

## **ACCESS TO JUSTICE FOR CHILDREN: MEXICO**

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### **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The CRC was signed by Mexico on 26 January 1990, ratified on 21 November 1990, and published in the Federal Official Gazette (*Diario Oficial de la Federación*) on 25 January 1991. In addition to the CRC, Mexico has ratified the Optional Protocols relating to the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.

All treaties signed by the President of Mexico, with the approval of the Senate, are deemed to constitute the supreme law of Mexico, together with the Constitution and the laws of the Congress of the Union.<sup>1</sup> The CRC is therefore part of national law and may serve as a legal basis in any proceedings before the national courts. It is also part of the supreme law of Mexico as a whole and must be implemented at federal level and in all the individual states.<sup>2</sup>

#### **B. Does the CRC take precedence over national law**

The CRC has been interpreted to take precedence over national laws, but not the Constitution. According to doctrinal thesis LXXVII/99 of November 1999, international treaties are ranked second immediately after the Constitution and ahead of federal and local laws.<sup>3</sup> On several occasions, Mexico's Supreme Court has stated that international treaties take precedence over national law, mainly in the case of human rights.<sup>4</sup>

#### **C. Has the CRC been incorporated into national law**

The CRC has been incorporated into national law by virtue of the process of ratification (see part I.A above).

Since ratification, the Mexican Government has taken steps to bring national legislation into conformity with the CRC. For example, Article 4 of the Constitution was amended in 2000 to give constitutional status to the right of children to satisfy their needs in terms of food, health, education and healthy recreation. This was followed by the enactment

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<sup>1</sup> Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*) (Constitution), Article 133; Law on International Treaties (*Ley sobre la Celebración de Tratados*), Article 2.

<sup>2</sup> *Third periodic report of Mexico to the UN Committee on the Rights of the Child*, CRC/C/125/Add.7, 24 August 2005, para. 13. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f125%2fAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f125%2fAdd.7&Lang=en).

<sup>3</sup> *Ibid.*

<sup>4</sup> See, for example, the opinions of the Supreme Court of Mexico issued in April 2007 and November 1999 by means of *tesis aisladas* with record numbers 172650 and 192867, respectively.

of the Act on the Protection of the Rights of Children in order to regulate Article 4 of the Constitution, as well as similar legislation in 11 states across Mexico. However, the Committee remains concerned about “the lack of effectiveness of the measures taken to implement the rights contained in the Convention and to allow rights holders to claim them”, the fact that “not all national legislation is in full conformity with the Convention”, and that legislation such as the Act on the Protection of the Rights of Children has not been fully integrated into state laws.<sup>5</sup>

D. Can the CRC be directly enforced in the courts?

International treaties such as the CRC are considered part of the supreme law of Mexico, therefore they can be directly enforced in courts.<sup>6</sup> Moreover, under Article 1 of the Constitution, provisions on human rights must be interpreted in accordance with the Constitution and international treaties encouraging broader protection for people.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been applied and cited in cases before the Supreme Court of Mexico, including with regard to child custody,<sup>7</sup> and the government’s duty to protect children.<sup>8</sup>

## II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children’s rights?

Children are entitled to bring *amparo* petitions for the protection of human rights contemplated in the Constitution and international treaties ratified by Mexico (which includes the CRC) when such rights are violated by general provisions, acts or omissions of authorities (see part III.A below).<sup>9</sup>

Children may also bring civil cases with the assistance of a representative, submit complaints to the Attorney General if they are a victim of crime (see part II.B below), or submit complaints to the National Human Rights Commission (CNDH) regarding alleged human rights violations (see part III.A below).

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

At both a federal level and in all of Mexico’s states, children are not entitled to bring

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<sup>5</sup> UN Committee on the Rights of the Child, *Concluding observations on the third periodic report of Mexico*, CRC/C/MEX/CO/3, 8 June 2006, para. 6. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2fCO%2f3&Lang=en).

<sup>6</sup> See, for example, opinion of the Mexican Supreme Court of Justice issued in December 2012 by means of jurisprudence with record number 2002264.

<sup>7</sup> <http://www.scjn.gob.mx/conocelacorte/ministra/derechosdelnino.pdf>, (accessed 11 February 2014).

