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MEXICO

CHILDREN'S RIGHTS: INTERNATIONAL AND NATIONAL LAWS AND PRACTICES

Executive Summary

The Mexican Constitution provides that the State has the duty to promote respect for the dignity of all children and the full exercise of their rights. It also provides that children have the right to satisfy their nutritional, health, educational, and recreational needs. Several laws have been enacted in order to implement this mandate, most importantly the federal Law on the Protection of the Rights of Children and Adolescents. In addition, Mexico is a signatory to several treaties that impact children's rights.

I. Introduction

Mexico is a federal republic formed by thirty-one states and a federal district, best known as Mexico City. The rights of the child are protected by legislation enacted at the federal and the state level. However, federal legislation on this topic tends to be more relevant, because the most significant and extensive initiatives on the rights of the child in Mexico are regulated by federal law. This report provides a summary of relevant federal laws concerning children's rights, including health, welfare, education, child labor and exploitation, trafficking of children, and juvenile justice. The report also provides a list of international treaties ratified by Mexico in the field of children's rights.

Definition of a Child

The Federal Civil Code provides that the age of majority is eighteen.¹ However, there are some instances in which individuals under the age of eighteen may be allowed to assume control over their actions and decisions. For example, the Federal Civil Code provides that, under certain circumstances, persons under eighteen may be allowed to marry.²

II. Implementation of International Rights of the Child

Among other relevant treaties and agreements, the following treaties with provisions that affect children, have entered into force in Mexico:

- International Covenant on Civil and Political Rights;³
- Convention on the Elimination of All Forms of Discrimination against Women;⁴

¹ Código Civil Federal (Federal Civil Code, as amended), art. 646, Diario Oficial de la Federación (D.O.), May 26, 1928, <http://www.diputados.gob.mx/LeyesBiblio/pdf/2.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

² *Id.*, art. 148 & 149.

³ The International Covenant on Civil and Political Rights, with a Preamble and 53 articles, was adopted by the U.N. General Assembly Dec. 16, 1966, and entered into force Mar. 23, 1976. G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess. Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171. *See also* the Promulgation of the International Covenant on Civil and Political Rights, DIARIO OFICIAL DE LA FEDERACIÓN (D.O.), May 20, 1981.

- Convention on the Rights of the Child;⁵
- Hague Convention on the Civil Aspects of International Child Abduction;⁶
- Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption;⁷
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;⁸
- Worst Forms of Child Labor Convention;⁹
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;¹⁰
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;¹¹
- Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime.¹²

⁴ CEDAW, comprising a Preamble and 30 articles, was adopted by the U.N. General Assembly Dec. 18, 1979, and entered into force Sept. 3, 1981. G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46. For an online text, see the U.N. Division of the Advancement of Women Web site, <http://www.un.org/womenwatch/daw/cedaw/text/convention.htm#article1> (last visited August 8, 2007). See also the Promulgation of the Convention on the Elimination of All Forms of Discrimination against Women, D.O., May 12, 1981.

⁵ G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49), at 167, U.N. Doc A/44/49 (1989). 28 Int'l Legal Materials 1456 (1989) (an unofficial source). See also the Promulgation of the Convention on the Rights of the Child, D.O., Jan. 25, 1991.

⁶ The Hague Convention on the Civil Aspects of International Child Abduction, Hague No. 28, was adopted by the Hague Conference on Private International Law Oct. 25, 1980, and entered into force Dec. 1, 1983. T.I.A.S. No. 11,670, 1343 U.N.T.S. 89; 19 I.L.M. 1501 (1980). For an online text, see the HCCH Web site, http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=24 (last visited Aug. 8, 2007). See also the Promulgation of the Hague Convention on the Civil Aspects of International Child Abduction, D.O., Mar. 6, 1992.

⁷ The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, comprising a Preamble and 48 articles, was concluded on May 29, 1993, and entered into force on May 1, 1995. 32 Int'l Legal Materials 1134 (1993). For an online text, see the HCCH Web site, http://www.hcch.net/index_en.php?act=conventions.text&cid=69 (last visited Aug. 8, 2007). See also the Promulgation of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, D.O., Oct. 24, 1994.

