children and adolescents first as victims of a string of accumulated violations of their rights but rather as criminal offenders.²⁷⁴

168. The IACHR is concerned that strategies to combat gangs in northern Central America have singled out the gangs themselves as being mostly responsible for the crime and violence.²⁷⁵ Specifically, civil society organizations reported to the IACHR about the criminalization of children, adolescents and young people, especially, those who come from territories controlled by criminal organizations, based on the widely held perception that these children, adolescents and young people are automatically members of these criminal groups.²⁷⁶

²⁷⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 51.

²⁷⁵ Save the Children. [En el Fuego Cruzado: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). *Supra*. June 25, 2019, pg. 46.

²⁷⁶ Information provided to the IACHR during the meeting on Children and Adolescents and Organized Crime. March 15, 2022.

169. Notwithstanding, according to technical information provided to the IACHR, child and adolescent criminal offenders linked to acts of organize crime account for a minor percentage of the total number of offenders belonging to this population.²⁷⁷ In this same vein, the United Nations has noted that, even though most of the crimes committed by children and adolescents are not of a violent nature, the pressure of using a “heavy hand against crime” has led to increasingly more severe responses. Thus, the public’s perception of children and adolescents as perpetrators of a high number of crimes has led to using a disproportionately punitive approach.²⁷⁸
170. The Commission notes that this information is consistent with reports on the subject matter in the framework of its monitoring functions of the human rights situation in northern Central America. By way of example, in Honduras, the IACHR noted that available figures show that the involvement of children and adolescents in criminal activities is extremely low (from 5% to 10%) as compared with the involvement of adults. It further underscored that when children and adolescents are linked to criminal activities, they usually commit non-violent offenses or crimes under the control of adults, who use them as an instrument for the commission of these conducts.²⁷⁹
171. In relation to the so-called “heavy handed policies,” the Commission notes that such policies are reflected mostly in two ways: lowering the legal age of criminal responsibility and lengthening prison terms, taking a punitive approach of confinement as opposed to pursuing the social readaptation function of juvenile justice. On this score, the IACHR has voiced its concern about persistent approaches of criminalizing and stigmatizing children and adolescents, who are in some way linked to maras and gangs, even though statistics bear out that adolescents are not responsible for the situation of violence that is being experienced in these countries.²⁸⁰
172. The IACHR finds that the alleged severity is also reflected in the age children and adolescents can be legally held responsible for their acts. On this score, the Committee on the Rights of the Child has noted that maturity and the capacity for abstract thought are still evolving in persons ages 12 to 13, because the frontal cortex of their brains is still developing. Therefore, it is very unlikely that they understand the consequences of their actions or criminal proceedings. Moreover, they are affected

²⁷⁷ Information provided to the IACHR during the meeting on Children and Adolescents and Organized Crime. March 15, 2022.

²⁷⁸ Human Rights Council, [Informe conjunto de la Oficina del Alto Comisionado para los Derechos Humanos, la Oficina de las Naciones Unidas contra la Droga y el Delito y la Representante Especial del Secretario General sobre la violencia contra los niños sobre prevención de la violencia contra los niños en el sistema de justicia juvenil y las medidas con las que responder a dicha violencia](#). Joint Report of the UNHCHR and UNODC and the Special Representative of the Secretary General on Violence against Children about prevention of violence against children in the juvenile justice system and measures to respond to such violence. A/ HRC/21/25, June 27, 2012, pars. 9 and 11.

²⁷⁹ IACHR. Report No. 146/19. [Situación de derechos humanos en Honduras](#). Situation of Human Rights in Honduras. August 27, 2019, par. 238.

²⁸⁰ IACHR. Report No. 146/19. [Situación de derechos humanos en Honduras](#). *Ibid.* August 27, 2019, par. 241; Information provided to the IACHR during the meeting on Children and Adolescents and Organized Crime. March 15, 2022.

by their transition into adolescence, a stage characterized by rapid brain development, which has an impact on risk-taking, decision-making and impulse control capacity.²⁸¹

173. Consequently, the Committee has recommended to States not to establish such an early minimum legal age for criminal responsibility, because of the circumstances surrounding emotional, mental and intellectual maturity of children and adolescents. The Committee has suggested setting the age at 14 to 16 years old.²⁸²
174. In this regard, the Commission observes that, in northern Central America, the harsh discourse of severity has permeated the laws determining the minimum age of criminal liability. For example, in Guatemala, the minimum age a person can be held criminally responsible is 13 years old;²⁸³ while, in Honduras²⁸⁴ and in El Salvador²⁸⁵ the law provides that criminal responsibility can be ascribed at 12 years of age. The Commission has previously voiced its concern over the fact that the age of 12 continues to be regarded as the internationally accepted absolute minimum age of criminal responsibility for children and adolescents in juvenile justice systems, when a number of States in the world and in the region of the Americas have set the minimum age of criminal responsibility much higher.²⁸⁶
175. Regarding the lengthening of prison sentences and the use of deprivation of liberty as a measure against children and adolescents, UNICEF has asserted that such measures are out of step with the binding provisions of the Convention on the Rights of the Child (CRC).²⁸⁷ In addition, the Commission is particularly concerned over the development of political stances denouncing the CRC, seeking to address the issue of violence with a criminalizing and prosecution-based approach, the effect of which actually pushes children and adolescents toward the criminal structures.²⁸⁸

²⁸¹ Committee on the Rights of the Child, [Observación general No. 24: Relativa a los derechos del niño en el sistema de justicia juvenil. CRC/C/GC/24](#), General Comment No 24: On children's rights in the child justice system, September 18, 2019, par. 22.

²⁸² Committee on the Rights of the Child, General Comment No. 10, Children's rights in Juvenile Justice, CRC/C/GC/10, April 25, 2007, pars. 32 and 33.

²⁸³ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), Decree 27-2003 Law of Protection of Children and Adolescents, 2003, Article 134.

²⁸⁴ IACHR. Report No. 146/19. [Situación de derechos humanos en Honduras](#). Situation of Human Rights in Honduras. August 27, 2019, par. 238; National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), Decree No. 73-96 Children's and Adolescents' Code, 1996, Article 180.

²⁸⁵ Legislative Assembly, El Salvador, ["Diputados aprueban seis reformas a códigos y leyes relacionadas a la protección de la población, tras crímenes de pandillas"](#). ["Deputies approve six amendments to codes and laws relating to the protection of the population, after gang crimes"], March 31, 2022; Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), Juvenile Criminal Law Decree No. 863, June 6, 1994, Article 2.

²⁸⁶ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.L/VII. Doc. 78, July 13, 2011, par. 49.

²⁸⁷ UNICEF, ["Encarcelar a los niños, niñas y adolescentes no es la solución a la violencia de pandillas en El Salvador"](#), Imprisoning Children and Adolescents is Not the Solution to Gang Violence in El Salvador, April 7, 2022.

²⁸⁸ Information provided to the IACHR at the meeting on Children, Adolescents and Organized Crime. March 15, 2022.

176. Specifically, in El Salvador, the Commission views with concern that, in March 2022, its Legislative Assembly approved an amendment to the Juvenile Criminal Statute to make punishments harsher for the crimes of simple and aggravated homicide, extortion, kidnapping, rape “of a minor or incapacitated persons,” sexual assault of a minor or incapacitated person, aggravated robbery, crimes of unlawful association, among other ones. Under this amendment, prison sentences of up to 10 years could be imposed on children and adolescents ages 12 to 16, while persons age 16 and older could be sentenced to up to 20 years in prison.²⁸⁹ In light of these amendments of the law, UNICEF asserted that punitive measures on their own do not solve the problem of gang violence.²⁹⁰

2. Stigmatization and prejudices against children and adolescents in contexts of crime

177. The Commission has underscored that certain groups of children, adolescents and young people are more susceptible to being stigmatized based on their socioeconomic status, the vulnerability they may be experiencing, and stereotypes and subjective judgments regarding their appearance or behavior, among other factors. These children, adolescents and young people run a much greater risk of being subjected to various kinds of violence and to violation of their rights, either by private individuals or the State itself and its agents.²⁹¹ Next, the Commission will characterize the principal aspects of stigmatizing prejudice in relation to these criteria, also describing the role of the media in deepening the stigmatization, as well as its connection to the lack of opportunities of this population.

178. In relation to prejudices based on the socioeconomic status of children and adolescents, the IACHR has expressed its concern over the stigmatizing impact of stereotypes that identify adolescents, particularly males in poor and peripheral neighborhoods, as the main agents responsible for violence and criminal activities. This perception has led to frequent abuses and arbitrary practices carried out by law enforcement against adolescents, as well as excessive penalization and criminalization against them and extremely precarious conditions of detention.²⁹²

179. The Commission has noted that the States cannot allow their agents or promote practices in society that perpetuate the stigma that children, adolescents and young persons living in poverty are predisposed to delinquency, or necessarily involved in the increased public insecurity. Stigmatization of that sort creates a climate in which at-risk juveniles face a latent threat of having their lives or liberty illegally curtailed.²⁹³

²⁸⁹ Legislative Assembly, El Salvador, [“Diputados aprueban seis reformas a códigos y leyes relacionadas a la protección de la población, tras crímenes de pandillas”](#), *supra*. March 31, 2022.

²⁹⁰ UNICEF, [“Encarcelar a los niños, niñas y adolescentes no es la solución a la violencia de pandillas en El Salvador”](#), *supra*, April 7, 2022.

²⁹¹ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 123.

²⁹² IACHR. [Pobreza y derechos humanos](#), *supra*, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 348.

²⁹³ IACHR. [Pobreza y derechos humanos](#), *id.* OEA/Ser.LV/II.164 Doc. 147, Sept 7, 2017, par. 191.

180. On this score, with respect to socioeconomic status-based stigmatization, the Commission has mentioned Honduras as an emblematic case of the context of violence marked by stigmatization against at-risk children and young persons living in poverty. The IACHR has been able to find international responsibility of the State of Honduras in the case of a group of victims who were detained in the framework of a mass and scheduled detention, with no legal basis.²⁹⁴
181. As for gender-based stereotypes and stigmatization as criminals, the Commission has noted that such criminalization has resulted in women associated with gang activity facing numerous obstacles to accessing social services, shelters for victims of domestic violence, protection measures or asylum. Similarly, in most of the cases, they do not report the violence perpetrated against them out of fear of retaliation from gangs, fear of being criminalized as gang collaborators or because of the refusal of the authorities to accept complaints.²⁹⁵
182. Likewise, the IACHR has ascertained that other prejudices exist pertaining to adolescents' clothing, tattoos, or physical presence in a particular place.²⁹⁶ On this note, the Commission has confirmed that there has been an increase in detentions on the basis of appearance under the criminal offense of "conspiracy to commit a crime" or "belonging to a criminal group" ("*asociación ilícita*").²⁹⁷ On this topic, Save the Children has asserted that such detentions are arbitrary given that they are carried out without any proof of a crime having been committed. This contributes to further stigmatization and harassment of certain social groups by police.²⁹⁸
183. In keeping with the foregoing, according to official statistics submitted to the Commission, from 2015 to April 2022 in El Salvador, 1,476 children and adolescents have been charged with the crime of unlawful association and 993, for the crime of belonging to terrorist organizations.²⁹⁹ Likewise, in Honduras, according to INAMI, from 2018 to 2020, 60% of adolescent criminal offenders were linked to the special justice system for the crime of unlawful association with maras and gangs.³⁰⁰ In this regard, the Committee on the Rights of the Child has established that the States parties to the CRC

²⁹⁴ IACHR. [Pobreza y derechos humanos](#), *id.* OEA/Ser.LV/II.164 Doc. 147, September 7, 2017, par. 189.

²⁹⁵ IACHR. [Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe](#), *supra*, OEA/Ser.LV/II. Doc. 233, November 14, 2019, par. 198.

²⁹⁶ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 176.

²⁹⁷ IACHR. [Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 14.

²⁹⁸ Save the Children. [Atrapados: El impacto de la violencia de maras y pandillas en la educación en el Triángulo norte de Centroamérica](#). *Supra*, May 2018, pg. 8.

²⁹⁹ Office of the Attorney General of the Republic, El Salvador, Response of the State of Guatemala to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, June 7, 2022, pg. 2 to 7.

³⁰⁰ CONADEH, Honduras, [Informe sobre el estado general de los derechos humanos y la gestión institucional del CONADEH durante el 2021](#). [Report on the general state of human rights and institutional conduct of CONADEH in 2021], March 2022, pgs. 55 and 56.

must refrain from trying children and adolescents for their mere link to a non-state armed group, including those classified as terrorist groups.³⁰¹

184. The communications media play a role in spreading stigmatizing speech against children and adolescents and their involvement in criminal acts.³⁰² According to the Committee on the Rights of the Child, children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative depiction or criminalization is often based on misrepresentation and/or misunderstanding the causes of crime, and regularly results in calls for tougher approaches.³⁰³
185. The Commission notes that media attention can fuel inequality by reinforcing perceptions and generalizations about children, adolescents and young people as “responsible for insecurity and violence, thus reinforcing the vicious circle of exclusion and violence.³⁰⁴ Likewise, according to UNDP, stigmatization on its own may constitute a type of symbolic violence by building or reinforcing a negative stigma against children, adolescents and young persons.³⁰⁵
186. In some instances, young people living in communities where maras or gangs are present are unable to find employment opportunities as a result of the stigmatization.³⁰⁶ On this score, UNDP has noted that, in El Salvador, the lack of job opportunities has been cited to account for a rise in homicide rates, resulting in the out of school and work population being heavily stigmatized and associated with crime and vagrancy. Furthermore, young men out of work and school are closely associated with the stereotype of criminals, when in actuality it was reported in 2018 that almost 8 of every 10 unemployed young persons are female, and this is their official status because they are engaged in household work and child care.³⁰⁷ In addition, violence tends to be the most frequently discussed issue in the media in relation to young men in this country.³⁰⁸

³⁰¹ Committee on the Rights of the Child, [Observación general No. 24: Relativa a los derechos del niño en el sistema de justicia juvenil. CRC/C/GC/24](#), *supra*, September 18, 2019, par. 101.

³⁰² Information provided to the IACHR at the meeting on Children, Adolescents and Organized Crime. March 15, 2022.

³⁰³ Committee on the Rights of the Child, [Observación general No. 24: Relativa a los derechos del niño en el sistema de justicia juvenil. CRC/C/GC/24](#), *supra*, September 18, 2019, par. 111.

³⁰⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 237.

³⁰⁵ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), *supra*, 2018, pg. 93.

³⁰⁶ ASJ, PNPRRS, PNUD, [Estudio de la situación de las Maras y Pandillas en Honduras – 2019](#), Study on the situation of Maras and Gangs in Honduras, 2020, pg. 47.

³⁰⁷ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), *supra*, 2018, pg. 192.

³⁰⁸ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), *id*, 2018, pg. 93.

3. Negative perceptions of children and adolescents vis-à-vis organized crime:
from victims to perpetrators

187. There is a widespread perception that children and adolescents are to blame for joining criminal organizations and, therefore, are also to blame for crime. This type of perception ignores that this population is experiencing extreme vulnerability as a result of social exclusion, contexts of violence, as well as being the victims of structural violence that led to them being exploited by criminal organizations. It also ignores that their involvement in criminal structures is the result of forced recruitment and, in order to provide them with comprehensive protection, this population must be regarded as a victim and not a perpetrator of crimes.
188. With respect to structural violence, the Commission has underscored that children, adolescents and young persons who perpetrate the violence generally have often themselves been victims of violence or abuse, or else they have witnessed it, or have had their own fundamental rights violated in another way.³⁰⁹ The impacts of violence and infringement of rights during early childhood can have consequences later on during adolescence, and even during childhood as future adolescent aggressors. Therefore, indicators of violence and infringement of rights must not be viewed in isolation from each other during the different stages of the lives of children, adolescents and young people.³¹⁰
189. As for the involvement of children and adolescents in acts of organized crime, it must be understood as the result of forced recruitment at the hands of criminal groups. The Commission has recommended that the States consider this population primarily as victims that the criminal groups use and exploit for their own criminal ends, as opposed to perpetrators. States must depart from the premise that the children and adolescents and young people who join criminal organizations have faced situations of disenfranchisement and vulnerabilities against which the States were unable to provide adequate protection.³¹¹
190. The IACHR has noted that the situation of vulnerability, pressure, manipulation and deceit that leads children, adolescents and young people to join the maras is not always understood by authorities. Consequently, they are stigmatized, discriminated against and mistreated by law enforcement, inasmuch as they are seen as potential delinquents.³¹² The States' response to children and adolescents who have been captured by criminal organizations must be based on comprehensive protection of the rights of the child and their readaptation and reintegration into society, as opposed to repression and criminalization.³¹³ This outlook must include mara and gang

³⁰⁹ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 51.

³¹⁰ IACHR. [Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 61.

³¹¹ IACHR. [Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 601.

³¹² IACHR. Press Release No. 117/18. [Comunicado de prensa 117/18 - Observaciones Preliminares de la Visita de la CIDH a Honduras](#). Preliminary Observations on the IACHR visit to Honduras], Washington DC, August 3, 2018, pg. 13.

³¹³ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 601.

members, who were not afforded the special protection as is recognized for them in international human rights treaties to ensure their rights.³¹⁴

4. Use of punitive measures for criminal offenses committed by children and adolescents

191. The Commission recognizes the importance of the deterrence and repression of organized crime. On this score, it confirms that, when children and adolescents committed crimes, States have used provisions of law aimed at holding this population group responsible for its criminal acts, in keeping with its duty as guarantor of human rights. Nonetheless, it underscores that these provisions must be geared towards a socioeconomic framework, the ultimate purpose of which is readaptation and reintegration into society based on the best interests of the child. Under such a framework, the IACHR will examine non-custodial measures and measures of deprivation of liberty used by the States of northern Central America.

4.1. Non-custodial measures

192. The norms of international human rights laws and the pronouncements of international human rights protection bodies have set a high bar for exceptions, when the restriction on the freedom of children and adolescents in conflict with criminal law are involved.³¹⁵ Hereunder, the IACHR provides an account for the legal basis and rulings of these human rights bodies on alternatives to deprivation of liberty, in keeping with international law obligations.

193. In terms of the law, the ACHR and the ADRDM protect the rights to life, physical integrity, and personal liberty and security from the harmful impacts of the confinement of children and adolescents. These provisions of law, read together with the right to a family and special protection of the child, also enshrined in the aforementioned instruments, flesh out the international obligations of the States with respect to the exceptional nature of the deprivation of liberty of persons under age 18.³¹⁶

194. Thusly, when the rights of the child are at stake, the Commission has deemed it necessary to include in its analysis the international *corpus juris* of child protection³¹⁷ under general norms of protection of this population enshrined both in the ACHR (Article 19) and in the ADRDM (Article VII). In this vein, the CRC establishes that the detention, incarceration or imprisonment of a child or

³¹⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 177.

³¹⁵ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78, July 13, 2011, par. 311.

³¹⁶ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *id*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, par. 313.

³¹⁷ IACHR. Report No. 107/18. Case 13.039. Merits. Martina Rebecca Vera Rojas. Chile. October 5, 2018, par. 83; IACHR. Report No. 102/13. Case 12.723. Merits. TGGL. Ecuador, par.149. Also see: [Corte IDH. Caso Forneron e hija Vs. Argentina. Fondo. Reparaciones y Costas. Sentencia de 27 de abril de 2012. Serie C No. 242](#), párr. 44; [Corte IDH. Caso Furlan y Familiares Vs. Argentina. Excepciones Preliminares. Fondo. Reparaciones y Costas. Sentencia de 31 de agosto de 2012. Serie C No. 246](#), IA Court of HR. Case of Forneron and Daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, par. 125.

adolescent shall only be carried out pursuant to the law and will only be used as a measure of last resort.³¹⁸ Furthermore, the CRC also establishes that, whenever appropriate and desirable, States must take measures with children and adolescents in conflict with criminal law, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programs, as well as other possible alternatives to institutional care, to ensure that children and adolescents are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offense.³¹⁹

195. As for the pronouncements of specialized bodies on the deprivation of liberty of persons under 18 years and alternatives to it, both bodies of the Inter-American system have upheld standards that respect the principle of exceptionality and the best interests of the child. The IACHR has noted the need to limit the use of the juvenile penal system with respect to children and adolescents and to reduce to the greatest extent possible the State's punitive intervention especially where deprivation of liberty is involved.³²⁰ The Inter-American Court has expressed that the right to personal freedom of children and adolescents cannot be examined without taking into account the best interests of the child and, therefore, it is the child's vulnerability that necessitates special measures of protection.³²¹
196. In this context, the Commission has urged the States to adopt legislation to enable the implementation of alternatives to deprivation of liberty because of the harmful effects that the punitive systems can have on children and adolescents and to dispel the notion that their misconduct requires a "get-tough" response through the juvenile justice system.³²² In order to avoid the negative consequences of the deprivation of liberty, alternatives to it must endeavor to make it easier for juvenile offenders to continue their education, maintain and even strengthen their family ties, while supporting those consigned to the state's care and connecting the juvenile offender to community resources to facilitate his or her re-assimilation into community life.³²³
197. In essence, the measures consist of organized socio-educational activities that prepare adolescents for a responsible life in society and foster positive behavioral changes, while at the same time guaranteeing full observance of their rights through comprehensive interventions.³²⁴ Alternative measures to deprivation of liberty include: i) a reprimand or warning; ii) or mediation proceedings; iii) assisted release; iv) supervised release; v) community service; and vi) other socio-educational

³¹⁸ United Nations, [Convención de los Derechos del Niño](#), Convention on the Rights of the Child, 1989, Article 40.

