

**CHILDREN'S AGENCY IN CENTRAL AMERICA: EMPOWERING AND ENSURING
INCUSIVITY WITHIN THE INTER-AMERICAN COMISSION ON HUMAN RIGHTS
(IACHR)**

By
Erĕleta Lushi

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SUPERVISOR: Professor Juliana Cesario Alvim Gomes

Central European University - Private University

ABSTRACT

This thesis provides a comprehensive legal analysis of children's agency within the Inter American Commission on Human Rights (IACHR), with a specific focus on the region of Central America. It does the examination of how the Inter American Commission addresses the specific vulnerabilities, legal and procedural challenges, the rights of the children and children agency through targeted resolutions, reports and case studies. Key findings of this research reveal significant gaps between the theoretical legal frameworks and their practical implementation, highlighting the issues such as forced gang recruitment, child labor and limited access to education and healthcare. Despite the robust international and regional instruments, enforcement often falls short due to systematic challenges like judicial corruption and resource limitations. The IACHR's efforts have led to some legislative successes, such as the increased penalties for child sexual exploitation in Guatemala, yet persistent issues like high child labor rates remain. This thesis recommends comprehensive and integrated approaches, empowering policies for children and communities, improved international and regional cooperation and ongoing evaluation and monitoring mechanisms. The research underscores the need for continued and in – depth studies to better tailor interventions for different local circumstances, emphasizing that the journey towards comprehensive child agency and protection is an ongoing endeavor.

Key words: Children's agency, Inter American Commission on Human Rights (IACHR), Central America, children's rights, legal analysis, child empowerment, human rights enforcement.

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INTRODUCTION

Central America's sociopolitical and economic landscapes are characterized by deep uncertainty, which has had an enormous effect on the lives of its young citizens. Children in countries ranging from Guatemala to Costa Rica face severe challenges, highlighting the importance of strong legal protection and activism.¹ These are not abstract legal concerns; rather, they are genuine, actual issues that have a significant impact on children's daily lives. Limited access to education and healthcare services is a widespread issue in the region, limiting children's potential and creating cycles of poverty. Additionally, the dangerously high rates of exploitation and abuse show an unfavorable representation of the dangerous situations many children confront in their own called homes and community.²

Based on what was mentioned until now, it shows that understanding the agency of children in this context is very important. Children's agency, according to the definition provided in the Article 12 of the United Nations Convention on the Rights of the Child, states that the right of children to express their views freely in all matters affecting them and also to have their own views taken seriously in accordance with their maturity and age.³ Recognizing children as active agents rather than the passive recipient of charitable giving recognizes their intrinsic dignity and allows them to shape their own lives and communities. This recognition is especially important in regions where also the focus of this research is, such as Central America where systemic obstacles frequently

¹ International Committee of the Red Cross, Annual Report 2020 Central America, accessed April 24, 2024. <https://www.icrc.org/en/document/annual-report-2020-central-america>.

² Inter-American Commission on Human Rights, Violence, Children and Organized Crime, (Washington, D.C.: Organization of American States, 2016), accessed April 24, 2024. <https://www.oas.org/en/iachr/reports/pdfs/violencechildren2016.pdf>.

³ United Nations, Convention on the Rights of the Child, "Article 12, adopted November 20, 1989, General Assembly resolution 44/25, accessed April 25, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

prevent children from fully participating in society. These difficulties include the inadequate access to education, healthcare (institutions, services) and most important safety from violence and exploitation.⁴ Empowerment of children to take an engaged role in their own growth, doing so by recognizing their agency within their families and communities is essential to overcome these obstacles and build more resilience and equitable societies.⁵

Agency, within the framework of human rights, is fundamental to the realization of human dignity and autonomy. It closely corresponds to the concepts of self-determination and empowerment that underpin many human rights frameworks. Recognizing agency in human rights discourse entails understanding people's ability to shape their own lives and advocate for their rights. This is very important especially in the context of children's rights and their agency because it alters the perspective from children recognized as passive recipients of care to those becoming active participants in their growth and development and protection.⁶

Conducting research and focusing on children's rights within the context of the Inter American Commission of Human Rights (IACHR) is crucial and informative action that will illustrate the depth and the complexity of applying international human rights legislation in order to protect and to empower Central American children. The responsibility of the commission in protecting children's rights and the encouragement of their active participation in society is not just a legal obligation, but also a moral imperative. This recognition and nurturing, despite their vulnerabilities, they are not passive recipients of charity but capable individuals with the

⁴ Inter-American Commission on Human Rights, Violence, Children and Organized Crime (Washington, DC: Inter-American Commission on Human Rights, November 11, 2015. <https://www.oas.org/en/iachr/reports/pdfs/violencechildren2016.pdf>.

⁵ Abebe, Tatek. Reconceptualizing Children's Agency as Continuum and Interdependence Social Sciences 8, no. 3: (2019) : 81. <https://doi.org/10.3390/socsci8030081>

⁶ Parsell, Cameron, Elizabeth Eggins, and Greg Marston, Human Agency and Social Work Research: A Systematic Search and Synthesis of Social Work Literature, The British Journal of Social Work 47, no. 1 (January 2017): 238–255. <https://doi.org/10.1093/bjsw/bcv145>.

availability to shape and create their own future, is very critical not just for the children's development, but also for the health of the society. By fostering a protective environment ⁷ that reduces structural vulnerabilities ⁸, the IACHR acknowledges and amplifies the agency of children. This approach not only respects but actively promotes their capacity as agents of change within their communities, embodying the principle of legal empowerment ⁹, which facilitates their participation in societal and legal processes that affect them.

This thesis does the examination of the Inter American Commission of Human Rights (IACHR) initiatives, with the focus not just on the legal analysis but also on how these efforts that have been made, impact the agency of children in Central America. By assessing whether the Commission strategies effectively enhance or fail to improve children's agency, this study aims to enrich our understanding of what it truly means to empower some of the society's most vulnerable members.¹⁰ While extensive research has been conducted on the theoretical foundations of children's rights within international legal frameworks, there is a significant gap in targeted evaluations that analyze the practical application and enforcement of these rights in Central America. This discrepancy is especially evident in how local and regional governments support, contest, or ignore these rights. Guatemala, for example, has made legislative success by strengthening the penalties for child sexual exploitation and improving labor inspections to prevent child labor. However, issues

⁷ The Protective Environment Framework, as developed by UNICEF, describes strategies to safeguard children from exploitation and abuse, thereby enhancing their capacity to participate safely in their communities. UNICEF, *Building a Protective Environment for Children*, 2006.

⁸ Structural vulnerability refers to the systemic and institutional barriers that disproportionately affect marginalized groups, impacting their access to resources and opportunities. See James Quesada, Laurie Kain Hart, and Philippe Bourgois, *Structural Vulnerability and Health: Latino Migrant Laborers in the United States*, *Medical Anthropology*, vol. 30, no. 4, 2011, pp. 339–362.

⁹ For a comprehensive look at legal empowerment, see the UNDP's report, *Making the Law Work for Everyone*, which explores the role of legal rights and norms in enhancing the lives of the poor through greater legal empowerment. UNDP, *Making the Law Work for Everyone*, Vol II, 2008, accessed April 24, 2024. <https://www.undp.org>.

¹⁰ United Nations, *Convention on the Rights of the Child*, Article 12, adopted November 20, 1989, General Assembly resolution 44/25, accessed April 25, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

remain, which include the significant frequency of child labor in agriculture and inadequate implementation of protective measures.¹¹ Differently, countries which include El Salvador have significant issues from gang violence, which has a very negative influence on children's rights and agency, by pushing them to participate in violent activities or even worse being target of violence.¹² These regional variances underscore the need for adopting methods for different local circumstances and challenges.

As these issues were mentioned previously, which include the significant frequency of child labor in agriculture and inadequate implementation of protective measures, especially for indigenous children in Guatemala,¹³ comparing to Sub-Saharan Africa, where lack of infrastructure is a more significant barrier.¹⁴ Furthermore, healthcare access is limited, particularly in Honduras' rural areas, resulting in high incidence of avoidable diseases and malnutrition,¹⁵ whereas Southeast Asia has issues such as high population density and variable healthcare infrastructure. These structural concerns have intensified children's vulnerability, increasing their exposure to violence, exploitation, and insufficient access to needed services.¹⁶ Contrarily the European Union benefits from a more robust system, which includes more effectively legal frameworks and more stable

¹¹ U.S. Department of Labor, 2022 Findings on the Worst Forms of Child Labor: Guatemala, Accessed May 21, 2024. <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guatemala>.

