



# Study on the Rapporteurship on the Rights of the Child of the Inter-American Commission on Human Rights



**HUMAN RIGHTS CLINIC**  
THE UNIVERSITY of TEXAS SCHOOL of LAW



**Save the Children**





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**Researchers in charge of the Project**

Àngels Simon, Save the Children Sweden, Regional Office for Latin America and the Caribbean

Ariel Dulitzky, The Human Rights Clinic at The University of Texas School of Law

**English Translation**

The Human Rights Clinic at The University of Texas School of Law

**Editorial Support**

Sandra Arista

**Graphic Design**

Jorge Kajatt

**Photography**

Jorge Clavijo (cover and page 39)

Gisselle Bulkool (Page 14)

José Gabriel Cabañas (Page 16)

Valéria Simões (Page 21)

Servais Thissen (Page 43)

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1546 Ignacio Merino Ave. Lince, Lima - Perú

**Save the Children Sweden**

Regional Office for Latin America and the Caribbean

120 La Santa María Street, San Isidro, Lima – Perú

Phone number (+51 1) 4229292

[www.scslat.org](http://www.scslat.org)

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*“Keep me away from the wisdom which does not cry, the philosophy which does not laugh and the greatness which does not bow before children”.*

Khalil Gibran



## PROLOGUE

I would like to welcome the presentation of this Study carried out by the Human Rights Clinic at The University of Texas and Save the Children with some personal reflections based upon my eight years of experience as Commissioner in charge of the Rapporteurship on the Rights of the Child of the Inter-American Commission on Human Rights. I would like to thank Ariel Dulitzky for the coordination of this Study and Hans Lind of Save the Children Sweden Regional Office for Latin America and the Caribbean, and especially Ángels Simon, for their reflections, support, and interest, always closely following my work as Rapporteur.

I took office as Commissioner at the Inter-American Commission on Human Rights (IACHR) in 2004 and with it, the role of Rapporteur in charge of the Rapporteurship on the Rights of the Child. The Rapporteurship had been created in 1998, and since then the Commission designated the Commissioner Helio Bicudo as the first Rapporteur and subsequently the Commissioner Susana Villarán headed the Office of the Rapporteur.

The Rapporteurship on the Rights of the Child emerged as an initiative by the Commission to strengthen the respect for the human rights of children and adolescents in the Americas, after receiving requests from human rights advocates who pushed the idea and presented the arguments that defended the importance of creating within the Commission a body focused on children's rights. The Rapporteurship on the Rights of the Child, then, was created almost a decade after the UN Convention on the Rights of the Child went into effect. The UN Convention on the Rights of the child was immediately ratified on this Continent, which is indicative of the sensitive nature of childhood issues.

The UN Convention on the Rights of the Child created a profound paradigm shift in terms of a vision of the child as human rights' holder and not only the mere recipient of protection from the family and the State. In other words, the child becomes the indisputable holder of all the same human rights as an adult, but is also entitled to special protection due to their particular situation; dependence on adults for effective enjoyment of their rights and state of progressive development.

This paradigm shift assumed that, beyond the ratification of the UN Convention on the Rights of the Child and its incorporation into the domestic order, the States must develop substantial changes in their sectorial laws, public policies, structures, institutions, and practice in order to reflect the evolution of international instruments in the effective protection of the human rights of children. Due to the UN Convention coming into effect and the change in operating paradigm, the obligations of the State should also have become the subject of reconsideration in terms of its scope and content in relation to the rights of the child.

The State has the obligation to guarantee human rights and promote their realization and full enjoyment. In the case of the rights contained in the UN Convention on the Rights of the Child, the States have had to revise their actions in the sense of effectively guaranteeing the rights of children, as a part of the common human rights of every human being, but also taking into consideration the imperative of special protection. In this sense, one of the last strongholds where the most difficulties exist for the penetration of the UN Convention is the family sphere; the family is still perceived as a sphere exempt to the reach of the Convention, as if the rights of children had to be suspended at the doors of homes. To my understanding, one of the remarkable contributions that the Inter-American System of Human Rights has brought to the subject of children's rights, with the decisive leadership from the Office of the Rapporteur and the Commission, has been to establish a clear jurisprudence on this theme when it had the

opportunity to tackle the case of physical and humiliating punishment of children, establishing children's right to dignity and personal integrity as with any other person, and placing on the States the obligation to support the families, through programs, in the exercise of a positive upbringing without violence.

In the Inter-American System, both the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man dedicate an article to the rights of children. Article 19 of the American Convention establishes 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," while the Article VII of the American Declaration declares that "[. . .] all children have the right to special protection, care and aid." The Commission understood that when it comes to children's rights, the articles mentioned should be interpreted in light of a collection of norms (treaties, conventions, resolutions, and declarations) that are bound with the effective and integral protection of children and adolescents. The Inter-American Court already in its first case on childhood, the case *Villagrán Morales et al.*, also known as the case of the "street children", determined that "both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention." The jurisprudence of the Court permitted the integral concept of the international protection of the rights of children be developed, which integrates the norms of the Universal System of Human Rights as well as the Inter-American System.

Despite these developments, the jurisprudence on children in the Inter-American System has been limited in terms of its number and incomplete in terms of content. The first situations that were analyzed by the IACHR in relation to violations of children's rights were in the 70's and concerned situations of arbitrary detention, patterns of kidnappings, murders of children by private militias, and later on violations of human rights that occurred during periods of dictatorships. Similarly, in the IACHR's report corresponding to 1984-1985 a specific reference to Article 19 of the American Convention was made. Subsequent cases have continued to come to the System, but they are relatively few and do not take into account the complexity of the phenomena that affect children and the violation of their rights.

To explain this situation I would like to highlight two aspects. First, the challenges in terms of capacity for organizations that work on children to access the System. It has been evident for some time that children's organizations were not gaining access to the System in the same number and frequency as other human rights organizations. The Office of the Rapporteur itself has in its past focused a significant amount of its efforts in activities that promote knowledge of the System and how it functions—as did the Inter-American Institute of Human Rights and international NGOs like Save the Children, which should continue to promote this knowledge of how the System functions. This has permitted a progressive increase in the presence of children's organizations in the System, but the need for these organizations to strengthen their capacities or better their association with others with more skills in the strategic use of the Inter-American System persists.

In order for the work of the Rapporteurship to be more efficient and attain a larger impact, it is of fundamental importance to count on organizations in civil society to partner actively with the Office of the Rapporteur, bringing up to date information on the local and national context in their respective States, as well as identifying and describing situations that constitute violations of the rights of children. It is impossible for this work to be carried out by the Office of the Rapporteur for an evident and obvious reason: those who know best the reality are the organizations in direct contact with it. We can also add to that, the lack of adequate resources in the IACHR, financial and personnel, to enable the Office of the Rapporteur to carry out its mandate effectively: without a team to support the Office of the Rapporteur it is simply not possible to identify, characterize, and follow up on situations that render vulnerable the rights of children in the reality of each country in the Region.

Secondly, the opportunities that the System of cases offers to advance standards for protection of the rights of children are limited and its development depends on the type of cases that are before the IACHR. It is evident that the cases, beyond giving justice to victims and restoring their rights, can also be a tool for establishing jurisprudence and determining content and scope of the rights contained in the American Convention and other instruments of the Inter-American System. It is particularly true and interesting when, by means of using litigation strategically, emblematic cases that seek to establish jurisprudence to complex subjects or subjects that have not been treated adequately nor in accordance with human rights, reach the Inter-American System. In order to go deeper into this logic, it is key that civil society organizations design strategies for the identification and litigation of emblematic cases. In the case of children's rights, this field should be better explored.

However, I insist it is not less certain that the casuistic system has its limits, especially when it comes to furthering the standards of protection of the rights of children. Proof of this is the profile of the cases that until now have reached the System, their number, duration time and resolution. During my years as Rapporteur I have put special emphasis on the development of other tools that the IACHR and the Rapporteurship have in their reach. In particular, the Thematic Reports are a great tool for analyzing in-depth a particular subject, they allow the participation of a broad range of actors through the consultation process, they fix and develop standards and offer recommendations to States that help them fulfill in the best way their responsibilities in that field. In addition, the Reports indirectly garner visibility for the subject and a place for it on the public agenda; they stimulate States to analyze the subject as a part of the process of identifying and presenting information to the Office of the Rapporteur; and also, they bring about the opening of spaces for reflection and dialogue between various actors in the face-to-face consultations.

During my mandate, the Rapporteurship on the Rights of the Child has produced three Thematic Reports, which apart from that, take on subjects that had been presented as concerns before the IACHR by means of thematic hearings requested by various civil society organizations of the Region. Thus, the identification of subjects that were the object of the Reports responded to these concerns described in the hearings. The average time for elaborating on a Report has been almost two years and the resources for counting on personnel in the Office of the Rapporteur dedicated to the process of preparing these has been one of the primary obstacles. The IACHR and the Office of the Rapporteur lack the sufficient financial resources and personnel to be able to produce Thematic Reports and they depend on fundraising or on the agreements of cooperation with other organizations for financing the elaboration of Thematic Reports. This, in some cases, has extended the process of preparation of a Report until the necessary resources have been obtained. After the presentation of a Thematic Report, it is of fundamental importance to spread the Report to various countries and make them as accessible as possible to a large number of recipients. There are also not enough resources for these activities and the IACHR and the Office of the Rapporteur rely entirely on fundraising. In this sense, if I had not received the support of UNICEF, Save the Children, the Office of the United Nations High Commissioner for Human Rights, the IDB, and other punctual donors, the three reports would have never come to light.

Another of the tools that the IACHR and the Office of the Rapporteur have at their disposal are visits to countries, those "in loco" and those of a promotional character, as well as the calls for attention to worrisome human rights situations that have been observed, by means of the so-called letter Article 41. In all of these cases, in my experience, the impacts of actions have been immediate and have managed to revert worrying situations without needing to wait for the situation to worsen and for it to be necessary to turn to the Inter-American System through another of its mechanisms, such as the hearings, the precautionary measures or cases. I believe that the use of these tools should be more frequent. In reality, it is the limited (to not say inexistent) resources available to the Rapporteur to travel the main obstacle for not conducting more visits. For an efficient use of the tool of letter Article 41, it is necessary to count on a permanent relationship between the Rapporteur and the various actors at the local and national level (e.g. civil society

organizations, national human rights institutions, and other child rights' advocates), which merits work on the part of the Office of the Rapporteur in terms of time and personnel in order to make this following in a periodic, fluid, and direct way, as on the part of the other actors in the monitoring, analysis, and communication with the Rapporteur. The resources, human as well as financial, are again the main obstacle for the Office of the Rapporteur to develop all of the tools at its disposal and increase in that way its efficiency and that of the System.

These limitations of the Rapporteurship on the Rights of the Child, which unfortunately are structural to the IACHR, make it impossible to plan an agenda or action plan in the medium term, since the capacity of action of the Rapporteur is largely constrained to the success, or not, of fundraising efforts as well as to the donor's conditions set out in the Cooperation Agreements. During my tenure, I was fortunate to be able to articulate the work of the Rapporteurship with the process that began in 2005 to develop the United Nations Study on Violence against Children, in which I was appointed as Rapporteur. The fortunate timing allowed me to perform many important activities in this region related to the issue of violence against children, but for me it is clear that the Rapporteurship cannot afford to be left to coincidences, however fortunate and timely that they can be, to carry out its activities.

At every opportunity presented to me I have urged States to fulfill their obligations to the Commission, and to the the Inter-American System in general, in terms of providing adequate funding to enable it to fulfill its mandate. This Study has now also put the emphasis on this aspect, and hopefully will serve as a basis for evidence of a situation that must necessarily be corrected and whose main responsibility lies with the States of the OAS.

I would like to take the opportunity offered by this Prologue to highlight and acknowledge the outstanding dedication of the Executive Secretariat of the Commission and its lawyers, and especially to Deborah Benchoam who assisted me during these eight years as Rapporteur, and who, despite working under such tight restrictions that I mentioned, produced admirable and extraordinary work in promoting and defending human rights, with a commendable personal and professional dedication, which at all times was made available to me and my fellow Commissioners and Rapporteurs in the exercise of our mandates.

Let me conclude by noting the importance of presenting this Study at the present time, in which there will be a new Rapporteur heading the Rapporteurship. I hope that this Study will become a useful tool for the new Rapporteur to continue the process of enhancing those areas identified by this Study as strengths and best practices in the activities of the Rapporteurship, and also will serve to design a strategy to overcome some of the current limitations facing the Rapporteurship which prevent the development of its mandate as effectively as we wish, or as is expected by millions of children in the Americas.