³¹⁹ United Nations, [Convención de los Derechos del Niño](#), Convention on the Rights of the Child, 1989, Article 40.

³²⁰ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*, OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 76.

³²¹ IA Court of HR. Case of the Juvenile Reeducation Institute v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, par. 225.

³²² IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*, OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 228.

³²³ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *id*, OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 313.

³²⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 561.

measures designed to build awareness in the adolescent of the harm caused by the offense and to promote their reintegration into the community using a positive and constructive approach.³²⁵

198. Alternative measures not only must be formally provided for in the law, but must also be effectively used and the States must overcome obstacles to their implementation.³²⁶ To be effective, these measures must have the necessary budgetary resources to ensure adequate functioning of the different programs and be available throughout the national territory.³²⁷ One of the main stumbling blocks to the use of alternative measures, as acknowledged by the IACHR, is that they are often viewed as a “last resort” because of the margin of discretion that some rules afford judges in ordering non-custodial measures, or they are not used because the programs are inadequate or ineffective. Thus, locking up children or adolescents, in many instances, is the only measure considered by those sitting in judgment of them.³²⁸
199. The IACHR observes that in the three countries of northern Central America the legislation provides for a variety of alternative measures to prison, although the way in which they are used varies between the States. Next, the Commission discusses what these measures are and how they are used in each of the States.

a) El Salvador

200. In El Salvador, based on available information, the Commission observes that in terms of the legal framework, several non-custodial measures exist, that could be used by the Salvadorian Institute for the Integral Development of Children and Adolescents (ISNA). Nonetheless, the Commission obtained no information about whether or not they are actually used.
201. The Juvenile Criminal Law provides for the following non-custodial measures when a criminal offense is committed by a child or adolescent: i) counseling and socio-family support; ii) reprimand; iii) imposing rules of conduct; iv) community service; and v) assisted release.³²⁹ According to public information, the ISNA is in charge of implementing the Non-custodial Assistance Program, which seeks to place adolescents in different components of care and implement measures, such as access to formal and informal education, psychosocial and family care, legal assistance and life skills development.³³⁰

³²⁵ IACHR. [Violencia, niñez y crimen organizado](#), *id*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 558.

³²⁶ IACHR. [Violencia, niñez y crimen organizado](#), *id*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 558.

³²⁷ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*, OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 172.

³²⁸ IACHR. [Violencia, niñez y crimen organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 559.

³²⁹ Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), Juvenile Criminal Law No. 863, June 6, 1994, Article 8.

³³⁰ Committee on the Rights of the Child, [Informes periódicos quinto y sexto combinados que El Salvador debía presentar en 2016 en virtud del artículo 44 de la Convención](#). *Supra* CRC/C/SLV/5-6, March 19, 2018, par. 204.

202. In this regard, the OECD has noted that children and adolescents who have committed minor offenses for which non-custodial measures have been used are more likely to leave a violent life behind, because they are able to carry out these measures without being separated from their families and the community. Additionally, they have the support and accompaniment of technical teams of the ISNA and of the sentence execution oversight judge. Likewise, they are usually aided by civil society organizations that carry out violence prevention, social skill-building and programs of reintegration into productive activities, especially when this population does not belong to gangs.³³¹

b) Guatemala

203. The Commission notes that the juvenile penal system of Guatemala has several non-custodial measures available that are administered through the Comprehensive Care Model of Juvenile Penal Justice (MAIJU, from its Spanish language acronym). Below, the IACHR provides a description of these measures and the programs used to implement them.

204. In terms of the legal framework, the Constitution of Guatemala establishes that children and adolescents who break the law are not subject to criminal prosecution and they must be dealt with in a way that is geared toward comprehensive education appropriate for children and youth. It further says that when this population engages in conduct that violates the criminal law, it will be assisted by specialized institutions and personnel.³³² Additionally, the Law of Protection of Children and Adolescents provides for socio-educational measures: i) reprimand and warning; ii) assisted release; iii) community service; and iv) reparation for damage to the offended party.³³³

205. Guatemala reported that the MAIJU is the mechanism for the implementation of early termination of criminal proceedings against adolescents, alternatives to deprivation of liberty and reentry into society.³³⁴ The State also noted that the Secretariat of Social Wellbeing had expanded the coverage of the Socio-Educational Measures Program to different areas of the country.³³⁵ Likewise, in 2021, a diversion assistance area (Atención de Remisiones) of the Directorate of Socio-Educational Measures was opened to deal in a comprehensive and individualized manner with adolescents who

³³¹ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), Study on Wellbeing and Policies in El Salvador, 2017, pg. 84.

³³² Guatemala, [Constitución Política de la República de Guatemala](#), Constitution of the Republic of Guatemala, 1985, Article 20.

³³³ Congress of the Republic of Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), Decree 27-2003 Law of Protection of Children and Adolescents 2003, Article 238.

³³⁴ Presidential Commission for Peace and Human Rights, Guatemala, Response of the State of Guatemala to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young persons from organized crime activities, March 24, 2022, pg. 10.

³³⁵ Office of the Ombudsman for Human Rights (Procuraduría de los Derechos Humanos), Guatemala, [Informe Anual Circunstanciado de Actividades y de la Situación de los Derechos Humanos](#), [Annual Report Accounting for Activities and the Human Rights Situation], 2021, pgs. 228 and 229.

commit minor offenses, as an alternative to deprivation of liberty, through psychotherapy, counseling and education follow-up.³³⁶

206. In addition, the State noted that, through the 2015 Judicial Policy for the Special Protection of Children and Adolescents, there has been a substantive decrease in the use of institutional care of children and adolescents in conflict with criminal law.³³⁷ Specifically, as of March 2022, there were 550 adolescents sentenced for criminal activities committed in the context of organized crime groups serving a sentence of a non-custodial socio-educational measure.³³⁸

c) Honduras

207. The Commission notes that in Honduras the law provides for several non-custodial sentences that are implemented through the Program of Alternative Measures to Deprivation of Liberty for Juvenile Offenders. It further notes that the State has implemented programs for its implementation but that it faces challenges due to inadequate budget.

208. In terms of the legal framework, the Code of Children and Adolescents of Honduras provides for non-custodial measures such as: i) reprimand; ii) assisted release; iii) community service; and iv) reparation of harm to the victim.³³⁹ According to the State, the Program of Alternative Measures to Deprivation of Liberty for Juvenile Offenders is responsible for the implementation and follow up on these measures.³⁴⁰ Additionally, the National Institute for Assistance to Juvenile Offenders (INAMI) has implemented a campaign to strengthen the aforementioned program to break the log jam of cases at prison facilities on a quarterly basis. According to official statistics, as of August 2020, there were 1,423 children and adolescents serving sentences of supervised release and guidance from the Pedagogic Residential Centers administered by the INAMI.³⁴¹ Nonetheless, it came to the attention of the Commission that in February 2022 proceedings on alternative non-custodial measures were suspended due to a lack of resources at the INAMI.³⁴²

³³⁶ Office of the Secretariat of Social Wellbeing of the Office of the President of the Republic, Guatemala, [“Brindarán atención integral a adolescentes que cometan delitos menores”](#), [Comprehensive care to be provided to adolescents who commit minor offenses], February 9, 2021.

³³⁷ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to conditions of detention and imprisonment in Guatemala, August 6, 2021, pg. 16.

³³⁸ Presidential Commission for Peace and Human Rights, Guatemala, *supra*, March 24, 2022, pg. 5.

³³⁹ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), Decree 73-96 Code of Children and Adolescents, 1996, Article 195.

³⁴⁰ National Institute for the Care of Juvenile Offenders, Honduras, [Instituto Nacional para la Atención a Menores Infractores INAMI](#), s.f.

³⁴¹ State of Honduras, Observations of the State of Honduras on the Report Situation of Human Rights in Honduras. 2019, October 30, 2020, pg. 21.

³⁴² Association for a More Just Society (ASJ) [@asjhn1]. (February 1, 2022). *Public Pronouncement of the Coalition for the Restoration of Rights of Children in Conflict with the Law* [Tweet]. Twitter. <https://mobile.twitter.com/broadcasts/1BRJnWnXMwJw>

209. The State reported to the Commission that, as of March 2022, 1,519 children and adolescents were serving sentences of non-custodial measures.³⁴³ Likewise, according to civil society organizations, as of April of 2022, 1,500 persons age 18 or younger sentenced to alternative measures to incarceration received assistance in their communities with specialized services provided by institutions such as Casa Alianza, Fundación Pan, Techo y Trabajo, Hogares Crea, Proyecto Victoria, INFOP, IHADFA, Ciudad Mujer and the Secretariats of State in the offices of the Secretaries of Health and Education.³⁴⁴

4.2. Measures depriving children and adolescents of liberty

210. As has been noted in this report, under international human rights law, the deprivation of liberty of children and adolescents is a measure that should only be used on an exceptional basis. As such, the Commission has established that custodial measures must only be used once it has been shown and proven that non-custodial measures are inadvisable and after careful review, taking into account the principles of legality, last resort and proportionality of the sentence, among other relevant considerations.³⁴⁵

211. In turn, the Committee on the Rights of the Child has established that the State response must always be proportional, not only to the circumstances and the gravity of the offense, but also to the personal circumstances (the age, least culpability, the circumstances and needs of the child or adolescent, including, when relevant, needs relating to mental health), as well as the various needs of society, given that strictly punitive methods are at odds with Article 40, paragraph 1 of the CRC.³⁴⁶ Moreover, when serious criminal offenses have been committed by children or adolescents, States may consider using measures that are proportional to the circumstances of the offender and the seriousness of the crime, taking into account the need for public security and punishment. Nonetheless, weight should be given to the best interests of the child as a primary consideration as well as to the need to promote the child's reintegration into society.³⁴⁷

212. In this context, the Commission will discuss the use of deprivation of liberty in northern Central America, describing its forms, use and limits. In addition, it will emphasize the violence faced by

³⁴³ DINAF, Honduras, Response of the Honduran State to the request for information of the Inter-American Commission on Human Rights in light of Article 41 of the American Convention on Human Rights about measures to reduce violence against children and adolescents from organized crime activities, August 11, 2022, pg. 9.

³⁴⁴ UNHCR, Questionnaire sent to civil society organizations, April 7, 2022, question 6.

³⁴⁵ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, par. 332.

³⁴⁶ Article 40.1 of the United Nations Convention on the Rights of the Child: "The States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

³⁴⁷ Committee on the Rights of the Child, [Observación general No. 24: Relativa a los derechos del niño en el sistema de justicia juvenil. CRC/C/GC/24](#), General Comment 24: on children's rights in the child justice system, September 18, 2019, par. 76.

children and adolescents deprived of liberty, the conditions of detention and social reintegration in terms of the international obligations of El Salvador, Guatemala and Honduras.

a) El Salvador

213. With respect to El Salvador, the Commission gathered information on the use of deprivation of liberty of children and adolescents. In this regard, it notes that there has been a reduction in the number of adolescents deprived of liberty. Nonetheless, the increased prison terms for certain offenses relating to organized crime is of particular concern.
214. The Juvenile Penal Law of El Salvador provides for confinement as one of the measures to which persons under age 18 may be subjected.³⁴⁸ On this score, it is noted that this measure must be used as a last resort and for as short a time as possible. In addition, while the sentence of confinement is being served, release for extramural activities outside of the prison facility may be authorized and assisted release may substitute for confinement, under certain conditions of conduct or the obligation of performing community service.³⁴⁹
215. Additionally, the aforementioned law establishes that the confinement shall be executed in special facilities for child and adolescent offenders, that are separate and distinct from offenders subject to common criminal law.³⁵⁰ According to the Committee on the Rights of the Child, the ISNA is in charge of implementing the Program for Assistance in the Measure of Confinement, which seeks to uphold the rights of adolescents confined at the Social Integration Centers.³⁵¹
216. As for legal constraints on the length of prison terms, the law establishes that adolescents over age 16 may be ordered to serve prison terms with maximum and minimum lengths that may not exceed half of the regular term, but may not exceed 7 years.³⁵² The IACHR reiterates the information above in this report about increased prison terms for several offenses committed in the context of the organized crime groups of up to 20 years in the case of adolescents 16 years old, and 10 years, for those age 12 years old. In addition, the law provides that for the offenses set forth in the amendment, the measure cannot be changed, substituted or revoked.³⁵³

³⁴⁸ Legislative Assembly, [Ley Penal Juvenil Decreto N° 863](#), *supra*, June 6, 1994, Article 8.

³⁴⁹ Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), *id*, June 6, 1994, Article 15.

³⁵⁰ Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), *id*, June 6, 1994, Article 119.

³⁵¹ Committee on the Rights of the Child, [Informes periódicos quinto y sexto combinados que El Salvador debía presentar en 2016 en virtud del artículo 44 de la Convención](#). *Supra*, CRC/C/SLV/5-6, March 19, 2018, par. 204.

³⁵² Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), *supra*, June 6, 1994, Article 15.

³⁵³ Legislative Assembly, El Salvador, ["Diputados aprueban seis reformas a códigos y leyes relacionadas a la protección de la población, tras crímenes de pandillas"](#). ["Deputies approve six amendments to codes and laws relating to the protection of the population, following gang crimes"], March 31, 2022.

217. According to public information, El Salvador posted the highest number of persons deprived of liberty in its history and one of the highest incarceration rates in the world in 2020. Thus, 30.83% of the prison population is age 18 to 35 years old, which places these individuals in the age group of protected young people, as explained above in this report, many of whom had no opportunity at all to attend middle or high school. In this context, civil society organizations claimed that the enemy-focused crime policy in this country serves to vent anger on the population at most risk of social exclusion.³⁵⁴
218. Likewise, the State reported to the IACHR that, from 2015 to April 2022, 12,886 adolescent defendants belonging to maras or gangs were recorded, primarily to MS and Barrio 18, with 8,166 and 4,658 respectively. Additionally, the Commission takes note that since 2015 there has been a progressive decrease in the number of children and adolescents charged with crimes reported annually.³⁵⁵
219. Additionally, according to official statistics, 2,577 cases of illicit association; 2,218 cases of resisting arrest, possession and carrying firearms, with 1,476 cases of possession and carrying; 993 cases of terrorist organizations; and 698 cases of aggravated homicide committed by adolescents registered as belonging to maras or gangs, have been reported.³⁵⁶
220. The Commission reiterates that the crimes of illicit association allow for a wide range of discretion that can result in arbitrary detentions of adolescents and young people based on subjective suspicions or perceptions about their belonging to a “mara,” because of the use of tattoos, their physical appearance, the place where they live or other factors.³⁵⁷ On this score, the Inter-American Court of Human Rights has held that any ambiguity in the legal definition of offenses leads to doubts and allows the authority to use its own discretion, which is particularly undesirable when establishing the criminal responsibility of the individual and penalizing this with punishments that severely affect fundamental rights such as life or liberty.³⁵⁸

³⁵⁴ TNT, DPLF, FESPAD, SSPAS y Agrupación Ciudadana por Despenalización del Aborto, [El Salvador: Régimen y condiciones de las personas privadas de libertad](#), [‘El Salvador: Regime and conditions of persons deprived of liberty’], December 3, 2020, pg. 5 and 6.

³⁵⁵ Office of the Attorney General of the Republic, El Salvador, Response of the Salvadoran State to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities. June 7, 2022, Response of the Salvadoran State to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities. June 7, 2022, June 7, 2022, pg. 1.

³⁵⁶ Office of the Attorney General of the Republic, El Salvador, Response of the Salvadoran State to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities. June 7, 2022, pgs. 2 to 7.

³⁵⁷ IACHR, [Violencia, Niñez y Crimen Organizado](#), *supra*, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 451.

³⁵⁸ IA Court of HR, Case of Pacheco Teruel et al v. Honduras. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, par. 105.

b) Guatemala

221. In the case of Guatemala, the Commission gathered information pertaining to the different forms of deprivation of liberty provided for under Guatemalan law and the use thereof. The IACHR notes that these forms include deprivation of liberty where children and adolescents do not spend all of their time in confinement.
222. The Law of Protection of Children and Adolescents of Guatemala establishes the following custodial punishments: i) deprivation of liberty in the home; ii) deprivation of liberty during free time; iii) deprivation of liberty at specialized facilities over weekends; and, iv) deprivation of liberty at specialized facilities to serve sentences of open-door confinement, work or school release (partial confinement), or total confinement.³⁵⁹
223. Home deprivation is carried out at the residence of the adolescent and spans a maximum of one year, while deprivation of liberty takes place in specialized facilities.³⁶⁰ Both the deprivation of liberty during free time, in other words, while the adolescent is not required to be at work or in class at school, and weekend deprivation of liberty, may be imposed for no longer than 8 months.³⁶¹
224. Deprivation of liberty at specialized facilities can be used in cases involving serious threats or violence against persons or property or a crime against life, sexual liberty, individual liberty, aggravated robbery, and drug trafficking, or when aggravated crimes of malicious intent punished in the Criminal Code or special laws, or with prison terms of more than six years, are involved.³⁶²
225. Open-door treatment consists of the adolescents residing regularly at a special facility to serve out the sentence, but they carry out all of their socio-educational activities outside of the facility; while work or school release or partial confinement, is different from open-door treatment in that only some activities take place outside the facility.³⁶³
226. Nonetheless, regarding the budget for implementing measures of deprivation of liberty, the aforementioned law requires adolescents to be placed at adequate facilities, exclusively for this population group, and not at adult facilities.³⁶⁴ On this topic, the State reported to the Commission that the Directorate of Specialized Centers of Deprivation of Liberty, the Under Secretary's Office of Social Reintegration and Readaptation of Adolescents in Conflict with Criminal Law and the

³⁵⁹ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), Decree 27-2003 Law of Protection of Children and Adolescents. 2003, Article 238.

³⁶⁰ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Article 249.

³⁶¹ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Articles 250 and 251.

³⁶² Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Article 252.

³⁶³ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Article 253.

³⁶⁴ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Article 159.

Secretariat of Social Wellbeing of the Office of the President are the entities responsible for the 5 Specialized Centers of Deprivation of Liberty: i) CEJUDEP Etapa, ii) CEJUPLIV II Anexo, iii) CEJUPLIM, iv) CEJUPLIV Gaviotas and v) Casa Intermedia.³⁶⁵ Additionally, a sixth facility called Centro Especializado de Reinserción (Specialized Reintegration Center) is about to be opened.³⁶⁶ As for constraints of the duration of time served at these facilities, the law establishes that the maximum length of a prison sentence for adolescents ages 15 to 18 years old is six years, while for adolescents ages 13 to 15 years old, the maximum length of time is two years.³⁶⁷

227. Notwithstanding, the law provides for conditional release from custodial measures, for a period equal to the length of the prison sentence, taking into account the efforts of the adolescent to provide reparation for the damages, the degree of gravity of the crimes committed, the family and social situation in which the adolescent is living, or whether the adolescent has been able to build an alternative life plan.³⁶⁸

228. Lastly, the State of Guatemala reported to the Commission that the offenses most frequently committed by children and adolescents in the context of organized crime groups from January 2021 to March 2022 were the crime of extortion, with 80 cases, illegal passing of weapons with 41 cases, and murder with 37 cases.³⁶⁹ It further noted that as of March 2022, there were 120 adolescents deprived of liberty awaiting trial and 438, serving sentence. Specifically, it indicated that from January 2021 to March 2022, 125 adolescents were reported as serving sentences for criminal activities committed in the context of organized crime groups.³⁷⁰

³⁶⁵ Office of the Prosecutor for Adolescents in Conflict with the Criminal Law, Guatemala, Response of the State of Guatemala to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights regarding measures to reduce violence against children and adolescents from organized crime activities, March 15, 2022, pg. 3.

³⁶⁶ Republic of Guatemala, Observations of the State of Guatemala on the Draft version of the Report Organized Crime and the Human Rights of Children Adolescents and Young Persons: current challenges and actions taken by the States of northern Central America, December 13, pg. 20.

³⁶⁷ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), 2003, *supra*. Article 252.

³⁶⁸ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *id.* 2003, Article 254.

³⁶⁹ Office of the Prosecutor for Adolescents in Conflict with the Criminal Law, Guatemala, Response of the State of Guatemala to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights regarding measures to reduce violence against children and adolescents from organized crime activities, March 15, 2022, pg. 1.