¹² Congressional Research Service, Gangs in Central America, RL34112, August 29, 2016, 5-7, Accessed May 21, 2024. <https://crsreports.congress.gov>

¹³ U.S. Department of Labor, 2022 Findings on the Worst Forms of Child Labor: Guatemala, Accessed May 21, 2024. <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guatemala>

¹⁴ World Bank. The Challenge of Inclusive Education in Sub-Saharan Africa. November 2018. Accessed May 21, 2024. <https://documents.worldbank.org/curated/en/171921543522923182/pdf/132586-WP-P168381-PUBLIC-WorldBank-SSAInclusive-Disability-v6-Web.pdf>.

¹⁵ Pearson CA, Stevens MP, Sanogo K, Bearman GM. Access and Barriers to Healthcare Vary among Three Neighboring Communities in Northern Honduras, International Journal of Family Medicine 2012, 2012:298472, doi: 10.1155/2012/298472.

¹⁶ United Nations High Commissioner for Refugees, Central America Emergency," UNHCR, accessed May 21, 2024. <https://www.unrefugees.org/emergencies/central-america/>; WOLA, "Children and Families Fleeing Violence in Central America, 2014, <https://www.wola.org/analysis/children-and-families-fleeing-violence-in-central-america/>.

political settings, which improve the protection of children's rights.¹⁷ These differences highlight the importance of establishing effective, context – specific interventions that address the unique obstacles that children encounter in the region of Central America, and safeguarding their agency and their rights.

The distinction between agency and children's rights is fundamentally established when the legal entitlements and safeguards are distinguished from children's ability and chance to fulfilling those rights independently. While children's rights are the legislative entitlements and safeguards accorded to them, agency refers to their ability to exercise these rights and make independent decisions. For example, a child may have the legal right to an education, but if they are restricted by socioeconomic constraints or a lack of access, their agency—or ability to exercise that right—is severely limited. This distinction is critical in determining how well legal frameworks transform into real empowerment for children.¹⁸

This research will comprehensively evaluate the IACHR's efficacy in promoting children's rights with the main focus in their agency. The study uses specific case studies, such as forced recruitment of children by gangs in Central America¹⁹ and child labor in Guatemala's agricultural sectors²⁰, to demonstrate both successes and to emphasize for development within the IACHR framework. These case studies were chosen for their relevance in highlighting the practical problems and successes of increasing children's autonomy. This study will give a detailed assessment of how

¹⁷ European Union Agency for Fundamental Rights, Fundamental Rights Report 2020, FRA. Accessed May 21, 2024. <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>.

¹⁸ Amnesty International, Child Rights, Amnesty International, Accessed June 4, 2024. <https://www.amnesty.org/en/what-we-do/child-rights/>.

¹⁹ Congressional Research Service. Gangs in Central America. RL34112, August 29, 2016. <https://crsreports.congress.gov>.

²⁰ Inter-American Commission on Human Rights. Situation of Human Rights in Guatemala. 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

legal principles are applied in practice, as well as their influence on children's rights and agency in Central America. The selection is supported by their coverage of a wide variety of child rights concerns, including enforcement failures and successes. Each case will be evaluated in terms of its significance to the broader debate about children's rights and agency. For example, the forced recruitment of children by gangs in Central America ²¹ demonstrates the severe constraints on children's agency caused by external coercive pressures. In contrast, legislative victories in Guatemala ²² aimed at preventing child labor demonstrate how strengthened legal frameworks can strengthen children's rights and agency. By focusing on these situations, the study hopes to provide a more nuanced view of the operational effectiveness of the IACHR's methods. It will delve into how the IACHR's rulings and activities help or impede the progress of children's rights and agency.

²¹Congressional Research Service. Gangs in Central America. RL34112, August 29, 2016. <https://crsreports.congress.gov>.

²² Inter-American Commission on Human Rights. "Situation of Human Rights in Guatemala." 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

CHAPTER 1. DEFINING CHILD AGENCY: REVEALING THE THREADS OF AUTONOMY AND PARTICIPATION IN CHILDREN'S RIGHTS

The concept of Child Agency is complex and nuanced that extends beyond the ability to act, because it requires also the decision not to act, which is an equal exercise of agency. Susan Thompson in one of her research papers, emphasizes that silence or non – action, explain that it may constitute an aspect of agency among groups like unaccompanied young children, that choosing not to speak up is influenced by their environment and circumstances.²³ Naila Kabeer expands on this concept by stating that agency entails actions that are compatible with ones objectives, which are not always favorable from the perspective of others. This definition is specifically important in the development contexts, because it emphasizes the ultimate aims of activities as a fundamental component of agency. However, determining whether choices are autonomous remains difficult, particularly when addressing children, whose ability to make decisions is sometimes questioned due to their vulnerability.²⁴ The problem becomes more acute when assessing the autonomy of youngsters, who are considered vulnerable and in the need of particular protection. Determining the age and conditions under which individuals can be trusted to make autonomous life decisions, is very challenging.²⁵

When the children's agency gets incorporated in, the complexity deepens more. Children who are perceived as in require safeguarding may confront additional barriers to having their agency

²³ Thomson, Susan. Agency as silence and muted voice: The problem-solving networks of unaccompanied young Somali refugee women in Eastleigh, Nairobi." *Conflict, Security & Development* 13, no. 5 (2013): 589-609.

²⁴ Naila Kabeer, Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment, *Development and Change* 30, no. 3 (1999): 435-464; Laura M. Ahearn, Language and Agency, *Annual Review of Anthropology* 30, no. 1 (2001): 109-137.

²⁵ Susan Shepler, *Childhood Deployed: Remaking Child Soldiers in Sierra Leone* (New York: NYU Press, 2014); Lan Anh Hoang and Brenda SA Yeoh, "Children's Agency and Its Contradictions in the Context of Transnational Labour Migration from Vietnam," *Global Networks* 15, no. 2 (2015): 180-197.

recognized. This makes it very necessary to have a careful assessment of their ability to participate in decisions affecting them and their life, a principle supported by the Convention on the Rights of the Child, which states that children's right to be heard must be respected to the greatest extent possible, taking into account their capacity to be independent from others.²⁶

The rights and agency of children, as recognized by international legal frameworks, hinge critically on the provisions of Article 12 of the CRC, which mandates that states must ensure the child's right to be heard in any judicial and administrative proceedings affecting them. This article is not merely procedural; it serves as a fundamental recognition of the autonomy and agency of children, affirming their capacity to participate actively in decisions that impact their lives.²⁷ Article 12 emphasizes the idea that children's views should not only be heard, but additionally taken seriously, and it states clearly that their agency should be recognized and supported. The text doesn't make any apparent age limitations, with the argument that children are capable of establishing their own opinions, and them should be given the opportunity to speak them. This wide direction demonstrated a very growing understanding of child agency, that recognizes it as a dynamic potential that does not precisely equate with age.²⁸

The Committee on the Rights of the Child provides additional interpretive guidance on this in the General Comment No.12, asserting that the realization of this right requires states not only guarantee opportunities for children to be heard, additionally to actively promote conditions that will enable the child to effectively express their points of view. The Committee emphasizes the importance of the use of approaches that correspondent to children's communicative styles at

²⁶ Committee on the Rights of the Child, "General Comment No. 12: The Right to be Heard," CRC/C/GC/12 Geneva: United Nations, 2009.

²⁷ Committee on the Rights of the Child, "General Comment No. 12: The Right to be Heard," CRC/C/GC/12 Geneva: United Nations, 2009, para. 1-2.

²⁸ Ibid., para. 20.

various developmental stages, including those who may not have the full potential to interact through traditional means. The remark states that communication for the goal of assessing capacity should be promoted, highlighting that nonverbal communication, which includes play or art, is appropriate.²⁹

General Comment No.5 also plays a crucial role in defining the scope of agency for children, particularly young children under the age of eight. It highlights that the recognition and the support of agency of very young children needs that adult to be patient and creative, tailoring their expectations and communication methods to the child's level of comprehension and interests. This method is critical in order to ensure that young children's participatory rights are fully protected, and their agency is recognized from the beginning of their development.³⁰

The status of children has undergone evolution, which has been significant, since the adoption of the United Nations Convention on the Rights of the Child (UNCRC) in 1989. The international convention affirms children's rights and requires state parties to provide protection, services and opportunities for significant participation. The UNCRC – participation rights are central to this framework, including the right to be heard, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, privacy, access to information, and participation in cultural life and the arts.³¹ The capability approach provides useful insights, highlighting children's potential to actively construct their own lives and contribute to decision-making processes that impact them. Article 12 also highlights administrative measures that safeguard children's right to be heard in judicial and administrative processes, emphasizing the

²⁹ Ibid., paras. 11, 21.

³⁰ Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation for the Convention on the Rights of the Child, (Geneva: United Nations, 2003), para. 11(c).

