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**REPORT ON CORPORAL PUNISHMENT AND HUMAN RIGHTS  
OF CHILDREN AND ADOLESCENTS**

*“Promoting the defense and respect of the human rights  
of children and adolescents in the Americas”*

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**REPORT ON CORPORAL PUNISHMENT AND HUMAN RIGHTS  
OF CHILDREN AND ADOLESCENTS**

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## REPORT ON CORPORAL PUNISHMENT AND HUMAN RIGHTS OF CHILDREN AND ADOLESCENTS

### I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) sees that the right of children and adolescents to a life free of violence and discrimination poses an urgent challenge within the regional and international human rights protection systems. The enactment of international human rights instruments to protect children’s rights reflects the consensus and recognition that exists in the member states regarding the need to eliminate violence against children and adolescents in the region.

2. This report, prepared by the office of the Rapporteur on the Rights of the Child,<sup>1</sup> has been prepared in the context of the challenges and progress made during the 20 years since the United Nations General Assembly’s adoption of the Convention on the Rights of the Child.<sup>2</sup> The Commission recognizes the gravity and seriousness of corporal punishment and decided to produce this thematic report in order to recommend, to the member states, specific actions for making comprehensive progress toward protecting the human rights of children and adolescents.

3. Citing the *Study on Violence against Children*,<sup>3</sup> the Commission maintains that “no violence against children is justifiable; all violence against children is preventable.” The Commission acknowledges the initiatives of several American States that have already placed legal bans on the use of corporal punishment as a method of disciplining children and adolescents, both at home and in society as a whole, and also those States that are drafting legislation in that direction. The Commission also notes that although most of the member states have banned corporal punishment as a sanction for criminal offenses, it remains in the penal codes as a disciplinary method of many countries. In addition, most of the member states do not have laws or explicit statutory language prohibiting corporal punishment at home or at school. The IACHR therefore calls on the OAS member States to act immediately on the problem of corporal punishment by placing explicit and absolute legal bans on its use in all contexts and, in parallel, by adopting such preventive, educational, and other measures that may be necessary to ensure the eradication of this form of violence, which poses a serious challenge to the wellbeing of children in the Hemisphere.

4. The IACHR is grateful to the Inter-American Development Bank for the financial support provided for the preparation of this report.

Washington, D.C., 2009.

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<sup>1</sup> This report acknowledges the contributions made by the consultant Cecilia Anicama.

<sup>2</sup> The Convention on the Rights of the Child was adopted by the United Nations General Assembly Resolution 44/25 on November 20, 1989.

<sup>3</sup> United Nations, *Study on Violence against Children*, October 2006, <http://www.ohchr.org/english/bodies/crc/study.htm>; available at [www.violencestudy.org](http://www.violencestudy.org)

## II. BACKGROUND

5. The Inter-American Commission on Human Rights, a principal and autonomous organ of the Organization of American States (hereinafter "OAS"), is charged with overseeing the observance of human rights in the Hemisphere. Over the years, the human rights of children have been a topic of particular interest to the IACHR. Thus, during its 100th regular session, held in Washington D.C., from September 24 to October 13, 1998, the Commission resolved to create the office of the Rapporteur on the Rights of the Child, with the instruction to study and promote activities for assessing the human rights situation of children in the member States of the Organization of American States; and to propose effective measures so as member states adopt practices and legislative provision so as to ensure the enjoyment and exercise of human rights by all children.

6. In recent years, the Commission has been paying particular attention to the problem of violence against children and adolescents and the relationship it bears to human rights at numerous hearings, through its system of cases, petitions and precautionary measures, thematic and specific reports, and visits to different countries in the region. In that context, the Commission notes that one form of violence against children and adolescents that is still legal in some OAS member states is corporal punishment, which is used as a way to discipline young people and which continues because it is tolerated and accepted by society and the State. This situation violates the human rights of children and adolescents, in blatant contravention of the provisions of both the Convention on the Rights of the Child and the inter-American human rights instruments. That situation leaves the children and adolescents of the hemisphere in a situation of vulnerability and potentially without access to the effective protection of their human rights and to a decent and violence-free existence.

7. The specific topic of corporal punishment in disciplining children and adolescents was placed on the inter-American system's agenda in 2005 at a thematic hearing held at IACHR headquarters during its 123rd regular session. That hearing was attended by the organization Save the Children Sweden and by the Andean Commission of Jurists, the Global Initiative to End All Corporal Punishment of Children, and defenders of the human rights of children and adolescents from across the Hemisphere,<sup>4</sup> who spoke of the need for the Commission and the Court to set an inter-American standard to guide the member states in meeting their international obligations regarding the use of corporal punishment to discipline children and adolescents in the Hemisphere.

8. At its 132nd session, the IACHR again turned its attention to the topic and decided to prepare this thematic report and to submit a request for an advisory opinion to the Inter-American Court of Human Rights<sup>5</sup> for it to set standards regarding violence of this kind and

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<sup>4</sup> In attendance were Mario Víquez (then Children's Defender of the People's Defense Office of Costa Rica) and María Do Rosario Nunes (member of the Human Rights Committee of the Chamber of Deputies of the National Congress of the Federative Republic of Brazil).

<sup>5</sup> On December 29, 2008, the Commission sent the Inter-American Court of Human Rights a request for an advisory opinion for the Court to determine "whether the practice of corporal punishment as a means of disciplining children and adolescents is not compatible with Articles 1.1, 2, 5.1, 5.2, and 19 of the American Convention on Human Rights and Article VII of the American Declaration of the Rights and Duties of Man, as they relate to the relevant provisions of the Convention on the Rights of the Child." On January 27, 2009, the Inter-American Court issued a resolution in which it decided that "shall not provide an answer to the request for advisory opinion [because] the answers to the questions asked [...] can be drawn from a full analysis and interpretation of the body of jurisprudence of the Tribunal regarding the rights of the child and relating to

to emphasize the jurisprudence of the inter-American human rights system and the relation it bears to the subject matter of this report.

### III. METHODOLOGY

9. The method used to prepare this report is based on an analysis of international human rights standards, sources of international law and comparative law, and on studies and tools developed by international and national organizations that work with children.

10. The report sets out general considerations relating to children; it analyzes state responsibility vis-à-vis the use of corporal punishment in public institutions, state responsibility in the use of corporal punishment by private citizens, and corporal punishment as it relates to the institution of parental custody (*patria potestad*); and it proposes a series of measures for eliminating the corporal punishment of the Hemisphere's children and adolescents.

11. The final section sets out the Commission's conclusions and recommendations, which aim to guide the member states in meeting their obligations of ensuring respect for and protection of the human rights of children and adolescents within their corresponding jurisdictions.

### IV. DEFINITIONS

#### A. Children<sup>6</sup> in international human rights law

12. The American Convention on Human Rights does not define the term "child." Therefore, in keeping with Article 31 of the Vienna Convention on the Law of Treaties,<sup>7</sup> the inter-

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...continuation

other criteria established for the child, as well as from the obligations issued by other international instruments ratified by the States in the region." Thus, in the "Considering" section, the Court stated:

That as regards the issue that is the subject of the request, the Court notes that various relevant steps forward have been taken in the development of international law and human rights regarding the protection of the human rights of children and adolescents. In particular there is the Convention on the Rights of the Child [...], which has been signed and ratified by 195 States [...], including 34 States of the American continent [...] and establishes the obligation for the States Parties to respect the responsibilities, rights and duties of those who are legally responsible for providing direction and guidance to children [...]. However it subjects this right to the duty to establish the best interests of the child as the fundamental elements of his or her upbringing and development, whether this be in the hands of the child's parents or legal guardians [...] Equally, it extends this obligation to discipline in schools, so that it is administered in a manner consistent with human dignity [...] In addition to the above, the Convention on the Rights of the Child obliges States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment [...] or to any form of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of his or her parents, legal guardian or any other person who has the care of the child." I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>

<sup>6</sup> This document uses the term "child" to refer, without distinction to: babies, boys, girls, and adolescents.

American human rights protection system uses the concept established in international law, specifically in Article 1 of the Convention on the Rights of the Child,<sup>8</sup> adopted by the United Nations General Assembly in 1989, which defines children and adolescents as “every human being below the age of 18 years unless, under the law applicable, majority is attained earlier.”<sup>9</sup>

13. In consideration of which, the Inter-American Court<sup>10</sup> and the Inter-American Commission<sup>11</sup> have established that the definition of “child” is based on the provisions of Article 1 of the Convention on the Rights of the Child.<sup>12</sup> In Advisory Opinion OC/17, the Inter-American Court ruled that “the term child, obviously, encompasses boys, girls, and adolescents”<sup>13</sup> and that

Taking into account international norms and the criterion upheld by the Court in other cases, “child” refers to any person who has not yet turned 18 years of age.<sup>14</sup>

## **B. Corporal punishment**

14. The IACHR embraces the definition proposed by the Committee on the Rights of the Child which in its General Comment No. 8, adopted in 2006, the Committee on the Rights of the Child defines “corporal” or “physical” punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves

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<sup>7</sup> 1969 Vienna Convention on the Law of Treaties, Article 31: General rule of interpretation. “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.”

<sup>8</sup> Adopted by the United Nations General Assembly in 1989, in force since September 2, 1990. <http://www2.ohchr.org/english/law/crc.htm>.

<sup>9</sup> Committee on the Rights of the Child, General Comment 4 (2003), CRC/GC/2003/4, Adolescent health and development in the context of the Convention on the Rights of the Child, paragraph 1.

<sup>10</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, Chapter V.

<sup>11</sup> IACHR, *Annual Report 1991*, Chapter IV.

<sup>12</sup> Article 1 of the Convention on the Rights of the Child provides:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

<sup>13</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, footnote 45.

<sup>14</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 42.



hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading.”<sup>15</sup> The definition that the Committee on the Rights of the Child established has two elements that enable one to clearly distinguish corporal punishment from mistreatment or abuse: one subjective element and the other objective. The subjective element is the intent to correct, discipline or punish the behavior of a child or adolescent. The second element, which is objective, is the use of physical force, however mild. It is the presence of both these factors that makes the practice of corporal punishment a human rights violation that is different from mistreatment or abuse. The subjective element in the definition of corporal punishment is significant since it is that intention to impose discipline, correction or punishment that distinguishes corporal punishment from other forms of violence committed against children. The convergence of these two elements establishes corporal punishment as a practice that violates children’s human rights.

15. In addition, the Committee noted that there are other forms of punishment that, while not physical, are also cruel and degrading and thus incompatible with the Convention. “These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”<sup>16</sup> In connection with General Comment No. 8 of the Committee on the Rights of the Child, the Inter-American Court of Human Rights said that it had “the purpose of guiding the States Parties on interpreting the provisions of the Convention on the Rights of the Child, in order to eliminate violence against children. For this purpose, it defined the concepts of “corporal punishment” and “other cruel or degrading forms of punishment”, stating that they are both incompatible with the said Convention, whether they take place in the home and family or in any other environment.”<sup>17</sup>

## **V. GENERAL CONSIDERATIONS RELATED TO CHILDREN**

### **A. Recognition of the child as the subject of rights and the notion of a *corpus juris***

16. The existence of a *corpus juris* applicable to children implies recognizing the existence of a set of basic provisions associated with the goal of upholding the human rights of

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<sup>15</sup> Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection against corporal punishment and other forms of cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*), CRC/C/GC/8, August 21, 2006, paragraph 11. In the same paragraph of General Comment No. 8, the Committee also observed that “there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection against corporal punishment and other forms of cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*), CRC/C/GC/8, August 21, 2006, paragraph 11.

<sup>17</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>; Citing: U.N., Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, 42nd Session (2006), Geneva, May 15 to June 2, 2006, UN Doc, CRC/C/GC/8 (2006), paragraphs 11 and 12.

children. In the inter-American system, the Commission made the first explicit references to Article 19 of the American Convention<sup>18</sup> and it was not until 1999 that the Court set out the idea that a *corpus juris* of human rights for children and adolescents should exist.<sup>19</sup> This idea had been developed by the IACHR in stating that:

For an interpretation of a State's obligations vis-à-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere.<sup>20</sup>

17. In turn, the Court ruled that the American Convention and the CRC were part of an international *corpus juris* for protecting the rights of people aged below 18 years. That means there is a substantive connection between both instruments, demanding their joint application.<sup>21</sup> Thus, the Court ruled that with respect to the human rights of children:

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<sup>18</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala* OEA/Ser.L/V/II.66, doc. 16, 1985. For the first reports on violations of the right to life, to humane treatment, and to personal liberty of children, see: IACHR, *The Rights of the Child in the Inter-American Human Rights System*, October 29, 2008, OEA/Ser.L/V/II.133. Doc. 34, paragraph 65.