<sup>8</sup> <http://www2.scjn.gob.mx/fi1-2009/Documentos/Informes/FacultadDeInvestigacion-1-2009V1.pdf>, (accessed 11 February 2014).

<sup>9</sup> Amparo Law, Article 1.

cases in civil courts, and must do so with the assistance of their representatives (e.g. parents or guardians).<sup>10</sup> Federal and state legislation on civil procedure provides that only people with legal capacity are entitled to initiate a judicial procedure (i.e. bring cases before domestic courts),<sup>11</sup> and children (under the age of 18) are deemed to lack legal capacity,<sup>12</sup> therefore cases must be brought to court by their representatives.

However, children are entitled to bring actions by themselves to protect their individual rights under the Amparo Law if their legal representative is absent, is prevented from bringing such cases, or refuses to bring such cases. The competent court will immediately appoint a special representative to appear in such trial. If the child is over the age of 14, they may appoint a special representative themselves in the initial lawsuit.

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With respect to federal criminal law, children aged 16 or over may submit a complaint (*querrela*) before the Attorney General by themselves or through their representative if they are victim of a crime. In cases of child victims under 16, complaints must be submitted by those who exercise custody or guardianship over the child.<sup>14</sup> At the state level, the majority of states within Mexico provide for children's ability to submit a complaint by themselves.<sup>15</sup> However, in some states, all children need the assistance of a representative in order to file a complaint,<sup>16</sup> while some other states impose a threshold of the age of 12,<sup>17</sup> 14,<sup>18</sup> or 16<sup>19</sup> for the ability to file a complaint without the assistance of a representative.

The Law for the Protection of Rights of Children and Adolescents (*Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes*) provides that all federal, local and municipal institutions created for the protection of the rights of children have the authority to represent the interests of children before courts (judicial or administrative).<sup>20</sup>

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, their cases would typically be brought through their representatives (see part II.B above).

D. Would children or their representatives be eligible to receive free or subsidized legal assistance in bringing these kinds of cases?

In Mexico, a person who is accused of a crime has the right under the Constitution to receive subsidised legal assistance (*defensor de oficio*).<sup>21</sup> In any criminal procedure

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<sup>10</sup> Federal Civil Code, Articles 412 and 414.

<sup>11</sup> Federal Code of Civil Procedure, Article 1.

<sup>12</sup> Federal Civil Code, Article 450, Section I.

<sup>13</sup> Amparo Law, Article 8.

<sup>14</sup> Federal Code of Criminal Procedure, Article 115.

<sup>15</sup> Campeche, Distrito Federal, Guanajuato, Guerrero, Estado de México, Nayarit, Oaxaca, Puebla, Quintana Roo, Sinaloa, Tamaulipas and Tlaxcala.

<sup>16</sup> Baja California Sur, Chiapas, Chihuahua, Colima, Durango, Jalisco and Veracruz.

<sup>17</sup> Zacatecas.

<sup>18</sup> Aguascalientes, Baja California, Hidalgo and Yucatán.

<sup>19</sup> Coahuila, Michoacán, Morelos, Nuevo León, Querétaro, San Luis Potosí, Sonora and Tabasco.

<sup>20</sup> Law for the Protection of Rights of Children and Adolescents, Article 49(B).

<sup>21</sup> Constitution, Article 20.

involving a child, the Constitution requires that the Attorney General or the court assist the child—e.g., by supplying legal arguments on the child’s behalf—with the view to protecting the best interests of the child.<sup>22</sup>

Under the Federal Law of Public Defence (*Ley Federal de Defensoría Pública*), indigent persons are entitled to public defence free of charge.<sup>23</sup> This is provided through (i) public defenders in criminal cases, from the initial investigation to the execution of sentence or measures; and (ii) legal advisers in non-criminal matters.<sup>24</sup>

The federal legal aid system is administered by the Federal Public Defence Institute (*Instituto Federal de Defensoría Pública*), an independent body functioning as part of the judiciary. Federal public defenders are recruited from the ranks of practising attorneys; they must have a minimum of three years’ professional experience in matters relating to the type of services being rendered,<sup>25</sup> and are tested on their knowledge of their particular field of expertise, covering constitutional law, human rights, *amparo* law, criminal law, and federal criminal procedure.<sup>26</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child’s parents or guardian have to agree to a case being brought)?