Professor Paulo Sérgio Pinheiro  
Geneva, October 2011

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## INTRODUCTION

The Human Rights Clinic at The University of Texas School of Law (HRC) was approached by Save the Children Sweden and asked to conduct a study of the Rapporteurship on the Rights of the Child (RRC) of the Inter-American Commission of Human Rights (the Commission or IACHR). The RRC is one of the eight Rapporteurships of the Commission and its main purpose is to support the work of the IACHR in promoting the defense and respect of the rights of the child in the Americas.<sup>1</sup> The Rapporteurship provides advice to the Commission in the proceedings of individual petitions, cases and requests for precautionary and provisional measures, which address the rights of the child.<sup>2</sup> Likewise, the Rapporteurship undertakes on-site visits in the OAS Member States and prepares studies and publications.<sup>3</sup> The Human Rights Clinic and Save the Children Sweden are committed to the objectives and advancement of the goals of the Commission, and believe in its ability to affect real, positive change in the Americas. The Human Rights Clinic and Save the Children Sweden have produced this report, aimed at providing analysis and reflections that might contribute to the strengthening of the RRC by capitalizing on its existing core activities and developing new strategies.

The following study aims to assess the current strengths and weaknesses of the RRC, with the goal of prescribing a set of recommendations that could enable the RRC to more effectively fulfill its mandate of promoting the rights of the child in the Americas.

Based upon an exhaustive list of interviews, the HRC and Save the Children Sweden have prepared this report that incorporates the opinions of a diverse and experienced group of actors in the human rights, particularly the children's rights arena. Among those interviewed, many have years of experience working closely with the IACHR or the RRC. Others have extensive backgrounds in human rights, either in the academic arena, or as a result of working closely with NGOs and civil society. The opinions of those interviewed have, at times, been as broad and diverse as their backgrounds. This paper aims to decipher these varied opinions, and ultimately, consolidate common views on major topics that would enable the RRC to improve its effectiveness. The opinions of such a broad array of experienced professionals are critical to assessing both the current practices of the RRC, and the scope for improvement. This paper first provides an understanding of the specific methodology, scope and limits of this report. It follows with a description of the RRC, with particular reference to its funding and the main activities done by the RRC, without involving an exhaustive account of those activities. Having established an understanding of the inner workings of the RRC and its mandate, the study presents its findings. In this regard, findings are broken down into those related to the impact of the RRC, and the current limits on the RRC's effectiveness. Finally, the report concludes with a set of recommendations that intend to further the RRC's impact, while simultaneously reducing the impact of the aforementioned limitations.

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1 See RRC website, [http://www.cidh.oas.org/Ninez/default\\_eng.htm](http://www.cidh.oas.org/Ninez/default_eng.htm), last visited Jan 13, 2011

2 *Id.*

3 *Id.*

## CHAPTER I

# METHODOLOGY, SCOPE AND LIMITS OF THE REPORT



Our methodology entailed distributing an independently developed questionnaire and conducting phone and face-to-face interviews with key players within the Rapporteurship and the Inter-American system, as well as children's rights advocates in the international human rights community. Over the course of the past year we distributed questionnaires to crucial actors and received 11 written responses and conducted 31 phone interviews. Most of the people interviewed allowed us to refer to them within the report while others chose to provide constructive responses while maintaining anonymity. We spoke with personnel from the Inter-American Commission, UNICEF, civil society organizations in Latin America, and NGOs with whom the Rapporteurship currently collaborates or could partner with in the future. We also reviewed secondary sources. While some of the input referred to the IACHR as a whole, we included it because the Commission and the RRC are intertwined, and the information may be directly applicable to the RRC. This report is not an attempt to produce a comprehensive report of the Commission or other Rapporteurships. However, we do make reference to them because we believe the comments are relevant to fully understanding the RRC.

This study has all the limitations associated with the methodology we chose. Each research methodology has its own strengths and limitations. In this case we opted for interviewing users of the Inter-American system with different levels of knowledge and experience in its use. Among the interviewees there are human rights NGOs with extensive knowledge of the system as well as NGOs and coalitions on the rights of the child with more limited experiences and capacities of strategically using it. We also interview the staff of the RRC, the IACHR, and UNICEF. The decision to opt for the interview methodology allows us to promote a space for dialogue and analysis among these actors, and to capture the impressions and perceptions of some of the main groups with whom the RRC interact. Most of the study is based on the opinions, visions, suggestions, expectations, and comments of the interviewees while the students of the clinic made the effort to compile the interviews and extract from them the most relevant aspects in the form of suggestions and recommendations in order to support and strengthen the Rapporteurship. We are aware that the document may contain different and even contradictory visions among the

interviewees. Nevertheless these contradictions are part of the methodology that we chose, and we believe that they contribute to the reflection and analysis. In the same vein there could be information that was omitted by the interviewees who provided their opinions based on their own particular experience.

Kristian Aguilar, Priya Bhandari, Melvin Huang, Trevor Sharon, Monica Uribe, Sarah Valdes and Doris Wong primarily undertook this research, with the assistance of Anjela Jenkins, all law students at The University of Texas School of Law Human Rights Clinic, under the supervision of Professor Ariel Dulitzky, with the support of Àngels Simon from Save the Children Sweden.

## CHAPTER II

# STRUCTURE, MANDATE, STAFF, FUNDING AND ACTIVITIES OF THE RRC



According to Article 15 of the new Rules of Procedure of the IACHR, “The Commission may create Rapporteurships with mandates that are linked to the fulfillment of its functions of promotion and protection of human rights, and in accordance with the thematic areas deemed of special interest for achieving this purpose. The grounds for the decision will be expressed in a resolution adopted by the absolute majority of votes of the members of the Commission in which the following will be recorded:

- a. the definition of the conferred mandate, including its functions and scope; and
- b. the description of the activities to be carried out and the methods of planned financing to defray them.

The mandates will be evaluated periodically and will also be subject to review, renewal, or termination at least once every three years” (Section 3). However, we did not receive information indicating that such evaluations were ever conducted.

The RRC was established by the IACHR in 1998<sup>4</sup> and is one of eight of the Commission’s Rapporteurships, including the Special Rapporteurship for Freedom of Expression, which is the only Rapporteurship not headed by a Commissioner.

The mandate and function of the RRC details the duties and possible activities the RRC could undertake. According to the mandate and functions explained on the RRC website:

The Rapporteurship provides specialized advice to the Commission in the proceedings of petitions filed to the IACHR regarding violations of the rights of the child. The Rapporteurship may

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4 See IACHR Press Release 18/98. The Commission appointed then Commissioner Helio Bicudo as the first Rapporteur on the Rights of the Child.

conduct studies regarding the rights of the child. These studies contribute to the development of International Human Rights Law. Furthermore, the above-mentioned studies may include recommendations to encourage States' compliance with international human rights standards. The Rapporteurship undertakes on site visits to the countries throughout the region. During these visits the Rapporteurship establishes contacts with governmental authorities, with civil society organizations and with children. These visits give the opportunity to observe in depth the problems that affect children and to address recommendations to States aiming at guaranteeing the respect and enjoyment of the rights of the child. The Rapporteurship engages in promotional activities regarding the protection of the rights of the child. For instance, the Rapporteurship organizes seminars, workshops and working meetings about international human rights standards.<sup>5</sup>

Commissioner Paulo Sergio Pinheiro, the current Rapporteur and a member of the Commission, with the support of the Secretariat staff, heads the RRC. Up to December of 2009, the RRC had the support of two consultants, in addition to part-time support from one staff attorney.<sup>6</sup> In 2010 the RRC received the help of a consultant and a lawyer. The consultants were funded by contributions from Save the Children Sweden and UNICEF.<sup>7</sup> Commissioner Pinheiro fills the role of the Rapporteur, as well as Commissioner and country rapporteur to the United States, Venezuela, El Salvador, and Barbados.<sup>8</sup> Since its creation, the Rapporteurship has always received the support of one permanent staffer of the Executive Secretariat who performs this role in addition to her other duties as a country desk officer or as a member of one of the Secretariat's working groups. The sole permanent staff attorney assigned to the RRC is also in charge of coordinating the precautionary measures for the entire IACHR.<sup>9</sup> Her dual roles only allow her to dedicate about 20% of her time and effort to the RRC, even though she oversees and edits all the work produced by the Rapporteurship.<sup>10</sup> As will be explained later, the lack of enough personnel assigned to the RRC to fully carry out its mandate is one of the main limitations that we found. This limitation is associated with the financial restrictions that the RRC and the Commission face.

Article 15 of the Rules of Procedure of the IACHR does not clarify the factors that the Commissioners should take into consideration in creating a special Rapporteurship, i.e. those Rapporteurships assigned to other persons designated by the Commission. It states that the Rapporteurs are designated by the Commission members and must have an absolute majority vote.<sup>11</sup> The HRC asked several people the reasons behind choosing the option of a special Rapporteurship rather than a thematic Rapporteurship for the Rapporteurship on Freedom of Expression, which is a special model, but nobody was able to give a concrete answer as to why the Commission chose a special model for the Rapporteurship on Freedom of Expression. One comment was that the theme associated with the Freedom of Expression Rapporteurship was more popular and it was easier to secure specific funding to support a Rapporteurship not headed by a Commission

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5 Mandate and Functions of the Rapporteurship on the Rights of the Child, *available at* <http://cidh.org/Ninez/mandatoeng.htm> (last accessed May 15, 2011).

6 Interview with Santiago Canton, Executive Secretariat – Inter-American Commission on Human Rights, in Washington D.C. (Nov. 2, 2009).

7 Interview with Deborah Benchoam, Attorney for Rapporteurship on Rights of the Child and in charge of Precautionary Measures – Inter-American Commission on Human Rights, in Washington D.C. (Nov. 5, 2009). Interview with Commissioner Paulo Sergio Pinheiro, Commissioner and Rapporteur for the Rights of the Child – Inter-American Commission on Human Rights, in Washington D.C.

8 Interview with Commissioner Paulo Sergio Pinheiro, Commissioner and Rapporteur for the Rights of the Child – Inter-American Commission on Human Rights, in Washington D.C. (Nov. 2, 2009).

9 Interview with Deborah Benchoam, *supra* note 7.

10 *Id.*

11 Rules of Procedure of the Inter-American Commission on Human Rights; Article 15, (Approved by the Commission at its 109 special session held from December 4 to 8, 2000 and amended at its 116th regular period of sessions, held from October 7 to 25, 2002).

member and supported by a full-time staff.<sup>12</sup> As expressed throughout this Report, there are concerns about the Rapporteurship's capabilities to develop its mandates, especially due to financial and personnel limitations. Therefore it would be important both for the credibility of the Commission as a whole and for the strengthening of the non-special Rapporteurship in particular, to have the IACHR clarify the advantages of the different models.

The Commission is funded from an OAS budget of about US \$4 million, which supports IACHR activities in 35 countries.<sup>13</sup> Because the budget is not adequate, the IACHR is forced to raise additional funds to support its activities.<sup>14</sup> Many times funding proposals are intended to secure resources to hire staff with specialized knowledge of the work of particular Rapporteurships.<sup>15</sup> If funding is secured, generally one or more lawyers are hired for the specific project.<sup>16</sup> This model requires a constant search for funds to support the activities of the Rapporteurship. The RRC informs us that there is a fundraising team within the Secretariat in charge of seeking financial support.<sup>17</sup> The RRC is funded and functions according to these parameters. Not surprisingly, this situation creates several constraints for long-term planning. It also requires additional work and generates great anxiety and instability in the Rapporteurship staff.

The magnitude of the efforts carried out by the RRC to secure funding in order to fulfill its mandate cannot be overemphasized. During Paulo Sergio Pinheiro's tenure as Rapporteur the RRC received contributions from the Inter-American Development Bank, UNICEF, Save the Children, and Luxembourg. These contributions make it possible to hire consultants to support the activities of the Rapporteur and to conduct research to prepare different thematic reports. Some of these donors are committed to long-term support of the RRC as they understand the importance of sustained activities. Additionally, the RRC had the cooperation of the United Nations Office of the High Commissioner for Human Rights and the Office of the United Nations Special Representative on Violence Against Children. This cooperation made possible the development of positive synergies to maximize the available resources.

Article 15 of the Rules, requires that "the thematic and special Rapporteurs perform their activities in coordination with the country rapporteurs." It also instructs Rapporteurs to "present their work plans to the plenary of the Commission for approval. They shall report in writing to the Commission, at least annually, on the work undertaken (Section 6)." Finally "all Rapporteurs shall advise the plenary with respect to issues they have become aware of that may be considered matters of controversy, grave concern or special interest for the Commission (section 8)."

Nevertheless, according to the interviews, the Rapporteurs are completely in charge of determining the agenda for the different Rapporteurships according to the highest priority themes and issues in the context of the region. The agenda and priorities of the RRC in the recent years had been marked by the theme of violence against children. The current Rapporteur, Professor Pinheiro, in his first years as Commissioner also served as the UN Secretary-General's appointed Independent Expert on Violence Against Children. During his UN tenure, he produced a very well received and comprehensive thematic report on that subject and concentrated the work of the RRC around his UN mandate.