Under Article 27 of the Convention, this obligation vis-à-vis the rights of children cannot be suspended even at times of war, public danger, or any other emergency threatening the independence or security of a state party. See also: IACHR, *Annual Report 1991*, Chapter VI, Strengthening of the OAS in the area of Human Rights; and *Annual Report 1992-93*, Chapter V, Status of the rights of minors in the Hemisphere. [See, *inter alia*: *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997; *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 29 rev. 1, September 29, 1997. Also: *Fourth Report on the Situation of Human Rights in Guatemala*, which addresses the case of the death of the adolescent Anstrau Villagrán Morales, although it contains no specific references to Art. 19 of the American Convention on Human Rights, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993. There are, however, country reports dealing with children's rights that make no reference to Art. 19 of the American Convention (for example, the 1999 *Report on the Dominican Republic*). Similarly, the *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System* invokes Art. VII of the American Declaration of the Rights and Duties of Man, which establishes special measures of protection for children, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28 2000] (Beloff, Mary: *Strengths and Weaknesses of Strategic Litigation for Strengthening International and Regional Protection Standards for Children in Latin America*, pp. 368 and 669.)

<sup>19</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63.

<sup>20</sup> IACHR, Report No. 41/99, Case 11.491, Minors in Detention, Honduras, March 10, 1999, paragraph 72.

<sup>21</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 194. See also: *Case of the Juvenile Reeducation Institute*. Judgment of September 2, 2004. Series C No. 112, paragraph 148; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, which explicitly states, in paragraph 166, that:

Both the American Convention and the Convention on the Rights of the Child are part of a broad international *corpus juris* for protection of children that aids this Court in establishing the content and scope of the general provision defined in Article 19 of the American Convention.

Both the American Convention and the Convention on the Rights of the Child are part of a broad international *corpus juris* for protection of children that aids this Court in establishing the content and scope of the general provision defined in Article 19 of the American Convention.<sup>22</sup>

18. The recognition of this *corpus juris* implies a reconceptualization of the aforesaid duty of special protection. Thus, the IACHR has stated that:

[...] the respect for the rights of the child is a fundamental value in a society that claims to practice social justice and observe human rights. This respect entails offering the child care and protection, basic parameters that guided in the past the theoretical and legal conception of what such rights should embody. It also means recognizing, respecting, and guaranteeing the individual personality of the child as a holder of rights and obligations.<sup>23</sup>

19. The Court has noted that existence of this *corpus juris* is the result of evolution in international children's human rights law, which is centered on the recognition of children as subjects of rights. Consequently, the legal framework for the protection of children's human rights is not limited to the provisions of Article 19 of the American Convention; it also includes, for interpretive purposes, a range of provisions including those contained in the Declarations on the Rights of the Child of 1924 and 1959, the Convention on the Rights of the Child of 1989, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules of 1985), the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules of 1990), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines of 1990), in addition to the general international human rights instruments.<sup>24</sup>

20. The Court has thus analyzed cases involving children's human rights in application of the *corpus juris* regarding children, in accordance with the following reasoning:

To establish the content and scope of this article, the Court will take into consideration the pertinent provisions of the Convention on the Rights of the Child, which Paraguay ratified on September 25, 1990, and that entered into force on September 2, 1990, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), which Paraguay ratified on June 3, 1997, and which entered into force on November 16, 1999. These instruments and the

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<sup>22</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, paragraphs 37 and 53; and *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 194.

<sup>23</sup> *Idem*. Also see IACHR, *Third Report on the Situation of Human Rights in Colombia*, 1999, Chapter XIII, paragraph 1; Report No. 33/04, Jailton Neri Da Fonseca (Brazil), Case 11.634, March 11, 2004, paragraph 80.

<sup>24</sup> The Court has written that "[t]he *corpus juris* of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law in affirming and building up the latter's faculty for regulating relations between States and the human beings within their respective jurisdictions." I/A Court H.R., OC-16, *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, October 1, 1999, paragraph 115.

American Convention are part of a very comprehensive international *corpus juris* for the protection of children that the Court must honor.<sup>25</sup>

21. It should be noted that the existence of *corpus juris* includes not only the text of the Convention on the Rights of the Child, but also the decisions adopted by the United Nations Committee on the Rights of the Child in pursuit of its mandate. That approach represents a significant step forward that indicates not only the existence of a shared legal framework in international human rights law as applicable to children but also the interdependence that exists at the international level among the different international systems for protecting children's human rights.

**B. Special obligations of the State to protect children from acts of violence: the best interests of the child**

22. Article 19 of the American Convention provides that:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

23. This article establishes a sphere of special protection for the human rights of children and adolescents that entails special, complementary and additional obligations of protection incumbent upon States. That sphere of special protection is dictated by the special conditions of the child as a subject of rights; in other words, it is necessitated by the child's vulnerability and his or her dependence on adults in order to exercise certain rights, his or her maturity, progressive growth and development, and unawareness of his or her human rights and of the means by which to demand observance of those rights. Given all these factors and considerations, the situation of children cannot be likened to that of adults and thus warrants the adoption of special measures.

24. In General Comment No. 8, the Committee on the Rights of the Child stated that the interpretation given to the best interests of the child must be compatible with the entire Convention, including the obligation of protecting minors from all forms of violence. In light of those considerations, the IACHR notes that the use of corporal punishment against children and adolescents, in addition to failing to respect their human rights, denotes a view of children as an object of rights, not a subject thereof – a view that states, in accordance with their international obligations, must overturn.<sup>26</sup>

25. Similarly, the Commission believes that, based on the doctrine of complete protection set forth in the Convention on the Rights of the Child itself, *the best interests of the child* must be construed as meaning the effective enjoyment of each and every one of their human rights. In other words: all decisions by the family, society, or State that affect persons

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<sup>25</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, paragraph 148; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 166; *The "Street Children" Case (Villagrán-Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 194, and *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002, Series A, number 17, paragraph 24.

<sup>26</sup> Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Article 19, paragraph 2 of Article 28, Article 37, *et al.*), CRC/C/GC/8, August 21, 2006, paragraph 26.

under the age of eighteen must objectively and invariably take into account the effective enjoyment of all those rights. The Inter-American Court stated,

the phrase “best interests of the child”, set forth in Article 3 of the Convention on the Rights of the Child, entails that children’s development and full enjoyment of their rights must be considered the guiding principles to establish and apply provisions pertaining to all aspects of children’s lives.

The ultimate objective of protection of children in international instruments is the harmonious development of their personality and the enjoyment of their recognized rights. It is the responsibility of the State to specify the measures it will adopt to foster this development within its own sphere of competence and to support the family in performing its natural function of providing protection to the children who are members of the family.<sup>27</sup>

26. The Inter-American Court has pointed out that “the Convention on the Rights of the Child sets high standards for protection of children against violence, particularly in Articles 19 and 28, as well as in Articles 29, 34, 37, and 40, and others, [...] taking into account the general principles contained in Articles 2, 3 and 12”.<sup>28</sup>

27. The Convention on the Rights of the Child contains a number of provisions concerning the special protection of children and adolescents:

#### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.<sup>29</sup>

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<sup>27</sup> I/A Court H.R., Advisory Opinion OC-17/2002, *Juridical Condition and Human Rights of the Child*, August 28, 2002, paragraphs 53 and 137-6. In its eighth operative paragraph it returned to this idea and stated that:

[...] true and full protection of children entails their broad enjoyment of all their rights, including their economic, social, and cultural rights, embodied in various international instruments. The States Parties to international human rights treaties have the obligation to take positive steps to ensure protection of all rights of children.

<sup>28</sup> I/A Court H.R., Advisory Opinion OC-17/2002, *Juridical Condition and Human Rights of the Child*, August 28, 2002, Series A No. 17, paragraphs 53 and 136-7, referring to *Committee on the Rights of the Child, Report of its Twenty-Eight Session*, 28.11.2001, CRC/C/111, paragraph 678.

<sup>29</sup> The Committee on the Rights of the Child has examined the principle of nondiscrimination on various occasions, *cf., inter alia*, Report of the Committee on the Rights of the Child, State Party Report: Paraguay, 2001; Report of the Committee on the Rights of the Child, State Party Report: Guatemala, 2001; and Report of the Committee on the Rights of the Child, State Party Report: Belize, 1999.

### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### Article 4

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

### Article 19

1. States Parties shall 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

### Article 28

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

## Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

[...]

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

[...]

28. The provisions cited above make it clear that, from the perspective of the best interests of the child and the *corpus juris*, the State, society and the family must prevent and avoid, by every means possible, any form of violence against children, in every realm and by any method. This includes all forms of corporal punishment and other traditional practices harmful to children's personal integrity.<sup>30</sup> The incorporation of the basic principles applicable to children enshrined in the Convention on the Rights of the Child – such as the principle of nondiscrimination, the principle of participation, the principle of the child's development and survival, and the principle of the child's best interests – can be seen in the decisions adopted by the regional system. To illustrate this, one of the first references to the principle of the child's best interests in the Commission's decisions can be found in its 1997 Annual Report, in which it recommended that all decisions affecting the life, freedom, physical or moral integrity, development, education, health or other rights of children, be made with a view to ensuring that the best interests of the child is taken into account.<sup>31</sup>

29. Also, the Inter-American Court has repeatedly noted the particular gravity of cases in which children and adolescents are the victims of human rights violations<sup>32</sup> as provided for in the American Convention and numerous other international instruments that enjoy broad acceptance within the international community. It has also emphasized that the "adoption of special measures to protect children is a responsibility both of the State and of the family,

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<sup>30</sup> Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection against corporal punishment and other forms of cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*), CRC/C/GC/8, August 21, 2006, paragraphs 20 – 50.

<sup>31</sup> IACHR, *Annual Report 1997*, Chapter VII, Recommendations to member states in areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

<sup>32</sup> I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, paragraph 134. See also: *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 64, paragraph 146; *Case of the Gómez Paquiyauri Brothers*. *supra* note 85, paragraph 162; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 133.

community, and society to which they belong.”<sup>33</sup> Similarly, in the case of *Servellón García et al. v. Honduras*, the Court ruled that :

The Tribunal understands that the due protection of children’s rights must take into consideration the characteristics of children themselves and the need to foster their development, and it must offer them the conditions necessary so that the child may live and develop his abilities with full use of his potential.<sup>34</sup> Likewise, the Court mentioned that Article 19 of the Convention must be understood as a complementary right that the treaty established for human beings that due to their physical and emotional development require special measures of protection.<sup>35</sup>

30. In consideration of the best interests of children and of the State’s obligations arising therefrom, in ruling on other contentious cases and ordering provisional measures the Court has required that steps be taken to protect the psychological integrity of children in order to prevent irreparable harm.<sup>36</sup> It has also repeatedly noted the need for States to adopt special measures of protection and assistance in line with the principle of the child’s best interests<sup>37</sup> to ensure them a decent existence;<sup>38</sup> and it has ruled that this special protection “should be understood as the need to satisfy all the rights of the child, and this obliges the State and affects the interpretation of the other rights established in the Convention when the case refers to children.”<sup>39</sup>

31. To summarize, in accordance with the established doctrine as applicable to children, which is based on their needs and the principle of their best interests, States are obliged to “adopt all positive measures required to ensure [the] protection of children against mistreatment [corporal punishment and other forms of violence], whether in their relations with

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<sup>33</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, paragraph 62.

<sup>34</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, *supra* note 72, paragraph 56. See also: *Case of the Ituango Massacres*, *supra* note 3, paragraph 244; *Case of the Mapiripán Massacre*, *supra* note 9, paragraph 152; and *Case of the Gómez Paquiyauri Brothers*, *supra* note 63, paragraph 163.

<sup>35</sup> I/A Court H.R., *Case of Servellón García et al.*, Judgment of September 21, 2006. Series C No. 152, paragraph 133.

<sup>36</sup> I/A Court H.R., *Matter of Reggiardo Tolosa regarding Argentina*, about a request for provisional measures, Order of January 19, 1994. The requested measures were intended to protect the mental integrity of minors Gonzalo Xavier and Matías Angel “whose true last names are Reggiardo Tolosa, and who were born in April 1977 during the captivity of their mother and were immediately seized and later registered as the children of Samuel Miara, a former assistant police inspector of the Federal Police, and his wife, Beatriz Alicia Castillo.”

<sup>37</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 162.

<sup>38</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraphs 133 and 134.

<sup>39</sup> I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, paragraph 134.



public authorities or in relations among individuals or with non-governmental entities” in order to ensure them the full exercise and enjoyment of their rights.<sup>40</sup>

## VI. CORPORAL PUNISHMENT OF CHILDREN AND ADOLESCENTS IN THE DOMESTIC LAWS OF THE AMERICAN STATES

32. Historically, laws in countries around the world did not protect everyone from violence, with many even explicitly allowing men to strike their wives and teachers to punish their students. Substantial progress was made in the 20<sup>th</sup> century, when defenders of women’s human rights promoted social and legal change, making domestic violence unacceptable and leading to the enactment of laws prohibiting it. Today, all adults are legally protected from assault, even if the force used is light. Nevertheless, adults are used to witnessing in public environments children and adolescents being punished corporally by their parents or other adults responsible for their care sometimes without response neither mechanism to protect them. By September 2009, only 24 states worldwide have enacted laws prohibiting corporal punishment even at the home.<sup>41</sup> Only three of these<sup>42</sup> are member States of the Organization of American States (OAS): Uruguay,<sup>43</sup> Venezuela<sup>44</sup> and Costa Rica.<sup>45</sup> Although the majority of countries in this hemisphere have ratified

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<sup>40</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>. Citing: I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17. See also: *Case of Ximenes Lopes*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, paragraphs 89 and 90.

