

Study of legal frameworks supporting adolescent participation in Latin America and the Caribbean



Editorial team:

Altair Rodríguez Grullón, consultant
Daniel Abreu, technical review

Edition and Supervision: UNICEF Regional Office for Latin America and the Caribbean, Ana Maria Ortiz, regional communication officer; Luz Angela Melo, regional advisor for adolescent participation. Organización Iberoamericana de Juventud., Paul Giovanni Rodríguez. Acknowledgements and sincere thanks to Organización Iberoamericana de Juventud (OIJ), and to those who offered advice, contacts, case studies and comments to this study. UNICEF country offices contributed through their Adolescent Development focal points by revising each of their corresponding country charts.

Barbados

Elaine King, Lisa McClean Trottman

Brasil

Mario Volpi, Ludmilla Palazzo, Maria Estela Caparelli

Costa Rica

Rita Azar, Alejandro Vargas

Ecuador

Berenice Cordero, Consuelo Carranza, Alejandro Ponce

Guatemala

Juan Enrique Quiñonez, Julia Christina Noethiger, Parisa Nabili

Honduras

Hector Espinal,

Jamaica

Novia Condell

México

Javier Alvarez, Norma Rocío Ortega

Peru

Melva Johnson, Marilú Wiegold, Hugo Valverde

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UNICEF

United Nations Children's Fund
Regional Office for Latin America and the Caribbean
Ciudad del Saber
Building 102
PO Box 0843/03045 Balboa, Ancon
Panama, Republic of Panama
Tel. (507) 301-7400
Fax: (507) 317-0258
Web: <http://www.unicef.org/lac>

This report and other materials are available at www.unicef.org/lac. The analyses and concepts expressed in this document represent the points of view of the authors, and do not necessarily represent the positions of the United Nations Children's Fund.

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Study of legal frameworks supporting adolescent participation in Latin America and the Caribbean

Compilation and analysis of documentation collected in eleven countries
Barbados, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Peru and
Dominican Republic

March 2012

PREFACE

The UNICEF Regional Office for Latin America and the Caribbean presents this analysis, based on information collected in eleven offices in the region, in order to have a regional “snapshot” of the participation of children and adolescents in each country and to learn about the main laws, norms, regulations and other instruments that serve as a basis for their application, and that might provide a solid platform for outlining a strategy to support child and adolescent participation.

This study recognizes the participation of children and adolescents as a right and a general principle founded basically on Article 12 of the Convention on the Rights of the Child.

On this precept, UNICEF supports the active participation of children and adolescents in actions of advocacy and programming. UNICEF and its partners consider participation as an inalienable right that empowers children and adolescents, and makes them agents of their own development and change. It prepares them to make better decisions, and to become interested in the affairs of their immediate environment and their community. At the same time, when participating together with other children they learn tolerance and respect, to include and to be citizens that contribute to the construction of societies in peace, in a framework of human rights.

UNICEF’s Regional Office for Latin America and the Caribbean, in collaboration with the OIJ, wishes to promote initiatives for participation in its work programmes through its country offices. To this end, it is working to identify the legal frameworks that serve as foundations for participation, document practices whose positive results could prove replicable, and in a subsequent phase systematize the documentation on adolescent participation produced by the UNICEF country offices and the OIJ and to document legal frameworks of countries not included in this report.

This first product – with information on Barbados, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico and Peru – reflects important progress in various aspects of youth participation, and will serve to redouble advocacy efforts in those countries where duly structured spaces still are necessary for heeding the voice of children and adolescents in the region.

This information and the documentation collected in all the phases of this process will be at the disposition of partners and collaborators, in order to foster and unify criteria on adolescent participation in Latin America and the Caribbean, including the gender, equity, human rights and life-cycle perspectives.

We hope that the use of the data offered by this study helps to promote progress in making the principle and right to participation for youths in matters concerning them a reality, giving due importance to their opinions in function of the child’s age and maturity. At the same time we recognize and thank the country offices and colleagues in the UNICEF Regional Office and the Ibero-American Youth Organization for their contributions to the preparation of the present document.

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INTRODUCTION

The present report is the result of the analysis of the legal framework for the rights of adolescents – and particularly of adolescent participation – in eleven countries in Latin America and the Caribbean with UNICEF offices: **Barbados, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico and Peru.**

The primer referent for the report is the **Convention on the Rights of the Child (CRC)** adopted in 1989, which is the main international legal instrument signed by the greatest number of countries in the world, including the eleven evaluated in this study. The CRC recognizes the child as a subject of rights, and defines “child” as “every human being below the age of eighteen years” (Article 1), making no distinction between the different phases of the life cycle.

Specifically, Article 12 of the CRC establishes that every child has the right “to express those views freely in all matters affecting the child (...)”. According to the Implementation Handbook for the Convention on the Rights of the Child, “...*the International Committee recommends that the State Party regularly examine the degree to which the opinions of children are considered and their effects on policy, the execution of the programmes and on the children themselves*”. (Norway CRC/C/15/Add. 126, paragraph 25)¹

“Article 12 of the Convention on the Rights of the Child is important because it guarantees the child not only the right to express his opinions freely, but also the right to have his opinion heard and “duly taken considered”. “The participation of the child also is mentioned in other articles of the Convention. Furthermore, the Universal Declaration of Human Rights establishes that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media” (Article 19 and regardless of frontiers” (Article 19)².

Because participation includes different dimensions and may be recognized in innumerable settings, its recognition varies significantly from country to country. Therefore, this study will seek to identify both the common traits and the differences among the different bodies of legislation, as well as practices that could be replicable in the recognition of the diverse facets of participation.

Aside from analysing the legal framework for children and adolescents, the present analysis also incorporates a more succinct sketch of the **legal frameworks on the rights of youth**, taking as its point of reference the **Ibero-American Convention on the Rights of Youth**, the first international treaty to specifically recognize the rights of young persons³. This Convention considers young persons as those between 15 and 24 years of age, that is, it also benefits late adolescents (also referring to adolescents between the ages of 15 and 17).

¹ Manual de Aplicación de la Convención sobre los Derechos del Niño, edición diciembre 2004.

² Manual de Aplicación de la Convención sobre los Derechos del Niño, edición diciembre 2004.

³ Ver: <http://www.laconvencion.org/index.php?secciones/convencion>.

As an overview of the contents of the report: **Chapter I** presents a brief methodological description of the report, its scope and limitations. Chapter II develops the frame of reference on the scope of participation, while offering orientation to the elements considered in evaluating each country in accordance with the parameters of the **Convention on the Rights of the Child**. **Chapter III** begins the comparative evaluation, starting with the laws on children and adolescents currently in force and their main protection institutions for children's rights. It also includes a more general analysis of the main instruments and institutions for youth. In the **fourth and final chapter** the regulation of adolescent participation in legislation on children and adolescents in their different facets, settings and mechanisms is established, in each section stressing the legal provisions that come closest to the normative recommendations of the Committee on the Rights of the Child and the Inter-American Children's Institute. This chapter also includes the most important provisions on participation in the laws for youth and the laws on education.

Finally, a table with the most significant provisions on participation contained in the laws for children and adolescents in the eleven countries analysed throughout this document is annexed.



UNICEF TACRO/Karen Dertien

I. METHODOLOGICAL APPROACH

1.1. Methodological Description

The present report is prepared in response to the overall objective proposed by the UNICEF Regional Office for Latin America and the Caribbean: “To prepare a **study of the legal frameworks that support adolescent participation in a minimum of 10** of the 35 countries where UNICEF works in the region”. The study was performed in the months of November and December 2011 and covered eleven countries: **Barbados, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico and Peru**. The selection of countries was made by UNICEF, based on pre-defined selection criteria to guarantee representation of the different sub-regions: Andean, Caribbean, Central America and Mexico, and South America.

The study had the following **specific objectives**:

- To identify systematically, the legal instruments that frame the participation of children and adolescents in each selected country.
- To prepare a technical fact sheet for each country, systematizing the key information on the legal frameworks.
- To make a comparative analysis to show the principal characteristics of the legal frameworks and showcase good practices.

To achieve these objectives, the working methodology was based on an exhaustive search of secondary sources covering the main laws, decrees, regulations, national plans and other pertinent documents dealing with the rights of adolescents, and especially their right to participation. Simultaneously, the main categories of analysis for preparing the technical factsheets and systematizing the information

were defined and agreed upon, according to the guidelines provided by UNICEF. Finally, the technical factsheets were validated by a representative of each UNICEF Country Office and by representatives of the bodies responsible for overseeing the implementation of the policies on adolescent-youth participation.

1.2. Scope and methodological Comments

To ensure a detailed comparative analysis the laws for protection of children and adolescents were prioritized; in practically all the countries laws had been passed as a result of the legal restructuring that proved necessary to comply with the provisions of the Convention on the Rights of the Child. The constitutional provisions on the rights of adolescents and national plans for children and adolescents in the countries that had addressed them also were studied.

The present study also has included a more general analysis of the national legal framework in the area of youth (in those countries having youth laws or statutes), as well as provisions on participation in education laws.

1.2.1 Analytical categories

The comparative analysis made in the present report begins with a systematization of the different categories of analysis incorporated in the technical data sheets for each country:

1. General description of the country.
2. Legal framework for promoting the rights of adolescents:

- a) National Constitution, emphasizing the rights of children and adolescents and provisions on their participation.
- b) Law or Code for children and adolescents, setting forth its objective, the definition of the “adolescent person”, incorporation of the gender approach or

perspective, inclusion of vulnerable groups, etc.

3. Institution responsible for the implementation of the laws for children and adolescents, including the date of creation, relation to the law for children and adolescents, mandate, attributes, levels of autonomy and budget.
4. Provisions and mechanisms for adolescent participation in the law for children and adolescents, especially in the dimensions of participation (expression, opinion, information and association); the settings in which participation is performed (family, community, judicial-administrative, school, health, communication media, public policies, etc.); the participation mechanisms created in these settings; the inclusion of a perspective on gender and vulnerable groups in the participation mechanisms; and the provisions and mechanisms for young people's participation in legislation concerning youth and legislation concerning education.
5. National policies or plans in favour of the adolescent population, with particular emphasis on their provisions on participation.

The report's priority, however, is the analysis of the provisions and mechanisms for adolescent participation (that is, categories 2 and 4). The technical data sheets therefore include additional information that is additional and complementary to the present report.

1.2.2 Methodological approach to analysing legal frameworks

The evaluation of the legal frameworks began with the **Human Rights Based Approach** (HRBA), which is based on international human rights norms, the full recognition of the rights of children, men and women, and the States' fulfillment of the obligations assumed in the

human rights instruments signed by them (UNICEF, 2008^a)

In this regard, UNICEF has studied and promoted the implications of the use of the HRBA in legislative reforms, in the context of the ratification of the Convention on the Rights of the Child. For the present study, the use of this approach implied the incorporation of the following elements in the legal frameworks:

- a) Existing institutions for the protection of the rights of adolescents.
- b) Equity, protection and special consideration for vulnerable groups.
- c) The incorporation of a gender approach in legislation in favour of the adolescent population

With respect to the incorporation of a **gender perspective or approach**, this is a neuralgic component of HRBA that makes it possible to determine how legislation seeks to guarantee equality of rights and non-discrimination among boys, girls, adolescents, men and women "as it places special emphasis on women and girls as a marginalized group" (UNICEF, 2008a)

The analysis of the inclusion of a gender perspective or approach in the legal frameworks was done within the following parameters:

- Incorporation of gender or non-sexist language
- Incorporation of the principle of non-discrimination for gender reasons.
- Existence of clauses with discriminatory potential.
- Inclusion of provisions that consider the specificity of girls and adolescent women.

1.2.3 Methodological limitations

Several methodological limitations determining the nature and scope of the present study also should be mentioned:

- **Limitations of scope:**

Above all, the study is based exclusively on eleven countries with UNICEF offices in the region. UNICEF is interested in being able to

incorporate the other 24 countries in 2012, in order to analyse the complete panorama. On the other hand, the analysis is limited to normative provisions – in other words it does not look at processes of consensus and consultation for the passage of laws, or at their implementation.

- **Limitations based on the countries' policy and legal structure:**

For the Federal States (Brazil and Mexico) considerations of time and scope, limited the study's focus to national legislation.

Finally, it should be mentioned that the Caribbean countries – Barbados and Jamaica – have an Anglo-Saxon– or Common Law – legal system with a more atomized legislation than the other countries. The common law system does not operate on laws or “Statutes”, but incorporates the findings of the courts through so-called “legal precedents”⁴. However due to the complexity of the legal systems the sentences or findings (Case Law) that might serve to complement or expand the existing legislations of these two countries were not included in the analysis,



Photo: UNICEF Honduras/Griffin Flannery

⁴ Sentences handed down by the national courts regarding specific cases – UNICEF, 2008-.

“Children, including adolescents, must be enabled to exercise their right to express their views freely, according to their evolving capacity, and build self-esteem, acquire knowledge and skills, such as those for conflict resolution, decision-making and communication, to meet the challenges of life. The right of children, including adolescents, to express themselves freely must be respected and promoted and their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity ... We will strive to develop and implement programmes to promote meaningful participation By children, including adolescents, in decision-making processes including in families and in schools and at the local and national levels”

Resolution of the United Nations General Assembly S-27/2 “A World Fit for Children”, approved on 10 May 2002 (Paragraph 32).

II. FRAME OF REFERENCE FOR ADOLESCENT PARTICIPATION

To analyse the legal frameworks for participation, it is necessary to begin with the international normative framework from which they derive. This normative framework is founded on the International Declaration of Human Rights, and more specifically on the **Convention on the Rights of the Child**, as the main international instrument consecrating the rights of children and adolescents, and also on the **Ibero-American Convention on the Rights of Youth**.

In addition, recourse must be had to the main documents interpreting, deepening and expanding the articles of the CRC regarding the participation of children and adolescents, in order to identify the key elements for the analysis of the right to participation in national bodies of legislation.

2.1 International Legal Framework

During the intervening decades, different international instruments have provided substance to the participation of citizens in the main settings of political, economic and cultural life (recognizing the right of association and freedom of expression and access to information). Some important examples are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – in the framework of the United Nations System – and the Inter-American Convention on Human Rights – in the setting of the Inter-American System of Human Rights.

The **Universal Declaration of Human Rights**, proclaimed by the United Nations General Assembly in 1948, includes participation among its four guiding principles, in recognizing the right of all persons to “take part in the political, economic, social and cultural life of their country”. In its Article 19, it furthermore consecrates the right to seek and receive

information, and express opinions without interference because of them. At the same time, Article 20 recognizes the right to peaceful assembly and association, which is a fundamental component of the right to participation in public life.

