

**THE GENERAL LAW FOR EARLY DETECTION OF CANCER IN
CHILDHOOD AND ADOLESCENCE: A SIGNIFICANT STEP IN PROTECTING
THE HEALTH AND WELL-BEING OF CHILDREN AND ADOLESCENTS
WITH CANCER IN MEXICO**

**LA LEY GENERAL PARA LA DETECCIÓN OPORTUNA DEL CÁNCER EN LA INFANCIA Y
LA ADOLESCENCIA, UN PASO SIGNIFICATIVO EN LA PROTECCIÓN DE LA SALUD Y
EL BIENESTAR DE LAS NIÑAS, NIÑOS Y ADOLESCENTES CON CÁNCER DE MÉXICO**

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ABSTRACT

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The following article aims to highlight the importance of implementing and enacting the General Law for Early Detection of Cancer in Childhood and Adolescence, which has been a significant step in protecting the health and well-being of children and adolescents with cancer in Mexico. By employing qualitative exploratory research and utilizing the method of legal dogmatics within Mexico's legislative framework, the historical development of the right to health is explained from a hermeneutic perspective, supported by doctrinal insights and jurisprudence from the Supreme Court of Justice of the Nation on the matter, and comparing these findings to the current situation regarding the protection of the right to health. The research employed a documentary technique, gathering information from books and articles of legal relevance related to human rights and the healthcare system in Mexico. The investigation demonstrated that, in the context of a healthcare crisis and a scarcity of oncological medications, the fundamental rights of children with cancer are frequently and systematically violated. Furthermore, the General Law for Early Detection of Cancer in Childhood and Adolescence serves as an indication of an ambitious response to the nation's requirements in the realms of public health and human rights. In this context, it is crucial to enact this law to prioritize childhood cancer management, reduce mortality rates, and ensure access to treatments, providing a tangible source of hope for those affected.

RESUMEN

Palabras clave:

El presente artículo pretende demostrar la importancia de la implementación y puesta en marcha de la Ley General para la

alud, infancia, constitución, derechos humanos	Detección Oportuna del Cáncer en la Infancia y Adolescencia, un paso significativo en la protección de la salud y el bienestar de las niñas, niños y adolescentes con cáncer de México. A través de una investigación cualitativa de carácter exploratorio se empleó el método de la dogmática jurídica en el marco legislativo de México, explicando desde la hermenéutica el proceso histórico del derecho a la salud y complementándolo con la doctrina y jurisprudencia de la Suprema Corte de Justicia de la Nación relevantes al tema en cuestión; confrontando los resultados con el panorama actual en la protección del derecho a la salud. La técnica de investigación empleada fue la documental, recabando información de libros y artículos de relevancia jurídica sobre los derechos humanos y el sistema de salud en México. El estudio pudo advertir que ante la crisis del sector salud y el desabasto de medicamentos oncológicos los derechos fundamentales de los menores con cáncer son violados de manera constante y sistemática. Así mismo, es evidente que la Ley General para la Detección Oportuna del Cáncer en la Infancia y la Adolescencia refleja una ambiciosa respuesta a las necesidades del país en materia de salud pública y derechos humanos. En este contexto, se considera la necesidad de ponerla en funcionamiento para abordar al cáncer infantil como una prioridad, reducir la mortalidad, ofrecer tratamientos y una esperanza tangible de vida.
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Introduction

The recognition of the right to health is a historically complex and lengthy process, which has culminated in its consolidation in the legal and contemporary sphere. Luigi Ferrajoli (2014) highlights how historically the institutionalization of fundamental rights in constitutions has been the corollary of various struggles and revolutions against oppression and discrimination, oriented towards the protection and defense of the weakest, "always conquered as limitations of correlatives of power". In the Mexican context, the social conquests achieved in the Mexican Revolution led to the constitutional text of 1917, in which the protection of health was constitutionalized as a social right, and since then the State has acquired the obligation to guarantee the prerogatives inherent to this right.