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12 Interview with Dario Abdala, Executive Director of ANDHES.

13 Name withheld by request, Actor within Inter-American System. While the \$4 million figure refers to the 2009 budget, figures from the financial report of the OAS for 2008 indicate that US \$3.362 million were allocated to the IACHR, which constituted 3.8% of the overall OAS budget.

14 Inter-Am. Comm'n H. R., Financial Resources (2009), <http://www.cidh.oas.org/recursos.eng.htm>.

15 Interview with Deborah Benchoam, *supra* note 7.

16 *Id.*

17 *Id.*

The preparation of this study was the result of the recommendation made by the United Nations Committee on the Rights of the Child to the General Secretary of the UN about naming an independent expert that would analyze this topic. The Committee on the Rights of the Child had already dedicated two days of General Debate to this topic, but the magnitude of the topic itself made it important to create a study that would produce a deeper analysis, and would also include broad consultations with all the relevant actors (experts, and public authorities responsible in regards to childhood and violence, civil organizations, universities, centers of research, and include the children and teenagers themselves). Three regional consultations were carried out in the Americas for the elaboration of the study, including a consultation with the children. Both the process of furthering the study itself and the process of consultation in the region had a very dynamic effect among all the actors that work on this topic, both in the States and civil society organizations, universities, and experts who made important and valuable contributions to the study. In the same way, the phenomenon of violence against children, in its various manifestations, gained more visibility in the public agenda and social debate due to the mobilization surrounding this study.

The study was accompanied by a report that summarizes the findings, and presented 12 recommendations. These recommendations are consistently used by the Committee on the Rights of the Child when analyzing the degree of compliance of the States in regards to their obligations of protecting children, which are contemplated in the UN Convention on the Rights of the Child. The process was able to promote the establishment of permanent relationships of collaboration among the different human rights monitoring bodies, concretely between the Committee on the Rights of the Child, the RRC, and the Special Representative of the General Secretary for the issue of Violence against Children (currently Dr. Marta Santos Pais), who was named as a result of the recommendations included in the report.

From the interviews we concluded that because of the wide scope of the UN's study and the lack of financial support and full-time personnel in the RRC, the synchronization of agendas had become necessary, even strategically, which led Paulo Sergio Pinheiro to concentrate the RRC's work around the UN mandate. However, there were also some interviewees for whom believed that synchronizing the agenda and priorities of the RRC with that of the United Nations' could be disadvantageous in that it prevented the development, self-identity and visibility of the RRC.

Using this framework, the RRC centered its agenda on four themes that became the priority for the Rapporteur: physical and humiliating punishment, citizen security and human rights, juvenile justice, and children in institutions of protection and care. These themes, besides having been identified as concerns in the region during the study of the United Nations on violence, were also the several themes presented by organizations of civil society in hearings and were focused on by IAHCR reports, elaborated for the RRC (the report on children in institutions of protection and care is still in the process of elaboration). Unfortunately, the circulation and diffusion of these reports has been affected by the lack of funds.<sup>18</sup> Other NGOs and organizations serve as sources of funding. The production of these studies was supported and partially funded by UNICEF. Save the Children Sweden also helped support the Juvenile Justice report and the children in institutions of protection and care report.

The focus on corporal punishment was in part the result of a concrete and important concerted effort by civil society organizations, parliamentarians, and national human rights institutions that

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18 *Id.*

started with a hearing on topic.<sup>19</sup> As a follow up, the IACHR, along with the leadership of the RRC, requested an advisory opinion from the Inter-American Court on Human Rights. Because the Court declined due to jurisdictional issues,<sup>20</sup> the RRC decided to produce a report about the jurisprudence on this topic.<sup>21</sup>

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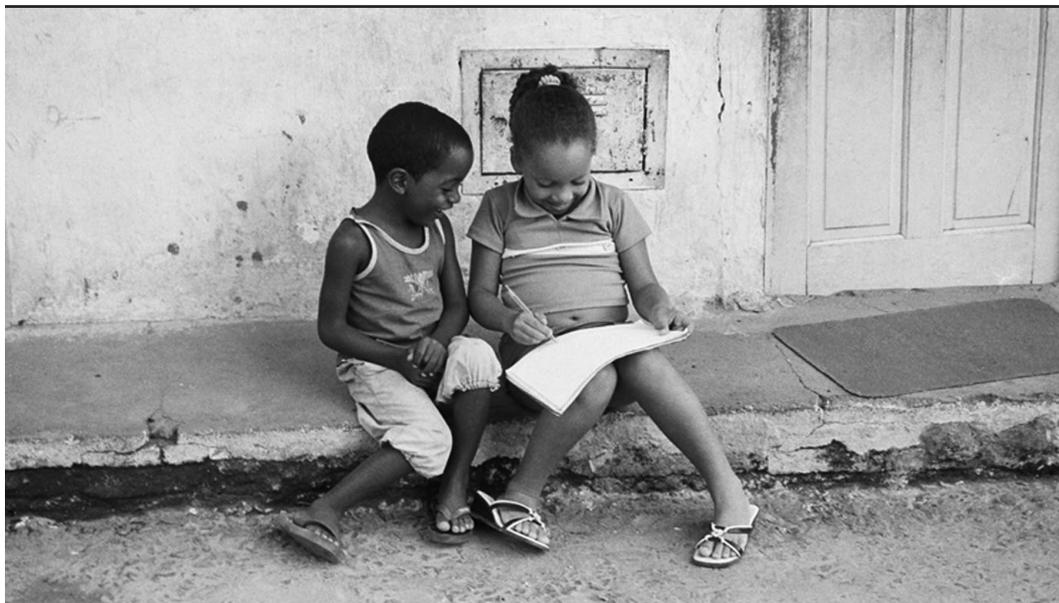
19 Save the Children Sweden was one of the organizations that requested the holding of the hearing before the Commission, which was granted in late 2005. The first cooperation agreement between Save the Children and the Commission was signed in December 2007. Cooperation agreements between Save the Children and the Commission are intended to help support the work and the mandate of the Rapporteurship on the Rights of the Child, considering the priorities that the Rapporteurship sets in its plan of action. The annual donation of funds is done according to the norms of the OAS / IACHR and Save the Children, including the presentation of an annual audit.

20 Resolution of the Inter-American Court of Human Rights, Request for Advisory Opinion presented by the Inter-American Commission on Human Rights (January 27, 2009).

21 This report addresses the issue of parental rights from a human rights perspective. This approach implies a limitation of parental rights as it required the respect of the rights of the child, particularly his/her dignity and physical integrity. The report reaffirms the need to respect human rights in private relations particularly in the sensitive space of family relationships. Finally, the report clarifies the scope of Article 19 of the Convention beyond the issue of violence.

## CHAPTER III

# RESULTS OF THE STUDY



### 1. Positive impacts of the RRC

This study does not intend to measure the impact of the RRC or the enjoyment of the rights of children in the Americas. In our interviews there were various opinions on whether or not the RRC has had a strong impact on the advancement of children's rights in the Americas. That is a theoretical and practical question that could yield many different answers dependent upon how the impact in advancing the rights of the child is measured. However, there was a general consensus that the RRC has brought very positive developments to the Inter-American system, as well as a clear consensus that more could be done in the future, provided that proper conditions are created for overcoming existing constraints and limitations that have made achieving a more robust advancement of the RRC role more difficult.

#### a. Bringing visibility to children's rights issues

According to several interviewees, the existence of the RRC has drawn attention to the issue of children's rights within the Inter-American system. The RRC has been able to bring visibility to different problems that affect children, highlight violations to their rights and increase its knowledge on the issue as well as that of the Commission. The focus of the RRC on violence against children is an example of how the Rapporteurship is able to address a central issue affecting children in the region. The UN Committee on the Rights of the Child had consistently recommended that States in the region focus more efforts on preventing and overcoming violence against children. Alternative reports submitted by civil society organizations also highlighted this concern. By choosing to focus on the topic of violence against children, the RRC responded to the findings and warnings of the UN Committee on the Rights of the Child, the body in charge of monitoring the application of the UN Convention on the Rights of the Child, and the demands of civil society organizations in the region.

A concrete example is the report produced in collaboration with the UN, the Report on Juvenile Justice. This report is the result of a strong concern among human rights advocates regarding detention conditions for children and violations of their rights during incarceration. In many

countries of the region there was an apparent trend toward the proposal of lowering the age of criminal responsibility and increasing penalties for illegal conduct committed by children. The trend was exposed during several thematic hearings presented by Child Rights National Coalitions of various countries in the region. The analysis of these conditions began during the preparation of the UN Study on Violence Against Children (UNVAC) and are raised by the UN Committee on the Rights of the Child in its Concluding Observations concerning several countries. In this case, the collaboration with UN bodies as well as the information provided by civil society organizations, allowed the RRC to become involved and produce a study on an issue that deeply concerned many different States in the Americas.

The hearings before the IACHR to analyze issues has had positive results in itself in the countries whose penal laws conflict with the rights of children. This is because the civil society organizations and the press disseminated information of the hearing thus opening a forum for public debate in their respective countries. The fact that at the State level, a response to a request for a hearing was prepared, created an opportunity to examine the challenges that the country and in their institutions face regarding the theme.

To prepare for the report, the RRC designs and disperses a questionnaire to the States and among civil society organizations so that the RRC could gather information from all relevant actors. Consultations with experts are also carried out. Consequently, the process of researching and drafting a report becomes a valuable opportunity for analyzing and identifying situations involving violations of the rights of children, progress and good practices.

Furthermore, feedback on the reports of the RRC was quite positive. There was special emphasis on the importance of presenting its reports to high government authorities so that legal reform could be catalyzed. Generally, the IACHR's recommendations tend to carry political weight that may prompt governments to follow them.<sup>22</sup> More specifically, RRC reports, with the "authority and seal of the IACHR stamped on them," can be quite influential, and have the ability to generate public debate on critical issues and the need to improve the regulation, policies and practices regarding children's rights. The RRC publically presented the report in several countries in the region, giving priority to those who are identified as areas of particular concern. These presentations are very useful opportunities to include the participation of national authorities and expert commentators on the subject, and receive significant media coverage.

It should be mentioned that prior to developing the report, the Committee on the Rights of the Child had already issued General Comment N°. 10, on "Children's Rights in Juvenile Justice." Although the General Comment states human rights standards in this area in general, the contributions of RRC's report provided a level of research and analysis of the actual situation in various countries and identified standard policies and practices in a level of detail that the Committee's General Comment cannot achieve. Therefore both documents are important complements to one another.

In relation to the capacity of the RRC to promote greater visibility to children's rights, UNICEF, for example, has spoken very positively of the RRC's position against corporal punishment as a violation of human rights and how the RRC has contributed in the incorporation of this issue into the agenda of States, when it was almost completely absent.<sup>23</sup> The report of the RRC on corporal punishment has been extremely useful and is in use by UNICEF and NGOs.<sup>24</sup>

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22 Interview with Commissioner Paulo Sergio Pinheiro, *supra* note 8.

23 Interview with Àngels Simon, Regional Programme Manager of Save the Children Sweden, Regional Office for Latin America and the Caribbean, in relation to the decision by the highest authorities on Children's affairs comprising the Niñ@sur Standing Committee, made up of 10 countries in the MERCOSUR area, to assume the eradication of corporal and humiliating punishment as a priority in their countries.

24 Interview with Peter Newell, Director of the NGO Global Initiative to End All Corporal Punishment of Children.

## **b. Deepening the Inter-American system standards and understanding of children's rights**

The RRC has contributed to the developing of standards on the rights of the child in the Inter-American Human Rights System. Also, in its work, particularly the preparation of thematic reports, the RRC has helped the Commission to better understand the particularities of children's rights. For instance, the Report on Corporal Punishment served to deepen legal analysis of the argument for the child as a holder of all human rights, the limits derived there for the legal institution of parental rights, and the scope of State responsibilities. Parental rights and responsibilities had not been directly addressed before by the Inter-American System, therefore the report on corporal punishment was an opportunity to do so and have had legal implications beyond the issue of corporal punishment. The Report is an important contribution to defining the scope of the State's obligations to ensure that children's right to their personal integrity as well as their right not to be subjected to any form of violence is upheld. Additionally these contributions helped determine the content of Article 19 of the Convention. The RRC was very open at all times to receiving information and opinions from the petitioners involved in the hearing. Once the Report was published, UNICEF and Save the Children Sweden supported RRC country visits and participation in fora for the dissemination of the information.

Several of the interviewees recognized the strategic vision of the RRC and its Rapporteur in using the different tools at their disposal to promote the development of standards for the effective protection of children's rights. Special emphasis was placed on the propagation of thematic reports. During Paulo Sergio Pinheiro's mandate, the Rapporteurship prepared three reports: The Report on Corporal Punishment and Children's Human Rights, The Report on Juvenile Justice and Human Rights, and currently the RRC is preparing a report on the situation of children in foster care institutions in the Americas.

