

PRESENTATION

LEGAL PROTECTION OF CHILDREN, GIRLS AND ADOLESCENTS IN HUMAN RIGHTS

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The normative provisions that regulate human rights are the corpus iuris that obliges States parties to implement mechanisms for effective protection and promotion, and also constitutes the limit to the exercise of power by them.

Consequently, the non-compliance in the guarantee of the exercise of such rights makes them responsible for the violations to them, which is why the States have the duty to prevent, investigate and sanction the actions that undermine the human rights of children, girls and adolescents recognized in this legal framework.

Reason why the international community, through the international systems of protection of human rights, have manifested in this respect since the international instruments that protect the rights of children and adolescents have been different.

The foregoing, observed through different approaches and areas of protection that range from the guarantees and duties of the State, as well as the obligations of the family and society, without leaving aside the best interests of these subjects of protection.

In this measure, we find how from the Universal Declaration of Human Rights (1948)¹, the Declaration of the Rights of the Child (1959)², the Convention on the consent to marriage, the minimum age for marriage and the registration of marriages (1962)³, the International Covenant on Civil and Political Rights (1966)⁴, the International Covenant on Economic, Social and Cultural Rights (1966)⁵, the American Convention on Human Rights (1969)⁶, the Inter-American Convention on Prevention, Punishment and Eradication Violence against Women and the Convention on the Rights of the Child (1989), this corpus iuris responds to the problems that arise from the violation of human rights in particular.

In this regard, also conventions 182 of 1999 and 138 of 1973 of the International Labor Organization, which extend the protection framework when dealing with prohibition of the worst forms of child labor and the minimum age for admission to employment, respectively.

¹ Adoptada por la Asamblea General de Naciones Unidas en su Resolución 217 A (III), del 10 de diciembre de 1948. En su artículo 25, numeral 2, señala que “la maternidad y la infancia tienen derecho a cuidados y asistencia especiales. Todos los niños, nacidos de matrimonio o fuera de matrimonio, tienen derecho a igual protección social”.

² Adoptada por la Asamblea General de las Naciones Unidas en su resolución 1386 (XIV) en la Resolución 1386 (XIV) del 20 de noviembre de 1959. La cual en su principio # 2 menciona que “el niño gozará de una protección especial y dispondrá de oportunidades y servicios, dispensado todo ello por la ley y por otros medios, para que pueda desarrollarse física, mental, moral, espiritual y socialmente en forma saludable y normal, así como en condiciones de libertad y dignidad. Al promulgar leyes con este fin, la consideración fundamental a que se atenderá será el interés superior del niño.”

³ Ratificada por la Asamblea General de las Naciones Unidas en su Resolución 1763 A (XVII), de 7 de noviembre de 1962, al cual en su artículo 2, refiere que “los Estados Partes en la presente Convención adoptarán las medidas legislativas necesarias para determinar la edad mínima para contraer matrimonio. No podrán contraer legalmente matrimonio las personas que no hayan cumplido esa edad, salvo que la autoridad competente por causas justificadas y en interés de los contrayentes, dispense el requisito de la edad.”

⁴ Adoptado por la Asamblea General de las Naciones Unidas en su Resolución 2200 A (XXI) del 16 de diciembre de 1966, el cual señala en su artículo 24, numeral 1: “todo niño tiene derecho, sin discriminación alguna por motivos de raza, color, sexo, idioma, religión, origen nacional o social, posición económica o nacimiento, a las medidas de protección que su condición de menor requiere, tanto por parte de su familia como de la sociedad y del Estado.”

⁵ Adoptado por la Asamblea General de las Naciones Unidas en su Resolución 2200 A (XXI) del 16 de diciembre de 1966, mediante el cual en su artículo 10, numeral 3. 3, señala que: “se deben adoptar medidas especiales de protección y asistencia en favor de todos los niños y adolescentes, sin discriminación alguna por razón de filiación o cualquier otra condición. Debe protegerse a los niños y adolescentes contra la explotación económica y social. Su empleo en trabajos nocivos para su moral y salud, o en los cuales peligre su vida o se corra el riesgo de perjudicar su desarrollo normal, será sancionado por la ley. Los Estados deben establecer también límites de edad por debajo de los cuales quede prohibido y sancionado por la ley el empleo a sueldo de mano de obra infantil.”

⁶ Suscrita por los estados signatarios el 22 de noviembre de 1969, la cual en su artículo 19, refiere que: “todo niño tiene derecho a las medidas de protección que su condición de menor requiere por parte de su familia, de la sociedad y del Estado.”

Together with the above, it responds to the problem related to food security, a topic addressed by the Inter-American Convention on Food Obligations (1989), in addition to cooperation on international adoption through the Hague Convention (1993) and, finally, on the Protection of Rights of Persons with Disabilities of the United Nations (2006).

In relation to International Humanitarian Law and Criminal Law, Protocol I, in addition to the four Geneva Conventions (1949) on protection of victims in international armed conflicts (1977), the Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and, finally, the Inter-American Convention on International Restitution of Minors (1989).

However, in matters of administration of justice, they are the United Nations Minimum Rules for the Administration of Juvenile Justice (1989)–Beijing Rules and the United Nations Minimum Rules for the Protection of Juveniles Deprived of Liberty (1991), which observe the protection framework from juvenile justice.

Finally, the recognition as subjects of law of children and adolescents has given rise to that in different instruments of international law a special protection based on the best interest is due to their lack of maturity and, consequently, to the vulnerability that this entails, therefore, concludes the need to ensure a training process under appropriate conditions.

For the Faculty of Law and Political Sciences, the Fondo Editorial Universidad Católica Luis Amigó and the direction of Summa Iuris journal it is important to open spaces for reflection on the subject of law and human rights.

In addition, we thank and greet those who support scientific research and make this edition possible; We know that, with education, the research contribution and the discussion scenarios, knowledge is enriched.

In this sense, we present volume 7, number 2 of the year 2019, where investigations of experts from Argentina, Ecuador, Mexico and Colombia are found. Fraternally, we thank Natalia Barbero, who, from Argentina, writes the Editorial and talks about the international responsibility of the States, also Jeny Vargas Yangua, who through her article result of research, addresses the issue related to “Transitional justice in Ecuador: justice beyond justice”; Similarly, his compatriot Diego Peñafiel Valencia makes an analysis of the “transitional justice in Ecuador against the dichotomies between security and human rights.” We also have contributions on “Indigenous peoples in Mexico and their human rights” made by Francisco Javier Valdez Valenzuela, Manuel Raymundo Valdez Domínguez and Álvaro Coronado Gutiérrez; Another contribution is made by Pablo Andrés Estrada García, who deals with “The responsibility for market share in environmental damage, a solution to the problem of negative environmental externalities?”; and we finalize this last edition with the research of Paula Andrea Vieira Ceballos, who presents us with a paper on “Regulatory challenges in biomedical advances: a necessary relationship between medicine, engineering and law in Colombia”.

This greeting and thanks extend to executives, editors, writers and, in general, to all the people who collaborated with Summa Iuris, and who during the last six years accompanied this academic project that leaves as a result seven volumes corresponding to thirteen numbers, the which make it possible for academia and knowledge to contribute to the construction of a just society, framed in respect for legal institutions, regulatory provisions, and the promotion and protection of human rights.

Finally, we point out that, with this volume, we definitively terminate the issuance and publication of Summa Iuris journal.

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