

Article

Juvenile Justice in Mexico

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Abstract: The first tribunal in Mexico was established in the central state of San Luis Potosi in 1926. The Law Regarding Social Prevention and Juvenile Delinquency for the Federal District and Mexican territories was promulgated in 1928. In 2005, Article 18 of the Mexican Constitution was modified to establish a comprehensive system (“Sistema Integral de justicia” in Spanish) of justice for juveniles between 12 and 18 years old who had committed a crime punishable under criminal law. Its objective was to guarantee juveniles all the due process rights established for adults, in addition to the special ones recognized for minors. The constitutional reform also provides a framework that includes special tribunals as well as alternative justice options for juveniles. With these reforms, institutionalization of minors was to be considered an extreme measure applicable only to felonies and to juveniles older than 14. In 2006, all states within the Mexican federation enacted the “Law of justice for adolescents”. This system, at both the federal and state levels, formalizes a new global paradigm with regard to the triangular relationship between children, the State and the Law. It recognizes that children are also bearers of the inherent human rights recognized for all individuals, instead of simply objects in need of protection. However, despite formally aligning Mexican juvenile justice law with the Convention on the Rights of the Child (CRC), issues of actual substantive rights remained and new ones have appeared. For example, juveniles younger than 14 who have not committed a felony are released from institutions without any rehabilitation or treatment options, and alternative forms of justice were included without evaluating their possibilities of application or their conditions for success. In addition, the economic status of most juvenile detainees continues to be one of the most important determining factors in the administration of justice. Juveniles lack real access to an adequate defense because they

cannot afford to pay lawyers. This disconnection between rights and reality undermines the new system, raising the question of whether recent modifications to bring laws in line with international norms are in fact advancing juvenile justice. By approaching the Mexican juvenile justice systems as a single, multilayered system combining international, federal and local laws and procedures, we can better describe some of the substantive inconsistencies that continue to prevail, even as new ones develop in terms of children's rights.

Keywords: juvenile delinquency; justice; Mexico

1. Introduction

The development of juvenile justice law in Mexico was directed to create special tribunals and laws for juveniles, keeping them separate from criminal laws, processes and penalties administered to adults. Two objectives were paramount: juveniles should be separated from adults so as not to be negatively influenced by them, and should be treated differently from adults. This "special treatment" was based on principles of education and protection [1]. The first tribunal in Mexico was established in the central state of San Luis Potosi in 1926. However, the subsequent legal developments in the area of juvenile justice occurred mainly in Mexico City. Those first courts adopted the model of the Chicago Court and of the Paternal Judge of New York [2].

The Law regarding Social Prevention and Juvenile Delinquency for the Federal District and Mexican territories was stated in 1928 [2]. It regulated juvenile offenses for common matters in the Federal District and for federal matters in the rest of the country. This law established that minors under 15 years old do not incur criminal responsibility. Therefore, they could not be criminally prosecuted nor submitted to judicial process. However, it decreed that these minors should be placed under state protection, which should take the appropriate actions in order to educate them [3]. Moreover, the tribunal action was extended to cases of neglected (abandoned), undisciplined, and vagrant children. In 1941, the Organic Law and Procedural Norms for Minors Tribunal and its Auxiliary Institutions for the Federal District and Territories was passed, modifying the structure of juvenile courts [4]. That law decreed two courts for Mexico City, with three members each, who would take decisions in a plenary session [5].

Article 18 of the Mexican Constitution was amended in 1964 to expressly recognize juvenile delinquents [6]. It mandated the federal government and the state governments to establish special institutions for the treatment of juvenile delinquents.

After the first national conference for juvenile offenders in 1973, a new theory for treatment emerged and the law was changed once more [2]. In 1974, the law creating the Juvenile Tutelary Council in Federal Territories and the Federal District was passed [7]. This law included new concepts, objectives and procedures, and returned to preventive, protectionist, corrective and non-punitive treatment. The tribunal was divided into small courts and its structure included a president and a counselor for each president. This law served as a model for similar legislation in other states of the republic. The fundamental characteristic of the tutelary approach is that minors are not considered

criminals. Accordingly, in this law there is no criminal responsibility, because due their age, juveniles (under 18 years old) do not have the capacity to understand criminal law [2].