<sup>41</sup> The States are: Sweden (1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Bulgaria (2000), Israel (2000), Germany (2000), Iceland (2003), Ukraine (2004), Romania (2004), Hungary (2005), Greece (2006), the Netherlands (2007), Portugal (2007), Spain (2007), New Zealand (2007), Uruguay (2007), Venezuela (2007), Costa Rica (2008) and Moldova (2008).

<sup>42</sup> Uruguay adopted law N° 18.214 entitled “Integridad personal de niños, niñas y adolescentes”, which amended the Childhood and Adolescence Code and the Civil Code, explicitly banning the use of corporal punishment as a disciplinary measure on children and adolescents. The law was approved on November 20, 2007, promulgated on December 9, 2007 and published in the Official Gazette on December 31, 2007. Venezuela approved the Law on “Prohibición del Castigo físico y el respeto a la integridad personal de niños, niñas y adolescentes” on December 10, 2007, published in the Extraordinary Official Gazette No. 5.859. Costa Rica adopted the law “Abolición del Castigo Físico y de Cualquier Otra Forma de Maltrato o Trato Denigrante contra Niños, Niñas y Adolescentes” approved by Congress on June 25, 2008, which adds article 24 bis to the Childhood and Adolescence Code and amends article 143 of the Family Code.

<sup>43</sup> The Law on Prohibition of Physical Punishment and Respect for the Personal Integrity of Children and Adolescents, which amends Uruguay’s Childhood and Adolescence Code, states: “Article 12 bis. Prohibition of physical punishment. It is prohibited for parents, guardians, and all other persons responsible for the care, treatment, education or supervision of children and adolescents, to use physical or any other kind of humiliating punishment as a form of correcting or disciplining children or adolescents. Uruguay’s Institute for Children and Adolescents, other State institutions and civil society are jointly responsible for: a) carrying out awareness raising and educational programmes for parents and all others responsible for the care, treatment, education or supervision of children and adolescents; b) promoting positive, participatory and non-violent forms of discipline as alternatives to physical punishment and other forms of humiliating treatment.”

<sup>44</sup> Official Gazette of the Bolivarian Republic of Venezuela, Number 5,859 Special Law for Partial Amendment of the Organic Law on Child and Adolescent Protection of December 10, 2007. “Article 32-A Right to Good Treatment. All children and young people have a right to be treated well. This right includes a non-violent education and upbringing, based on love, affection, mutual understanding and respect, and solidarity. Parents, representatives, guardians, relatives, and teachers should use non-violent methods of education and discipline to raise and educate their children. Consequently, all forms of physical and humiliating punishment are prohibited. The State, with the active participation of society, must ensure that policies, programmes and protection measures are in place to abolish all forms of physical and humiliating punishment of children and

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the Convention on the Rights of the Child, few have fully adapted their domestic laws to conform to the standards that the Convention establishes. In the last three years, however, bills have been introduced that would prohibit corporal punishment in all settings in Peru, Brazil, Canada and Nicaragua.

33. As at September 2009, corporal punishment is not prohibited by law in schools in most OAS member states.<sup>46</sup> In some countries, it is prohibited in schools but not in the family.<sup>47</sup> Laws in some countries explicitly authorise corporal punishment and regulate how it should be inflicted, as in Belize,<sup>48</sup> Grenada,<sup>49</sup> and St Vincent and the Grenadines.<sup>50</sup> In some states, teachers can use corporal punishment as a last resort, in cases involving serious and repeated offenses.<sup>51</sup>

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young people. Corporal punishment is defined as the use of force, in raising or educating children, with the intention of causing any degree of physical pain or discomfort to correct, control or change the behaviour of children and young people, provided that the act is not punishable. Humiliating punishment can be understood as any form of offensive, denigrating, devaluing, stigmatising or mocking, treatment, carried out to raise or educate children and young people, with the aim of disciplining, controlling or changing their behaviour, provided that the act is not a punishable offense.”

<sup>45</sup> Costa Rica, Law Abolishing Physical Punishment and Any Other Form of Abuse or Denigrating Treatment of Children and Adolescents, passed by Congress on June 25, 2008. It adds Article 24 bis to the Child and Adolescent Code and amends Article 143 of the Family Code. “Article 24 bis. The right to discipline free from corporal punishment and other degrading forms of treatment. Children and adolescents have a right to receive counselling, education, care and discipline from their mother, father or tutor, as well as from their caretakers or the personnel from educational and health centres, shelters, youth detention or any other type of centres, that in no way represents an authorisation of any sort to these parties for the use of corporal punishment or degrading treatment. The Patronato Nacional de la Infancia shall coordinate with the institutions conforming to the National Integral Protection System and NGOs, for the implementation of educational campaigns and programmes directed to parents and other adults in custodial or caring roles.”

<sup>46</sup> Corporal punishment is not explicitly prohibited in legislation applicable to schools in Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Cuba, Dominica, Grenada, Guatemala, Guyana, Jamaica, Mexico, Panama, Paraguay, Peru, St Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Trinidad & Tobago, and the US.

<sup>47</sup> Canada, Nicaragua, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras and possibly Suriname.

<sup>48</sup> In Part VI, paragraph 27, the Education Act (amended on December 31, 2000) provides that “[f]or serious and repeated offences, punishment may be administered by the principal, or by a member of his staff under his authorization, provided that any such punishment shall not be excessive and harmful to the child.” In August 2009, draft Education Rules which would prohibit corporal punishment were under discussion.

<sup>49</sup> The Ministry of Education and Human Resources has established that it is the duty of the principal of the educational institution to impose discipline; to that end, the principal may administer corporal punishment when necessary and delegate to the deputy principal and senior teachers, where applicable the authority to administer corporal punishment <http://www.grenadaedu.com/FAQ/tabid/238/Default.aspx>.

<sup>50</sup> In the Education Bill, 2005, Division 5, provision 53 states that (2) Corporal punishment shall only be administered - (a) by the principal or deputy principal or a teacher specifically designated by the principal for the purpose; (b) in the principal’s office or other private room in the school; (c) using an instrument prescribed by the regulations; and (d) in conformity with any written guidelines issued by the Chief Education Officer.) . See also UN Secretary General’s Study on Violence against Children, *Ending Legalized Violence against Children, Caribbean Special Report*, Trinidad, 2005.

<sup>51</sup> Belize. Education Rules (2000) Disciplinary measures Para. 141. 1) Disciplinary measures may be taken against a student for offences in the classroom of school-related offences but teachers shall be mindful of effective and acceptable methods of behavioral modification,:

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Some laws even go so far as to specify the instrument that is to be used to administer the corporal punishment and how it is to be inflicted.<sup>52</sup> Invoking laws that allow the use of corporal punishment on children and adolescents in school, legal challenges to the practice of corporal punishment have been dismissed on the grounds that they were unfounded. For example, the Supreme Court of Saint Vincent and the Grenadines dismissed a suit in which a student claimed to have been the victim of physical punishment administered by a teacher on the grounds that the student's case was unfounded. The Court ruled that the punishment could not be classified as degrading treatment, and the punishment itself was not, therefore, unlawful.<sup>53</sup>

34. As for institutions and establishments charged with the care and protection of children and adolescents, in most countries of the hemisphere corporal punishment is not explicitly prohibited.<sup>54</sup> Corporal punishment in institutions charged with the care and protection of children and adolescents is permitted in other countries.<sup>55</sup>

35. Despite the recent progress made in some countries of the region regarding the express prohibition of corporal punishment of children and adolescents, flawed legislation on the subject remains on the books in most member states, a problem compounded by the fact that the practice is legitimized by society's tolerance and acceptance of it. It is vital that the States, in furtherance of their international obligations, explicitly prohibit corporal punishment in their laws

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1) including counselling.2) Subject to sub rules (3) below, where any punishment is used, such punishment shall not be excessive. 3) For serious and repeated offences, *corporal punishment may be administered as a last resort* (\*) by the principal teacher, or by a senior member of the staff under the authority of the principal teacher (\*) Bold type appears in the Education Rules. Saint Vincent and the Grenadines Statutory Rules and Orders 1959 No. 44 Gazetted the 16<sup>th</sup> January, 1960. Section 9, Sub-section 3 of the said Regulations says:-"Corporal Punishment may be administered as a last resort by the Head Teacher or by an Assisted Teacher in the presence, under the direction and on the responsibility of the Head Teacher."

<sup>52</sup> Saint Vincent and the Grenadines, Statutory Rules and Orders 1959 No. 44 gazetted the 16<sup>th</sup> January, 1960 Section 9 Sub-section 4 defines the Instrument to be used for Corporal Punishment as follows: "It shall be a leather strap twenty inches in length and one and a half inches in breadth and a quarter of an inch in thickness."

<sup>53</sup> Supreme Court, *Kevin Lucas 'by next friend' Virginia Mascoll v Jack & Anor*, 11 Oct. 1999, <http://www.interights.org/showdoc/index.htm?keywords=corporal%20punishment&dir=databases&refid=2302>.

<sup>54</sup> See in this regard U.N. Doc. A/61/299, available as of November 13, 2006 at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/491/08/PDF/N0649108.pdf?OpenElement>, paragraph 53.

<sup>55</sup> Jamaica: Prison (Amendment) Rules, 1965 N° 115. 244A. (1) The Director shall, at the time of imposing corporal punishment under section 43 of the Law, indicate whether such punishment shall consist of flogging or whipping. (2) Flogging shall be inflicted - (a) with the cat-o-nine tails, that is to say, a rope whip consisting of a round wooden handle twenty inches long, and one to one and on-half inches in diameter with nine thongs of cotton cord and not more than three sixteenths of an inch in diameter and knotted at the end or whipped at the end with cotton twine; (b) on the back of the prisoner between the shoulders and the waist. (3) Whipping shall be inflicted - (a) with the tamarind switch, that is to say, three lengths of twigs of the tamarind tree, each forty-four to forty-eight inches long and not more than one-quarter of one inch in diameter, trimmed smoothly so that there shall be no protrusion of knots or joints and bound together with cotton twine; (b) on the prisoner's buttocks. Dated at Kingston this 7th day of April, 1965 Edward Seaga, Minister of Development and Welfare. No C 26/S8 (Thursday, April 15, 1965, vide the Jamaica Gazette Supplement, Rules and Regulations Vol. LXXXVIII No 53).

and map national strategies, policies or plans geared to instructing individuals and institutions charged with children's care alternative in nonviolent techniques of discipline.

## VII. CORPORAL PUNISHMENT IN PUBLIC INSTITUTIONS

36. The State's obligation to prohibit the use of corporal punishment as a way to discipline children and adolescents under the custody and protection of the State's public institutions – detention centers, hostels, orphanages, hospitals, schools, military schools, etc. – is absolute. In analyzing this topic, the agencies of the regional system speak of the additional vulnerability of individuals who, for whatever reason, are interned in public institutions<sup>56</sup> and the State's special status therein as guarantor.<sup>57</sup> With regard to the right to humane treatment, the Court has ruled that the State has an obligation to apply the highest standard in determining the seriousness of actions that violate children's right to humane treatment:<sup>58</sup>

The right to life and the right to humane treatment require not only that the State respect them (negative obligation) but also that the State adopt all appropriate measures to protect and preserve them (positive obligation), in furtherance of the general obligation that the State undertook in Article 1.1 of the Convention.<sup>59</sup>

37. This guarantor role therefore means that the State has extensive control and dominion over the lives of those people under its protection or in its custody, who, in turn, are unable to satisfy numerous needs of their own, which makes the State the only entity capable of ensuring the enjoyment and exercise of their rights. The aforesaid criterion applies to all individuals under the care and protection of the State, and it is of particular relevance in connection with those aged under 18, because of the scope of the State's special protection obligations and in light of the principle of the child's best interest.

38. The violence meted out by institution personnel in order to instill "discipline" in children can involve, *inter alia*, striking them and beating them with sticks and rubber hoses, hitting their heads against walls, immobilizing them in cloth sacks, tying them to furniture, locking

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<sup>56</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 170.

<sup>57</sup> The Inter-American Court of Human Rights has spoken of the State's role as the guarantor for children and adolescents in various cases, including, most notably, the following: *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110; *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112.

<sup>58</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 170.

<sup>59</sup> I/A Court H.R., *Case of the Juvenile Reeducation Institute*. Judgment of September 2, 2004. Series C No. 112, paragraph 158. See also: *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, paragraph 153; *Case of Myrna Mack Chang*. Judgment of November 27, 2003. Series C No. 103, paragraph 153; *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, paragraph 75; *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 14, paragraphs 130 and 131; *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 15, paragraphs 65 and 66; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 84; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 11, paragraph 129; *Case of the Sawhoyamaxa Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, paragraph 152.

them up in refrigerated rooms for days, and forcing them to lay in their own waste.<sup>60</sup> Sometimes they are caned or whipped, immobilized in uncomfortable positions, and subjected to humiliating treatment, such as being stripped and flogged in front of other detainees.<sup>61</sup>

39. On many occasions, corporal punishment that leaves no visible traces is generally, if detected, neither investigated nor punished, because such punishments are not considered illegal acts and so there are no mechanisms to enable the children and adolescents to report them. This is compounded by the lack of oversight of certain States over such violence at their institutions; consequently, such actions go unpunished because the practice is either tolerated or encouraged by the State.

