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ARGENTINA

**CHILDRENS RIGHTS:
INTERNATIONAL AND NATIONAL LAWS AND PRACTICES**

Executive Summary

The long awaited national Law for the Integral Protection of Children and Adolescents was enacted in 2005 to implement the UN Convention on the Rights of the Child, ratified by Argentina in 1990. In addition to adopting comprehensive protective measures for children, it lays the groundwork for a juvenile justice system, calls for institutionalized children to be integrated back into society, and establishes mechanisms to protect children from abuse and exploitation.

I. Introduction

Although the last years have seen consistent economic growth and diminished poverty and unemployment rates in Argentina, the rights of some of the most impoverished children have yet to be fully established. About seven percent of the population lives on the equivalent of less than US\$1 a day.¹

Most poor children have no access to the early learning activities that would prepare them for primary school. Primary education is almost universal, and literacy rates are high, but many students repeat grades or drop out of secondary school.² Updated statistics about the status of children, which could be used to guide policymakers, are not regularly available.³

After years of advocacy, in 2005 a national Law for the Integral Protection of Children and Adolescents was enacted. It lays the basis for a juvenile justice system and calls for institutionalized children to be integrated back into society. Each province will create mechanisms to protect children from abuse and exploitation.⁴

A national program called “*Plan Familia*” has been launched to assist poor families, ensuring that their children attend school and receive primary health care. The project will eventually reach 500,000 families.⁵

II. Implementation of International Rights of the Child

Argentina ratified the United Nations Convention on the Rights of the Child⁶ (CRC) in 1990, and since 1994, it has been included in the National Constitution.⁷ In spite of this very important step, it took

¹ UNICEF, *Argentina*, 2007, THE STATE OF THE WORLD’S CHILDREN, available at <http://www.unicef.org/infobycountry/argentina.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Plan Familia*. PLANES DE GOBIERNO, <http://www.presidencia.gov.ar/plan.aspx?cdArticulo=1582> (Web site of the President of Argentina) (last visited Aug. 14, 2007).

⁶ LAW 23849 adopting the U.N. Convention on the Rights of the Child, Sept. 27, 1990, BOLETIN OFICIAL (B.O.) Oct. 10, 1990.

some time for the country to engage in a process of legislative reform that would implement the legal and financial commitments undertaken under the CRC towards the protection of children's rights. It was only in 2005 that Congress enacted Law 26061⁸ on the Comprehensive Protection of the Rights of Children and Adolescents.

The General Protection System created by Law 26061 is a set of public policies that consider girls, boys, and adolescents as subjects with rights. Its purpose is the comprehensive protection of children and adolescents, in order to guarantee the full exercise and enjoyment of the rights granted under the national legal system and the international treaties to which the country is a party. These rights cover education, health, culture, recreation, and other matters.⁹

This is the first comprehensive statute for the protection of children in the country, with a clear definition of the responsibilities of the family, society, and the government with regard to the universal rights of the children as provided under the CRC. Law 26061 was regulated by Decree 415/2006.¹⁰

Argentina also ratified the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict¹¹ and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.¹²

III. Child Health and Social Welfare

While mortality rates, both maternal and infant, have considerably decreased in recent years, they still remain high, especially with regard to children from a lower socio-economic background; those living in rural or poor areas, in particular in the northern provinces; and indigenous children.¹³

Law 26061 requires that the government and its entities have to provide: a) access to health services while respecting cultural and family standards recognized by the family and society that do not pose a threat to their health and safety;¹⁴ b) comprehensive health, rehabilitation, and integration programs; c) assistance and orientation programs for families; and d) informational campaigns to promote the rights of the child through the media.¹⁵

The Law also requires health services to be rendered with priority to children, adolescents, and pregnant women.¹⁶

The lack of financing for social security programs has severely impacted all Argentine health institutions. In addition to overcoming what has been described by the Pan American Health

⁷ CONSTITUCION DE LA NACION ARGENTINA, Buenos Aires, 1994, art. 75, para. 22.

⁸ Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, Oct. 26, 2005, B.O. Oct. 26, 2005.

⁹ *Id.*, art. 1.

¹⁰ Decree 415/2006 on the Regulation of Law 26061, Apr. 17, 2006, B.O. Apr. 18, 2006.

¹¹ Law 25616 on the Ratification of the Optional Protocol of the CRC on the Involvement of Children in Armed Conflict, July 17, 2002, B.O. Aug. 12, 2002.