In order to facilitate the access and the understanding of developments in the Inter-American system in the area of children's rights, the RRC published an updated edition of a book on Inter-American case law in this area. This publication is available on the RRC website.

In this regard, the activities carried out by the RRC with the support of UNICEF, the IDB, Save the Children, and Luxembourg facilitated and contributed to the promotion of children's rights.

## **c. Developing strategic relations with key children's rights actors**

There is a clear consensus that the key to the success of the RRC is to develop contacts, networking, building alliances and cooperation and work with NGOs. It is encouraging that all those involved with the RRC recognize this factor and hopes to continue to cultivate these relationships. This study found that the RRC's relations and coordination with key actors in the promotion and protection of children's rights is a largely positive aspect of the RRC. These ties need to be maintained and strengthened in the future. As an example of RRC's initiatives to accomplish this, the RRC has made several country visits, conducted expert panels and communicated with NGOs in the production of their thematic reports. Further, the Rapporteur has established the practice of holding regular teleconferences with the National Coalitions for the Rights of the Child and the regional network that serves as the umbrella (REDLAMYC),<sup>25</sup> in order to track the context and situations that are of concern, seeking to stay informed, to follow up on previous situations and to detect regressive trends or concerns that warrant immediate attention to prevent further worsening of the situation (as has been the example to alert on State programs or proposals for normative reforms that presented difficulties from the point of view of children's rights).

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25 Red Latino-Americana y Caribeña para la Defensa de los Derechos de los Niños, Niñas y Adolescentes (REDLAMYC) - Latin American and Caribbean Network for the Rights of the Children and Adolescents - which consists of 22 national coalitions and more than 2,300 NGOs that work in the whole region in promoting and defending the rights of children.

For instance, during the preparation of the UN Study on Violence Against Children, Paulo Sergio Pinheiro as Rapporteur was able to open a dialogue with organizations and civil society experts on issues of violence against children. Furthermore, direct contact and dialogue with civil society organizations, state authorities and children in the region was established during three consultations that were held in the Americas. Approaching and opening these dialogues with civil society organizations was key to strengthening the relationship between the RRC and NGOs. Particularly encouraging, as will be explained throughout this report, is the strong relationship between the RRC and several UN bodies, such as UNICEF, the Committee on the Rights of the Child, and the different special procedures of the Human Rights Council dealing with children's rights. The RRC has carried out different joint projects with them, including joint visits. Further both the RRC and the other human rights monitoring bodies apply the standards and consider the recommendations that both have developed, thus creating important synergies.

#### **d. Strengthening children's rights organizations**

The RRC has also expanded information regarding the Inter-American human rights system and the rights of the child to the network of children's NGOs in the Americas. Those NGOs by virtue of their interaction with the RRC gained new legitimacy, which in turn has encouraged more people and organizations to approach them to denounce violations of children's rights or to participate in dialogue on these issues with the Government. Furthermore, by submitting information to the RRC, those organizations have increased awareness of their own investigations and findings. Also, the need to properly document cases and situations, prepare written and oral statements and interact with an intergovernmental organizations and human rights monitoring bodies, such as the RRC and IACHR, provided opportunities for the development and strengthening of new skills within those organizations.

#### **e. Other positive impacts related to the strategic use of the RRC's different tools**

Some interviews highlighted other examples of the concrete and positive impact resulting from the activities of the RRC projects. Much emphasis was placed on Paulo Sergio Pinheiro's strategic use of the different tools at the disposal of the IACHR and the RRC. In particular the Rapporteur conducted on-site and promotional visits to countries in order to identify situations of particular concern and adopt immediate actions to address them. The use of Article 41 letters had very positive impacts and made it possible to quickly address situations of particular concern. This approach has provided a flexible and efficient way to protect children's rights, especially when the efforts are followed up by civil society organizations. For instance, the RRC's visit to El Salvador to study the phenomenon of gangs provided greater visibility to the issue and forced awareness on child rights standards amongst local authorities.<sup>26</sup> This achieved faster results than any other action taken by the RRC, and reversed a worrisome legal initiative to combat the gangs.<sup>27</sup> In Paraguay, the intervention of the Rapporteurship and the Commission also helped to suspend government raids to pick up street children.<sup>28</sup> The Article 41 requests of information have also had concrete impacts on curbing legislative reforms that would have gone against international standards and avoiding situations that are more difficult to reverse later.

Therefore, it is clear that the RRC has made great strides in advancing the rights of the child in the Americas. Many interviewees were able to attest to not only general advancements but, as

<sup>26</sup> Written Questionnaire Response from Georgina Villalta, Director of the Child Rights National Coalition of El Salvador-La RIA. Written Questionnaire Response from Rosa Maria Ortiz, Member of the UN Committee on the Rights of the Child, Vice President.

<sup>27</sup> Written Questionnaire Response from Heve Otero, Director of the Child Rights National Coalition of Paraguay- CDIA.

<sup>28</sup> Written Questionnaire Response of Rosa Maria Ortiz, *supra* note 26.

stated, gave specific concrete examples. However, as in all cases there is room for improvement and through the evaluation of the RRC we were able to find areas in which the RRC could achieve greater efficiency, therefore increasing its impact and strengthening its role in the Americas.

## 2. Limitations on the impact and effectiveness of the RRC in defending and promoting children's rights

### a. Rapporteurship models

As referred to earlier, two different models of Rapporteurships exist. The Special Rapporteurship on Freedom of Expression is the only Rapporteurship not headed by a Commissioner. This Rapporteurship has a full-time four to five member staff as well as an independent Rapporteur.<sup>29</sup> Thus, the Freedom of Expression Rapporteurship has more staff and capacity to work on the specific issue. It is not surprising that for many of the respondents this Rapporteurship was the easiest and most efficient to work with,<sup>30</sup> as it provides more possibilities for follow-up on concrete issues.<sup>31</sup>

On the other hand, this model was criticized and not recommended as a model for the RRC.<sup>32</sup> While having a Commissioner as a Rapporteur can be helpful for the work and credibility of the RRC, particularly within the case system,<sup>33</sup> it may not be effective to separate the roles.<sup>34</sup> One concern with the Freedom of Expression model is its cost, as it requires the need to raise specific funds to pay the salary of the Special Rapporteur. In this regard, one recommendation offered was to follow the UN approach where experts who are not Commissioners serve.<sup>35</sup> According to this model, the Rapporteur should not receive a full-time salary because there are many people who are willing and would be honored to serve on a voluntary basis.<sup>36</sup> This would allow the recruitment of experts with extensive knowledge of children rights that could independently carry out a range of advocacy methods including producing fact-finding reports, and providing expert testimony, both legal and factual, for individual petitions and urgent measures brought before the Commission, without incurring the costs of high salaries.<sup>37</sup>

The different models existing within the Commission created a sense that some issues deserve a high profile Special Rapporteur and more resources than others. It is therefore understood that the Commission's reasons for these disparities should be publicized, and there should be a more transparent system of assigning resources to the different Rapporteurships. One advocate mentioned that the lack of permanent Rapporteurs causes the RRC's work and even its credibility to suffer.<sup>38</sup> Another limitation of the RRC model is that some Commissioners might not be as active as others and so the work of the particular Rapporteurship may come to a standstill. Thus Rapporteurs should participate actively by intervening in on-going debates throughout the region. The Commission has more impact when the Rapporteurs are proactive and do not wait for cases or hearing requests. When Rapporteurs travel to the countries, when they meet with

29 *Id.* Interview with Dario Abdala, *supra* note 12.

30 Interview with Andrea Pochak, Centro de Estudios Legales y Sociales (CELS).

31 Interview with Juan Carlos Gutiérrez, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos.

32 Written Questionnaire Response from Mary Beloff, Ex-consultant of the Rapporteurship on the Rights of the Child, IACHR.

33 Interview with Commissioner Paulo Sergio Pinheiro, *supra* note 8.

34 Interview with Deborah Benchoam, *supra* note 7.

35 Written Questionnaire Response from Thomas Antkowiak, Ex-Senior Attorney, Inter-American Commission on Human Rights. Interview with Mary Beloff *supra* note 32.

36 Interview with Mary Beloff *supra* note 32.

37 *Id.*

38 Interview with Andrea Pochak, *supra* note 30.

legislators, government officials and other key domestic actors, and when the Commission's work gains publicity the likelihood of its impact increases. If the Rapporteurs' work is not noticeable, it is hard to gain credibility and increase effectiveness. When the Rapporteurs respond, react and commit to a sustained engagement with concerted efforts with civil society actors and friendly Government officials committed to making positive changes, the Commission in general and the Rapporteurships in particular are more successful.

## **b. Funding**

One of the primary challenges facing the RRC and its ability to maximize its effect is a lack of adequate funding. As the Commission needs to raise funds for the different Rapporteurships as well as other general functions, it appears that some issues are simply more pressing or appealing to donors than others, and often attract greater financial support. Based on the financial situation of the RRC and the other Rapporteurships, it appears that currently such appealing topics include women's rights, the rights of indigenous peoples, and freedom of expression.<sup>39</sup> As we stated, the IACHR as a whole does not have enough money to fulfill all the conventional mandates and accomplish all the tasks that the OAS General Assembly asks, therefore it must rely on funding from government donations, from OAS Member States, from European states, and from private donors to function for the entire year.<sup>40</sup> The fact that only 50% of the entire IACHR is maintained by member states is surprising and disappointing.<sup>41</sup> Yet, the existing structure of the IACHR requires the investment of regular funds, as limited as they are, to keep the various Rapporteurships in operation.<sup>42</sup> Even the Rapporteur has noted that the RRC is almost exclusively funded by UNICEF and to a lesser extent by Save the Children Sweden as well as funding from the IDB and Luxembourg.<sup>43</sup> Because the RRC lacks resources, many of its activities cannot be fully developed and in order to compensate for the scarcity of funds, new and creative ideas are pursued, such as joint projects with better-funded UN institutions. For instance, Paulo Sergio Pinheiro, had to align much of his work in the RRC with the UN's mandate for the development of the Study on Violence, since the IACHR did not provide the RRC with the needed funds to develop its own agenda. By working with the UN, the RRC was able to participate in more promotional activities, social mobilization, and positioning of a public agenda.

Some actions initiated by the RRC have not been afforded the continuity necessary to be more effective and have greater impact due to lack of resources. For example, after the RRC visit to El Salvador, Honduras and Guatemala, the report on gangs was not published, though the data were used in the UN Study. However, as discussed, many other concrete developments were accomplished during these visits. It must be understood that not all actions conducted by the Rapporteur conclude with the development of a report. The ability to develop reports is linked to the availability of funds and consultants to support the workload because the RRC staff cannot fulfill this function. The staff of the Secretariat working for the RRC coordinates the activities of the Rapporteurship, responds to the requirements of the Rapporteur, and organizes the work of consultants. Some of the activities that the staff performs include the preparation of Article 41 letters, precautionary measures, annual reports of RRC activities, preparation of thematic reports and country visits, as well as other promotional activities.

In comparison to other Rapporteurships, the RRC appears to be at a disadvantage both in terms of financial and human resources. For example, for many respondents, one of the most effective Rapporteurships is the Rapporteurship on the Freedom of Expression, which has the financial

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39 Name withheld by request, *supra* note 13.

40 Telephone Interview with Katya Salazar, Executive Director of the Due Process and Law Foundation, (Nov. 13, 2009).

41 Interview with Commissioner Paulo Sergio Pinheiro, *supra* note 8.

42 Name withheld by request, *supra* note 13.

43 Interview with Dr. Santiago Canton, *supra* note 6.

resources to have a permanent, full-time Special Rapporteur with one of the highest salaries in the Commission and with a certain degree of autonomy from the Commission. Therefore the Rapporteur is able to seek her own additional funding and devote all of her time to the Rapporteurship, which makes her organization more specialized and efficient.

Admittedly, with the current financial crisis, it is harder to secure money, therefore closer follow-up may be needed with donors, or funding may need to be narrowed to specific end-products that only the Commission can do, e.g. processing of cases, country visits, or technical advice and cooperation with States to implement Inter-American standards. We were informed this method might elicit more funds than a broad request to support general activities. However, as someone within the IACHR mentioned, catering to donors may itself be a concern and something to be avoided.<sup>44</sup> Having to produce something donors are willing to fund rather than focusing on the advancement of the general strategy defined by the IACHR and the RRC eclipses the entire panorama of possibilities and prevents the relevant actors from collectively focusing on the same priorities. As a result, some people believe that the Rapporteurship would benefit from a clearer, more complete vision of the myriad problems facing children's rights rather than the more narrowly drawn project-driven approach currently in place (this will be discussed further in Section 4 below).<sup>45</sup>

Having a clear vision would help minimize the possibility of the donors influencing the RRC, even to some extent comprising its independence. Similarly it is important to raise awareness among donors, especially OAS Member States of the importance of supporting the RRC with sufficient resources to effectively develop its mandate and to be able to comply with its working agenda. Many interviewed indicated that in order to raise funds, the RRC needs to address issues that spark the interest of a large range of children's rights advocates and not a specific group, which can help States and donors focus on helping to position the RRC to effectively respond to large groups of advocates for the rights of children. This brings us, again, to the important role played by children's rights organizations in fortifying the RRC, and in this case, supports the dissemination of the agenda of the RRC and making an impact so that the respective States can provide the RRC with the necessary resources.