40. The Court has been emphatic in stating that Article 1.1 of the American Convention requires States to take the steps necessary, through its own agencies and in conjunction with civil society organizations, to enforce the protection of children enshrined in Article 19 of the American Convention:

This Court has repeatedly established, through analysis of the general provision set forth in Article 1.1 of the American Convention, that the State is under the obligation to respect the rights and liberties recognized therein and to organize public authorities to ensure persons under its jurisdiction free and full exercise of human rights. According to legal standards regarding international responsibility of the State that are applicable to International Human Rights Law, actions or omissions by any public authority, of any branch of government, are imputable to the State which incurs responsibility under the terms set forth in the American Convention. This general obligation requires the States Parties to guarantee the exercise and enjoyment of rights by individuals with respect to the power of the State, and also with respect to actions by private third parties. By the same token, and for the purposes of this Advisory Opinion, the States Party to the American Convention are under the obligation, pursuant to Articles 19 (Rights of the Child) and 17 (Rights of the Family), in combination with Article 1.1 of this Convention, to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities.

41. In consideration of the general and specific obligations enshrined in the aforesaid human rights protection instruments, the IACHR has spoken on many occasions about the scope of the State's obligation of affording special protection to children's right to humane treatment in analyzing petitions, cases, requests for precautionary measures, and special reports dealing with, in particular, acts of torture, inhumane treatment, arbitrary arrest, extrajudicial killings, forced disappearances, domestic violence, etc.<sup>62</sup>

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<sup>60</sup> See, in connection with this: U.N. Doc. A/61/299, available as of November 13, 2006, at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/491/08/PDF/N0649108.pdf?OpenElement>, paragraph 56.

<sup>61</sup> Report of the Special Rapporteur on violence against women on the mission to the United States of America on the issue of violence against women in state and federal prisons (E/CN.4/1999/68/Add.2), paragraphs 55 and 58.

<sup>62</sup> For illustrative purposes, see the following cases: IACHR, Case 2137, *Jehovah's witnesses v. Argentina*, November 18, 1978, operative paragraph 1; Case 2271, *Nélida Azucena Sosa de Forti*, November 18, 1978, in *Annual Report of the IACHR 1978*. Case 2553, *Clara Anahí Sosa Mariani Teruggi*, Argentina, Resolution 31/78 of November 18, 1978, in *Annual Report of the IACHR 1979-1980*; Case 10.506, *Ms. X and her*

42. Similarly, the Inter-American Court has also stated that the State's role as guarantor requires it to prevent situations that could lead, through actions or omissions, to violations of the right to life or to humane treatment.<sup>63</sup> In its reply to the Advisory Opinion requested by the Commission, the Court said that "in its jurisprudence [it] has repeatedly made pronouncements regarding matters linked to the subject of the request for advisory opinion, in cases of litigation as well as in provisional measures and in one advisory opinion, which allow its criteria regarding the best interests of the child, the duty on the part of States to adopt positive measures in favor of the child, including legislative and other measures, as well as the particular gravity of violations of the rights of children, to be understood."<sup>64</sup> Thus, in its Advisory Opinion 17, it addressed the idea of "mistreatment" in the following terms: "By the same token, and for the purposes of this Advisory Opinion, the States Party to the American Convention are under the obligation, pursuant to Articles 19 (Rights of the Child) and 17 (Rights of the Family), in combination with Article 1.1 of this Convention, to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities."<sup>65</sup>

43. However, reality indicates that children and adolescents in State custody are often exposed to various forms of violence at the hands of the staff and authorities responsible for their welfare. Practices such as torture, inhumane or degrading treatments, mistreatment,

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daughter Y, Argentina, Report 38/96, October 15, 1996; Case 7481, Community of Caracoles, Bolivia, Resolution 30/82 of March 8, 1982, in *Annual Report 1982*; Case 11.598, Alonso Eugenio da Silva, Brazil, Report 09/00 of February 24, 2000; Case 11.599, Marcos Aurelio De Oliveira, Brazil, Report 10/00 of February 24, 2000; Case 11.556, Corumbiara, Brazil, Report 32/04 of March 11, 2004; Case 11.364, Jailton Neri Da Fonseca, Brazil, Report 33/04 of March 11, 2004; Case 4666, Miguel Ángel Rojas Abarca, Chile, October 16, 1981, in *Annual Report of the IACHR 1981-1982*; Case 9477, Eliana and Catherine Bernal Rivera, Colombia, Report 22/93 of October 12, 1993; Case 10.456, Irma Vera Peña, Colombia, Report 23/93 of October 12, 1993; Case 2839, Lidia Rivera, El Salvador, November 17, 1978, in *Report on the Situation of Human Rights in El Salvador, 1978*; Case 6717, María Guardado, El Salvador, October 4, 1983, in *Annual Report of the IACHR 1983-1984*; Case 10.227 and Case 10.333, Julio Ernesto Fuentes Pérez, El Salvador, Report 8/92, February 4, 1992; Case 9999, Manuel Antonio Alfaro Carmona, El Salvador Report No. 1/91, October 13, 1992; Case 10.380, Soledad Granado Martínez, Eva Ricse Bohorquez, and Hildo Jaime Huancauqui Portillo, Peru Report 42/90, June 1, 1989. Those reports can be consulted on the IACHR's web site: [www.cidh.org](http://www.cidh.org).

<sup>63</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 124.

<sup>64</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>; Citing the following cases: I/A Court H.R., *Case of the Street Children (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, paragraph 194; *Case of Bulacio*. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, paragraphs 133 and 134; *Case of the Gómez Paquiyauri Brother*. Merits, Reparations, and Costs. Judgment of July 8, 2004, Series C No. 110, paragraphs 162, 163, and 164; *Case of the Girls Yean and Bosico*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 8, 2005, Series C No. 130, paragraph 134; and *Case of Servellón García et al.*, Merits, Reparations, and Costs. Judgment of September 21, 2006. Series C No. 152, paragraph 113. 24 See: *Matter of Reggiado Tolosa*, Provisional Measures regarding Argentina, Order of the Court of January 19, 1994; *Matter of Millacura Llaipén et al.*, Provisional Measures regarding Argentina, Order of the Court of February 6, 2008; and *Matter of the Minors detained at FEBEM's "Complejo Do Tatupé"*, Provisional Measures regarding Brazil, Order of November 25, 2008.

<sup>65</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 87.

sexual abuse, and the use of corporal punishment as a form of discipline are still common occurrences, all of which represent different violations of children's human rights. The problem of corporal punishment is compounded by the fact that in most countries, such violence within public institutions is not explicitly banned.<sup>66</sup>

44. In this regard, the IACHR believes that the protection of minors interned in mental health facilities is a matter of particular importance. The IACHR recognizes that the situation of children and adolescents with mental disabilities<sup>67</sup> is a topic that remains practically unaddressed not only on State agendas, but also by society. It is apparent that children with mental disabilities are in a situation of extreme and aggravated vulnerability, because they are both minors and disabled.

45. To date, the IACHR has not heard any cases alleging violations committed against children with mental disabilities. It has, however, dealt with similar cases involving adults, and it has found that persons with mental disabilities are particularly vulnerable<sup>68</sup> and consequently require specialized treatment. These considerations acquire a special dimension when they involve children, who depend on adults not only to attain full development, but also to obtain what they need to satisfy their specific medical requirements in an environment that ensures them decent living conditions and enables them to achieve their full development as human beings.

46. Given the particular vulnerability of children with mental disabilities, a holistic approach is required whereby the full regulatory framework governing children is applied to ensure their protection and to recognize the particular circumstances of their vulnerabilities. Of special importance in this are the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care,<sup>69</sup> the Inter-American convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities<sup>70</sup>, Article 19 of the American Convention, and the following Articles of the Convention on the Rights of the Child: Article 9, on the child's right to not be separated from his parents; Article 19, on the right of protection from abuse of all kinds; Article 27, on the right to an adequate standard of living; Articles 28 and 29, on

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<sup>66</sup> See, in connection with this: U.N. Doc. A/61/299, available as of November 13, 2006, at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/491/08/PDF/N0649108.pdf?OpenElement>, paragraph 53.

<sup>67</sup> In this report, the IACHR uses the definition of 'disability' set out in the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, Article 1 of which defines disability in the following terms:

a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment. (Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, adopted on June 7, 1999, and available at: <http://www.cidh.org/Basicos/Basicos8a.htm>.)

<sup>68</sup> IACHR, Report No. 63/99, Case 11.427, Víctor Rosario Congo (Ecuador), April 13, 1999, paragraph 67.

<sup>69</sup> Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by means of United Nations General Assembly resolution 46/119 of December 17, 1991. Text available at: [http://www.unhchr.ch/spanish/html/menu3/b/68\\_sp.htm](http://www.unhchr.ch/spanish/html/menu3/b/68_sp.htm).

<sup>70</sup> OAS, Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Adopted at Guatemala City, Guatemala at the twenty-ninth regular sessions of the General Assably of the OAS, held on June 7, 1999.

the right to education; and Article 2, which enshrines the right to freedom from discrimination on the grounds of disability.

47. Children with mental disabilities demand specialized, priority attention from the State as the only way in which they can meet their obligation of affording special protection to the rights of children. The IACHR therefore highlights the need to create programs to monitor agencies responsible for caring for disabled children and adolescents, regardless of whether their disabilities are mental or physical, in order to ensure that they are not exposed to the humiliation of corporal punishment. Regardless of this, it is also necessary to examine each specific case to determine when corporal punishment is involved and when other forms of human rights violations have come into play; this is because corporal punishments meted out against children with mental disabilities interned in public institutions could easily lead to more serious violations that could qualify as cruel, inhuman, or degrading treatment.

48. At the same time, it is evident that the holding of children under the age of 18 at detention centers involves a series of characteristics that have been studied by the regional system's agencies on several occasions. Respecting children's dignity requires prohibiting and preventing all forms of violence within the context of juvenile criminal justice. That includes all phases in the proceedings, from first contact with the police authorities up to the serving of sentences.<sup>71</sup> Article 5 of the American Convention applies to individuals held in detention and enshrines the right of all people to have their physical, mental, and moral integrity respected. Consequently, torture and cruel, inhuman, or degrading punishments or treatment are banned, a principle that now belongs to the realm of the international *jus cogens*.<sup>72</sup>

49. The IACHR has paid particular attention to protecting the rights of children and adolescents in conflict with the law, and has conducted regional consultations to produce a special report on standards and recommendations applicable to the topic. In consideration of the particular vulnerability of children and adolescents detained in State custody, the IACHR has

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<sup>71</sup> Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10, April 25, 2007, paragraph 13. In paragraph 89 the Committee refers to the use of force in the following terms:

Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately.

<sup>72</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, paragraph 112. Similarly: I/A Court H.R., *Case of Maritza Urrutia*, paragraph 92; *Cantoral Benavides Case*, paragraphs 102 and 103. IACHR, *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97, Doc. 29, rev. 1, 1997, Chapter V, paragraph 32. Article 2 of the Inter-American Convention to Prevent and Punish Torture states that:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.



underscored the need for States to adopt appropriate measures so that “minors in the centers of detention [do] not become victims of the severe correctional measures that represent an attack on their physical integrity and their dignity.”<sup>73</sup> With reference to forms of discipline, all measures that involve cruel, inhuman, and degrading treatment are prohibited, as are corporal punishment, seclusion in a dark cell, solitary confinement, reduced food rations, denying or restricting adolescents’ access to or contact with their parents, and any other measure that endangers their physical or mental health.<sup>74</sup>

50. The Committee on the Rights of the Child, in speaking of disciplinary procedures, has stated that:

Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.<sup>75</sup>

51. In addition, there are other provisions contained in international declarations condemning the practice of corporal punishment that refer to the protection of children in State custody. As an example, the Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”), section “Guiding principles in adjudication and disposition,” establishes that “juveniles shall not be subject to corporal punishment” (Rule 17.3). Similarly, the United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”) provide that:

“21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following: (...) (h) Avoidance of harsh disciplinary measures, particularly corporal punishment.” Guideline 54 further provides that “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.”

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<sup>73</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, Chapter XII.

<sup>74</sup> CRC, Articles 19 and 37; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Nos. 66 and 67; Beijing Rules, No. 17.3; Riyadh Guidelines, No. 54; and Guidelines for Action on Children in the Criminal Justice system, No. 18. With reference to this point, see: I/A Court H.R., *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, paragraph 87; *Case of Hilaire, Constantine, Benjamin, et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 164; *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 150; *Case of the Juvenile Reeducation Institute*, Judgment of September 2, 2004, Series C No. 112, paragraph 167. Similarly: Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, No. 31. In Chile, Article 45.b of Law 20.084 prohibits the use of disciplinary measures consisting of reclusion in a dark cell, in isolation, and in solitary confinement. In spite of this, complaints have been made regarding the use of reclusion in solitary or punishment cells as a form of discipline; see: UNICEF – Chile, “Main Problems at Detention Centers for Adolescents and Youth,” in: Diego Portales University, *Annual Report on Human Rights in Chile*, 2008, pp. 124 et seq.

<sup>75</sup> Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, April 25, 2007, paragraph 89.