³¹ United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, arts. 12-17, 31. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

significance of procedural standards that are consistent with national law. Therefore, the scope of concerns which impact children expands beyond the formal proceedings to incorporate larger social dynamics.³²

The capability approach and the participation reinforce each other in realization of human rights. Individuals participate in decision making – processes that affect their life, which helps to expand their talents and agency. This existent relationship between participation and capacities emphasizes how important are these frameworks for achieving human rights goals particularly among children and young people. Scholars Biggeri and Karakara in one of their studies, in this context emphasize how important is to empower children and young people as proactive holders of rights, while also acknowledging the evolution capacities and maturity levels that correlate with their age. Adopting a life cycle perspective on children's participation illuminates the varying degrees of opportunity, capability, and agency evident at distinct stages of development. Initiating early interactions, enhances the competence and confidence in self-expression and the negotiation of rights, establishing a robust foundation for substantial involvement that spans throughout their childhood and adolescence.³³

The discussion about agency, encapsulating both the capacity and opportunity for action, emerges as a key theme. This distinction is crucial for understanding the barriers encountered by the disadvantaged children in various settings, including Guatemala, India, and Southern Africa. Such

³² United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, arts. 12-17, 31. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

³³ Mario Biggeri and Ravi Karkara, "Transforming Children's Rights into Real Freedom: A Dialogue Between Children's Rights and the Capability Approach from a Life Cycle Perspective," in *Children and the Capability Approach*, edited by Mario Biggeri, Jerome Ballet, and Flavio Comim, 22-45. Basingstoke: Palgrave Macmillan, 2011.

analysis not only deepens the understanding of challenges to children's rights but also underscores the importance of contextually aware strategies that acknowledge and bolster children's agency.³⁴

The debate regarding the efficiency of children's agency within the context of children's rights frequently emphasizes a critical dichotomy: theoretical recognition of rights vs actual challenges in their implementation. While international accords such as the United Nations Convention on the Rights of the Child (UNCRC) promote children's active involvement and agency³⁵, the application of these principles can vary significantly across different jurisdictions.

Scholars such as Freeman³⁶ and Archard³⁷ in their studies, argue that recognizing children as independent agents is critical to their social and moral development. However, the practical execution of these rights frequently falls short, as documented in the reports by the Inter American Commission on Human Rights (IACHR), which reveals the inconsistencies and challenges in protecting these rights, especially in cases involving vulnerable groups such as migrant children or those in conflict with the law.³⁸ This gap that was mentioned from the articles, between frameworks and the lived realities of children calls and shows the need for a critical examination of the mechanisms in place and their effectiveness in promoting true agency among children, raising questions about the adequacy of the current legal protections and the need for a more robust implementation strategy.

³⁴ Alison James, *Agency in the Palgrave Handbook of Childhood Studies* (London: Palgrave Macmillan, 2009).

³⁵ United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, arts. 12-17, 31, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

³⁶ Michael Freeman, *The Rights and Wrongs of Children* (Oxford: Oxford University Press, 2016).

³⁷ David Archard, Children's Rights, Stanford Encyclopedia of Philosophy, last modified 2004, Accessed 26 April 2024, <https://plato.stanford.edu/archives/win2004/entries/rights-children/>.

³⁸ Inter-American Commission on Human Rights, "Violence, Children and Organized Crime" (Washington, DC: Inter-American Commission on Human Rights, November 11, 2015), <https://www.oas.org/en/iachr/reports/pdfs/violencechildren2016.pdf>.

CHAPTER 2: CHILDREN'S RIGHT IN THE INTER AMERICAN SYSTEM

The American Convention on Human Rights defines specific obligations toward children through Article 19, which articulates a robust framework for the protection and safeguarding of children. This article states: "Every minor has the right to measures of protection required by his condition as minor on the part of his family, society, and the state."³⁹ Tailored protective measures are present that address children's vulnerability and development. This section focuses on a distinctive emphasis on children's rights, recognizing them as different rights holders. This approach highlights the states commitment to establish and sustain environments that safeguard children's rights and promote their growth and development. Furthermore, the Article 5 of the American Convention on Human Rights broadens its scope of protection by incorporating the right to humane treatment for all individuals, including children. It specifically states, "Every person has the right to have his physical, mental and moral integrity respected."⁴⁰

This encompasses a comprehensive prohibition against acts of torture and other inhumane, cruel or degrading treatment or punishment. For children, this commitment is particularly significant given their heightened vulnerabilities and the severe long – term impact that such abuses can have on their development. Article 5 also serves as a foundational element in the Convention's framework, ensuring that the fundamental human rights of children are upheld in different circumstances, reinforcing their inherent dignity and value as individuals within society.⁴¹

³⁹American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 (1969), art. 19, accessed April 26, 2024, https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf.

⁴⁰ Ibid., art. 5.

⁴¹ Ibid., art. 5.

Children's rights under the Inter – American system are extensively defined beyond the American Convention on Human Rights, through a variety of other treaties and resolutions that all provide a more complex definition and emphasize children's agency. One of them is The Protocol of San Salvador, formally known as Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, extends the protections of the American Convention by specifically addressing there economic, cultural and social rights. Article 16 of this protocol is particularly significant as it articulates the right of every child to education. This article emphasizes that education should be designed to develop the child's personality and abilities to their fullest potential, preparing them for a responsible life in a free society, with respect for cultural identity, and values of respect for human rights and fundamental freedoms.⁴²

Further, Article 10, which focuses on the right to health, reinforces Article 16 by stating that children have the right to health protection and medical care, which are made available to all through preventative measures, the provision of the necessary medical services, and rehabilitation. This is very important because it does emphasize the state's role in ensuring that these services are focused towards achieving the healthy development of children in settings of equality.⁴³ The Inter – American Commission on Human Rights (IACHR) report, "Organized Crime and the Rights of Children, Adolescents, and Young People: Lines of Action and the Challenges Facing States in Northern Central America"⁴⁴ provides a very critical examination of the significant challenges of child agency posed by organized crime in this region. The IACHR recognizes that the pervasive impact of maras or gangs, notably in Northern Central America, not only violates the basic rights

⁴² Protocol of San Salvador, O.A.S. Treaty Series No. 69, art. 16, Nov. 17, 1988, accessed April 26, 2024, <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>.

⁴³ Ibid., art. 10.

⁴⁴ Inter-American Commission on Human Rights, Organized Crime and the Rights of Children, Adolescents, and Young People: Lines of Action and the Challenges Facing States in Northern Central America, Accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

of children and adolescents but also severely hinders their ability to act autonomously within their communities. Central to the report's findings is the impact of forced recruitment by criminal organizations on child agency. Children as young as 13 are persuaded into joining these groups, often under the threat of violence or by socioeconomic manipulations, taking advantage of legal gaps that delay criminal liability. This recruitment is extremely damaging because it embeds youngsters in cycles of violence and crime, severely hampering their ability to make independent, constructive decisions about their futures.⁴⁵

Therefore, the Inter American Commission on Human Rights stresses, the importance of involving children, adolescents and their families in the design and the implementation of the public policies aimed for combating organized crime. This approach of participation not only empowers young people by acknowledging their voices and experiences but it also enhances the effectiveness of measures designed to protect them and to rebuild their capacity for agency in a context free from violence.⁴⁶ The Inter American Commission on Human Rights Resolution 05/23, which was approved lately in January 2024, does present an important turning point in the recognition and promotion of child agency within the Inter American Human Rights framework. This resolution demonstrates the IACHR's commitment to incorporate the notion of child agency into its operations, to foster a climate in which children and adolescents are not only recognized as rights holders, but they are also active participants in developing these rights. This is consistent with the goals established in previous discusses and resolutions, particularly emphasizing the significance

⁴⁵ Inter-American Commission on Human Rights, *Organized Crime and the Rights of Children, Adolescents, and Young People: Lines of Action and the Challenges Facing States in Northern Central America*, April 26, 2023, accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

⁴⁶ Inter-American Commission on Human Rights, *Organized Crime and the Rights of Children, Adolescents, and Young People: Lines of Action and the Challenges Facing States in Northern Central America*, accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

of children's voices in all sectors of societal and policy engagement.⁴⁷ Resolution 05/ 23 particularly outlines how the Inter American Commission on Human Rights intends to implement this increased emphasis on child agency. It proposes specific strategies for encouraging children's active engagement, such as making IACHR materials more accessible to younger audiences and describing the manner in which the organization's procedures work in communication that children and adolescents comprehend. These projects aim to empower children by providing them with the knowledge and skills needed to actively participate in the IACHR's work.⁴⁸

Further in the Advisory Opinion OC-21/14, the Inter-American Court of Human Rights emphasized the importance of preserving child migrants' agency, emphasizing that their views should be implemented significantly in all migration and international protection proceedings, taking into account their age and maturity. This fundamental principle not only supports children's rights to actively participate in decisions that influence their life, but it also emphasizes the importance of states incorporating these considerations into their national policies and procedures. Despite this instruction, there is an urgent need for empirical study to assess how these rights are realistically enforced throughout the region. Studies could concentrate on the effectiveness of present implementations, the impact of participation rights on the well-being of child migrants, and the development of policies that better facilitate these rights.⁴⁹ However in the General Comment No. 21 is highlighted the importance of respecting and enhancing child agency during