On 20 November 1989, following 20 years of discussion, the United Nations General Assembly approved the **Convention on the Rights of the Child**. This document introduces a new paradigm for thinking about children, by defining the child as the subject of rights, consecrating participation as one of its guiding principles “...and avoid the continuation of criteria of a charitable and paternalistic nature in the way matters related to children are addressed.”⁵

In the CRC, participation is included in Article 12 as “the right to be heard” and is mentioned in all articles through Article 17. Paragraph 1 of Article 12 ensures for every child “who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. Paragraph 2 demands that the child be given the right to be heard in a legal or administrative procedure affecting him or her. The participation of children also is mentioned as a right in other articles of the Convention; for example Article 9.2 on the child’s right to be heard with respect to his or her place of residence, and in Articles 37 and 40, the child having the right to play an active part in legal procedures involving him or her.

The following articles complement and permit the effective implementation of the right to be heard, as incorporated in Article 12 of the CRC:

⁵ Implementation Handbook for the Convention on the Rights of the Child, December 2004 edition.

- Article 13, which reaffirms the right to freedom of expression including the freedom to seek, receive and impart ideas of any kind and through any medium;
- Article 14, which recognizes the freedom of thought and conscience;
- Article 15, proclaiming children's and adolescents' right to freedom of association and assembly; while
- Other articles establish the "consideration of his or her points of view in different situations at the social, family and school level." (Art. 9, 16 y 29).

According to the opinion of the **Committee on the Rights of the Child** (the body in charge of overseeing fulfilment of the provisions of the CRC and interpreting its meaning), the child's right to "**be heard**" recommends that the States Parties heed the obligation of revising or modifying their legislation to introduce mechanisms giving children and adolescents access to pertinent information and adequate support for having their opinions considered, and to procedures for denouncement, recourse or redress (Committee on the Rights of the Child, 2009).

Finally, reference should be made to the **Ibero-American Convention on the Rights of Youth** (CIJ – Spanish acronym) – approved in 2005 and valid since 2008 – the most important normative instrument in this area in the region of Latin America and the Caribbean, which has served as a foundation for legislation on youth developed in the past decade. This convention establishes that the age range for youth is between 15 and 24 years, making adolescents between 15 and 17 the bearers of rights under both the CRC and the CIDJ. This convention explicitly establishes the **right to the participation of youths** in its Article 21, complementing Article 18 which recognizes the freedom of expression, reunion and assembly.

2.2 Bases for analysis: scope of participation

To determine the scope of the different articles of the CRC related to participation, the present report begins with two key documents

interpreting and analysing its contents in depth. The first is **General Comment No. 12** on The Right of the Child to be Heard (20 July 2009). This Comment was issued by the Committee on the Rights of the Child, and due to its transcendence will provide the fundamental bases for this analysis of good practices in national laws, in the areas of participation.

The second is a regional document published by the Inter-American Children's Institute (IIN) published in May 2010, in the context of the twentieth anniversary of the CRC. It is entitled *Child Participation in the Americas*. Despite its lack of a legal nature, it proves useful as a widely accepted parameter of reference for the analysis for the different dimensions of participation.

Both the Committee on the Rights of the Child and the IIN enjoy great legitimacy on the theme of protection of the rights of children and adolescents – internationally and regionally, respectively – and in these documents they set forth the most critical elements to be incorporated in national legal frameworks with respect to the participation of children and adolescents

2.2.1 General Comment No. 12 (Committee on the Rights of the Child)

In 2006 the Committee on the Rights of the Child ("the Committee") held a "day of general debate" on the right of the child to be heard, to study the meaning and importance of Article 12 of the Convention on the Rights of the Child. It also evaluated the relation of this provision to other CRC articles, and identified good practices and priority questions that should be addressed to promote the enjoyment of this right. "General Comment No. 12" is the product of the mentioned Committee.

The General Comment considers that Article 12 rights treaty, since it focuses on the legal and social condition of the child who, on one hand, lacks the full autonomy of an adult but on the other, is a subject of rights.

The right of all children to be heard and taken seriously is one of the fundamental values of the Convention. **The Committee has considered Article 12 as one of the four general principles of the Convention, along with the right to non-discrimination, the right to life and development, and the paramount consideration of the best interest of the child, thus indicating that this article not only establishes a right in itself, but that it also should be taken into account for interpreting and respecting all the other rights.**

The main contribution of General Comment No. 12 to our analysis is that it describes some of the most important settings in which participation should be promoted: family; health; alternative foster home modalities; education and school; recreational; sports and cultural activities; work; situations of violence; the formulation of preventive strategies – in immigration and asylum situations – that are relevant for participation, and establishes the settings. These settings serve as a basis for systematizing our comparative analysis and for identifying the provisions most aligned with the mandate of the Convention on the Rights of the Child.

2.2.2. Frame of Reference for the Americas Region: dimensions

Since 2008, the **Inter-American Children's Institute (IIN)**, in collaboration with UNICEF and more than 13 countries in the region, has been organizing different regional forums and congresses in Mexico, Uruguay, Panama, Peru and Colombia, for implementing a process of defining a relevant conceptual frame of reference for the situation of children and adolescents in the Americas.

As a result of this process, in 2010 the IIN prepared a **Proposal for a Frame of Reference**

is a provision unprecedented in any human **in the area of child and adolescent participation**, an interdisciplinary document identifying and integrating conceptual tools, strategies, methodologies, techniques and experiences for the promotion and protection of the participation of children and adolescents. As the document itself states, “this is a document based on the real situation of the Hemisphere, with contributions from the participants, that **has the consensus of the States and is intended to become instrument for moving forward in the effective exercise of the right to participation**”.

Participation and its Dimensions

The Frame of Reference Proposal refers to the articulation of the **principle of participation** with the rights consecrated in the CRC, and provides a basis for talking of the “**dimensions of participation**”.

Expression

This refers to the right to express opinions freely (Article 12, CRC). It implies respect for the different forms of expression and the acceptance of children's and adolescents' language in the different phases of their development. It also is associated with the freedom of opinion, conscience and religion. (Article 14, CRC).

Information

This is the freedom to seek, receive and impart information of all kinds (Article 13, CRC). It is a right that requires the adult to provide information with respect for the child, taking his or her capacities into account. It is not only “telling”, but in providing whatever the child or adolescent needs to appropriate the information, understand it and use it for forming his or her own opinions. Care must be taken to guarantee the child or adolescent's best comprehension, but this does not justify a reduction in the quality of the information, or the distortion thereof.

Opinion

Opinion refers to the contents of the expression, in making pronouncements on the matters that concern the child or adolescent. It opens the space for inter-generational dialogs. The right to opine includes the right to be heard and have one's opinion respected. Listening implies an attitude of aperture on the part of the interlocutor, a commitment and a willingness to accept and recognize the interests and modalities with which the other expresses himself or herself.

Free association and assembly

This guarantees the right to socialization and communication, and opens the way to participation. It is expressed in spontaneous meetings, within groups of peers and organizational processes.

This analytical approach to the dimensions of participation can make a significant contribution to the definition of indicators and instruments for evaluating the degree of participation achieved in a specific space, be it at the scale of a project, an institution or a State.

Participation might be considered a process with different "moments": Access to information, the formation of an individual's opinion, and the possibility of expressing it to another who listens and takes it into account when a decision is made. **Participation includes all these dimensions, is fed by them, but at the same time it transcends them.**



UNICEF TACRO/Jesús Carrasco

III GENERAL ANALYSIS: LEGAL FRAMEWORKS FOR THE RIGHTS OF ADOLESCENTS

The present chapter proceeds to the comparative analysis of the general aspects of the legal framework for the rights of adolescents. From the constitutional framework and the principal aspects of laws on children and adolescents it draws the definition of adolescents, the existing institutions, etc. To a lesser degree, it also will refer to adolescent participation in the laws for youth.

3.1. Constitutional framework

The legal framework of any country begins with its political constitution, this being the supreme law for national legal order. That is why the adaptation of the legal framework to the international human rights instruments begins with the Constitution.

Since the 'Nineties a process of democratization has been underway in Latin America and the Caribbean that often leads to the approval of new national constitutions or the incorporation of reforms to the existing ones. These changes have brought with them the establishment of substantive constitutional frameworks in the area of human rights, in some cases including provisions on their hierarchy within the constitutional order, their direct application, and their incorporation into national legislation (UNICEF, 2005). Many countries also proclaim the rights of children and adolescents in their constitutional clauses on human rights, both generally and in specific settings (like education, health and labour) (UNICEF, 2005).

Of the eleven countries evaluated in the present study, nine incorporate at least one set of articles dedicated to the rights of children and adolescents. The only exceptions are Barbados and Jamaica, which only refer to the fundamental laws of all persons.

The contents of the constitutional precepts dedicated to children and adolescents vary

substantially from country to country, especially in terms of the scope and degree of detail and precision in the obligations of the State and the rights established. Some of the constitutions analysed dedicate chapters or complete sections to the rights of children and adolescents, while precisely enumerating their rights – as in the case of **Brazil, Ecuador and Honduras**. Others are limited to more generally establishing the protection of children and adolescents, while mentioning some rights and duties.

Those constitutions that have been in force for more than 25 years – that is, that were approved before the CRC – and that have not been substantially modified with respect to the rights of children and adolescents, tend to refer exclusively to children – that is, they do not mention adolescents – but without considering children as subjects of rights, but rather as objects of State protection; at the same time, they include the elderly, children, woman and/or persons with disabilities in a single category. This is the case of **Costa Rica** (1949) and **Guatemala** (1985). **Costa Rica** proclaims the right to protection of “the mother, the child, the elderly and the disabled ill”, **Guatemala** also dedicates an article to the protection “of minors and the elderly” (Article 51). Another constitution that contains this kind of provisions is Peru’s, which even though it was created after the ratification of the Convention on the Rights of the Child, is limited to proclaiming the duty of the Community and the State to especially protect “the adolescent, the mother, and the abandoned elderly” (Article 4).

3.1.1 The best interest of the child and comprehensive development

“The best interest of the child” is one of the guiding principles of the CRC, and must be “the base on which all efforts to reform national legislation, customs and practices are made” (UNICEF 2008).

TABLE 3.1 Constitutional Provisions on Specific Rights of Children and Adolescents	
Priority on the exercise of children and adolescents' rights	Brazil; Ecuador (the rights of children and adolescents prevail over those of the other persons)
Prohibition of child labour	Brazil, Guatemala, and Mexico (prohibition of work in children under 14) ; Dominican Republic (declares the prohibition of child labour to in the “national interest”); Honduras (prohibits persons under 16 from working, determines that those under 16 stay in school; and accepts only daytime work for persons under 17)
Prohibition of all kinds of exploitation of, or violence against, children and adolescents	Brazil; Ecuador; Dominican Republic and Honduras
Adoption of children and adolescents	Brazil; Guatemala
Exemption of penal responsibility for persons under 18	Brazil; Guatemala; Honduras (prohibits the incarceration of persons under 18)

While the majority of constitutions make reference to the rights of children and adolescents, only those of **Ecuador**, the **Dominican Republic** and **Mexico** expressly call for safeguarding this principle.

The Conventions of the **Dominican Republic** and **Ecuador** require the family, society and the State to give priority to “the best interest of the child” (“Article 45 of the Dominican Constitution) and to heed the mentioned principle (Article 44, Ecuadorian Constitution).

México was the latest country to incorporate the best interest of the child, including it in one of the first articles of a recent constitutional reform (12 October 2011). Its proclamation constitutes the most complete reference to this principle. The current Article 4 demands that the State guarantee the best interest of the child and ensure that this guides public policies for children: “In all decisions and actions by the State the best interest of the child shall be overseen and fulfilled, fully guaranteeing his or her rights [...] This principle shall guide the

design, execution, monitoring and evaluation of public policies concerning children”. (Article 4).

With respect to the **comprehensive development of the child, Colombia, Ecuador** and the **Dominican Republic** make express reference in their constitutions, to the duty of the family, society and the State to promote and guarantee the comprehensive development of children and adolescents and the “full exercise of their rights”. In the case of **Brazil**, although no mention is made of comprehensive development, reference is made to society’s participation in fulfilling the rights of children and adolescents.

Following the recent Constitutional reform, **Mexico** also makes reference to comprehensive development by establishing the right “to the satisfaction of his /her needs for food, health, education and healthy recreation for his or her comprehensive development”.

3.1.2 Other important provisions

As we emphasized previously, the rights of children and adolescents have been incorporated in different constitutions in different ways. **Honduras**, for example, goes beyond demanding that the “State, family and society” guarantee these rights, by establishing the express obligation of the communication media to “cooperate in the formation and education of the child” (Article 125).

The constitutions of Ecuador and Brazil require that the rights of children and adolescents be ensured as a priority.

Honduras, and **Ecuador**, demand priority treatment for children and adolescents in emergencies that require aid. In table 3.1 we show this and other specific clauses on specific rights of children and adolescents, recognized by some constitutions:

3.1.3. Exclusive provisions on adolescents and /or youth

Only the constitutions of the **Dominican**

Republic and **Colombia** make express and exclusive reference to the adolescent population (separately from children). **Colombia** states the adolescent’s right to “protection and comprehensive formation” (Article 45), while Article 56.3 of the Dominican Constitution proclaims adolescents to be “active subjects of the development process”, while demanding that the State, families and society create opportunities “**to stimulate his or her productive transit to adult life**”.

The case of **Brazil** also should be mentioned, since in 2010 that country’s constitution was modified to include the mandate for approval of a “Youth Statute” to establish the rights of Young Persons and a ten-year National Youth Plan (Article 227). Currently the Brazilian Congress is debating the bill of law for the Youth Statute, which would benefit youths-adolescents between fifteen and seventeen years of age, and in the corresponding definition and debate over which there has been an active participation of youth organizations and representatives.

- The Constitution of the Republic of **Ecuador** (2008) is the only one to include the express mandate of the CRC in the area of child and adolescent participation, in recognizing their **right “to be consulted in matters affecting them”**, and demanding that the State “**guarantee their freedom of expression and association” (Article 45)**. In breaking down the rights of children and adolescents, it also goes beyond the CRC in incorporating the right “**to social participation**”;
- The Constitution of the **Dominican Republic** (2010) requires that the State promote “**the active and progressive participation of children and adolescents in family, community and social life** (Article 56.2)
- The Constitution of the Republic of **Colombia**, although passed in 1991, incorporated at that moment the “free expression of opinion of children” (Article 44). It also makes express reference to the participation of young persons, demanding of the State and society “the active participation of youths in public and private organizations in charge of the protection, education and progress of youth” (Article 45)

a. Provisions on adolescent participation

Even though the majority of constitutions studied enumerate different principles and rights of children and adolescents, only in **Colombia, the Dominican Republic and Ecuador** were provisions on adolescent participation found (The latter two have the most recent constitutions of the group of countries studied).