52. In addition, to set specific standards for this topic, in March 2008 the IACHR adopted the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle I of which establishes that all detained persons:

[...] shall be protected from any kind of threats and acts of torture, execution, forced disappearance, cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.<sup>76</sup>

53. In spite of these protective mechanisms, arrested children almost systematically receive violent treatment from officials, on occasions as a form of control or punishment for what are often minor offenses. In at least 78 of the world's countries, corporal punishment and other violent forms of punishment are recognized as legal disciplinary measures at detention centers.<sup>77</sup> However, in its reports assessing the human rights situation in different OAS member states, the IACHR has spoken of the need to protect detained children from acts of violence, recommending specific courses of action to those States.<sup>78</sup> For example, in its 1997 Report on the Situation of Human Rights in Brazil, the IACHR requested that the State:

(d) Prevent and eradicate the acts of torture and abuse received by minors in prisons and institutions where they are confined; and [...] investigate, punish, and try the persons responsible for those offenses; and strengthen governmental and community agencies to supervise police action in regard to minors.<sup>79</sup>

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<sup>76</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, March 2008, <http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>.

<sup>77</sup> See, in connection with this: U.N. Doc. A/61/299, available as of November 13, 2006, at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/491/08/PDF/N0649108.pdf?OpenElement>, paragraph 62. See also: G. Cappelaere and A. Grandjean, *Detained Children: Rights and Duties* (Madrid, Ministry of Labor and Social Affairs, 2000). Regarding the prohibition of physical punishment as a disciplinary measure or sanction, see: I/A Court H.R., Order of January 27, 2009, particularly "whereas" paragraphs 11 and 14; Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, August 21, 2006; and General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, April 25, 2007, paragraph 71. (Additional information may be obtained at the following address: [http://www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/). See also: *Eliminating Corporal Punishment: A Human Rights Imperative for Europe's Children*, Council of Europe Publishing, 2005; Inter-American Court of Human Rights, Advisory Opinion OC-17/2002, August 28, 2002, paragraphs 87 and 91; African Commission on Human and Peoples' Rights, Curtis Francis Doebbler v. Sudan, Communication No. 236/2000 (2003), paragraph 42).

<sup>78</sup> See, *inter alia*: IACHR, *Report on the Situation of Human Rights in Brazil*: Chapter V, Violence against Minors, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997; IACHR, *Third Report on the Situation of Human Rights in Colombia*: Chapter XIII: The Rights of the Child, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999; IACHR, *Third Report on the Situation of Human Rights in Paraguay*: Chapter VII, Rights of Children, OEA/Ser.L/V/II.110, doc. 52, March 9, 2001.

<sup>79</sup> IACHR, *Report on the Situation of Human Rights in Brazil 1997*, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997.

54. In turn, the Inter-American Court has been emphatic in highlighting the State's duty of assuming the role of guarantor vis-à-vis detained children and adolescents, noting that the State:

"[...] must take special measures based on the principle of the best interests of the child. On the other hand, to protect a child's life, the State must be particularly attentive to that child's living conditions while deprived of his or her liberty."

55. The Court has also dealt in detail with the State's obligation of protecting detainees from mistreatment. Specifically, with reference to the American Convention, the Court has underscored the prohibition of using mistreatment as a way to discipline detained children.<sup>80</sup>

56. In the case of the *Juvenile Reeducation Institute v. Paraguay*, the Court ruled that:

The State has a special role to play as guarantor of the rights of those deprived of their freedom, as the prison authorities exercise heavy control or command over the persons in their custody.<sup>81</sup> So there is a special relationship and interaction of subordination between the person deprived of his liberty and the State; typically the State can be rigorous in regulating what the prisoner's rights and obligations are, and determines what the circumstances of the internment will be; the inmate is prevented from satisfying, on his own, certain basic needs that are essential if one is to live with dignity.<sup>82</sup>

57. With reference to the corporal punishment of adults, mention should be made of the case of Mr. Winston Caesar, convicted by the High Court of Trinidad and Tobago. In that case, the Inter-American Court found that the imposition of court-ordered corporal punishment on a man of adult age, consisting of a flogging with a cat-of-nine-tails, violated the right to humane treatment. Specifically, the Inter-American Court said that it:

also notes the growing trend towards recognition, at international and domestic levels, of the impermissible character of corporal punishment, with regard to its inherently cruel, inhuman and degrading nature. In consequence, a State Party to the American Convention, in compliance with its obligations

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<sup>80</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>; Citing the following cases: I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*, paragraph 196; *Case of Bulacio*, paragraphs 126 and 134; *Case of the Gómez Paquiyauri Brothers*, paragraphs 124, 163, and 164; and *Case of the Juvenile Reeducation Institute*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004, Series C No. 112, paragraph 160. See also: *Juridical Status and Human Rights of the Child*, *supra* note 6, paragraphs 56 and 60. I/A Court H.R., *Case of Caesar*. Merits, Reparations, and Costs. Judgment of March 11, 2005, Series C No. 123. *Case of Hilaire, Constantine, Benjamin et al.*, *supra* note 34, paragraph 164; and *Case of Maritza Urrutia*. Merits, Reparations, and Costs. Judgment of November 27, 2003. Series C No. 103, paragraph 87.

<sup>81</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra* note 74, paragraph 98; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 111; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 138.

<sup>82</sup> I/A Court H.R., *Case of the Juvenile Reeducation Institute*. Judgment of September 2, 2004. Series C No. 112, paragraph 152.

arising from Articles 1.1, 5.1, and 5.2 of that instrument, is under an obligation *erga omnes* to abstain from imposing corporal punishment, as well as to prevent its administration, for constituting, in any circumstance, a cruel, inhuman or degrading treatment or punishment.<sup>83</sup>

58. It is also worrisome to the Commission the lack of explicit prohibition of corporal punishment in the codes of discipline in military schools in different Member States, as well as the apparent lack of access to a system of compliant or effective mechanisms of investigation of such practices.<sup>84</sup>

59. The Committee on Economic, Social and Cultural Rights has ruled that the use of corporal punishment undermines the right of dignity of individuals aged under 18, using the following terms:

In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual.<sup>85</sup>

60. In its final comments on the situation of economic, social, and cultural rights in the states parties to the International Covenant on Economic, Social, and Cultural Rights, the Committee urged States to prohibit and eradicate the use of corporal punishment.<sup>86</sup>

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<sup>83</sup> I/A Court H.R., *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, paragraph 70. See also: United Nations Human Rights Committee, General Comment No. 20, Article 7 (44th session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1, p. 14 (1994), paragraph 5; and United Nations Human Rights Committee, General Comment No. 21, Article 10 (44th session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1, p. 14 (1994), paragraph 3; cited in paragraph 62 of the Inter-American Court's judgment in the *Case of Winston Caesar (supra)*; UNHRC consideration of reports submitted by states parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee: Trinidad and Tobago, 17th session, November 3, 2000, CCPR/CO/70/TTO, paragraph 13; cited in paragraph 62 of the Inter-American Court's judgment in the *Case of Winston Caesar (supra)*; IACHR, Report No. 79/07, Case 12.513, Merits, Prince Pinder v. Bahamas, October 15, 2007.

<sup>84</sup> Committee on the Rights of the Child, Consideration of reports submitted by states parties on the Optional Protocol on the involvement of children in armed conflict, CRC/C/OPAC/GTM/CO/1, June 12, 2007, pars. 16 and 17; and, final Observations to the initial report on the Optional Protocol on the participation of the children in armed conflict, CRC/C/OPAC/CHL/CO/1, February 13, 2008, paragraph 11.

<sup>85</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, The Right to Education (Article 13 of the Covenant) E/C.12/1999/10, December 8, 1999, paragraph 41.

<sup>86</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: Belgium, E/C.12/BEL/CO/3, January 4, 2008, paragraph 33: "The Committee recommends that the State party adopt specific legislation prohibiting all forms of corporal punishment of children within the family." Committee on Economic, Social and Cultural Rights, Concluding Observations: Costa Rica, E/C.12/CRI/CO/4, January 4, 2008, paragraph 23, "The Committee is concerned about the fact that corporal punishment within the family, in the form of "moderate correction", is still allowed under article 143 of the State party's Family Code," and paragraph 44, "The Committee encourages the State party to expedite the adoption of currently existing proposals to amend article 143 of the Family Code and the law providing for an explicit prohibition of all corporal punishment that is currently under consideration."

61. Concern about the use of corporal punishment on children and adolescents in all areas has also been noted by the Committee on the Elimination of Discrimination against Women<sup>87</sup> and by the Committee Against Torture.<sup>88</sup>

62. In the European system, the European Court of Human Rights has progressively condemned the use of corporal punishment in juvenile criminal justice systems, at schools (including private schools), and in the home; it has not as yet explicitly required the prohibition of all corporal punishment, but it has also established that the prohibition of corporal punishment does not conflict with the protection of other human rights such as religious freedom or the right to the protection of private life.<sup>89</sup> The European Court gave its first ruling on the use of corporal punishment as a sanction for juvenile offenders in 1978, in the case of *Tyrer v. the United Kingdom*. In this case, the Court ruled that the birching of adolescents as a punishment was in violation of the prohibition on inhuman or degrading treatment or punishment enshrined in Article 3 of the European Convention.

63. In that case, the European Court specified that determining a violation of Article 3 of the European Convention required an analysis of the following factors: the nature of the punishment, the context in which it is applied, how it is applied, the method used, its duration, the physical and mental effects, and, in certain circumstances, the sex, age, and health conditions of the victim.<sup>90</sup>

64. The African Commission on Human and Peoples' Rights has also handed down decisions regarding the incompatibility of corporal punishment used against children and adolescents. Thus, in the case of *Curtis Francis Doebber v. Sudan*, 236/2000, it was alleged that eight students' right to humane treatment had been violated by the imposition of 40 lashes as a punishment for criminal offenses. In a decision adopted during its 33rd session, held in Nigeria in 2003, the African Commission ruled that states did not have the right to inflict physical violence as a punishment for offenses since it was in contravention of the nature of the African Charter on Human and Peoples' Rights.<sup>91</sup>

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<sup>87</sup> Committee on the Elimination of Discrimination against Women, Concluding Comments on the United Kingdom and Slovakia adopted at the 41st session, July 2008: United Kingdom A/63/38 280, (...)The Committee also notes with concern that corporal punishment is lawful in the home and constitutes a form of violence against children, including the girl child" paragraph 281. "The Committee further recommends that the State party include in its legislation the prohibition of corporal punishment of children in the home"; Slovakia A/63/38, paragraph 34 "The Committee expresses concern about the fact that corporal punishment in the home is lawful and constitutes a form of violence against children, including the girl child."

<sup>88</sup> Committee Against Torture, recommendations adopted at its 40th Session, April 28 to May 16, 2008. For example, in its final comments on Australia, the Committee against Torture asked the State to report on "measures undertaken to prohibit the use of corporal punishment in all schools (private and public), detention centers and alternative care settings in all states and territories." CAT/C/AUS/Q/4, June 6, 2007, paragraph 36.

<sup>89</sup> European Court of Human Rights, *Case of Campbell and Cosans v. UK*, 1978; *Case of Costello-Roberts v. UK*, 1993; *Case of A v. United Kingdom*, Judgment of September 23, 1998, paragraphs 19-24; European Commission on Human Rights, Admissibility Decision, *Case of Seven Individuals v. Sweden*, 1982

<sup>90</sup> European Court of Human Rights, *Case of Tyrer v. United Kingdom*, Series A No. 26, paragraphs 14-15 and 29-30. See also: *Case of Soering v. United Kingdom*, Series A, No. 161, paragraph 100.

<sup>91</sup> Global Initiative to End All Corporal Punishment of Children and Save the Children Sweden, Special Africa Report, Ending legalized violence against children, 2007, p. 19. El estudio se encuentra disponible en el siguiente sitio de Internet <http://74.125.47.132/search?q=cache:WPKomONHesAJ:www.childrenareunbeatable>.

65. Thus, in light of the above considerations and the existing jurisprudence applicable to children, it must be seen that States are obliged to eradicate the use of corporal punishment as a way of disciplining children and adolescents in all areas of their lives.

66. State custodial facilities must record the acts of violence and injuries suffered by children and adolescents during the time they spend in detention.<sup>92</sup> All complaints must lead to independent investigations, particularly when violence, torture, cruel, inhuman, and degrading treatment, or corporal punishment are involved, and when they result in the injury or death of detained adolescents.<sup>93</sup> Similarly, States must adopt measures to prevent the repetition of the incidents described in those complaints.<sup>94</sup>

67. In other words, States are obliged to create effective mechanisms for preventing and punishing acts of violence against children and adolescents, both at home and in the educational system, as well as in other areas of social life where such threats may arise. Consequently, it is clear that the member states are under the obligation of adopting strict oversight programs to monitor the situation of children and of taking the steps necessary to uphold the rights of children, particularly those that are victims of violence, including violence inflicted through corporal punishment. As the Court has said, the scope of the member states' positive obligations in this regard requires that they "adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities."