³⁷⁰ Office of the Prosecutor for Adolescents in Conflict with the Criminal Law, Guatemala, Response of the State of Guatemala to the request for information of the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights regarding measures to reduce violence against children and adolescents from organized crime activities, March 15, 2022, pg. 2.

c) Honduras

229. The Commission observes that Honduras has several modalities of deprivation of liberty. In this regard, it notes that, according to available information, the use of deprivation of liberty at the Pedagogical Internment Centers has been reduced.
230. In Honduras, the Children and Adolescents' Code establishes as custodial measures of punishment, the following: i) home confinement (deprivation of liberty), ii) partial confinement (work and/or school release) and iii) deprivation of liberty at certified or specialized facilities.³⁷¹ Additionally, it provides that deprivation of liberty must be used on an exceptional basis and only when it is not possible to use another punishment and in instances where a serious crime has been committed.³⁷²
231. Home deprivation of liberty takes place in the residence of the adolescent with his or her family, for a period not to exceed 9 months.³⁷³ While partial deprivation of liberty (work and school release) involves children and adolescents serving the punishment of deprivation of liberty on non-business days at a specialized facility without being allowed to engage in activities outside of the facility, for a period of up to 8 months.³⁷⁴
232. Lastly, regarding deprivation of liberty at a specialized state facility or a DINAF certified facility,³⁷⁵ Honduras noted that this measure is applicable when serious threats or violence against persons, life, individual liberty, sexual freedom, aggravated robbery and drug trafficking are involved; or aggravated and serious willful crimes, punished by law with a minimum prison term of above 8 years are involved.³⁷⁶
233. As for legal constraints on the duration of the deprivation of liberty, in cases of adolescents up to ages 16 to 18, the measure may not be less than 6 months or exceed 8 years. Also, for adolescents ages 14 to 15 years old, the measure may not be less than 4 months or exceed 5 years. Lastly, for persons ages 12 to 13 years old, the measure may not be less than 1 month or more than 3 years.³⁷⁷
234. According to information provided by civil society organizations, the inmate population at the Pedagogical Internment Centers (specialized juvenile facilities) has been reduced by more than 50%. In 2017, there was a population of 600 child and adolescent residents, while by March 2022, that

³⁷¹ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), Decree No. 73-96. *Supra.* 1996, Article 195.

³⁷² National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *id.* 1996, Article 201.

³⁷³ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *id.* 1996, Article 202.

³⁷⁴ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *id.* 1996, Article 203.

³⁷⁵ National Congress, Honduras, [Decreto No. 34-2021](#), Decree No. 34-2021. July 16, 2021, Articles 1 and 2.

³⁷⁶ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra.* 1996, Article 204.

³⁷⁷ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *id.* 1996, Article 205.

number had been reduced to 203.³⁷⁸ In addition, according to statistics from the Public Prosecutor's Office, in 2020, 106 children and adolescents were convicted; and in 2021, 123 were convicted.³⁷⁹

235. As for the profile of adolescents deprived of liberty in Honduras, World Vision found that, in 2019, 70% were ages 16 to 18 years old. However, these teenagers claimed to have begun committing crimes from earlier ages, in many instances, beginning at 9 years old. In addition, 23% has completed elementary education, while only 1.2% has completed secondary school;³⁸⁰ 37.8 % reported first time use of drugs at 12 years of age, and 49% ran away from their home at 12 years of age or earlier.³⁸¹ The State further noted that the offenses most committed by children and adolescents from 2020 to 2021 are drug trafficking, with 147 cases, vehicle theft, with 35 cases and illegally carrying firearms with 24 cases.³⁸²

4.3. Greater risk of violence of children and adolescents deprived of liberty

236. The risk of violence to which children and adolescents deprived of liberty are subjected must be assumed as part of the State's special role as guarantor of the human rights of this population group. In this regard, the IACHR will discuss the context of deprivation of liberty and how it is a breeding ground for infringements of the human rights of children and adolescents, where criminal gang activity further aggravates the situation, disrupting and perverting the processes of reentry into society.

237. As a function of its special role as guarantor of persons deprived of liberty, States have the heightened obligation to ensure the rights of children and adolescents in such circumstances.³⁸³ This obligation must involve the eradication of structural violence against children and adolescents deprived of liberty, regardless of what the source of aggression or who the perpetrator is,³⁸⁴ either by action of State agents or third parties, including gang members.³⁸⁵

³⁷⁸ DINAF, Honduras, Response of the Honduran State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures taken to reduce violence against children, adolescents and young people from organized crime activities. August 11, 2022, pg. 9.

³⁷⁹ DINAF, Honduras, *id.* August 11, 2022, pg. 9

³⁸⁰ World Vision, [Niñez y Juventud Privada de Libertad: Entendiendo Realidades](#), [Children and Young Persons Deprived of Liberty: Understanding realities], 2019.

³⁸¹ World Vision, [Niñez y Juventud Privada de Libertad: Entendiendo Realidades](#), *id.* 2019, pgs. 8 and 9.

³⁸² DINAF, Honduras, Response of the Honduran State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures taken to reduce violence against children, adolescents and young people from organized crime activities. August 11, 2022, pg. 8.

³⁸³ IA Court of HR. Matter of the Socio-Educational Internment Facility with respect to Brazil. Resolution of the Inter-American Court of Human Rights of February 25, 2011 ("IA Court of HR. Judgment Matter of Socio-Educational Internment Facility") par. 14.

³⁸⁴ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEASer.LV/II. Doc. 78, July 13, 2011, par. 536.

³⁸⁵ IACHR, Report No. 41/99, Case 11.491, Admissibility and Merits, Minors in Detention, Honduras, March 10, 1999, par. 136.

238. The area of penitentiary systems is one of the spheres where the most violent actions are committed against children and adolescents³⁸⁶ –including gender-based violence.³⁸⁷ The environment in which children are detained can be a form of structural violence, as it undermines the very purpose of the system and seriously jeopardizes the child’s chances of social reintegration upon release.³⁸⁸ The United Nations Human Rights Council has affirmed that the more overpopulated a facility is, the lower the ratio is of prison personnel to children and adolescents held there, and the higher the risk of violence is.³⁸⁹
239. Gangs wield a lot of clout at prison facilities and over the inmates held in them in the States of northern Central America. The IACHR has established that this presence of criminal organizations has turned centers of deprivation of liberty into factors of greater vulnerability and exposure to violence and crime for adolescents, compounding the very problem they are meant to resolve, failing to offer the necessary conditions to prevent recidivism of criminal activities.³⁹⁰ The Commission has noted that the gangs occupy premises in the environs of internment facilities, from where they can engage in illicit activities and reinforce their control over prisons and the surrounding areas.³⁹¹
240. Based on the foregoing, the Commission is concerned about the situation of children and adolescents deprived of liberty in the States of northern Central America. The reports of emerging and structural problems revolve around violations of the right to life and humane treatment, inadequate juvenile justice systems to respond to the phenomenon of crime, strategies of differentiating among and distributing the inmate population under age 18 based on membership in gangs and intermingling them with adults deprived of liberty.
241. Regarding the violations of the rights to life and humane treatment, in 2019, the Commission issued an appeal to Honduras after the violent deaths of 46 persons deprived of liberty, including four adolescents. On this occasion, the IACHR and Office of the UN High Commissioner for Human Rights underscored the obligation to protect the human rights of all persons deprived of liberty, for

³⁸⁶ Inter-American Children’s Institute, [Pautas para la prevención y gestión de la violencia institucional dentro de los Sistemas de Responsabilidad Penal Adolescente](#), [Guidelines for the prevention and management of institutional violence the Criminal Penal Systems]. July 2021, par. 8.

³⁸⁷ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LVII. Doc. 78, *supra*. July 13, 2011, par. 539.

³⁸⁸ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *id.* OEA/Ser.LVII. Doc. 78, *supra*. July 13, 2011, par. 536.

³⁸⁹ Human Rights Council, [Informe conjunto de la Oficina del Alto Comisionado para los Derechos Humanos, la Oficina de las Naciones Unidas contra la Droga y el Delito y la Representante Especial del Secretario General sobre la violencia contra los niños sobre prevención de la violencia contra los niños en el sistema de justicia juvenil y las medidas con las que responder a dicha violencia](#). *Supra*. AHRC/21/25, June 27, 2012, par. 35.

³⁹⁰ IACHR. [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LVII. Doc. 40/15, November 11, 2015, par. 438.

³⁹¹ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 104.

which measures of prevention must be taken and assurances of non-repetition must be offered.³⁹² For its part, the OECD has noted that in El Salvador cases have been reported of young people deprived of liberty being murdered at the orders of gang leaders, from outside of the facilities, which are conveyed through family members acting as intermediaries during visits or when the young people attend case hearings in courts.³⁹³

242. With respect to inadequate justice systems, by way of example, the OECD has reported that the juvenile justice system in El Salvador was designed to deal with adolescent offenders in normal contexts, but has not been brought in line with contexts of high incidence of gang-related violence.³⁹⁴ Notwithstanding, El Salvador has a mechanism in place to deal with complaints of young people at internment facilities when a violation of fundamental rights takes place or when a young offender is subjected to a prohibited disciplinary punishment banned under the law or under the Rules of Internment Facilities.³⁹⁵

243. As for differentiating and distributing inmate children and adolescents based on their membership in criminal groups, the Commission has acknowledged efforts made by the States of northern Central America to reduce violence caused by this situation of grouping children and adolescents at detention facilities based on membership or non-membership in any of the gangs. Thus, this population is housed in separate facilities or different cell blocks, in keeping with the gang they belong to, or with which they are allegedly linked, in order to reduce situations of violence.³⁹⁶

4.4. Conditions of detention of children and adolescents

244. In light of the special protection provided for under Article 19 of the American Convention and Article VII of the American Declaration to children and adolescents deprived of liberty, the States must ensure their right to live in conditions of detention that are compatible with their personal dignity.³⁹⁷ As such, the role of the State as guarantor is of particular importance when the person in detention is a child or adolescent because of the defenselessness inherent to being a minor in such

³⁹² IACHR, Press Release 334/19 - [Ante la declaración del estado de emergencia en materia penitenciaria, CIDH y OACNUDH hacen un llamado urgente al estado de Honduras a proteger la vida e integridad de los privados de libertad en centros penitenciarios y centros pedagógicos](#). [“In response to the declaration of state of emergency in prisons, the IACHR OUNHCHR have issued an urgent call to the State of Honduras to protect the lives and integrity of persons deprived of liberty at prison facilities and pedagogic centers”], Washington DC, December 26, 2019.

³⁹³ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 104.

³⁹⁴ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *id.* 2017, pg. 19. OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *Estudio de bienestar y políticas de juventud en El Salvador*, *id.* 2017, pg. 19.

³⁹⁵ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *id.* 2017, pg. 93.

³⁹⁶ IACHR, [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, pars. 434 and 540; IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), Resolution 17/2017, PM161-17 – Juvenile Centers of Deprivation of Liberty with respect to Guatemala. Guatemala, par. 8; OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 92.

³⁹⁷ IACHR, [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 519.

circumstances.³⁹⁸ Likewise, the protection of the life of the child and adolescent requires the State to become particularly concerned with the living circumstances he or she will endure while being deprived of liberty.³⁹⁹

245. The physical environment where children and adolescents are deprived of liberty must have the proper infrastructure in terms of surface area, ventilation, access to natural and artificial light, drinking water and hygienic facilities and supplies. In particular, children and adolescents deprived of liberty must have easy access to sanitary facilities that are hygienic and private.⁴⁰⁰ In this context, the Commission reiterates that one of the principal obligations of States with respect to detention conditions concerns making sure that the physical space of the facilities that house juvenile offenders respects the dignity and health of the children deprived of liberty.⁴⁰¹
246. Overcrowding can generate friction between inmates and increases the levels of violence in prisons and, as such, crowding may constitute a form of cruel, inhuman and degrading treatment, violating the right to humane treatment.⁴⁰² On this score, the Human Rights Council has noted that overcrowding, the lack of supervision and failure to segregate the more vulnerable children and adolescents contribute to violence between peers, which may be induced by gang membership, or may result from incidents of racism.⁴⁰³ Consequently, measures involving cruel, inhuman or degrading treatment, as well as corporal punishment, confinement to a dark cell, punishment in closed or solitary confinement, reduced food rations, restriction or refusal of contact by the detained child or adolescent with his or her family members, or any other measure that jeopardizes his or her physical or mental health, is prohibited under international law.⁴⁰⁴
247. Moreover, the IA Court of HR has also underscored that for compliance with the State's obligation to effectively guarantee, Member States must contemplate, among other aspects, strategies, appropriate actions and allocation of any resources that may be essential for children and adolescents deprived of liberty to be segregated from adults; for those awaiting trial to be

³⁹⁸ IA Court of HR. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Serie C No. 100 ("IA Court of HR. Bulacio Judgment"), par. 126.

³⁹⁹ IA Court of HR. Matter of the Socio-Educational Internment Facility with respect to Brazil. Resolution of the Inter-American Court of Human Rights of April 26, 2012 ("IA Court of HR. Judgment Matter of Socio-Educational Internment Facility") par. 22.

⁴⁰⁰ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 522.

⁴⁰¹ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *id.* OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 520.

⁴⁰² IACHR, [Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 64, December 31, 2011, par. 455- 460.

⁴⁰³ Human Rights Council, [Informe conjunto de la Oficina del Alto Comisionado para los Derechos Humanos, la Oficina de las Naciones Unidas contra la Droga y el Delito y la Representante Especial del Secretario General sobre la violencia contra los niños sobre prevención de la violencia contra los niños en el sistema de justicia juvenil y las medidas con las que responder a dicha violencia](#). *Supra*. AHRC/21/25, June 27, 2012, par. 43.

⁴⁰⁴ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 548.

segregated from those serving sentences; as well as for the creation of comprehensive education, medical and psychological care programs for all children deprived of liberty.⁴⁰⁵

248. With respect to the particular situation when persons incarcerated as children turn 18 and reach legal age of adulthood, the Commission recommends that a review hearing be held to determine whether the person in question should remain incarcerated or be released, or whether the remaining portion of the sentence should be commuted and replaced with a non-custodial measure. Furthermore, it has recommended such a hearing serve to evaluate the possibility of placing the young person who has reached legal age in a special program to ensure that his or her rights are not violated by transferring him or her to an adult facility, and also to ensure that the rights of the other children are not imperiled by leaving the young adult in the juvenile facility.⁴⁰⁶
249. Based on the international standards cited above and in accordance with available information, the IACHR will lay out the advancements and challenges faced by the States of northern Central America with respect to detention conditions of children and adolescents. Specifically, it will address issues relating to infrastructure; overcrowding; segregation of juveniles age 18 and under from adults deprived of liberty; practices that may entail cruel, inhuman and degrading treatment to detained or incarcerated children and adolescents; and how this population is treated when it turns 18 years old in the custody of the State.
250. As for infrastructure, it has come to the attention of the IACHR that, in El Salvador, poor infrastructure is an obstacle to providing adequate care at the Internment Facilities.⁴⁰⁷ Likewise, in Honduras, civil society sounded the alarm that, in February 2022, due to a lack of budget for INAMI food, telephone, energy, water, internet and fuel services would be suspended at the Juvenile Internment Centers.⁴⁰⁸
251. Additionally, based on official information submitted to the IACHR, since 2018 in Guatemala, the Secretariat of Social Wellbeing has made structural fixes at each detention facility to improve living conditions for children and adolescents deprived of liberty. By way of example, the necessary arrangements were made for the water supply and for each facility to have a physician assigned to it.⁴⁰⁹ Nonetheless, the Ombudsman for Human Rights claimed that at some of the Juvenile Detention Centers some adolescents were sleeping in the library and in the classroom areas due to a lack of space in the dormitories. Furthermore, it observed a lack of areas for relieving oneself and

⁴⁰⁵ IA Court of HR. Case of the “Juvenile Reeducation Institute” v. Paraguay. Judgment of September 2, 2004, Series C, No. 112, par. 161.

⁴⁰⁶ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEASer.LVII. Doc. 78, July 13, 2011, par. 433.

⁴⁰⁷ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 106.

⁴⁰⁸ Association for a More Just Society (ASJ) [@asjhn1]. (February 1, 2022). *Public Pronouncement of the Coalition for the Restoration of Rights of Children in Conflict with the Law* [Tweet]. Twitter. <https://mobile.twitter.com/broadcasts/1BRJjnWnXMwJw>

⁴⁰⁹ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to conditions of imprisonment and pretrial detention in Guatemala, August 6, 2021, pg. 51.

recreation.⁴¹⁰ In its observations on the draft version of this report, Guatemala noted that, as of 2018, the Secretariat of Social Wellbeing has renovated all of the facilities where adolescents in conflict with the law are housed, posting a rate of 0% overcrowding and providing adequate spaces for outdoor activities, workshops, toilets and showers and enhancement of the water pipes for toilets and the installation of water filters for drinking water.⁴¹¹

252. Regarding measures taken that could entail cruel, inhuman and degrading treatment of the children and adolescents held in custody, the IACHR granted precautionary measures in the case of “Juvenile Detention Centers with respect to Guatemala,” in which the petitioner claimed that the facilities “replicate and promote denigrating and abusive practices (...) which have an impact on mental health and also promote a culture of violence;” they do not allow for accessing a suitable life plan for social readaptation and reintegration; expose the children to cruel, inhuman and degrading treatment, including sexual violence, either by facility personnel or their own peers and, in many instances, with the authorities having knowledge of it or failing to bring it under control.⁴¹²
253. The situations of violence exposed in the above-cited case include the use of pepper spray as a form of punishment,⁴¹³ “dungeon-like” sleeping quarters,⁴¹⁴ death threats from prison employees,⁴¹⁵ and forced physical activity.⁴¹⁶ In this context, the IACHR noted that the State must have the prison staff refrain from engaging in acts that may violate the rights of the persons in custody. On the contrary, they have the positive obligation to support the enjoyment of the rights of the persons in detention.⁴¹⁷
254. As for overcrowding, the Commission became aware that the Secretariat of Social Wellbeing created Strategy 19, one pillar of which is “zero overcrowding,” which involves ongoing review of court case

⁴¹⁰ Office of the Ombudsman for Human Rights, Guatemala, [Informe de Supervisión a las instituciones del Sistema de Justicia Penal Juvenil SJPJ](#), Report on Supervision of the institutions of the Juvenile Criminal Justice System SJPJ. September 2020, pgs. 43 and 44.

⁴¹¹ Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and the Rights of Children, Adolescents and Young People, Current challenges and actions taken by the States of northern Central America. December 13, 2022, pg. 21.

⁴¹² IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *supra*. Resolution 17/2017, PM 161-17 *supra*. Guatemala, par. 7.

⁴¹³ IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *supra*. Guatemala, pars. 8 and 23.

⁴¹⁴ IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *id.* Guatemala, pars. 11 and 12.

⁴¹⁵ IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *id.* Guatemala, par. 13.

⁴¹⁶ IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *id.* Guatemala, par. 23.

⁴¹⁷ IACHR, [Resolución 17/2017, MC 161-17 - Centros Juveniles de Privación de Libertad respecto de Guatemala](#), *id.* Guatemala, par. 34.

files, psychological and social work records to make sure that an adolescent is prepared to leave the detention facility. Moreover, in the framework of this strategy, a new facility was opened to support overcrowding reduction at the facilities.⁴¹⁸ Nonetheless, according to statistics from the Office of the Ombudsman for Human Rights of Guatemala, on November 19, 2021, the Juvenile Detention Centers had a total population of 617 children and adolescents, while installed capacity was for 557, which is an overpopulation rate of 11%.⁴¹⁹ In its observations on the draft version of this report, the State of Guatemala noted that as the amendments to custodial punishments are implemented and with the opening of the new Special Deprivation of Liberty Center, it is expected that, in the medium term, no facility will present overcrowding.⁴²⁰

255. With respect to segregation of child and adolescent offenders from each other and from adults and their distribution, the IACHR observes that El Salvador segregates children and adolescents according to sex, age and procedural status and, to the extent possible, minors are not intermingled with adults.⁴²¹ In its observations on the draft version of this report, the State noted that no case has been documented where any adolescent has remained for the period of administrative custody together with adults.⁴²² Nonetheless, the OECD has confirmed cases where such segregation was not carried out. On this score, the Office of the Assistant Director of Social Reintegration of ISNA has claimed that this situation is the result of insufficient budget.⁴²³

256. Additionally, in Guatemala, the Law of Protection of Children and Adolescents establishes that children and adolescents deprived of liberty may never be confined in the same place where other adolescents are serving sentences.⁴²⁴ Notwithstanding, the Office of the Ombudsman for Human Rights has noted that adolescents in pretrial detention and those serving sentences are indeed held together and intermingle at the same detention facilities.⁴²⁵ Furthermore, the Commission notes that the aforementioned law establishes that in order for the temporary internment to be as brief as possible, cases in which an adolescent is held in temporary custody should be given top priority for processing

⁴¹⁸ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to conditions of imprisonment and pretrial detention in Guatemala, August 6, 2021, pg. 50.

⁴¹⁹ Office of the Prosecutor for Human Rights, [Informe Anual Circunstanciado de Actividades y de la Situación de los Derechos Humanos](#), *supra*. 2021, pg. 229.

⁴²⁰ Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and the Rights of Children, Adolescents and Young People, Current challenges and actions taken by the States of northern Central America. December 13, 2022, pg. 22.

⁴²¹ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 92.

⁴²² Republic of El Salvador, Observations of the State of El Salvador on the draft version of the Report Organized Crime and the Rights of Children, Adolescents and Young People, Current challenges and actions taken by the States of northern Central America. December 13, 2022, pg. 2.

⁴²³ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 106.

⁴²⁴ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *supra*. 2003, Article 182.