⁴⁷ Inter-American Commission on Human Rights, Resolution 05/23 on the Right of Children and Adolescents to Participation, January 16, 2024, accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

⁴⁸ Inter-American Commission on Human Rights, "Resolution 05/23 on the Right of Children and Adolescents to Participation, January 16, 2024, accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

⁴⁹ Inter-American Court of Human Rights, Advisory Opinion OC-21/14 on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, November 19, 2014, Accessed April 26, 2024, <https://www.refworld.org/jurisprudence/caselaw/iacrthr/2014/en/101499>.

the international migration process. This comment states that children have the fundamental right to freely express their opinions and have their points of view considered according to their age and maturity. This emphasis on agency acknowledges children as active participants in migrating decisions, which strengthens their positions beyond being passive recipients of protection. This directive does emphasize the importance of migration policies that include and respond to the voices of child migrants, thereby promoting their psychological and social well – being.⁵⁰

To continue the discussion, cases that include the forced recruitment of children by gangs in Honduras highlight the critical need to delve deeper into how child agency is compromised and what measures can effectively restore and protect these young individuals within the Inter – American Human Rights framework. The analysis not only highlights the severe difficulties, but they also emphasize the importance of implementing specific measures to protect the rights and future of children in such a vulnerable situation. The forced recruitment of children by gangs in Honduras is a very serious violation of their rights to life, liberty and security as established in international human rights conventions. This instance is an illustration of the stark reality in which children are persuaded into practicing violent and against law behaviors. These circumstances not only risk their lives, but also restrict their physical, social development and psychological state, highlighting and are where the Inter American Human Rights framework needs to intervene.⁵¹ the Case of Child Labor in Agricultural Sectors in Guatemala, is another case that offers an impacting example. This case demonstrates the widespread prevalence of child labor on coffee plantations, where children are forced into hazardous dangerous work, violating their rights to education and

⁵⁰ Inter-American Court of Human Rights, General Comment No. 21 on Children's Rights in the International Migration Process, Accessed April 26, 2024, https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

⁵¹ The Advocates for Human Rights, Honduras' Compliance with the International Covenant on Civil and Political Rights submitted by for the 138th Session of the Human Rights Committee October 2022, Accessed April 2024.

health. These types of arrangements clearly contradict international treaties and significantly limit the children's ability to exercise agency.⁵²

⁵² U.S. Department of Labor, 2022 Findings on the Worst Forms of Child Labor: Guatemala, Accessed April 26, 2024, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2022/Guatemala.pdf.

METHODOLOGY

This thesis employs a qualitative research design, it incorporates a combination of legal doctrinal analysis and the case study examination to do the exploration in how the Inter American Commission on Human Rights addresses the agency of children within the human rights framework, particularly focusing on the region of Central America. This dual approach is designed to probe together the legal foundations and the practical enforcement of children's rights emphasizing how these elements contribute to or hinder the realization of child agency.

Legal Doctrinal Analysis

This approach does involve an in depth examination of the reports, resolutions, case studies from the basis of the Inter American Commission on Human Rights work on children's rights. Including the Convention on Human rights and the Convention on the Rights of the Child. This analysis aims to elaborate into the legal standards and principles that dictate the protection and the enhancement of child agency, exploring how these norms are interpreted and applied in the Inter American Commission's legal processes.

Data Collection Methods

Data has been collected from a combination of primary sources and secondary sources, for the main purpose – to generate a rich and very informed analysis based on the objectives set for this research.

Primary Sources include a throughout examination of the Inter American Commission on Human Rights reports, rulings and official documents, which was conducted to do the determination of how the Inter American Commission on Human Rights addresses child agency. These include:

IACHR Reports:

- Violence, Children and Organized Crime (2015)
- Juvenile Justice and Human Rights in the Americas (2011)
- The report Towards the Effective Fulfillment of Children's Rights: National Protection Systems (2017)

IACHR Resolutions:

- Resolution 5/23: Participation of Children within the Mandates of the IACHR
- Resolution 93/2020 under Precautionary Measure No. 1100-20

Case Studies:

- Situation of Human Rights in Guatemala." 2021 Annual Report
- Regional Study on Violence (2021)

Secondary Sources: Academic literature, policy assessments, and non – governmental organization (NGO) publications have been assessed to give context and improve on primary source findings, thereby to improve the knowledge of child agency within the larger human rights environment.

- The 2022 U.S. Department of Labor report on Guatemala

Analytical Framework

The analysis employs a thematic approach, focusing on how the IACHR incorporates the concept of child agency into its jurisprudence and recommendations. This involves:

Examining how the IACHR interprets and applies legal standards related to children's agency:

This stage includes a thorough examination of how the IACHR interprets and applies international legal norms governing children's rights and agency. The analysis focuses on comprehending the Inter American Commission on Human Rights legal concepts and frameworks, focusing on the significant treaties such as the American Convention on Human Rights and the Convention on the Rights of the Child. This study's objective is to discover how these standards are operationalized in the context of children's agency by evaluating the Inter American Commission's legal reasoning and the decision-making processes.

Assessing the impact of the Inter American Commission on Human Rights decisions on promoting children's rights and agency in Central America

The framework evaluates the tangible consequences of the Inter American Commission on Human Rights decisions and recommendations on the promotion of children's rights and their agency throughout Central America. This includes assessing the outcomes of specific instances and actions and how they have contributed to children's empowerment and as active rights holders. The assessment is designed to examine the success of IACHR actions in improving children's involvement, protection, and general well-being.

Identifying patterns and discrepancies in the IACHR's handling of cases involving children:

The research employs a comparative analysis to identify regular patterns and significant discrepancies in the IACHR's assessment of cases regarding children. This includes reviewing some case studies, reports and resolutions to do the identification of the common themes, the effective techniques and the areas where the Inter American Commission approach may fall to lacking. By identifying these patterns and disparities, the analysis provides the spotlight on the strengths and the limits of the Inter American Commission on Human Rights efforts to protect children's rights and agency. This thematic approach offers a throughout and nuanced understanding of the Inter American Commission's role in the advancement of child agency, by providing significant insights into both the theoretical and practical aspects of children's rights within the Inter American Human Rights System.

Analytical Questions

How does the Inter American Commission on Human Rights address the specific vulnerabilities faced by children in the Central America?

What are the legal and procedural challenges evident in the Inter American Commission on Human Rights handling of the cases that involve children?

How do the outcomes of these cases contribute to or hinder the advancement of children's rights and child agency in the region?

What are the gaps between the legal frameworks and their actual practical implementation in the context of children's rights in Central America?

Data Collection

Sources and their Relevance

Table 1. The Collected Data

| Category | Document | Description | Relevance | Citation |
|----------------------------|--|---|--|--|
| Reports on specific issues | Violence, Children and Organized Crime (2015) | Published by the IACHR, this report delves into the systematic factors contributing to children's vulnerability to violence and exploitation by organized crime. | It critiques punitive state responses and recommends prevention – focused public policies. | Inter-American Commission on Human Rights. Violence, Children, and Organized Crime. 2015. https://www.oas.org/en/iachr/reports/pdfs/violencechildren.pdf . |
| Reports on specific issues | Juvenile Justice and Human Rights in the Americas (2011) | This report evaluates juvenile justice systems in the Americas, advocating for a shift towards rehabilitation focused practices and the adoption of a child centered approach in handling juvenile offenders. | Supports arguments for rehabilitation-focused techniques in juvenile justice. | Inter-American Commission on Human Rights. Juvenile Justice and Human Rights in the Americas. 2011. https://www.oas.org/en/iachr/reports/pdfs/JuvenileJustice.pdf . |
| Resolutions | Resolution 5/23: Participation | Focuses on institutionalizing | Highlights the IACHR's commitment to | Inter-American Commission on Human Rights. Resolution 5/23: Participation of Children within |