¹² Law 25763 on the Ratification of the Optional Protocol of the CRC on the Sale of Children, Child Prostitution and Child Pornography, July 23, 2003, B.O. Aug. 25, 2003.

¹³ UNICEF, *supra* note 1.

¹⁴ Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, Oct. 26, 2005, B.O. Oct. 26, 2005, art. 14.

¹⁵ *Id.*

¹⁶ *Id.*

Organization (PAHO) as a sanitary emergency, the gap between the richest and poorest in the society have not been addressed.¹⁷

The Federal Plan of Health 2004-2007 proposed, among other items, the development of preventive and promotional programs, emphasizing primary care and respecting the growing network of provincial and township level health care programs. It also proposes protecting the financing of established programs.

The Program of Maternal and Infant Health Care protects women and children in populations at risk. It emphasizes prenatal care, care during delivery, and control of the health and development of children. Vaccine coverage increased progressively during the 1980-2002 period. Since 1990, vaccine coverage has been above eighty percent in all provinces, and since 1995 it has been greater than eighty-five percent. In 2002, the national coverage was 93.8% for the Sabin polio vaccine (3rd dose), 92.5% for the Diphtheria Pertussis and Tetanus vaccine (3rd dose), and 95% for the measles vaccine.¹⁸

The program to fight against human retrovirus and AIDS provides to the uninsured population: antiretroviral drugs free of charge, support for the determination of viral load, and development of informative actions directed to the general public, focused on high-risk groups.¹⁹

IV. Education

According to the National Law on Education,²⁰ *Ley Nacional de Educación*, the Argentine education system is structured as follows:

- Initial Education: consisting of kindergartens for children between three and five years of age, and being obligatory for the latter.
- General Basic Education (*EGB*): nine grades of obligatory education. It is understood to be a comprehensive pedagogic unit organized in different cycles.
- Secondary School (*Educación Polimodal*): after finishing the EGB. It has a minimum duration of three years.
- Higher Education: Professional and academic education. Its duration is set by universities or corresponding agencies.
- Special Education: includes initial education, EGB, job pre-training workshops, and job training workshops.²¹

While school enrollment for both primary and secondary education has increased, there is still limited access to education, and there are high drop-out and repetition rates, especially at the secondary school level. Children from marginalized urban and rural areas, indigenous children, and children from migrant families, particularly illegal migrants, are especially affected.²² Due to economic constraints, the country has suffered a reduction in education spending which also particularly affects poorer children.²³

¹⁷ PAHO, *Argentina, Health Situation and Trends Summary*, http://www.paho.org/English/DD/AIS/cp_032.htm (last visited Aug. 15, 2007).

¹⁸ *Programa Materno Infantil*, <http://www.msal.gov.ar/hm/Site/promin/UCMISALUD/index.htm> (last visited Aug. 15, 2007).

¹⁹ PAHO, *supra* note 17.

²⁰ Law 26206 on National Law on Education, Dec. 14, 2006, B.O. Dec. 28, 2006.

²¹ *Id.*

²² Netherlands Institute of Human Rights Web site, <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/0/3567bf5c062c819e41256c5d0043aa0b?OpenDocument> (last visited Aug. 15, 2007).

²³ *Id.*

In compliance with the commitments under the CRC,²⁴ Law 26061 regulates the right of the children to education as a fundamental human right.²⁵ It provides for the right of children to public and free education, to help them reach their full development as human beings and citizens. The right to education must be exercised respecting the children's creativity, culture, and language of origin.²⁶ The law also secures the right to access to and permanent attendance at an educational facility close to their residence.²⁷

In case a child is missing his or her identification documents, the child will be provisionally registered in the educational institution, while the competent authorities proceed to expeditiously provide the child with such documentation.²⁸

Children and adolescents with special needs or with disabilities are granted all the rights under the law to a comprehensive education, in addition to the special rights derived from their condition.²⁹

Even though neither Law 26061 nor its regulatory Decree 415/06 provides for a definition of child and adolescent, the Civil Code (Codigo Civil de la Republica Argentina y Legislacion Complementaria, 47th ed., LexisNexis Abeledo Perrot, Buenos Aires, 2006, arts. 126-128) does provide for a distinction between minors between fourteen and eighteen years old (*menores impuberes*) and minors between eighteen and twenty-one years old (*menores adultos*), who are assigned a different set of rights.