⁴²⁵ Office of the Ombudsman for Human Rights, [Informe Anual Circunstanciado de Actividades y de la Situación de los Derechos Humanos](#), *supra*. 2021, pg. 230.

and adjudication.⁴²⁶ Nonetheless, in 2020, the Ombudsman for Human Rights found adolescents who had been deprived of liberty for more than 6 months, who were still awaiting final sentencing.⁴²⁷

257. By the same token, Honduran law ensures that children and adolescents serving sentence have the right to be segregated from adults ages 18 and older.⁴²⁸ Moreover, the population deprived of liberty is supposed to be segregated by sex and based on whether they are being held in pretrial detention or are serving sentence. Furthermore, juveniles in custody are supposed to progressively be segregated by age group.⁴²⁹
258. When the prison population turns 18 years old, the Commission notes that, in El Salvador, young inmates who reach legal age while serving a prison sentence remain at the social reintegration facilities of the ISNA. However, when they need any kind of specialized treatment or pose a risk to the other children and adolescents, they are transferred to the Rehabilitation Farm of Ilobasco, which only houses adults and is the first facility to not segregate the population by whether the inmate is a gang member or not.⁴³⁰
259. In Honduras, the Children's and Adolescents' Code establishes that when young inmates turn 18, they are segregated from other children and adolescents, but they are not placed with adults.⁴³¹ For this purpose, the State reported to the Commission about the construction of the Intermediate Center for young people 18 years and older at the El Carmen Center in San Pedro Sula.⁴³²
260. Finally, in Guatemala the Law of Protection of Children and Adolescents establishes that, when an adolescent deprived of liberty turns 18 years old while in custody, he or she must be separated from adolescents or be transferred to a special facility for such purpose.⁴³³

⁴²⁶ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *supra*. 2003, Article 183.

⁴²⁷ Ombudsman for Human Rights, Guatemala, [Informe de Supervisión a las instituciones del Sistema de Justicia Penal Juvenil SJPJ](#), [Supervision Report on the institutions of the Juvenil Penal Justice System], September 2020, pg. 45.

⁴²⁸ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), [Decree No. 73-96 Children's and Adolescents' Code]. 1996, Article 180.

⁴²⁹ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra*. 1996, Article 256.

⁴³⁰ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 92.

⁴³¹ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra*. 1996, Article 256.

⁴³² DINA, Honduras, Response of the Honduran State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children and adolescents from organized crime activities, August 11, 2022, pg. 14.

⁴³³ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *supra*. 2003, Article 261.

C. Use of social reintegration measures for criminal offenses committed by children and adolescents

261. The IACHR has asserted that international human rights law requires the creation of a specialized juvenile justice system for treating juvenile offenders based on restorative justice and rehabilitation of the youngster through socio-educational measures, rather than the traditional punitive and retributionist approach of criminal law.⁴³⁴ As such, States have an obligation to establish, as part of their juvenile justice systems, services to make it easier for children deprived of their liberty to rejoin their community.⁴³⁵
262. Part of these services must include access to educational programs without discrimination.⁴³⁶ The Inter-American Principles on the Protection of Persons Deprived of Liberty in the Americas Establishes that primary or basic education must be free for persons deprived of liberty, particularly for children.⁴³⁷ The Commission notes that a child's right to education cannot be limited or restricted by criminal responsibility for reasons or excuses of applying a punishment for conduct.⁴³⁸
263. Additionally, the IIN has noted that job or vocational training is especially important when considering the need for a criminally responsible child's or adolescent's reintegration into society and life plan. In this regard, youth criminal law offenders in juvenile justice systems face a bleak outlook inasmuch as they are very often housed in prison facilities where training opportunities are few and far between.⁴³⁹
264. On this score, the Commission has affirmed that re-assimilation services must be available for all children and adolescents who regain their freedom, whether they do so through an early release program or probation, or after serving their sentence. States must also provide adequate funding for those services so that they can be effective.⁴⁴⁰
265. The Commission acknowledges progress in the reintegration of children and adolescents who have been deprived of liberty in the States of northern Central America. Nonetheless, it cautions that, even though their regulations envisage the rehabilitation and social reintegration function in their juvenile

⁴³⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 556.

⁴³⁵ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 573.

⁴³⁶ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *id.* OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 493.

⁴³⁷ IACHR. [Principios y Buenas Prácticas sobre la Protección de las Personas Privadas de Libertad en las Américas](#), Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. March 14, 2008, Principle XIII.

⁴³⁸ Inter-American Children's Institute, [Pautas para la prevención y gestión de la violencia institucional dentro de los Sistemas de Responsabilidad Penal Adolescente](#), *supra*. July 2021, par. 149.

⁴³⁹ Inter-American Children's Institute, [Pautas para la prevención y gestión de la violencia institucional dentro de los Sistemas de Responsabilidad Penal Adolescente](#), *id.* July 2021, par. 146.

⁴⁴⁰ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, par. 573.

justice systems, often, in practice, such a function does not fully abide by those principles, due to the limited availability of such programs and to the internal management model of facilities, which is inconsistent with these principles, including the lack of trained personnel to deal with adolescents in conflict with the law.⁴⁴¹ Next, the IACHR will provide an explanation of the different reintegration programs for this population, that are available in El Salvador, Guatemala and Honduras.

a) El Salvador

266. With respect to El Salvador, the Commission confirms that several projects are under way to aid in the reentry into society of children and adolescents in conflict with the law. The IACHR will report on these projects, as well as the challenges that were faced in the context of their implementation and the difficulties faced by adolescents in re-assimilating into society in El Salvador.

267. The Commission has learned that the Framework Program for Comprehensive Assistance to Adolescents Subject to Juvenile Criminal Responsibility guides the implementation of operational subprograms of formal and informal education, food and nutrition, health, psychosocial care, family counseling, legal assistance, life skills development and security assistance; each of which would be used at different stages of care in juvenile criminal proceedings.⁴⁴²

268. Specifically, children and adolescents on work or school release receive support to help them remain in the education system and enhance their employability. These actions are carried out without removing them from their nuclear family and social group, because the fundamental role of their environment in the process of reintegration is recognized.⁴⁴³

269. With respect to young people deprived of liberty, the Commission learned of the Social Integration Pioneer Project (*Proyecto Pionero en Inserción Social*), which has been implemented at the Social Integration Center of Tonacatepeque, which is based on a model of social reintegration for adolescents and young people with a history of gang affiliation. Under this project, cases are dealt with on an individualized basis with a plan for each participant, which includes education, health, nutrition, and psychosocial assistance, as well as vocational training in areas such as art, culture, sports, community services, training on gender or masculinity and ecumenical spiritual strengthening.⁴⁴⁴

⁴⁴¹ IACHR, [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 439.

⁴⁴² UNESCO, [Educación de jóvenes en situación de privación de libertad en El Salvador](#). [Education of youth deprived of liberty in El Salvador]. 2020, pg. 29.

⁴⁴³ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 19.

⁴⁴⁴ UNDP, [“Presentan modelo de inserción social para adolescentes y jóvenes en Tonacatepeque”](#). [‘Model of social integration for adolescents and young people in Tonacatepeque presented’], September 16, 2021.

270. The Juvenile Criminal Law establishes that schooling, job training and recreation are mandatory at the Internment Centers.⁴⁴⁵ In this regard, UNESCO reported that, in 2020, there were 451 residents who were studying at the Educational Centers of the juvenile facilities.⁴⁴⁶ Additionally, it noted that in order to avoid conflicts between children and adolescents belonging to different gangs, the teaching staff arranges for different gang affiliated groups to enter the Educational Centers on different schedules.⁴⁴⁷ Nevertheless, precariousness in the size of teaching staff, the physical space, the number of classrooms and available furnishings renders it impossible to provide education to the entire student population.⁴⁴⁸ In addition, UNESCO found that gang leaders within internment facilities influenced class attendance through the control they wield over the students.⁴⁴⁹
271. According to the OECD, one challenge to the implementation of support programs in El Salvador is that the offering is uneven throughout the country and from one Internment Center to another, due to a lack of resources, management problems at internment facilities, and the failure of some social sectors to become involved in supporting the reintegration process. Additionally, a lack of specialized personnel poses challenges at juvenile internment facilities.⁴⁵⁰
272. Also, according to UNDP, the chances of persons 18 and older of becoming rehabilitated are lower than for adolescents because these youngsters are mostly sentenced to punishments of confinement.⁴⁵¹ Young people in conflict with the law who have served their punishment face a variety of challenges in the job market because they only have a basic education or receive inadequate job training and are thus unable to compete with other young people. Moreover, they have no prior work experience and the diplomas awarded by the internment facilities can brand them with a stigma.⁴⁵²
273. As for stigmatization, the Commission observes that young people who have been gang members are often tattooed, which makes it harder for them to reenter society due to the stigma attached to these markings in the mind of the community and potential employers.⁴⁵³ Moreover, the gangs themselves may readily identify them as “deserters” and retaliate.⁴⁵⁴

⁴⁴⁵ Legislative Assembly, El Salvador, [Ley Penal Juvenil Decreto N° 863](#), [Juvenile Penal Law Decree No. 863], June 6, 1994, Article 120.

⁴⁴⁶ UNESCO, [Educación de jóvenes en situación de privación de libertad en El Salvador](#), *supra*. 2020, pg. 9.

⁴⁴⁷ UNESCO, [Educación de jóvenes en situación de privación de libertad en El Salvador](#), *id.* 2020, pg. 24.

⁴⁴⁸ UNESCO, [Educación de jóvenes en situación de privación de libertad en El Salvador](#), *id.* 2020, pg. 25.

⁴⁴⁹ UNESCO, [Educación de jóvenes en situación de privación de libertad en El Salvador](#), *id.* 2020, pg. 9.

⁴⁵⁰ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 19.

⁴⁵¹ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?](#), *supra*. 2018, pgs. 225 and 226.

⁴⁵² OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pgs. 19 and 20.

⁴⁵³ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *id.* 2017, pg. 85.

⁴⁵⁴ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *id.* 2017, pg. 105.

274. In this context, it came to the attention of the Commission that the National Youth Institute (INJUVE) offers a Comprehensive Program for Tattoo Removal, involving the physical removal of tattoos and psychological support for young people at risk of social exclusion. Testimonials of beneficiaries of this program claim that tattoo removal has enabled them to enter the job market or improve their employment situation; that interpersonal communication and relations with people outside of their nuclear family improved; and that it has prevented them from being the victims of assaults on their lives and that of their family.⁴⁵⁵

b) Guatemala

275. By the same token, the Commission has ascertained that a legal framework is in place in Guatemala providing for a variety of measures aimed at the reintegration of children and adolescents. Nonetheless, it was unable access information pertaining to the results of this framework. Thus, hereunder, the Commission conveys the information that was available to it.

276. The Political Constitution of Guatemala establishes that the treatment of children and adolescents who break the law must be geared toward comprehensive education.⁴⁵⁶ This provision also establishes that when an adolescent is soon to be released from a prison facility, he or she must be prepared for release, with the assistance of social workers, psychologists and psychiatrists at the facility; as well as with the collaboration of their parents and family members, when possible.⁴⁵⁷

277. In this regard, the Commission has asserted that reintegration into the community should not begin when children leave the community, but as has been stressed throughout this report, these programs must begin immediately after the sentencing and must be implemented for as long as the deprivation of liberty lasts.⁴⁵⁸

278. The Commission learned that the purpose of the Directorate of Tertiary Prevention is to enable juveniles in conflict with the law to acquire abilities and skills, by empowering them with new opportunities for social, educational and job integration. This assistance covers a timeframe of 6 months prior to, and up to 6 months after, completing sentence, during which adolescents are assisted through the Post-Sentence Execution Program, which provides psychological care, counselling and educational support, job intermediation and entrepreneurship and violence prevention workshops.⁴⁵⁹

⁴⁵⁵ OECD, [Estudio de bienestar y políticas de juventud en El Salvador](#), *supra*. 2017, pg. 105.

⁴⁵⁶ Guatemala, [Constitución Política de la República de Guatemala](#), Political Constitution of the Republic of Guatemala, 1985, Article 20.

⁴⁵⁷ Congress of the Republic, Guatemala, [Decreto 27-2003 Ley de Protección de la Niñez y Adolescencia](#), *supra*. 2003, Article 263.

⁴⁵⁸ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEASer.LVII. Doc. 78, July 13, 2011, par. 575.

⁴⁵⁹ Presidential Commission for Peace and Human Rights, Guatemala, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights on measures to reduce violence against children and adolescents from organized crime activities, March 24, 2022, pg. 10.

279. The State of Guatemala also reported to the IACHR about the creation of Casa Intermedia [‘Intermediate House’], which acts as a type of halfway house, from which adolescents can leave to go to work or school with a judge’s authorization. Additionally, adolescents have access to psychological treatment, group therapy and medical care to make their reentry into society comprehensive.⁴⁶⁰
280. Additionally, Strategy 19, which has been implemented at Casa Intermedia, includes reintegration initiatives, such as “Zero Illiteracy,” which helps to find decent employment for those who have not finished serving their sentence, to be able to support their families and not become repeat offenders. Under this framework, children and adolescents receive elementary to university education.⁴⁶¹ Coupled with that initiative, arrangements have been made to secure national and international cooperation for scholarships to enhance the reintegration process.⁴⁶² In addition, the “Dame Chance” [‘Give me a Chance’] strategy involves a campaign to do away with stigmas against young people in conflict with the law, providing them tools to help them to attain true readaptation and re-assimilation into society.⁴⁶³
281. Furthermore, in its observations on the draft version of this report, Guatemala noted that the Secretariat for Social Wellbeing, through the Office of the Undersecretary for Reintegration and Reentry into Society (*Subsecretaría de Reinserción y Resocialización*), is working on the process of re-assimilating into society of adolescents in conflict with the law through an inclusive, restorative and rights based approach, doing away with the criminalizing and stigmatizing approach, taking into account that they are not legally not subject to criminal responsibility.⁴⁶⁴ Likewise, it noted that the Directorate for Tertiary Prevention carries out programs to strengthen the process of reassimilation and reentry into society of adolescents who complete their custodial and non-custodial sentences, with a mind toward developing abilities, skills and aptitudes for new opportunities in society and to prevent recidivism.⁴⁶⁵

⁴⁶⁰ Presidential Commission for Peace and Human Rights, Guatemala, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights on measures to reduce violence against children and adolescents from organized crime activities, March 24, 2022, pg. 7.

⁴⁶¹ Secretariat of Social Wellbeing of the Republic, Guatemala, “[Así funciona la estrategia 19 en la rehabilitación y reinserción de jóvenes](#)”, [‘This is how Strategy 19 works in the rehabilitation and reintegration of young people’], June 12, 2019.

⁴⁶² Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and Children’s and Adolescents’ Rights: Current challenges and actions taken by the States of northern Central America, December 13, 2022, pg. 23.

⁴⁶³ Secretariat of Social Wellbeing of the Republic, Guatemala, “[Así funciona la estrategia 19 en la rehabilitación y reinserción de jóvenes](#)”, *supra*, June 12, 2019.

⁴⁶⁴ Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and Children’s and Adolescents’ Rights: Current challenges and actions taken by the States of northern Central America, December 13, 2022, pg. 14.

⁴⁶⁵ Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and Children’s and Adolescents’ Rights: Current challenges and actions taken by the States of northern Central America, December 13, 2022, pg. 24.

282. Notwithstanding, the Ombudsman for Human Rights of Guatemala has cautioned that segregation by gang ties results in adolescents from the same mara or gang being grouped together in the same space, thus reinforcing membership and the sense of identification with the group and making it harder for them to successfully complete the process of readaptation and socio-family reintegration.⁴⁶⁶ In addition, young people and adolescents who have left the maras and gangs have often been compelled to emigrate in order to protect themselves from violation of their right to life and the right to humane treatment, as their physical integrity continues to be vulnerable.⁴⁶⁷

c) Honduras

283. In relation to Honduras, the Commission obtained little information about reintegration measures. Based on the scarce information provided to it, the programs and challenges are explained below.

284. The Commission learned of the National Program of Prevention, Rehabilitation and Social Reintegration, whose purpose it is to rehabilitate and re-assimilate into society individuals who have been gang or mara members, so they are able to become law-abiding and socially responsible citizens with self-esteem, in both the private and public spheres.⁴⁶⁸ In this regard, the Commission received information that the INAMI is engaged in drafting a Social Reintegration Policy for adolescents and young people in conflict with the law, which is in the final stage of approval. This policy would include programs for adolescents linked to organized crime.⁴⁶⁹

285. Additionally, the Program of Formal and Informal Education at the Pedagogic Centers is responsible for continuity in the schooling of child and adolescent offenders in the formal and informal education systems.⁴⁷⁰ In this framework, the State reported on the opening of the Manuel Castillo Girón Comprehensive Education Program Center, which has education programs up to and including the

⁴⁶⁶ Prosecutor for Human Rights, Guatemala, [Informe de Supervisión a las instituciones del Sistema de Justicia Penal Juvenil SJPJ](#), *supra*. September 2020, pg. 231.

⁴⁶⁷ Republic of Guatemala, Observations of the State of Guatemala on the draft version of the Report Organized Crime and Children's and Adolescents' Rights: Current challenges and actions taken by the States of northern Central America, December 13, 2022, pg. 13.

⁴⁶⁸ Legislative Branch, Honduras, [Decreto No. 141-2001 Ley para la prevención, rehabilitación y reinserción social de personas integrantes de pandillas o maras](#), [Decree No. 141-2001 Law for the prevention, rehabilitation and social reintegration of gang and mara members], December 18, 2001, Article 1.

⁴⁶⁹ DINAf, Honduras, Response of the Honduran State to the request for information of the Inter-American Commission on Human Rights in light of Article 41 of the American Convention on Human Rights about measures to reduce violence against children and adolescents from organized crime activities, August 11, 2022, pg. 14.

⁴⁷⁰ National Institute for the Care of Juvenile Offenders, Honduras, [Instituto Nacional para la Atención a Menores Infractores INAMI](#), *supra*. s.f.

secondary school level, with degree programs in finance, computer science and humanities, certified by the Secretariat of Education.⁴⁷¹

286. Nonetheless, civil society organizations claimed that reintegration processes had been suspended in February 2022, due to the lack of budget.⁴⁷² On this score, the Commission reiterates its appeal to the States to provide sufficient financial and human resources to programs aimed at making it easier for the children to return to the community after serving sentences of deprivation of liberty.⁴⁷³

⁴⁷¹ DINAF, Honduras, Response of the Honduran State to the request for information of the Inter-American Commission on Human Rights in light of Article 41 of the American Convention on Human Rights about measures to reduce violence against children and adolescents from organized crime activities, August 11, 2022, pg. 14.

⁴⁷² Association for a More Just Society (ASJ) [@asjhn1]. (February 1, 2022). *Public statement of the Coalition for the restoration of the rights of children in conflict with the law* [Tweet]. Twitter. <https://mobile.twitter.com/broadcasts/1BRJjnWnXMwJw>

⁴⁷³ IACHR. [Justicia Juvenil y Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II. Doc. 78, July 13, 2011, pg. 178.

Chapter 4

Responses and obligations of the States with respect to organized crime from a perspective of the rights of children and adolescents

Responses and obligations of the States with respect to organized crime from a perspective of the rights of children and adolescents

288. In this chapter, the Commission will describe the efforts of States in the area of prevention, special protection and restorative measures of the rights of children and adolescents in light of organized crime activities, as well as the challenges faced by the States of northern Central America in this regard.
289. From a standpoint of prevention and comprehensive protection, the IACHR notes that special legal provisions and programmatic policies for the protection of children and adolescents and, in some instances, young people, exists in the States of northern Central America. However, the results and effectiveness thereof have not been reported. Accordingly, as will be explained later in this report, civil society organizations and human rights bodies have expressed concern over the patchwork of public policies on the subject, the lack of institutional leadership and of the sustainability of specific community interventions over time.
290. With respect to measures of restoration of rights and reparation, the Commission finds that the States of northern Central America have approved measures to adapt their systems of reporting, case processing and institutional redesign for children and adolescents and, as appropriate, young people, to be able to access justice. Notwithstanding, the efforts reveal worrisome limitations on the participation of these populations, which are at odds with international standards, such as not taking their complaints seriously and a failure to ensure their fair trial rights in terms of the best interests of the child. As for children and adolescents linked to punitive systems and criminal justice, the Commission deems it necessary to use a non-revictimizing approach and to protect this population from potential recapture by criminal groups.
291. As for the challenges to providing comprehensive protection, the IACHR has identified that the lack of attention to the root causes of the violence, the lack of comprehensive protection of children and adolescents; the lack of an institutional framework and capture of the State by the criminal groups; as well as, recruitment into the groups, are all pressing and top tier concerns in terms of the involvement of children and adolescents and, at times young people, in organized crime in northern Central America.
292. Next, the Commission will flesh out each of the points relating to prevention, comprehensive protection and measures of access to justice and reparation for children and adolescents and young people affected by organized crime; as well as the challenges in this regard in northern Central America. For this purpose, the IACHR will examine the information provided by the States in terms of international law standards on the subject matter; taking into account as well the information gathered through ongoing monitoring and provided by civil society organizations.