There are no other such conditions or limits.

### III. How can children’s rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

*Amparo* is a “constitutional protection lawsuit” governed by Articles 103 and 107 of the Constitution which may be filed in federal court. It gives anyone, including children, the right to bring to court challenges to violations of individual rights caused by laws, acts or omissions of governmental authorities. Acts by private parties may also be challenged in an *amparo* petition, provided such acts are tantamount to acts of an authority under a statute.<sup>27</sup>

There are various types of *amparo* according to subject matter, including:

- *amparo* against arbitrary detention (*amparo habeas corpus*), in which an aggrieved detainee can contest the validity of an arrest and obtain an order of release if the arrest is not justified;
- *amparo* against laws (*amparo contra leyes*), in which a private individual or legal

<sup>22</sup> Federal Code of Criminal Procedure, Article 1.

<sup>23</sup> Federal Law of Public Defence, Article 2.

<sup>24</sup> *Ibid.*, Article 4.

<sup>25</sup> *Ibid.*, Article 5.

<sup>26</sup> H. van As, ‘Assuring Quality Legal Aid in Mexico and the Netherlands: Horses for Courses?’, [http://www.ilagnnet.org/jscripts/tiny\\_mce/plugins/filemanager/files/Killamey\\_2005/Conference\\_Papers/Hennie\\_van\\_As\\_-\\_Assuring\\_quality\\_legal\\_aid\\_in\\_Mexico\\_and\\_the\\_Netherlands.pdf](http://www.ilagnnet.org/jscripts/tiny_mce/plugins/filemanager/files/Killamey_2005/Conference_Papers/Hennie_van_As_-_Assuring_quality_legal_aid_in_Mexico_and_the_Netherlands.pdf), (accessed 11 February 2014)

<sup>27</sup> Basham, Ringe y Correa SC, ‘New Amparo Law’, <http://www.lexology.com/library/detail.aspx?g=c34b359c-03a8-4415-831c-40eefaa01b4e>, 2013, (accessed 11 February 2014).

entity can contest any legal instrument issued by the federal legislature that they believe violates their fundamental rights under the Constitution or international treaties ratified by Mexico (including the CRC); they can also contest the constitutionality of federal and state legislation;

- administrative *amparo* (*amparo administrativo*), which concerns judicial review of administrative acts regarding their conformity with basic rights; and
- judicial *amparo* (*amparo judicial* or *amparo casación*), which is a challenge to a court-issued procedural ruling, an interlocutory decision or a final decision; this can be used when a judge has erred in interpreting the facts of a legal action and when that interpretation is a crucial element of the judge's conclusions.<sup>28</sup>

In addition, anyone, including children, has the right to submit a complaint directly to the National Human Rights Commission (CNDH) when federal administrative authorities, with the exception of the judiciary, commit acts or omissions that violate human rights. The CNDH has the power to receive and investigate complaints and make recommendations to authorities. Children may submit complaints directly or with the assistance of a representative. In the case of children who cannot write, their complaint can be submitted orally. The complaint must contain identifying details and be signed or have the fingerprint of the complainant; the CNDH does not allow anonymous communications. The complaint must be lodged within a period of one year from the beginning of the violation of human rights. However, in the case of gross violations of fundamental rights, the CNDH may extend this period.<sup>29</sup>

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>30</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.<sup>31</sup> A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>32</sup> The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.<sup>33</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>34</sup> When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties

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<sup>28</sup> Research Directorate, Immigration and Refugee Board of Canada, Ottawa, ‘Mexico: “Amparo” lawsuits and their implementation in the legal system’, <http://www.refworld.org/docid/47d6548cc.html>, 2008, (accessed 11 February 2014).

<sup>29</sup> National Human Rights Commission, [www.cndh.org.mx/node/37](http://www.cndh.org.mx/node/37), (accessed 11 February 2014).

<sup>30</sup> The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm); American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>31</sup> American Convention on Human Rights, Article 44.

<sup>32</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>33</sup> *Ibid.*, Article 28.

