



U.S. DEPARTMENT OF LABOR
Bureau of International Labor Affairs

COLOMBIA

**LAWS GOVERNING EXPLOITATIVE CHILD
LABOR REPORT**

TABLE OF CONTENTS

INTRODUCTION..... 3

EXPLOITATIVE CHILD LABOR..... 3

COLOMBIA 4

Introduction

This report on the laws of Colombia governing exploitative child labor has been prepared pursuant to section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned his responsibilities under section 2102(c)(9) of the Trade Act to the Secretary of Labor, provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)). Pursuant to the Trade Act, this report contains information on laws governing exploitative child labor. Please see Sections V-C and V-D of the Department of Labor’s *Colombia: Labor Rights Report* for information on the incidence and nature of forced labor and child labor.

Exploitative Child Labor

There is no universally accepted definition of the term “exploitative child labor.” Under Article 2(3) of International Labor Organization (ILO) Convention 138, Minimum Age for Admission to Employment, the minimum age of admission into employment or work in any occupation “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15.” Countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention. Additionally, under Article 7(1), “National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is – (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.” Countries that have specified a minimum legal working age of 14 may permit persons 12 to 14 years of age to engage in light work, as defined in Article 7(1). Examples of such light work may include work in family business, on a family farm, after school, or in a legitimate apprenticeship opportunity that is not hazardous and that does not affect a child’s attendance at school.

The ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor. Under Article 3 of ILO Convention 182, “the term worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory

labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹

According to Convention 182, the types of work referred to under Article 3(d) “shall be determined by national laws or regulations or by the competent authority....”² Article 2 of the Convention states that, “the term *child* shall apply to all persons under the age of 18.”³

This report relies primarily on information from the Department of State in Washington, D.C., the U.S. Embassy in Colombia, and from other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from Colombia; international organizations such as the ILO; and nongovernmental organizations (NGOs). Finally, the report also makes use of information submitted in response to Department of Labor requests for public comment published in the *Federal Register*.⁴

Colombia

Colombia ratified ILO Convention No. 138 on Minimum Age of Employment on February 2, 2001 and ILO Convention No. 182 on the Worst Forms of Child Labor on January 28, 2005.

Colombia’s Constitution states that children are to be protected against exploitative and hazardous labor.⁵ The new minimum employment age in Colombia is 15 years, based on the Code of Childhood and Adolescence (2006), which supersedes the Minor’s Code (1989).⁶ Prior to the adoption of the new code, the Minor’s Code had established the minimum age for

¹ ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 2, 3 and 4; available from <http://www.ilo.org/ilolex/>.

² *Ibid.*, Article 4.

³ *Ibid.*, Articles 2, 3 and 4. ILO Recommendation 190 on the worst forms of child labor provides certain guidelines that countries should consider in determining what constitutes a worst form of child labor under Article 3 (d). See ILO, *R190 Worst Forms of Child Labor Recommendation, 1999*; available from <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁴ U.S. Department of Labor, “Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador, and Peru and Their Laws Governing Exploitative Child Labor,” 69 *Fed. Reg.* 35063 (June 23, 2004). The Department received comments from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in response to this notice.

⁵ Government of Colombia, *Constitución Política de Colombia*, (1991), Article 44; available from <http://pdba.georgetown.edu/Constitutions/Colombia/col91.html>.

⁶ Government of Colombia, *Código de la Infancia y la Adolescencia*, Ley 1098, (November 8, 2006), Article 35; available from http://www.secretariassenado.gov.co/compendio_legislativo.htm.

employment at 14.⁷ Children under age 15 may receive permission from the Labor Inspectorate to work for pay in artistic, cultural, recreational or sports-related jobs, up to 14 hours per week.⁸

According to the Code of Childhood and Adolescence, parents of adolescents of legal working age wanting to work must receive authorization from the Labor Inspectorate.⁹ Among other provisions, the work authorization is contingent upon an official from the Inspectorate visiting the worksite to ensure that working conditions will not harm the health of the adolescent; the adolescent completing school or if not registered, being registered in school by the employer; and the employer obtaining a health certificate for the adolescent. The authorization must also include the terms of the work contract.¹⁰ Indigenous youth must receive permission from their respective traditional authority. If these requirements are not met, authorization can be denied or revoked.¹¹

Adolescents ages 15 and 16 may only work six hours per day, 30 hours per week, and until 6 p.m. Adolescents age 17 may only work 8 hours per day, 40 hours per week, and until 8 p.m.¹² Adolescents have a right to a salary commensurate with the work done and time worked and which is at least the legal minimum monthly salary.¹³ Pregnant working adolescents may only work four hours per day from the seventh month of pregnancy through lactation; there is to be no reduction in salary or benefits.¹⁴ No one under age 18 may perform work that is dangerous, detrimental to their health or welfare, or considered worst form of child labor. The Ministry of Social Protection (*Ministerio de la Proteccion Social*, MPS) and the Colombian Family Welfare Institute (*Instituto Colombiano de Bienestar Familiar*, ICBF) have responsibility for the identification of the worst forms of child labor.¹⁵