This law did not bestow any Due Process rights and other Procedural Guarantees because the state functioned as "*parens patriae*". In this sense, the state is the guardian of the children and has the power to intervene in their education, orientation and treatment. When a child committed a crime, the parents have failed in their task of educating their children; therefore, the state has to intervene and function as a tutor searching for their "wellbeing". Even though the imprisonment was the "treatment" for children (separate for adults), it was understood that the state did not punish the delinquent children, it was education. For this reason, it was not necessary confer any procedural right to the children; the state was protecting them instead of punishing. United Nations beholden to the states to recognize that imprisonment is punishment and it was necessary to provide procedural rights to juvenile delinquents.

For this purpose, a new law was enacted in 1991: The "Juvenile Treatment Law for the Federal District". It regulates state level crimes for the Federal District and federal crimes for the rest of the republic [8]. The objective of this law is established in its first statute: "...[It] Rules the function of the State in protecting juvenile rights as well as in the social adjustment of those whose conduct is typified within the federal laws and in those of the federal District law" [8]. This is an administrative court, since all the officials that constitute the juvenile council are administrative authorities (non-judiciary). The structure of the tribunal changed significantly from the previous. A president, a single counselor (in Mexico this is called *Unitarian*), a superior court (appeal body), an interdisciplinary committee (which issues the diagnosis), and a juvenile defense unit formed this tribunal. Unlike the former tribunals, a Unitarian counselor makes the resolutions during the process.

In 2007, a new law for the Federal District, the "Law of Justice for Adolescents for the Federal District" was decreed, which included the new treatment for juveniles proposed under the Mexican Constitution and the Convention on the Rights of the Child [9]. The objective of this new law is to establish an integral system of justice for adolescents ("*Sistema Integral de justicia para adolescentes*" in Spanish) guaranteeing all their Constitutional rights including the right of Due Process, and institutionalization as a last resort. This Law creates judicial courts for adolescents, eliminating the administrative tribunals in existence before 2007.

In 2005, Article 18 of the Constitution [6] was modified to establish an integral system of justice for adolescents between 12 and 18 years old, who had committed a crime punishable under the criminal law. Its objective was to guarantee juveniles all the due process rights established for adults, in addition to the special ones recognized for minors. The constitutional reform also provides a framework that includes special tribunals as well as alternative justice options for juveniles. With these reforms, institutionalization of minors was to be considered an extreme measure applicable only to felonies and to juveniles older than 14 years old [10].

In 2006, all states within the Mexican federation enacted the "New Law of justice for adolescents". This system, at both the federal and state levels, formalizes a new global paradigm with regard to the triangular relationship between children, the State and the law. It accepts that children are also holder of the inherent human rights recognized for all individuals, instead of simply objects in need of protection. However, despite formally aligning Mexican juvenile justice law with the Convention on the Rights of the Child (CRC) [11], issues of actual substantive rights remained and new ones have appeared. For example, juveniles younger than 14 who have not committed a felony are released from

institutions without any rehabilitation or treatment options, and alternative forms of justice were included without evaluating their possibilities of application or their conditions for success. In addition, the economic status of most juvenile detainees continues to be one of the most important determining factors in the administration of justice. Juveniles lack real access to an adequate defense because they cannot afford to pay lawyers. This disconnects between rights and reality undermines the new system, raising the question of whether recent modifications to bring laws in line with international norms are in fact advancing juvenile justice. By approaching the Mexican juvenile justice systems as a single, multilayered system combining international, federal and local laws and procedures, we can better describe some of the substantive inconsistencies that continue to prevail, even as new ones develop in terms of children's rights.

2. International Influence

Mexico ratified the United Nations Convention on the Rights of the Child in 1990 [11], thus making this treaty part of the supreme law. Article 18 of the Mexican Constitution [6] is the constitutional foundation for juvenile justice, wherein the Federal and State governments are required to create, regulate and administer a juvenile justice system within their respective legal systems. In 2005, the Mexican Constitution was modified, establishing an integral system of justice for juvenile delinquents (article 18) [6], including alternative forms of justice, and its operation by specialized institutions and authorities. Almost all Mexican states modified their Juvenile Justice Laws in 2006 to conform to the new constitutional provisions. However, despite bringing Mexican law in line with the CRC, several problems persist, and new ones have appeared. Therefore, the aim of this paper is to analyze whether and to what extent these new legal modifications constitute progress in the protection of children's rights.