<sup>34</sup> *Ibid.*, Article 23.

concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).<sup>35</sup> Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.<sup>36</sup> The Court's judgments are legally binding on the State against which they are made.

B. What powers would courts have to review these violations, and what remedies could they offer?

If a court rules in favour of a petitioner in an *amparo* proceeding, the petitioner will be exempted from the application of the challenged law, ruling or decision. In cases where a law is found to be unconstitutional in two consecutive court decisions, the Supreme Court may request that the authority that issued the law modify the provisions that are deemed unconstitutional. If the authority fails to modify the law within 90 days, the Supreme Court may issue a general declaration of unconstitutionality, which suspends the application of the unconstitutional law or provision.<sup>37</sup>

The courts may use public force to execute their resolutions. The Amparo Law provides for the Supreme Court to remove and prosecute any authority that does not comply with an *amparo* judgment.<sup>38</sup>

In general, the remedy in civil cases is the restoration of the status quo prior to the damage, when possible, or the payment of damages. Courts may also award compensation to private individuals if their wealth or rights have been harmed as a result of illegal State acts.<sup>39</sup>

Regarding class actions lawsuits (see part III.D), federal courts can award damages, injunctive relief, or specific performance, including orders to remediate damage.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Article 322 of the Federal Code of Civil Procedure requires the plaintiff's submission to indicate the name of the plaintiff. Under Article 587 concerning collective actions, an

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<sup>35</sup> Ibid., Article 45.

<sup>36</sup> American Convention on Human Rights, Article 63.

<sup>37</sup> CCN Mexico Report, 'Pratique legal - the general applicability (erga omnes) of certain case decisions issued by Mexican Federal Courts as a result of Mexico's new Amparo Law (Ley de Amparo)', <http://mexicoreport.com/en/2013/05/PRACTIQUE-LEGAL-The-General-Applicability-Erga-Omnes-of-Certain-Case-Decisions-Issued-by-Mexican-Federal-Courts-as-a-Result-of-Mexico-s-New-Amparo-Law-Ley-de-Amparo-?aid=1360>, 2013, (accessed February 2014).

<sup>38</sup> Global Legal Monitor, 'Mexico: new Amparo Law is enacted', [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403575\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403575_text), 2013 (accessed 11 February 2014).

<sup>39</sup> Constitution, Article 113.

application must contain the names of the plaintiffs.<sup>40</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Two or more claimants may initiate a collective *amparo* proceeding, as long as they can prove that all members of the collective have suffered a common impairment caused by the same authority, even if the act or omission that caused the impairment is not the same for each individual.<sup>41</sup> Any party with a legitimate interest (individual or collective) may also join an *amparo* suit.<sup>42</sup>

Under the Federal Code of Civil Procedure, private plaintiffs and certain non-profit organisations can bring collective actions in cases involving harm to consumers of public and private goods or services, or harm to the environment.<sup>43</sup> In order to bring a collective action, certain prerequisites must be satisfied, including the following: (1) there must be at least 30 identified class members; (2) common questions of fact or law must exist among class members; and (3) absent class members must be adequately represented.<sup>44</sup> Collective actions may be initiated by filing a complaint with a federal district judge, which must meet certain formal requirements, including establishing the standing of the representative, the type of action claimed, the factual basis for the claim, and the common circumstances that make collective action appropriate.<sup>45</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

It is possible for a non-governmental organisation (NGO) to file an *amparo* petition. Under the Amparo Law, anyone with a "legitimate interest" has standing to initiate an *amparo* proceeding. In 2012, the Mexican courts admitted an *amparo* motion by an organisation aiming to preserve constitutionally-protected rights. The court's admission of this *amparo* motion was unprecedented in Mexico.<sup>46</sup>

NGOs may also intervene in cases as third parties or *amicus curiae* providing written or oral statements or documents, so long as such statements or documents are relevant in

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<sup>40</sup> Federal Code of Civil Procedure, Article 587.

<sup>41</sup> CCN Mexico Report.

<sup>42</sup> G. Zyberi, 'The story of Amparo Laws in Mexico', <http://www.internationallawobserver.eu/2013/05/22/the-story-of-amparo-laws-in-mexico/>, 2013, (accessed 11 February 2014).