| | | | | |
|------------------------------|---|---|---|--|
| | of Children within the Mandates of the IACHR (2023) | children's participation in the human rights dialogue within the Americas | including children's voices into its mechanisms. | the Mandates of the IACHR. 2023. https://www.oas.org/en/iachr/reports/pdfs/ParticipationChildren.pdf . |
| Resolutions | Resolution 93/2020 under Precautionary Measure No. 1100-20 | Addresses the rights of Venezuelan migrant children who additionally are experiencing deportation threats. | Highlights the IACHR's role in defending the rights of migrant children. | Inter-American Commission on Human Rights. Resolution 93/2020 under Precautionary Measure No. 1100-20. 2020. https://www.oas.org/en/iachr/reports/pdfs/PrecautionaryMeasures2020.pdf . |
| Comprehensive Reviews | Towards the Effective Fulfillment of Children's Rights National Protection Systems (2017) | Emphasizes the necessity for strong national protection mechanisms that include children's voices. | Highlights the importance of national protection systems that respect and fulfill children's rights. | Inter-American Commission on Human Rights. Towards the Effective Fulfillment of Children's Rights: National Protection Systems. 2017. https://www.oas.org/en/iachr/reports/pdfs/fulfillmentrights-children.pdf . |
| National Reports on Children | The 2022 Guatemala Report | Provides a case study of progress in preventing child labor, including legal amendments and improved inspection techniques. | Demonstrates the practical implementation of national policies aimed at improving children's rights and agency. | U.S. Department of Labor. 2022 Findings on the Worst Forms of Child Labor: Guatemala. 2022. https://www.dol.gov/agencies/ila/b/resources/reports/child-labor/guatemala . |

| | | | | |
|--|-----------------------------------|---|--|--|
| Reports on specific issues (Including States of El Salvador, Guatemala, Honduras) | Regional Study on Violence (2021) | Published by the IACHR, this report examines the efforts and challenges in addressing violence against children, highlighting the initiatives to ensure inclusivity and child agency. | It evaluates national policies, intersectoral coordination and preventive measures providing recommendations for enhancing child protection systems. | Inter-American Commission on Human Rights. Regional Study on Violence. 2021. https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf . |
|--|-----------------------------------|---|--|--|

Each of these resources was thoughtfully selected to provide a comprehensive understanding of the complex issues that involve child agency in the contexts of migration, violence and legal processes affecting children in Central America. The reports, declarations and the resolutions provide a throughout evaluation of the legal and humanitarian measures required to strengthen child agency and protect their rights within the Inter American Commission on Human Rights framework. The Declaration on Central American Unaccompanied Child Migrants (2014) ⁵³ and other Inter American Commission reports, an example can be the Violence, Children and Organized Crime (2015) ⁵⁴ and the Juvenile Justice and Human Rights in the Americas (2011) ⁵⁵, which do the examination of the systematic vulnerabilities and the efficacy of current policies. These collected sources underscore the obstacles which are posed by violence, exploitation and

⁵³ Organization of American States, OAS :: Media Center :: Press Release,” January 28, 2024, accessed April 26, 2024, https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-008/14

⁵⁴ Inter-American Commission on Human Rights. Violence, Children, and Organized Crime. 2015. <https://www.oas.org/en/iachr/reports/pdfs/violencechildren.pdf>.

⁵⁵ Inter-American Commission on Human Rights. Juvenile Justice and Human Rights in the Americas. 2011. <https://www.oas.org/en/iachr/reports/pdfs/JuvenileJustice.pdf>.

the ineffective judicial systems, laying the groundwork for comprehending the larger structural concerns that restrain child agency.

Resolution such as the Resolution 05/23 about the Participation of Children in the Mandates of the Inter American Commission on Human Rights (2023) ⁵⁶ and the Resolution 93/2020 under the Precautionary Measure No.1100 – 20 ⁵⁷ address the procedural and the participatory elements that constitute children’s rights. They emphasize the need to include children’s voices in the human rights discussion and protecting migrant children from refolement, by demonstrating implementations of the legal principles designed to preserve child agency. A detailed review of the Towards the Effective Fulfillment of Children's Rights: National Protection Systems (2017)⁵⁸ offers a strategic framework for developing strong national protection systems that are child-inclusive and rights-oriented. This research underlines the importance of intersectoral coordination, data collecting, and independent monitoring methods, which supports the thesis's argument for systematic and holistic approaches to child protection. National reports, such as the 2022 Guatemala Report ⁵⁹, and the Report Regional Study on Violence ⁶⁰ provide specific instances of how national policies can either support or impede child agency. These materials have the focus on the practical ramifications of the legal and policy actions, illustrating both triumphs and the current challenges in protecting children’s rights.

⁵⁶ Inter-American Commission on Human Rights. Resolution 5/23: Participation of Children within the Mandates of the IACHR. 2023. <https://www.oas.org/en/iachr/reports/pdfs/ParticipationChildren.pdf>.

⁵⁷ Inter-American Commission on Human Rights. Resolution 93/2020 under Precautionary Measure No. 1100-20.2020. <https://www.oas.org/en/iachr/reports/pdfs/PrecautionaryMeasures2020.pdf>.

⁵⁸ Inter-American Commission on Human Rights. Towards the Effective Fulfillment of Children's Rights: National Protection Systems. 2017. <https://www.oas.org/en/iachr/reports/pdfs/fulfillmentrights-children.pdf>.

⁵⁹ U.S. Department of Labor. 2022 Findings on the Worst Forms of Child Labor: Guatemala. 2022. <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guatemala>

⁶⁰ Inter-American Commission on Human Rights. Regional Study on Violence. 2021. <https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf>.

The sources collectively address the research topics by giving evidence of how the Inter American Commission on Human Rights programs affect child agency, the effectiveness of the legislative frameworks and the practical obstacles of the implementation. The analysis chapter will synthesize these findings, by highlighting the patterns, discrepancies and opportunities for improvement. This organized approach will allow a throughout review of how the present the Inter American Human Rights legislation and practices promote or impede children's rights and agency, eventually delivering actionable recommendations to improve child protection practices in Central America.

DETAILED ANYLISIS

Violence, Children, and Organized Crime (2015)

The report “Violence, Children and Organized Crime”, published by the Inter-American Commission on Human Rights (IACHR) on November 11, 2015,⁶¹ meticulously outlines how systemic issues such as inequality, social exclusion, and the limited availability of critical services amplify the vulnerability of children to exploitation and violence at the hands of organized criminal entities. This analysis is pivotal for the thesis, as it highlights the underlying causes of children's rights violations, setting the stage for a discussion on the necessary policy interventions and protective measures. Moreover, the report's critique of current state responses, particularly the punitive approaches towards adolescents entangled in criminal activities, serves as a significant point of analysis. It underscores the counterproductive nature of such measures and advocates for a shift towards more holistic, prevention-focused public policies that prioritize the rights and needs of children. The recommendations presented in the report for the implementation of comprehensive and human rights-centered policies provide a strategic framework for the thesis's exploration of potential reforms within the IACHR's policy and legal frameworks. It suggests a move towards integrated approaches that not only address the immediate risks posed by violence and organized crime but also tackle the root causes of children's vulnerability, including poverty, lack of education, and inadequate social protection. By drawing on the evidence-based insights and policy recommendations of the IACHR report, the thesis aims to articulate a series of

⁶¹ Inter-American Commission on Human Rights, Violence, Children and Organized Crime, November 11, 2015, Accessed March 12, 2024, [<https://www.oas.org/en/iachr/reports/pdfs/violencechildren2016.pdf>], for a comprehensive examination of the impact of violence and organized crime on children and adolescents in the Americas, and the need for a rights-based approach to their protection.

actionable recommendations. These are intended to enhance the protective mechanisms for children in Central America, ensuring their rights are safeguarded, and their agency is supported within the context of increasing violence and organized crime.⁶²

Child Labor in Guatemala

The Situation with Child Labor in Guatemala

The 2022 U.S. Department of Labor report on Guatemala evaluates the country's progress and operated problems in addressing the most severe types of child labor. According to the report, Guatemala has made significant legislative progress, including the passing of a decree that strengthened the penalty for child sexual exploitation online. The Labor Inspectorate was extended from four to eleven human rights inspectors, indicating the government's commitment to addressing child labor issues more effectively. Despite regulatory efforts, severe types of child labor continue, particularly in agriculture and commercial sexual exploitation. The agricultural industry employs the most child laborers, with children working in dangerous conditions on coffee, sugarcane, and maize farms. These youngsters are frequently exposed to hazardous machinery, harmful chemicals, and extreme weather conditions, which can cause serious health problems and hamper their educational potential. The research also identifies systemic concerns that lead to the continued use of child labor. Poverty remains a big encouragement, with many families relying on their children's earnings to survive. In addition, there exist loopholes in the enforcement of child

⁶² Inter-American Commission on Human Rights, Violence, Children and Organized Crime, November 11, 2015, Accessed March 12, 2024, [<https://www.oas.org/en/iachr/reports/pdfs/violencechildren2016.pdf>], for a comprehensive examination of the impact of violence and organized crime on children and adolescents in the Americas, and the need for a rights-based approach to their protection.

labor rules, which are compounded by judicial corruption and low resources. Inadequate labor inspections and poor sanctions for violators allow child labor to continue, despite laws against it.⁶³

Furthermore, the research identifies social disadvantage and a lack of access to excellent education as major impediments to abolishing child labor. Many children, particularly those from indigenous and rural areas, experience discrimination and have restricted educational opportunities. This lack of education reinforces the cycle of poverty and child labor, as children without education have less chances for better-paying occupations in the future. The U.S. Department of Labor report emphasizes the need of addressing these underlying problems through comprehensive social programs and tougher enforcement. It pushes for coordinated measures to promote access to education, give economic help to families, and strengthen labor inspectors' ability to successfully enforce child labor regulations. This thesis attempts towards enhancing children's rights and agency within the IACHR framework, and these recommendations support that objective.⁶⁴

IACHR's Efforts and Recommendations

The 2021 IACHR Annual Report on Guatemala presents an in-depth examination of the country's persistent challenges with judicial independence and institutional corruption, both of which hamper the effective enforcement of child labor regulations. The IACHR has made substantial steps to address the unique vulnerabilities that children in Guatemala confront, including legislative advocacy, monitoring, and direct interventions.⁶⁵ The IACHR highlights the need to strengthen legal frameworks to establish stronger penalties for child labor abuse and to ensure that

⁶³ U.S. Department of Labor, 2022 Findings on the Worst Forms of Child Labor: Guatemala (Washington, D.C.: Bureau of International Labor Affairs, 2022), Accessed April 26, 2024. <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guatemala>

⁶⁴ Ibid.