3. Procedural System

The Mexican Constitution (article 18) [6] establishes the accusatory system for juvenile justice, implying the division and separation of the investigation and judgment functions during the juvenile trial. The judge cannot proceed to the investigation, prosecution or accusation of the offenses; he/she decides about the law and facts presented in the trial. Moreover, it is assumed there will be contradiction, debate, equal opportunities for the parties, and ample recognition of defense rights [12].

The accusatory procedural system will be applied for the first time in the juvenile justice system under the Law of Justice for Adolescents. The previous law (Law that Creates the Juvenile Tutelary Council) operated under the inquisitorial system; it was characterized by the concentration of the investigation and judgment functions within one institution [13]. The counselor was the person who executed those functions. However, within the accusatory system the investigation is executed by one legal body and the judgment is handed down by another. The new system decrees that the investigation is the purview of the specialized prosecutor (fiscal) and the judgment, that of the juvenile judge. This regulation claims to assure the right to impartiality in the trial and the respect of due process rights for minors. Another difference between the two laws is that in the inquisitorial judicial system the instruction phase is fundamental for the process; sentences are based on the trials produced during this stage. However, in the accusatory system there is only a single preparatory stage of the trial.

The new law includes the phases of investigation, instruction, trial and application of measures. The specialized prosecutor (fiscal) conducts the investigation stage. The stages of instruction and judgment are the responsibility of the specialized judge, and the application of measures to a treatment institute. The instruction phase consists of previous diligence conducted to determine the nature and circumstances of the criminal act and the identity of the people who have participated in it. The law also establishes the resources of appeal, revision, revocation, and complaint in diverse instances; they could be claimed before a superior court.

In the adversarial system, an impartial person makes the decision about the case; usually a judge or jury and two institutions operate to persuade the judge (prosecutors against defense) as to the culpability or innocence of the defendant [14]. Under new law, a special prosecutor officer conducts the investigation of the case. The prosecutor rather than the judge direct this stage, and the evidence obtained is taken into consideration by the judge in deciding the case. However, it is argued in the literature that this situation could maintain impartiality because one of the parties is in charge of the facts and the judge does not directly obtain the evidence [13]. Moreover, a real defense for most juveniles is difficult because they cannot afford a private lawyer. The state provides free defense for all adolescents; however, there are 5 defense attorneys for 500 juvenile delinquents in each state. Therefore, the principles of equal opportunities for the parties and ample recognition of defense rights are not reached. The state has all the resources to investigate and find proofs to condemn the adolescent, and most of the time; juveniles lack the resources to ensure a suitable defense.

4. Principles of Law that Establish the Integral System of Justice for Adolescents

4.1. Best Interest of the Child

The Law that Establishes the Integral System of Justice for Adolescents states the “best interest of the child” is the most important principle. Mexican jurisprudence (decisions of the Supreme Court of justice) states that

In considering the articles 4th of the Political Constitution of Mexico; 3rd of the Convention on the Rights of the child (ratified by Mexico and published in the Official Federation Newspaper on 25 January 1991); and 3rd, 4th, 6th and 7th of the Law for the Protection of the Rights of Children and Adolescents, the courts must primarily apply the best interest of the child in all the measures that concern the child. The Convention principle “best interest of the child” was construed by the Inter-American Court of Human Rights on 16 December 1998 when ratified the Inter-American Convention of Human Rights) as implying that children’s development and the total exercise of their rights, must be considered as the governing criteria for the elaboration of norms and the application of these in all the orders relative to the life of the child [15].

The Supreme Court in Mexico established that the principle of the “best interest of the child” is conceived as the means through which his/her total and integral development are achieved, and this includes providing to him/her the care and necessary attention to effect this [16].

4.1.1. How Should “Best Interest” Be Interpreted? Related to the Child’s Individual’s Needs?

In the literature, there is no concise interpretation of the best interest standard. However, one traditional interpretation is the consideration that “parents know what is best for the child”. A more recent explanation is that the State knows what the best interest of the child is, and using the *parens patriae* power, can decide for the child [17]. “Best interest” has also been interpreted as responding to children’s wishes and in terms of their rights and developmental needs, taking into account their physical and psychological health. The position and autonomy of the child is recognized in interpreting the best interest standard [17]. The participation of the child in determining what could be her/his best interest and influencing decisions concerning her/him is the central point of the CRC Convention. Consequently, authorities cannot make decisions on what constitutes the best interests of an individual child without taking that child’s views into account [18]. Therefore, the best interest of the child is associated with the right of the child to be heard, in addition to due process rights, religious freedom, freedom of speech and respect of his/her own opinions. Rodriguez [19] indicates that the best interest of the child should be understood as the physical and emotional stability of the child, in a context of respect for her/his decisions; in conclusion, taking into account the fundamental development of his/her personality.