<sup>43</sup> Federal Code of Civil Procedure, Articles 578 and 585.

<sup>44</sup> N. R. Marder & A. S. Jick, 'Collective actions in Mexico: similarities, differences, and implications', <http://about.bloomberglaw.com/practitioner-contributions/collective-actions-in-mexico-similarities-differences-and-implications/>, 2012, (accessed 11 February 2014).

<sup>45</sup> Jones Day, 'New class action rules in Mexico create significant risks for companies doing business in Mexico', [http://www.jonesday.com/new\\_class\\_action\\_rules\\_in\\_mexico](http://www.jonesday.com/new_class_action_rules_in_mexico), 2012, (accessed 11 February 2014); Federal Code of Civil Procedure, Article 587.

<sup>46</sup> The Mexican Association for the Right for Information (MARI) filed an *amparo* motion against the Federal Competition Commission's (FCC) resolution authorising the merger between Grupo Televisa and GSF Telecom Holdings before the Federal District's 13th District Court in administrative matters. MARI argued that the FCC's resolution harmed the rights of freedom of speech and information. In July 2012 the court admitted the *amparo* motion: SAI Law & Economics, 'A change of paradigm in *amparo* proceedings', <http://www.internationallawoffice.com/newsletters/detail.aspx?g=078c0386-3990-4ccc-8f0e-4821c5e1a487&redir=1>, 2012, (accessed 11 February 2014).

order to resolve the matter in dispute and the third parties do not have a conflict of interest with the parties.<sup>47</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to impugn a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases are typically initiated through a complaint presented in a civil court. The complaint can also be filed in a criminal court in order to claim violations of children's rights for a criminal action.

An *amparo* lawsuit is typically filed in a federal District Court. The petitioner will challenge the ruling/decision on constitutional grounds, requesting *amparo* from the application of the ruling/decision. The petitioner must name the governmental authorities that committed the allegedly wrongful acts, as well as any third party that may be affected by the *amparo* decision.<sup>48</sup>

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D.

According to the Federal Law of Public Defence, legal aid in non-criminal matters is preferably given to unemployed or underemployed persons, retirees, indigenous persons, and persons who for any social or economic reason have a need for such services.<sup>49</sup>

In civil trials, although a party must have legal counsel before being granted an appearance before a judge, all costs associated with appearing in court are absorbed by the government. This includes court fees, witnesses' expenses, and costs for court activities conducted outside the place of the trial.<sup>50</sup>

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that

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<sup>47</sup> Federal Code of Civil Procedure, Article 59.

<sup>48</sup> A. Torriente, 'Study of Mexican Supreme Court decisions concerning the rights of State employees to organize in the States of Jalisco and Oaxaca', <http://www.dol.gov/ilab/media/reports/nao/TorrienteStudy.htm>, (accessed 11 February 2014).

<sup>49</sup> Federal Law of Public Defence, Article 15.

<sup>50</sup> Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>, 2012, (accessed 11 February 2014), p. 179; M. Venegas, 'Mexico', <http://globalarbitrationreview.com/know-how/topics/63/jurisdictions/16/mexico/>, 2012, (accessed 11 February 2014).



does not require the payment of legal fees up front?

Children or their representatives may seek pro bono legal assistance from the Asociación de Servicios Legales, AC (ASL), administered by the Mexican Bar Association. Legal aid through the ASL is only available to individuals and groups who lack equal access to justice; recipients typically fall within one of the following categories: (i) people facing extreme poverty or illiteracy; (ii) people afflicted with a physical or mental disability; or (iii) minorities or victims of discrimination. The ASL has assisted in the following types of cases: (i) family law issues; (ii) issues involving minor children; and (iv) mental and physical discrimination claims.<sup>51</sup>

University legal clinics also provide free legal advice and representation, such as those at the Universidad Panamericana and the Instituto Tecnológico Autónomo de México. The legal clinic at Universidad Panamericana litigates cases before almost all courts, including civil court, family court, and criminal court. The decision whether to accept a case depends on several factors, including the socioeconomic status of the individual, the jurisdiction of the case, the viability of the claim and the ethical repercussions of representation.<sup>52</sup>

