



Convention on the Rights of the Child

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Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Initial reports of States parties due in 2004

Mexico*

[7 October 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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I. Introduction

1. This is the Government of Mexico's initial report in compliance with its obligations under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

2. It was prepared in accordance with the guidelines issued by the Committee on the Rights of the Child regarding the layout and content of initial reports to be submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/OP/AC/1).

3. The Government of Mexico signed the Optional Protocol on 7 September 2000 and ratified it on 15 March 2002. The international and national obligations set forth therein entered into force on 15 April 2002.

4. Mexico made the following declaration on article 3, paragraph 2, of the Optional Protocol at the time of ratification:

In ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the General Assembly of the United Nations on 25 May 2000, the Government of the United Mexican States considers that any responsibility deriving therefrom for non-governmental armed groups for the recruitment of children under 18 years or their use in hostilities lies solely with such groups and shall not be applicable to the Mexican State as such. The latter shall have a duty to apply at all times the principles governing international humanitarian law.

5. Since there is no internal armed conflict whatever in Mexico, and the country is not involved in any international armed conflicts, there is no risk of Mexican children being called up by the armed forces to participate in hostilities. Mexico considers it relevant to make this declaration in view of the fact that the Optional Protocol is based on the possible existence of armed conflicts which might give rise to the recruitment or use of children.

6. This report was prepared using information supplied by the Ministry of Defence and the Ministry of the Navy and refers to the legal provisions in force in both the Political Constitution of the United Mexican States and domestic legislation.

7. The Government of Mexico reiterates its firm desire to cooperate with international human rights mechanisms, in particular with the treaty monitoring bodies, with respect to compliance with the obligations arising from the international human rights instruments to which it is a party.

8. The Government of Mexico maintains an open and permanent invitation to all the international human rights mechanisms. Between 2000 and 2008 it received 12 visits from United Nation mechanisms, including 4 official visits from the Office of the United Nations High Commissioner for Human Rights and 8 from mechanisms of the inter-American system.

II. General information

A. Definition of the child and adolescent in domestic legislation

9. The Political Constitution of the United Mexican States,¹ in article 34 of chapter IV (“Mexican citizens”), specifies 18 as the age of majority for the exercise of electoral and political rights, which characterize a democratic State governed by law and are based on the notion of Mexican citizenship recognized in the Constitution.

10. In addition, in article 2, the National Act on the Protection of the Rights of Children and Adolescents, published in the Official Gazette of the Federation on 29 May 2000, defines persons covered by the Act as being up to 18 years of age, in accordance with article 1 of the Convention on the Rights of the Child, and divides them into two age groups: children (up to 12 years of age) and adolescents (from 12 to 18 years of age).

11. Given the importance that Mexico attaches to the gender perspective, particular care is taken to use accurate terminology in both written and oral language when mentioning girls, boys and adolescents of both genders in public discourse.

B. Applicability of the Optional Protocol in Mexico

12. Mexico ratified the Convention on the Rights of the Child on 21 September 1990 and its two Optional Protocols in 2002. In conformity with article 133 of the Constitution, international treaties are part of the Supreme Law of the Nation. This provision was confirmed by the Supreme Court of Justice of the Nation in 1999, when it issued a separate opinion stating that international instruments are ranked below the federal Constitution but above the federal laws enacted by the Congress of the Union.²

¹ See the text of the Constitution on www.ordenjuridico.gob.mx/constitucion.php.

² International treaties take precedence over federal laws and are ranked below the federal Constitution. The hierarchy of laws within our judicial system has been the subject of much legal debate. There is unanimous agreement that the federal Constitution is the basic law and that, although in principle the plural used in wording “... shall be the supreme law of all the Union ...” seems to indicate that not only the Constitution is supreme in that respect, that argument is overruled by the fact that all laws must emanate from the Constitution and must be approved by a constituted body, such as the Congress of the Union, while all treaties must be in accordance with the Constitution, which clearly indicates that only the Constitution is the supreme law. Various solutions have been suggested in case law and doctrine to the problem of the hierarchy of other laws of the system. The main ones are the principle of the supremacy of federal law over local law, with the same position for both in relation to “constitutional laws”, which are recognized as being supreme. Nevertheless, the Supreme Court of Justice considers that international treaties rank immediately below the Constitution and above federal and local law. This interpretation of article 133 of the Constitution is based on the fact that the Mexican State assumes these international commitments as a whole, which implies a commitment by all State authorities with respect to the international community. This would explain why the Constituent Assembly empowered the President to sign international treaties in his capacity as Head of State. Similarly, the Senate represents individual states and by ratifying treaties commits all the authorities of those states. Another important aspect to consider in the hierarchy of treaties is that there is no jurisdictional division between the Federation and the states, that is, the distinction between federal and local jurisdiction is not taken into account in relation to the content of a treaty, but rather, as expressly laid down in article 133, the President of the Republic and the Senate can commit the Mexican State in any matter, regardless of whether such matter may otherwise fall under state jurisdiction. Consequently, the interpretation of article 133 ranks federal and local laws alike in third position, pursuant to article 124 of the Constitution, which stipulates that “The powers not