A. Measures taken by the States to prevent and combat violence against children and adolescents committed by organized crime groups

292. In the previous chapter, the IACHR discussed the situation of risk faced by children and adolescents who are targeted for recruitment by organized crime. In this vein, it explained the need for the States to take adequate measures to neutralize the threat of violations of the human rights of this population stemming from the operations of organized crime groups, in terms of the general obligation to ensure human rights.
293. However, beyond the points raised earlier in this report, the duty of prevention also entails the obligation of addressing the root or structural causes that impact the security of the persons affected by threats.⁴⁷⁴ In order to fulfill this obligation, the State must investigate “immediately, exhaustively, seriously and impartially” to identify “where the threats come from” and punish, to the extent possible, “those responsible, with the aim of trying to prevent the threats from being carried out.”⁴⁷⁵
294. The IACHR has asserted that the duty of prevention and citizen security is a multidimensional effort. In this regard, the duty of prevention encompasses every possible measure of a legal, political, administrative and cultural nature to safeguard human rights under the leadership of law enforcement and specialized public agencies.⁴⁷⁶ Under this premise, the state’s interventions must lead to a comprehensive approach, including preventive measures to address a shift from a culture that makes conditions ripe for replicating violence and high levels of exclusion and marginalization, which the Commission has acknowledged to have seriously torn apart the social fabric over the past decades in the region of the Americas.⁴⁷⁷
295. Among the multidimensional factors, the State must take into consideration reducing violence against children and adolescents. The IACHR has acknowledged that public policies on the protection of this population in northern Central America must be formulated with respect for the principles of comprehensive protection and the best interests of the child.⁴⁷⁸ Furthermore, build-up of vulnerabilities, rights violations and different forms of victimization make interventions more

⁴⁷⁴ IACHR. [Informe No. 2520. Caso 12.780. Fondo \(Publicación\). Carlos Arturo Betancourt Estrada y familia](#). Report No. 2520. Case 12.780. Merits (Publication). Carlos Arturo Betancourt Estrada and Family. Colombia. April 22, 2020, par. 79; CIDH, [Informe No. 35/16. Caso 12.713. Fondo. Jose Rusbel Lara y Otros](#), Report No. 35/16, Case 12.713. Merits. Jose Rusbel Lara et al. Colombia. March 21, 2017, par. 152.

⁴⁷⁵ IACHR, [Informe sobre la Situación de Defensores y Defensoras de los Derechos Humanos en las Américas](#), *supra*. OEA/Ser.LV/II.124, Doc. 5, March 17, 2006, par. 47.

⁴⁷⁶ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 286; IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 41.

⁴⁷⁷ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *id.* OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 59.

⁴⁷⁸ IACHR, Press Release No. 26/04 - [Comisión Interamericana de Derechos Humanos y UNICEF expresan preocupación por la situación de los Niños, Niñas y Adolescentes vinculados a pandillas o maras en El Salvador, Guatemala y Honduras](#). [Inter-American Commission on Human Rights and UNICEF express concern over the situation of children and adolescents linked to gangs and maras in El Salvador], Washington DC, December 4, 2004.

complex. For the design of adequate prevention and violence reduction policies, it is essential to identify risk factors and protection factors that have a bearing on the phenomenon. Additionally, the States must create mechanisms to gather sufficient and rigorous information and data to allow for a thorough review of the issue,⁴⁷⁹ and allow for the participation of the populations concerned.⁴⁸⁰

296. In contexts of organized crime and criminal gangs, the States must take into consideration the phenomena as it relates to children and adolescents. In the view of the IACHR, public policies should take into consideration the risk factors that lead to the emergence of violent gangs and the involvement of children and adolescents in them. The failure to strengthen protection and prevention results in violent gangs proliferating, turning more organized, continuing to recruit children and adolescents, and transforming into more complex and challenging phenomena to law enforcement, democratic institutions and human rights protection.⁴⁸¹ Citizen security policies must be coordinated with crime prevention institutions. By the same token, the Commission has asserted that prevention of crime, delinquency and insecurity must include the promotion of education, especially in schools, as well as raising greater awareness about the different stakeholders in the prevention of crime, violence and insecurity,⁴⁸² and identifying and addressing the factors that enable the replication of violence at the local level.⁴⁸³ In this same vein, the responses that may be offered by the States in the areas of prevention, control and law enforcement must give priority to protection and effective guarantees for children and to the restitution of their rights.⁴⁸⁴
297. The IACHR has documented several successful experiences in the region in terms of violence prevention in contexts of citizen insecurity, targeting at-risk populations and institutional strengthening. With respect to the protection of at-risk populations, the IACHR has reported on measures to reduce alcohol use, bearing of firearms, urban redesign, maintaining user friendly public spaces, creation of job exchanges, developing non-violent conflict resolution skills at educational facilities, creating early childhood development and support programs for families with children, adolescents and young men and women in situations of greater vulnerability to crime and violence. In the institutional arena, implementing programs to improve the rapport between the police and local communities, creating follow-up indicators and instruments to information generation, have been identified as important.⁴⁸⁵

⁴⁷⁹ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 200.

⁴⁸⁰ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 208.

⁴⁸¹ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 178.

⁴⁸² IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 59.

⁴⁸³ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *id.* OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 60.

⁴⁸⁴ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 179.

⁴⁸⁵ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.LV/II. Doc. 57, December 31, 2009, par. 60.

298. Among prevention policies, education policy is essential vis-à-vis the threats to which children, adolescents and young people are exposed from organized crime. On this note, the IACHR has mentioned the importance of ensuring access to and completion of primary and secondary school, as well as offering opportunities for skills development and vocational training.⁴⁸⁶ Likewise, it is essential to identify strategies that help to reduce exposure to the risk of organized crime through school, such as lengthening the school day, making schooling more challenging, and incorporating after-school extracurricular activities.⁴⁸⁷

299. Next, the IACHR will discuss the principal activities reported by the States concerned in the instant report on the subject of organized crime and infringements of the rights of children and adolescents and, as appropriate, of young people.

a) El Salvador

301. Based on the information to which it has had access, the IACHR notes that the prevention measures in El Salvador have lacked continuity and sustainability over time and, in some instances, have not gone beyond the pilot phase or been replicated nationwide. Next, the IACHR will spotlight the salient points of these measures.

302. The IACHR was informed that the “Projóvenes” program, despite nationwide implementation, eventually lost its integral components and has even become a short-term populist program.⁴⁸⁸ A similar description was given about the “Centros de Alcance,” which were created to engage directly with young persons and determine what motivated them to join criminal organizations. However, according to reports to the Commission, the program ended up becoming “deconfigured” [‘disfigured’], as it was coopted by criminal groups.⁴⁸⁹

303. The IACHR has taken note that the governments have not given priority to the necessary social, economic and integration investment to eradicate violence. Thus, according to the information received by the Commission, during the period of government from 2014-2019, the “Safe El Salvador Plan (“Plan El Salvador Seguro”) attempted to focus crime prevention, prosecution and victim assistance efforts on the municipalities with the highest rates of crime and exclusion; nonetheless, these efforts were insufficient or were not implemented on a mass scale and, therefore, had very little impact on the root or structural causes of the violence. According to the information, the Plan was accompanied by a highly repressive policy, that reportedly resulted in an alarming rise in extrajudicial executions, arbitrary detentions, ill-treatment, torture, as well as forced disappearances.

⁴⁸⁶ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 533.

⁴⁸⁷ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 533.

⁴⁸⁸ Information provided to the IACHR at virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁴⁸⁹ Information provided to the IACHR at virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

These actions have also damaged confidence in law enforcement institutions, particularly the police, creating a climate of confrontation and violence between State institutions and the population.⁴⁹⁰

304. During the current term of government (2019-2024) the Territorial Control Plan has been implemented; however, it has remained classified. According to information gathered by the Commission, the Plan includes the creation of the “Urban Center of Wellbeing and Opportunities (CUBO from its Spanish-language acronym) throughout national territory, which is similar in its design to other previously implemented interventions, but reportedly does not attack the root causes of violence.⁴⁹¹ Even though the IACHR takes a positive view of the reduction in homicides with the implementation of the aforementioned Plan, it has also been concerned over the lack of mechanisms of citizen participation, as well as the lack of transparency in its design, implementation and effectiveness.⁴⁹²
305. In its observations on the draft version of this report, El Salvador noted that the CUBOs are spaces within the most vulnerable communities, where the development of the population is promoted through healthy relaxation, fostering literature, arts and culture and information and communication technology. The State also reported that currently there are 5 CUBO units in operation, and another 6 will soon be opened. Since their opening on November 13, the State has recorded a total of 134,254 users have visited them.⁴⁹³
306. According to information gathered by the Commission, the Directorate of Reconstruction of the Social Fabric is the agency responsible for endeavoring to get children and adolescents to sever their ties with gangs. Nonetheless, experts have asserted that as of the present date, the policies, programs or plans to guide the work of the above-referenced Directorate have not been made public. According to information reported to the IACHR, the only plan that is known is the “Zero Idle Time Plan” (Plan Cero Ocio), although the impact of its implementation is unknown.⁴⁹⁴
307. By the same token, international development and human rights agencies have reported on prevention efforts through the creation of opportunities for children, adolescents and young people. Specifically, UNDP and the OECD Development Centre have reported on the advancements of the “Jóvenes con Todo” program targeting the adolescent and youth population (ages 15-29 years old) who are unemployed, underemployed or are completing their middle school education. According to reports, the program seeks to provide access to skills training opportunities and services to improve their chances of entering the job and national production market by boosting their employability.

⁴⁹⁰ Information provided to the IACHR at virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁴⁹¹ Information provided to the IACHR at virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁴⁹² IACHR, [Situación de derechos humanos en El Salvador](#), *supra*. OEA/Ser.L/V/II. Doc. 2/78 October 14, 2021, par. 3.

⁴⁹³ Republic of El Salvador, Observations of the State of El Salvador on the Draft of the Report “Organized Crime and the Rights of Children and Adolescents: Current challenges and actions taken by the States of northern Central America, November 29, 2022, pg. 2.

⁴⁹⁴ Information provided to the IACHR at virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

According to the information received, the program has reached 15,810 individuals over the past two years, 49% of whom are women; 14% young mothers with children 6 years and under; 0.8%, persons with disabilities and 0.5%, LGBTI persons.⁴⁹⁵ The OECD Development Center has highlighted the intersectoral nature of the program and involves different private sector stakeholders, although it is notable that the program does not link to the family, school or community and it does not appear to take a gender-based approach.⁴⁹⁶

308. On this same topic, the OECD Development Centre has published information on advancements in the development of education, employment and violence prevention policies in El Salvador. In the area of education, it has highlighted school and food package grant programs.⁴⁹⁷ As for violence prevention and social reintegration, it noted that many programs on these subject matters are beneficiaries of large funding grants and are implemented along with civil society organizations and international cooperation agencies.⁴⁹⁸

309. Lastly, in the area of citizen security, the IACHR notes that the “Cuscatlán Plan” includes a prevention and rehabilitation and social reintegration component. According to the Plataforma por la Seguridad Pública, the lines of action focusing on prevention and reintegration offer similar proposals in that they are intended to create differentiated opportunities to improve the living conditions of the target populations. Based on the information reported, the Plan is focused on the protection of children and adolescents; while, the other initiatives, are focused on young people and persons formerly deprived of liberty.⁴⁹⁹

b) Guatemala

310. Based on the information to which it had access, the IACHR observes that prevention measures in Guatemala are geared toward designing programmatic and institutional policies for the protection of children and adolescents from different forms of violence, as well as the adoption of education and training programs and plans on the subject matter. Next, the IACHR will highlight the most salient points of these measures.

311. The State of Guatemala has informed the Commission that in 2018 it adopted the National Policy for the Comprehensive Protection of Children and Adolescents 2017-2032. According to the information,

⁴⁹⁵ UNDP, [Informe sobre Desarrollo Humano El Salvador 2018 ¡SOY JOVEN! ¿Y ahora qué?.](#) *supra.* 2018, pg. 198.

⁴⁹⁶ OECD, [Estudio de bienestar y políticas de juventud en El Salvador.](#) *supra.* 2017, pgs. 16 and 17.

⁴⁹⁷ OCDE, [Estudio de bienestar y políticas de juventud en El Salvador.](#) *id.* 2017, pg. 60.

⁴⁹⁸ OCDE, [Estudio de bienestar y políticas de juventud en El Salvador.](#) *id.* 2017, pg. 62.

⁴⁹⁹ Plataforma para la Seguridad Ciudadana, [Informe sobre seguridad ciudadana en El Salvador: medición de indicadores 2018-2020](#), [Report on citizen security in El Salvador: indicator measuring 2018-2020], September 2021, pgs. 22-23.

this policy is coordinated by the National Children's and Adolescents' Commission and is linked to other existing policies on the subject matter.⁵⁰⁰

312. Additionally, the State reported implementing the “Crime and Violence against Children and Adolescents Prevention Program at educational facilities.” The program seeks to keep children and adolescents from ending up at juvenile detention centers through counselling and awareness raising about the dangers posed by joining a criminal group or using illegal substances. According to reports, young people receive psychological care, counselling and educational support, as well as job placement support, through a multidisciplinary team to help provide assistance in social, labor, educational and family reintegration.⁵⁰¹ The program includes a prevention component at schools called “Safe Schools Program” (Programa Escuelas Seguras), which seeks to do away with firearms at educational facilities and to keep children and adolescents from getting involved in criminal acts.⁵⁰²
313. The Guatemalan State reported to the Commission about several educational activities on the subject of crime prevention, but they were disrupted by the pandemic. In this regard, the State told the IACHR that some crime prevention programs targeting young people, as well as schools for parents, are coordinated by the Secretariat of Social Wellbeing with the participation of the Public Defense Institute.⁵⁰³
314. In the area of prevention of criminal offenses committed by children and adolescents in conflict with the law, the State reported about implementation the “Inter-institutional Strategic Plan.” According to the information, the plan coordinates the intervention of several bodies of the justice administration system⁵⁰⁴ for the purpose of contributing to the protection of the rights of adolescents in contact with the justice system and strengthening the Juvenile Criminal Justice System through the Juvenile Criminal Justice High Level Working Group, which coordinates the different work plans on the subject matter.⁵⁰⁵

⁵⁰⁰ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to the conditions of detention and pretrial custody in Guatemala, August 6, 2021, pgs. 8-9.

⁵⁰¹ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to the conditions of detention and pretrial custody in Guatemala, August 6, 2021, pgs. 10-11,

⁵⁰² Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to the conditions of detention and pretrial custody in Guatemala, August 6, 2021, pg. 11.

⁵⁰³ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to the conditions of detention and pretrial custody in Guatemala, August 6, 2021, pgs. 10-11.

⁵⁰⁴ The following bodies are mentioned: the Judiciary, the Public Prosecutor's Office, the Criminal Public Defender, the Ombudsman for Human rights and the Secretariat of Social Wellbeing of the Office of the President.

⁵⁰⁵ Presidential Commission for Peace and Human Rights, Survey questionnaire on compliance with the recommendations of the IACHR relating to the conditions of detention and pretrial custody in Guatemala, August 6, 2021, pgs. 9-10.

315. By the same token, in its observations on the draft version of this report, the State noted that the Department of Non-Residential Youth Home Care of the Directorate of Special Protection and Non-Residential Care is responsible for planning, organizing, running, coordinating, supervising and evaluating services and actions aimed at providing protection and care to children, adolescents and young people, in order to create safe spaces for this population group in high social risk communities. In this framework, psychological, social and educational services are provided to prevent community violence and keep children and adolescents from becoming victims of violence or victimizers.⁵⁰⁶

c) Honduras

316. The Commission notes that Honduras has a battery of plans and programs for the prevention of violence against children, adolescents and young people, which include several different approaches to resistance to becoming a member of criminal gangs. Next, the IACHR will describe the salient points based on the available information.

317. In its observations on the draft version of this report, the State of Honduras reported to the Commission about the Government Plan to Remake Honduras 2022-2026 (Plan de Gobierno para Refundar Honduras), which seeks to prosecute crimes and provide reparation for damages to victims, as well as to impose harsher punishment for the crimes of human trafficking in order to combat the forced recruitment and other forms of exploitation of children and adolescents.⁵⁰⁷

318. Likewise, the Honduran State has been implementing the National Policy on the Prevention of Violence against Children and Youth since 2012. According to publicly available information, the purpose of this policy is to mitigate the factors that make children, adolescents and young people vulnerable and victims in Honduras. In addition, it seeks to build capacities and strengthen the actions of the State, in collaboration with civil society, to adequately prevent the risk factors that spawn violence against this population. It is also intended to sever its link to crime and conflict, addressing children and youth in situations of social conflict, vulnerability and victims of violence through consistent and coordinated strategies and actions, involving all sectors of Honduran society for the purpose of preventing and addressing the problems stemming from violence and promote a culture of good citizenship.⁵⁰⁸

⁵⁰⁶ Republic of Guatemala, Observations of the State of Guatemala on the Draft of the Report “Organized Crime and the Rights of Children and Adolescents: Current challenges and actions taken by the States of northern Central America, November 29, 2022, pgs. 2, 3, 7 and 8.

⁵⁰⁷ Republic of Honduras, Observations of the State of Honduras on the Draft of the Report “Organized Crime and the Rights of Children and Adolescents: Current challenges and actions taken by the States of northern Central America, November 29, 2022, pg. 8.

⁵⁰⁸ IACHR, [Informe Anual, Capítulo V “Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras”](#), Annual Report, Chapter V “Follow-up on recommendations issued by the IACHR in the report on the Situation of Human Rights in Honduras, 2020, par. 134; COIPRODEN, [Política Nacional de Prevención de Violencia hacia la Niñez y Juventud en Honduras](#), [National Violence against Children and Youth Prevention Policy in Honduras], 2012

319. The above-mentioned policy is being implemented by the National Program of Prevention, Rehabilitation and Social Reintegration, which has been carrying out methodological training to strengthen the family nucleus, team work, decision-making, entrepreneurship workshops, psychological and vocational counselling for young students and at-risk youth, contributing to the building of restorative justice among young people deprived of liberty and their empowerment for reentry into society.⁵⁰⁹
320. Additionally, the IACHR has identified several instruments and programmatic policies aimed at protecting children and adolescents in the context of crime in Honduras.⁵¹⁰ The Commission highlights the National Response Plan to Violence against Children and Adolescents 2021-2026,⁵¹¹ which was drawn up based on the results and findings of the Survey on Violence against Children and Adolescents.⁵¹² Also, the State recently reported on implementation of the National Response Plan for the Prevention of Violence against Children and Adolescents, in order to strengthen efforts in the prevention area that are being carried out recently by different agencies at the municipal and local level.⁵¹³
321. By the same token, at the legal and regulatory level, the Commission notes the approval of the Children's and Adolescents' Code, in effect since 1996, which provides in Article 933 that "the government shall adopt any measures necessary to prevent and, as appropriate, punish, threats or violations of the rights of children."⁵¹⁴ In this same vein, the State has approved the Law for the Prevention, Rehabilitation and Reentry into Society of gang and mara members, in effect

⁵⁰⁹ IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2020, par. 136

⁵¹⁰ The State noted that the following had been implemented: Comprehensive Policy of Coexistence and Citizen Security, Strategic Framework "Prevention, Peace and Coexistence;" National Response Plan for the Prevention of Violence against Children and Adolescents; Joint project between the Under Secretariat of Security for Prevention and the United Nations Children's Fund (UNICEF), provides for direct actions for the prevention of violence against children, a shift in social norms, equality campaigns and positive sense of worth for children and adolescents, as well as strengthening the institutions of the Cabinet of Prevention, Security and Defense and training of National Police; *Actívate* Program: for physical activity, mental health and healthy eating as part of the efforts to foster prevention of non-communicable chronic diseases and prevention of harmful substance use, among other things. [IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2020, par. 134 et seq.].

⁵¹¹ IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2020, par. 137 et seq.

⁵¹² IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2020, par. 137.

⁵¹³ IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2020, par. 137. Information provided to the IACHR by the State of Honduras in the framework of the Promotional Visit on violence and discrimination against women and girls, May 3, 2021, pgs. 5-18.

⁵¹⁴ National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra.* 1996,

since 2001. In this statute, the National Program of Prevention, Rehabilitation and Social Reintegration is established.⁵¹⁵

322. Likewise, Honduras reported that it has been implementing a “National Model of Community Policing” (MNPC). This model is based on a philosophy of police conduct focused on community outreach, rooted in identifying, analyzing, prioritizing, focusing on and comprehensively dealing with the factors that give rise to violence and insecurity.⁵¹⁶ According to the information provided, the MNPC seeks to coordinate the following components: (i) strategies and processes to reduce the root causes of violence and insecurity in communities, focusing on vulnerable groups and at-risk populations; (ii) activities aimed at strengthening the role of the police, increasing its presence in the community, protecting the lives and property of individuals, to reduce the likelihood of crimes and minor offenses occurring; and (iii) implementation of strategic, tactical and operational impact operations against common and organized crime and outlawed groups, and coordinating the support of the special units through targeted operations that have a positive impact on citizen security.⁵¹⁷
323. The Honduran State also reported on implementation of the Gang Resistance Education and Training Program (G.R.E.A.T., as it is known from its English language acronym). This program features a prevention component relating to substance use, school bullying eradication, intrafamily violence prevention and gang membership.⁵¹⁸ In the framework of the program, the National Police of Honduras has conducted training courses for children and young people on the prevention of crime and violence.⁵¹⁹
324. In this same vein, the IACHR has become aware through publicly available information that the State of Honduras has been implementing the program “*Convivir*.” The purpose of the program, which targets youth ages 18 to 30, is to promote youth playing a leading and sustainable role in the revitalization and use of safe spaces in the municipalities where the project is implemented. The intervention includes building, enhancing and equipping the social infrastructure for young people and public spaces, and cofounding the work with young people and training the staff of the institutions involved.⁵²⁰

⁵¹⁵ Legislative Branch of Government, Honduras, [Decreto No. 141-2001 Ley para la prevención, rehabilitación y reinserción social de personas integrantes de pandillas o maras](#), *supra*. December 18, 2001.