One of the consequences of the tenuous financial situation is that Rapporteurships are competing with one another for limited funds, when they should actually be funded by member States.<sup>46</sup> The RRC is also competing for the same funds as NGOs.<sup>47</sup> Also, due to hard-pressed finances, promotional activities are restrained. For example, there are not enough funds to fully disseminate the corporal punishment report or create an informational CD in three of the four OAS official languages as the RRC originally hoped.<sup>48</sup> Even though there is a fundraising team in the administrative and financial sectors of the Commission, we were told that so far no funds have been located for these efforts.<sup>49</sup>

The issue of funding is crucial for the RRC to fully comply with its mandate. However, the structural financial limitations of the Commission as a whole make it difficult for the RRC to acquire adequate funding. Therefore, improving the Commission's financial situation as a whole would be the most effective way to address the issue of RRC's funding.

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44 Name withheld by request, *supra* note 13. Interview with Àngels Simon, *supra* note 23.

45 Interview with Deborah Benchoam, *supra* note 7.

46 Telephone Interview with Maria Claudia Pulido, staff of the IACHR.

47 Interview with Mary Beloff, *supra* note 32.

48 Interview with Deborah Benchoam, *supra* note 7.

49 Telephone Interview with Maria Claudia Pulido, *supra* note 46.

### c. Human Resources

The lack of financial resources constrains the work of the Commission and puts additional pressure on its staff. As one senior attorney of the IACHR stated candidly, “All us have two to three hats (...) it really is a shame, but it’s a reality we have to face.” She continued that with no external funds, “we have to work with people we have in-house.” However, just as Commissioners take on multiple roles, in-house attorneys assigned to the Rapporteurship also maintain other positions as well. Rapporteurships have an appointed senior staff of the Executive Secretariat to establish points of continuity and coordination, and generally at least one staff member specializing in its thematic area. Even though ideally there should be one to two full-time attorneys per Rapporteur, there are only two dozen lawyers for the entire IACHR.<sup>50</sup> They are required to process thousands of petitions, prepare on-site visits, write country and thematic reports, carry out some promotional activities, and support particular Rapporteurships, among other things. The two temporary consultants assigned to Commissioner Paulo Sergio Pinheiro were simply not enough.<sup>51</sup>

Although there is generally high praise for the quality of the RRC’s research, some advocates pointed out the need for a strong, full-time research staff that has “expertise in communications and media, because maximizing dissemination and impact of reports is making most of the post [RRC’s position].”<sup>52</sup> Another consequence of the lack of human resources is that the Commission and the RRC tend to increasingly rely on consultants, fellows, and interns. This situation creates problems in terms of continuity and stability, and it does not provide the RRC with a staff with the level of seniority, expertise, and experience required to handle sensitive issues in a timely manner, nor to effectively interact with high-level officials. In addition, while interns could help with some of the RRC’s needs, the RRC currently does not have any interns assigned to it. Indeed, rarely are interns assigned to a specific Rapporteurship.<sup>53</sup> Although one advocate said the current IACHR system has reached its limit in terms of maximizing the use of interns, the RRC’s lack of interns deprives it of some support. Internships are a great way for people to learn about the Inter-American system<sup>54</sup> and the current internships are helpful with the large caseload (currently around 200, all in different stages of review).<sup>55</sup> Since the RRC does not have such an internship system implemented, this may be an oversight the RRC could address.

The lack of adequate personnel makes networking and coordinated advocacy more difficult. Without a permanent representative at the IACHR main office, such as the Freedom of Expression Rapporteurship has, the RRC may not have access to enough reliable administrative frameworks to carry out projects that require synchronized communication or management of multiple research items.<sup>56</sup>

### d. RCC profile

For many, and despite all the positive impacts already mentioned, the RRC is not well known in the Americas due to its low profile and the narrow focus of its projects. This problem is even more pronounced in some areas of the Americas. There is little awareness of the RRC in English-speaking countries such as the U.S., Canada and the Caribbean area, and even among legal

50 Interview with Commissioner Paulo Sergio Pinheiro, *supra* note 8.

51 Telephone Interview with Begoña Arellano, Child Protection Officer, UNICEF Regional Office for Latin America and Caribbean.

52 Telephone Interview with Peter Newell, *supra* note 24

53 Name withheld by request, *supra* note 13.

54 Name Withheld by Request, *supra* note 13. Interview with Dr. Santiago Canton, *supra* note 6.

55 Interview with Deborah Benchoam, *supra* note 7.

56 Interview with Andrea Pochak, *supra* note 30. Interview with Luis Pedernera, Director of Child Rights National Coalition of Uruguay (Comité de los Derechos del Niño de Uruguay).

scholars who are supposed to be experts in children's rights. It is fair to say that this problem applies to the Commission as a whole and not only to the RRC. Many argued that there is not enough accessible information on the RRC.<sup>57</sup> The lack of press releases and coverage of the RRC activities makes it difficult for people to know about the work of the RRC.<sup>58</sup> International rights resources seem distant and exclusively oriented and written by and to lawyers. Many agreed that a strategy of awareness needs to be developed for the Commission and the RRC and its mechanisms.<sup>59</sup>

It should be noted that these opinions were collected prior to the strengthening of the press office of the IACHR, which, since its creation has regularly reported on the activities of the IACHR and its Rapporteurs. The main instrument used by this press office is the distribution of news via e-mail newsletter to subscribers. Despite the recognition of its great importance and value in developing a communications strategy at the IACHR, it should not be the only recourse and should be accompanied by other strategies. The web broadcast of hearings is also an important development both for the purpose of disseminating the activities of the IACHR, strengthening its profile and commitment to greater transparency and access to information.

By broadening its profile, the RRC can increase its impact, especially since it is a unique organization with no equivalent in any other region in the world. Furthermore, compliance with the Commission's decisions and recommendations depends heavily on wide dissemination and on press coverage because society and public opinion play a key role in promoting normative, political, and socio-cultural changes that are more respectful of human rights.

The individuals participating in the study had a diverse number of suggestions about how a higher profile could be created. The RRC would benefit by engaging with the media. Often, issues made compelling to the media gain not only widespread recognition but garner public support as well. Since defending the rights of children is a compelling cause, proper use of media resources could be instrumental in making the issue more prominent, and, as a result, more supported.

Another suggestion to raise visibility of the RRC was to take a more prominent role in the children's rights cases being decided upon by the Court. One human rights defender observed that the RRC will "frequently [add] on a children's component to her activities or cases—for instance, by contributing to a thematic report on a broader issue with a section on how the issue affects children," or conducting an in-country investigation on "children in conflict with the law." However, she contends that this work is largely related to a sub-set of a larger topic. She argues that there are certain "autonomous children's topics," which the Rapporteurship should take ownership of, and this would bolster its identity as an autonomous organ in the Commission.

The RRC's low profile may be due to its narrow focus on only certain issues that do not reflect the priorities of many organizations. For others, part of the RRC's low profile could be attributed to the fact that the RRC does not tackle so-called complex, sensitive issues (e.g. children in armed conflict, gang violence). For example, they believe corporal punishment is not a "hot" topic, though other fellow advocates disagree. Regardless of these contradictory visions, there is consensus that the Rapporteurship lacks high visibility and that there is a broader need to engage in a substantive dialogue with civil society organizations in order to define an agenda that reflects either regional consensus or children's rights priorities.

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57 Interview with Juan Carlos Gutiérrez, *supra* note 31.

58 *Id.*

59 Written Questionnaire Response Andrea Iglesias, Director Child Rights National Coalition of Chile (Red de Chile). Written Questionnaire Response from Jorge Freyre, Executive Director of REDLAMYC (Red Latino-Americana y Caribeña para la Defensa de los Derechos de los Niños, Niñas y Adolescentes). Interview with Mary Beloff, *supra* note 32.

### e. Setting the RRC agenda

There was a clear consensus on the need for the RRC to communicate a clear vision for the Rapporteurship priorities and agenda.<sup>60</sup> Many believed that the RRC does not achieve more specific results due to the difficulty of deciphering what themes the Rapporteurship would be willing to undertake. This was also a complaint about the IACHR in general. Specifically, if member States and civil society organizations knew which topics interested the IACHR, they would have the opportunity to gather the best cases and situations that were relevant to those issues and areas. This would increase coordination between all member States and civil society organizations and allow the projects of the Rapporteurship to have a greater impact.<sup>61</sup>

As discussed earlier, the need for funding is crucial to the success of the RRC. The agenda of the RRC could serve as a useful mechanism in helping raise funds. As some actors held, the RRC's lack of funds and the need to raise them have potential disadvantages attached. There is the possibility for donors to influence the determination of the agenda. Thus, according to some respondents, the RRC agenda cannot be defined in a realistic way if there are inadequate funds to finance it, leading to serious limitations for planning capacity in both the medium and long term. To the extent that the RRC's agenda have to be adapted to the agenda of donors to receive the resources that will enable it to operate, this could eventually raise questions regarding its independence.<sup>62</sup> However, other actors stated that if the RRC was to have a clear vision this threat would be eliminated.<sup>63</sup> We acknowledge the need for the RRC to take on topics that effect multiple countries and attract many different children's rights NGOs. By taking on these issues the RRC will address themes that gather support of multiple member States and NGOs. Many believe that by doing so they will have the ability to increase their current funds in order to meet the needs that currently cannot be addressed.<sup>64</sup>

Furthermore, many stated that in the past the RRC had insufficiently involved neither the member States nor civil society organizations in the creation of the agenda. The need to gather input from member States and NGOs regarding which topics regarding children's rights are most critical in their countries is crucial.<sup>65</sup> By doing so the RRC is able to garner support through the involvement of the various member States and increase the legitimacy of its agenda.

Nevertheless there have been some positive developments. In the past two years, Paulo Sérgio Pinheiro has conducted periodic teleconferences with National Coalitions for the rights of the child to identify areas of concern. This dialogue has helped the RRC gain a better understanding of situations and existing preoccupations in different countries and this information can contribute to the formation of the new agenda. Paulo Sergio Pinheiro also took advantage of the visits in different countries to initiate this type of dialogue with the States. Also, Paulo Sergio Pinheiro has placed special emphasis on establishing permanent coordinating relations with the United Nations Committee on the Rights of the Child and the Special Representative of the Secretary General of the United Nations on the issue of Violence Against Children. So, the effort to receive input from these various actors is therefore being made, but it must be established as an institutional practice of the RRC, to help strengthen its agenda and the RRC as a whole.

Many proposals were made in this regard. One suggestion was that the RRC should conduct yearly visit to member States. Or alternatively, take advantage of sub-regional meetings, such as regular

60 Interview with Dario Abdala, *supra* note 12. Written Questionnaire Response from Jorge Freyre, *supra* note 59.

61 Interview with Dario Abdala, *supra* note 12. Interview with Heve Otero, *supra* note 27.

62 Interview with Àngels Simon, *supra* note 23.

63 Interview with Dario Abdala, *supra* note 12.

64 Written Questionnaire Response Thomas Antkowiak, (November 1, 2010). Interview with Dario Abdala, *supra* note 12.

65 Interview with Andrea Pochak, *supra* note 30.

meetings of the Standing Committee NIÑ@SUR, consisting of the highest authorities on children's affairs of the 10 States of MEROCSUR. It was also suggested that during country visits the agenda should be made available to the government and a meeting held with the minister of foreign affairs to draw attention and give importance to the visit.<sup>66</sup> During these visits the RRC would have the opportunity to discuss the relevant issues pertinent to that country. At the conclusion of these visits the RRC could decide what themes would be most relevant during the upcoming period. It is clear that in order for this plan to function properly, cooperation and interaction with member States and organizations is crucial. NGOs and Human Rights organizations must also have input in the creation of the agenda.<sup>67</sup> There needs to be a systemization of the demands to the RRC, in terms of hearings, precautionary measures as a way to elaborate an agenda that takes into account the demands of users and petitioners. All this would be a change from the current situation in which the Rapporteur is completely in charge of creating the agenda.<sup>68</sup>

## **f. Follow-Up and Interaction Mechanisms**

Many members of civil society groups said that the projects that the RRC conduct had the potential to have a large impact on various countries. Unfortunately, the follow-up mechanisms in place within the RRC did not function properly to make the most out of the work and research conducted. However, as discussed earlier, the RRC has recently made efforts to engage the various countries and NGOs in the follow-up of the Rapporteurship reports, but more work needs to be done in order to make these efforts more systematic. Again, a main problem is the lack of resources needed to provide this follow-up.