#### VIII. THE STATES OBLIGATION TO RESPECT AND TO PROMOTE RESPECT OF CHILDREN HUMAN RIGHTS IN THE RELATIONS AMONG PRIVATE INDIVIDUALS

68. Studies done on corporal punishment and its impact on children and adolescents<sup>95</sup> show that in most regions of the world the practice of corporal punishment is accepted and tolerated when used by adults responsible for the care and protection of children and adolescents as a means to discipline and control them. Thus, for example, the 2006 Report of

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[org.uk/pdfs/EndingLegalisedViolenceAgainstChildrenoctober06.pdf+Doebber+Sudan&hl=sv&ct=clnk&cd=3&gl=se](http://www.org.uk/pdfs/EndingLegalisedViolenceAgainstChildrenoctober06.pdf+Doebber+Sudan&hl=sv&ct=clnk&cd=3&gl=se)

<sup>92</sup> UN. Report of the Independent Expert for the United Nations. Study on Violence against Children, A/61/299, August 29, 2006, paragraph 107.

<sup>93</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly resolution 45/113 of 14 December 1990, rule 57.

<sup>94</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Approved by the IACHR on its 131st period of sessions celebrated from March 3-14, 2008, Principle XXIII.3.

<sup>95</sup> The following are examples of the studies done: Save the Children Sweden, *Manual for Action: Ending Physical and Humiliating Punishment of Children*, 2005. *Poniendo fin al castigo físico contra la niñez, cómo hacerlo posible* [Ending physical punishment of children: how to make it possible], 2003. *Amor, poder y violencia. Una comparación transcultural de los patrones de castigo físico y psicológico* [Love, Power and Violence: a Transcultural Comparison of Physical and Psychological Punishment Patterns], 2005. Save the Children Sweden and End All Corporal Punishment of Children, 2005. Save the Children Sweden and the Andean Commission of Jurists, *Poniendo fin a la violencia legalizada contra los niños. Marco jurídico sobre castigo corporal en América Latina, 2005* [Ending legalized violence against children. Legal framework on corporal punishment in Latin America], 2005, available at <http://www.scslat.org/poniendofin/index.php>.

the Independent Expert for the United Nations Study on Violence against Children shows that the discipline exercised through corporal punishment is often regarded as normal and inevitable, especially when no “visible” or “lasting” injury results.”<sup>96</sup> The study finds that only a small percentage of cases of violence against children are reported and investigated and that, worldwide, only 2% of children and adolescents are protected against corporal punishment in the home; 4% of children in alternative care institutions are protected, 42% are protected against corporal punishment committed in the school, 42% are protected against corporal punishment imposed by the penal system as part of a judgment, whereas 81% of children are protected against corporal punishment imposed by the penal system as a disciplinary measure used on child offenders.<sup>97</sup>

69. Domestic courts and the international bodies that oversee human rights<sup>98</sup> have underscored the importance of the *erga omnes* nature of the duties that States have to respect and to ensure respect for the rights of children and adolescents to special protection vis-à-vis the actions of private third parties.<sup>99</sup> Domestic and international jurisprudence clearly holds that states must oversee the provision of services that are in the public interest, such as health or education, when those services are supplied by private parties.<sup>100</sup> This obligation of supervision is of fundamental importance when the services being supervised are those provided by public or private institutions charged with the protection, safekeeping, care and education of children, to guard them against corporal punishment.

70. International human rights law does not admit arguments based on a dichotomy between the public and private spheres that would tend to ignore or place unjustified restrictions on human rights. Thus, the Preamble to the Universal Declaration of Human Rights refers to the responsibilities of nongovernmental agents vis-à-vis human rights in the following terms:

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<sup>96</sup> UN. Report of the Independent Expert for the United Nations. Study on Violence against Children, Paulo Sérgio Pinheiro. A/61/299, August 29, 2006, paragraph 26.

<sup>97</sup> UN. World Report on Violence against Children, October 2006, p. 11 <http://www.ohchr.org/english/bodies/crc/study.htm>. For additional information, see also the website of Global Initiative to End all Corporal Punishment of Children <http://www.endcorporalpunishment.org>

<sup>98</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic 1999*, paragraph 431 <http://www.cidh.org/countryrep/Rep.Dominicana99sp/Cap.11.htm>. European Court of Human Rights, *Case of Tyrer v. United Kingdom*, Sentence of April 25, 1978. *Case A v Runited Kingdom*, Sentence of September 23, 1998, *Case Z v United Kingdom*, Sentence of May 10, 2001 (aplication 29392/95) Committee of Human Rights, General Observation 20 of 10/04/92. Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection against corporal punishment and other forms of cruel or degrading forms of punishment (arts 19; 28, para. 2; and 37, *aong others*), CRC/C/GC/8, August 21, 2006, paragraph 11. Human Rights Committee, General Observation 20, Replaces to the General Observation 7 prohibition of the torture and the deals and cruel griefs (article 7) 10/04/92, paragraph 5. Committee on Economic, Social and Cultural Rights, Final Observations: Belgium, E/C.12/BEL/CO/3, January 4, 2008 paragraph 33. Committee on Economic, Social and Cultural Rights, Final Observations: Costa Rica, E/C.12/CRI/CO/4, January 4, 2008, paragraphs 23 and 44.

<sup>99</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, concurring opinion of Antônio Cançado Trindade, paragraphs 62 and 65.

<sup>100</sup> I/A Court H.R., *Case of Ximenes Lopes*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paragraphs 94, 96, 99. *Case of Alban Cornejo et al*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, paragraph 119.

Every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.<sup>101</sup>

71. Similarly, the jurisprudence of the European Court has addressed the State's obligations vis-à-vis the actions of private citizens. Specifically, the topic of corporal punishment was dealt with in connection with the United Kingdom's obligations regarding the forms of discipline used in private schools in the case of *A v. the United Kingdom*, 1998.<sup>102</sup>

72. In this regard, the Commission notes that States are obliged to uphold the principle of the limits that exist between the rights and duties of private citizens enshrined in Article 32.2 of the American Convention on Human Rights. That Convention, in contrast to the Convention on the Rights of the Child, stipulates in Article 32 that the relationship between people's rights and duties must be ensured. It states that, to ensure that relationship:

The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

73. The joint interpretation of these provisions requires States to bring their domestic laws into line with the Convention's standards, in order to ensure that a correlation between rights and duties always exists in relations among private citizens. In this regard, the Court has ruled that: "the general duty set forth in Article 2 of the American Convention implies the adoption of measures on two fronts. On the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees."<sup>103</sup>

74. In addition, Article 32 underscores the horizontal dimension of the State's obligation of upholding human rights. Thus: "States are obliged *erga omnes* to protect all people under their jurisdiction, and that obligation is imposed not only with respect to the power of the State, but also as regards the actions of private third parties."<sup>104</sup> The Inter-American Commission has addressed the scope of Article 32 in the following terms:

Article 32.2 recognizes the existence of certain inherent limitations to the rights of all persons which are a normal consequence of life in society.<sup>105</sup>

75. In addition, as stated by the Court in Advisory Opinion 17, no room for discretion exists in the private sphere, particularly as regards the full respect for the human rights

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<sup>101</sup> Universal Declaration of Human Rights, adopted on December 10, 1948, by the General Assembly of the United Nations. The text is available at: <http://www.unhchr.ch/udhr/lang/spn.htm>.

<sup>102</sup> European Court of Human Rights, *Case of A v. United Kingdom*, Judgment of September 23, 1998.

<sup>103</sup> I/A Court H.R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, paragraph 178. *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, paragraph 180.

<sup>104</sup> I/A Court H.R., *Matter of the Sarayaku Indigenous People*, Order of June 17, 2005, Explanation of Vote by Judge Antônio Cançado Trindade, paragraphs 14 to 20.

<sup>105</sup> IACHR, Report No. 38/96, Case of X and Y (Argentina), October 15, 1996, paragraph 55.



of children and adolescents.<sup>106</sup> Accordingly, the IACHR holds that States are obliged to take steps of all kinds to ensure a correlation of rights between the adults responsible for the care, guidance, and education of children and the international standards applicable to minors and the way in which States can ensure that correlation in accordance with international human rights law.

76. Further to this, in Advisory Opinion 17, the Court ruled that there must be a fair balance between the interests of the individual and those of the community, as well as between those of minors and those of their parents.<sup>107</sup> It also stated that the authority of the family does not entitle it to exercise arbitrary control over a child that could pose a threat to the minor's health or development.<sup>108</sup> In its reply to the request for an Advisory Opinion on the topic of this report, the Court said that:

States are responsible for the actions of both public and private entities that provide services which affect the life and integrity of people. In this respect, “the States must regulate and supervise [...] as a special duty to protect life and personal integrity, regardless of the public or private nature of the entity giving such services [...], since under the American Convention international liability comprises the acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them.”<sup>109</sup>

77. In light of the Court's rulings, the IACHR holds that in meeting their international obligations vis-à-vis the protection of children, States must ensure that the rights exercised by parents, guardians, and others responsible for the care and education of children under the age of 18 does not mean that the rights of those children and adolescents are ignored.

78. In this context, the IACHR points out that since corporal punishment is seen in the Americas as a “reasonable” and “moderate” practice and is broadly accepted and allowed as a necessary method of correcting children's behavior, the result is a situation of disproportionate and unreasonable differentiation with regard to persons under the age of 18. The result of this is that only cases of extreme violence or those that leave physical marks on children and adolescents are sanctioned. The IACHR sees a contradiction in this situation, in that when the practice is used against adults, it is ruled illegitimate; this is exemplified by the fact that domestic laws contain criminal provisions that prohibit all forms of aggression and abuses against adults,

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<sup>106</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 66.

<sup>107</sup> European Court of Human Rights, *Case of Buchberger v. Austria*, Judgment of November 20, 2001, paragraph 40; *Case of Elsholz v. Germany*, Judgment of July 13, 2000, paragraph 50; *Case of Johansen v. Norway*, Judgment of August 7, 1996, Reports 1996-III, paragraph 78; and *Case of Olsson v. Sweden*, Judgment of November 27, 1992, Series A No. 250, paragraph 90.

<sup>108</sup> European Court of Human Rights, *Case of Buchberger v. Austria*, Judgment of December 20, 2001, paragraph 40; *Case of Scozzari and Giunta v. Italy*, Judgment of July 11, 2000, paragraph 169; *Case of Elsholz v. Germany*, Judgment of July 13, 2000, paragraph 50; and *Case of Johansen v. Norway*, Judgment of August 7, 1996, Reports 1996-IV, paragraph 78.

<sup>109</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>; Citing: *Case of Ximenes Lopes*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, paragraphs 89 and 90, and Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraph 19; *Juridical Condition and Rights of the Undocumented Migrants*, paragraphs 146 and 147.

defined as crimes of criminal injury and offenses against physical integrity. Thus, it could be held that with respect to children, the principles of nondiscrimination and of equal protection of the law are being violated.

79. In conclusion, it could be suggested that a State that permits or tolerates the use of corporal punishment as a form of discipline by private citizens – be they parents, teachers, or other adults with responsibilities in caring for children and adolescents – could be in violation of its international obligations to ensure the enjoyment and exercise of the right to humane treatment and a life without violence for all individuals aged under 18.

#### **IX. CORPORAL PUNISHMENT OF CHILDREN AND ADOLESCENTS AND THE INSTITUTION OF *PATRIA POTESTAD***

80. It should be noted, at the outset, that this section of the report is intended to assist States in adopting comprehensive public policies intended to educate families and institutions about the distinction that exists between corporal punishment, even the lighter forms thereof, and nonviolent discipline methods.

81. Corporal punishment administered by parents and other family members to correct and discipline children and adolescents is a widespread practice around the world. Various studies and statements made by the children and adolescents in the regional consultations conducted prior to preparation of the United Nations World Report on Violence against Children underscore the physical and psychological harm and damage they suffer as a result of corporal punishment.<sup>110</sup> As observed in the Study on Violence against Children,<sup>111</sup> the family can become a dangerous place for children and adolescents and this is one of the spheres that pose the most serious challenges in the struggle to combat violence against children and adolescents.<sup>112</sup>

82. By way of example, the majority of the member states of the OAS have not yet adopted specific measures to protect children and adolescents from the use of corporal punishment as a disciplinary method. That omission is evident in the fact that most states in the hemisphere still have laws on the books that, in either ambiguous or explicit terms, allow parents to moderately correct and punish their children.<sup>113</sup> While this is true, there are a number of

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<sup>110</sup> International Save the Children Alliance, Ending Physical and Humiliating Punishment of Children – Making it Happen, Part I. Contribution to the United Nations Secretary-General’s Study on Violence against Children (Stockholm, Save the Children Sweden, 2005), available as of November 14, 2006 at [www.violencestudy.org/europe-ca](http://www.violencestudy.org/europe-ca).

<sup>111</sup> UN. Report of the Independent Expert for the United Nations. Study on Violence against Children. Paulo Sérgio Pinheiro. A/61/299.

<sup>112</sup> UN. Report of the Independent Expert for the United Nations. Study on Violence against Children. Paulo Sérgio Pinheiro. A/61/299, page 47.