⁸ G.A. Res. 54/4 (A/RES/54/4), Oct. 6, 1999. Available from the United Nations Division for the Advancement of Women Web site, <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm> (last visited Aug. 8, 2007). Ratified by Mexico on Mar. 15, 2002.

⁹ The Worst Forms of Child Labour Convention, with a Preamble and 16 articles, was adopted by the General Conference of the International Labour Organisation June 17, 1999, and entered into force Nov. 19, 2000. See also the Promulgation of the the Worst Forms of Child Labour Convention, D.O., Mar. 7, 2001.

¹⁰ G.A. Res. 54/263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (May 25, 2000). Available from the OHCHR Web site, <http://www.ohchr.org/english/law/crc-sale.htm> (last visited Aug. 8, 2007). Ratified by Mexico on Mar. 15, 2002.

¹¹ G.A. Res. A/RES/54/263, May 25, 2000, available from the OHCHR Web site, <http://www.unhchr.ch/html/menu2/6/protocolchild.htm> (last visited Aug. 8, 2007). Ratified by Mexico on Mar. 15, 2002.

¹² G.A. Res. 55/25 (Nov. 15, 2000). See also the Promulgation of the Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime, D.O., Apr. 10, 2003, available at <http://www.ordenjuridico.gob.mx/TratInt/Penal/OE4QUATER.pdf>.

III. Child Health and Social Welfare

Health Care

The Mexican Constitution provides that every person has the right to health protection.¹³ Furthermore, the Constitution provides that children have the right to satisfy their nutritional, health, educational, and recreational needs.¹⁴

The General Law on Health (GLH) sets forth the objectives of the right to health protection as well as the objectives of the National Health System.¹⁵ The GLH provides that basic health services are classified under the following categories: 1) health education and the promotion of sanitation; 2) prevention and control of priority communicable diseases, the most frequent non-communicable diseases, and accidents; 3) medical care, including preventive measures, rehabilitation, and emergency treatment; 4) maternal and child care; 5) family planning; 6) mental health care; 7) the prevention and control of oral diseases; 8) the availability of medicaments and other essential supplies; 9) promotion of improved nutrition; and 10) social welfare for at-risk groups.¹⁶

The provisions in chapter 5 of the GLH prioritize and define maternal and child care and call for the protection of minors, activities to support families and contribute to maternal and child health, appropriate standards of school hygiene, and health services for schoolchildren. Health care for children includes pre- and post-natal care, nutrition advice, immunization, and eye and ear care.¹⁷ Public health care services are provided by the federal Department of Health, with support from social security institutions and state and local authorities.¹⁸

Welfare

The Law on Social Welfare (LSW) regulates social services in Mexico.¹⁹ The LSW states that social welfare services are provided by the federal Department of Health, with support from social security institutions, such as the National System for Integral Family Development (DIF), state and local authorities, and private institutions.²⁰

IV. Education

Article 3 of the Mexican Constitution provides that every individual has the right to education.²¹ The State – federation, states, Federal District, and municipalities – shall provide preschool, primary, and

¹³ Constitución Política de los Estados Unidos Mexicanos (Mexico Constitution, as amended), art. 4, D.O., Feb. 5, 1917, <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

¹⁴ *Id.*

¹⁵ Ley General de Salud, (General Law on Health, as amended), D.O., Feb. 7, 1984, <http://www.diputados.gob.mx/LeyesBiblio/pdf/142.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

¹⁶ *Id.*, art. 27.

¹⁷ *Id.*, art. 61.

¹⁸ *Id.*, arts. 7 & 9.

¹⁹ Ley de Asistencia Social (Law on Social Welfare), D.O., Sept. 2, 2004, <http://www.diputados.gob.mx/LeyesBiblio/pdf/270.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

²⁰ *Id.*, arts. 7 & 9.