Several interviewees highlighted the important interaction that developed between the Rapporteur and national coalitions, which had not existed before. Even when reports are presented in countries by the RRC those presentations should be in a participatory manner, to secure the buy-in of the relevant actors. Some of those interviewed complained that they were invited by the RRC to meetings with State actors, but not to a dialogue regarding the topic. Some actors indicated that the consultation process for the preparation of the reports of the RRC should strengthen the opportunity for broad and substantive participation from public authorities and officials, civil society organizations, experts, etc. The methodology should allow both the analysis of the information as well as promote the creation of forums for dialogue on the particular issue, laying out the foundation so the actors can continue to work on the issue at a national level.<sup>69</sup>

Furthermore, regarding the Report on Corporal Punishment, actors indicated their satisfaction with the content of the report but belief that its dissemination has been further limited by the lack of both resources and strategic monitoring in terms of distribution and dissemination. In relation to this, it is also recognized that it is impossible to expect all of this from the RRC, and that the RRC must count on the active support of civil society actors, combining efforts and coordinating actions and strategies.<sup>70</sup> However, we acknowledge that the lack of follow-up may be caused by the lack of human and financial resources within the RRC. It is important that resources are available for promotional and follow-up visits and the publication of reports. The RRC must also make use of new technology by displaying the report on their website, preparing an e-newsletter with relevant information and compiling an e-mail list to use for mass dissemination of this information with a public friendly summary of the reports. The press unit

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66 Interview with Roberta Cecchetti, Advocacy Manager of Save the Children Child Protection Global Initiative and Ex-Director of Save the Children International Advocacy Office in Geneva, Chair of the NGO Group.

67 Interview with Peter Newell, *supra* note 24.

68 Interview with Commissioner Paulo Sergio Pinheiro, *supra* note 8.

69 Interview with Dario Abdala, *supra* note 12.

70 Interview with Stephanie Brewer, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Ciudad de México.

of the Commission is working towards this goal by providing live broadcasts of the hearings and making them available for download from the OAS website. Links to relevant hearings should be made available on the RRC website.

The RRC needs to strategically work with relevant actors to increase its impact. NGOs, National Coalitions and networks such as the Latin American and Caribbean Network for the Rights of the Children and Adolescents (REDLAMYC), play an important role in helping with the dissemination of the reports and other activities of the RRC through their contacts, websites, meetings, and communications with authorities in their respective countries. Also, the role of the national human rights institutions is key to supporting the decisions made by the Inter-American system. It is essential that the RRC partner with these other actors, especially with civil society organizations capable of working directly at the state and local level. Also, the RRC should take advantage of universities and clinics that are willing to play a role in distributing information or contacting various organizations.

Many interviewees suggested organizing annual meetings with NGOs and human rights organizations as a way to follow up on the different issues the RRC is or was working on and to identify emerging situations and trends.<sup>71</sup> It was also suggested that States be invited to regional meetings to evaluate which decisions and recommendations have been complied with, which were not, and how successful the State has been in implementing the recommendations. This would be an opportunity to learn from the examples of different countries and to determine whether or not they have complied.<sup>72</sup> The RRC could also take the opportunity to work with multilateral organizations like the Southern American Children Initiative (Niñ@sur Standing Committee, within MERCOSUR), CARICOM (in the Caribbean region) and SICA (in Central America), and attend their meetings to answer questions and learn of subjects the states must deal with.<sup>73</sup>

Furthermore, visits would have a longer lasting effect and greater impact if they were used as a way to change public policy.<sup>74</sup> Visits to countries should be strategically designed and the purpose of the visit needs to be clearly explained to all actors so as not to raise undue expectations that could in the end affect the credibility of the RRC. The reports would also have a greater effect if they were applied to cases and litigated before the court.<sup>75</sup>

## g. Child Participation

Another key issue discussed by many was the need to include more child participation in the work of the RRC.<sup>76</sup> Including children in RRC projects will help the government see them as key actors in the implementation of children's rights in the country.<sup>77</sup> It will also allow the children to become more familiar with the Inter-American system and their rights. Awareness of their rights is one of the most important mechanisms of their protection.<sup>78</sup> Meeting with children, when done in an organized way around a certain topic, can bring up issues that are being overlooked

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71 Interview with Isabel Recupero, Ex-Staff of the Inter-American Commission on Human Rights. Written Questionnaire Response of Rosa Maria Ortiz, *supra* note 26. Interview with Peter Newell, *supra* note 24.

72 Written Questionnaire Response of Rosa Maria Ortiz, *supra* note 26.

73 *Id.* Interview with Àngels Simon, *supra* note 23.

74 Written Questionnaire Response Javier Palummo, Consultant for the Rapporteurship on the Rights of the Child, IACHR, Director of Legal Clinic -Clinica Jurídica de Derechos Humanos de la Infancia y Adolescencia del Observatorio del Sistema Judicial.

75 Interview with Deborah Benchoam, *supra* note 7.

76 Written Questionnaire Response from Heve Otero, *supra* note 27. Written Questionnaire Response from Jorge Freyre, *supra* note 59. Written Questionnaire Response from Rosa Maria Ortiz, *supra* note 26. Interview with Àngels Simon, *supra* note 23. Interview with Roberta Cecchetti, *supra* note 66. Interview with Stephanie Brewer, *supra* note 70.

77 Written Questionnaire Response from Rosa Maria Ortiz, *supra* note 26.

78 *Id.* Written Questionnaire Response from Andrea Iglésis *supra* note 59.

or false assumptions, and creates a much more media-friendly and appealing face to the work of child's rights institutions.<sup>79</sup>

Paulo Sergio Pinheiro has already held two meetings in Lima, one with representatives of children from several countries in Latin America and another only with children from Peru, to hear the children's concerns directly. The Committee on the Rights of the Child has made significant efforts to integrate the participation of children in its processes. Currently, a group of NGOs is developing a guide for the Committee on the Rights of the Child with recommendations and findings that may be useful for the RRC in making the consultation of children a part of its practices. In addition, General Comment 12 of the Committee on the Rights of the Child states that children should be guaranteed the right to participate.

## **h. Accessibility issues**

Many interviews highlighted various problems of accessibility to the RRC. These include issues such as the website being inaccessible and not well maintained, the absence of a clear contact person, and the fact that there is no easy way to reach the Rapporteur. Even general contact information and staff roles are not explicit, which discourages some advocates from connecting with the RRC. Providing relevant information on its website such as specific examples of actions carried out by the RRC, current reports, visits, and recent decisions of the Inter-American Court regarding children's rights might encourage different actors to contact the RRC. The website should be adjusted periodically to meet the need of its users.

Specific comments on the general lack of accessibility of the Commission and, therefore, the RRC as well, and its impact have also emerged in respondent views. For instance, a human rights defender commented that the Rapporteurships are not accessible to the average attorney, or NGOs. Additionally, he states that such individuals do not know how to use the Inter-American mechanism, and are unable to implement it as a tool.<sup>80</sup> The training of relevant actors on the strategic use of the inter-American system for the promotion and protection of children's rights should be encouraged and NGOs with expertise, universities, and bar associations should make training a priority. The same person suggests that there should be more stable and continuous contact with the Rapporteurship, in order to improve accessibility and effectiveness.<sup>81</sup> It is evident from the responses received that the RRC should seek ways to improve information and access to the Rapporteurship.

One method to establish structured communication with Paulo Sergio Pinheiro and the RRC was developed by National Coalitions and the regional network that brings them together (REDLAMYC). The Coalitions would hold regular teleconferences where they would identify issues of common concern to the various countries, and issues that only affect one country. Prior to the teleconference with prof. Pinheiro, REDLAMYC prepares a draft agenda of topics to be discussed with the Rapporteur and the RRC. This requires prior coordination by the Coalition to organize the contents, prepare relevant documentation, and prepare proposals for actions to be submitted for consideration by the Rapporteur. Any agreed actions are followed in a subsequent conference call, and if necessary, e-mail is used to continue the exchange of information. In some of these teleconferences and communications, experts on the issue of violence against children have also participated in the discussion. This system has helped strengthen the bond of the RRC with civil society organizations and has created an organized line of communication with the RRC that does not overwhelm and exceed the capacities of the RRC and which is inclusive of a greater number of organizations. This practice should be institutionalized to provide continuity of this good relationship beyond the current Rapporteur.

<sup>79</sup> Written Questionnaire Response from Stephanie Brewer, *supra* note 70.

<sup>80</sup> Interview with Juan Carlos Gutiérrez, *supra* note 31.

<sup>81</sup> *Id.* See also Telephone Interview with Mary Beloff, *supra* note 32.

## **i. Coordination**

A substantial number of individuals believe that the RRC should consider more methods to strengthen relationships with other key actors. The main reason for this is to enable the RRC to amplify the voice of the rights of the child, make a larger impact, supply part of the financing gap by capitalizing on synergies with other actions, and possibly obtain the greater funding necessary to carry out the activities of the organization. The following discussion emphasizes the need for the RRC to coordinate and build greater relationships with UN bodies, the IACHR, the Inter-American Children's Institute (IIN) and other multilateral agencies, NGOs and civil society organizations, national human rights institutions, and universities and clinics.

### **• With IACHR**

Many recommended that the RRC develop stronger bonds with other Rapporteurships in the IACHR, as it stands to gain much by building connections with other, similarly situated entities such as the Rapporteurship on the Rights of Women and the Rights of Indigenous People. Not only would it benefit by learning from good practices and experiences of other Rapporteurships, they may also be experiencing some of the same challenges, and working with other Rapporteurships the RRC can create a more comprehensive approach to such issues. It also would increase the visibility of the RRC if the work of two Rapporteurs were combined. Many respondents would like the RRC to develop stronger relationships with other Rapporteurships, and having a strong collaborative network within the IACHR will thus enable it to strengthen its abilities through knowledge-sharing, achieve a more comprehensive approach to issues (such as girl's rights or the situation of children in particular contexts in specific countries) and increase the visibility of children's rights by bringing together the voices of two or more Commissioners.<sup>82</sup> This may not have been feasible to this point due to a lack of staff at the RRC and Commission in general because of the high workload.

### **• With the Inter-American Children's Institute and other multilateral organizations**

Another suggestion is for the RRC to strengthen its ties with the Inter-American Children's Institute (IIN), one of the specialized agencies of the Organization of American States, created by the Fourth Pan American Child Congress in 1924 and established in 1927. The IIN focuses on the promotion of public policies for children and adolescents, technical assistance to the States, as well as awareness of the problems affecting children in the Americas.

Many have recommended that bolstering a relationship with this organization can enable the RRC to be better informed and make greater use of resources related to the rights of the child in the Americas. There are three main areas where combined efforts of these two actors would be beneficial. First, the collaboration with the IIN in the dissemination of information on the rights of the child would provide a better understanding of their contents and of the scope of State responsibilities. Second, the IIN could assist in informing all member States and senior officials of the decisions and recommendations of the RRC and Commission. The IIN could provide technical support to the States for a correct understanding of these decisions by the IACHR and the RRC and could help implement change through promoting public policy changes, developing normative models, identifying best practices, exchanging knowledge, etc., that could be of utility to the States in fulfilling their responsibilities. In addition, the IIN could provide technical support in the development of monitoring and evaluation systems, which would allow States to follow-up and measure the level of implementation of their own norms and policies regarding children's rights. Finally, when there are issues related to violations of the rights of the child that are of concern to several States that come up during meetings of the IIN, this information could be shared with the RRC. The RRC could then visit the country, hold meetings with relevant actors and provide information and recommendations.

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<sup>82</sup> Interview with Jomary Ortegón (November 6, 2009). Interview with Diya Nijowne, RRC consultant, (November 2, 2009).

Recommendations have also been made to have similar cooperation with multilateral organizations such as MERCOSUR, which has a Standing Committee (NIÑ@SUR) comprised of senior officials from the member States that focuses on promoting children's rights through inter-State cooperation, particularly in relation to transnational phenomena and issues of concern shared in all countries of the region. The same type of relationship with the IIN could be made with these other multilateral organizations. NIÑ@SUR has already shown interest in strengthening relations with various human rights bodies from the UN and the Inter-American system, including the Commission and RRC.<sup>83</sup> This could help in setting an agenda for children's rights issues in the region, and securing commitments for collaboration, information outreach and financial support that would allow the RRC to fulfill its role. A multilateral approach provides a more coherent and effective avenue for discussing a subject of concern to several States. Forums of this kind facilitate contacts that the RRC might find it difficult to make otherwise and provide unique opportunities to heighten the States' awareness of the RRC concerns. Lastly, certain thorny issues are more easily broached in a multilateral setting, and the resulting resolutions can lay a solid foundation for the RRC's work.