The state of Veracruz, México states that the best interest of the child in concrete situations means [20]:

1. The opinion of the child (the right to be heard),
2. The equilibrium between the rights and obligations of the child,
3. The equilibrium between the requirements of the common good, the rights and guarantees of the child,
4. The equilibrium between the rights of persons and the rights of the child,
5. The specific condition of the child as a developing person.

CRC states that children should be recognized as separate human beings from their parents, and that they can have their own interests, which may conflict with those of their parents [11]. The CRC article 12 establishes that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child” [11]. It also indicates that the child can express those views directly, or through a representative or appropriate body. Therefore, it is important to establish at what age children can form their own views and when they can express them directly. Under current Mexican law, children under 18 years old can express their views only through their representatives (Mexican Federal Civil Code, article 23) [21]. However, the goal of the Convention is direct expression by the child.

Thus, the right of children to be heard, at least on matters of personal importance for them, originates from a view of the child as separate from their parents [22]. Child participation in court proceedings is therefore considered a manifestation of respect for children’s rights. The denial of the direct participation of the child in court proceedings could be considered as affecting the child’s personhood [22]. The right to be heard constitutes the direct participation of children in expressing their opinions in matters important to them.

The Federal Law for the Protection of Children and Adolescents (2000) in turn establishes that children can express their opinion related to matters that affect them and other subjects connected

to their family and community (article 41) [23]. However, the Federal Court has interpreted this right differently.

In 2000, the Supreme Court determined that the Juvenile Law of Tamaulipas State violated the child's right to be heard because it did not provide children with the opportunity to designate a representative to intervene in their defense. Children must be heard in a trial, in order to fulfill the guarantee of hearing, before depriving them of their liberty [24].

4.1.2. What does the “Best Interest of the Child” Mean in Relation to His/Her Protection in the Process?

Dagdug-Kalife [13], considers four basic protection rights to determine the best interest of the child: (a) the right to privacy; (b) precautionary treatment or measures; (c) alternative measures; and (d) protection.

The right to privacy. The Convention establishes privacy in all stages of the proceedings. It legislates to protect the normal physical and psychological development of the child.

Precautionary treatment or measures. Measures should be directed to child protection and take into consideration the presumption of innocence enshrined in the Convention. In this sense, the privation of freedom should be the last resort.

Alternative measures. The process could finish in the first stages through care, guidance, supervision orders, mediation, conciliation, restoration or any alternative measure.

Protection. It should be implemented to avoid stigmatization due to the crime committed.

This best interest of the child principle appear after the Constitutional reform in Mexico. It is shown in Table 1.

Table 1. Understanding of the best interest of the child in Mexican states juvenile justice laws.

Explanation on the law for justice of adolescents	Before the reform	After the reform
No mention	29	0
Maximize the rights of adolescents	0	4
Mention that it is a basic principle but, not explain it	0	9
Respect of all the children's rights	0	4
Effective fulfillment of the children's rights and guaranties	0	9
Optimal development	0	2
Increased quality of personhood	0	1
Total	29	29

The best interest of the child is directed to child protection and the satisfaction of their needs; however, state intervention in the case of juvenile delinquents is most directed to punish the criminal acts. The state does not seek the fulfillment of children rights and wellbeing during the process for juvenile delinquents. The process is directed to pursue the delinquent, similar to adults, and find the grade of guiltily of the adolescent. It is supposed that the state will find the optimal measure to achieve their healthy and optimal development. The most frequent option is incarceration, the use of alternative measures is scarce; state does not have the structure for applying them. Incarceration deprives children of opportunities for healthy socialization, family attachment, and education. Therefore, it does not help to reach the optimal development of the children, as it is established in the Mexican Constitution and Convention.