Finally, it should be mentioned in this chapter that the Constitutions of **Ecuador and Brazil recognize the political participation of adolescents** older than sixteen, by conceding to them the optional right to vote⁶.

3.2 Legislative framework: Laws and Codes for children and adolescents

Article 4 of the CRC establishes that, in ratifying that instrument, the States must adopt “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”. The Committee on the Rights of the Child, in turn, has established in the General Comment No. 5 that to ensure full compliance with the provisions of the CRC there must be “a comprehensive review of all national legislation”. It also requires them to ensure that the articles of the CRC have legal effect in the national legal systems and exhorts them to incorporate the CRC into national legislation.

To meet these obligations, since the beginning of the ‘Nineties the countries of Latin America and the Caribbean have gone about implementing the process of adapting national legislation to the provisions of the CRC through laws or Codes for Children and Adolescents,” which for the first time introduce the Doctrine of Comprehensive Protection in the legal order of the States” (IIN, 2010). These Codes or laws tend to address a wide range of priority aspects for children and adolescents, including the principles of protection, their corresponding rights, and the obligations of the State, society and the family to guarantee these rights (UNICEF, 2008a).

In the specific case of the countries evaluated, except for Barbados⁷, all have a law or Code for Children and Adolescents, as indicated in Table 3.2 on next page.

The table also reflects the relation between the ratification of the CRC and the passage of each Law for Children and Adolescents, showing that in the majority of cases – seven out of eleven countries – the Law for Children and Adolescents was passed a decade or more after the ratification. The only exceptions are Brazil, Colombia, Costa Rica and Honduras. Colombia, and then Brazil, were the first of the evaluated countries to pass legislation on the rights of children and adolescents. Each promulgated its Code for Minors (in the case of Colombia) and Statute on Children and Adolescents (in the case of Brazil) before the ratification of the CRC – in 1989 and 1990, respectively.

⁶ The Brazilian Constitution (1988) establishes the optional (non-obligatory) vote for persons older than 16 and younger than 18 (Article 14 II c). In recognizing the enjoyment of political rights, the Ecuadorian Constitution (2008) establishes that “the vote will be optional for persons between sixteen and eighteen years of age [...]” (Article 62.2).

⁷ Given the absence of a Law for Children and Adolescents in Barbados, the following laws were reviewed: the Family Law Act of 1991; the Minors Act of 1985; the Education Act of 1985; the Protection of Children Act of 1990; the Sexual Offences Act of 1992; the Domestic Violence (Protection Orders) Act of 1992 and the Juvenile Offenders Act of 1998.

TABLE 3.2
Ratification of the Convention on the Rights of the Child and Legislation on Adolescent Rights

COUNTRY	DATE OF CRC RATIFICATION*	INSTRUMENT	DATE OF INSTRUMENT APPROVAL	Chronological order of approval of instruments for children and adolescents
BARBADOS	9 Oct. 1990	N/A	N/A	
BRAZIL	24 Sept. 1990	Statute on Children and Adolescents ⁸ (Law 8.069)	13 Jul. 1990	2
COLOMBIA	28 Jan. 1991	Code for Children and Adolescents (Law 1098)	8 Nov. 2006	1 ⁹
COSTA RICA	21 Aug. 1998	Code for Children and Adolescents (Law 7739)	6 Feb. 1998	4
ECUADOR	23 Mar. 1990	Code for Children and Adolescents (Law No. 100)	3 Jan. 2003	7
GUATEMALA	6 June 1990	Law for Comprehensive Protection of Children and Adolescents (27-2003)	4 Jun. 2003	8
HONDURAS	10 Aug. 1990	Code on Children and Adolescents (Decree No. 73-96)	5 Sept. 1996	3
JAMAICA	14 May 1991	Child Care and Protection Act	2004	10
MEXICO	21 Sept. 1990	Law for the Protection of the Rights of Children and Adolescents	29 May 2000	5
PERU	4 Sept. 1990	Law approving the new Code for Children and Adolescents (No. 27337)	2 Aug. 2000	6
DOMINICAN REPUBLIC	11 June 1991	Code for the protection of the Fundamental Rights of Children and Adolescents (Law No. 136-03)	7 Aug. 2003	9

* Source: United Nations Treaty Collection.

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

⁸ Translator's note: here and throughout this document every effort has been made to provide an accurate and authentically "English-sounding" version of the titles of the laws and codes cited. However, as there are various English translations of each one in existence, and generally no "official" one, whenever possible the translations presented here have been selected from those used by United Nations System agencies.

⁹ The first "Code for Minors" in Colombia was approved in 1989.

The majority of these laws respond to the CRC mandate to make children and adolescents subjects of rights instead of objects of protection (in Guatemala, Peru and especially Costa Rica the laws for children and adolescents transcend the vision that persists in their constitutional postulates, of children and adolescents as objects of protection and control). Also, the majority incorporate the Principles of the Best Interest of the Child and Non-discrimination (two of the guiding principles of the CRC)¹⁰

TABLE 3.3 Incorporation of the basic principles of the CRC in legislation for children and adolescents		
COUNTRY	Principle of the Best Interest	Prohibition of All Forms of Discrimination
BARBADOS	N/A	N/A
BRAZIL		X
COLOMBIA	X	X
COSTA RICA	X	X
ECUADOR	X	X
GUATEMALA	X	X
HONDURAS		
JAMAICA	X	
MEXICO	X	X
PERU	X	X
DOMINICAN REPUBLIC	X	X

The legislation also establishes other important principles, like the duty of prioritizing or guarantee of priority (as it is called in **Brazil**) or the principle of prevalence, preference or priority of rights (in the cases of **Colombia, Ecuador, Honduras and Mexico**) that implies primacy in the formulation of public policies, when receiving protection or attention from public or private services, in the setting of administrative or judicial acts or decisions and in the assignation of “public resources” (in the case of **Brazil** or **Mexico**). The **Dominican Republic** also incorporates this principle, calling it the “principle of absolute priority” and affirming the prevalence of the rights of children and adolescents “in any situation of conflict with other rights and legitimately protected interests” (Principle VI, Code for children and adolescents.)

¹⁰ The Committee on the Rights of the Child has established, as guiding principles of the CRC: the obligation of non-discrimination (Article 2, CRC); the best interest of the child “as a primary consideration for all measures concerning children (Article 3, CRC); the right to life, survival and development (Article 6, CRC); the right to express his or her opinion freely “in all acts concerning children (Article 12, CRC – we refer to this point in detail in Chapter IV. See: Committee on the Rights of the Child (2003). *General Rule No. 5 -CRC/GC/2003/5-*. November 25 2010. In <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/17/PDF/G0345517.pdf?OpenElement>

3.2.1. Definition of “adolescence”

Although the CRC does not offer concrete indications regarding the specific age or ages in which the child should acquire his or her rights, it does provide a framework of principles. By virtue of Article 12, the child capable of forming his or her own views has the right to express those views freely in all matters affecting him or her. Those views will be “given due weight in accordance with the age and maturity of the child”. The Convention emphasizes the importance of respecting the “evolving capacities of the child (see Article 5 and Article 14)”¹¹.

The majority of Codes and Laws for children and adolescents consider “adolescents” to be persons between 12 and 18 years of age (as detailed in the following table). Upon reaching the age of 18, they are considered adults and acquire full citizenship, so that the differentiation between childhood and adolescents does not make the latter a “specific legal category” (Krauskopf, 2000).

TABLE 3.4 Rango edades adolescentes en Leyes NNA	
COUNTRY	AGE RANGE
BARBADOS	<i>Legislation does not use the concept of “adolescent”</i>
BRAZIL	Between 12 and 18 (Article 2)
COLOMBIA	Between 12 and 18 (Article 3)
COSTA RICA	Between 12 and 17 (Article 2)
ECUADOR	Between 12 and 18 (Article 4)
GUATEMALA	Between 13 y 17 (Article 2)
HONDURAS	Between 12 and 18 (men) Between 14 and 18 (women) (Article 1)
JAMAICA	<i>Legislation does not use the concept of “adolescent”</i>
MEXICO	Between 12 and 18 (Article 2)
PERU	Between 12 and 18 (Article 1)
DOMINICAN REPUBLIC	Between 13 and 17 (Principle II)

¹¹Implementation Handbook for the Convention on the Rights of the Child, (Manual de Aplicación de la Convención sobre los Derechos del Niño, edición diciembre 2004).

The main exceptions in the age-group classification are **Guatemala** and the **Dominican Republic**, which consider adolescence to begin at the age of 13. Also, **Honduras** differentiates between men and women adolescents (with women beginning adolescence at 14 while men begin at 12), even though the Committee on the Rights of the Child has expressed its concern about that country's the use of "biological criteria of puberty" for defining the passage into adolescents in boys and girls. Finally, Jamaica and Barbados do not incorporate the concept of "adolescent", limiting themselves instead to the use of the terminology of the CRC (considering every person under 18 as a boy or a girl).

With some exceptions that will be mentioned throughout the report, the laws for children and adolescents tend not to dedicate special sections or prerogatives for the exclusive benefit of adolescents (that is, they make no distinction by age group). However, some of their provisions do apply almost exclusively to adolescents – mainly the provisions regarding working adolescents and those violating the law. Other, specific provisions also apply especially to the adolescents, including the minimum ages permitted for situations like leaving school and contracting marriage – which the same as with employment, tends to be 14 years. (UNICEF, 2005a).

3.2.2 Gender approach and vulnerable groups

As mentioned in the methodological clarifications, different elements were studied in order to analyse the incorporation of a gender perspective. Around half of the countries analysed include **gender language** in their laws or codes for children and adolescents, as well as some clause on the **principle of non-discrimination** – including for reasons related to gender. The inclusion of gender language was especially noticeable in the laws of **Colombia, Costa Rica, Guatemala, Mexico** and the **Dominican Republic**. Costa Rica mentions "**persons that are minors**", while the rest use the term "girls, boys and adolescents". The laws of these countries, along with **Peru**, also include an express clause prohibiting any kind of discrimination, including for reasons of gender.

Beyond these two elements, only a few countries **incorporate provisions pertinent to gender analysis**, that consider the vulnerabilities and kinds of discrimination facing girls and female adolescents in their conditions as women. For example, **Colombia, Mexico** and the **Dominican Republic** incorporate clauses alluding to overcoming traditional gender roles and incorporating a gender perspective:

- **Colombia's** Code for Children and Adolescents (2006) includes a specific clause on the incorporation of the "**gender perspective**" in the legislation, requiring that it be taken into account when applying the Code for Children and Adolescents, "in all areas where boys, girls and adolescents are involved, in order to achieve equity" (Article 12).
- In **Mexico**, the Law for the Protection of the Rights of Children and Adolescents (2000) includes an article that demands the overcoming of gender roles and prejudices, and expressly obligates the State, family and society to promote and stimulate an egalitarian development of girls, boys and adolescents with the duty of combating or eradicating, from the earliest age, the customs and prejudices that tend to foster a pretended superiority of one sex over the other". (Article 18).
- In the **Dominican Republic**, the Code for the Protection of the Fundamental Rights of Children and Adolescents consecrates, as part of Principle VIII, the "**common and equal**" **responsibilities and obligation of fathers and mothers "with regard to the care, development, education and comprehensive protection of their sons and daughters"** and as part of this Code incorporates the right of pregnant women to claim food for the as yet unborn child, while calling for the strengthening of family planning and maternal and paternal responsibility programmes (Article 30).

Another important aspect for gender analysis is contribution to disseminating the problem of pregnancy among girls or adolescents and protecting them in the laws of some countries. **Costa Rica, Ecuador** and the **Dominican Republic** prohibit schools from applying discriminatory measures because of an adolescent's pregnancy or maternity. Ecuador also requires public authorities to guarantee care for them during pregnancy and childbirth (Article 25). Finally, Honduras' Code on Children and Adolescents also emphasizes protection for working or law-breaking "girls"¹² that are in a state of pregnancy or are nursing mothers". (Articles 116 and 127).

Costa Rica's Code for the Protection of Children and Adolescents is the one that stands out most clearly for the broad protection it provides for pregnant adolescents in the settings of economics, health and education under the responsibility of different institutions. (This includes the prohibition of pregnancy-related sanctions in schools, and support to keep adolescents that are pregnant or mothers in school). Also interesting is the clause demanding non-discrimination because of gender in the school environment, and very especially the clauses calling for setting up education programmes and policies on sexual and reproductive health and gender violence.

Beyond the mentioned provisions, no other legislation incorporates mechanisms for actively promoting equality – for example, through non-sexist education – or places particular emphasis on girls and adolescent women in the settings of health, education, etc.

3.2.3. Institutions for the protection of children's and adolescents' rights

All the countries analysed have one or several institutions and organizations responsible for guaranteeing the rights of children and adolescents, both administrative and advisory. Also, the laws in half the countries call for the creation of a system for "protection" or "guarantee" that includes the creation of an institutional structure at the different levels (national, municipal, etc.) and State powers (executive and judiciary)¹³.

While the formulae for the structuring of these systems vary from country to country, they tend to be comprised of organizations for setting public policies at different levels, institutions in charge of overseeing the fulfilment of the rights of children and adolescents (like the offices of the ombudsman for children), children's courts, children's ombudsmen bureaus, and others.

Nonetheless, it is noteworthy that only in Ecuador and Guatemala, do the laws for children and adolescents expressly create the main governmental institutions in the area of children and adolescents: the Council and National Commission for Children, respectively. The case of Brazil also stands out, because while its Statute on Children and Adolescents calls for the creation of the National Council on Children and Adolescents, its creation required a subsequent law establishing its faculties and structure. In the rest of the countries the child and adolescent rights protection institutions have been established by special laws (as in **Costa Rica** and **Colombia**) or presidential decrees (as in **Mexico, Honduras** and the **Dominican Republic**).