#### • **With UN bodies**

There has been a suggestion among the respondents that the RRC continues to undertake the important and invaluable cooperative effort that is already being carried out with UN bodies. Specifically, the suggestion has been made that RRC should emphasize relationships with the UN Committee on the Rights of the Child, UN special rapporteurs, SRSO on Violence against children and UNICEF.<sup>84</sup> Such relationships enable the rights of the child in the Americas to have a greater voice on the world stage. There has already been some important collaboration between these institutions, bodies and procedures and the RRC. Throughout this report multiple references were made to joint initiatives carried out by the RRC with UNICEF, and by the RRC with the Committee on the Rights of the Child and the UN Special Representative on the issue of violence against children (VAC). Examples of successful collaboration include: the joint visit of the RRC, the UN Special Representative on VAC and the Committee on the Rights of the Child to Brazil to support the passage of a bill presented by the President to ban corporal punishment; the joint statements that they issued regarding trends to reduce the age of criminal responsibility, and the Sub-regional high level meetings for follow-up to the UN Study on violence against children (first Sub-regional meeting for the South American region was held in April 2011 in Asunción, Paraguay. The Central America Meeting will be held in December 2011 in the Dominican Republic. The Caribbean Meeting will be organized for the first quarter of 2012).

There has also been an ongoing cross-fertilization in the development of universal and regional standards. For example, the RRC and Commission cited the General Comment of the Committee on the Right of the Child on corporal punishment in the RRC thematic report on this topic. The Committee on the Rights of the Child in its concluding observations does follow up on whether the countries are integrating the UNVAC recommendations, decisions of the Inter-American Court of Human Rights and recommendations of the IACHR.

The authors of this report support this collaborative approach but would like to make a critical distinction between the recommendation to work closely with UN bodies and the dangers of subsuming the RRC agenda to UN mandates. The RRC should strive to build strong relations with UN bodies, as these can form the basis of greater collaboration, through which the RRC would be able to have a targeted impact on preserving children's rights in the Americas. The RRC must be sure that when collaborating with the UN there is a mutual benefit. Because in

83 An example is the recent advisory opinion filed with the Inter-American Court on Human Rights by the States of Argentina, Brazil, Paraguay, and Uruguay about the subject of migrant children. MERCOSUR has the newly created Institute for Human Rights Policy, with which the RRC and the Commission may establish relations of technical cooperation.

84 Interview with Michael Camilleri. Interview with Stephanie Brewer, *supra* note 70.

many places the RRC is not as well known as UNICEF and other UN bodies it is easy for the RRC's work to be left in the shadows. The RRC must make sure that it receives recognition for its work. The RRC must be careful to collaborate with the UN when the RRC work coincides with UN projects. It must also make certain that the name of the RRC does not become diluted in the process of collaborating with such large and well-established organizations.

- ***With NGOs and civil society***

Interviewees have strongly agreed that the RRC would substantially benefit from strengthening its relationship with NGO's and civil society organizations. Developing strong relationships with civil society greatly enhances the RRC's work, since it increases the overall effectiveness of the organization.<sup>85</sup> In order to do this it is necessary to strengthen these civil society organizations. If civil society organizations do not reach out to the RRC then it is difficult for the RRC to fulfill its role. The strengthening of organizations within civil society would allow the RRC to become more in tune with the realities of the countries and the region, and it would make it easier to respond in a timely and adequate manner to pressing issues. Reaching out to civil society organizations is key to the RRC in at least three aspects: to access information on local and national contexts; the wide dissemination of the recommendations of the RRC at the local and national level; and collaborative monitoring of possible situations of concern. Additionally, when approaching civil society groups who are interested in the same thematic issues that concern the RRC, a natural constituency is formed, which can lead to a symbiotic relationship that enhances the RRC's effectiveness.<sup>86</sup>

However, conversely, we also recognize that the lack of staff and resources of the RRC make it difficult to reach out to civil society organizations. As stated earlier it would be helpful to provide information on the RRC website encouraging the participation of NGOs and civil society. Additionally, by working directly with NGOs, the RRC would have greater access to extensive media coverage and access to higher-level institutional officials. In the case of cooperation with civil society organizations, continuing the work of Paulo Sergio Pinheiro in building permanent relationships with National Coalitions on the rights of the child and continuing the teleconferences, is crucial for the RRC.

- ***With National Human Rights Institutions***

As National Human Rights Institutions are present in almost every country of the region there should be a symbiotic relationship between them and the RRC. There are several crucial differences in terms of mandates, independence, autonomy, capacity, funding, and staffing among the different national human rights institutions. The RRC needs to be aware of these differences and work closely with those groups that have similar mandates and approaches as the Commission.

National Human Rights Institutions have broad mandates that could include monitoring human/children rights situations, providing legal assistance to victims, cooperatively providing technical expertise to States seeking to comply with international human rights standards, cooperating with international bodies and promoting human rights awareness and providing information. Many also provide training to officials and authorities on the content and scope of international instruments and the decisions of supervising bodies (such the IACHR).

The RRC could benefit by taking advantage of the National Human Rights Institutions and the close connections they have to situations and officials in various countries. If the RRC was to coordinate with the National Human Rights Institutions in countries of interest this could, to some extent, make up for any lack of resources and staff of the RRC.

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85 Interview with Peter Newell, *supra* note 24. Interview with Mary Beloff, *supra* note 32. Interview with Begoña Arellano (November 11, 2009), *supra* note 51.

86 Interview with Michael Camilleri, *supra* note 84.

- ***With universities, human rights research centers and legal clinics***

Universities can be helpful in disseminating knowledge about the Inter-American system and the function of the RRC as well as previous decisions and reports from the Inter-American system regarding children. University legal clinics can also provide specialized legal advice on cases and specific issues. The research centers can conduct research, collect data and evidences, and provide legal analysis that could serve as input to the RRC for constructing its agenda or writing thematic reports.

Clinics can help identify issues that may be strategic for litigation, conduct specialized studies on the level of implementation of decisions issued by the Inter-American Court and recommendations made by the Commission, assist in advocacy campaigns and promote the work of the RRC, among many initiatives.

For the RRC and the Commission in general to have a productive engagement with universities, human rights research centers and legal clinics in general it should consider the academic calendar and pace of these institutions. Among other things, to be able to count on the support of them, the RRC and the IACHR should have a well-established calendar and planning process. For instance, if the RRC wants to have clinics respond to a questionnaire circulated by the Rapporteurship for the production of a report it cannot give only a month for receiving those responses nor can it release the questionnaire at the end of the semester.

## **j. Individual cases**

There is a consensus that the RRC should use its limited resources in those areas where the Commission is in a unique position to play an effective role in advancing children's rights. In this sense, there is a need for the RRC to strategically define its approach to different issues by using those tools that are at the disposition of the Commission only, and not to other institutions, or where the RRC can bring an added value. Some advocates continue to believe that publishing reports is the most effective way the RRC can utilize its limited resources. NGOs can use the reports and recommendations to promote changes in the governments' human rights agenda, norms, public policies and institutional practices.<sup>87</sup> Thematic reports can also help in setting standards, clarifying the scope of human rights norms, noting which institutional practices are not consistent with international human rights law, and ultimately advancing the protection and guaranteeing the rights of the child. Thematic reports can provide answers to certain issues identified by various actors, which many times may be lost in the legal logic of cases.

This is in contrast to other responders, who believe universities could conduct such academic research and produce these reports, thus freeing up the RRC to coordinate advocacy campaigns.<sup>88</sup> While it is true that universities could conduct this research and analyze the information some actors observed that the fact that the RRC is conducting visits and meeting with State authorities and civil society organizations in order to learn the first hand reality detailed in the report gives weight and institutional legitimacy that cannot be replaced by university-based research. Many highlighted the differences between an academic and a RRC/IACHR report as they pursue different goals and purposes, they follow different methodologies and their intended audiences differ as well.

Other actors held that the impacts of thematic reports are achieved thanks to the joint effort of various actors through the use of different strategies. Currently, because of the lack of staff and resources it is difficult for the RRC to timely distribute the thematic reports. The establishment of fora for dialogue with the States to establish plans of implementation of recommendations made by the RRC and also to monitor States' compliance appears to be a necessity. Furthermore, the cooperation of civil society organizations will help with the involvement of local and national media as well as with a strategy to help distribute these reports.

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<sup>87</sup> Telephone Interview with Maria Claudia Pulido, *supra* note 46.

<sup>88</sup> Telephone Interview with Mary Beloff, *supra* note 32.

Many believe that the RRC could focus more on the processing of cases.<sup>89</sup> While the UN system is more promotional, the IACHR is more legal in nature, which ought to facilitate concentration on the processing of individual petitions. Great regional change can come from a single case. Additionally, many actors have noted that the ability to focus on a more legal approach is contingent upon greater resources and capacity building in the RRC.<sup>90</sup> The impact of cases requires the confluence of many factors such as the ability of national and regional organizations to select strategic and paradigmatic cases, follow up on the decisions, provide support to the victims, and make the decisions of the Commission and the Court broadly known in the country. The lack of a stronger focus on a case based approach by the RRC could be explained in part by the inexistence of a concerted effort by children rights organizations to pursue litigation of cases.

It is also important to note that the case based approach is just one additional tool at the disposal of the RRC and as such needs to be utilized as part of an integral strategy to advance children's rights. The case-based approach it should be a means rather a goal in itself.

Furthermore, it appears that the delay of the Commission procedure furthers the problem of accessibility. Some proposed the creation of a "fast track" for children's rights cases.<sup>91</sup> Those interviewed stated that the system could be of little help to children if it takes years for their cases to start and they become adults and still do not have concrete results.<sup>92</sup> Thus many are discouraged to access the system in the first place. In this regard the Commission needs to consider in which situations children's rights cases require the development of special mechanisms to secure the timely disposition of the case, the proper participation of children and the correct application of the positive measures required by Article 19 of the Convention. Precautionary measures could be used more flexibly in the case of children precisely because of their special circumstances and as established in Article 19 of the American Convention. The precautionary measures should take into consideration the unique situation of the child, which requires additional responsibility for the State to protect children according to Article 19. It should be understood that the needs of children are different from those of adults because children are more vulnerable. The State should adopt special protective measures to protect children in addition to any rules protecting the physical integrity of every individual.

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89 Interview with Elizabeth Abi-Mershed, Assistant Executive Secretary to the IACHR (November 5, 2009). Mary Beloff, *supra* note 32

90 Interview with Elizabeth Abe-Mershed, *supra* note 89. Interview with Lisa Myers (November 10, 2009) Interview with Deborah Benchoam, (November 5, 2009), *supra* note 32. Isabel Recupero, (Interview date November 19, 2009).

91 Written Questionnaire Response from Nora Pulido, Director of the Child Rights National Coalition of Argentina (El Colectivo). Written Questionnaire Response from Jorge Freyre, *supra* note 59. Interview with Luis Pedernera, *supra* note 56

92 Written Questionnaire Response Jorge Freyre, *supra* note 59.

## CHAPTER IV RECOMMENDATIONS



Based on the progress, issues and challenges identified above, and the input from all our interviewees, we have compiled and devised the following recommendations that the RRC could consider implementing to strengthen its effectiveness and potential.

### 1. Create an agenda with a clear vision

- a. The agenda needs to be broad in scope rather than focused on a particular project driven mission.
- b. The agenda should include a list of priorities for the RRC that can also guide and focus the work and efforts of civil society and of the States throughout the region.
- c. The preparation of the agenda should take into account input from member States, other Rapporteurs, the plenary of the Commission, NGOs, civil society, universities, and National Human Rights Institutions.
- d. A public RRC agenda presented and discussed with a wide variety of stakeholders should decrease potential overlap in work, and increase coordination and communication, thus reducing waste of available resources.

### 2. Increase media coverage of the RRC

- a. Issue more press releases to increase awareness of the current activities and issues that the RRC is focusing on.
- b. Participate in other media outlets such as documentaries and live interviews to promote the RRC activities.
- c. Use the media as an outlet to reach different organizations and increase awareness of the RRC.

### **3. Make the RRC more accessible**

- a. Improve the website by regularly updating it and by making it more navigable. Include contact information for the people working within the RRC and how best to communicate with them.
- b. RRC reports should be more user-friendly and written in less technical language that is more accessible to the general public. At the very least the reports should also contain an Executive Summary that is more user-friendly.
- c. Make more information available in a timely manner including but not limited to a calendar of current, future and past events (with the links to the pertinent documentation), decisions made by and within the system, visits, precautionary measures, reports.