²¹ Constitución Política de los Estados Unidos Mexicanos (Mexico Constitution, as amended), art. 3, D.O., Feb. 5, 1917, <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

secondary education.²² Preschool, primary, and secondary education through grade 9, constitute the basic compulsory education.²³ The General Law on Education regulates education in Mexico.²⁴

The Mexican education system is organized into four levels: Preschool (K1-K3), basic education (grades 1-9), upper secondary education (grades 10-12), and higher education.²⁵ Although the government is only officially responsible for providing compulsory basic education, it is also involved at the other levels through public funding of upper secondary and higher education.²⁶

Humane School Discipline

The Law on the Protection of the Rights of Children and Adolescents provides that teachers must avoid any form of harm, injury, aggression, abuse, or exploitation of children or adolescents.²⁷

V. Child Labor and Exploitation

The Mexican Constitution provides that the State has the duty to promote respect for the dignity of all children and the full exercise of their rights.²⁸ It also provides that the use of labor of minors under fourteen years of age is prohibited.²⁹ Persons above that age and less than sixteen shall have a maximum work day of six hours.³⁰

The Federal Labor Law provides that children under sixteen may not engage in unhealthy or hazardous work or in industrial night work.³¹ Unhealthy or hazardous occupations are those which, by the nature of the work; by the physical, chemical, or biological conditions of the environment in which it is conducted; or by the composition of the raw material used, may be detrimental to the life, development and physical and mental health of children.³²

Children between the ages of fourteen and sixteen must obtain a medical certificate indicating their fitness to work.³³ Without the certificate, no employer may lawfully employ them.³⁴ Working children will be subject to periodical medical examinations conducted by labor authorities.³⁵ Children

²² *Id.*

²³ *Id.*

²⁴ Ley General de Educación (General Law on Education, as amended), D.O., Jul. 13, 1993, <http://www.diputados.gob.mx/LeyesBiblio/pdf/137.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

²⁵ RAND Education, *Education in Mexico, Challenges and Opportunities*, http://www.worldfund.org/assets/files/RAND_Education%20in%20Mexico.pdf (last visited Aug. 9, 2007).

²⁶ *Id.*

²⁷ Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes (Law on the Protection of the Rights of Children and Adolescents), D.O., May 29, 2000, <http://www.diputados.gob.mx/LeyesBiblio/pdf/185.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

²⁸ Constitución Política de los Estados Unidos Mexicanos (Mexico Constitution, as amended), art. 4, D.O., Feb. 5, 1917, <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

²⁹ *Id.*, art. 123 A (III).

³⁰ *Id.*

³¹ Ley Federal del Trabajo (Federal Labor Law, as amended), art. 175, D.O., Apr. 1, 1970, <http://www.diputados.gob.mx/LeyesBiblio/pdf/125.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

³² *Id.*, art. 176.

³³ *Id.*, art. 174.

³⁴ *Id.*

³⁵ *Id.*

under the age of eighteen cannot be hired for purposes of working outside of Mexico, except in the case of children with technical or professional training, artists, athletes, and specialized workers.³⁶

The Department of Labor is charged with protecting workers' rights.³⁷ It has been reported that government enforcement is more effective at large and medium-sized companies, especially in industries under federal jurisdiction, than it is at the smaller companies and in the agriculture, construction, and informal sectors. It is in the informal, unregulated sector, however, that most children work.³⁸

VI. Sale and Trafficking of Children

The Law on the Protection of the Rights of Children and Adolescents recognizes the right of children and young persons to be protected against any acts or omissions affecting their physical or mental health, their normal development, or their right to education, including neglect; negligent treatment; abandonment; emotional, physical, or sexual abuse; exploitation; the use of drugs and narcotics; abduction; and trafficking.³⁹ This law also provides that mothers, fathers, and anyone having custody of children must protect them against any form of ill treatment, prejudice, harm, aggression, abuse, trafficking, and exploitation.⁴⁰ In addition, the Federal Criminal Code and the Federal Law on Organized Crime provide that corruption of minors, child prostitution, and child pornography are felonies.⁴¹

These legal provisions notwithstanding, it has been reported that Mexico is a point of origin, transit, and destination for persons trafficked for sexual exploitation.⁴² While a majority of non-Mexican trafficking victims are from Central America, others have been brought to Mexico from Brazil, Cuba, Ecuador, China, Taiwan, India, and Eastern European countries.⁴³ The government estimates that approximately 20,000 children are sexually exploited each year.⁴⁴

Sexual tourism and sexual exploitation of minors take place frequently in the northern border area and in resort areas.⁴⁵ Undocumented migrants from Central America and the poor are particularly vulnerable to trafficking. Many illegal immigrants become victims of traffickers along the Guatemalan border, where the growing presence of gangs made the area especially dangerous for unaccompanied women and children migrating north. Young female migrants recounted being robbed, beaten, and raped

³⁶ *Id.*, art. 29.