13. This view was further confirmed on 13 February 2007 by the plenary session of the Supreme Court of Justice of the Nation, in a decision adopted by a majority of 6 votes to 5, when addressing 14 *amparo* appeals relating to certain rules that contravened international trade treaties.³

C. Implementation of the Optional Protocol in relation to the general principles of the Convention on the Rights of the Child

1. Non-discrimination (article 2 of the Convention)

14. In Mexico, the Act on the protection of the rights of children and adolescents, in article 16, title II, chapter III (“The right to non-discrimination”), provides as follows:

The rights of children and adolescents shall be recognized without discrimination of any kind on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, economic status, physical disability, birth or any other status not provided for in this article.

15. It also stipulates that “it is the duty of the authorities, ascendant relatives, guardians and members of society to promote and encourage equal development among girls, boys and adolescents, by combating or eliminating from the earliest age all customs or prejudices suggesting superiority of one sex over the other”.

16. The Government of Mexico also runs the National System for the Full Development of the Family as the public body responsible for implementing, applying and fully developing public policies in the area of social assistance for the family and establishing a national culture of respect, safeguards and tolerance for children, by implementing strategies aimed at generating a process of social change to promote understanding, knowledge, application, exercise and fulfilment of the rights of children and adolescents among the general public.

expressly granted by this Constitution to federal officials are understood to be attributed to the states.” It may be recalled that the previous Supreme Court had adopted a different position in its opinion P. C/92, published in December 1992 in the *Gaceta del Semanario Judicial de la Federación* (Judicial Weekly Gazette of the Federation), No. 60, page 27, under the heading “Federal laws and international treaties have the same legal status”. However, the present Supreme Court considers it preferable to abandon that view and to give treaties precedence, even over federal law. *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), ninth edition, volume X, November 1999, opinion P.LXXVII/99, p. 46.

³ International treaties are an integral part of the supreme law of the union and are ranked above general federal and local laws. Interpretation of article 133 of the Constitution. The systematic interpretation of article 133 of the Political Constitution of Mexico identifies a higher legal order at the national level, comprising the federal Constitution, international treaties and general laws. According to this interpretation, in line with the principles of international law underlying the Constitution and the basic rules and premises of this branch of law, it may be concluded that international treaties are ranked below the federal Constitution and above general federal and local laws, inasmuch as the Mexican State, upon signing the treaties, in conformity with the provisions of the Vienna Convention on the Law of Treaties between States and international organizations or between international organizations, and in line with the fundamental principle of international customary law *pacta sunt servanda*, freely undertakes commitments with respect to the international community which cannot be set aside by invoking domestic legislation and whose non-observance entails international responsibility. *Judicial Weekly of the Federation*, ninth edition, volume XXV, April 2007, opinion P.IX/2007, p. 6.

17. The National System for the Full Development of the Family works to ensure that all children enjoy the right to fulfilment of their needs in terms of food, health, education and healthy recreation for their full development and that the State provides whatever is required to ensure respect for the dignity of children and the full exercise of their rights. It is also responsible for setting up committees for the follow-up and monitoring of the Convention on the Rights of the Child.

2. Best interests of the child (article 3 of the Convention)

18. The Act on the protection of the rights of children and adolescents, in article 4, title I (“General provisions”), provides that:

In conformity with the principle of the best interests of the child, rules applicable to children and adolescents shall be aimed primarily at providing them with the care and assistance they need to attain full growth and development in a climate of family and social well-being. In accordance with this principle, the exercise of the rights of adults may never, at any time or under any circumstances, condition the exercise of the rights of children and adolescents. The implementation of this Act shall ensure compliance with this principle and with the fundamental guarantees and rights recognized in the Political Constitution of Mexico.