### **4. Plan more strategic country visits**

- a. Coordinate with children's rights Coalitions and States to not only ensure that the recommendations are being carried out at both a local and national level, but also to allow the RRC a direct and first-hand approach to issues that are a priority for local advocates and States and to take note of, and possibly incorporate the most successful models throughout the continent when making recommendations to other countries.
- b. Ensure that such visits are at the same time proactive and are of an encouraging nature, while also serve to bring to light a government's actions or policies that are contrary to children's rights. The visits should serve the purpose of supporting and encouraging good practices while pointing out the children's rights failings and violations.
- c. Discuss the RRC agenda with National Coalitions and States to verify that the most pertinent issues are being addressed, and follow up to see whether or not the recommendations are being carried out.
- d. During those visits the RRC should coordinate with the respective country Rapporteurs in order to include in its agenda working meetings on children's rights cases pending in front of the Commission.
- e. Include meetings with competent State authorities to encourage and provide technical cooperation to facilitate the implementation of the Commission and Court's decisions regarding children's rights.
- f. Inform and coordinate visits with the offices of UNICEF at country level, as well as with the IIN and other multilateral bodies, the UN Committee on the Rights of the Child and UN Special Rapporteurs. Coordinated efforts prior to the visit should aim to identify relevant aspects of context (both in terms of progress as well as problems) and failings and gaps in order to help prepare for the visit and provide sufficient information that is relevant and up to date. When conducting such country visits, it should be taken into special consideration the recommendations made by other UN Human Rights monitoring bodies to that particular country in order to contribute to the comprehensive and holistic international protection of the Rights of Children.
- g. Develop a press campaign strategy before, during, and after each country visit.

### **5. Increase the rate of processing of children's rights cases within the IACHR and Inter-American Court.**

- a. The RRC can address difficult themes through cases, which can make for stronger promotion than non-binding activities.

- b. By prioritizing the resolution of several emblematic children's rights cases, the RRC could contribute to strengthening the child-rights-focused jurisprudence within the Inter-American System.
- c. The RRC should create a dialogue with NGOs and legal clinics that can help with emblematic cases in identifying, arguing, legally presenting and defending a case.
- d. The RRC is uniquely positioned to create this children's perspective in jurisprudence, similar to the way the Rapporteurship on Women's Rights is contributing to the establishment of a gendered perspective, or how the Indigenous Rapporteurship developed an aboriginal-based litigation scheme.
- e. The RRC should make it a priority to have a presence in every case regarding children's rights that goes before the Commission. This will help strengthen the profile of the RRC.

## **6. Coordinate more efficiently the mandate of the RRC with those of the IIN and UNICEF.**

- a. Hold regular meetings to enable a fluid exchange of relevant information. In this sense, the IIN and UNICEF are in a unique position to provide updated information to the RRC, which will allow for a more timely and effective intervention by the RRC (e.g. visits, thematic reports, recommendations, letter Art. 41, etc.) in accordance to the situation identified, and either at country or at regional level. This early identification of detrimental situations to the rights of children has a preventive effect by encouraging immediate action and avoiding further deterioration of situations that are subsequently more difficult to reverse.
- b. Promote awareness and trainings on the contents and scope of children's rights and the States' responsibilities, as well as disseminating the decisions and recommendations made by the RRC and other human rights bodies, along with providing technical assistance and support to States in implementing necessary changes, these are all activities of the outmost importance that are carried out by the IIN and UNICEF, This is due to their character of specialized technical agencies/bodies, which differs from the RRC mandate. So, having a clear vision of these different roles is key to making better use of resources, coordinating efforts and strengthening the institutional mandates of each of them.
- c. Establish with IIN and UNICEF a framework of strategic relations based on the differences in their respective mandates, in order to enable greater synergies and reduce duplications.
- d. Analyzed with special care, initiatives in the field of prevention in order to avoid duplication. The IIN and UNICEF are better positioned to provide technical support, training, knowledge management, and dissemination of good practices and successful models. Whereas the RRC is in a unique position to develop standards in those areas where it is necessary to assist States in better implementing children's rights and to meet their international responsibilities (e.g. by means of thematic reports) Further, the RRC can offer specific recommendations arising from the direct observation of reality after a country visit. We therefore recommend the establishment of a more precise framework for coordination between the RRC and these other agencies/bodies.

## **7. Strengthen the relationship framework between the Universal and the Inter-American Systems of Protection of Children's Rights.**

- a. Hold regular meetings (recommended once a year) and keep fluid communication between the RRC and the UN Committee on the Rights of Child (in particular the Committee's experts responsible for the countries in this region), as well as other UN Rapporteurs in charge of issues in the field of children's rights. This will serve as a way to share information about their current priorities and work plans, and to identify synergies and complementarities.

- b. Establish direct and agile mechanisms for information exchange, especially for information that warrants immediate action and intervention to reverse situations of special concern (e.g. new legislation being discussed in Parliaments contrary to the rights of children). Coordinate these actions and interventions, in the framework of the mechanisms and tools available to the mandates of the various organs, with special emphasis on issuing observations/recommendations, letters of concern, and conducting country visits. All these initiatives should be carried out jointly.
- c. Implement strategic dialogue to strengthen the complementarity of the diverse tools and mechanisms available to the RRC and to the UN bodies. This will enhance the overall capacity and effectiveness of the International Protection System of children's rights, and will avoid duplications.

## **8. Establish a permanent liaison between the RRC and domestic NGOs on the ground.**

- a. This could be easily accomplished through the country Coalitions that are already in place.
- b. A liaison would help the RRC learn about the most pressing issues in individual countries, and facilitate collaboration with NGOs regarding how to address these issues. It would also encourage and assist NGOs in their advocacy work, and follow up to make sure that recommendations are being implemented. Lastly, it could be an avenue through which to share and integrate successful models for children's rights from all over the region.
- c. Along with a formal communications procedure, such a liaison could make the transmission and dissemination of information smoother and faster.
- d. Some concrete activities that the RRC could conduct in order to facilitate its communication and coordination with civil society organizations, and that would require only minimal resources, are:
  - Convene a meeting with specialized NGOs, during each period of sessions, similar to the one that the Executive Secretary does for human rights defenders.
  - Participate in more activities of a regional character with strong civil society presence.
  - Establish an updated emailing list to periodically report the RRC and the Commission's work in general.
  - Maintain the practice of periodic teleconferences with National Coalitions and with REDLAMYC.
  - Hold an annual meeting with representatives of children organizations.

## **9. Increase communication among the different Rapporteurships to aid collaborative efforts.**

- a. Rapporteurs should work together more closely, especially on intersecting issues, sharing knowledge, establishing intra-IACHR dialogue, and jointly developing best practices can all help amplify the visibility of children's rights issues. In short, each Rapporteurship should perform their specific jobs, but in a more closely coordinated fashion.
- b. RRC should proactively pursue the children's rights perspective and facilitate the participation of children's rights advocates in all the Commission's activities. For instance, if any of the other Rapporteurships or the Commission is sending a questionnaire to civil society organizations or governments, the RRC should disseminate it to the specialized government institutions and NGOs and encourage them to respond.

## **10. Open up inter-regional dialogue between English-speaking and Spanish-speaking countries.**

- a. There is much to be gained from increased communication between all the countries in the Americas, since everyone could benefit from learning what the most effective mechanisms have been and best practices in confronting similar children's rights problems.

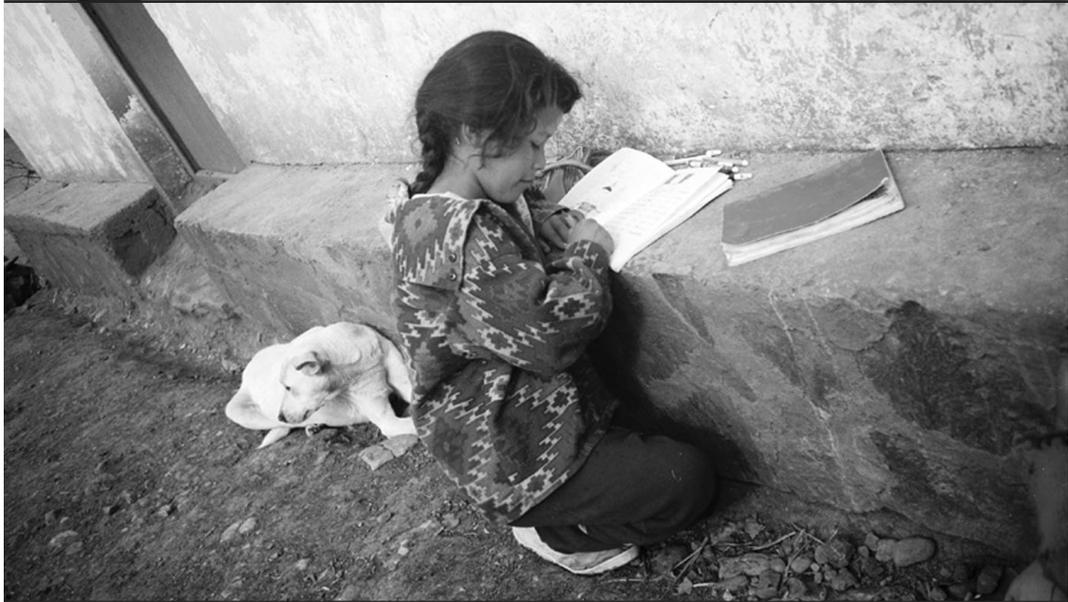
## **11. Hire a permanent senior staff member, devoted full-time exclusively to the RRC.**

- a. Based on the opinions of those surveyed, a lack of funding and resources held the RRC back in achieving its full potential. This chain can begin to be broken by hiring a permanent senior staff member, with the requisite qualifications, who is focused solely on the efforts of the RRC and supporting the Rapporteurship and the Rapporteur's duties. This person would play a key role in the development of the RRC, as he/she would have the required expertise, time and focus to identify gaps in the RRC's effectiveness, and promote actions necessary to bolster it.
- b. The hiring of such a key player would not be a large investment, considering the returns. As the situation currently stands, the RRC has a very limited staff, whose attention is divided among other projects. Most can agree that the rights of the child are a pressing issue, which deserves great support. Employing the right personnel, who would have the benefit of time to focus exclusively on RRC issues, would be the origination point for much improvement in the RRC's efforts, and would further help bring its advocacy on children's rights to fruition.

## **12. Establish a full-fledged fellowship and internship program and strengthen partnerships with universities.**

- a. Establishing a fellowship and internship program would substantially benefit the RRC.
  - It would enable the organization to gain visibility by building ties with universities and promoting its importance within the network of scholars, activists, and other professionals deeply involved in advocacy related to the rights of children.
- b. Establish a partnership with universities and legal clinics
  - It would enable the RRC to draw upon a resource pool of individuals with a diverse array of academic backgrounds. It would be of great benefit to the RRC if it sought to gain the advice of academics trained in subjects such as political science, economics and other social sciences, as it would broaden the entity's knowledge base, and thus, enable it to act in a way that is more in touch with the realities of children's rights.
  - The use of university's legal clinics can be helpful in the promotion of strategic litigation.
  - University research centers can be used as research support, data mining, and forensic analysis for the activities of the RRC.
  - The Universities can serve to help strengthen the awareness within the advocacy community of the RRC and increase access to it by NGOs.

## CHAPTER V CONCLUSION



The RRC is uniquely positioned to do something that no other organization can: create and supervise a comprehensive children's rights agenda that can be sustained throughout the Americas. By having a prioritized plan that views human rights through a children's perspective, the RRC can guide and encourage individual countries, both governments and NGOs, not only to mutually discern the most pressing children's rights issues, but more importantly, to develop effective solutions to these problems.



The **Rapporteurship on the Rights of the Child of the Inter-American Commission on Human Rights (IACHR)** is one of the eight Rapporteurships of the IACHR. Its main purpose is to support the work of the IACHR in promoting the defense and respect of the rights of the child in the Americas. The Rapporteurship cooperates with the analysis and evaluation of the situation of the human rights of children in the Region. The Rapporteurship provides advice to the IACHR in the proceedings of individual petitions, cases and requests of precautionary and provisional measures which address the rights of the child. Likewise, the Rapporteurship undertakes on site visits in the OAS Member States and prepares studies and publications.

**Save the Children** is a non-governmental organization. The basis of our work is the United Nations Convention on the Rights of the Child (CRC) and the United Nations Declaration on Human Rights. These build on the principles that all people are equal, children have special rights and everyone has a responsibility –but governments have a special obligation. We influence public opinion and support children at risk in the world. We exert an influence on decision makers –from local authorities to the United Nations– to see to the best interests of the child. We arouse public opinion and spread knowledge about children’s needs and rights and we exert an influence on legislation for the benefit of children. We support those children whose rights have been violated most. Save the Children works in 120 countries around the world.

The **Human Rights Clinic** brings together an interdisciplinary group of law and graduate students. Working from the advocate’s perspective, students collaborate with human rights organizations worldwide to support human rights claims in domestic and international fora, to investigate and document human rights violations, to develop and participate in advocacy initiatives before the United Nations and regional and national human rights bodies, and to engage with global and local human rights campaigns. The range of cases and projects handled by the Human Rights Clinic illustrates the breadth of human rights practice, including fact-finding, reporting and using the press, and other public advocacy.

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