4.2. Principe of Legality

The Convention on the Rights of the Child declares “no child shall be accused by act or omissions not previously prohibited by the national or international law” [11]. The Mexican Constitution (article 18) recognizes this [6]. The previous laws (Law that Creates the Juvenile Tutelary Council) established that measures up to and including institutionalization could be applied to minors committing antisocial acts, but it did not define antisocial behavior. Article 14 of the Mexican Constitution establishes the principle of no crime without sanction and no sanction without law (*nullum crimen sine poena, nullum poena sine lege certa*) [6]. It states, “In a criminal trial it is prohibited to impose, by analogy or majority of reason, a sanction not established in the law which is exactly applicable to the crime”. The standard is the exact application of the law in view of the facts and it constitutes the fundamental principle of legality.

The definition of this principle in the new system implies that measures can be applied only after a non-appealed judgment is obtained, dictated by a competent judge in a due process and under the form prescribed by the law. It also means that any adolescent can suffer restrictions of his/her liberty only because of a judge’s sanction [25].

The Supreme Court establishes the legality of the authorities’ restraint in its public power, which can only be exerted in conformity with the law and the faculties it grants [26]. This principle derives from article 14 of the Mexican Constitution, which states the restricted exigency of concrete contents, meaning that law should be neither vague or imprecise nor open or ample enough to allow arbitrariness [27]. In sum, the principle of legality constitutes the exact application of criminal law and the administration of previously established laws for criminal acts. The liberty of adolescents can be restricted only when a previously established law and tribunal have judged them and a non-appealed judgment has been obtained.

Table 2 shows that before the reform antisocial behavior or indiscipline could be considered for arresting any children. After the reform of 2006 children could be arrested only for crimes established by the law. This is one of achievements of the new law.

Table 2. Legality principle.

Type	Number of states	
	Before reform	After reform
Children abandoned, when parents asked and crimes established in criminal law	1	0
Indiscipline and crimes established in the law	1	0
Antisocial behavior and crimes established in the law	24	0
Crimes established in the law	0	29
No data	3	0
Total	29	29

4.3. Diversion

The CRC (article 40) promotes the possibility of extrajudicial measures, while respecting children’s rights [11]. The article 18 of Mexican Constitution establishes that, when possible, alternative forms of justice should be utilized [6]. Thus, the new system foresees pre-judicial or extra-judicial instances of conflict resolution and favors a non-judicial process, using the principles of minimal intervention and

the best interest of the child. Reducing the use of the judicial system implies the existence of an alternative solution for criminal processes [28]. In some states of the Mexican Republic, mediation and conciliation are considered alternative forms of justice. For example, in Sonora State, article 9, fraction XVI [29]. Nuevo León State favors restorative justice, which is defined as the voluntary juridical act conducted between the victim and the accused children that results in the solution of the conflict through any suitable mechanism (article 62) [30].

In Sonora State, mediation could occur during the procedure or before pronouncing the resolution (article 155). Conciliation and mediation are utilized in repairing the damage that results from crime. These alternative forms are allowed for crimes that are prosecuted at the request of the offended party and they allow the extinction of the criminal action when legal disinterestedness of the victim in the continuation of the cause exists (article 156) [29]. All states of the Mexican Republic consider the judicial process as the last resort in the treatment of juvenile offenders, and in many states, the law promotes the use of alternative processes. However, few states allow these processes to be carried out in a center for alternative justice. In addition, alternative systems exist for misdemeanors but in some of them, it is difficult to have recourse to them because of a number of prerequisites for their use [25]. Two Mexican states (Querétaro [31] and Chiapas [32]) contemplate extra-judicial process; however, their legal systems indicate that a judge will prescribe psychological assistance for the processed adolescent, who must repair the harm inflicted on the victim. Most of the state's laws authorize judges and public prosecutors to settle agreements through mediation and conciliation, yet, some states request the intervention of specialized public or private centers; for example, Durango [33] State redirects the process to an alternative center of justice. Table 3 shows the number of states that considered diversion for adolescents.

Table 3. States that consider diversion for adolescents.

Type	Number of states	
	Before reform	After reform
Conciliation	0	5
Mediation and conciliation	0	10
Mediation, conciliation and restorative justice	0	2
Conciliation and suspended process to proof	0	6
Mediation, conciliation and suspended process	0	3
Restorative justice and suspended process	0	1
Restoration, mediation, conciliation, and suspended process	0	2
Total	0	29

A real extra-judicial process carried out in the community, school contexts, or in a combination of these, is not recognized by law. An alternative process conducted outside of the court is not possible under the Mexican system, only one state considers an alternative center of justice. Considering former arguments alternative process for juveniles is not possible and it is essential to ensure a healthy social and psychological development of adolescents.