⁵¹⁶ Information provided to the IACHR by the State of Honduras in the framework of the Promotional Visit on violence and discrimination against women and girls, May 3, 2021, pg. 4.

⁵¹⁷ Information provided to the IACHR by the State of Honduras in the framework of the Promotional Visit on violence and discrimination against women and girls, May 3, 2021, pg. 6.

⁵¹⁸ Information provided to the IACHR by the State of Honduras in the framework of the Promotional Visit on violence and discrimination against women and girls, May 3, 2021, pg. 7.

⁵¹⁹ National Police, Honduras, [“Niños y jóvenes son capacitados sobre prevención de la delincuencia en la zona oriental”](#), [‘Children and Youth trained on crime prevention in the eastern zone’] July 1, 2021.

⁵²⁰ Mi Ambiente, Honduras, [“Más de 91 millones de lempiras se han invertido con programa Convivir”](#), [‘More than 91 million lempiras have been invested in the *Convivir* program’] January 16, 2019.

B. Actions implemented for the protection of children and adolescents in the context of organized crime

325. Hand in hand with prevention policies against the threats posed by organized crime to persons age 18 and under, international human rights law has stressed the importance of adopting concurrent protection measures and providing assistance for the infringements experienced by this population.
326. International law provides that States must take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”⁵²¹ Specifically, Inter-American standards establish the duty of the States to adopt measures of special protection, care and aid that persons age 18 or under require⁵²² because of their physical and emotional development.⁵²³ Based on the foregoing, the IA Court of Human Rights has recognized that, pursuant to international standards, there is an additional and complementary right that obliges the States to adopt measures of special protection,⁵²⁴ which is, in short, watching out for the best interests of the child by ensuring that each and every one of his or her human rights in the framework of citizen security policies is effective.⁵²⁵
327. Meanwhile, the Commission has held that the duty of special protection is based on recognition of the special condition of children who, because their progressive development at all levels—physical, cognitive, emotional, psychological, and social—depend on adults for effective access and enjoyment of all their rights, as well as for recourse to legal action to demand them.⁵²⁶ Likewise, the Commission has also addressed the obligation of the States to adopt general and specific measures of protection for persons under the age of 18. This assumes that a special measure entailing suitable, appropriate, and individualized protection will be determined and implemented, that takes account of the child’s need for protection as an individual in his or her specific context.⁵²⁷
328. In the view of the IACHR, citizen security problems occur when the State fails, either in whole or in part, to discharge its function of providing protection against crime and violence that stems from its

⁵²¹ Convention on the Rights of the Child, Article 19.1.

⁵²² American Convention on Human Rights, Article 19; American Declaration on the Rights and Duties of Man, Article VII.

⁵²³ IA Court of HR. [Caso "Instituto de Reeducción del Menor" Vs. Paraguay](#). *Supra*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, par. 147 et seq; IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 87.

⁵²⁴ IA Court of HR. [Caso "Instituto de Reeducción del Menor" Vs. Paraguay](#). *Supra*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, par. 112.

⁵²⁵ IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#), *supra*. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 87.

⁵²⁶ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 271.

⁵²⁷ IACHR. [Informe 40/15. Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.L/V/II. Doc. 40/15, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 275.

obligation to ensure rights under Article 1.1 of the American Convention.⁵²⁸ Specifically, in contexts of violence infringing the rights of children and adolescents, this lack of guarantee is evident in the little or null capacity to assist children in vulnerable situations, thus making it easier for them to become involved in criminal organization and staying in them after turning 18 years of age.⁵²⁹

329. The Commission will now discuss efforts and challenges on the subject matter, based on the information provided by the States of northern Central America, human rights bodies and civil society organizations. Additionally, the IACHR will provide information on the subject of special protection from criminal violence that has been obtained through its ongoing monitoring function.

a) El Salvador

330. El Salvador has policies in place for the comprehensive protection of children and adolescents, which includes juveniles age 18 or under linked to the penal system. Nonetheless, the information gathered sheds light on a lack of leadership, coordination and even a failure to bring charges in cases of corruption by the implementing agencies. The Commission will now address these aspects based on the information it has gathered.

331. The IACHR has expressed its concern over the situation of children and adolescents exposed to criminal violence and the attendant forced displacement in El Salvador. On this score, it has addressed the impact on this population in situations of deprivation of liberty and its greater exposure to violence,⁵³⁰ recruitment and gender-based violence at schools by criminal gangs⁵³¹ and mental health care and access in light of the extreme experiences of violence this population has had in its lives.⁵³² The Commission has also mentioned the particularly dire effects of violence and the consequent impunity that children and adolescents have sustained as a result of the criminal acts of sexual violence, threats, extortion afflicting El Salvador.⁵³³

332. Based on publicly available information, the Commission can report that, since 2013, El Salvador has adopted a National Policy of Comprehensive Protection of Children and Adolescents 2013-2023. This policy establishes as an overarching goal to ensure that all rights of children and adolescents in El Salvador will be respected, with the active participation and shared responsibility of the State, the

⁵²⁸ IACHR, [Informe 40/15. Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.L/V/II. Doc. 40/15, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 281.

⁵²⁹ IACHR, [Informe 40/15. Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.L/V/II. Doc. 40/15, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 289.

⁵³⁰ IACHR, [Situación de derechos humanos en El Salvador](#), *supra*. OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 144.

⁵³¹ IACHR, [Situación de derechos humanos en El Salvador](#), *id.* OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 263.

⁵³² IACHR, [Situación de derechos humanos en El Salvador](#), *id.* OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 264.

⁵³³ IACHR, [Situación de derechos humanos en El Salvador](#), *id.* OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 337.

family and society.⁵³⁴ Strategically speaking, in addition to the prevention-focused components, it establishes protection measures by strengthening child protection mechanisms (strategy 2.2⁵³⁵); implementing programs and services to provide a response to human rights violations and to protect children (strategy 2.3⁵³⁶); and guaranteeing the protection and social inclusion of children and adolescents impacted by situations of socioeconomic vulnerability (strategy 2.4⁵³⁷).

333. The aforementioned policy also addresses reparative and structural components. In this regard, it establishes effective institutional mechanisms to ensure and facilitate actions of restitution and reparation to children, adolescents and their families, who have faced situations of violations of their rights in terms of access to justice (strategy 2.5⁵³⁸). Lastly, the policy also establishes the incorporation and implementation of a rights-based approach, the doctrine of comprehensive protection and restorative justice for criminal liability of adolescents (strategy 2.6⁵³⁹).
334. Notwithstanding, civil society organizations and experts have claimed to the IACHR that there is a lack of clarity and leadership when it comes to the implementation of the specific protection measures offered by El Salvador. In this vein, even though the Directorate of Reconstruction of the Social Fabric is identified as the agency responsible for getting persons age 18 and under and young people out of and away from criminal gangs, they contend that the policies, programs or plans to accomplish its goal are unknown.⁵⁴⁰
335. In relation to the population age 18 years and under held in the prison system, it was also reported to the Commission that the General Directorate of Prison Centers had refused to allow civil society organizations and families to enter prison facilities and denied publicly known information about the living conditions of persons deprived of liberty, including programs conducted inside of facilities, beyond the “Zero Idle Time Plan,” explained above in this report, about which no information is available in terms of their execution and impact in order to be able to measure results.⁵⁴¹

⁵³⁴ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *supra*. May 16, 2013, pg. 64.

⁵³⁵ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *id.* May 16, 2013, pg. 77.

⁵³⁶ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *id.* May 16, 2013, pg. 78.

⁵³⁷ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *id.* May 16, 2013, pg. 80.

⁵³⁸ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *id.* May 16, 2013, pg. 81.

⁵³⁹ National Children’s and Adolescents’ Council, [Política Nacional de Protección Integral de la Niñez y de la Adolescencia 2013-2023](#), *id.* May 16, 2013, pg. 82.

⁵⁴⁰ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁵⁴¹ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

336. Lastly, the IACHR was informed that the aforementioned institutions have not been exempt from criticism of corrupt practices. According to reports, both directorates, that of Reconstruction of the Social Fabric and of Prison Centers, have been accused of helping to strike a deal between the gangs and the government.⁵⁴²

b) Guatemala

337. Despite the repeated recommendations from the IACHR, Guatemala still does not have a national comprehensive child and adolescent protection system. On this score, civil society organizations have reported that many programs for the social reintegration of young people, who have left gangs, are dependent upon non-state initiative. Next, based on the sparse information provided, these topics will be addressed.

338. The IACHR has voiced its concern over the lack of a national comprehensive protection system of the rights of children and adolescents and has acknowledged that the protection of this population has been historically deficient, and was further aggravated by the COVID-19 pandemic.⁵⁴³ Accordingly, the Commission has addressed the failure to approve a legislative bill to overhaul the domestic legal framework to establish a comprehensive protection system in line with international standards on the subject matter.⁵⁴⁴

339. In its observations on the draft of this report, the State noted that, in view of the recommendations of the IACHR, all programs, plans and projects implemented by the Under Secretariat of Reintegration and Social Readaptation will be carried out with a rights-based approach, taking into account the inclusion and integration of young people and adolescents in the process of reintegration into society, who have left the maras or gangs.⁵⁴⁵

340. Additionally, civil society organizations told the IACHR that they conduct interventions to protect adolescents and young people who have left the gangs and who they assist in family and community reintegration.⁵⁴⁶

c) Honduras

341. Honduras has a significant body of laws, regulations, plans and programs to prevent, eradicate and protect children, adolescents and young people against family and social violence, including when it

⁵⁴² Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁵⁴³ IACHR, [Informe Anual, Capítulo V “Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Guatemala”](#), *supra*. 2020, par. 100.

⁵⁴⁴ IACHR, [Informe Anual, Capítulo IV.B “Guatemala”](#), *supra*. 2021, par. 225.

⁵⁴⁵ Republic of Guatemala, Observations of the State of Guatemala on the Draft Report Organized Crime and the Rights of Children and Adolescents: current challenges and actions taken by the States of northern Central America. December 13, 2022, pg. 25.

⁵⁴⁶ CIPRODENI, Questionnaire to civil society organizations, April 22, 2022, question 2.

is the result of a context of crime in this State. On this score, the Commission has observed there is a body of institutions that run these programs and systems, although no information was made available about the results of the interventions they carry out or about coordination between them. Next, the salient points of this topic, based on the information gathered, are explained.

342. In the legal arena, the Commission was informed that the protection of children and adolescents is provided for in the Constitution and the law. In the constitutional realm, protection of this population is established as set forth in international treaties;⁵⁴⁷ specifically, protection against abandonment, cruelty and exploitation⁵⁴⁸ and the special jurisdiction for its protection.⁵⁴⁹
343. In the statutory sphere, the Children's and Adolescents' Code provides for special protection measures. For this purpose, it establishes special protection ensuring the comprehensive development of this population through the creation of the agencies and procedures necessary to offer it the protection it requires; by facilitating and ensuring access to justice, and by defining the principles that guide national policies for its protection.⁵⁵⁰ In relation to the participation of this population in criminal activities, Article 96 of the Code expressly prohibits "selling, donating or handing over to a child, in any way: a. firearms, ammunition, explosives and gun powder in general."⁵⁵¹
344. With respect to legal protection of persons age 18 and under, who are victims of recruitment or use by criminal groups in Honduras, the State has a Law against school bullying, the Law of Municipalities, which lays out that it is the responsibility of the municipalities "to aid in providing services of legal representation and social assistance to vulnerable persons and sectors, such as: minors, foundlings, older persons, single mothers, members of ethnic groups, handicapped persons and others who are in similar situations."⁵⁵²
345. In the realm of government programs, according to publicly available information, the Commission notes that Honduras has a Social Protection System and Policy, through which it implements and executes plans and programs making up the Social Protection Floor.⁵⁵³ On this note, the Social Protection Policy seeks to gradually and progressively put into place social conditions that contribute

⁵⁴⁷ Political Constitution of the Republic of Honduras, Article 119.

⁵⁴⁸ Political Constitution of the Republic of Honduras, Article 124.

⁵⁴⁹ Political Constitution of the Republic of Honduras, Article 122.

⁵⁵⁰ UNHCR, Questionnaire sent out to civil society organizations, April 7, 2022, question 7; National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra*. 1996.

⁵⁵¹ UNHCR, Questionnaire sent out to civil society organizations, April 7, 2022, question 7; National Congress, Honduras, [Decreto No. 73-96 Código de la Niñez y la Adolescencia](#), *supra*. 1996.

⁵⁵² UNHCR, Questionnaire sent out to civil society organizations, April 7, 2022, question 7.

⁵⁵³ IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *supra*. 2020, par. 66.

to individual and collective wellbeing, as well as boost skills and abilities for the full exercise of the rights of persons living in situations of poverty, extreme poverty, vulnerability, social exclusion and risk, to create and expand their opportunities for wellbeing and family and collective wealth, thus achieving active inclusion in society.⁵⁵⁴

346. Consistent with the foregoing aims, the Social Protection Policy identifies as persons entitled to care and assistance the population of children, adolescents and young people, as well as the rural-based and urban-based, indigenous and/or afro-descendants. The IACHR notes that, in a crosscutting manner, the Policy aims to care for children and adolescents who are exploited for illicit activities. In the case of young persons (19-30 years), the policy also focuses on the individuals who take part in illicit activities.⁵⁵⁵
347. In addition, the Commission notes that Honduras has approved several public policy documents such as the National Roadmap to Prevent and Reduce Violence against Children, Adolescents and Young People in Honduras (2015-2020), the National Prevention Plan and School Security Strategy, the National Risk Management Plan of the Education Sector (2011-2021), the National Policy of/for/ with Youth (2019- 2030), the National Policy of Prevention of Violence against Children and Youth in Honduras (2013), the National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras (2020-2030), and the National Comprehensive Policy on Coexistence and Citizen Security (2011-2022).⁵⁵⁶
348. The Commission was apprised by civil society organizations about executive decrees PCM-020-2019 and PCM-038-2019, whereby the State created the Comprehensive System of Guarantee of Children and Adolescents in Honduras (SIGADENAH).⁵⁵⁷ The System coordinates the group of bodies, entities, mechanisms and public and private offices at the national, departmental and municipal levels for the promotion of the rights, prevention, protection, defense and reparation of harm from the violation of rights, through policies, programs and intersectoral actions aimed at ensuring the rights of all children and adolescents comprehensively. The System provides for the active participation of children and adolescents at the national, departmental and municipal levels and is coordinated by its highest authority, the National Children's and Adolescents' Council.⁵⁵⁸
349. According to the information submitted, the social protection policy includes programs of assistance to children and adolescents: *Criando con Amor*; Assistance to young Women and Children in Situation of Violence and Social Risk; Teen Pregnancy Prevention and, School Meal Program.⁵⁵⁹

⁵⁵⁴ Republic of Honduras, [Política de Protección Social](#), Social Protection Policy. 2012, pg. 5.

⁵⁵⁵ Republic of Honduras, [Política de Protección Social](#), *id.* 2012, pgs. 12 and 14.

⁵⁵⁶ UNHCR, Questionnaire sent to civil society organizations, April 7, 2022, question 7.

⁵⁵⁷ UNHCR, Questionnaire sent to civil society organizations, April 7, 2022, question 7.

⁵⁵⁸ UNHCR, Questionnaire sent to civil society organizations, April 7, 2022, question 7.

⁵⁵⁹ State of Honduras, Observations of the State of Honduras on the Report Situation of Human Rights in Honduras 2019, October 30, 2020, pg. 11.

350. The Honduran State also told the IACHR about the adoption of the National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 and the First Plan of Action 2021 –2023.⁵⁶⁰ The overall goal of the National Policy is that “children and adolescents of Honduras increase enjoyment of their rights, with improved wellbeing to enable them to realize their full potential.”⁵⁶¹ In addition, the Commission can report that the policy is coordinated through several strategic objectives relating to overcoming obstacles to the exercise of rights (strategic objective 1),⁵⁶² overcoming poverty and exclusion (strategic objective 2);⁵⁶³ participation of children and adolescents (strategic objective 4);⁵⁶⁴ and strengthening the SIGADENAH (strategic objective 5).⁵⁶⁵
351. In terms of special protection for children and adolescents, the aforementioned Policy lays out as one of its strategic objectives “to guarantee timely, comprehensive and immediate protection and restitution of the violated rights of children and adolescents, through complementarity of institutional competencies between the institutions of the executive branch of government, between the latter and the judicial branch, as well as between the territorial levels of the State, capitalizing on experiences to raise awareness about the importance of strengthening prevention policies and strategies.”⁵⁶⁶
352. Based on its monitoring function, in 2019, the IACHR recommended to the State that the National Children’s Policy meet the protection needs of children and for it to be based on a realistic and participatory diagnostic assessment encompassing all rights, identifying groups in special situations of vulnerability, and include indicators to be able to measure the progress and effectiveness of the policy.⁵⁶⁷ On this score, the State reported on the process of approval and functioning of the National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2020-2030. Likewise, in 2020, Honduras reported that the Policy was in a participatory process of drafting,

⁵⁶⁰ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶¹ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶² Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶³ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶⁴ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶⁵ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶⁶ Republic of Honduras, National Policy for the Guarantee of the Rights of Children and Adolescents in Honduras 2021 –2030 & First Plan of Action 2021 –2023, October 2020, pg. 41.

⁵⁶⁷ IACHR, [Situación de derechos humanos en Honduras](#), *supra*. OEA/Ser.LV/II. Doc. 146, August 27, 2019, recomendation 15.

although it confirmed a delay in its implementation due to the COVID-19 pandemic.⁵⁶⁸ Notwithstanding, in 2021, the Policy was still awaiting approval of the expert opinion on the fiscal impact from the Secretariat of Finances, before it is approved by the SIGADENAH.⁵⁶⁹

C. Measures implemented for the restitution of rights, rehabilitation, effective access to justice and reparation

353. The obligations of justice and reparation for human rights violations emanate from States' general obligation to ensure the human rights enshrined in Article 1.1 of the American Convention. In this vein, the Commission has noted that "children and adolescents face particular challenges and barriers due to their condition, that may entail obstacles that in practice impede effective access to justice, leaving violations of their rights in impunity and negatively impacting their right to obtain adequate reparation."⁵⁷⁰ Therefore, when these obligations specifically applied to this population are involved, the Inter-American system has set forth specific provisions to ensure their access to justice and attain reparations.

354. As an obligation of international law, the right of access to justice for victims of human rights violations is recognized in both the American Convention and Declaration. Pursuant to these instruments, the bodies of the Inter-American system have understood that the States must adopt special guarantees to ensure access to justice for children and adolescents, in light of their age and growth and development, their dependence on adults when it comes to exercising their rights.⁵⁷¹ Specifically, the Commission has found that the States have the duty to ensure access to effective justice for children and adolescents under Articles 8 and 25 of the ACHR, in connection with Articles 1.1 and 2 of the ACHR, and should adopt all adequate measures, giving special consideration to the particular conditions of this population and the duty of special protection for it, pursuant to Article 19 of the ACHR.⁵⁷²

355. In accordance with the standards of the Inter-American system, due process of law must be guaranteed in all proceedings. When persons age 18 and under are involved, this includes the necessary accommodations of the penal system itself, proceedings, investigations and due diligence; as well as, endeavoring for them to participate at all stages of the judicial proceeding. The

⁵⁶⁸ IACHR, [Informe Anual, Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *supra*. 2020, par. 124.

⁵⁶⁹ IACHR, [Informe Anual Capítulo V "Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Honduras"](#), *id.* 2021, par. 138.

⁵⁷⁰ IACHR, [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), Toward the Effective Fulfillment of the Rights of Children and Adolescents: National Protection Systems. OEA/Ser.LV/II.166 Doc. 206/17, November 30, 2017, par. 194.

⁵⁷¹ IACHR, [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), *id.* OEA/Ser.LV/II.166 Doc. 206/17, November 30, 2017, par. 193.

⁵⁷² IACHR, [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), *id.* OEA/Ser.LV/II.166 Doc. 206/17, November 30, 2017, par. 195.

ultimate aim of these accommodations must be access to justice, knowing the truth of what happened and granting fair reparation to the victims and their families.⁵⁷³ Next, the IACHR will discuss the principal international standards on this subject matter.