<sup>113</sup> The following are legal provisions in force in the member countries pertaining to the question of corporal punishment of children and adolescents: Cuba, Article 86 of the Family Code of Cuba. In moderation, parents have the authority to properly reprimand and correct the children under their *patria potestad*. [*Los padres están facultados para reprender y corregir adecuada y moderadamente a los hijos bajo su patria potestad*]. El Salvador, Article 215 of the Family Code. Mothers and fathers have a duty to properly correct their children, in moderation (...) [*Es deber del padre y de la madre corregir adecuada y moderadamente a sus hijos (...)*]. Antigua and Barbuda, Article 32 of the Education Act, “discipline of pupils” (The Education Act of April 4, 1973) provides that “Corporal punishment may be administered as a last resort by the Headteacher only or by his deputy, or by a teacher in his presence, under his direction and on his responsibility”; Article 11(4)(b) (Prison Act of July 1, 1956) provides that corporal punish as a disciplinary measure is permitted and

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that in the case of a person appearing to be under the age of 21, twelve strokes of a tamarind rod are allowed. Under Article 11 of the Corporal Punishment Act of December 23, 1946, a person under the age of eighteen may be sentenced to be whipped once. The Childcare and Protection Act of February 20, 2004, does not have a provision that protects children against the practice of corporal punishment. Argentina, Article 266 of the Civil Code (1998) provides that: Children must respect and obey their parents. Article 278 provides that: "Parents have the authority to correct or require correction of their minor children's conduct. The power of correction must be practiced in moderation, and any form of mistreatment, punishment or measure that physically or psychologically harms or abuses the minors is prohibited. Judges must protect minors from excessive parental correction, order that the excesses be stopped and punish parents where appropriate." [*Los padres tienen la facultad de corregir o hacer corregir la conducta de sus hijos menores. El poder de corrección debe ejercerse moderadamente, debiendo quedar excluidos los malos tratos, castigos o actos que lesionen o menoscaben física o psíquicamente a los menores. Los jueces deberán resguardar a los menores de las correcciones excesivas de los padres, disponiendo su cesación y las sanciones pertinentes si correspondieren*]. Barbados, The Prevention of Cruelty to Children Act (1996) punishes assault, neglect and "unnecessary suffering" of children under 16 years (section 5), but allows "moderate chastisement." Belize, Part VI, Article 27 of the Education Act (amended December 31, 2000) provides that "for serious and repeated offences, punishment may be administered by the principal, or by a member of his staff under his authorization: provided that any such punishment shall not be excessive and harmful to the child); Brazil, Civil Code, Article 1638 provides that by order of a court, a father or mother who punishes his or her child excessively shall lose *patria potestad*. Canada, Section 43 of the Criminal Code provides that: "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstance." A January 30, 2004 decision of the Supreme Court of Canada upheld the right of parents to administer physical punishment to children between the ages of 2 and 12. Guatemala, Article 13 of the Law for Comprehensive Protection for Children and Adolescents (2003) provides that "(...) The State shall respect the rights and duties of parents and, where appropriate, the legal representatives, to guide, educate and correct the child or adolescent, using prudent means of discipline that do not violate the child's dignity and personal integrity as an individual or member of a family. They shall be held liable, under criminal and civil law, for any excesses that, as a result of their actions and omissions, are committed in the exercise of the *patria potestad* or guardianship (...)" [*El Estado respetará los derechos y deberes de los padres y en su caso de los representantes legales, de guiar, educar y corregir al niño, niña o adolescente, empleando medios prudentes de disciplina que no vulneren su dignidad e integridad personal como individuos o miembros de una familia siendo responsables penal y civilmente de los excesos, que como resultado de sus acciones y omisiones, incurrieren en el ejercicio de la patria potestad o tutela*.] Article 253 of the Civil Code (1963) provides that "The father and mother are required to care and provide for their children, whether born in or out of wedlock, to educate them and to correct them using prudent disciplinary methods and shall be answerable under criminal law if they abandon them, either morally or materially, and fail to perform the duties inherent in *patria potestad*." [*"El padre y la madre están obligados a cuidar y sustentar a sus hijos, sean o no de matrimonio, educarlos y corregirlos, empleando medios prudentes de disciplina, y serán responsables conforme a las leyes penales si los abandonan moral o materialmente y dejan de cumplir los deberes inherentes a la patria potestad"*.] Grenada, the Education Act (2004) allows the use of corporal punishment in school, unless parents indicate their objection to it, in writing, addressed to the school principal. Honduras, Article 191 of the Family Code (1984) provides that "Under the institution of *patria potestad*, parents are authorized to reprimand and correct their children properly and in moderation." [*"Los padres están facultados para reprender y corregir adecuada y moderadamente a los hijos bajo su patria potestad"*.] Jamaica, the Flogging Regulation Act of March 21, 1903, provides the following: 2. (...) and twelve strokes in the case of juvenile offenders..." Under that law, an adult is anyone over the age of 16. Nicaragua, Child and Adolescent Code of 1998, Article 49, "Teachers, authorities, officials, employees or workers of the Educational System shall not use any abusive measure or punishment on pupils that causes them physical, moral and psychological harm as determined by an informed ruling by specialists and faculty, or that restricts the rights contemplated in the present Code. The guilty parties shall face the appropriate administrative or criminal sanctions," (emphasis added) [*"Se prohíbe a los maestros, autoridades, funcionarios, empleados o trabajadores del Sistema Educativo aplicar cualquier medida o sanción abusiva a los educandos que les cause daños físicos, morales y psicológicos según dictamen calificado de especialistas o facultativos o que restrinja los derechos contemplados en el presente Código. Los responsables estarán sujetos a las sanciones administrativas o*

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states in the region that do have laws establishing penalties for the improper exercise of *patria potestad*. These penalties consist of limitations or restrictions imposed when the parents endanger their children's personal integrity. They apply only when the punishments inflicted by the parents are unreasonable or excessive. It is important to point out that the goal here is not that parents be penalized or sanctioned; instead, the goal is for States, in furtherance of their obligation to prevent and to act with due diligence, to promote stronger family units and family institutions by taking steps to eradicate the use of violence of any kind in the private sphere, which includes the family and the school. In most States of this hemisphere, the prevailing climate is one of permissibility and legal acceptance of punishments provided they are neither excessive nor unreasonable.<sup>114</sup>

83. The Committee on the Rights of the Child is troubled by the social tolerance for corporal punishment. To those American states that have submitted their periodic reports, it has consistently recommended the adoption of a law "explicitly prohibiting the use of corporal punishment in the home, in schools and in other institutions."<sup>115</sup> An examination of the domestic laws in most member States of the OAS finds that while moderate corporal punishment is practiced that does not jeopardize the personal integrity of children and adolescents, corporal punishment is not prohibited.

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penales que correspondan".] (emphasis added). Panama, Article 319 of the Family Code (1994), amended in 2001, provides the following: "*Patria potestad* over children includes the following duties and authorities: (...) 1. To reasonably and moderately correct them." ["La patria potestad con relación a los hijos o hijas comprende los siguientes deberes y facultades: (...) 2. Corregirlos razonable y moderadamente"]. Peru, Article 74 of the Child and Adolescent Code (1993, updated in 2000) provides the following: "The duties and rights of parents who exercise custody include: ... (d) Providing [children] with good examples and correcting them moderately. When this action is not sufficient, they can turn to the competent authority." ["Son deberes y derechos de los padres que ejercen la patria potestad: ... d) Darles buenos ejemplos de vida y corregirlos moderadamente"]. Saint Lucia, the Children and Young Persons Act (1972) speaks of "the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to him" (Article 5). Under the Regulations to Education Act (1992) in Saint Vincent and the Grenadines, corporal punishment is lawful in schools; in government and government assisted primary schools, children as young as 5 years of age can be given up to six strokes using "a leather strap", as a last resort, by the head teacher or an assisted teacher in the presence of the head.

<sup>114</sup> Brazil, Article 1638 of the Civil Code (2002) "By order of a court, a father or mother shall lose *patria potestad* when: I. He or She punishes his or her child excessively (...) IV – He or she repeatedly engages in the misconduct listed in the preceding article (...)" (unofficial translation)

<sup>115</sup> Concluding observations of the Committee on the Rights of the Child: Antigua and Barbuda CRC/C/15/Add.247, November 3, 2004, paragraphs 35 and 36. Argentina, CRC/C/15/Add. 35, 1995, paragraph 39. Belize Concluding observations of the Committee on the Rights of the Child: Belize, 10/05/99, CRC/C/15/Add. 99 paragraphs 19 and 30. Peru, CRC/C/15/Add. 120, 22/02/2000, paragraph 22. Brazil CRC/C/15/Add.241, November 3, 2004 paragraphs 42 and 43. Chile CRC/C/15/Add. 173, 2002 and 2007. Colombia Concluding observations of the Committee on the Rights of the Child: Colombia, CRC/C/15/Add. 30, 15/02/95; Concluding observations of the Committee on the Rights of the Child: Colombia, CRC/C/15/Add. 137, 16/10/2000 and Concluding observations, CRC/C/COL/CO/3, June 8, 2006, paragraphs 61 and 62. Ecuador, Concluding observations, CRC/C/15/Add.262, September 13, 2005, paragraphs 37 and 38. Honduras Concluding observations: CRC/C/HND/CO/3, May 2, 2007, paragraphs 54 and 55. Mexico, Concluding observations CRC/C/MEX/CO/3 June 8, 2006, paragraph 36. Nicaragua, Concluding observations CRC/C/15/Add.265, September 21, 2005, paragraphs 43 and 44. Peru Concluding observations, CRC/C/PER/CO/3, March 14, 2006, paragraph 43. Saint Lucia, Concluding observations, CRC/C/15/Add.258, September 21, 2005, paragraphs 34 and 35.

84. The gaps and shortcomings of the domestic laws of the OAS member states with respect to the rights and authorities given to parents to discipline their children point up the fact that the Court needs to give the States its guidance as to how to regulate the institution of *patria potestad*. Thus, the interpretation of the scope and limits of the mutual rights and duties of parents and children is of particular importance in counseling the States as to how they can best ensure full respect for the human rights of children and adolescents within the family.

85. The IACHR recognizes that *patria potestad* is a basic institution in family law and has been recognized in international human rights instruments.<sup>116</sup> The IACHR contends that parental authority must be interpreted as a function of the indivisibility of human rights<sup>117</sup> to ensure that the rights of the child are protected. The member States' domestic laws must regulate this matter in such a way that the human rights of children and adolescents are protected and observed.

86. It is self-evident that the special measures of protection required under Article 19 of the American Convention include the obligation to prevent and to adopt such legislative and other measures as may be necessary, pursuant to Article 2 of the Convention. Improper exercise of *patria potestad* may lead to violation of various human rights of the child, beyond the right to humane treatment. Therefore, the requested interpretation of Article 19, taking Article 5 of the American Convention into account and rendered in light of the Convention on the Rights of the Child, is crucial to determining the State's added obligation to regulate this institution in such a way that the principle of the best interests of the child is properly served, and to establishing the measures that must be taken to provide parents with assistance and comply with international human rights standards.

87. The indivisibility and interdependence of human rights must be reflected in all measures that States adopt, since violations of certain human rights may imply the abridgment of others. For example, if a child suffers corporal punishment, that undermines not only his right to humane treatment, but also his right to a decent life, free of violence. Consequently, it is imperative that the regulation and exercise of parental custody (*patria potestad*) reflect the recognition that human rights are indivisible and interdependent.

88. The IACHR notes that the aforesaid provision refers to the basic elements that make up parental custody, an institution that is protected by international human rights law and, in particular, by the Convention on the Rights of the Child, and that established responsibilities, rights, and duties with respect to children and adolescents; at the same time, however, the guiding principle behind that institution must be the supremacy of the child's best interests,

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<sup>116</sup> Article 5 of the Convention on the Rights of the Child provides that "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention." (emphasis added).

<sup>117</sup> Paragraph 5 of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights on June 23, 1993, reads as follows: "5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

ensuring that children and adolescents can exercise the rights granted to them by the Convention on the Rights of the Child.

89. At the same time, in line with the position held by the Committee on the Rights of the Child in its General Comment No. 8, the IACHR believes it must be pointed out that although parenthood and child custody demand frequent physical actions and interventions to protect them (for example, holding a child so that a doctor can apply an inoculation, and “time outs” and other methods of “positive discipline”), that cannot justify the use of physical force to discipline a child. Of course, there are many other situations similar to those described in this section that neither the Commission nor the Court can catalogue. The topic of corporal punishment cannot be dealt with casuistically. That is not the aim of this study.

90. Of course, the use of physical actions and interventions to protect children are clearly different from the deliberate and punitive use of force to cause a degree of pain, discomfort, or humiliation. As the Committee on the Rights of the Child concluded, “as adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children.”<sup>118</sup>

91. Accordingly, the IACHR holds that laws allowing parents to punish their children in a “moderate” or “reasonable” way by using corporal punishment are not in line with the international standards applicable to the institution of parental custody and, consequently, fail to afford the child due protection from corporal punishment.

#### **X. MEASURES INTENDED TO ERADICATE THE CORPORAL PUNISHMENT OF CHILDREN AND ADOLESCENTS**

92. As previously noted in this report, meeting the obligation of respecting and upholding human rights assumed by States in the protection of children and adolescents against corporal punishment requires measures of many different kinds, the goal of which must be the absolute eradication of the practice. In that regard, a consensus can be seen to exist within the international community regarding the urgency of legally prohibiting corporal punishment against children. This legal ban, however, must be accompanied by measures of other kinds – judicial, educational, financial, etc. – that, taken together, serve to eradicate the use of this form of punishment in the everyday lives of all children and adolescents.

93. Accordingly, in this section the Commission will propose a series of criteria that should form part of any strategy intended to eradicate the practice, and it then proposes a range of specific measures to guide States in their efforts to eradicate corporal punishment.