4.4. Due Process Rights and Other Procedural Guarantees

The Mexican Constitution (article 18) and juvenile justice laws recognize that the procedural guarantees of adults have to be granted to juveniles; moreover, these legal frameworks enshrine the special guarantees granted for persons under 18 years old (children and adolescents) and their *due process rights* [6]. The due process rights constitute the principles, rights and guarantees that protect persons against arbitrary acts by authority, conferring on them a strong status in the presence of punitive action by the state. These protections include the rights to be judged in judicial tribunals, to be heard, of contradiction and defense, the presumption of innocence, the right to an oral trial, the establishment of the means of incrimination, and the accusatory system. For children, due process rights conceive them as subjects of rights and procedural guarantees granted to all persons, but those rights also provide special guarantees because of their condition [34]. The Interamerican Court of Human Rights stated that in the application of these rights the special condition of the child should be taken into consideration [35]. Table 4 indicates the number of states that contemplate the presumption of innocence before and after the reform.

Table 4. Presumption of innocence principle.

Type	Number of states	
	Before reform	After reform
No guarantee for adolescents	25	0
Guarantee for adolescents	4	29
Total	29	29

In the case of children, due process rights should be respected in all the stages of the process, even during the application of the treatment. The due process rights granted by this law are: the right to be informed about the due process rights; to not be private of freedom just for cases established by the law; to be respected; to presumption of innocence; to not be forced to testify; to guarantee that the burden of proof should be charged to their prosecutors; to be informed about procedural acts; to short preventive institutionalization; to the presence of their parents or tutors in all stages of the diligence; to the right to privacy; to the right to an appropriate defense (which includes *the right to counsel* and *the right to a state-appointed attorney when no other counsel has been designated*); to the right to an interpreter in case of being indigenous or not Spanish-speaking; to have access to all information available for their defense; to an expeditious, complete and impartial trial; to present any evidence regulated by Criminal Law; to confront and cross-examine witnesses; to assure notification of their parents or guardians regarding the charges; to appeal the resolutions; to be notified about the charges, and the right to privacy and confidentiality. Children have the right to respect of their privacy and that of their families, thus they have the right to non-disclosure of any information about their identity (name, address, relationships, picture, *etc.*) at any stage of the process. All the authorities intervening in the process have the obligation to maintain confidentiality regarding all information that could lead to the identification of the child. Some Mexican states mandate this obligation as applied to their police forces and prosecutors. All publicity related to children's cases is prohibited.

The right to intervention means that the adolescent should have enough time to prepare his/her defense and participate in all the hearings of the process, to have access to all the documents, have the

right to formulate questions to witnesses, to present allegations and other important arguments for the defense, and to propose and contradict proofs.

The right to be informed implies that children should be informed concerning all their rights and all aspects of the process. Children should receive information in a simple and clear form, according to their capacity to comprehend. This information could vary depending on their age, contents of the law, the meaning of the process diligences, the object, purpose, motive and duration of the measures, and so on. This has two objectives for children: to ensure that they understand the value of the prescribed judicial actions and grasp the educational function of those actions.

Non-discrimination is another essential right for adolescents. However, the law does not define it; it merely describes the causes of discrimination. The law indicates the right of equality, and non-discrimination for reasons of gender, religion, race, ethnic origin, language, nationality, cultural practices or beliefs, special capacities, social mal-adaptation, nature and seriousness of behavior, political preference, parents' situation, and economic and social condition. The non-discrimination right is also considered in the application of measures. The absolute impartiality of their execution, under the supervision of a judge, is established. The law also contemplates special protection for native, female and handicapped adolescents.

In spite of this, the state grants all procedural rights to adolescents, for example precautionary prison is considered in all states of Mexico, it is established for exceptional cases and for minimal time. However, all adolescents that break the law are arrested immediately and remain in jail until the sentence.