⁶⁵ Inter-American Commission on Human Rights. Situation of Human Rights in Guatemala. 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

these laws are consistent with international standards. This includes improving existing laws to address emerging kinds of exploitation, such as online child sexual exploitation, as well as ensuring that punishments are effective deterrents. Effective enforcement of child labor laws is critical, and the IACHR supports expanding the number and capacity of labor inspectors. Inspectors must be trained on child labor issues and provided with the resources necessary to conduct full investigations in order to effectively enforce legislation. Addressing the core causes of child labor necessitates comprehensive social initiatives that provide economic assistance to families, enhance access to excellent educational opportunities, and provide social services to at-risk children. The IACHR highlights the importance of programs that reduce poverty, provide educational opportunities, and promote community development.⁶⁶

Resolution 5/23: Participation of Children within the Mandates of the IACHR (2023)

The adoption of "Resolution 5/23: Participation of Children within the Mandates of the IACHR" on December 30, 2023, is a significant step forward in recognizing and promoting the participation of children within the Americas' human rights framework.⁶⁷ This resolution not only underlines the IACHR's commitment to ensuring that children's perspectives are heard, respected, and integrated, but it also represents a change toward recognizing children as active agents in shaping the human rights conversation. The resolution's emphasis on fundamental values such as the child's best interests, progressive autonomy, and meaningful engagement addresses the thesis's central questions about the function and influence of child agency within legal and policy frameworks.

⁶⁶ Ibid.

⁶⁷ Inter-American Commission on Human Rights, Resolution 5/23: Participation of Children within the Mandates of the IACHR, December 30, 2023, Accessed April 26, 2024, <https://www.oas.org/en/iachr/decisions/2023/Res-5-23-EN.pdf>.

By mandating non-infantilizing communication and security measures, the resolution addresses the practical issues of empowering children, particularly those from vulnerable backgrounds, to engage securely and effectively in human rights institutions.⁶⁸

Resolution 93/2020 under Precautionary Measure No. 1100-20The relevance of this resolution to the thesis lies in its direct confrontation with the traditional perceptions of children as passive subjects. It reinforces the thesis's argument that recognizing children's agency and participatory rights can lead to more inclusive and effective human rights practices. However, there is a potential contradiction in the implementation challenges that such resolutions might face, especially in environments where cultural norms or lack of resources hinder the actualization of these principles. The literature on child rights advocacy supports the resolution's approach, suggesting that when children are actively involved in decision-making processes that affect them, the outcomes are more likely to be sustainable and beneficial for the children's social and personal development.

Resolution 93/2020 under the Precautionary Measure No. 1100 - 20

The Inter American Commission on Human Rights (IACHR) conducted a comprehensive investigation of the Resolution 93/ 2020 under the Precautionary measure No. 1100 -20⁶⁹, which critically assesses the agency of the Venezuelan migrant children threatened with deportation from Trinidad and Tobago. This resolution, that was issued on December 9, 202 responds to the urgent plea from “Foro Penal “, representing children that are at risk. It does emphasize the international

⁶⁸ Inter-American Commission on Human Rights, Resolution 5/23: Participation of Children within the Mandates of the IACHR, December 30, 2023, Accessed April 26, 2024, <https://www.oas.org/en/iachr/decisions/2023/Res-5-23-EN.pdf>.

⁶⁹ Inter-American Commission on Human Rights, Precautionary Measure No. 1100-20 Resolution 93/20, December 9, 2020, Accessed April 26, 2024, <https://www.oas.org/en/iachr/decisions/pdf/2020/93-20MC1100-20-TT.pdf>.

principle of non – refoulment, which protects individuals from being returned to a country where they face serious threats to their life or freedom.⁷⁰ The Inter American Commission’s proactive efforts underscore the challenges of ensuring for migrant children’s rights within the Inter American Human Rights framework, by emphasizing the concept of the child’s best interests. This principle is fundamental, ensuring that all the decisions prioritize the child’s wellbeing and rights which is a primary focus of this thesis, that explores how the Inter American system addresses and mitigates vulnerabilities experienced by children in Central America. The absence of a response from the Trinidad and Tobago government at the time when the resolution was issued, highlights significant procedural and substantive issues in the region’s approach to the migrant children’s rights. This incident illustrates the Inter American Commission’s crucial role in the intervention when the national actions risk child protection.⁷¹ This resolution is particularly relevant to this research because it embodies the practical implementation of theoretical human rights standards within the national migration policies. The emphasis is on due process, the principle of the child’s best interest and the prohibition of the collective expulsions without individual assessments provide a robust framework for advocating more inclusive and protective measures for the children within the Inter American Commission on Human Rights context.

⁷⁰ Inter-American Commission on Human Rights, Precautionary Measure No. 1100-20 Resolution 93/20, December 9, 2020, Accessed April 26, 2024, <https://www.oas.org/en/iachr/decisions/pdf/2020/93-20MC1100-20-TT.pdf>.

⁷¹ Inter-American Commission on Human Rights, Precautionary Measure No. 1100-20 Resolution 93/20, December 9, 2020, accessed April 26, 2024, <https://www.oas.org/en/iachr/decisions/pdf/2020/93-20MC1100-20-TT.pdf>.

The report Towards the Effective Fulfillment of Children's Rights – National Protection Systems (2017)

This report “Towards the Effective Fulfillment of Children's Rights – National Protection System (2017) does emphasize the importance of the development of strong national protection systems that ensure that children's rights are actively recognized, protected and respected. This throughout analysis highlights a coordinated approach which encompasses different sectors and stakeholders, as well as the importance of incorporating children in the design and the implementation of these systems to ensure their effectiveness and relevance to children's current needs.⁷²

The report examines the framework that is required for the development of national systems to defend children's rights and proposes for a paradigm change that acknowledges children and adolescents as rights holders. It defines the state's responsibility to respect, safeguard and ensure fundamental rights through comprehensive, multidimensional and cross – sectoral policies. Establishing the comprehensive data collection mechanisms to monitor and assess the situation of children's rights, including disaggregated data by age, gender, ethnicity and other relevant factors is critical for effectively identifying specific vulnerabilities and targeting interventions. Independent monitoring mechanisms are also required, as these authorities supervise and evaluate the performance of child protection systems, ensuring openness, accountability and continual development of the policies and procedures.⁷³

⁷² Inter-American Commission on Human Rights, Towards the Effective Fulfillment of Children's Rights: National Protection Systems, 2017, Accessed May 26, 2024, <https://www.oas.org/en/iachr/reports/pdfs/fulfillmentrights-children.pdf>.

⁷³ Ibid.

