

The Universal Periodic Review, as it applies to the Human Rights of Children in Mexico

The following document reviews recommendations made to Mexico by human rights treaty bodies and special procedures since the first Universal Periodic Review of Mexico's of human rights commitments in 2009, with specific reference to the rights of children. The principle recommendations made to Mexico in the 1st Universal Periodic Review in 2009¹ that are relevant to children related to the need:

- To harmonize legislation throughout the country in accordance with international standards, for prevention and response to abuse and sexual exploitation of children including child pornography;
- To harmonize training and procedures in relation to violence against girls and women;
- To ensure the realization of the rights of migrants in its territory, pass legislation and provide training to concerned officials;
- To ensure effective access to education for all children, in particular to migrant and indigenous children, and take effective measures to prevent their exclusion from the education system;
- To increase enrolment rates of girls in primary and secondary schools, and
- To withdraw reservations from human rights treaties ratified by Mexico.

I. Background and framework

A. Constitutional and legislative framework

Major Constitutional Human Rights Reform of June 2011, giving international human rights treaties constitutional status, was followed by a specific Constitutional Reform to articles 4 and 73 in November, incorporating the Best Interests of the Child principle, and giving Federal Congress powers to legislate on concurrent responsibilities between sectors and administrative levels on child rights matter. This provides Mexico with a unique opportunity to create an effective child rights protection system at all levels of the federation, overcoming long-standing fragmentation of legal, institutional and policy frameworks for children's rights in the country.

B. Institutional and human rights infrastructure and policy measures

Mexico is faced with the challenge of bringing child rights to the centre of the national agenda and developing an adequate institutional framework to implement and monitor them, that involves all sectors of government and all administrative levels, and mobilizes society. The unique opportunity afforded by the 2011 Constitutional Reform to establish working governance mechanisms for child rights and child protection across government and at all levels of the federation, and the reform agenda of the new administration, both open windows for significant and sustainable progress to close equity gaps for children in the coming years. The pending approval and implementation of a new General Law on Child Rights could address historical legal, institutional and policy fragmentation in this area. It will be important for Mexico to accord priority to this once-in-a-generation opportunity to establish sustainable mechanisms – laws, institutions, budgets and policies – and to build capacity for the promotion and protection of child rights. This would respond to recurrent recommendations from the Committee on the Rights of the Child (CRC) in this regard. Given Mexico's national capacities, and its notable

¹ A/HRC/11/27 29 May 2009

policy innovation and experience in certain child rights areas, future advances achieved in child rights governance and protection, could contribute to Mexico's growing international cooperation.

II. Co-operation with treaty bodies

In June 2012 the Mexican government presented its 4th report to the CRC, which is due for review in due course.

Subsequent to the 2009 Universal Periodic Review, Mexico's implementation of the **Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography (OPSC)**², and on **Children and Armed Conflict (OPAC)**³, was reviewed with the Committee on the Rights of the Child in January 2011.

In follow-up to concluding observations by the Committee, the Mexican Senate agreed in February 2013 to the Executive's request to withdraw the interpretative declaration Mexico had made at the time of ratification of the Optional Protocol on Children and Armed Conflict, to the effect that the government did not have responsibility for the recruitment of children by non-state armed groups within Mexican territory. The withdrawal of this interpretative declaration opens the way for more robust prevention and rehabilitation policies related to the voluntary and forced recruitment of children and adolescents by armed criminal groups.

Subsequent to the January 2011 OPAC review the federal government also drew up a joint protocol for the protection of the rights of children during federal operations against organized crime groups by military, security, justice and social welfare organs, which counted with UNICEF technical assistance. By December 2012 over 50,000 military and security personnel had been trained in it. The protocol has elements useful for day-to-day operation of security, justice and social welfare agents in contact with children and adolescents whether as victims, witnesses and possible perpetrators of crimes. Its normative adoption across these sectors is pending.

In February 2012, the Supreme Court issued a Protocol for all those in contact with children in judicial processes. Based on the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, issued by the Economic and Social Council in 2005, the protocol institutes the kinds of child-sensitive procedures, to which the CRC referred to in its concluding observations in relation to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Important challenges remain in building capacity to respond to the rights and needs of children within the justice system.

Following the inclusion of sexual exploitation of children and adolescents in the federal penal code in 2007, the majority of states have included crimes related to this issue (trafficking, pandering, corruption, prostitution, pornography and sexual tourism), in their penal codes. All states, except Campeche, have also typified trafficking within their penal codes, and 15 out of 32 have issued specific anti-trafficking laws. In 2012 a new General Law on Trafficking, provided greater national harmonization on this issue. Progress has been less complete in relation to Sexual Tourism (11 states) and Corporal Punishment.