4.5. Application of Measures

The Mexican Constitution [6] denominates "measures" by the state in response to those responses contravening Criminal Law. These measures constitute real penalties or sanctions because they imply the adolescent's responsibility for their criminal offences. The Senate, in passing the law, explained the term "measures" was used to differentiate them from penalties applied in the adult system because the latter involves individuals possessing *mens rea*. Measures aim to eliminate the retributive goal of sanctions; the Mexican Constitution [6] establishes that the purpose of measures is "the familiar and social rehabilitation of the adolescent to reach a complete development of her/his person and capacities". Therefore, according to the Constitution, the measures or treatment have an educational function. The administration of measures should be flexible and the judge applies discretion in their administration in order to respect the minors' due process rights. The objective is to find the most appropriate measure for the adolescent's rehabilitation.

The juvenal system of justice establishes very diverse measures for adolescents who violate Criminal Law, ranging from a warning and reprimand to systems of semi-freedom or institutionalization. Mainly, two kinds of measures are applicable to adolescents: one is institutionalization; another is external measures consisting of orientation, protection, education and treatment. Institutionalization is considered an extreme measure applicable only to felonies and to juveniles older than 14 [6] (article 18). Some Mexican states include other forms of deprivation of freedom, for example domiciliary arrest (23 states, constituting the majority of states), free-time arrest (11 states), semi-open system (16 states), and weekend arrest (12 states) [25]. Deprivation of freedom should be the last resort, consisting of the shortest incarceration time possible. There is no regulation to define this disposition and each state determines what "the shortest time" is. In some states, it depends

on the age and the severity of the crime. In addition, some states consider different gradations of deprivation of freedom, and the judge has to justify the use of the extreme measure of institutionalization.

However, in reality the law increased the maximum years of penalties and incarceration. The next table (Table 5) shows a comparison of the penalties before and after of constitutional reform.

Table 5. Penalties that establish the laws for juvenile delinquents in the different states of Mexico before the reform of 2006 and after the reform.

Maximum Years of penalties	Number of States	
	Before of reform	After the reform
5	20	3
6	1	0
7	2	12
8	0	3
10	0	5
12	0	1
15	0	2
18	0	1
20	0	1
22	1	0
No exceed the penalty for adults	0	1
Undefined	1	0
No data	4	0
Total	29	29

All states establish rights for children who are subject to institutionalization and indicate that the intervention must be tailored to the individual child's needs. In addition, it is agreed that children should be heard in the elaboration of this individualized program. Indeed, their agreement to the program is important for the accomplishment of the measure and the goal of the intervention system. The purpose of rehabilitation of the new law is converted into an increased time of incarceration.

4.6. Proportionality of Measures

The CRC [11] establishes in article 40 that a correlation should exist between punitive measures, the circumstances of the crime and the severity of the infraction. Punitive measures should be prescribed according to the goal of the integral system, which is the education of the adolescent. Therefore judges should impose the most appropriate sanction to strengthen the child's rights, freedom and developmental, as well as the social integration of adolescents [25]. For example, the law of Justice for Adolescents in Sonora [29] indicates that, in determining a measure, the Judge will have to consider: first the best interests of the child, and second, various global characteristics of the case, such as life circumstances and the severity of the criminal conduct, the adolescent's age, the conditions of his/her development, the adolescent's attitude during the process, his/her efforts carried out to repair the harm, and the possibility that the adolescent will fulfil the prescribed punitive measures (article 83). With these dispositions, the law tries to adhere to the principle of proportionality in the application of punitive measures. Moreover, the law states that these measures should always favor the interests of

the adolescent; for this reason, it is important that the judge consider the juvenile's needs and circumstances, because they can affect his or her behavior. Adverse social and familial conditions experienced by the adolescent should mitigate the sanction, rather than aggravate it. Increasing time of incarceration does not favor the social and familiar rehabilitation and development of the children; therefore, the application of the law does not reach the best interest of the child.

4.7. Specialization

The CRC [11], the Mexican Constitution [6] (article 18) as well as the Justice for Adolescents [29] state that any process will be conducted in specialized institutions, by specialized authorities and courts. The specialization is also extended to the administration of punitive measures; the new law requires specialized personnel for the elaboration of programs for adolescents subject to "institutionalization and application of other punitive measures" [25].

Specialized courts have been created to administer justice for adolescents, in the context of the judicial power of the state. With this establishment of specialized courts, the juvenile courts in Mexico [29] moved from an administrative to a judicial context (article 22). Provisional custody, the execution of external measures and the institutionalization of adolescents will be administered by the Institute of Treatment and Application of Measures for Adolescents, under the authority of the Executive Secretary of Public Security of the State [29] (article 23). This law also created the Specialized Unit of Prosecution of Justice for Adolescents, part of the General Prosecution Office of the State. The position of specialized prosecutor in the administration of justice for adolescents was also created. This unit will prosecute and investigate the crimes of adolescents (article 16) [29].