¹² Although the term "girl" is used, it refers to adolescents, given that it is prohibited for persons under 14 to work (Article 120, Code on Children and Adolescents of Honduras, 1996)

¹³ This is the case of **Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador and Peru**. **Mexico** has not formally created a protection system, but does delegate to the Federation, Federal District, states and municipalities, the obligation to establish institutions "for a better defence and protection of children and adolescents at the national level, which will be "specialized instances" with trained personnel (Article 48).

Another interesting element is that, in many of the countries, the main family institutions predate the laws and codes for children and adolescents: this is the case of the **Colombian** Family Welfare Institute, **Costa Rica's** National Children's Board of Costa Rica (PANI), the National System for the **Comprehensive Development of the Family in Mexico**, the **Ministry of Women and Social Development in Peru** and the National Council for Children and Adolescents (CONANI) in the **Dominican Republic** – although in the case of Peru and the **Dominican Republic** the laws for children and adolescents redefine the functions of these institutions. This is shown in Table 3.5:

TABLE 3.5 Institutions in charge of overseeing child and adolescent rights			
COUNTRY	Institution	Creation date	Law creating it (if not created by the law for children & adolescents)
BARBADOS	Child Care Board	1969	N/A
BRAZIL	National Council on the Rights of Children and Adolescents (CONANDA)	1991	Law 8.242 (12 Oct. 1991)
COLOMBIA	Colombian Family Welfare Institute	1968	Law 75/68 (Dec. 1968)
COSTA RICA	National Children's Board	1930	Organic Law 7648 (1996)
ECUADOR	National Council on Children and Adolescents	2003	Code for Children and Adolescents
GUATEMALA	National Commission on Children and Adolescents	2003	Law for the Comprehensive Protection of Children and Adolescents
HONDURAS	Honduran Institute of Children and the Family	1997	Decree 199-97
JAMAICA	Child Development Agency	2004	N/A
MEXICO	National System for the Comprehensive Development of the Family (SNDIF).	1997	Decree of 13 January 1997
PERU	Ministry of Women and Social Development	1966	29 October 1966 (name changed in 2002)
Dominican Republic	National Council for Children and Adolescents (CONANI)	1978	Executive Power Decree No. 426

The **mandate** of most of these institutions is to make the rights of children and adolescents effective, and to define and oversee the application of the national policies on children and adolescents – in the case of those that are advisory in nature -- or to foster the healthy development of children and adolescents and guarantee or provide them with protection and care – for those that are administrative.

With respect to the level of autonomy of the institutions, in six of the countries evaluated the institutions are **autonomous or decentralized** in nature, both functionally and budgetarily, with their own legal patrimony. In the rest of the cases the institutions are direct dependencies of the office of the President of the Republic (National Commission on Children and Adolescents of Guatemala and the **Secretariat and National Council for the Promotion of the Rights of the Child** in Brazil), or else are under a Ministry (the Child Care Board in **Barbados** and Jamaica's Child Development Agency – although the latter is an “executive agency” that is semi-autonomous in nature). Only in the Case of **Peru** is the responsible institution a ministry (Ministry of Women and Social Development), which has a Directorate of Children and Adolescents – the DNNA).

For the purposes of this study the main element to be stressed regarding the institutions for children and adolescents is that in no case was it possible to identify, among their competencies or attributes, the mandate to promote the different forms of adolescent participation. Even so, they indirectly are obligated to do so, since they must ensure the fulfilment of the rights of children and adolescents and/or define and oversee compliance with the national policies for children and adolescents.

3.3. National legislation and youth institutions

In demarcating the main normative instruments comprising the legal framework of adolescents' rights, we must not forget the ones that guarantee the comprehensive development of youth.

3.3.1 Period considered “youth”

As an age category, youth usually covers the period between 15 and 24 – as established in the Inter-American Convention – or between 15 and 29 years of age (although, as we shall see further along, it can be extended to the age of 35) (Davila, 2004).

Only three countries – **Barbados, Brazil and Peru** – coincide in including the population between 15 and 29 in the “youth” cohort. **Jamaica** also establishes the departure point at fifteen years, but up to the age of 24. **Colombia** and **Guatemala** begin at 14, but the first goes up to the age of 26, and the second up to 29. According to an ECLAC study – OIJ recognizes youth up to 30 years. Three countries consider persons as young as 12 to be youths (**Costa Rica, Honduras and Mexico**), that is, their regulations cover the entire adolescent population. **Ecuador** is the only country that does not include adolescents in its classification of youths (given that its Law for Youth considers persons from the age of 18 on to be youths). Finally, the **Dominican Republic, Honduras, Costa Rica (35 years) and Guatemala (30 years)** are the only ones that extend the period of “youth” to 35 and 30, respectively.

3.3.2. National legislation and youth institutions

Of the eleven countries studied, only five have national laws for youth: Colombia, Costa Rica, Ecuador, Honduras, and the Dominican Republic. Two others – Brazil and Mexico – have passed laws that exclusively create youth institutions: the Mexican Youth Institute and the National Youth Council in the case of Brazil – although in the latter the Legislature is in the process of approving a National Statute on

Youth. Although they do not have a law, Peru and Guatemala have regulatory instruments in this field, issued by the office of the president of the republic.

Table 3.6 shows the main instruments, while indicating the age cohorts demarcating “youth” and reflecting the absence of common categories:

TABLE 3.6 National instruments for youth and definition of “youths”			
COUNTRY	YOUTH INSTRUMENT	YOUTH LAW DATE OF PASSAGE	YOUTH COHORT AGES (YEARS)
BARBADOS	N/A	N/A	Between 15 and 29 [^]
BRAZIL	Law 11129 , creating the National Youth Law	30 June 2005	Between 15 and 29
COLOMBIA	Law 375	4 July 1997	Between 14 and 26
COSTA RICA	General Law on Youth	20 May 2002	Between 12 and 35
ECUADOR	Law for Youth	24 Oct. 2001	Between 18 and 29
GUATEMALA	Governmental Accord 357-96	26 Sept. 1996	Between 14 and 29 [*]
HONDURAS	Framework Law for the Comprehensive Development of Youth	17 Jan. 2006	Between 12 and 30
JAMAICA	N/A	N/A	Between 15 and 24 ^{**}
MÉXICO	Law on the Mexican Youth Institute	6 Jan. 1999	Between 12 and 29
PERÚ	Decree 061-2005-PCM (Guidelines for the National Youth Policy)	7 Aug. 2005	15 to 29
DOMINICAN REPUBLIC	General Law on Youth 49-2000	July 2000	Between 15 and 35

[^]According to the “Draft National Youth Policy” (2011)

^{*}Established in Law No. 11129 (2005), creating the National Youth Council.

^{*}According to the National Youth Policy 2005-2015

^{**} According to the National Youth Policy (2004).

Each of the countries has some institution in charge of defining and implementing the laws or regulations on youth, with the exception of Barbados. This shows that many countries have not waited for the approval of a youth law to create an institution responsible for the promotion of this population’s rights. The following table presents the youth institutions and the regulations that create them (see table 3.7 on the following page:

TABLE 3.7 National Youth Institutions				
COUNTRY	Institution/Institutions	Date Created	Created by Youth Law	Creating regulation
BARBADOS	N/A	N/A	N/A	N/A
BRAZIL	National Youth Council (CONJUVE) / National Secretariat of Youth	30 June 2005	No youth law	Law No. 11.129, creating the National Youth Council (2005)
COLOMBIA	“Young Colombia” Presidential Programme	8 May 2000	No	Decree 822 (2000)
COSTA RICA	Vice Ministry of Culture and Youth	20 May 2002	Yes	General Law on the Young Person No. 8261 (2002)
ECUADOR	National Council of Youth Policies / National Youth Institute	24 October 2001	Yes	Youth Law (2001)
GUATEMALA	National Youth Council	26 September 1996	No	Governmental Accord 357-96 and Decree 114-97 of the Congress of the Republic
HONDURAS	National Youth Institute	17 January 2006	Yes	Framework Law for the Comprehensive Development of Youth (Decree 260-2005)
JAMAICA	National Centre for Youth and Development	2000	No youth law	Could not be identified
MEXICO	Mexican Youth Institute	6 January 1999	No youth law	Law for the Mexican Youth Institute (1999)
PERU	National Secretariat of Youth (SENAJU)	2008	No youth law	Supreme Decree No. 001-2008-ED
DOMINICAN REPUBLIC	Ministry of Youth	July 2000	Yes	General Youth Law (2000)

*Under the Ministry of Culture, Youth and Sports.

For **Brazil**, **Costa Rica** and **Ecuador** the table shows both the advisory bodies and the institutions in charge of implementing the approved laws or public policies. Also, in some cases, the responsible institution was not created by law despite its existence. This is the case of **Colombia**, where the institution responsible at the administrative level – the Young Colombia Presidential Programme, was created by decree.

3.3.3. Institutional attributions and the right to participation

Unlike the laws and codes for children and adolescents, the youth laws or laws creating youth institutions do expressly establish mechanisms for promoting different kinds of youth participation. Pertinent provisions of this sort were found in the laws of Brazil, Colombia, Costa Rica and Honduras:

→ **National Youth Council, Brazil.** The authority to “foster exchanges among national and international youth organizations “(Article 9, Law 11.129, which establishes the CNJ, 2005)

→ **Young Colombia Presidential Programme.** One of its major attributions is “to promote training for youth participation in the decisions affecting the Nation’s economic, political, administrative and cultural life” (Article 3, Decree No. 822 of 2000).

→ **National Council on Public Policy for Young Persons, Costa Rica.** One of its objectives is “to support and encourage the participation of young persons in activities promoted by international and national organizations related to this sector (Article 12d, *General Law for the Young Person*, No. 8261).

→ **National Youth Institute, Honduras.** As part of UNICEF’s mandate, Costa Rica establishes “fostering the active and permanent participation **of youths in their own development and that of the Nation**” (art. 1, Ley Marco para el Desarrollo Integral de la Juventud, 2006).



IV. ANALYSIS OF ADOLESCENT PARTICIPATION

The previous chapter presented the general framework of the rights of adolescents. While some clarifications were made regarding the right to participation in the constitutional sector and in the mandates of the institutions most important for the present study, this chapter will break down the way the evaluated countries express the right to participation in its different dimensions and settings, and what mechanisms they establish to make it viable.

The analysis is based mainly on the laws for children and adolescents that have been discussed previously, although a less detailed section on relevant provisions in the laws for youth and the laws for education also is incorporated.

At the end of each section, the comparative analysis of participation in the laws for children and adolescents underscores the provisions that best consecrate the rights being analysed. The selection of these “**outstanding provisions**” on adolescent participation take as their principal reference **General Comment No. 12** of the **Committee on the Rights of the Child** and the regulatory recommendations of the **Inter-American Children’s Institute**, discussed in chapter II.

The identification of the outstanding provisions was based on two criteria: on one hand, the settings and mechanisms for participation that only one or two countries incorporate (for example, the case of participation in the communication media, which only **Guatemala** recognizes explicitly); on the other hand, in the settings that are in fact addressed by the majority of the countries (as in the case of participation in the legal system) selecting the provisions that come closest to the regulatory recommendations of the Committee on the Rights of the Child and/or the Inter-American Children’s Institute. In other words, those legal provisions that most clearly and amply recognize

the participation of children and adolescents in a determined sector are emphasized.

4.1 Provisions for adolescent participation in legal frameworks for the protection of children and adolescents

The Inter-American Children’s Institute (2010) has considered the right to participate as the centre of the new paradigm of the CRC, even though the Convention itself does not explicitly establish the right to participation as such. The same year that the CRC was adopted (1990), Brazil included **the right to participate** in its Statute on Children and Adolescents. In other words, from the very moment of the adoption of the CRC in this continent, the process of readjustment of the national legal frameworks to incorporate the rights of children and adolescents was begun.

Of the countries analysed, five recognize participation explicitly as a right in itself: Colombia, Ecuador, Honduras, Mexico and the Dominican Republic. A sixth country, Brazil also incorporates participation succinctly as an “aspect” of the right to freedom.

Ecuador and **Mexico** dedicate an entire chapter to it. **Mexico’s** Law for the protection of the rights of children and adolescents itemizes the different dimensions of participation in a section entitled “Concerning the right to participate”; and **Ecuador’s** Code for Children and Adolescents discusses their “Rights to participation”. In one Article, **Colombia** recognizes the right to participate and the different settings where both the State and society have the obligation to **foster the “active participation”** of children and adolescents. For its part **Honduras** recognizes participation as a right within the sector of culture and also as one of the

freedoms enjoyed by children and adolescents in the family and community environment. Finally, the **Dominican Republic**, in addition to including participation as a right, links it to the “progressive incorporation into **active citizenship**” (Article 17).

Of the countries that do not explicitly include the participation of children and adolescents as a right, three make reference to it in specific settings and provisions: **Costa Rica** recognizes it within the settings of education and recreation; **Guatemala** refers to the obligation of the communication media to promote “the direct participation” of children and adolescents in programmes or editions focused on them, while **Jamaica** only refers expressly to the participation of children and adolescents in establishing the right to social and recreational participation in foster care centres.

Outstanding Provision – Explicit recognition of the Right to Participate

Colombia: Code for Children and Adolescents – Article 31

Colombia recognizes both the right of children and adolescents to participate, and the settings in which this right should be exercised and the conditions under which said participation should be promoted. Article 31 of the country’s Code for Children and Adolescents affirms that, “For the exercise of the rights and freedoms consecrated in this Code, boys, girls and adolescents have the **right to participate** in the activities within the family, the schools, associations, state, departmental, district and municipal programmes of interest to them [...]. This article also requires both the State and society to foster the “**active participation**” of adolescents “in public and private organizations in charge of the protection, care and educating of children and adolescents”.

4.1.1. Breakdown of the dimensions of participation

As discussed in the frame of reference, the **Inter-American Children’s Institute** has identified different “dimensions of participation”, in accordance with the relevant articles of the Convention on the Rights of the Child. In the following section we make a comparative analysis of each of the four dimensions: **opinion, expression, information, and freedom of assembly and association**.

a. Recognition of the right to express a view, and have it considered

The majority of the countries analysed in some way recognize the right of children and adolescents to express a view. **Brazil** and **Costa Rica** include it as part of the right to freedom. These two countries, together with the **Dominican Republic, Colombia, Mexico** and **Honduras** incorporate this right with no reference to the principle of maturity

For example **Honduras’** Code for Children and Adolescents affirms the “freedom of expression of thought (such) that their opinions are considered in an environment of respect” (Article 28c). **Mexico** goes further, recognizing the right of children and adolescents “to exercise their capacities of opinion, analysis, and critique and to present proposals in all the settings in which they live” (Article 39).