All worst forms of child labor, as defined by ILO Convention 182 and the Government of Colombia, are expressly prohibited.¹⁶ MPS Resolution 4448 of 2005 identifies the worst forms of child labor that are prohibited for all minors under age 18. According to the current list, minors cannot perform most work related to: agricultural work destined for market, such as coffee, flowers, sugarcane, cereals, vegetables, fruits, tobacco, and livestock; fisheries; logging; mining or work underground; industrial manufacturing and bakeries; utilities; construction,

⁷ Government of Colombia, *Código del Menor*, (1989), Article 238; available from http://www.secretariasenado.gov.co/leyes/C_MENOR.HTM.

⁸ *Código de la Infancia y la Adolescencia*, Article 35.

⁹ *Ibid.*, Articles 113.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*, Article 114.

¹³ *Ibid.*, Article 115. For 2008, the minimum monthly salary was set at 461,500 pesos (USD 235). See Presidencia de la República de Colombia, “Declaración del Presidente Uribe sobre salario mínimo para el año 2008,” press release. See also Government of Colombia, “Por el cual se fija el salario mínimo legal,” Decree No. 4965 (December 27, 2007), Article 1; available from <http://www.businesscol.com/empresarial/tributarios/2008/decreto-4965.pdf>.

¹⁴ *Código de la Infancia y la Adolescencia*, Article 116.

¹⁵ *Ibid.*, Article 117.

¹⁶ *Ibid.*, Article 20. The worst forms of child labor as defined in ILO Convention 182 include: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. See: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

painting, and heavy equipment; transportation or warehousing; healthcare; defense and private security; and unskilled labor such as shoe shining, domestic service, trash collection, messenger service, building security, gardening, work in clubs and bars, and street sales.¹⁷ Minors must also not work under ground or water, under rigorous environmental conditions (e.g., hot or cold) or in conditions where there are: loud noises; strong vibrations; dangerous substances; poor lighting or ventilation; fluctuating barometric pressures; or biological or chemical materials. Youth cannot perform work that entails safety risks excessive physical activity, or may negatively affect the youth's posture.¹⁸ Minors may not work under conditions that would harm their psychosocial development, such as work without pay; work that interferes with schooling; work that keeps them separated from their families; work under despotic or abusive conditions; work in illegal or immoral situations; or with the exception of minors ages 16 or 17, work between 8 p.m. and 6 a.m.¹⁹ Individuals must report child labor law violations.²⁰

The age limitation and ending work time in the Resolution 4448 and Code of Childhood and Adolescence are in disagreement. The Resolution states adolescents ages 16 and 17 can work until 8 p.m., while Article 114 of the Code states minors ages 15 and 16 can only work until 6 p.m.²¹ The ILO CEACR has requested clarification on exceptions in Resolution 4448 about when adolescents ages 16 and 17 may work at night.²²

Colombian law prohibits slavery, servitude, and human trafficking in all forms.²³ Articles 213 and 214 of the Penal Code identify penalties for pimping of 32 to 72 months imprisonment and fines of 66.66 to 750 times the legal minimum monthly salary, with those for pimping children under age 14 increasing by one-third to one-half. The penalty for forced prostitution is 80 to 162 months imprisonment and fines of 66.66 to 750 times the legal minimum monthly salary.²⁴ Article 216 states that penalties increase by one-third to one-half if the victim is under age 14 or if the crime involves international trafficking. Penalties for managing a brothel involving prostitution by minors are 96 to 144 months imprisonment with similar fines as above.²⁵ Child pornography is punishable by the same prison sentences as for running a brothel, with fines from 133.33 to 1,500 times the legal minimum monthly salary. Penalties in both cases increase by one-third to one-half if the perpetrator is a family member. The use of the mail or Internet to obtain or offer sexual contact with a minor is punishable by 80 to 180 months incarceration and a fine of 66.66 to 150 times the legal minimum monthly salary, with penalties up to one-half if the minor involved is under age 12.²⁶ Article 219 provides for fines of 13.33 to 75 times the legal

¹⁷ MPS, *Resolución No 4448: por la cual se desarrolla la facultad contenida en el Código del Menor*, (December 2, 2005); available from http://white.oit.org.pe/ipec/documentos/resolucion_listatip_col.pdf.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ *Código de la Infancia y la Adolescencia*, Article 40.

²¹ *Resolución No 4448*, Article 6. See also *Código de la Infancia y la Adolescencia*, Article 114.

²² ILO CEACR, *Direct Request, Night Work of Young Persons (Industry) Convention, 1919 (No. 6) Colombia (ratification: 1983)* [online] 2007 [cited September 6, 2007]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

²³ *Constitución de Colombia*, Articles 17 and 53.