3. Right to life, survival and development (article 6 of the Convention)

19. The right to life is guaranteed in article 15, title II, chapter II (“The right to life”) of the Act on the protection of the rights of children and adolescents, wherein it is provided that “Children and adolescents have an inherent right to life. Their survival and development shall be guaranteed to the maximum extent possible.”

20. Similarly, in article 19, title II, chapter IV (“The right to live in conditions propitious to well-being and to a healthy physical and mental development”), the Act provides that “Children and adolescents have the right to live in conditions propitious to their healthy and harmonious growth, whether physical, mental, material, spiritual, moral or social.”

4. Respect for the views of the child (article 12 of the Convention)

21. In articles 38, 39 and 41, title II, chapter XIII (“The right to participate”), the Act on the protection of the rights of children and adolescents guarantees respect for the views of children and adolescents, as follows:

Article 38: “Children and adolescents have the right to freedom of expression, which includes expressing views and being informed. Such freedoms are limited only by the provisions of the Constitution.”

Article 39: “Children and adolescents have the right to freedom of opinion, analysis and criticism and to submit suggestions in all the environments in which they live, including the family, school, society or any other, subject only to the limitations established in the Constitution or arising from respect for the rights of others.”

Article 41: “The right to express an opinion means that their views must be heard with respect to:

- (a) Matters that affect them and the content of resolutions concerning them;
- (b) Their opinions and suggestions regarding family and community affairs.”

III. Information relating to articles 1 to 7 of the Optional Protocol

A. Article 1: direct involvement in hostilities

22. In accordance with the provisions of the Optional Protocol, Mexicans who join the Mexican Army or Air Force on active service must be at least 18 years of age, except when enrolled in the military education system. There is no law obliging children under 18 years to enter active service with the armed forces, nor any obligation for them to take part in hostilities.⁴

23. In view of the fact that Mexico is not currently involved in any form of armed conflict, the provisions of the Protocol requesting lists of members of the armed forces under 18 years of age who have been taken prisoner do not apply.

B. Article 2: forced or compulsory recruitment

24. In relation to article 2 of the Optional Protocol, which stipulates that States parties shall ensure that no children under 18 years shall be compulsorily recruited into their armed forces, the Political Constitution of the United Mexican States, in article 5, provides that military service shall be compulsory, while in article 31, it includes among the obligations of Mexican citizens:

Appearing on the days and at the times appointed by the town or city council of their place of residence, in order to receive civic and military instruction to ensure that they remain apt to exercise of their citizens' rights, skilled in the handling of weapons and familiar with military discipline.

25. The Constitution adds that they must "enlist and serve in the National Guard, in conformity with the applicable organization act, in order to guarantee and defend the independence, territory, honour, rights and interests of the Nation, as well as internal peace and order".

26. According to article 1 of the Military Service Act,⁵ military service is compulsory for all persons who are Mexican by birth or by naturalization, who must serve in the army or navy as soldiers or non-commissioned or commissioned officers, in accordance with their abilities and aptitudes.

27. In the event of an international war, military service will also be compulsory for foreigners who are nationals of countries allied with Mexico and resident in Mexico. All the provisions of that Act and its regulations will apply to foreigners who are required to perform military service in Mexico, as if they were Mexican, subject to whatever provisions are applicable in that respect in international agreements or conventions.

28. There is no law of any kind, however, that stipulates the forced or compulsory recruitment of any person under the age of 18 years into the armed forces.

29. Article 4 of the Military Service Act provides that the preliminary stages of enlistment to each class of military service will take place during the second half of the year

⁴ Organization Act on the Mexican Army and Air Force (text available on www.ordenjuridico.gob.mx/Federal/Combo/L-185.pdf), art. 149, and Regulations on Recruitment of Mexican Army and Air Force Personnel (text available on www.ordenjuridico.gob.mx/Federal/Combo/R-164.pdf), art. 17.

⁵ See www.ordenjuridico.gob.mx/Federal/Combo/L-93.pdf.

in which individuals reach 18 years of age, and they begin their military service on 1 January of the following year. Military obligations come to an end on 31 December of the year in which they reach 45 years of age.

30. The Rules for the Recruitment of Personnel for the Mexican Army and Air Force⁶ provide, in article 17, that it is a requirement for entry into the Mexican army and air force to be at least 18 years of age.

31. Military service may be anticipated, but only in the case of adolescents over the age of 16 who, due to study commitments or foreign travel, are unable to perform their military service at the normal time assigned by the regulations, and provided that they have the prior authorization of the person who has parental authority.