The Code for the Protection of the Fundamental Rights of Children and Adolescents of the **Dominican Republic**, for example, recognizes the right to freely express their opinion, be heard and taken into account in more than six settings: State, family, community, social, school, cultural, sports and recreational (Article 16). This article also emphasizes the administrative and legal settings, by adding that “the personal and direct exercise” of said right, “especially in all administrative and legal proceedings, leading to a decision that is tied to the guarantee of his or her rights and interests”.

Some countries recognize the right of children and adolescents to express their view in specific contexts: Barbados recognizes it in the sector of justice, while Peru and Jamaica, in addition to justice, recognize it in the family, recreational and cultural areas, respectively. **Jamaica's** Child Care and Protection Act also refers specifically to the right of children in foster care centres or in detention to be consulted and express their opinion, recognizing their right "to be consulted, and according to the abilities of the child, to express their views regarding significant decisions affecting them (Section 62b).

Ecuador is the only country to go beyond the right to "be heard", incorporating the right of all children and adolescents **to be consulted "in all matters affecting them** (Article 61 of the Ecuadorian Code for Children and Adolescents). This provision adds an important clarification "[...] **No child or adolescent may be obligated or pressured in any way to express its opinion**".

To have their opinion taken into consideration although all the countries recognize the right to express themselves, not all unequivocally affirm that their opinion will be considered. Only Colombia, Honduras, Jamaica and the Dominican Republic establish this right in a comprehensive way.

Some countries condition this right on the age and maturity of the subjects. For example, the Law for the Comprehensive Protection of Children and Adolescents of the Republic of **Guatemala** requires that the opinion of the children and adolescents be taken into account **"in function of their age and maturity"** (Article 5). Finally, **Ecuador's** Code for Children and Adolescents establishes that for the opinion to be taken into account, "his or her age and maturity" should be considered (Article 61). Similarly, the Child Care and Protection Act of **Jamaica** adds, that if "the child is of sufficient age and maturity so as to be capable of forming his or her own views [...] those **views are to be given due weight in accordance with the age and maturity of the child.** (Section 2g). **Barbados**, in turn, limits the exercise of this right according to the "principle of maturity"; concretely, the Family Law Act establishes that "beginning at the age of 16 years the Courts

have the obligation of taking the adolescent's opinion into consideration" (Chapter 214, Section 43). However, a legal precedent has been established in accepting the participation of an adolescent of 14 in a custody case¹⁴.

b. Freedom of expression

Only five countries explicitly recognize the right to freedom of expression. **Brazil** and **Honduras** define it as one of the fundamental liberties. **Ecuador** establishes it a part of the freedom of conscience, while the **Dominican Republic** and **Mexico** include it in the provision of the right to express an opinion. The latter, in its **Law for the Protection of Children and Adolescents**, disposes the "right to exercise their capacities of opinion, analysis and critique" and "to present proposals in all areas [...] be they the family, school, society or any other, with no other limitations than those established by the Constitution and dictated by respect for the rights of third parties" (Article 39). The rest of the countries do not clearly establish this right

c. Right to information

Four of the five countries proclaiming the freedom of expression of children and adolescents, also recognize the right to information without restriction: **Mexico**, **Ecuador**, **Costa Rica**, **Brazil** and the **Dominican Republic**. The Code for the Protection of the Fundamental Rights Protection of Children and Adolescents in the **Dominican Republic** indicates that "all boys, girls and adolescents have the right to receive, seek, and

¹⁴ It is important to emphasize that a legal precedent has been established permitting an adolescent of 14 to participate in a custody case (*Haloute v. Adamira*. Unreported, No. 233 of 1989 Barbados High Court Judgments).

use all types of information that are in accordance with their development, and to select freely the medium and the information they receive (Article 27). The Code for the Protection of Children and Adolescents of **Costa Rica** recognizes the right of children and adolescents to “obtain information, regardless of its source and mode of expression, especially that which promotes their social, spiritual and emotional welfare and their physical and emotional health”. Brazil also recognizes the right to information, taking into consideration the principle of maturity; and Ecuador restricts it to the limitations deriving from the exercise of parental custody (Article 45 of the Code for Children and Adolescents).

Other countries like **Peru, Guatemala, Colombia** and **Jamaica** recognize the right to information in specific areas or situations. **Peru** establishes it for situations of internment so that the adolescent can have access to information from the social media (Article 240 of the Code for Children and Adolescents). **Guatemala** recognizes this right in special cases, specifically children and adolescents with disabilities, during the execution of sanctions against indigenous adolescents as a **trial** guarantee of “receiving clear and precise information in the child’s mother tongue, regarding the meaning of each of the legal proceedings being implemented in his or her presence, as well as the content and reasons for each of the decisions”. (Article 116 of the Law for the Comprehensive Protection of Children and Adolescents). **Colombia** and **Jamaica** establish it in specific areas like the communication media and the legal areas, respectively.

Finally, **Honduras** considers it as part of the freedom of expression, recognizing “the possibility of seeking, receiving and disseminating information, investigations and ideas through any licit means (Article 28 of the Code for Children and Adolescents).

d. Right to/freedom of association

Freedom of association is recognized clearly and independently in the laws of three countries: **Colombia, Honduras** and **Costa Rica**. The Code for Children and Adolescents of Honduras recognizes the freedom “to associate, assemble and manifest oneself publicly; as long as the ends pursued are licit and harmonious with morals and good customs” (Article 28d). For its part, Colombia’s Code for Children and Adolescents establishes the “right of assembling and associating for social, cultural, sports, recreational, religious, and political or any other purpose, with no other limitation than those imposed by law, good customs, physical or mental health and the well-being of the minor”. It also specifies that said right includes “forming part of associations, including their directive bodies, and promoting and forming associations comprising children and adolescents”. (Article 32)

The case of Costa Rica is particularly relevant to the present study, since Article 18 of the Code for the Protection of Children and Adolescents incorporates an express distinction between children and adolescents in this area, establishing differentiated and progressive rights according to the age cohort. This article affirms that “every person that is a minor shall have the right to associate freely with other persons for any licit purpose, except for political purposes and those that are only and exclusively for profit. In the exercise of this right he or she may: Associate with each other (other minors) or with adults. In this latter aspect, **persons under twelve years of age may take part in the deliberations but only with the right to speak. Adolescents shall have the right to speak and vote, and may be members of the directive bodies [...] Adolescents older than fifteen years may form, inscribe and register associations like those authorized in this article and carry out the acts strictly related to these purposes.** In them, they shall have the right to speak and vote, and may be members of the directive bodies [...]”

Three other countries refer with less precision and extent to the freedom of association. **Ecuador** and **Mexico** establish the right to free association in connection with the freedom of assembly. For example, **Mexico’s** Law for the Protection of Children and Adolescents” establishes in its Article 42 that “children and adolescents have the right to assemble and associate. The laws must provide whatever is necessary so that they may exercise it with no other limits than those established by the Constitution”. Finally, **Brazil** only contemplates the right to association in the school environment, establishing the right to “organization and participation in student organizations” (Article 53 of the Statute on Children and Adolescents). The rest of the countries do not include the right or freedom of association in their legal frameworks.

The following table summarizes and systematizes the main findings of this section, in accordance with each one of the articles of the Convention on the Rights of the Child. **It shows that the most common provision is the one that, in consonance with Article 12 of the Convention, establishes the right of children and adolescents to express their view in the matters affecting them.** However, only seven countries – of the eleven evaluated – specify the obligation for the view of the child or adolescent to be taken into consideration. It also is important to note that the other dimensions of participation, like the right to information and freedom of expression, are recognized by at least half the countries.

TABLE 4.1					
Recognition of the dimensions of participation and related rights					
COUNTRY	Right to express his/her view in matters that affect him/her (Article 12, CRC)	To have his/her opinion taken into consideration	Freedom of expression (Article 13, CRC)	The right to information (Articles 13 and 17, CRC)	Freedom Of Association (Article 15, CRC)
BARBADOS	Partial	Yes	No	No	No
BRAZIL	Yes	No	Yes	Yes	Partially
COLOMBIA	Yes	Yes	No	No	Yes
COSTA RICA	Yes	No	No	Yes	Yes
ECUADOR	Yes	Yes	Yes	Yes	Yes
GUATEMALA	Yes	Partially	No	Partially	No
HONDURAS	Yes	Yes	Yes	Yes	Yes
JAMAICA	Yes	Yes	No	No	No
MEXICO	Yes	Yes	Yes	Yes	Yes
PERU	No	No	No	No	No
DOMINICAN REPUBLIC	Yes	Yes	Yes	Yes	Yes

Outstanding Provision – Dimensions of Participation

Ecuador: Code for Children and Adolescents -- Chapter V

Mexico: Law for the Protection of Children and Adolescents – Title II, Chapter XIII

Ecuador and **México** are the only countries that dedicate a complete chapter in their legislation exclusively to the rights to participation; they also are the only ones that unequivocally establish provisions on all the dimensions of participation analysed. Ecuador includes the additional provision of the right to be consulted, and while **Honduras** and the **Dominican Republic** also cover all the dimensions, they do so in a less precise manner.

In the case of **Ecuador**, the Code for Children and Adolescents dedicates its Chapter V to “**Rights to Participation**”, including Articles: 59 on the “right to freedom of expression; 60, on the “right to be consulted”; 61 on the “right to freedom of thought, conscience and religion; 62 on the “right to freedom of assembly”; and 63, which covers the “right to free assembly”. Ecuador is the only country that recognizes the “right to be consulted” explicitly, as an independent right.

With respect to **Mexico**, its Law for the Protection of Children and Adolescents denominates the Second Title of the Thirteenth Chapter “**Concerning the Right to Participate**”. Article 38 deals with “the freedom of expression”; 39 with the “right to exercise their capacities of opinion, analysis, critique and to present proposals in all the areas within which they live...”, 40 on the “right to information”; 41 on the “right to express their view”; and final, 42 covers the “right to assemble and associate”.

4.1.2. Settings, situations and mechanisms for participation

Having reviewed the different dimensions of participation, we shall look at the settings and mechanisms that the laws itemize for their exercise. As previously stated, the selection and analysis of the settings of participation is based mainly on **General Comment No. 12** of the Committee on the Rights of the Child, and on the document, “**The participation of Children and Adolescents in the Americas**” of the Inter-American Children’s Institute (2010).

General Comment No. 12, in its section on “**the observance of the right to be heard in different settings and situations**” (Paragraphs 89-131) sets forth ten settings and situations that “States may use to foster the participation of children”, jointly with mechanisms for an effective implementation of these guarantees. The present section begins with the settings discussed in the General Comment and regroups them as follows: participation in the family; in the legal and administrative system (also including the immigration and asylum rights setting); in health care; in education and the school; in recreational, sports and cultural activities; and in emergency situations¹⁵.

Our analysis also has included other settings proposed by the IIN, and which the countries themselves typify in their laws as **community participation, political participation and participation in public policies affecting children and adolescents**. Also, it includes the setting of the communication media, which although not included in the section on the General Comment No. 12’s settings of participation, the Committee itself “also reminds the States Parties that the communication media constitute an important resource, both for promoting awareness of the right of children to express their opinions, and for giving them the opportunity to express those opinions publicly” (Paragraph 83).

¹⁵ The legal and administrative setting includes the participation in “immigration and asylum rights” as exhorted by the Committee. Only “participation in the workplace” has not been included because, at the regional level, its incorporation as a setting of participation still is in an un concluded debate process (the IIN document does not explicitly recognize it as a setting of participation); and the settings of (formulation and application of measures) in situations of violence and in the formulation of prevention strategies because, although they are indeed fundamental settings, their analysis cannot be identified only by reviewing legal frameworks, but rather calls for an analysis of the participatory process of drafting them, which is beyond the scope of the present study.

Regarding the detail of analysis of each setting in the countries studied, the **legal setting** is the only one that has been incorporated unanimously, both at the level of enunciations and in the inclusion of mechanisms for participation.

The **educational setting** is the second most recognized, given that seven countries include it – **Brazil, Colombia, Costa Rica, the Dominican Republic, Guatemala, Honduras and Mexico** – either in guaranteeing the right to dispute academic evaluations or promoting student associations. The **recreational, cultural and artistic** setting is another of the most commonly dealt with, included in the legal frameworks of five countries: Colombia, Costa Rica, the Dominican Republic, Honduras, and Jamaica. **Colombia** and **Costa Rica** recognize it explicitly as a right; **Jamaica** declares the “right to participate in social and recreational activities” in benefit of children and adolescents in shelter homes or foster care centres. Only **Honduras** promotes the creation of mechanisms for this setting.

It is important to note that very important settings, like participation in public policies and especially in health – one of the most heavily emphasized by the General Comment – are relatively absent from the legislation of most of the countries analysed in this document. Only **Costa Rica, Ecuador** and **Colombia** directly or indirectly incorporate the setting of public **policies** in their legal frameworks, and only **Guatemala** and the **Dominican Republic** in the **health** setting. Also, political participation is only recognized by two countries – **Brazil** and **Ecuador** – as was mentioned in the section on constitutional analysis. In addition to its constitution, Brazil incorporates participation in its law for Children and Adolescents.

With respect to the **family setting**, although it is enunciated by four countries in their general provisions (**Brazil, Colombia, Mexico** and the **Dominican Republic**), no legislation deals with it in detail in a section delving into the scope that is expected in terms of children and adolescents within the family.

The participation of children and adolescents is critically absent in the **emergency situations** setting in all the countries’ legislation. A possible exception would be **Colombia’s** Code for Children and

TABLE 4.2 Settings in which adolescent participation is recognized in legislation for children and adolescents									
COUNTRY	Famil y	Educatio n	Communi ty	Public Policie s	Legal/ Admo n.	Politic al	Com m. Media	Cultur al and Artis- tic	Healt h
BARBADO S					x				
BRAZIL	x	x	x		x	x			
COLOMBIA	x	x		x	x			x	
COSTA RICA		x		x	x			x	
ECUADOR				x	x	x			
GUATEMAL A		x			x		x		x
HONDURA S		x			x			x	
JAMAICA					x			x	
MEXICO	x	x			x				
PERU					x				
DOMINICA N REPUBLIC	x	x	x		x			x	x

Adolescents, which in its Article 20 incorporates it as a setting of protection against “the risks and effects produced by natural disasters and other emergency situations”.