356. As for accommodations of the penal system, the Commission has cited the lack of effective policies of rehabilitation and social reintegration for children and adolescents linked to criminal organizations and gangs. On this score, it has noted that the fact that the response has been largely focused on criminal justice and imprisonment has impeded implementation of appropriate rehabilitation and social reintegration interventions, due to shortcomings in the structure and workings of the juvenile justice system.⁵⁷⁴
357. On this note, the IACHR has raised in the past several stumbling blocks to the design and effective use of models of restorative justice and alternative measures to incarceration for adolescents.⁵⁷⁵ However, the main explanation for this stagnation is that there still has not been a paradigm shift in the regulatory framework and in society regarding the status of adolescents with respect to crime and criminality. Instead, as the Commission observes, a rationale that prioritizes order and security is still in place, irrespective of, or with very little consideration given to, the special status of children and adolescents as the focus of protection.⁵⁷⁶
358. As for procedural accommodations, the Commission has asserted that cases must be tailored to be streamlined, accessible, appropriate and understandable to children and adolescents, making sure that they have enough information in proceedings that involve them through easy-to-understand language. Likewise, their cases must be heard expeditiously and diligently, making sure they are promptly processed and adjudicated.⁵⁷⁷
359. With respect to accommodations for fair trial rights, the Commission has stressed that every possible mechanism must be put into place in order to facilitate the right of children and adolescents to be heard in the context of proceedings that affect them and for their best interests to be assessed. The IACHR has also held that the States must ensure access to free and quality legal assistance and representation for children and adolescents and, as appropriate, young people, and ensure the existence of specialized jurisdictional bodies to hear cases involving children's rights. Additionally, the Commission has highlighted the importance of periodic training for judges, prosecutors, attorneys,

⁵⁷³ IA Court of HR. [Caso Masacres de Río Negro Vs. Guatemala. Excepción Preliminar, Fondo, Reparaciones y Costas](#). Case of the Massacres of Río Negro v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 2507, par. 191.

⁵⁷⁴ IACHR. [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 418.

⁵⁷⁵ Namely: i) insufficient financial resources, ii) the absence of the social programs and methodologies tailored to the need for rehabilitation and social reintegration, that would allow such a model to be implemented, and iii) the shortage of specialized personnel trained to carry out such programs.

⁵⁷⁶ IACHR. [Violencia, niñez y crimen organizado](#), *supra*. OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 93.

⁵⁷⁷ IACHR. [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), *supra*. OEA/Ser.LV/II.166 Doc. 206/17, November 30, 2017, par. 202.

police officers, school teachers, social workers, health care workers and other professionals, on the subject of the rights of this population, including their right of access to justice.⁵⁷⁸

360. As to due diligence in investigations, the Commission has reported in the past on shortcomings in this area on the part of authorities, particularly, in investigating murders of children and adolescents when the suspected perpetrators are members of organized crime groups, without the necessary efforts being made to ascribe liability or identify the culprits. It has also noted that, on occasion, the officials responsible for investigating crimes give less consideration to cases that are thought to concern a “settling of scores” or disputes between members of criminal groups or gangs, or based on the adolescent victim belonging to a certain socioeconomic sector or ethnic groups, those who are members (or perceived as members) of a gang or a group involved in criminal activities, or those regarded as “dangerous,” based on stereotypes (such as adolescents who live on the streets and/or have problems of drug addiction). The IACHR has recognized that, in very few cases is the matter brought to trial, responsibilities apportioned, and appropriate penalties imposed in line with the seriousness of the violation. In the view of the Commission, the level of impunity that such behavior enjoys clearly contributes to its recurrence.⁵⁷⁹
361. With respect to reparation and restoration of rights, the Commission has emphasized the importance of framing the assertion of the rights of children and adolescents with a view toward halting or putting an end to the different forms of violence to which they are subjected from an early age. The Commission has acknowledged that the impacts of violence and infringement of rights during early childhood can have consequences later on during adolescence and afterwards. On this score, the IACHR has stressed the importance of bearing in mind that adolescents performing acts of violence have most often themselves been victims of violence and abuse, or have witnessed such acts, or have had their own fundamental rights violated as adolescents, even during childhood as future adolescent aggressors. All of this, therefore, should all be taken into consideration in any policy to restore children’s or adolescents’ rights or to help them to sever their ties to criminal groups.⁵⁸⁰
362. The Commission will now review the principal forward steps in the area of access to justice and reparation for children, adolescents and young people from organized crime activities. Even though the information submitted by the States has been sparse, the Commission will also provide data it has obtained from its own ongoing monitoring and information submitted by civil society organizations from the States of northern Central America.

⁵⁷⁸ IACHR. [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), *id.* OEA/Ser.LV/II.166 Doc. 206/17, November 30, 2017, par. 202.

⁵⁷⁹ IACHR. [Violencia, niñez y crimen organizado](#), *supra.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 390.

⁵⁸⁰ IACHR. [Violencia, niñez y crimen organizado](#), *id.* OEA/Ser.LV/II. Doc. 40/15, November 11, 2015, par. 61.

a) El Salvador

363. The Commission has voiced its concern over the situations of violence to which persons age 18 and under deprived of liberty are subjected in El Salvador. The IACHR has shed light on the conditions of detention and capture of these juvenile rehabilitation facilities on the part of criminal organizations and gangs.⁵⁸¹
364. As for conditions of detention, the IACHR has issued statements on the poor conditions of infrastructure, for example, of the Social Reintegration Center of Tonacatepeque. Regarding the presence of crime, the Commission has reiterated to El Salvador that prison facilities may become factors of greater vulnerability and exposure to violence for adolescents, especially when criminal organizations hold great sway at such facilities.⁵⁸²
365. Notwithstanding, the IACHR also hails the initiatives that have been carried out to provide treatment consistent with human dignity, with a view toward effective and constructive reentry into society.⁵⁸³ Likewise, the IACHR notes that, with the support of international human rights agencies and civil society organizations, initiatives are being implemented to improve the stay of persons age 18 and under at the holding cells in judicial centers of El Salvador, while these juveniles await hearings or judicial proceedings to take place.⁵⁸⁴ In this vein, implementation of children's game centers (*ludotecas*) at these spaces provide emotional relief to the victims of violence and enable them to readapt to become members of the community and society again and never transition from victims to victimizers. Comprehensive reparation and attainment of justice must go hand in hand.⁵⁸⁵

b) Guatemala

366. The Commission has reported on Guatemala's challenges to put forward a policy for the protection of the rights of children and adolescents in connection with access to justice and restoration of rights. On this score, the IACHR has shed light on stumbling blocks, stemming from insufficient financing and coverage of the Office of the Counsel General of the Nation (PGN, whose responsibility it is to represent the interests of minors in the judicial and administrative spheres)⁵⁸⁶

⁵⁸¹ IACHR, [Situación de los derechos humanos en El Salvador](#), Situation of Human Rights in El Salvador. OEA/Ser.L/V/II. Doc. 278, October 14, 2021, pars. 143 et seq.

⁵⁸² IACHR, Press Release No. 335/2019 - [CIDH presenta observaciones preliminares de su visita in loco a El Salvador](#). IACHR presents its preliminary observations following its *in loco* visit to El Salvador. Washington DC, December 27, 2019.

⁵⁸³ IACHR, [Situación de los derechos humanos en El Salvador](#), *supra*. OEA/Ser.L/V/II. Doc. 278, October 14, 2021, pars. 143 et seq.

⁵⁸⁴ UNICEF, ["Iniciativa Spotlight apoya la modernización de ludotecas en centros judiciales"](#). Spotlight Initiative supports modernization of children's play centers at judicial facilities. January 18, 2021.

⁵⁸⁵ UNICEF, ["Iniciativa Spotlight apoya la modernización de ludotecas en centros judiciales"](#). *id.* January 18, 2021.

⁵⁸⁶ IACHR, [Situación de los derechos humanos en Guatemala](#), Situation of Human Rights in Guatemala, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 114.

and the Office of the Attorney General Crimes against Children and Adolescents Section⁵⁸⁷ in order to fulfill their roles in the defense and protection of children and adolescents whose rights have been violated. Likewise, regarding the failure to prosecute and punish, and the context of impunity for crimes perpetrated against children and adolescents, the IACHR has noted that the weakness of the institutional framework in this area is also tied to an absence of a national public policy to ensure the rights of this population, that takes more than just a protectionist approach.⁵⁸⁸

367. In terms of programs, Guatemala has reported in the past to the IACHR about implementing the Management System for Comprehensive Care of Children and Adolescents. This System involves each report or complaint filed being addressed in a comprehensive and multidisciplinary fashion by “Rapid Response Teams” made up of law, psychology, social work and investigation professionals. The main goal of this system, according to the State, is to restore the rights of the children and adolescents and ensure their integral development within the nuclear or extended family, and provide them with a chance to reshape their own life plan.⁵⁸⁹
368. By the same token, the Guatemalan State reported that, at the Public Prosecutor’s Office, Modules of Comprehensive Care of Children and Adolescents (MAINA) have been created, through which legal, medical, social and psychological protection of the child or adolescent victim is provided; as well as restoration of their rights when a violation has previously taken place. In the case of adolescents who have joined a criminal group and have severed their ties with it, this Office coordinates with the Office of Witness Protection to prevent these criminal structures from retaliating against or harassing them.⁵⁹⁰
369. Based on the information submitted, persons age 18 or under who are victims of crimes receive psychological care and their assailants are often referred, as appropriate, to schools for parents or addiction rehabilitation programs. In addition, with respect to children and adolescents who also experience social exclusion, based on discriminatory criteria or because of danger of recruitment in gangs, the State coordinates with international programs such as the Transitional Protection Mechanisms (PTA) of child and adolescent refugees seeking refuge in another State. The State also reported that the Office of the Ombudsman for Children and Adolescents issues measures of protection for aggrieved persons age 18 years and under before the Children’s Court. Lastly, the

⁵⁸⁷ IACHR, [Situación de los derechos humanos en Guatemala](#), *id.* OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 116.

⁵⁸⁸ IACHR, [Situación de los derechos humanos en Guatemala](#), *id.* OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 115.

⁵⁸⁹ IACHR, [Informe Anual, Capítulo V “Seguimiento de las recomendaciones formuladas por la CIDH en el informe sobre la Situación de Derechos Humanos en Guatemala”](#), *supra.* 2020, par. 98.

⁵⁹⁰ Office of the Ombudsman for Children and Adolescents of the Public Prosecutor’s Office, Guatemala, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, March 14, 2022, pg. 2.

State noted that the PGN endeavors to place children and adolescents in rehabilitation programs, when substance addiction is an issue.⁵⁹¹

370. The State of Guatemala also reported that the Department of Non-Residential Care “*Casa Joven*” has worked together with the children’s and adolescents’ courts to restore the rights of this population through psychosocial care and flexible schedule school tutoring.⁵⁹² In addition, the Secretariat of Social Wellbeing has implemented the program “*Casa Joven*,” which targets victims of recruitment and use by organized crime groups, sexual violence, physical violence, abuse, child labor, trafficking in persons, among other crimes, providing them with the services they require to restore their physical and emotional stability.⁵⁹³
371. Furthermore, in its observations on the draft version of this report, Guatemala noted that, through the Directorate of Special Protection, Foster Family and Residential Care, programs have been established for the protection of children and adolescents who enter the protection system affording them comprehensive care to restore their rights. It also noted that since the Specialized Program for Child and Adolescent Victims of Sexual Violence, Exploitation and Trafficking was created in 2019, around 340 cases of child and adolescent victims of trafficking have been tended to.⁵⁹⁴

c) Honduras

372. The State provided no information on this topic.

D. Challenges for comprehensive protection of children and adolescents from organized crime activities

373. Dealing with the phenomenon of crime, as has been described in this report, requires a coordinated response on the part of the State, in keeping with its international obligations of comprehensive protection of children and adolescents. As such, as has been noted above, the State must do its utmost to control the criminal activities of its own agents within the operational structure of the State

⁵⁹¹ Office of the Ombudsman for Children and Adolescents of the Public Prosecutor’s Office, Guatemala, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, March 14, 2022, pgs. 4 and 5.

⁵⁹² Presidential Commission for Peace and Human Rights, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, March 24, 2022, pg. 3.

⁵⁹³ Presidential Commission for Peace and Human Rights, Response of the Guatemalan State to the request for information from the Inter-American Commission on Human Rights under Article 41 of the American Convention on Human Rights about measures to reduce violence against children, adolescents and young people from organized crime activities, March 24, 2022, pg. 4.

⁵⁹⁴ Republic of Guatemala, Observations of the State of Guatemala on the Draft version of the Report Organized Crime and the Rights of Children, Adolescents and Young People: Current challenges and actions taken by the States of northern Central America. December 13, 2022, pgs. 7 and 26.

itself, as well as with respect to actions carried out by members of criminal organizations, who threaten the rights of children and adolescents, and young people alike.

374. Nonetheless, the actions taken by the State to neutralize the acts of its agents and third-party members of organized crime can only be partially successful if, after adequate investigation and trial proceedings to bring cases to closure, there is no punishment of those responsible and reparation to the victims. Moreover, as has been noted in this chapter, access to justice and the consequent reparation for children and adolescents, as well as young people, meet serious barriers and deterrents to be fully effective.
375. In this regard, the IACHR has noted that these barriers and deterrents are often associated with the lack of knowledge on the part of children and adolescents of their rights and how to and where to report violations; their lack of legal standing to bring suit and dependence on other people to exercise their right of action; the lack of legal counsel and independent and specialized legal representation, free of charge; the short period of time before the statute of limitations lapses and precludes any legal action; failure to adapt judicial proceedings to the needs of children and adolescents and the lack of specialization of the courts in respect to the rights of children; the fear of re-victimization in the context of judicial proceedings; and lack of trust in the authorities to investigate and prosecute crimes, when they are committed against this population group.⁵⁹⁵
376. Furthermore, as for the challenges to providing children and adolescents with comprehensive protection from organized crime activities, the IACHR has been apprised of the lack of attention to the root causes of violence, the lack of comprehensive protection of children and adolescents; the lack of an institutional framework and capture of the State by criminal groups; as well as recruitment by criminal groups, all of which is of dire and top tier concern in terms of the involvement of children and adolescents, and also young people, in organized crime in northern Central America. Now the Commission will make general observations followed by the main challenges on the subject matter in terms of each State comprising northern Central America.
377. The root causes of violence are not addressed as a whole through public policies aimed at reducing organized crime by the States of northern Central America and its technical specialized institutions.⁵⁹⁶ On this score, it came to the attention of the IACHR that some State institutions work on their own and in a silo with respect to organized crime and its effects on the rights of children and adolescents. This situation delays the necessary creation of a holistic, systematic and integrating institutional framework to address the phenomenon of crime and its effects. In this same vein, the different levels of government must participate in the creation of these institutions, which must work hand in hand in order to create municipal protection and prevention systems.⁵⁹⁷

⁵⁹⁵ IACHR. [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), *supra*. OEA/Ser.L/V/II.166 Doc. 206/17, November 30, 2017, par. 197.

⁵⁹⁶ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁵⁹⁷ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

378. Historically, there has been a lack of concern over the consolidation of a comprehensive protection policy of children and adolescents in the face of organized crime. The Commission has compiled the concerns of civil society organizations, that underscore the need to adopt comprehensive care in response to recruitment and school drop-out rates, as well as dealing with the conditions of marginalization impacting children and adolescents.⁵⁹⁸ The IACHR has highlighted the importance of community development and creating opportunities to generate life plans away from the climate of violence.⁵⁹⁹
379. The States of northern Central America are experiencing a heavy penetration of criminal organizations, which erode their institutional framework. In light of this phenomenon, the Commission has taken note that the credibility of authorities has been undermined and that citizens have no incentive to report crimes out of fear of retaliation. Based on the information gathered by the IACHR, this retaliation is carried out by both State law enforcement agents, through infiltrated police forces or who are members of the criminal organizations themselves, and directly by members of criminal groups. In its most extreme form, people who file reports have been murdered and other just decide to leave the country.⁶⁰⁰
380. Public policies to combat organized crime and its impact on the rights of the children, adolescents and young people of northern Central America must be participatory and community-based. The Commission was informed that many intervention initiatives are, in theory, solidly prepared, but are often marred by a lack of connection or link to the reality of the community they are intended to transform. Moreover, many of these initiatives lack a long-term view and implementation is quite spotty. The IACHR stresses that the families, communities and the young people themselves must be able to participate not only as beneficiaries, but also in the design and creation of the interventions themselves.⁶⁰¹

a) El Salvador

381. In the specific case of El Salvador, the Commission has gathered information on the main challenges to the exercise of the human rights of children, adolescents and young people in the face of organized crime. On this score, civil society organizations expressed their concern to the IACHR about the repressive security policy of the State, the territorial domination of the criminal groups, the lack of opportunities to realize alternative life plans and the absence of spaces of engagement between El Salvador and civil society organizations. Lastly, the Commission finds that the citizen security policy on organized crime still poses challenges in terms of international obligations in the area of human rights of El Salvador.

⁵⁹⁸ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁵⁹⁹ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰⁰ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰¹ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

382. The principal security policy of the State -the Territorial Control Plan – does not prioritize the elements of violence prevention, but rather emphasizes the intervention of police and military security agents in their operations.⁶⁰² The root causes of violence and the impact they have on it have not changed over the past years and have even surged.⁶⁰³ In its observations on the draft version of this report, the State noted that, as part of the Territorial Control Plan, the purpose of the CUBOs is to create social wellbeing programs in the 262 municipalities, particularly targeting young people.⁶⁰⁴
383. The heavy presence of organized crime in certain territories enables it to exercise political, economic and social power precisely in spaces where the State is absent.⁶⁰⁵ In this regard, the complexity of the violence exerted by the gangs, as well as their grip over broad expanses of the territory of the country, calls for comprehensive interventions, with a high financial investment and long-term policies of State. Nonetheless, it has come to the attention of the IACHR that such form of intervention is at odds with the vested economic and political interests of authorities.⁶⁰⁶
384. Gangs are appealing to children, adolescents and young people, in the face of the lack of opportunities for development and the high incidence of violence in community spaces. Gangs in El Salvador represent a sort of social recognition that is wielded through fear and violence, with which children and adolescents can become members of a group that provides them an identity, but protection and economic access as well.⁶⁰⁷
385. As for the issues of children and adolescents impacted by organized crime, there has been a breakdown in communication, engagement and the ability to build solutions together between civil society organizations and the State of El Salvador. The Commission was troubled that these organizations have been the targets of smear campaigns and defamation, and even of criminalization by officials of the State.⁶⁰⁸
386. Lastly, the IACHR reiterates its considerations regarding the declaration of the state of emergency and the reports of human rights violations associated with it that were discussed above in this report. On this score, the citizen security policy against organized crime in El Salvador poses challenges and, therefore, it must be brought in line with international human rights obligations.

⁶⁰² Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰³ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰⁴ Republic of El Salvador, Observations of the State of El Salvador on the draft version of the Report Organized Crime and Children, Adolescents and Young People: Current challenges and actions taken by the States of northern Central America. November 29, 2022, p. 3.

⁶⁰⁵ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰⁶ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰⁷ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

⁶⁰⁸ Information provided to the IACHR at the virtual meeting on Children and Adolescents and Organized Crime. March 15, 2022.

b) Guatemala

387. In the case of Guatemala, based on the information it has received, the Commission learned of challenges in terms of the impact of organized crime on the human rights of children, adolescents and young people and the lack of protection systems and ways of creating opportunities for these population groups.
388. With respect to Guatemala's failure to protect, the Commission was informed once again about the absence of a true National System of Comprehensive Protection and Guarantee of the Rights of Children and Adolescents, as well as of Municipal Systems of Prevention and Protection from the different types of violence affecting children and adolescents. By the same token, the IACHR also raises concerns over the weakness of social policies and low public investment in respect to the human rights of children, adolescents and young people.⁶⁰⁹
389. Regarding the creation of opportunities for this population, the Commission received information suggesting there is a need to improve the quality of education and increase coverage of education systems; generate a work incentive to enable mothers and fathers, and young people access to decent employment and thus be able to meet their basic needs and slow down forced migration; create educational, recreational, cultural and employment offerings for young people to move or keep them away from crime; as well as open and strengthen spaces where children, adolescents and young people can participate in a meaningful way.⁶¹⁰

c) Honduras

390. In the case of Honduras, the Commission has gathered information about the concerns pertaining to the disconnect between legal protections for children, adolescents and young people and operational and programmatic implementation of such policies; as well as the recruitment of this population for its participation in organized crime activities.
391. Implementation of child, adolescent and youth policies on protection from organized crime in Honduras is inconsistent with the wide-ranging protection enshrined in the country's body of law, including the Constitution. On this note, domestic law of Honduras provides for a broad framework of protection for children, the basis of which is found in the Political Constitution, and implements a specific public policy on the subject matter that was recently approved. Notwithstanding, challenges persist for implementation of the law and regulations in a manner consistent with Honduras's international obligations, to safeguard and ensure the rights of persons age 18 or under, especially,

⁶⁰⁹ CIPRODENI, Questionnaire to civil society organizations, April 22, 2022, question 1.

⁶¹⁰ CIPRODENI, Questionnaire to civil society organizations, April 22, 2022, question 2.

the victims of links to criminal group activities, which usually results in danger or forced displacement.⁶¹¹

392. Combatting the phenomenon of the recruitment of persons age 18 or under for criminal aims demands a multisectoral effort to meet the basic needs of the affected populations. The IACHR has registered its deep concern over recruitment in Honduras, the use of children by the maras and gangs and the need to call it what it is: human trafficking. This situation poses several challenges to become a suitable alternative to address the specific issues of juveniles becoming linked to organized crime and the obligations of the State relating to the care and protection of these victims.⁶¹²

393. Based on the foregoing, the Commission highlights the need to coordinate intersectoral efforts in order to comprehend the broader implications of the recruitment and use of children and adolescents in criminal activities in Honduras, to make it possible to take legislative and public policy measures to prevent persons age 18 and under from engaging with the criminal groups and adequately assist those who have been recruited and used by organized crime in accordance with the international obligations of this State.⁶¹³

⁶¹¹ UNHCR, Questionnaire to civil society organizations, April 7, 2022, question 3.