The pro bono culture is still not fully ingrained in the Mexican legal community, however pro bono services in Mexico are becoming more prevalent, and efforts have been made to raise awareness of the need for such services. For example, the Pro Bono Declaration for the Americas intends to expand the commitment of lawyers to provide legal services to the poor and underprivileged in the Americas, and calls for all sponsoring firms and departments to make a specific commitment of 20 pro bono hours per lawyer per year.<sup>53</sup> Moreover, the Mexican Pro Bono Network (Red Pro Bono México), a network of law firms, lawyers and legal clinics, has a pro bono commitment to provide legal services to underprivileged children who do not have access to justice or legal alternatives.

Contingency fee arrangements are permissible and common in Mexico.<sup>54</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Generally, *amparo* petitions must be brought to court within 15 days following the ruling/decision. However, *amparo* petitions concerning deprivation of life, attacks on personal freedom, detention, deportation or expulsion, banishment or exile, forced disappearance, or any acts under Article 22 of the Constitution may be filed at any time.

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- E. Evidence. What sort of evidence is admissible / required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

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<sup>51</sup> Latham & Watkins, p. 180.

<sup>52</sup> Ibid., pp. 179-180.

<sup>53</sup> Ibid., p. 179.

<sup>54</sup> M. Venegas.

<sup>55</sup> Amparo Law, Articles 17-18.

In accordance with Article 87 of the Federal Code of Civil Procedure, courts must receive evidence submitted by the parties whenever such evidence is recognised by the law. However, courts are entitled to deny the admission of any evidence that they deem to be against basic moral principles. In accordance with the Supreme Court resolutions to protect children's rights, judges have the authority to take into consideration any evidence they consider important or necessary.<sup>56</sup>

Article 1 of the Federal Code of Penal Procedure establishes that in any criminal proceedings in which a child is involved - as a perpetrator, participant, victim, injured party or in any other capacity - the Public Prosecutor's Office or the relevant court must offset any lack or deficiency of reasons or grounds required to protect their rights.

In February 2012, the Supreme Court issued a Protocol for those who administer justice in cases involving children and adolescents.<sup>57</sup> This Protocol lists and explains general principles and practices to be applied to any child involved in judicial proceedings - whether as a victim, witness, or alleged perpetrator of a crime - to ensure respect for their rights.<sup>58</sup> For example, no child may be compelled to testify in a judicial proceeding against their will, or without the knowledge of their parent or legal guardian unless the parent or guardian is the likely perpetrator of the crime against the child, the child expresses concern about being accompanied by such persons, or the court finds that it is contrary to the interests of the child.<sup>59</sup>

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Article 17 of the Constitution states that the administration of justice should be prompt and expeditious. However, there are no provisions in Mexican law that specifically set the period of time within which courts must deliver their decisions. It is reported that the justice system in Mexico is plagued with delays and unpredictability.<sup>60</sup>

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In Mexico, the availability of an ordinary appeal depends on the subject, territory, matter and the jurisdiction of the original action.

At the federal level, decisions of the District Courts (*Juzgados de Distrito*) can be appealed to the Circuit Courts (*Colegiados de Circuito*). The Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) is the highest court in Mexico and has final

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<sup>56</sup> The Supreme Court of Mexico issued this opinion in March 2013 by means of jurisprudence with record number 2003069.

<sup>57</sup> Suprema Corte de Justicia de la Nación, 'Protocolo de actuación par a quienes imparten justicia en casos que afecten a niñas, niños y adolescentes', [http://www.pjetam.gob.mx/tamaulipas/interiores/Publicaciones/Protocolo2012\\_v3.pdf](http://www.pjetam.gob.mx/tamaulipas/interiores/Publicaciones/Protocolo2012_v3.pdf), 2012, (accessed 12 February 2014).

<sup>58</sup> *Report by Mexico to the UN Committee on the Rights of the Child*, CRC/C/MEX/4-5, 2012, para. 359. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2f4-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2f4-5&Lang=en).

<sup>59</sup> Suprema Corte de Justicia de la Nación, pp. 40-41.