As may be seen in Table 4.2, the **Dominican Republic** is the country that incorporates the most settings of participation (six): family, education, community, administrative and legal, cultural and artistic, and health. It is followed by **Colombia** and **Brazil**, with five settings; **Honduras**, **Guatemala** and **Cost Rica** with 4 participation settings; **Ecuador** and **Mexico** with three settings; **Jamaica** with two settings, and finally **Peru** and **Barbados**, which only refer to adolescent participation in the legal and administrative setting.

In this regard it is interesting to note that no correlation is seen between the recognition of dimensions of participation and the settings of participation. For example, Mexico and Ecuador describe all the dimensions of the participation in detail (right to expression, opinion, association, etc., but do not expand on this conception of participation into more specific settings. The Dominican Republic is the country with the most balanced legal framework in terms of these aspects, since it incorporates both the set of dimensions – although less specifically than Mexico and Ecuador – and the broadest conception of participation of children and adolescents by settings.

In general, **Peru** and **Barbados** stand out as nations with the weakest legal framework for the participation of children and adolescent, with **Peru**¹⁶ being the only country that does not recognize any setting of participation, and both being the ones that include the fewest settings of participation.

In terms of the **mechanisms** for making recognized participation viable in practice, only in the legal setting (with education in second place) do the majority of the countries establish such mechanisms. **This contrast between the settings of participation and the reduced number of mechanisms reflects the declarative and enunciative nature of many of the settings.** Table 4.3 points this out:

TABLE 4.3 Mechanisms for participation in different settings					
COUNTRY	Educative	Legal/Admin.	Public Policies	Cultural	Community
BARBADOS		X			
BRAZIL	X	X			
COLOMBIA	X	X			
COSTA RICA	X	X	X		
ECUADOR		X	X		
GUATEMALA		X			
HONDURAS	X	X		X	
JAMAICA		X			
MEXICO	X	X			
PERU		X			
DOMINICAN REPUBLIC		X			X

¹⁶ At the moment this report is being prepared, the National Congress of Peru is pending a review of a new bill of law for children and adolescents.

In the settings touching on decision-making at the local and national level, as well as the **community and public policy** levels, there is a clear minimum presence. It also should be mentioned that no legal framework has created participation mechanisms for such vital settings as health and the family.

In the following section a detailed analysis is made of the most important findings in each setting, and the participation mechanisms evaluated in the laws and codes for children and adolescents.

a. Family Setting

Concerning the guarantee of the right to participation in the family setting, only five countries include it: **Brazil, Colombia, Mexico**, and the **Dominican Republic** – and only Peru dedicate an independent provision to this setting. The rest include it when enumerating the different settings of participation recognized by legislation. To cite two examples: **Colombia's** Code for Children and Adolescents, in its Article 31, establishes that “for the exercise of the rights and freedoms consecrated in this Code, children and adolescents have the right to participate in activities in the family, the schools, associations, State, departmental, district and municipal programmes of interest to them”. As may be observed, participation in the family setting is enunciated with no particular emphasis. In turn, the **Brazilian** Statute on Children and Adolescents refers to participation “in family life” in the section that recognizes participation as an aspect of the right to freedom (Article 16).

b. Education Setting

The education setting is the second most recognized, both at the declarative level and in terms of mechanisms to ensure its exercise. Specifically, the mechanisms for disputing evaluations in **Brazil, Honduras** and **Costa Rica** stand out. Costa Rica's Code for the Protection of Children and Adolescents goes beyond the dispute of evaluations to include among its educative principles the “respect for due process” when the student feels that his or her rights are being violated, “through agile and effective procedures for hearing the challenges to the evaluation criteria, the corrective actions, disciplinary sanctions or other way in which the student feels that his or her rights are being violated” (Article 60c).

Mexico and **Colombia** establish mechanisms for democratizing and introducing the participation of children and adolescents in the management of schools. For example, **Mexico's** Law for the Protection of Children and Adolescents requires that “mechanisms for democratic participation be provided in all school activities as a means of citizen formation”, as one of the measures for guaranteeing the right to an education (Article 32.E). It also is highly significant that **Colombia's** Code for Children and Adolescents delegates to the schools, the obligations of “facilitating the participation of students in academic administration of the school” (Article 42.4) and “stimulating the cultural manifestations and inclinations of the children and adolescents, and promoting their artistic, scientific and technological production” (Article 42.8).

Brazil and **Honduras** also promote student association, as reflected in the next page outstanding provision:

Outstanding Provision

Honduras: Code on Children and Adolescents – Article 35.

Brazil: Statute on Children and Adolescents – Article 55

Honduras and **Brazil** have the only legal frameworks that clearly and simultaneously make explicit recognition of participation in the education setting, promote student associations and incorporate mechanisms for disputing evaluations in the teaching-learning process.

Honduras' Code establishes that education shall be imparted in such a way as to ensure “the formation of student and youth organizations or their participation or permanence in them...” and grants students the faculty of “disputing before the corresponding instances, according to the law and the regulations, the evaluations made during the teaching-learning process”. For its part, **Brazil's** Statute for Children and Adolescents establishes the right “to dispute evaluation criteria, being able to resort to higher school authorities” and the right to “organization and participation in student entities”.

Although such provisions are missing in the laws for children and adolescents of many countries– **Peru, Ecuador, Guatemala**, the **Dominican Republic** – these mechanisms are in fact incorporated in legislation on education (as mentioned in Point 4.3).

c. Community setting

Participation in the community setting is not precisely established in any of the legal frameworks of the countries analysed except for the **Dominican Republic** and **Brazil**. Brazil's Statute on Children and Adolescents mentions it as a setting of participation within its general provision of the right to freedom, and the Dominican Republic's Code for the Protection of the Rights of Children and Adolescents dedicates a complete article to it, as shown in the following outstanding provision.

Outstanding Provision

Dominican Republic: Code for the Protection of the Fundamental Rights of Children and Adolescents – Article 455.

The Dominican Republic has the only legal framework that explicitly dedicates a section to the community participation of children and adolescents, itemizing the spaces in which they have the right to participate and contemplating the creation of new spaces. More specifically, Article 455 “**Concerning the Community Participation of Children and Adolescents**” affirms that “Children and adolescents may participate, according to their interests, in the participation mechanisms defined as clubs, children's circles, instances of school participation and in the strategies of organizations that implement programmes and activities in the community setting. Other mechanisms for their participation and the demandability of their rights may be created”

d. Legal and administrative setting

As previously indicated, the majority of the participation mechanisms in benefit of the adolescent population are concentrated in the legal setting. In fact, **all the countries studied establish provisions for participation in the different judicial and administrative processes, especially in the adoption and custody systems, and in procedures for guarantees during trials.**

Generally, the **Dominican Republic** is the country with the most comprehensive provisions in terms of guarantees of participation in legal-administrative processes, as reflected in the outstanding provision in this section.

The majority of the countries emphasize this setting in one of the dimensions of participation: the right of all children and adolescents to express their view in matters that affect them. Some do so generally, while others limit it to specific processes or actors:

- In **Costa Rica**, the Code for the Protection of Children and Adolescents establishes the “right to a hearing” as a procedural safeguard; that is, the right to have the opinion of children heard in all trials and administrative or legal procedures in which their rights are discussed (Article 114f). It also recognizes that persons under the age of 18 “shall have direct participation in the trials/processes and procedures established in this Code and their opinion on the matter shall be heard” (Article 105);
- **Peru’s** Code on Children and Adolescents establishes the obligation of the specialized judge to “hear the opinion of the child and take that of the adolescent into account” (Article 85);
- The Child Care and Protection Act of **Jamaica** requires the children’s ombudsman to take the necessary measures for the opinions of children and adolescents to be heard (Section 4.13.5)
- In its Law for the <protection of Children and Adolescents, **Mexico** requires that the opinion of children and adolescents “be Heard and taken into consideration in adoption processes” (Article 26);
- **México** demands in its Law for the Protection of Children and Adolescents that their opinion “be heard and considered in adoption processes” (Article 26);
- In **Barbados**, the *Adoption Act* obligates the court to take into consideration the wishes of the child that is of sufficient age to understand the nature of the process (Section 43 I); and
- In cases of placement with a substitute family (through foster care/custody, guardianship or adoption) the **Brazilian** Statute on Children and Adolescents, demands the right to be heard and “have his or her opinion heard” (Article 28.1).

Some provisions go beyond guaranteeing children and adolescents the right to “be heard”, by expressly requiring their consent or that their opinion be taken into consideration, generally for the exclusive benefit of adolescents. For example, the Statute on Children and Adolescents, in **Brazil**, requires the consent of adolescents (that is, persons over the age of 12) that are in an adoption process (Article 45). In **Barbados**, the Family Law Act establishes that the Courts have the obligation of taking into consideration the opinion of the adolescent older than 16 (Chapter 214, Section 43). In recognizing the right of all children and adolescents to be heard in administrative and legal procedures, **Costa Rica’s** Code for the Protection of Children and Adolescents adds that, in order to determine “how to handle the opinion”, the legal or administrative authority “**shall take into account the emotional maturity**” of the minor (Article 105). Finally Peru’s Code on Children and Adolescents concedes to the adolescent with no parents or family, the right to participate in the meetings of Family Council¹⁷ with the **right to speak and vote** (Article 102).

With respect to the provisions on participation benefiting adolescents in conflict with the law or that are being investigated, the codes of the Dominican Republic and Colombia go so far as to recognize the “right to participate in the development of the plan for the execution of the sanction” (Articles 349 and 188, respectively). It also is important to mention the case of Ecuador, whose Code for Children and Adolescents extensively sets forth the guarantees for those adolescents “subjected to trial” (including the right to be heard in any phase of the process, to free access to documents and evidence in the process, to interrogate witnesses and experts, etc. (Article 314). Also, it recognized the right to receive information and present petitions before any authority during internment (Article 377).

¹⁷ The Family Council is the institution in charge of protecting the person and interests of the child or adolescent that has no father or mother, or is handicapped [...] (Article 101).

Regarding procedural safeguards, other laws recognize:

- **The right to be heard by the competent authority (Brazil's Statute on Children and Adolescents (Article 111V);**
- **The right to receive information** both at the moment of being investigated or detained – as in the case of the Code for Children and Adolescents of **Ecuador** (Article 312) and the Juvenile Offender's Act of **Barbados** (Section 8.1) and during the implementation of the sanction (in the case of the Law for the Comprehensive Protection of Children and Adolescents of **Guatemala** – Article 260d), and the Code for the Protection of the Rights of Children and Adolescents in the **Dominican Republic** (Article 349).
- **The right of the “child offender” to participate in the trial to which he or she is subjected** “if his or her degree of maturity permits” (**Honduras'** Code on Children and Adolescents, Article 226). The article adds that in this case he or she “shall have the right, from the beginning of the investigation, to be represented and heard, to introduce evidence and introduce legal appeals, without prejudice to the other rights established in the present Code” (Article 226).
- **The right to dispute the legality of the deprivation of liberty (the Dominican Republic's Code for the protection of the rights of children and adolescent – Article 324).**

The Child Care and Protection Act of **Jamaica** also is of interest because it allows children to submit complaints to the **Children's Advocate** (Section 4.13.5) which must investigate complaints presented by children whose rights have been violated by some authority (Section 4. Part I .11.1).

On the other hand, as previously affirmed, the **Guatemalan** Law for the Comprehensive Protection of Children and Adolescents also stands out for taking into account the needs of adolescents from the indigenous peoples, ensuring that “adolescents express themselves, are heard and receive information in their own language in legal procedures” (Article 116 a, d).

Outstanding Provision

Dominican Republic: Code for the Protection of the Fundamental Rights of Children and Adolescents - Articles 77, 91, 126, 324, 349 and 377.

Costa Rica: Code for Children and Adolescents – Articles 114f and 105.

The **Dominican Republic**, in its Code for the Protection of the Fundamental Rights of Children and Adolescents, deals with the participation of children and adolescents in judicial processes, establishing participatory procedures in: Trials concerning parental authority, wherein the children and adolescents “have the authority to demand the suspension and termination of parental authority” (Article 77); in Custody Procedures in which their opinion should be heard, in accordance with their maturity” (Article 91) and in Adoption Procedures, in which “if the adoptees are older than twelve (12) years of age, they must be personally in agreement with their own adoption” (Article 126). In the case of child and adolescent offenders, the right to directly challenge “the legality of the deprivation of their liberty” is established (Article 324); also during the implementation of sentences the “right to receive information and participate actively in the preparation and implementation of the Individual Plan of Execution of the Sanction” is established (Article 349). Finally the Code demands that adolescents “with problems of dependence on controlled substances” be guaranteed “... participation in determining the type of treatment and the place where it will be practiced” (Article 377).

Costa Rica's Code for the Protection of Children and Adolescents also stands out for guaranteeing the “direct participation in the processes and procedures established in the Code, and their opinion in this respect shall be heard” (Article 105) and establishes a procedural guarantee the “right to a hearing”, explained above.

e. Public Policy Setting

The laws of the majority of the countries do not clearly incorporate the participation of children and adolescents in the definition, monitoring and evaluation of public policies related to their comprehensive development (either nationally or locally). This is evident in the absence of concrete mechanisms permitting any real participation in forums for defining the policies affecting children and adolescents. Only **Costa Rica** and **Ecuador** establish specific mechanisms in this setting, and both exclusively benefit adolescents, and not children.

Nonetheless, the mentioned Article 31 of **Colombia's** Code for Children and Adolescents also recognizes the participation of children and adolescents in this important setting. In recognizing children and adolescents' right to participate, it includes "State programmes as one of the settings, and demands that State and society propitiate the **"active participation" of children and adolescents in "public and private bodies in charge of the protection, care and education of children and adolescents"**.

Outstanding Provision

Costa Rica: Code for the Protection of Children and Adolescents – Article 179

Ecuador: Code for Children and Adolescents – Article 198

Costa Rica and **Ecuador** stand out as the only countries that have established clear mechanisms for adolescent participation in public policies.

Costa Rica includes the participation of one adolescent representative on the Child and Adolescent Protection Boards, which are the local bodies for coordination and adjustment of public policies on children and adolescents, with the same rights as the rest of the members. It explicitly establishes that "in addition to the members mentioned in the Organic Law for the Institution, each Board will have one representative of the community's adolescent population, who must be older than fifteen years and shall act with a voice and a vote".