The research also emphasizes the necessity of allocating adequate funds to child protection systems to support their implementation and sustainability, which includes budget allocations for health, education, social services, and legal protections. It encourages intersectoral coordination and collaboration among many sectors, including as health, education, justice, and social services, in order to build a holistic and integrated approach to child protection. This coordination is critical for addressing the diverse character of children's demands and rights. In addition, the civil society organizations, communities and children themselves are encouraged to participate in the development, implementation and the monitoring of child protection systems. This participative approach guarantees that policies and programs are relevant to children's actual needs and experiences.⁷⁴

The research underlines the importance of implementing a rights-based approach that prioritizes the child's best interests, nondiscrimination, and the right to be heard. It advocates for the incorporation of child rights into national policies and programs, ensuring that all the sectors contribute to the protection and realization of children's rights. This comprehensive and integrated strategy seeks to develop strong national protection systems that are successful, sustainable and responsive to children's real needs, emphasizing the necessity of their active participation in these processes. In the addition, the report's emphasis on international standards and compliance is linked to the border human rights context, making it an important component in understanding

⁷⁴ Inter-American Commission on Human Rights, Towards the Effective Fulfillment of Children's Rights: National Protection Systems, 2017, accessed May 26, 2024, <https://www.oas.org/en/iachr/reports/pdfs/fulfillmentrights-children.pdf>.

how comprehensive rights – based methods can preserve and strengthen children’s rights and agency in the region.⁷⁵

The Report Regional Study on Violence (2021)

Introduction

The Inter – American Commission on Human Rights (IACHR) has been actively working in fulfilling the objectives of ensuring the inclusivity of children and what the focus of this research is the promotion of their agency across the Americas, with its significant efforts and the developments made in the region of Central America. The analysis of this report focuses on the Inter American Commission’s achievements, what were the strategies of its work and the challenges through the process in the region. It highlights the specific actions taken in the individual countries where the focus of the study is in order to address and eradicate violence against children while promoting their rights and their participation in the framework. The Commission’s commitment to promote and guarantee the full enjoyment of children’s rights is rooted in international human rights instruments, such as the Convention on the Rights of the Child (CRC). This convention emphasizes the need for a specialized approach to children’s rights, by advocating for comprehensive protection and the recognition of children as active rights holders. The Convention underscores the importance of the promotion of children’s rights in various settings, including their families, society and their state.⁷⁶

⁷⁵ Inter-American Commission on Human Rights, Towards the Effective Fulfillment of Children’s Rights: National Protection Systems, 2017, accessed May 26, 2024, <https://www.oas.org/en/iachr/reports/pdfs/fulfillmentrights-children.pdf>.

⁷⁶ Inter-American Commission on Human Rights. Regional Study on Violence. 2021. <https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf>.

What are the Central American Efforts?

The countries of the region of Central America have demonstrated through this report a strong commitment to the Convention on the Rights of the Child' principles through various initiatives that were aimed at eradicating violence against children and promoting their rights and agency. These efforts are characterized by the implementation of the national systems for the comprehensive protection of children and the establishment of intersectoral and interagency coordination mechanisms. Further will be provided an analysis of the report focusing on the states of the region such as El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica.⁷⁷

El Salvador

El Salvador has made significant strides in aligning its national policies with the Convention on the Rights of the Child' principles. The report focuses on the Consejo Nacional de la Niñez y Adolescencia (CONNA)⁷⁸ which leads the efforts to promote and protect children's rights. Key initiatives towards it include National Action Plans: The state of El Salvador has developed National Action Plans that are focused on addressing the issues such as violence, trafficking and exploitation and protecting children and adolescents. These plans outline the strategic objectives and specific actions to be taken by various government agencies and civil society organizations to safeguard children's rights. These plans provide a very structured approach to tackling violence and ensuring that children's needs are met in a systematic way. Another initiative is the Comprehensive Protection System – The country has established systems to ensure the comprehensive protection of children, by incorporating intersectoral coordination and community

⁷⁷Inter-American Commission on Human Rights. Regional Study on Violence. 2021. <https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf>.

⁷⁸ Consejo Nacional de la Niñez y la Adolescencia., <https://cnna.go.cr/>.

participation. These systems are designed to provide a very holistic approach to child protection, as they ensure that all aspects of a child's wellbeing are considered. By the integration of various sectors, these systems contribute towards creating a very supportive environment for children. Lastly, another initiative mentioned in the report is the Preventive Measures – El Salvador has implemented some preventive measures for the main objective to target violence in educational settings and within families, emphasizing the importance of creating safe environments for the youngest ones. These measures include some educational campaigns, training programs for teachers and parents and the establishment of safe space for children to report the abuse and neglect. Such initiatives as this one have one aim – to proactively address the root causes of violence and to create a culture of prevention.⁷⁹

Guatemala

The analysis included also the efforts made of the country of Guatemala. This country's approach to promoting children's rights is spearheaded by the Secretaria de Bienstar Social de la Presidencia de la Republica (SBS). Their efforts include the Legislative Framework – The Comprehensive Protection of Children and Adolescents Act (PINA)⁸⁰ serves as a cornerstone for the state of Guatemala's child protection policies, by ensuring legal safeguards for children. This act provides a legal basis for the protection of children's rights and sets out the responsibilities of various government agencies that work towards ensuring these rights are upheld. Another focus is in the Interagency Coordination – The country of Guatemala has established coordination mechanism involving various public and private sectors to address violence against children in a

⁷⁹ Ibid., pp. 17 – 24.

⁸⁰ Stacy Kowalski, *Ninas y Adolescents in Guatemala: Reflections on the Implementation of the Ley PINA*. *Hastings Race & Poverty Law Journal* 13, no.2 (Summer 2016): 391, available at https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1007&context=hastings_race_poverty_law_journal

comprehensive way. These mechanisms facilitate collaboration between different agencies and organizations, ensuring coordinated response to child protection issues. This coordination is very essential for addressing the complex issues that cut across different sectors. Lastly, the Public Awareness Campaigns – Guatemala has conducted public awareness campaign to educate families and communities about children’s rights and the importance of preventing violence. These campaigns aim to change societal attitudes towards violence and promote a culture of respect and protection for children. By raising awareness, these campaigns help to create a supportive environment for children’s rights.⁸¹

Honduras

Another state, Honduras has undertaken several initiatives towards the protection of children’s rights, led by the Dirección de Niñez, Adolescencia y Familia (DINAF).⁸² The key efforts of this initiatives are National Policies – Honduras has developed national policies that focus the prevention and the addressing of the violence against children, including specific strategies to combat trafficking and sexual exploitation. These policies outline the government’s commitment to protect children’s rights and provide a framework for action. Another initiative is the focus they have for family and community engagement, the country emphasizes the role of families and communities in the protection of children, promotion of active participation and awareness – raising initiatives. These efforts aim to strengthen the protective environment around children and young people and ensure that the families are equipped to support and protect their children. Honduras has also established some supporting systems for children to ensure their well – being

⁸¹ Ibid., pp. 17 – 23.

⁸² Dirección Nacional De Niñez, Adolescencia Y Familia. (DINAF), Consultorio Jurídico, Universidad Nacional Autónoma de Honduras, accessed June 17, 2024, <https://consultoriojuridico.unah.edu.hn/assets/cjgCabinas/faq-dinaf.html>. See more at <https://consultoriojuridico.unah.edu.hn/assets/cjgCabinas/faq-dinaf.html>.

and recovery. These systems are designed to provide comprehensive support to children and their families, by helping them to overcome the effects of violence and build a better future ahead.⁸³

Nicaragua

The state of Nicaragua's Ministry of the Family, Adolescence and Childhood oversees the implementation of child protection measures. Some significant actions include State Policies – Nicaragua has formulated state policies aimed for strengthening family and community ties to prevent violence against children. These policies emphasize the importance of a supportive and protective family environment for the children's development. The country employs integrated approaches that encompass health, education and social services to address the multifaceted nature of violence against children. These approaches aim to provide a comprehensive response to child protection issues, by ensuring that all the aspects of a child's well-being are considered. Nicaragua has also enacted legislative reforms to align its national laws with the international standards, enhancing the legal framework for child protection. These reforms provide a stronger basis for protecting children's rights and ensuring that perpetrators of violence are held accountable.⁸⁴

Costa Rica

The state of Costa Rica's efforts is coordinated by the Patronato Nacional de la Infancia (PANI), some of the key initiatives include Child Protection Systems, Public Education Campaigns and Intersectoral Collaboration.⁸⁵ Costa Rica has established comprehensive child protection systems that prioritize the best interests of the child and ensure their participation in the decision-making

⁸³ Inter-American Commission on Human Rights. Regional Study on Violence. 2021, pp 17 – 24. <https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf>.

⁸⁴ Ibid., pp. 17 – 24.

⁸⁵ Costa Rica: Patronato Nacional de la Infancia (PANI) – Línea 1147, Child Helpline International, accessed June 17, 2024, <https://childhelplineinternational.org/costa-rica-patronato-nacional-de-la-infancia-pani-linea-1147/>.

processes. These systems aim to provide a holistic approach to child protection by ensuring that all the aspects of a child's wellbeing are considered. The country has also implemented extensive public education campaigns to raise awareness about children's rights and the importance of preventing violence. These campaigns aim towards changes of social attitudes towards violence and promote a culture of respect and protection for children. Costa Rica promotes intersectoral collaboration among governments agencies, international organizations and civil society and international organizations in order to address the violence against children effectively. These efforts ensure a coordinated response to child protection issues involving all relevant stakeholders⁸⁶.