It is specifically provided that public education is free at all levels, including education for children with special needs.³⁰

V. Child Labor and Exploitation

It has been noted that child protection requires not only adequate laws, but also a committed police force and judiciary to implement them. In addition to good legislation that is properly enforced, the legal environment needs to be child friendly and sensitive to the needs of child victims of commercial sexual exploitation.³¹

Argentina has ratified all the international instruments related to child labor and exploitation, such as the International Labour Organization Convention No. 182 on the Worst Forms of Child Labour (ILO Convention 182)³² and the Inter-American Convention on International Trafficking of Minors.³³

²⁴ CAMPAÑA ARGENTINA POR EL DERECHO A LA EDUCACIÓN. 22 AL 29 DE ABRIL 2007 SEMANA DE ACCIÓN MUNDIAL, available at <http://www.casacidn.org.ar/leer.php/131>.

²⁵ Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, Oct. 26, 2005, B.O., Oct. 26, 2005, art. 15.

²⁶ *Id.*, art. 15.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, art. 16.

³¹ Informe Global de Monitoreo de las acciones en contra de la explotacion sexual comercial de ninos, ninas y adolescentes -2006, at 18, available at http://www.ecpat.net/eng/A4A_2005/americanas.html.

³² Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182), 38 INT'L LEGAL MATERIALS 1207 (1999) (an unofficial source). Entered into force Nov. 19, 2000. Argentina ratified by Law 25255, July 20, 2000, ratification effective Feb. 5, 2001. Consultado el 13 de septiembre de 2006, available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

Decree No. 719/2000³⁴ of August 25, 2000, has established the National Commission for the Elimination of Child Labor within the Ministry of Labor, Employment, and Training of Human Resources, in order to coordinate, evaluate, and implement measures aimed at preventing and eliminating child labor. The International Labor Organization (ILO), UNICEF, and the International Program on the Elimination of Child Labor (IPEC) are to act in an advisory capacity to the Commission. Law No. 25072³⁵ of December 9, 1998, covers the prevention of the ill-treatment of children and adolescents and the topic of domestic violence.

Although Argentina has made considerable advances in its legislation, child labor has increased, in large part due to the economic situation. Child labor is defined as work performed by children outside their homes if the children are aged five to fourteen years. It includes both rural and urban area occupations and does not exclude tasks done for tips or done customarily as assistance to relatives or neighbors.³⁶

In 1995, 225,000 children worked, compared with the 482,803 children who worked in 2000, an increase of over ninety-one percent. Using a definition of child labor that considers as work “to do the housework when adults are outside,” the number of working children aged five to fourteen increases almost three fold to about 1,503,925.³⁷

In 2000, Argentina established a National Plan of Action against the Commercial Sexual Exploitation of Children (*Plan de Acción a Favor de los Derechos de la Infancia Objeto de Explotación Sexual Comercial*).³⁸ It was developed jointly by the department responsible for Criminal Policies and Services to the Community within the Office of the Attorney General (*Procuración General de la Nación, Fiscalía General de la Política Criminal y Servicios a la Comunidad*), the Secretariat for Criminal Policies and Penal Affairs in the Ministry of Justice and Human Rights (*Ministerio de Justicia y Derechos Humanos de la Nación, Secretaría de Política Criminal y Asuntos Penitenciarios*), the National Council for Children and the Family (*Consejo Nacional del Menor y la Familia*), and the National Council for Women (*Consejo Nacional de la Mujer*).

The National Plan was developed with six action areas: awareness raising and prevention; information and training; strengthening of networks; strengthening girls, boys, and adolescents; legislation and legal practices; and research. There are specific objectives and activities assigned to each action area.³⁹

Argentina also ratified ILO Convention No. 138 concerning Minimum Age for Admission to Employment in 1996, in addition to ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor in 2001.⁴⁰ In spite of these actions, a growing number of children under fourteen are subject to economic exploitation; the problem is

³³ InterAmerican Convention on International Trafficking of Minors, available at the OAS Web site, <http://www.oas.org/juridico/spanish/tratados/b-57.html> (last visited Aug. 15, 2007). Argentina adhered to the Convention on Feb. 28, 2000, Consultado el 13 de septiembre de 2006, available at <http://www.oas.org/juridico/spanish/firmas/b-57.htm>.

³⁴ DECREE 719/2000, Aug. 25, 2000, B.O. Aug. 30, 2000.

³⁵ LAW 25072 Dec. 9, 1998, B.O. Jan. 11, 1999.

³⁶ PAHO, *supra* note 17.