94. In addressing some of the measures for eradicating the use of corporal punishment as a means of disciplining children and adolescents in the OAS member states, the IACHR proposes the adoption of legislative, educational, and other measures that recognize the following criteria:

- a. The child as a subject of rights: this criterion requires that States ensure that children are aware of their right to freedom from corporal punishment and have access to appropriate mechanisms for defending themselves. In addition, children must be allowed to participate and express their opinions in the actions taken toward eradicating corporal punishment.

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<sup>118</sup> Committee on the Rights of the Child, General Comment No. 8 (2006), *op. cit.*, paragraph 14.

b. A differentiated and specific approach for the effective protection of children in situations of greater vulnerability: children with disabilities, those held in detention centers, etc.

c. Efforts to bring about a change in social awareness regarding attitudes toward children, ensuring full respect for their rights through public policies in the social and educational spheres.

**A. Legislative measures**

95. By legislative measures intended to protect children from corporal punishment, the Commission means both the repeal of provisions that explicitly authorize the use of corporal punishment on children under the age of 18, the elimination of the “corrective measures” guidelines that are still a part of the regulations governing parental custody in many countries, and the adoption of provisions that explicitly prohibit corporal punishment.

96. The Inter-American Court has said that:

One of the obligations of the State to protect children against mistreatment involves taking positive measures. Furthermore, the Court considered that “if the States, pursuant to Article 2 of the American Convention, have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognized in the Convention, it follows, then, that they also must refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them.” In the same respect, the Tribunal has pointed out in various cases that the general duty under article 2 of the American Convention implies the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees. Furthermore this adoption of measures becomes necessary when there is evidence of any practice which is contrary to the American Convention in any area.<sup>119</sup>

97. The Commission notes with concern that although many countries of the region have laws that protect children and adolescents against physical violence and child abuse, the same provisions do not guarantee appropriate protection for ensuring that minors do not receive corporal punishment. Thus, from a general perspective, States must afford absolute protection for the dignity and integrity of children and adolescents. That demands eliminating, in their legal frameworks, the use of such nonjuridical concepts as “moderation” to define what kind of discipline can be used against a person of minor age. Neither is it permissible for States to remain neutral vis-à-vis the widespread social acceptance of corporal punishment or for them to attempt to justify it as a necessary disciplinary measure that corresponds to positive goals, arguing that its application is deemed beneficial for the child or adolescent.

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<sup>119</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights. Available at: Other matters <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf>.

98. In addition, it is vital that States explicitly prohibit corporal punishment, in particular, for two reasons: first, because it enhances the recognition of corporal punishment as a form of violence and a violation of human rights, which has an absolute effect on the actions of state agents; and, second, because although the goal of prohibition is not to penalize the actions of parents in the private arena, it is important to acknowledge that a legislative ban offers a reference point for the actions of legal officials responsible for enforcing domestic law in order to ensure protection for people aged under 18 who claim they have been victims of punishment. Furthermore, the experiences of other countries that have already taken a stance against the corporal punishment of children offers an argument in favor of an explicit ban covering such violations of children's human rights.

99. In addition, to be effective, the adoption of legislative measures requires the State to provide guidelines for their enforcement, such as, for example, the dissemination of those provisions and the promotion of the human rights of children and adolescents.

100. With reference to our region, the IACHR notes that almost three years have passed since the Study on Violence against Children was presented, urging States to prohibit child corporal punishment by 2009, and that only three of the 35 member states of the Organization of American States have enacted legislation explicitly banning the use of corporal punishment on children and adolescents. Those countries are Uruguay, Venezuela, and Costa Rica.

## **B. Educational measures**

101. Since the use of corporal punishment as a way to discipline children and adolescents is an accepted practice in many of the Hemisphere's societies, it is vital that both the adults responsible for caring for children under the age of 18 themselves receive education about the rights of children, about the protection mechanisms available, and about discipline methods that are in no way based on violence.

102. Essential in this area are campaigns to raise society's awareness about refraining from the use of corporal punishment and, instead, to promote the understanding and use of nonviolent methods of discipline. Public education campaigns might be vital in order to create an understanding about the negative consequences of the corporal punishment and the need to promote preventive programs, including programs aimed at families on mechanisms that promote positive forms of discipline.

103. For example, reference may be made to the experiences of other countries, such as Sweden,<sup>120</sup> the first country in the world to embark on the eradication of corporal punishment, which implemented a series of mechanisms to educate its citizens about the need to eradicate corporal punishment. So, for example, the government of Sweden sent educational pamphlets to all homes and schools, to ensure that children and adolescents were aware of their rights.

104. In accordance with Article 19 of the American Convention on Human Rights and the Convention on the Rights of the Child, the IACHR urges the States to promote nonviolent forms of discipline that respect the rights of the child, to assist children in successfully attaining their goals by providing them with appropriate information and supporting their development as

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<sup>120</sup> Council of Europe, *Eliminating Corporal Punishment: A Human Rights Imperative for Europe's Children*, 2nd edition, Belgium, 2007, p. 57.



human beings.<sup>121</sup> The IACHR holds that this new form of learning must be based on the recognition of children and adolescents as full subjects of rights and on respect for their dignity. This view consequently admits no method that in any way affects or undermines the right of people aged under 18. It unavoidably involves shared learning among parents, adults, and children under the age of 18, and this poses particular challenges in that it entails teaching this new approach to discipline to adults, almost all of whom were disciplined through the use of corporal punishment.

105. In addition, the IACHR believes that the Convention on the Rights of the Child helps identify some of the basic elements in the concept of discipline. Thus, the second paragraph of Article 28<sup>122</sup> of that Convention provides that school discipline must be compatible with the child's human dignity. Although this provision deals with the right of children to education and the exercise of that right within educational establishments, the IACHR maintains that the discipline of children and adolescents can only be addressed in consideration of the human dignity of children; otherwise, it becomes an empty concept, one that is contrary to the rights of the child.

106. Finally, the IACHR notes the existence of various studies and manuals that provide reference points for guiding the adoption of measures to promote positive discipline or rights-based discipline within the family, at school, and in other institutions responsible for the protection and care of children and adolescents.<sup>123</sup>

### **C. Other measures to promote the eradication of corporal punishment against children and adolescents**

107. In addition to these legislative and educational measures, the eradication of corporal punishment against children and adolescents demands comprehensive action from the State. In connection with this point, the Commission does not intend to offer an exhaustive list of the range of measures that can be used to create a state policy for the eradication of corporal punishment. Nevertheless, it can identify a number of areas in which immediate action by the State would be necessary. These include health, justice, domestic security, etc.

108. A comprehensive and effective course of action to eradicate child corporal punishment demands the development of appropriate skills among the public officials and other individuals who are responsible for children and who act with the consent of the State. The development of skills necessarily demands the creation and facilitation of rights-based training programs covering all the agencies involved in the promotion and protection of children and adolescents.

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<sup>121</sup> Save the Children Sweden Southeast Asia and the Pacific, *Positive Discipline, What it is and how to do it*, Bangkok, 2007, p. 12.

<sup>122</sup> Convention on the Rights of the Child, Article 28.2: "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."

<sup>123</sup> Examples include the following materials, developed in response to the recommendations set out in the Study on Violence against Children: Save The Children Sweden Southeast Asia and the Pacific, *Positive Discipline, What it is and how to do it*, Bangkok, 2007, 356 pp. Council of Europe, *Parenting in Contemporary Europe: A Positive Approach*, 2007, 175 pp. Council of Europe, *Views on Positive Parenting and Non Violent Upbringing*, 2007, 104 pp. UNESCO *Eliminating corporal punishment: The way forward to constructive child discipline*, UNESCO Publishing, Paris, 2005.

109. In the sphere of justice, for example, the relevant measures include offering advisory services and specialized legal counsel for minors, so they are aware of and can act in situations in which they are victims of different forms of violence. In addition, consideration could be given to including the child-rights approach in the training courses given to justice system workers with responsibilities over children's matters.

110. At the same time, different forms of violence, even the milder forms, create public health problems which, if not addressed, could have a negative impact on both the social life and personal development of individuals.<sup>124</sup> Because of this, States should recognize that the use of corporal punishment to discipline children has a direct repercussion on physical and mental health, which requires the allocation of adequate specialized human and financial resources to ensure that the health system respects and protects the rights of children.

111. Since corporal punishment is a form of violence, it is, simultaneously, a mechanism that teaches violent ways to relate to others, and this, in conjunction with factors of exclusion such as poverty, can lead to law-and-order problems. As this report has already emphasized, the aim of banning corporal punishment is not to penalize the actions of adults, but it does require, *inter alia*, a greater awareness and preparation on the part of the individuals responsible for upholding law and order. Instead, the aim is to encourage the effective compliance by States of their international obligations in protecting children and adolescents from all forms of violence.

112. It is also important that regular research efforts are conducted to obtain updated information on children's experiences with the topic of corporal punishment and on the perceptions and attitudes of parents and other responsible adults, to be used as ingredients in the design of new strategies.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

113. Pursuant to the provisions of the American Convention on Human Rights, interpreted in light of the Convention on the Rights of the Child, the IACHR affirms that the use of corporal punishment as a way to discipline children and adolescents, whether imposed by state agents or when a State permits or tolerates it, constitutes a form of violence against children that wounds their dignity and hence their human rights. The IACHR affirms that pursuant to the terms of Article 19 of the American Convention on Human Rights and Article VII of the American Declaration of the Rights and Duties of Man, the member states of the Organization of American States are obliged to guarantee children and adolescents special protection against the use of corporal punishment.

114. In accordance with the international standards governing the rights of children and adolescents, the IACHR emphasizes the urgent need to adopt a state policy for children that transcends individual governments and short-term needs and, at the same time, ensures the sustainability of the measures adopted to comply with international obligations relating to the protection of child rights in the Hemisphere.

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<sup>124</sup> Committee on the Rights of the Child, General Comment No. 8 (2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Article 19, paragraph 2 of Article 28, Article 37, *et al.*), CRC/C/GC/8, August 21, 2006, paragraph 48.

115. Both the IACHR and the Court have identified the need to implement appropriate measures, based on the particular vulnerability of children and adolescents that guarantee full respect for their rights.

116. The Inter-American Commission has determined that under the domestic laws of the member states of the Organization of American States, the use of corporal punishment as a way to discipline children is accepted by societies and tolerated by the States. The IACHR consequently attests that the State's duty of ensuring respect for the rights of the child requires the adoption of legislative measures that explicitly prohibit the corporal punishment of children and adolescents in the home, at school, and in institutions responsible for their care. Parallel to this, the IACHR recommends the adoption of other measures to assist in eradicating corporal punishment and to make the Americas a region free of corporal punishment for children and adolescents.

117. The IACHR underscores the need to ensure that a comprehensive approach to children's rights is followed in all areas that have an impact on their full development as human beings. In this regard, the IACHR notes that the legal institutions applicable to the family jurisdiction are still conceived of and constituted juridically as institutions unaffected by the doctrine of comprehensive protection set out in the Convention on the Rights of the Child: a relationship of absolute authority and subordination continues to exist between children and their parents and other adults with responsibilities for the care of children under 18.

118. The Commission believes that under the principles of nondiscrimination and equal protection of the law, States cannot tolerate social practices that allow children to be victims of corporal punishment.

119. The IACHR notes that although States have a margin of discretion in regulating laws applicable to families and institutions, that obligation must be met in accordance with principle of the indivisibility and interdependence of human rights and the principles that govern children's affairs – such as the child's best interests and nondiscrimination – in order to ensure that children's rights are respected in relations among private citizens. Therefore, the Commission recommends:

1. That States prohibit all forms of violence against children, in all settings, within the family, schools, alternative care institutions and detention facilities, places where children work and communities, as required by the inter-American jurisprudence and international treaties, including the American Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child; taking into account the General Comment No. 8 (2006) of the Committee on the Rights of the Child on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28, paras. 2, and 37, *inter alia*) (CRC/C/GC/8) and the United Nations World Report On Violence Against Children.
2. That the member states incorporate an integral awareness of the rights of the child in designing public policies applicable to children, with particular emphasis on the eradication of corporal punishment in public institutions, such as detention centers, shelters, orphanages, hospitals, psychiatric institutions, schools and military schools, among others. The IACHR therefore recommends that the States take steps for the due implementation of such

policies, by assigning adequate amounts of human and financial resources to areas that affect children.

3. That, in accordance to the *corpus juris* related to the rights of children, the member states take actions for the promotion of educational measures for adults and children that, based on an awareness of child rights, can assist the effective enforcement of laws banning corporal punishment, and promote alternative disciplinary measures that are participatory, positive and not violent in society in such a way, that children's human dignity is respected.
4. That the States implement initiatives of prevention and response to all forms of violence against children, creating mechanisms directed at facilitating children who have been victims of violence, including corporal punishment, to be heard and to present claims.
5. That the member States report back to the IACHR on the measures adopted to eradicate corporal punishment as a way of disciplining children and adolescents and to make the Americas a region free of child corporal punishment by 2011.

120. Finally, the IACHR reiterates its commitment toward cooperating with States in the promotional activities they undertake at the domestic and regional levels in order to eradicate corporal punishment as a way of disciplining children and adolescents.