<sup>60</sup> Freedom House, 'Mexico', [http://www.freedomhouse.org/report/freedom-world/2013/mexico#\\_iP8xA](http://www.freedomhouse.org/report/freedom-world/2013/mexico#_iP8xA), 2013, (accessed 12 February 2014).

appellate jurisdiction over all state and federal courts.

State law establishes the structure and function of the courts in each state in Mexico. Generally, decisions of the Courts of First Instance (*Tribunales de Primera Instancia*) in civil and criminal cases can be appealed to the Superior Court of Justice, which is the highest appellate court at the state level.

If a petition for *amparo* is denied by a federal District Court, the petitioner may file a request for review of the *amparo* decision (*recurso de revisión*). The request for review will be heard by a Circuit Court, unless the *amparo* challenges the constitutionality of a law or regulation, in which case it will be heard by the Supreme Court.<sup>61</sup>

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The principle of *stare decisis* is not recognised in Mexico's civil law system. The result of an *amparo* proceeding generally only affects the parties involved, unless a statute is declared to be unconstitutional (see part III.B above).

However, the Mexican judiciary does create case law to some extent. The Supreme Court and federal Circuit Courts may establish formally binding precedent (*jurisprudencia*) by having five consecutive and consistent decisions on a point of law, issued in different sessions by a majority of at least eight votes.<sup>62</sup> *Jurisprudencia* is binding on the court that established it and on all lower federal and state courts.<sup>63</sup> Therefore, a negative decision that has become binding through this process may have a lasting impact.

Since judicial authority operates with autonomy from the executive and legislative authorities, usually these decisions do not have any political impact. Nevertheless, depending on the severity of the case and the media influence, some decisions may attract political backlash.

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

It is reported that Mexico's inquisitorial judicial system has proven inefficient and highly vulnerable to corruption, resulting in a high impunity rate—only two percent of reported crimes lead to a conviction. In August 2009, a poll found that 68 percent of respondents had little or no trust in the judiciary. As a result, many underprivileged people have traditionally preferred to resolve conflicts without resorting to court. However, certain recent reforms, including amendments to the Constitution, have increased access to the courts and fairness in legal proceedings (see part V below).<sup>64</sup>

- V. Additional factors.** Please list any other national laws, policies or practices you believe

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<sup>61</sup> A. Torriente; A. Tschentscher & C. Lehner, 'The Latin American Model of Constitutional Jurisdiction: Amparo and Judicial Review', [http://www.jurisprudencia.de/lit/Amparo\\_SSRN.pdf](http://www.jurisprudencia.de/lit/Amparo_SSRN.pdf), 2013, (accessed 12 February 2014).

<sup>62</sup> Amparo Law, Article 222.

<sup>63</sup> F. Avalos, 'Update: An Electronic Guide to Mexican Law', <http://www.nyulawglobal.org/global/Mexico1.htm>, 2012, (accessed 12 February 2014).

<sup>64</sup> Latham & Watkins, pp. 178-179.

would be relevant to consider when contemplating legal action to impugn a violation of children's rights.

In 2008, the Mexican Congress passed a constitutional amendment to reform the judiciary and justice sector. By 2016, all state and federal judicial systems are required to transition from the inquisitorial system to a more transparent accusatorial justice system. Relevantly, the reforms include: (1) changes to criminal procedure through the introduction of new oral, adversarial procedures with live public proceedings to be held in open court, alternative sentencing, and alternative dispute resolution mechanisms; and (2) a greater emphasis on the rights of the accused (i.e., the presumption of innocence, due process, and an adequate legal defence). Furthermore, the reforms created a new due process judge (*juez de garantía*, or *juez de control*), whose role is to ensure that a criminal case moves forward properly during its investigation, preliminary hearing, and indictment. The due process judge will also oversee alternative dispute resolution processes, such as the use of mediation.<sup>65</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>65</sup> D. Shirk, 'Justice reform in Mexico: change & challenges in the judicial sector', <http://www.wilsoncenter.org/sites/default/files/Chapter%207-%20Justice%20Reform%20in%20Mexico,%20Change%20and%20Challenges%20in%20the%20Judicial%20Sector.pdf>, 2011, (accessed 12 February 2014).