²⁴ Government of Colombia. *Código Penal, with modifications*, (2000), Articles 213-214; available from http://www.secretariassenado.gov.co/compendio_legislativo.HTM.

²⁵ Ibid., Articles 216-217.

²⁶ Ibid., Article 218.

monthly minimum salary for failing to report any crimes previously described in this paragraph. Public servants convicted of the crimes described in this paragraph also lose their employment.²⁷

Posting child pornography on the Internet is punishable by fines up to 100 times the legal minimum monthly salary and the cancellation or suspension of the Web site.²⁸ Tourist agencies can be penalized by fines and the suspension or cancellation of their registration for involvement in child sex tourism.²⁹ Forced prostitution and sexual slavery in relation to the country's ongoing conflict are punishable by imprisonment from 160 to 324 months and a fine of 666.66 to 1,500 times the legal minimum monthly salary.³⁰

Minors may not serve in the government armed forces or perform defense-related or intelligence activities.³¹ Recruitment of children under age 18 by armed groups is punishable by 96 to 180 months in prison and fines ranging from 800 to 1,500 times the legal minimum monthly salary.³² The law regards child soldiers as victims of political violence.³³ Forcing minors to participate in the commission of terrorist acts is punishable by 192 to 360 months incarceration and fines ranging from 6,667 to 45,000 times the legal minimum monthly salary.³⁴ Punishments for crimes involving illegal drugs, such as cultivation, manufacturing, and trafficking are doubled if the crimes involve a minor.³⁵

The MPS is responsible for conducting formal sector labor inspections, with 274 of the 289 labor inspector positions currently filled.³⁶ However, according to the U.S. Department of State, the MPS does not have sufficient resources to effectively enforce labor laws.³⁷ ICBF, the Family Defenders, the Children and Adolescent Police, and the Prosecutor General are also responsible for enforcing child labor laws.³⁸ The Attorney General's Office and Judicial Police units investigate and prosecute child trafficking and commercial sexual exploitation.³⁹ The Attorney General's Office has a unit dedicated to prosecuting crimes of trafficking and sexual violence as

²⁷ Ibid., Article 219.

²⁸ Government of Colombia, *Decreto 1524*, (2002), Articles 4 and 9; available from <http://www.uris.com/leyes/dec/1524.htm>.

²⁹ Ministry of Commerce, Industry and Tourism, *Resolución 119*, February 12, 2002. See also Government of Colombia, *Ley 679*, (2001), Articles 7 and 10; available from <http://www.secretariasenado.gov.co/leyes/L0679001>.

³⁰ *Código Penal*, Article 141.

³¹ *Resolución No 4448*, Articles 1 and 9. See also Government of Colombia, *Decreto 128 sobre política de reincorporación a la vida civil*, (2003); available from http://www.presidencia.gov.co/prensa_new/decretoslinea/.

³² *Código Penal*, Article 162.

³³ Government of Colombia, *Ley 782*, (2002), Article 15; available from http://www.altocomisionadparalapaz.gov.co/juridicos/ley_782.pdf.

³⁴ *Código Penal*, Articles 343 and 344.

³⁵ Ibid., Articles 375 and 384.

³⁶ MPS, written communication to U.S. Embassy-Bogota, Citación e información necesaria para el informe sobre Derecho Laboral en Colombia, September 21, 2007. See also Ministry of Social Protection, *Decreto 205*, (February 3, 2003), Article 2 (par. 28); available from <http://www.suratep.com/legislacion/decretos/205.html>.

³⁷ U.S. Department of State, "Country Reports on Human Rights Practices- 2006: Colombia," Section 6d; available from <http://www.state.gov/g/drl/rls/hrrpt/2006/78885.htm>.

³⁸ *Código de la Infancia y la Adolescencia*, Articles 79-82, 88-89, 96, 205, 208-214. See also Observatory for Gender Affairs, *La esclavitud aún existe*, Boletín No. 7, Bogota., November-December, 2006, 8-11; available from http://www.presidencia.gov.co/equidad/documentos/boletin_7.pdf.

³⁹ International Organization for Migration, *Panorama sobre la trata de personas*, Bogota: 2006, 11, 33-39; available at <http://www.oim.org.co/modulos/contenido/default.asp?idmodulo=7&idlibro=115>.

well as crimes against minors.⁴⁰ ICBF is responsible for child protection programs, including services to former child soldiers.⁴¹

⁴⁰ International Organization for Migration, *Panorama sobre la trata de personas*, 37.

⁴¹ Government of Colombia, *Decreto 4760*, (December 30, 2005), Article 3, para. 3; available from <http://www.altocomisionadoparalapaz.gov.co/noticias/2006/enero/documentos/decreto4760.pdf>.