³⁷ *Id.*

³⁸ ECPAT International, *Argentina*, NATIONAL PLANS OF ACTION, Jan. 9, 2004, available at http://www.ecpat.net/eng/ecpat_inter/Country/National_plans_of_action/Argentina.html.

³⁹ *Id.*

⁴⁰ Law 24650, June 24, 1996, B.O. July 1, 1996. ILO Convention Concerning Minimum Age for Admission to Employment.

especially serious in particular in rural areas, because of the economic crisis. It has also been noted by writers in the field that there is a lack of data and information with regard to this issue.⁴¹

The phenomenon of child prostitution, especially in big cities, is increasing. Although the National Plan of Action to Combat Commercial Sexual Exploitation of Children has been in place since 2000, coordinated policies and programs on this issue have yet to be fully funded. Research undertaken for UNICEF Argentina has shown this increase in the extent of child and adolescent prostitution in the country. While statistics are not available, the research concludes that young persons' participation in prostitution is not insignificant or represented merely in isolated cases. Research has also found that the use of young persons in the production of pornographic materials and sex tourism, as well as in homosexuality and transvestitism for the purposes of prostitution, is not unknown in Argentina."⁴²

As a party to the Optional Protocol to the CRC on the involvement of children in armed conflict,⁴³ Argentina has forbidden the enrollment of children younger than eighteen in armed conflicts, according to a statement included as a declaration at the time of ratification of the Protocol.⁴⁴

VI. Sale and Trafficking of Children

Sale of children, child prostitution, and child pornography are criminalized under a number of pieces of legislation which give effect to relevant international obligations, including the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography, which was implemented by Law 25087/1999,⁴⁵ amending the Criminal Code,⁴⁶ as well as Law 26061.⁴⁷

The Criminal Code criminalizes the prostitution of minors of eighteen years of age or younger,⁴⁸ but it only sanctions those who "promote or facilitate" prostitution, and not the client who exploits the minor. This approach does not comply with the commitments assumed under the international above-mentioned instruments.⁴⁹

The provisions penalizing child pornography⁵⁰ are also deficient and do not fulfill the international law standards, since they do not penalize the possession, import, export, sale, or offer of child pornographic material. Nor is the distribution of such material through the Internet or other virtual means of communication penalized.⁵¹

The National Counsel for Children, Adolescents, and the Family implements a number of programs to assist children, including programs aimed at the prevention of domestic violence, maltreatment, and sexual abuse of children; the rehabilitation of victims; the provision of legal assistance

⁴¹ Netherlands Institute, *supra* note 22.

⁴² UNICEF, *supra* note 1.

⁴³ Law 25616 on the Ratification of the Optional Protocol of the CRC on the Involvement of Children in Armed Conflict, July 17, 2002, B.O. Aug. 12, 2002.

⁴⁴ *Id.*

⁴⁵ Law 25087 on the Amendment of the Criminal Code, Apr. 14, 1999, B.O. May 14, 1999.

⁴⁶ 1 CODIGO PENAL Y LEYES COMPLEMENTARIAS (6th ed., Editorial Astrea, Buenos Aires, 2007).

⁴⁷ Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, Oct. 26, 2005, B.O., Oct. 26, 2005, art. 9.

⁴⁸ 1 CODIGO PENAL Y LEYES COMPLEMENTARIAS, art. 125 bis (6th ed., Editorial Astrea, Buenos Aires, 2007).

⁴⁹ Informe Global de Monitoreo de las acciones en contra de la explotación sexual comercial de niños, niñas y adolescentes -2006, available at http://www.ecpat.net/eng/A4A_2005/americas.html.

⁵⁰ 1 CODIGO PENAL Y LEYES COMPLEMENTARIAS, art. 128 (6th ed., Editorial Astrea, Buenos Aires, 2007).