Whilst the majority of state education laws include the general obligation to preserve the physical integrity of boys and girls in the school environment, only 13 provide sanctions for not doing so, and only seven explicitly prohibit corporal punishment in schools. Causing injury, homicide or intra-family violence are considered crimes

² CRC/C/OPSC/MEX/CO/1 4 February 2011

³ CRC/C/OPAC/MEX/CO/1 4 February 2011

in all 32 state penal codes. Few, however, establish as an aggravating factor when the victim is a child, or when the assailant is related to or has power over or duty of care for a child victim. Causing injuries that take less than 15 days to heal, or do not leave visible marks, incur very low sanctions. These factors leave children un-protected in the face of the common use of physical punishment.

Pending issues remain the institution of a robust information system on violence against children and other violations of their rights, continuing harmonization of legislation related to children in all states, the development of integrated prevention and response policies to address violence and exploitation against children, and training of all those in contact with children for the promotion and protection of their rights.

Mexico's implementation of the **International Convention on the Rights of all Migrant Workers and their Families** was reviewed in 2010 and 2011 by the respective UN Committee. It concluded that more robust protection of the rights of children in migration were necessary⁴.

In 2011 Mexico passed new laws on Migration and on Refugees and Complementary Protection, both of which make special provision for the protection of the rights of children, for example to access to education, health care, social protection and the justice system. The implementation of provisions of the new laws remains a challenge. A special corps of Child Protection Officers within the National Migration Institute has been trained to better inform children of their rights, and in sensitive interview techniques, resulting in an increased detection in trafficking, and in granting of asylum and complementary protection to children. However, Mexico continues to detain un-documented migrant children prior to deportation, although the new Migration Law makes provision for alternatives to detention. The practical implementation of a Best Interests of the Child Determination Process in migration and asylum procedures, foreseen in the new legislation, remains a challenge.

The **UN Working Group on Enforced or Involuntary Disappearances** visited Mexico in March 2011. In the context of extensive recommendations on the need to recognize the extent of the issue in Mexico, provide disaggregated information and develop policies for prevention, eradication, investigation, punishment and reparation, the working group did not make specific recommendations in relation to children and adolescents⁵. It did however emphasize the need for reparation, restitution, psycho-social, and medical support to families of the disappeared.

In this context UNICEF draws attention to the need to ensure continuing access to education for children of the disappeared, including through grants or dispensations to cover matriculation and educational quotas, for those whose parents are among the disappeared.

In February and March 2012 the **Committee on the Elimination of Racial Discrimination** when reviewing Mexico's implementation of the International Convention on the Elimination of all Forms of Racial Discrimination, indicated the need to provide information on the situation of people of African descent in Mexico⁶. Particular concern was expressed that some 70% of the indigenous population lived in multi-dimensional poverty, combining low income with at least one social disadvantage, related to access to rights to education, health, social security, housing, basic services and food. The report also drew attention to the vulnerability of migrant population to kidnapping, torture and murder, and their reluctance to seek assistance because of fears of discrimination and xenophobia.

⁴ CMW/C/MEX/CO/2 3 May 2011

⁵ A/HRC/19/58/Add. 2 20 December 2011

⁶ CERD/C/MEX/CO/16-17 4 April 2012

Indigenous children suffer multiple deprivations in Mexico. Whilst in the general population 12.8% of children live in extreme poverty (5.1 million), extreme poverty affects 33% of indigenous children⁷. In accordance with the national poverty measurement methodology, more than 90% of indigenous children have at least one social disadvantage related to the exercise of their social rights.

In October 2012 the **Committee against Torture** reviewed implementation of the Convention against Torture, Cruel, Inhuman and Degrading Treatment⁸. In addition to recommendations with regards detention procedures and *arraigo*, the Committee specifically commented in relation to juvenile justice on the need to pass pending Federal Juvenile Justice legislation, to implement an integral juvenile justice system in the country with custodial sentences were a matter of last resort, and the need to ensure full and disaggregated data on adolescents detained and imprisoned, including in relation to adolescents detained by federal authorities in operations against organized crime.

In December 2012 Federal Congress passed long-awaited Federal Law on Justice for Adolescents which will come into force in December 2014. The National Statistics Office, INEGI, is coordinating improvements in the collection and consolidation of disaggregated data on adolescents in conflict with the law, through the system for government, security, justice and prisons.

III. Cooperation with Special Measures

The **Special Rapporteur on the Right to Education** visited Mexico in February 2010 and in his report drew special attention *inter-alia* to the need to ensure access to quality education for indigenous children, children with disabilities and children in rural areas, including children of migrant farmworkers, and those over 15, increase citizens, civil society and children's participation in all educative processes, and take immediate steps to ensure free civil registration (which can be a barrier to access to education)⁹.

With regard to the latter, Mexico jointly with Turkey promoted an important resolution in the Human Rights Council on Birth Registration and the Right to everyone to recognition as a person before the law¹⁰ in 2012. Mexico is progressing towards universal prompt birth registration, but first birth certificates are still charged for in the majority of states, which can be a barrier for the poorest families.