Ecuador's legal framework has created a national-level Consultative Council, comprised entirely of adolescents, as are the respective consultative councils at the sub-national level, establishing that "both the National Council and the Canton Councils shall promote the formation of consultative councils of children and adolescents, in their respective national and sectional levels".

f. Communication Media

Many of the bodies of law evaluated refer to the communication media, establishing their responsibility either as a channel for access to information by children and adolescents, or for their pedagogical nature. For example, the Code on Children and Adolescents of **Peru** recognizes the right of incarcerated adolescents to "have access to information from the social communication media" (Article 240). **Costa Rica**, in turn, establishes in its Code for the Protection of Children and Adolescents that the communication media "shall procure to address the information needs of this group and shall promote the dissemination of their rights, duties and guarantees" (Article 21).

However, only **Guatemala's** Law for the Comprehensive Protection of Children and Adolescents establishes the promotion of direct participation of children and adolescents in the communication media, as described in the following Outstanding Provision.

Outstanding Provision

Guatemala: Law for the Comprehensive Protection of Children and Adolescents – Article 60

The legislation for the protection of children and adolescents in **Guatemala**, in addition to explicitly recognizing the importance of the function played by the State social communication media “as an instrument for promotion; development of social, spiritual, and moral well-being and the physical and mental health of all children and adolescents” **encourages the communication media to “promote direct participation in the programmes or editions of children and adolescents”**.

g. Setting of Recreation, Culture and Art

The recreational, cultural and artistic setting is one of the most widely recognized in laws for children and adolescents, being incorporated by five of the eleven countries evaluated. **Colombia** and **Costa Rica** recognize it explicitly as a right in itself; for example, Article 30 of **Colombia’s** Code for Children and Adolescents establishes the “Right to recreation, participation in cultural life and in the arts”, wherein “the children and adolescents have the right to rest, leisure, play and other recreational activities corresponding to their life cycle and to participate in cultural life and the arts”.

The Child Care and Protection Act of **Jamaica** limits this right to children and adolescents in foster care or custody centres, affirming their right to: “participate in social and recreational activities appropriate to the skills and interests of the child” (62.g). Also, the Code for the Protection of the Fundamental Rights of Children and Adolescents of the **Dominican Republic**, in its article establishing the right to participate, simply mentions participation in [...] “cultural, sports and recreational [...] life (Article 17).

Finally, only Honduras promotes the creation of mechanisms to exercise participation “in the country’s cultural and artistic life”.

Outstanding Provision

Honduras: Code on Children and Adolescents – Articles 46 and 49

Honduras’ legislation is the most outstanding in this setting, as it requires the pertinent institutions to promote participation in the cultural and artistic setting, establishing that “children, according to their age and their vocation, have the right to participate in the country’s cultural and artistic life. The state entities in charge of education, culture and tourism shall promote opportunities to achieve this end”.

Furthermore, it is the only legislation that establishes specific institutional responsibilities for the fulfilment of this right, while linking participation in the cultural environment to freedom of association: “the National Council of Youth, under the National Congress, shall collaborate with the Secretariat of State and the Arts to promote, finance and supervise the formation of associations of children with the purpose of investigating and disseminating the national traditions

h. Health Setting

Comprehensive health is a setting covered broadly in the majority of bodies of legislation in its dimensions of protection and primary right. However, only **Guatemala** clearly calls for participation in the setting of health, although it does not establish a particular mechanism for its implementation.

The **Dominican Republic** partially addresses participation in this setting in its Code for the Protection of the Fundamental Rights of Children and Adolescents, by including the right to information about health where “all children and adolescents have the right to be informed and educated concerning the basic principles of prevention in the area of health, nutrition, early stimulation, physical development, sexual and reproductive health, hygiene, environmental sanitation and accidents [...]” (Article 29).

Outstanding Provision

Guatemala: Law for the Comprehensive Protection of Children and Adolescents – Article 76

Guatemala's law for the protection of children and adolescents establishes that it is an obligation of the State "to design policies and execute comprehensive health programmes with the participation of the institutions dedicated to health care, for the prevention of diseases, providing the necessary ingredients. To this end, it must promote to the highest degree, the participation of children and adolescents, families and the community".

i. Considerations of Gender and Vulnerable Groups in Participation Mechanisms

As may be seen, no country considers the gender perspective in defining the settings and mechanisms for participation, nor are participation mechanisms for vulnerable groups defined. However, some countries do refer to the right to participate or to some of the dimensions of participation:

- In its Law for the Comprehensive Protection of Children and Adolescents, **Guatemala** recognizes the right of children and adolescents with disabilities to receive information (Article 48) and the right of indigenous children and adolescents to express themselves in their own language (Article 10).
- The Code for Children and Adolescents of **Colombia** recognizes the right of children and adolescents with disabilities to enjoy a dignified life in equal conditions "[...] that allow them to develop to the maximum of their potential and participate actively in in the community (Article 36).
- The Law for the Protection of the Rights of Children and Adolescents in **Mexico** recognizes the rights of children and adolescents with disabilities to a dignified life "that allows them to integrate into society". The law specifies that this right shall be exercised by "participating" to the extent of their possibilities, in school, labour, cultural, recreational and economic settings" (Article 30).
- **Peru's** Code on Children and Adolescents also establishes specific responsibilities for the participation of children and adolescents with disabilities:

Outstanding Provision

Peru: Code on Children and Adolescents - Article 23

Peru is the only country with legislation establishing an institutional responsibility to promote the participation of children and adolescents with disabilities through the Ministries participating on the National Council for Persons with Disabilities, and making society co-responsible for guaranteeing the "equality of opportunities of access to conditions adapted to their situation with adapted material and services, such as health, education, sports, culture, and labour training. It also ensures the full development of the personality up to the maximum of their potential, as well as the enjoyment of a full and dignified life, **facilitating their active participation**, equality and opportunities in the community".

4.2. Adolescent participation in youth laws

The laws for youth place great emphasis on the right of young persons to participate in matters that affect them. Unlike the laws for the protection of the rights of children and adolescents, they incorporate different modalities to guarantee the participation of young persons in all matters affecting them, including the definition and supervision of policies and programmes for youth and in instances of decision-making.

This is due to a tendency in youth laws to emphasize the role of the young person as a "social actor" to foster youths' playing a greater role in public affairs. The **Honduran** Framework Law for the Comprehensive Development of Youth, for example, establishes among its objectives "To propitiate

youths' assuming an active a leading role in the positive transformation of the national reality [...]” (Article 6.1). Furthermore, the General Law for the Young Person in **Costa Rica**, and the General Law on Youth in the **Dominican Republic** recognize this role of young persons, along with their capacity to contribute to national life.

4.2.1 Provisions on the right to participation

Being based on the social role played by young persons, the laws for youth tend to make detailed and substantive formulations of the right to participation, including the right to participate in the formulation and application of public policies.

→ **General Law for the Young Person No. 8261, Costa Rica (2002).**

The law for the young person in **Costa Rica** includes different formulations of the right to participation. Of the twelve rights of young persons enumerated in Article 4, at least four are related to participation – in the settings of public policies, recreation, the environment and quality of life. This law also recognizes the right to participation of persons with disabilities.

With regard to participation in public policies, the law affirms the “right to participation, formulation and application of policies allowing (him or her) to join in the processes of decision-making at the different levels and settings of national life in vital areas for their human development” (Article 4b).

→ **Law 375 for Youth, Colombia (1997).**

In **Colombia**, the Law for Youth grants youth organizations and movements participation in its execution, affirming that youth, both as individuals and in association, are one of its “main implementers” (Article 24).

It also delegates to them a leading role in the negotiation of the “national, departmental, municipal and district policies and plans for youth”. This role corresponds to youth jointly with the State, and civil society organs, organizations and movements working in favour of youth (Article 26).

It is important to mention that Colombia recently has passed the **Statute on Young People’s Citizenship**, which enters into effect in 2012 and exceeds the scope of Law 375 in the area of youth participation. Its very objective shows this: “To establish the Institutional framework for guarantee full exercise of youth citizenship in the civil or personal, social and public settings for all young persons”.



Law for Youth, Ecuador (2001).

While this law does not benefit adolescents (as it considers “youth” to be persons older than 18), we might mention some of its provisions. It establishes the **right to “direct action”**, which guarantees that young persons may “formulate complaints and proposals for the promotion and protection of their rights” (Article 5). Furthermore, its Article 9 recognizes the right to **participate** “in all those matters that interest or affect them, especially in the **design and evaluation of policies and the implementation of actions and programmes for the development and well-being of the community**”. It also refers to youth organizations, not only by demanding that the State promote and stimulate their creation “...and the State will promote and stimulate the creation of youth organizations”, but also by including them as one of the organs comprising the “National Youth System”.

Article 12 of this Law demands that the “policies for promoting the rights of youth” must have the participation of representatives of youth”, either directly or through organizations constituted in accordance with the law”.

→ Framework Law for the Comprehensive Development of Youth, Honduras, (2002).

The Honduran law includes participation as a right and a duty:

- “Right to participate in the decisions and the social, educational, cultural, economic, political, environmental and recreational activities, as well as in the public and private institutions, in conformity with the powers granted them by law (Article 13.4)”; and;
- Duty of participating actively in the civil, cultural, economic, social and political, recreational and sports life of the country (Article 14.5).

It also guarantees the “right to organize” as one of the objectives that the law must guarantee (Article 6.4) and incorporates as one of the orientations for the National Policy on Youth, “to create the mechanisms for the participation of youths in the different levels of public life” (Article 10.1).

→ General Law for Youth No. 49-2000, Dominican Republic.

The object of the General Law for Youth in the Dominican Republic is to establish the legal, political and institutional framework for, among other things, “**an effective participation of youths in the decision-making process**” (Article 1).

It also establishes **participation as a sectorial policy** aimed at inserting young persons in “formal spaces for social and political participation” and guaranteeing their participation “in the different instances or powers of the State, as well as in public administration and decision-making mechanisms” (Article 14). Another relevant objective of the sectorial participation policy is the creation of “alternative spaces for youth expression” (such as information networks, discussion roundtables, municipal, provincial and national youth forums and other types”).

4.2.2 Participation mechanisms

The majority of the countries that have laws or statutes for youth go beyond enunciating and itemizing the right to association by **demanding mechanisms for participation**, especially in the organizational setting and participation in spaces for making decisions regarding youth.

This is especially true in the organizations in charge of ensuring compliance with the laws for youth and the respective national policies with the participation of the youth population (including its different political-territorial levels – national, provincial, departmental, municipal, etc.). In some of the countries these organizations are non-governmental and in others they are mixed, with representation of civil society organizations and State entities.

On the Youth Councils and Committees operating at the local level, the representation of youth tends to be greater. However, in some cases – like the Youth Councils in the **Dominican Republic** and **Colombia** – these entities are totally comprised of youth representatives and organizations.

→ In **Colombia**, Law 375 established the National, Municipal and Departmental Youth Councils as social, collegial bodies to work “in favour of youth” and act as spokespersons before the public entities responsible for themes of youth and as overseers of the execution of youth policies (Article 18, Law 375).

- The Municipal Councils are comprised of 40% representatives of youth organizations and 60% persons elected by direct popular vote of youth (Article 19)¹⁸. The Departmental Councils, in turn, are comprised of representatives of the Municipal Councils, and the National Council is comprised of members of the Departmental Councils. (Articles 20 and 21).

¹⁸ The Departmental Councils must be comprised of representatives of the Municipal Councils.

The **Statute on Young Peoples' Citizenship** created the National System of Youth, comprised of 1) the Institutional Subsystem of Youth; 2) the Subsystem of Youth Participation; and 3) Negotiation and Decision-making Commissions

The Youth Participation Subsystem continues the figure of youth councils (also at the national, departmental, district, municipal and local level) as “autonomous mechanisms for participation, negotiation, oversight and control of public administration and mediation/interlocutor among youths with respect to the territorial agendas of youths. [...]” (Article 34).

→ In **Costa Rica**, Law 8261 on the Young Person (2002) regulates the participation of this population in institutional spaces of the “National Youth System”, especially on the Canton Youth Committees and the National Consultative Network on the Young Person:

- The Canton Youth Committees are entities that operate in each municipality and are comprised of young persons representing municipalities, schools, and youth, sports and religious organizations of the Canton (Article 24). Their mandate is “to prepare and implement local and national proposals dealing with the principles, ends and objectives of this law, contribute to the construction of a national policy for young persons” (Article 25) and form part of the structure of the National Consultative Network on Young Persons (Article 23).
- The National Consultative Network on the Young Person is a national-scale organization comprising the “National Youth Committees” and the “National Assembly” with the purpose of “giving the country’s young people effective participation in the formulation and application of the public policies affecting them” (Article 22 Law No. 8621)¹⁹. The law establishes that three members of the National Consultative Network participate on the **National Public Policy Council for the Young Person**, the guiding body on public policies for young persons” (Articles 11 and 14, Law No. 8261).

→ In **Ecuador**, the Youth Law requires the participation of two representatives of youth organizations on the “**National Council on Public Policies for Youth**” – an organization attached to the Office of the President of the Republic, in charge of the defining, monitoring and evaluation of the policies for promotion of youth rights” (Article 24)²⁰.

→ In **Honduras**, the Framework Law of the Comprehensive Development of Youth also demands youth participation in the institutions in charge of overseeing the law for youth and the national youth policy.

- National Youth Commission: consultative organ in charge of guaranteeing respect for the Law and proposing the National Youth Policy (Article 27). Young persons participate in it with “two representatives from each Regional Youth Commission”, according to the country’s territorial division. (Article 25.3).
- Municipal Youth Commissions: in charge of designing, implementing and evaluating the Municipal Youth Policy and comprising “at least one member of the Municipal Corporation and representatives of the municipality’s youth organizations”. (Article 37).
- Local Youth Commissions (to be established in each *barrio*, *colonia* or village) comprising “one representative of each of the youth organizations in the locality, plus a representative of the

¹⁹ This network is comprised of young persons that are “representatives of public and private schools, Community Development Associations legally inscribed and currently active in the National Directorate of the Development of Communities, Cantonal Committees for the Young Person, Public and Private Universities, institutions for (female) university students, political parties, Non-governmental Organizations and other Civil Society Organizations specializing in the theme” (Article 22 Law No. 2861).

²⁰ However, it is interesting that the Law does not include representation of youth on the Local Youth Councils

governmental organizations and non-governmental organizations working with and for local youths” (Article 38).

- →In the **Dominican Republic**, the General Law for Youth (49-00) also calls for the creation of a National Youth Council and Provincial and Municipal Youth Councils as “strictly juvenile” entities under the National System for Youth. Among its functions are “Proposing policies [for] improving the quality of life for youth in the different territorial jurisdictions and demarcations of the country” and to foster “the organization of youths in different kinds of groups according to their interests in their different life scenarios” (Article 37).
- The Municipal Councils are comprised “by youth organizations based in the community localized in the Municipality” (Article 34); and the Provincial Councils are comprised of delegates from the Municipal Youth Councils” (whose main function is) “to evaluate the implementation of the local youth councils with a provincial perspective” (Article 35).