The law also mandated the establishment of the Specialized Unit for the Defense of Adolescents, under the authority of the General Direction of the Official Counselling (Government institution). This specialized unit will provide adolescents with assistance, legal representation, advice and defense of their rights during trial (article 16) [29].

The law establishes that the staff of these units should be carefully selected, demonstrating previous experience in the treatment of children, and competence in the management of children's issues. Chihuahua State (article 118) [36] established that these personnel should exhibit "aptitudes to exercise the [expected] function, a gender perspective, knowledge of human rights, and specialization in adolescents in private practice". Other states establish that staff should demonstrate knowledge of children's rights and juvenile delinquency, as well as possess appropriate legal knowledge. Moreover, systematic and continuous training on the psychological, physical, and social development and needs of children is mandated. Furthermore, specialized background and training in children's issues is a condition for hiring, granting of permanency and promotion of all personnel. Table 6 indicates the number of specialized judges before and after the reform.

Table 6. Specialization of the judges.

Type	Number of states	
	Before reform	After reform
No specialization	29	0
Specialization	0	29

The personnel of the system are:

1. Prosecutors
2. Police officers
3. Judges and magistrates
4. Public attorneys
5. Technical team
6. Institution for the execution of the measures
7. Directors of institutions of incarceration centers
8. Auxiliary team

After the reform all the Juvenile system was modified, prosecutors, judges, and unit of defense are specialized. They receive an orientation about children rights, legal process and juvenile delinquency. However, there is no specialized police; adolescents are arrested for police officers that attend general population.

5. Concluding Remarks

The new law radically changes the concept of the child, who is now considered a subject with rights and obligations instead of simply an object to be protected. The best interest of the child is the fundamental principle of the law, and full protection of children its main goal. However, these changes, designed for juveniles who contravene criminal law, have not modified their legal and social status. Application of the new principles has not improved their situation, in part because of ambiguities in definitions. The concept of integral protection, for example, is diffuse; there is no clear definition in the law. This system tries to responds to juvenile delinquency problems in a social scenario where there is a demand for solutions; through this system, the government addresses the issue of adolescents who contravene criminal law [28], although apparently, only in a conceptual or theoretical way.

In contrast, alternative forms of justice could encourage the Mexican government to focus on the needs of children. This would also promote a more egalitarian system. The new system is directed to this end in theory, but the first step to an improved juvenile legal system would be the recognition that more than half of Mexican children live in poverty. If the State ignores this situation, it does not meet its responsibilities. The new system of protection involves providing education, promoting and guaranteeing health, and offering opportunities for complete human development. Although the proposal of the new juvenile legal system is the fulfilment of the needs of the adolescent, in practice, the system is more directed to social control. It tries to eliminate the undesirable behavior of adolescents through sanctions and by encouraging the juvenile to recognize his/her responsibility, while at the same time deterring other adolescents from committing crimes. Most Mexican States increased their penalties for adolescents. However, there is no real social service proportionating to adolescents the opportunity to receive social, familial, educational, and health support to develop a healthy lifestyle.

Although institutionalization is intended for felonies, each state differs in its definition of a felony. Frequently, it is up to judges to decide what constitutes a felony for juveniles. In addition, adolescents could be incarcerated for any offense, increasing the probability for institutionalization. The instruction phase thus continues to be the most important part of the trial. Therefore, could be considered the new law has not changed this situation.

Under new system a special prosecutor is designated to investigate juvenile cases. In practice, then, the prosecutor, not the judge, directs the investigation of the facts and this evidence is taken into consideration by the judge in deciding the case [13]. Such a situation threatens the impartiality of the proceeding because one of the parties directly involved is in charge of handling the facts. Moreover, the judge does not directly obtain the evidence.

In conclusion, although the Mexican laws are responding to international requirements, the protection of children has not been achieved. In contrast, a complex, sometimes contradictory, system of pluralistic rules has developed, making the goal of children's protection unreachable in the present context.

Author Contributions

The first author wrote the article and the second elaborated the tables.

Conflicts of Interest

The authors declare no conflict of interest.

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