Mexico has made significant progress in ensuring children's access to basic education and gender equality in education has improved. Nonetheless, coverage of upper secondary education remains highly inequitable. More than 6 million children aged 3-17 are out of school. Out-of-school youth among indigenous groups are 19 percentage points higher than non-indigenous youth¹¹.

From his first week in office President Enrique Peña Nieto gave priority to obtaining cross-party support for education sector reform. In the context of such reform, UNICEF draws attention to the need to ensure learning

⁷ Own calculations based on INEGI-Censo 2010, MCS-ENIGH 2010 and CONEVAL CONEVAL, *Medición de pobreza. Estados Unidos Mexicanos. Anexo Estadístico* (CONEVAL: México, 2011). Available on www.coneval.gob.mx Medición de pobreza 2010. Also see. *Alcanzar los Objetivos de Desarrollo del Milenio con Equidad : Una mirada des la Infancia y la Adolescencia en México*, UNICEF, April 2013 www.unicef.org/mexico

⁸ CAT/C/MEX/CO/5-6 11 December 2012

⁹ A/HRC/14/25/Add.4 2 June 2011

¹⁰ A/HRC/Res/19/9, April 2012

¹¹ Own calculations based on Encuesta Nacional de Ingresos y Gastos en los Hogares, ENIGH 2010, INEGI.

outcomes for children and adolescents at all levels, and to close the gaps in age-for grade completion. Particular attention is needed to ensure universal access to secondary school, and to redress drop-out in lower and upper secondary. National efforts towards initial education also need strengthening, with support for families in early learning 0-3, and to fulfil national commitments to universalize pre-school especially for 3-4 year olds. Cross-cutting all levels is the need to ensure access and success for indigenous children within the education system, including through a broader implementation of bi-lingual and intercultural education.

In April 2009, the **Special Rapporteur on Education** issued a report on the right to education of those deprived of liberty¹². Specifically in relation to children and women in detention, the report emphasized the need to guarantee access to education for all school-aged children in detention, to ensure gender differences are taken in to account to make effective girls and women's access to education in these circumstances, and to ensure special attention to vulnerable groups in detention including women, indigenous people, migrants and the disabled. The provision of full access to education for adolescents deprived of their liberty and in conflict with the law remains a challenge for the education system in Mexico.

The **UN Special Rapporteur on the Independence of Judges and Lawyers** visited Mexico in October 2010. The Rapporteur recommended as a matter of urgency that sufficient funding be provided for the implementation of the new juvenile justice system at all levels, particularly in terms of necessary infrastructure and specialized training for the system's staff¹³. He also recommended that the oral and adversarial procedural system should be implemented across the entire system.

Following 2005 Constitutional Reform on Juvenile Justice all 32 states have approved legislation instituting a specialized juvenile justice system, and oral proceedings are adopted in the majority of them. In contrast, the 2012 Federal Law on Justice for Adolescents to come into force in December 2014, proposes written proceedings for adolescents in conflict with the law charged with federal offences.

The **UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression** visited Mexico in August 2010 on a joint mission with the Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression. Concentrating on the protection of journalists, the report made no specific recommendations with regards freedom of opinion and expression by children, but recommended that Mexico preserve notable advances made in relation to the right to access to information¹⁴.

The **UN Special Rapporteur on the Right to Food** visited Mexico in June 2011. The January 2012 report drew attention to the simultaneous situations of child malnutrition and obesity affecting children and adolescents in Mexico¹⁵.

Subsequent to the visit, the results of the National Survey on Health and Nutrition, ENSANUT were released in 2012¹⁶ revealing that stunting among those under-5 remains at 13.6% (almost 1.5 million). Consistently, the highest incidence of this indicator is registered in southern rural areas (27.5%), where indigenous children continue to face the greatest disadvantages (33.1%). Meanwhile, data on overweight and obesity

¹² A/HRC/11/8 2 April 2009

¹³ A/HRC/17/30/Add. 3 18 April 2011

¹⁴ A/HRC/17/27/Add. 3. 19 May 2011

¹⁵ A/HRC/19/59/Add.2 17 January 2012

¹⁶ Encuesta Nacional de Salud y Nutrición, ENSANUT, 2012, Instituto Nacional de Salud Pública, INSP.

are of concern. The combined prevalence among school-age children (5-11 years old) it is 34.4% and among adolescents (12-19 years old) is 35% (6.3 million).

Early in his administration, President Enrique Peña Nieto made combating malnutrition a priority, and launched a *Crusade against Hunger*, focusing on 400 municipalities for combined actions, which have yet to be detailed.

Given the proven link of malnutrition to child mortality, UNICEF encourages Mexico to develop a working nutritional surveillance and referral system for all children.