⁵¹ Informe Global, *supra* note 49.

to child victims and to those in conflict with the law; assistance to children to return home or to return to school; and assistance to parents, to learn about their responsibilities.⁵²

VII. Juvenile Justice

Law 26061 provides that the government has to guarantee both children and adolescents, in addition to all the rights provided by the national constitution, the CRC, and international treaties to which the country is a party, in any judicial or administrative proceeding, the following rights: a) to be heard before a competent authority; b) to have as a primary consideration the child's opinion at the time the decision is made; c) to have legal counsel, preferably specialized in children's issues, from the beginning of the judicial or administrative proceeding and paid for by the government if the child has no economic resources; d) to actively participate throughout the proceedings; and e) to appeal before the superior courts if needed.⁵³

In spite of the enactment of Law 26061, the juvenile justice system still needs to be fully reformed to implement the mandates of that Law and of the CRC. The current Law 22278 of 1980,⁵⁴ as amended by Law 22803⁵⁵ on the Criminal Regime of Minors, does not provide a punitive juvenile regime that considers the special needs of children and adolescents, as well as the necessary measures needed to reinstate that child in society after a criminal violation has occurred.⁵⁶ Law 22278 is based on the doctrine of "irregular situation," and does not make a clear distinction between children in need of care and protection and those in violation of the law. Under the current law, a judge can order the detention of children without due process based only on their social situation, and this decision cannot be appealed.⁵⁷

The conception of childhood under the current Law is thought to be unconstitutional, because it implies that the child is considered an object of "judicial protection," entailing the annulment of all the legal safeguards enjoyed by adults, the judicialization of poverty, and the invention of the "social risk" category as a justification for coercive state intervention.⁵⁸

There is a 2005 draft bill on Juvenile Justice⁵⁹ pending Congressional approval that would fulfill these commitments. It establishes limits on juvenile criminal responsibility and procedures to be followed, in accordance with article 40, paragraph 3, of the CRC.⁶⁰

VIII. Concluding Remarks

⁵² United Nations, *Commission on Human Rights, Report Submitted by Mr. Juan Miguel Petit, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, in Accordance with Commission on Human Rights Resolution 2002/92*, Jan. 6, 2003, available at <http://www.hri.ca/fortherecord2003/documentation/commission/e-cn4-2003-79.htm>.

⁵³ Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents, Oct. 26, 2005, B.O. Oct. 26, 2005, art. 27.

⁵⁴ LAW 22278 ON THE CRIMINAL REGIME OF MINORS of Aug. 25, 1980 in B.O. Aug. 28, 1980 as amended by LAW 22803 of May, 5, 1983 in B.O. May 9, 1983.

⁵⁵ *Id.*

⁵⁶ E.GARCIA MENDEZ, *INFANCIA Y DEMOCRACIA EN LA ARGENTINA, LA CUESTION DE LA RESPONSABILIDAD PENAL DE LOS ADOLESCENTES* (Fundacion Sur, Editores del Puerto, 2004).

⁵⁷ J.A. VERGARA LUQUE, *REGIMEN PENAL DE LA MINORIDAD* (Ediciones Juridicas Cuyo, Mendoza, 2004).

⁵⁸ *The Implementation of the Rights of Children and Adolescents in Argentina. Current Scenario, challenges and recommendations*, COLECTIVO DE ONG'S DE INFANCIA Y ADOLESCENCIA, ARGENTINA, 2002, at 9, available at http://www.oiji.org/contador.php?url=doc/documental_705_en.pdf&&tabla=1&cod=705&codcont=4217.

⁵⁹ REGIMENT LEGAL APLICABLE A LAS PERSONAS MENORES DE 18 ANIOS DE EDAD INFRACTORAS DE LA LEY PENAL, Bill 6789-D-05 in Camara de Diputados, available at http://www1.hcdn.gov.ar/folio-cgi-bin/om_isapi.dll?clientID=2485252296&advquery=6789-D-05&infobase=tp.nfo&record={AF7B}&softpage=Browse_Frame_Pg42&x=29&y=19&zz=-.

⁶⁰ Argentina: Report Submitted under article 44 of the CRC in CRC/C/15/Add.187, Oct. 9, 2002.

The ratification of the CRC by Argentina meant a turning point in the advancement of the rights of children and adolescents in the country. Adverse circumstances, such as the economic and social crisis in the country, however, have resulted in a deterioration of general living conditions in the society at large and for children in particular since the 1990s. The passage of Law 26061 in 2005, on the Comprehensive Protection of the Rights of Children and Adolescents, is another milestone, but a need has been expressed to couple it with a comprehensive new public policy approach towards the child; specific policies, especially on the criminal responsibility of minors with a basic guarantee of due process; and strengthening of institutions so that children are given due priority.⁶¹

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August 2007

⁶¹ Comité Argentino de Seguimiento y Aplicación de la Convención Internacional de los Derechos del Niño, Breve Análisis de las políticas de Infancia en Argentina, sus paradigmas y la construcción de la nueva ley, <http://www.casacidn.org.ar/leer.php/97> (last visited Aug. 15, 2007).