⁶¹² UNHCR, Questionnaire to civil society organizations, April 7, 2022, question 3.

⁶¹³ UNHCR, Questionnaire to civil society organizations, April 7, 2022, question 3.

Chapter 5

Conclusions and recommendations

Conclusions and recommendations

395. Based on the foregoing considerations, the Inter-American Commission presents the following conclusions:

396. On the phenomenon of crime in northern Central America

1. Organized crime must be confronted by the States through measures that address the negative impacts it has on the lives and development of children, adolescents and young people. In the States of northern Central American, organized crime has taken one of its most violent forms in the maras or criminal gangs, the root causes of which can be described, *inter alia*, as the result of the pernicious interplay between poverty and social exclusion; corruption and institutional weakness; infiltration by criminal structures into the formal institutions of the States; and impunity.
2. Historically, the maras and criminal gangs take advantage of fear, the lack of opportunities and the need of children, adolescents and young people to feel a sense of belonging, in order to scale up their criminal operations and expand the territory they control using a variety of forms of exploitation, which may even constitute new forms of slavery. In this context, society does not perceive children and adolescents as victims, but as perpetrators. This population group finds little or no support from State institutions in undoing the consequences of bringing violence into their individual, family and community life plans.
3. Criminal groups, such as maras and gangs, penetrate deep into State institutions to tighten their grip on authorities and, in this way, are able to more readily carry out their illegal operations. In such circumstances, it is hard to figure out whether the perpetrator of the act violating human rights is the State itself or a third party, as has been denounced in the States of northern Central America. This being the case, the States must investigate *ex officio* the direct involvement of their own agents and elucidate whether the violative act took place with the support or tolerance of public officials or whether these officials acted in such a way that the violation was carried out in an absence of any preventive measure or with impunity, in which case it constitutes a situation of acquiescence of the State.
4. In contexts of organized crime, certain acts can only have been committed if the State was aware, or it should have been aware of the real and imminent danger of them occurring and, nonetheless, it did not take any measures to mitigate the danger. This particular situation would mean that the State has disregarded its obligations to prevent and protect persons exposed to imminent violation of their human rights under its international obligations.
5. As a consequence of operations of drug trafficking, weapons trafficking, extortions or human trafficking for sexual exploitation conducted by the criminal groups such as the maras and criminal gangs, in addition to confrontations between rival groups to dispute territorial

hegemony to conduct their illegal activities, the rights to life, humane treatment, personal liberty and security, property and movement are infringed. In their most serious forms, the acts occurring in these contexts of crime result in disappearances, torture, violence and sexual slavery, as well as forced displacements, disproportionately infringing the human rights of children, adolescents and young people.

6. In the States of northern Central America, repressive public security and prison policies aimed at combatting the maras currently prevail. Such policies have resulted in profiling and automatic detention of young people by law enforcement.

396. On children, adolescents and young people in contexts of crime and citizen insecurity

7. Children, adolescents and young people are particularly at risk in contexts of violence. Violence not only impacts their physical and psychological integrity, but affects their access to a variety of rights. Children and adolescents are particularly vulnerable to the consequences of violent social settings and, in such circumstance, are victims of violations of their right to life, humane treatment, health, education, recreation, personal liberty, participation in matters that affect them, *inter alia*.
8. With respect to young persons, this population group and its exposure to organized crime have not been precisely defined and, as such, evidence-based, public policy decision-making on respect for the rights of this group has been difficult to come by. Assistance programs for this population are only nominally geared toward job placement or severing ties with criminal gangs and there does not appear to be concern over the attendant types of traumas endured by it under the threat of gangs and in the context of violence.
9. The lack of information about young people linked to organized crime is a roadblock to the adoption of policies of prevention, protection and restitution of their rights. One of the challenges in this area is the failure to establish a precise definition of young people. On this score, persons ages 15 to 29 years old are considered to be in the stage of life known as “youth,” for purposes of the instant report, in order to include individuals who are affected by contexts of violence and organized crime. Nonetheless, the concept of “youth” is dynamic, can vary according to context, and must be based on a differentiated and intersectional approach, in accordance with stages of development and respective needs.
10. In the context of northern Central America, children, adolescents and young people are exposed to different forms of violence over the course of their development, and this context is further compounded by the presence of crime. Reports suggest such situations impinge upon the right to life; physical, mental and sexual integrity; the eradication of stereotypes; access to justice and combatting impunity, among other aspects. In this same vein, infringements of economic, social and cultural rights, as well as the right to education and access to employment, have been observed as well.

11. The presence of criminal organizations results in a lack of effective guarantees of a variety of the rights children and adolescents are recognized to have, placing them in a condition of particular vulnerability, which in the context of violent and criminal groups, exposes them to being captured, used, abused and exploited. When aware of this situation of particular risk of violations of their rights, the States must take immediate measures to neutralize the danger in light of their obligation to prevent, as enshrined in Article 1.1 of the American Convention.
 12. When real and imminent dangers of rights violations from organized crime, mara or gang activities arise, which may impact children and adolescents, there is a heightened duty of the State to adopt diligent measures of protection because of its special role as guarantor. Infringements of rights perpetrated against this population by the actions of organized crime, maras and gangs not only entails the State's duty of prevention but also its duty to ensure the right to personal security enshrined in Article 7.1 of the American Convention. This same analysis is applicable to risks of the population of young people.
397. On forms of violence against children, adolescents and young people in the context of organized crime in northern Central America: forced recruitment and criminalization.
13. Recruitment of children, adolescents and young people by organized crime, maras or gangs is one of the serious ways in which the special situation of risk of this population materializes. In the case of northern Central America, after becoming members of maras or gangs, this vulnerable population usually lives alongside of each other in urban communities, for the purpose of watching out for and defending one other, as well as defending the neighborhood from rival "maras" or "gangs." Also, many of the recruits carry weapons and engage in criminal activities, which include homicide, robbery, theft and armed confrontations with other "maras" or "gangs," often with fatal outcomes.
 14. International human rights protection standards cover the recruitment of children and adolescents by organized crime. Article 19 of the American Convention and Article VII of the American Declaration provide that children have the right to the adoption of special measures for their protection. These special protections include the prohibition of the recruitment of children and adolescents for engagement in illicit activities such as those performed by organized crime, maras and gangs and these non-state actors must refrain from carrying out this type of recruitment. For the States, this prohibition means that they must take immediate, effective and emergency action to eradicate this type of recruitment. Consequently, any children and adolescents who are recruited by organized crime, maras or gangs must be treated primarily as victims.
 15. The cycle of recruitment by maras and gangs results in a string of ongoing violations of children's rights. Thus, in the context of northern Central America, because of its ultimate purpose, the forced recruitment of children and adolescents, by coercion or persuasion, is part and parcel of a criminal strategy of the maras, gangs and organized crime to take full advantage of the fact that persons age 12 and under are not subject to criminal liability under

the law and who are experiencing poverty or a breakdown of the nuclear family because of forced migration or migration for economic reasons of their mothers, fathers or caretakers.

16. The activities carried out by the population age 18 or under recruited by the maras or gangs vary and increase in number according to their age and their involvement in increasingly more violent situations over time. In the States of northern Central America, 8-year-old children are forced to take part in surveillance, information, extortion collection, retail drug trafficking and arms transport support activities. Girls and young women perform traditional gender-based roles of care, surveillance activities, rent collection, drug and weapon transportation and storage, and are victims of diverse forms of violence within the gangs, even being sexually exploited and forced to carry out sex visits to mara and gang members deprived of liberty.
17. The criminalization of children, adolescents and young people in contexts of organized crime has an impact on the enjoyment and exercise of their rights based on their involvement in the criminal justice system and the different forms of violence, as well as abuses by State authorities and difficulties to access employment opportunities, which further aggravates their situation of social exclusion.
18. The countries of northern Central America have adopted “iron fist policies,” which are primarily reflected in two areas: a lower legal minimum age of criminal responsibility and lengthening of jail sentences. In this context, the discourse of harsher punishment has made its way into the provisions of law establishing at what age a person begins to be legally liable for a crime: 13 years old in Guatemala and 12 years old in Honduras and El Salvador. Additionally, in El Salvador the jail sentences for children, adolescents and young people were lengthened with respect to certain organized crime-related offenses.
19. The laws of the countries of northern Central America provide for both custodial and non-custodial measures of punishment. Nonetheless, statistics show that the trend is to use deprivation of liberty, when it should be a measure used on an exceptional basis, as a last resort, and for the shortest time possible. A high proportion of children and adolescents deprived of liberty have been punished for offenses relating to a criminal organization’s activities, specifically, for belonging to illicit or terrorist groups in the case of El Salvador. Notwithstanding, it must be noted that there has been a gradual reduction in the number of adolescents deprived of liberty.
20. Children and adolescents deprived of liberty are exposed to a greater risk of violence which must be accepted by the States in light of their special role as guarantor of the rights of this population. Gangs hold a lot of sway at prison facilities and over those confined within them in the States of northern Central America, which has further entrenched and compounded the problem. The primary violations resulting from this context of holding this population in the custody of the State involve infringements of the right to life and humane treatment, the failure to adapt the juvenile justice system to the phenomenon of crime, strategies of differentiating and distributing the inmate population age 18 and under based on gang membership and with respect to adults deprived of liberty.

21. Conditions of detention in the three countries of northern Central America make it difficult to ensure the right of children and adolescents deprived of liberty to live in conditions compatible with their human dignity. The conditions of infrastructure at the prison facilities are inadequate due to poor resource administration and, consequently, certain services cannot be guaranteed without interruption. In Guatemala, there have been reports of cruel, inhuman and degrading treatment of child and adolescent inmates, overcrowded facilities and, in El Salvador and Guatemala, reports of persons ages 18 and under being confined with adults.
 22. The States of northern Central America have approved regulations, national programs and pilot projects focusing on the reintegration of children and adolescents in conflict with the law into society. These programs, at least on the surface and based on their enabling legislation, are aimed at education, employability and recreation. Nevertheless, shortcomings mar the sustainability of these programs, in terms of adequate budget and expansion nationwide. Moreover, these programs are infiltrated by organized crime, undermining their original intent or concealing the criminal intent of the infiltrators in the framework of their implementation, perpetuating forced recruitment. In fact, segregating this population in social reintegration programs by particular gang membership could compound feelings of belonging or rivalry with another gang. There is insufficient information on the mental health care received by this population to determine if it is receiving assistance to overcome growing up in violent environments.
398. On the responses and obligations of States with respect to organized crime from a perspective of the rights of children, adolescents and young people.
23. From a prevention and comprehensive protection perspective, the States of northern Central America have approved special laws and regulations and programmatic policies for the protection of children and adolescents and, in some instances, young people, although the results and effectiveness thereof have not been reported. Furthermore, the patchwork of public policies on the subject matter is worrying, as is the lack of institutional leadership and sustainability over time of the specific community interventions.
 24. With respect to measures of restoration of rights and reparation, the States of northern Central America have taken measures to adapt their systems of reporting and filing complaints, adjudicating cases and redesigning institutions to provide greater access to justice by children and adolescents and, as appropriate, for young people. Notwithstanding, the efforts reveal worrisome limitations on the participation of these populations, which are at odds with international standards, such as not taking their complaints seriously and a failure to ensure their fair trial rights in terms of the best interests of the child. As for children and adolescents linked to the penal and criminal justice systems, a non-revictimizing and protection-based approach must be used with this population to prevent potential recapture by criminal groups from occurring.
 25. In relation to challenges to providing comprehensive protection, the failure to deal with the root causes of violence, the lack of comprehensive protection of children and adolescents; the

lack of institutions and capture of the State by criminal groups; as well as forced recruitment into criminal groups, are urgent and top tier concerns in terms of the involvement of children and adolescents, and also of young people, in organized crime in northern Central America.

26. The root causes of violence are not addressed in a holistic manner through public policies aimed at reducing organized crime in the States of northern Central America and their specialized technical institutions. Some State institutions work on their own and in silos with respect to organized crime and to the effects it has on the rights of children and adolescents. This situation delays the necessary creation of a holistic, systematic and integrating institutional framework to address the phenomenon of crime and its effects. In this same vein, the different levels of government must participate in the creation of this institutional framework, which goes hand in hand with the need to create municipal systems of protection and prevention.
27. The States of northern Central America are experiencing a deep infiltration by criminal organizations, eroding their institutional framework. In light of this phenomenon, the Commission is concerned that the credibility of authorities has been undermined and that citizens have no incentive to report crimes out of fear of retaliation. This retaliation is carried out both by law enforcement agents, through infiltrated police or who are members of the criminal organizations themselves, and directly by members of criminal groups. In its most extreme form, whistle blowers have been murdered and others just decide to leave the country.
28. Many public policies to combat organized crime and its impact on the rights of children, adolescents and young people in northern Central America are established on paper, but are marred by a disconnect with the reality of the community they are intended to transform. Moreover, many of these initiatives lack a long-term view and implementation is quite spotty. Families, communities and young people must be able to participate not only as beneficiaries, but in the design and creation of the interventions themselves.

399. Based on the foregoing conclusions, under Article 41.b) of the American Convention, the Commission issues the following recommendations:

400. Recommendations common to the three States of northern Central America

1. Address on a priority basis the infiltration by organized crime into the structure and institutions of the State by creating safe reporting channels to identify State agents who serve at the pleasure of organized crime.
2. Establish, with the participation of the affected population groups, civil society organizations, experts, and the support of international cooperation agencies, the root causes of criminal

violence, and based on that evidence modify accordingly the different programs and plans relating to the care and protection of child, adolescent and young victims of criminal violence.

3. Analyze current and future citizen security and crime control policies to identify and discard measures that are repressive and criminalizing with respect to children, adolescents and young people.
4. Define the age range that makes up the population group of young people in accordance with the international standards laid out in this report.
5. Generate specialized information systems on the situation and rights infringements, and impacts on the lives, of young people who have been recruited by organized crime for the adoption of evidence-based, social reintegration public policies.
6. Prepare and adapt the emergency and protection systems of the State to respond diligently to real and imminent dangers to children, adolescents and young people of being the target of violations of their rights by the actions of organized crime, maras or gangs.
7. Generate up-to-date, periodical information systems to be able to identify in a timely manner risks faced by children, adolescents and young people from the actions of organized crime, maras or gangs. These information systems must break information down by sex, gender, age, economic status, appearance, ethnic-racial group vis-à-vis the phenomenon of criminalization described in this report.
8. Legally define as a criminal offense in the penal code or, as appropriate, modify the legal description of the crime of recruitment of persons ages 18 years or under for purposes of exploitation in the commission of criminal acts or other activities including information gathering, tactical and logistic support, and surveillance, at the direction of criminal groups, including maras or gangs, in accordance with the international standards described in this report.
9. Analyze forms of cooptation and forced recruitment used by the maras and gangs, in order to establish effective programs aimed at neutralizing the forced recruitment of children, adolescents and young people.
10. Train and provide information to justice operators and law enforcement officers about the situation of children and adolescents used and exploited by the criminal groups in order to ensure their appropriate treatment as victims. These programs must emphasize the use of non-revictimizing and protection-based approaches on this population group given the potential of recapture by the criminal groups.
11. Raise the statutory minimum age of criminal responsibility to 14 to 16 years old as suggested by the Committee on the Rights of the Child.

12. Create programs and disseminate information for the purpose of eradicating the stigmas associated with children, adolescents and young people, including media-based information campaigns.
13. Establish information reporting mechanisms to make it possible to determine the extent of the use of measures of deprivation of liberty as opposed to alternatives to incarceration.
14. Determine the geographic areas of influence where maras or gangs wield control over prison facilities and their environs and take measures to neutralize this interference, which hinders the purpose of reintegration of children, adolescents and young people into society.
15. Progressively direct resources for the improvement of juvenile detention facility infrastructure and services taking care that the physical space at the facilities ensures respect for the dignity and health of children deprived of liberty.
16. Train prison guards on their special role as guarantor of the rights of children and adolescents in the custody of the State for the purpose of eradicating the acts of violence to which they are subjected as a result of their deprivation of liberty.
17. Create safe complaint and reporting systems, that are accessible and understandable at the stage of development in the lives of the children and adolescents deprived of liberty, about situations involving possible acts of torture or cruel, inhuman and degrading treatment against them, which provides for a flow of information that can be used for investigation by prosecutors and law enforcement in the judicial system.
18. Identify cases of young people who have turned 18 years old while they were deprived of liberty within the juvenile penal system and have been transferred to an adult non-segregated facility without the appropriate analysis of their situation of institutionalization that began when they were under age.
19. Ensure the segregation of children and adolescents based on sex, age and procedural status, in order to avoid their being confined with adults.
20. Generate periodical information systems to make it possible to assess the effectiveness of the plans and programs aimed at reintegrating into society children, adolescents and young people who have severed their ties with organized crime.
21. Implement, create or continue with programs of voluntary removal of tattoos for people who have severed ties with organized crime in order to make their reentry into society smoother by lessening the chances of stigmas associated with their appearance.
22. Include in social reintegration programs mental health support and treatment of children, adolescents and young people who have severed ties with organized crime for the purpose of

transforming the paradigm of violence and its interconnection with individuals, families and communities.

23. Determine and assess periodically the obstacles faced by children, adolescents and young people for their complaints to be taken seriously and to ensure their fair trial rights in light of the best interests of the child.
24. Ensure that plans and programs aimed at reducing organized crime and its impact on children, adolescents and young people are expressly based on and get at the root causes of the violence in the framework of the process of their drafting and implementation by the specialized technical institutions.
25. Ensure that rules and regulations, plans and programs aimed at the restitution and reparation of the rights of child, adolescent and young victims of organized crime are consistent and comprehensive, under institutional coordination that avoids isolated efforts or a disconnect between each other.
26. Build a relationship of trust between State institutions and citizens who seek to report criminal acts or threats stemming from the actions of organized crime. For this purpose, it is recommended to reinforce safe systems of reporting by protecting the identity of the complainants and also to reinforce witness protection programs, and the protection of defenders and journalists involved in public denunciation of these crimes.
27. Ensure the participation of the families, communities, children, adolescents and young people in the design of public policies to combat organized crime. The participation must be part of the process of creation of any intervention in this area and, in the case of active programs, it must be provided for in evaluation systems so adjustments can be made to programs based on the information from the users themselves of the programs.

401. Specific recommendations for El Salvador

1. Review the compatibility with the Convention of the increased length of prison sentences for offenses committed by children and adolescents related to organized crime, as well as the prohibition of the use of alternatives to incarceration, in light of the international standards cited in this report.
2. Review the compatibility with the Convention of creating the criminal offense of illicit association in view of the indiscriminate effects it has on children, adolescents and young people and its compatibility with the principle of legality under the criminal law as enshrined in Article 9 of the American Convention.
3. Review the compatibility with the Convention of the exceptions instituted in 2022, paying particular attention to arrests without court order, excessive use of force and alleged acts of

torture committed against children, adolescents and young people for alleged links to organized crime.

4. Provide as standard at all Confinement Centers support programs in the process of reintegration into society, allocating sufficient resources to these programs to make up for the lack of specialized assistance and personnel training.
5. Reduce the use of measures of deprivation of liberty for youth 18 years and older to boost their chances of readaptation and reentry into society.
6. Prioritize the elements of violence prevention in State security policies encompassing the root causes of violence.
7. Generate mechanisms of transparency and access to information on security policies, specifically in relation to the “Territorial Control Plan.”
8. Generate mechanisms of transparency and access to information relating to the “Zero Idle Time Plan (“Plan Cero Ocio”).
9. Generate mechanisms of transparency and access to information about the interventions of the Directorate of Reconstruction of the Social Fabric.
10. Instruct the General Directorate of Prison Centers to resume and allow the entry of civil society organization personnel and families to penitentiary facilities to verify the living conditions of children, adolescents and young people in its custody.
11. Create formal and institutional spaces of dialogue between senior level State authorities and civil society organizations and families, child, adolescent and young victims of organized crime.

402. Specific recommendations for Guatemala

1. Take measures with regard to the overcrowding of children and adolescents deprived of liberty in a way that is consistent with international standards of persons deprived of liberty and in keeping with the best interests of the child.
2. Strengthen social policies and increase public investment in the respect of the human rights of children, adolescents and young people in relation to the National System of Comprehensive Protection and Guarantee of the Rights of Children and adolescents, as well as the Municipal Prevention and Protection Systems.

3. Generate mechanisms of transparency and access to information on the results of the National Program of Prevention, Rehabilitation and Social Reintegration in the area of psychological counselling.
4. Adopt and implement a national system of comprehensive protection with respect to the rights of children and adolescents in accordance with the recommendations previously issued by the IACHR on the subject matter.
5. Verify detention conditions at juvenile prison facilities to protect the lives and physical integrity of adolescents in the custody of the State following the parameters set forth under Precautionary Measure No. 161-17.

403. Specific recommendations for Honduras

1. Direct the necessary resources for the use of non-custodial alternative measures to incarceration, as well as programs of social reintegration for children and adolescents.
2. Conclude the process of review and drafting of the National Children's Policy in accordance with the recommendations previously issued by the IACHR on the subject matter.
3. Generate mechanisms of transparency and access to information on the results of the set of plans and programs aimed at protecting child, adolescent and young victims of organized crime.
4. Submit to the IACHR information relating to the measures implemented for restitution of rights, rehabilitation, effective access to justice and reparation of children, adolescents and young people.