³⁷ Ley Orgánica de la Administración Pública Federal (Law on the Federal Executive Branch, as amended), art. 40, D.O., Dec. 29, 1976, <http://www.diputados.gob.mx/LeyesBiblio/pdf/153.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

³⁸ U.S. Department of State, *Mexico*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2006, Mar, 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78898.htm>.

³⁹ Ley para la Protección de los Derechos de Ninas, Niños y Adolescentes (Law on the Protection of the Rights of Children and Adolescents), art. 21, D.O., May 29, 2000, <http://www.diputados.gob.mx/LeyesBiblio/pdf/185.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

⁴⁰ *Id.*, art. 11.

⁴¹ Código Penal Federal (Federal Criminal Code, as amended), D.O., Aug. 14, 1931, <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>. See also Ley Federal contra la Delincuencia Organizada (Federal Law on Organized Crime, as amended), D.O., Nov. 7, 1996, <http://www.diputados.gob.mx/LeyesBiblio/pdf/101.pdf>. These hyperlinks connect to the official Web site of the Mexican House of Representatives.

⁴² U.S. Department of State, *supra* note 38.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

by members of criminal gangs and then forced to work as prostitutes under threat of further harm to them or their families.⁴⁶

Individual police, immigration, and customs officials reportedly participated in, facilitated, or condoned trafficking, primarily for money. Poorly paid officials often extort money from victims and traffickers. In September 2005 a judge issued arrest warrants for seven immigration agents in connection with their participation in a human smuggling ring; however, none were charged.⁴⁷

VII. Juvenile Justice

The Federal Law for the Treatment of Juvenile Offenders provides that children between eleven and eighteen years of age are subject to special courts for juvenile offenders.⁴⁸ Juveniles are assisted by Guardianship Councils, which are responsible for the care and protection of juvenile defendants.⁴⁹ Children that are accused of committing an infraction must be treated fairly and humanely.⁵⁰ Ill treatment, *incommunicado* detention, psychological coercion or any other action impairing the child's dignity or physical or mental integrity during legal proceedings are prohibited.⁵¹

The Law on the Protection of the Rights of Children and Adolescents provides that children shall be protected against any act that violates their constitutional guarantees or the rights recognized by law or by international treaties subscribed to by Mexico.⁵² This law also provides guarantees for children accused of having infringed criminal laws, including a presumption of innocence, prompt notification of any charges, prohibition of self incrimination, and prompt trial.⁵³

Minors who are found responsible of committing an infraction may be subject to a wide variety of measures, including:

- Counseling
- Educational and vocational training programs, and other rehabilitating measures.⁵⁴
- Warning
- Admonition
- Prohibition to go to certain places
- Prohibition to drive motor vehicles
- Placement in custodial homes
- Confinement in educational institutions⁵⁵

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Ley para el Tratamiento de Menores Infractores para el Distrito Federal en Materia Común y para toda la República en Material Federal (Federal Law for the Treatment of Juvenile Offenders, as amended), art. 6, D.O., Dec. 24, 1991, <http://www.diputados.gob.mx/LeyesBiblio/pdf/179.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

⁴⁹ *Id.*, art. 4.

⁵⁰ *Id.*, art. 3.

⁵¹ *Id.*

⁵² Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes (Law on the Protection of the Rights of Children and Adolescents), art. 44, D.O., May 29, 2000, <http://www.diputados.gob.mx/LeyesBiblio/pdf/185.pdf>. This hyperlink connects to the official Web site of the Mexican House of Representatives.

⁵³ *Id.*, art. 46.

⁵⁴ *Id.*, art. 45 (g).

⁵⁵ Ley para el Tratamiento de Menores Infractores para el Distrito Federal en Materia Común y para toda la República en Material Federal (Federal Law for the Treatment of Juvenile Offenders, as amended), arts. 97, 103 & 112, D.O., Dec. 24,

VIII. Concluding remarks

Mexico has a vast legal framework designed to protect children's rights. This legislation notwithstanding, the rights of children are not always fully protected.

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August 2007