Child Agency and Participation

The Inter American Commission on Human Rights emphasized the importance of establishing legislative and conceptual frameworks that systematically guarantee children's rights. These frameworks are designed to address universally comprehensiveness and intersectionality in protecting children's rights. Countries like El Salvador, Guatemala and Honduras have developed these comprehensive legal frameworks to protect children's rights, including laws and policies that align with the Convention on the Rights of the Child (CRC). The Inter American Commission supports the establishment of comprehensive protection system that do incorporate intersectoral collaboration with the United States Committee on the Rights of the Child UNICEF and the Pan American Health Organization (PAHO). This collaboration aims to promote and monitor the human rights agendas of children and adolescents across the region. Also, initiatives like Mercosur and Red Surca focus on promoting children's rights through subregional systems. And these

⁸⁶ Ibid., pp 13 – 24.

initiatives highlight the importance of consultative roles for adolescents in decision making processes, ensuring that children's voices are heard and considered in policies affecting them. Lastly, the Inter American Commission on Human Rights promotes international cooperation to strengthen national systems and legislative mechanisms for protecting children's rights. This includes generating coordination mechanisms between institutions for monitoring and comprehensive protection, as well as encouraging the strengthening of regional networks.⁸⁷

The Inter American Commission's initiatives have significantly contributed to promoting the inclusivity and agency of children in Central America. These efforts include establishing comprehensive legal frameworks, supporting regional and international cooperation, promoting child participation in decision – making processes, raising public awareness and enhancing child participation in decision making processes, raising public awareness and enhancing data collection and monitoring systems. Despite the progress that has been made, there are still some challenges that remain present, such as resource constraints and cultural norms that tolerate violence. Addressing these challenges requires a concerted effort to increase resources, implement long – term strategies for cultural change, to strengthen coordination mechanism and to enhance data systems to ensure the full protection and inclusivity of children's rights.⁸⁸

⁸⁷ Inter-American Commission on Human Rights. Regional Study on Violence. 2021. <https://scm.oas.org/pdfs/2021/CP45149ECAJP.pdf>.

⁸⁸ Ibid., pp 33 – 35.

COMPARATIVE ANALYSIS

While extensive research has been conducted regarding the theoretical basis of children's rights within international legal frameworks, there is a substantial gap in specific evaluations that examine the practical application and enforcement of these rights in Central America. This disparity is visible in various areas. One of them is about the judicial independence and the institutional corruption that undermine the effectiveness of Guatemala's child labor legislation. The 2021 Inter American Commission on Human Rights Annual Report on Guatemala⁸⁹ undermines the theoretical safeguarding provided by international legal systems, showing how necessary is a more in-depth investigation of the practical application. And the Inter American Commission on Human Rights report on Violence and Organized Crime criticizes the state's punitive actions to children engaging in the criminal activity. These approaches do not specifically address the underlaying of children's vulnerability. The gap between the theoretical basis of children's rights and their practical implementation is clear here, as comprehensive, prevention focused policies are required to replace punitive measures.⁹⁰

Finally, the adoption of the Resolution 05/23 represents an advancement in recognizing children's participating rights within the Inter American Commission on Human Rights framework. However, the practical obstacles of the implementation of this resolution, particularly in resource – constrained and culturally diverse settings, underscore the disconnection between theoretical

⁸⁹ Inter-American Commission on Human Rights. Situation of Human Rights in Guatemala. 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

⁹⁰ Inter-American Commission on Human Rights. Violence, Children, and Organized Crime. 2015. <https://www.oas.org/en/iachr/reports/pdfs/violencechildren.pdf>.

recognition and practical application. This gap emphasizes the importance of policy evaluation and adaptation in order to promote children's agency successfully.⁹¹

Comparative perspectives from different regions of Central America can help to highlight these gaps. For example, both reports on child labor in Guatemala⁹² and Inter-American Commission on Human Rights' Regional Study on Violence highlight major impediments to successful policy implementation caused by systemic difficulties such as judicial corruption, resource limits, and logistical challenges. These similarities do highlight the importance of context – sensitive interventions that address both structural and urgent issues.⁹³ Highlighting the success stories, such as the improved labor inspections in Guatemala, highlights the beneficial effects of some certain policy initiatives, that can result in major gains in children's rights and agency, and can provide valuable lessons for other situations.⁹⁴

The IACHR's various reports and decisions underscore the significance of comprehensive, human rights-centered methods that address both immediate risks and the fundamental reasons of children's vulnerability. By connecting these pieces and including comparative analysis, success stories, longitudinal data, and targeted policy suggestions, the thesis seeks to establish actionable proposals for improving protective mechanisms for Central American children. This method protects human rights and strengthens their agency in the context of increasing harm and organized

⁹¹ Inter-American Commission on Human Rights, Resolution 05/23 on the Right of Children and Adolescents to Participation, January 16, 2024, accessed April 26, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/077.asp.

⁹² Inter-American Commission on Human Rights. Situation of Human Rights in Guatemala. 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

⁹³ Inter-American Commission on Human Rights. Violence, Children, and Organized Crime. 2015. <https://www.oas.org/en/iachr/reports/pdfs/violencechildren.pdf>.

⁹⁴ Inter-American Commission on Human Rights. Situation of Human Rights in Guatemala. 2021 Annual Report. Accessed May 25, 2024. <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Guatemala-en.pdf>.

crime, effectively bridging the highlighted gaps between theoretical frameworks and legitimate enforcement.

CONCLUSIONS

This last chapter of this thesis defines the key findings and insights gained from a comprehensive investigation of children's agency within the Inter American Commission on Human Rights (IACHR) framework, with a concentration on the region of Central America. The study did the examination of six key topics aimed for assessing the accomplishments of the Inter American Commission's strategies for the promotion and the protection of children's rights and their agency.

Key findings

Addressing Specific Vulnerabilities

The analysis indicated that the Inter American Commission on Human Rights acknowledges of the specific vulnerabilities that children in Central America face, including here issues like forced gang recruitment, child labor and a lack of access to education and healthcare. The case studies demonstrated how these variables significantly restricted children's agency. The Inter American Commission's efforts, particularly through targeted resolutions and reports, highlight the importance of comprehensive protective measures and rehabilitation programs. However, recurrent implementation issues highlight gaps that must be filled to improve the efficacy of these interventions.

Legal and Procedural challenges

The research conducted discovered significant legal and procedural issues in the IACHR's consideration of cases involving children. Despite the strong legal frameworks provided by international treaties such as the CRC and regional instruments such as the American Convention on Human Rights, real enforcement can frequently come insufficient due to systemic challenges such as judicial corruption, a lack of resources, and cultural differences. These problems impede

the successful implementation of children's rights and their ability to develop as fully independent agents.

Impact on Children's Rights and Agency

The Inter American Commission's decisions have had some various consequences on the promotion of children's rights and agency. While there have been important legislative achievements, a good example shows this – the increased punishment for child sexual exploitation in Guatemala, persistent concerns that are still present, such as the high prevalence of child labor show that some further efforts are required. The Inter American Commission on Human Rights' advocacy and recommendations have been critical in highlighting these challenges and pushing for systemic improvements, but translating these legal frameworks into tangible empowerment for children continues to be a work in progress.

Gaps between legal frameworks and their practical implementation

The research highlighted an important discrepancy between theoretical legal frameworks and practical execution. While regional and international treaties guarantee children's rights, their actual implementation is constrained by a variety of socioeconomic and structural challenges. The analysis highlighted also the necessity for specialized methods that take into account the specific circumstances in Central America.

RECOMMENDATIONS

1. **Comprehensive and Integrated Approaches:** Using comprehensive approaches that include health, education, justice, and social services will help to create a more conducive environment for child agency. These techniques should be context-specific, addressing both urgent and structural challenges.
2. **Empowering Children and Communities:** Policies should prioritize empowering children and communities by ensuring their involvement in the design and execution of programs that impact them. Providing tools and assistance to lessen reliance on child labor and other exploitative practices is critical.
3. **The improvement of International and Regional Cooperation:** The increased cooperation between international and regional organizations can more effectively address the cross – border concerns, as they were mentioned – migration and trafficking. The Inter American Commission on Human Rights can help to encourage such cooperation by ensuring that international norms are followed.
4. **The Ongoing Evaluation and Monitoring:** Lastly, the establishment of a continuing data collection and the impartial monitoring procedures is critical to do the tracking of the implementation and the efficacy of the current child protection policies. These systems should promote transparency and accountability while doing the adjustment for the evolving problems.

Future Research Directions

This thesis has proved a comprehensive analysis of the Inter American Commission on Human rights' role in promoting children's rights and agency in the region of Central America, however it also highlights the need for a continued and more in-depth research. Future studies should focus on the longitudinal assessments of the implemented policies and their real – world impacts on children and young people's lives. Additionally, by exploring the social, economic and cultural contexts in more details can provide further insights into how the best way is to tailor these interventions and adopt them for different local circumstances and their issues. This research is an ongoing process, and continuous efforts are necessary to fully realize the objectives of empowering and protecting the youngest ones of Central America.

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