C. Article 3: minimum age for voluntary recruitment

32. The Government of Mexico, in compliance with article 3, paragraph 2, of the Optional Protocol, deposited a binding declaration setting forth the minimum age for the voluntary recruitment of its nationals into the armed forces as 18 years.

33. Article 149 of the Organization Act on the Mexican Army and Air Force⁷ and article 48 of the Organization Act on the Mexican Navy⁸ provide that the recruitment of personnel will be carried out through conscription, in conformity with the Military Service Act, or through voluntary recruitment, by selecting among individuals who apply, subject to the terms and conditions specified in the respective employment contracts.

34. The minimum age requirement for voluntary recruitment is 18 years. Under article 24 of the Military Service Act, persons under 18 and over 16 years of age may be admitted to join the army, but only to be trained as technical operatives in signal units under contract with the State not exceeding 5 years. In such cases, the consent of the parent or guardian, an application in writing by the person concerned and his or her birth certificate are required.

D. Article 4: non-governmental agents (armed groups)

35. The Protocol's provision regarding recruitment of children by armed groups other than the armed forces does not apply in Mexico's case, partly on account of the interpretative declaration referred to in paragraph 4 of this report and partly due to the fact that Mexico is not currently involved in any armed conflicts (internal or international), so that there is no recruitment or use of children by armed groups.

E. Article 5: implementation of international instruments and humanitarian law by Mexico

36. Mexico applies whatever rules guarantee the best protection of children's rights, whether through national legislation, international instruments or humanitarian law.

37. Mexico ratified the Optional Protocol for which this report has been prepared in 2002, and is a party to the following international instruments on children's rights:

⁶ See note 4 above.

⁷ See note 4 above.

⁸ See www.ordenjuridico.gob.mx/Federal/Combo/L-166.pdf.

- (a) Convention on the Civil Aspects of International Child Abduction: ratified by Mexico on 6 March 1992;
- (b) Convention on the Rights of the Child: ratified by Mexico on 21 September 1990;
- (c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: ratified by Mexico on 15 March 2002;
- (d) Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption: ratified by Mexico on 24 October 1994;
- (e) Inter-American Convention on Conflict of Laws concerning the Adoption of Minors: ratified by Mexico on 21 August 1987;
- (f) ILO Convention No. 58 Fixing the Minimum Age for the Admission of Children to Employment at Sea: ratified by Mexico on 25 August 1951;
- (g) ILO Convention No. 90 concerning the Night Work of Young Persons Employed in Industry: ratified by Mexico on 20 June 1956;
- (h) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour: ratified by Mexico on 30 June 2000;
- (i) Inter-American Convention on the International Return of Children: ratified by Mexico on 29 July 1994;
- (j) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages: ratified by Mexico on 22 February 1983.

38. With respect to international humanitarian law and armed conflicts, Mexico is a party to the following instruments:

- (a) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention): ratified by Mexico on 29 October 1952;
- (b) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention): ratified by Mexico on 29 October 1952;
- (c) Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention): ratified by Mexico on 29 October 1952;
- (d) Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention): ratified by Mexico on 29 October 1952;
- (e) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I): ratified by Mexico on 10 March 1983;
- (f) Convention on the Prevention and Punishment of the Crime of Genocide: ratified by Mexico on 22 July 1952;
- (g) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity: ratified by Mexico on 15 March 2002;
- (h) Inter-American Convention on Support Obligations: ratified by Mexico on 29 July 1994.

F. Article 6: implementation in domestic legislation

39. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was incorporated in Mexican law by virtue of the Government's ratification of that international instrument.

40. Within the legal system of Mexico, the provisions of the Optional Protocol are embodied in the Organization Act on the Mexican Army and Air Force and the Military Service Act.

41. The Government wishes to point out that the provision regarding the adoption of measures to ensure that persons within the jurisdiction of the State who have been recruited or used in hostilities in contravention of the Protocol are demobilized or otherwise discharged from the service does not apply to Mexico.

G. Article 7: international cooperation and assistance

42. Since the Mexican State is not currently involved in any armed conflicts, it has no technical cooperation or financial assistance programmes to implement the Optional Protocol. Therefore, no provision has been made for financial assistance through multilateral or bilateral programmes in the budgets allocated to the respective government departments.

43. The remaining articles of the Optional Protocol do not apply to the Mexican State because, as previously mentioned, it is not involved in any internal or international armed conflicts.