Finally, we cite the case of **Mexico**, since although this country has no law for youth, the law creating the **Mexican Institute of Youth** incorporates youth representation on its Board of Directors and the Council for the Monitoring of Projects and Programmes.

Despite the creation of these detailed institutional structures, in the laws that were evaluated it was not possible to find provisions specifically showing the representation of adolescents in the different spaces for the participation of young persons.

4.3 Adolescent participation in other legislation: Education laws.

Although the laws for children and adolescents and youth are the most useful for analysing the provisions on adolescent participation, there are other laws that complement the ones evaluated in the previous chapters, by incorporating this right in specific settings. This is the case of the laws for education – a setting that, as we have seen previously, is one of the most frequently mentioned with respect to adolescent participation.

In five of the eleven countries analysed, relevant clauses on students’ right to participation were detected. Some establish participation as a right or principle of the education system, while others establish mechanisms for the participation of the student, either as part of the education community or in spaces exclusively reserved for students. In this regard, we shall point up the most relevant provisions in the laws of **Brazil, Colombia, Guatemala, Peru** and the **Dominican Republic**.²¹ Of these, Peru is the only one that does not include participation in the education setting in its legislation on children and adolescents.

²¹ Reference will be made only to those laws that contain relevant general clauses. However, we stress that the Fundamental Education Law No. 2160 (1957) of **Costa Rica** refers to participation but only in the case of students with special needs: “Schools shall provide students and their parents with the necessary information so they may participate, understand and support the education process” (Article 29). See: <http://www.mep.go.cr/LeyFundamental.html>. We also include the case of **Mexico** here, because while it does establish School, Municipal and State Councils for Social Participation, with the aim of promoting the participation of society in strengthening and improving the quality and coverage of public education, it does not include representation of the student body on these councils, but only parents, teachers’ associations, education authorities, civil society organizations and social and productive settings in the rest of the cases. Only the School Councils include representation of former students (Articles 68-70). General Education Law (1993), Articles 68-70. See <http://basica.sep.gob.mx/dgei/pdf/normateca/LeyGeneraldeEducacion.pdf>.

→ **Brazil, Law No. 9.394, establishing the guidelines and bases for national education (1996)**²²

This law considers the “**participation in the school and local communities on the school councils**” as one of the principles guaranteeing the “democratic administration of public education”, (Article 14). According to Law 10.172, approving the National Education Plan²³, these **school councils** should be oriented by the “**democratic principle of participation**”, and are comprised of students, parents, teachers and other education workers (Article 2.2).

→ **Colombia, General Education Law No. 115 (1994)**

The Colombian General Education Law calls for the participation of the education community (of which the students are part) “in the direction of the education establishments” (Article 6). Furthermore, it includes the participation of a representative of the students of the three highest grades “on the Directive Councils of the basic and middle education establishments”, who must be chosen by the students themselves, according to the regulations of each institution (Article 93). Finally, it calls for the selection of a “representative of students and promoter of their rights and duties” in each basic and middle education establishment (Article 94).

→ **Guatemala, National Education Law – Legislative Decree No. 12-91-(1991)**

The National Education Law in Guatemala establishes, as one of the characteristics of the National Education System, that it be participatory (Article 4) and as one of the purposes of education “to form citizens with critical awareness [...] that participate actively and responsibly in the search for economic, social, political, humane and just solutions” (Article 2).



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²² See: http://www.planalto.gov.br/ccivil_03/leis/l9394.htm.

²³ Law 10.172, of 9 January de 2001, approving the National Education Plan and other measures. See: http://www.planalto.gov.br/ccivil_03/leis/leis_2001/l10172.htm.

More specifically, it establishes **participating in the activities and planning “of the education community”²⁴ as a duty and a right of students** (Articles 34 and 39). It also recognizes students’ right to organize in associations “without being the object of reprisals”, and to participate in educational, sports, recreational and cultural activities and programmes (Article 39). However it does not establish a specific structure like a student council or committee.

Finally, it requires the directors of education centres to “propitiate and support the organization of student associations in their school” (Article 37.8).

→ **Peru. General Education Law No. 28044 (2003)²⁵**

Peru’s General Education Law affirms that the student is “the centre of the education process and system” (Article 53) and in this sense is he or she is entitled to:

“c) Organize in “School Municipalities” or other forms of student organization, in order to exercise their rights and participate responsibly in the education institution and in the community.

d) Express opinions on the quality of the education service (he or she) receives”.

It also affirms that the formulation of the education curriculum is a participatory process that is constructed by the education community and other actors in society (Article 34). The education community, in turn, is comprised of “students, parents, teachers, directors, administrators, former students and members of the local community”. Their representatives comprise the Institutional Education Council²⁶ and participate in the formulation and execution of the Education Project (Article 52)²⁷.

→ **Dominican Republic, Organic Law on Education No. 66-97 (1997).**

The Organic Law on Education in the Dominican Republic includes the **right and duty of participation of all members of the “education community”**, including the student body: the director, teachers, school personnel, students, parents, members of the community and the municipality (Article 181 and ss). Also, it requires that the educational curriculum foster, among other things, a **“culture of active participation”** (Article 65).

It establishes the creation of different “participation organisms” like the assemblies of parents, students and teachers and the General Assembly of the Education Centres. For students, it establishes Student Assemblies, the Course Councils and Student Councils (comprising the presidents of each course council) (Article 189) – which in turn are part of the General Assembly of Education Centres (Article 187).

Finally, it should be mentioned that the law establishes the creation of the **National Student Welfare Institute** (a decentralized organization under the ministry of Education) with the aim of “promoting the participation of students in the different curricular activities” (Article 177).

²⁴ La *educative community* is comprised of students, parents, educators and organizations created for educative purposes (Article 18 of the National Education Law – Legislative Decree No. 12-91-(1991)).

²⁵ See: http://www.oei.es/quipu/guatemala/Ley_Educacion_Nacional.pdf.

²⁶ The Institutional Educative Council “is an organ for participation, concerted action and citizen surveillance. It is presided by the Director and comprises the sub-directors; representatives of the teachers, students and parents, with the exception for the latter when the characteristics of the institution so justify”. (Article 69, General Law on Education No. 28044, 2003).

²⁷ The article states that the participation of the different members of the education community “is implemented in democratic forms of association, through the free, universal and secret election of its representatives”. (Article 52, General Law on Education No. 28044,2003).

CONCLUSIONS

Deriving from the mandate of the Convention on the Rights of the Child, all the countries evaluated undoubtedly recognize and promote adolescent participation in their main laws on children and adolescents. Almost all the countries recognize their right to express their opinion, in accordance with Article 12 of the Convention, and most also refer to some of the other dimensions of participation: information, freedom of expression, freedom of association. Also, all the laws incorporate some mechanism for the exercise of participation, especially in the legal and administrative setting and in the education setting. However, other important settings are overlooked in the majority of the laws, such as the public policy, community participation, health and other settings.

On the other hand, while only half of the countries have laws for youth – which tend to be more recent than those for the protection of children and adolescents – it is interesting that they establish quite precise provisions and mechanisms for promoting youth participation. It also is noteworthy that the institutions created by the laws and other instrument for youth tend to include among their attributes the obligation to foster the participation of youth – by contrast with the institutions established to guarantee the rights of children and adolescents, that usually are not expressly empowered to promote their participation in the settings established by the laws reviewed in this document.

If we contrast the laws for children and adolescents with those for youth, we find what we could call the “adolescent condition paradox”: increasingly, adolescents (especially in late adolescence) have double legal protection through the laws or codes for children and adolescents and the laws or statutes for youth. Despite this, both type of legislation pay little attention to them – except at very precise points.

In the laws and codes for children and adolescents, adolescents usually figure especially in the legal and administrative setting, essentially in procedures for custody, adoption and in those related to adolescents in conflict with the law. It is good that the countries consider adolescents in administrative and legal procedures affecting their rights, safeguarding their integrity and incorporating their right to be heard and have their opinion taken into consideration, as established in the Convention on the Rights of the Child. **Nonetheless, the pre-eminence of participation mechanisms in legal matters could be interpreted as evidence of the negative portrayal of adolescents.**

It should be considered favourable that the legal and administrative setting is followed in importance by the education setting, particularly with reference to the promotion of the exercise of the right to association in the student environment, and guarantees of the right to question evaluations and the definition of evaluation criteria. The prohibitions of all forms of discrimination in the education environment, including three countries’ recognition of the rights of pregnant adolescent students, is a great step forward – and very positive from the gender perspective.

But beyond these two settings (legal and educational) few laws establish concrete mechanisms for adolescent participation at the level of the community, health, public policies, culture and recreation, etc. **An example of this is that only two laws for children and adolescents establish mechanisms to guarantee adolescent participation in forums for the definition of public policies oriented to this population** (an essential setting for guaranteeing the contribution of adolescents as social actors).

Fortunately, the legal frameworks are not static. They change and improve, especially in matters of youth, whose inclusion still is quite recent in national legal orders. In many countries this is a nascent framework, or Law for the Comprehensive Protection of Children and Adolescents one, still in the process of structuring, **which in the immediate future could bring about a greater visibility of the adolescent population in the laws for youth.** (At the end of 2011 and during the preparation of this report, Brazil was in the process of approving its Statute on Youth, and Colombia was in the process of passing a new and more advanced law, in whose definition and debate there has been a large presence of youth organizations)

Finally, we find a universal problem of distance between the legal framework and the real situation of children and adolescents. Often the rights established in these instruments are not only halfway guaranteed or violated, but the institutional structures and mechanism established therein are not put into practice. Different human rights organizations denounce the problem of the weak implementation of the rights incorporated in the national legal framework (IIN, 2012a).

The key lies in making sure there is legislation founded on the international standards, assignation of the necessary economic resources, and political commitment, in order to make it a reality whose results will be clearly evident.

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Annex I. Summary of Outstanding Provisions

Annex I SUMMARY OF OUTSTANDING NORMATIVE PROVISIONS		
CATEGORY	COUNTRY 1	COUNTRY 2
Recognition of adolescent participation in the Constitution	Ecuador: Constitution 2008, Article 45 (Recognizes the right of children and adolescents to be consulted and the right to freedom of expression and association).	Dominican Republic: Constitution 2010, Article 56.2 (Recognizes active and progressive participation of children and adolescents in family, community and social life).
Explicit recognition of the “right to participate”	Colombia: Code for Children and Adolescents, Article 31 (Recognizes the right of children and adolescents to participate and establishes the active obligation of the State and society to propitiate “active participation”).	Dominican Republic: Code for the Protection of the Fundamental Rights of Children and Adolescents, Article 17 (Recognizes the right of every child and adolescent to participate “freely, actively and fully” in the family, community, social, school, scientific, cultural, sports and recreational settings, “as well as their progressive incorporation into active citizenship”. It requires the State, family, and society to “create and promote opportunities for participation of all children and adolescents and their associations”).
Express inclusion of all dimensions of participation	Ecuador: Code for Children and Adolescents, Chapter V (Recognizes as “Rights to Participation”: the right to freedom of expression, to be consulted, to freedom of opinion, conscience and religion, to freedom of assembly and free association) Código de NNA Capítulo V	Mexico: Law for the Protection of the Rights of Children and Adolescents, Chapter XIII Title 2 “Concerning the freedom of expression, right to express their opinion, right to information, right to assemble and to associate, and the “right to exercise their capacities of opinion, analysis, critique, and to present proposals in all the settings in which they live”)
Provision and mechanism for participation in the educative setting	Honduras: Code on Children and Adolescents, Article 35 (Recognizes the faculty of children to challenge “the evaluations made during the learning process” and establishes the obligation for education to guarantee “the formation of student and youth organizations [...]).	Brazil: Statute on Children and Adolescents, Article 55 (Recognizes the right “to dispute criteria for evaluation, with the ability to resort to higher school instances” and the right to “organization and participation in student entities”).
Provision on participation in the community setting	Dominican Republic: Code for the Protection of the Fundamental Rights of Children and Adolescents, Article 455 (Recognizes the right of children and adolescents to benefit from “the mechanisms of participation defined as clubs, children’s circles, instances of school participation and in the strategies of the organizations [...] in the community environment [...]).	

CATEGORY	COUNTRY 1	COUNTRY 2
Mechanisms for participation in the legal setting	Dominican Republic: Code for the Protection of the Fundamental Rights of Children and Adolescents, Articles 77, 91, 126, 324, 349, and 377 (Calls for the participation of children and adolescents in processes of parental authority, custody and adoption. Guarantees adolescents in conflict with the law the right to “challenge the legality of the deprivation of their liberty, as well as the right to receive information.	Costa Rica: Code for the Protection of Children and Adolescents, Article 114f and 105. (Article 105 guarantees children and adolescents “direct participation in the processes and procedures established in this Code and that their opinion about this matter will be heard”. Article 114f establishes as a procedural guarantee the “right to a hearing” – the “right of minors to have their opinions heard in all those administrative or legal processes and procedures in which their rights are discussed.)
Participatory mechanisms in public policy	Costa Rica Code for the Protection of Children and Adolescents, Article 179 (Includes participation of one adolescent representative within the Protection Councils for Children and Adolescents – local coordination and adequacy for public policies regarding children and adolescents.	Ecuador: Code for the Protection of Children and Adolescents, Article 198 (Establishes the creation of a national-level council of adolescents, as well as second-level consultative councils).
Provision on participation in the communication media	Guatemala: Law for the Comprehensive Protection of Children and Adolescents, Article 60 (Urges the communication media to “promote the direct participation in the programme or editions for children or adolescents	
Mechanisms for participation in the recreation, culture and art setting	Honduras: Code on Children and Adolescents, Articles 46 and 49 (Establishes the right of Children and Adolescents to participate in the cultural and artistic life of the country” and requires that the responsible institutions promote “the formation of children’s associations to investigate and disseminate national traditions”).	
Provision on participation in the health setting	Guatemala: Law for the Comprehensive Protection of Children and Adolescents, Article. 76. Requires that in the design of policies and comprehensive health programmes the participation of children and adolescents be promoted to “the maximum”.	
Mechanism for the participation of children and adolescents with disabilities	Peru: Code for Children and Adolescents, Article 23 (Makes the ministries on the National Council on Persons with Disabilities to promote the participation of children and adolescents’ with disabilities)	



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