However, the country is going through a critical conjecture regarding the right to health, facing significant challenges to guarantee it to the entire population, despite the fact that it is enshrined both in constitutional norms and in international treaties ratified by Mexico. The discrepancy between what is stipulated in the Constitution and the effective reality is evident in the limited accessibility to health services for the entire population. The transition from Seguro Popular to the Instituto de la Salud para el Bienestar (INSABI) in 2019, disarticulated the financing mechanisms with which all types of cancer in childhood and adolescence were insured, and the way in which oncological medicines were acquired, which caused thousands of girls, boys and adolescents with cancer in the country to be left without access to health services.

The indifference and lack of commitment on the part of government authorities to recognize and enforce fundamental rights, including the right to health, has led to a recurrent violation of this essential right, particularly in children and adolescents with cancer, a particularly vulnerable group that seems invisible to the authorities. The families of these minors have expressed their dissatisfaction with the new drug procurement and distribution policy, which has led to a considerable increase in out-of-pocket expenses and a financial imbalance in their families. In view of this scenario, there is a need to establish specific regulations and legal mechanisms that will make it possible to vindicate and give concrete expression to the right to health.

This paper aims to highlight the relevance of implementing and activating the General Law for the Timely Detection of Cancer in Children and Adolescents, a significant step in the protection of the health and well-being of children and adolescents with cancer in Mexico. Published on January 7, 2021 in the Official Gazette of the Federation, this law represents a notable legislative advance, the result of the tireless efforts of Mexican civil society to improve the prognosis and quality of life of minors affected by cancer. The law establishes a legal framework for the early detection, treatment, follow-up and rehabilitation of childhood cancer, ensuring comprehensive, quality and universal medical care for this population group, with the ultimate goal of reducing the mortality rate associated with this disease. However, more than three years after its publication, there is no indication of its entry into force.

In order to achieve these objectives, we have analyzed Article 4 of the Constitution of the United Mexican States, which enshrines the right to health protection and establishes the corresponding measures to safeguard this right, and we have examined the evolution of this right through the norms that have been incorporated since 1990, when Mexico ratified the Convention on the Rights of the Child, as well as the 2011 reform on human rights. A reform that implied a significant and transcendental modification of the first article of the Constitution, by giving the so-called individual guarantees the status of human rights, expanding the parameter of constitutional regularity. This process has

obliged the Mexican State to guarantee, respect, protect and promote the right to health of the entire population, paying special attention to vulnerable groups.

In this context, the General Law on the Rights of Children and Adolescents in Mexico establishes a comprehensive legal framework for the protection and promotion of the rights of minors. This law is in line with national and international standards to ensure their physical, emotional and social well-being, creating a safe environment conducive to the full development of their capabilities. It recognizes minors as subjects of their own rights, which must be respected and guaranteed by the State and society.

The main criteria associated with the judicial interpretation and evolution of the lines of jurisprudence on the right to health and the principle of the best interests of the child were reviewed. This principle is fundamental at both the national and international levels, since it prioritizes the well-being and integral development of children and adolescents in all decisions and actions that affect them. It demands that their rights and needs be guaranteed and respected as a priority, ensuring that legal, administrative and judicial decisions are oriented towards the protection and promotion of their general welfare.

It is essential to consider the pronouncements of the Supreme Court of Justice of the Nation as it has allowed for reflection and understanding of the new constitutional paradigm among national and international instances, on the occasion of the 2011 reform. This reform underscores the need to strengthen the dialogue between national and international human rights law. In this environment, it is crucial to be aware of the international human rights treaties to which the Mexican State is a signatory, in order to improve the protection of the right to health and ensure a positive impact on its safeguarding.

On the other hand, the doctrine of various authors on the importance of health in people's lives as a valuable asset in itself and its incorporation process, as a human right, in the constitutional text has played a fundamental role. In order to be able to confirm that health is a fundamental right of all human beings, which is intrinsically linked to the preservation of life and taking into consideration this value, the State has the obligation to preserve it. Mainly because it is an instrumental right for the satisfaction and safeguarding of other rights, such as the right to education, recreation and the enjoyment of the environment.

The main contribution of this research lies in demonstrating that the implementation of the General Law for the Timely Detection of Cancer in Children and Adolescents is fundamental both from a public health perspective and from the perspective of fundamental human rights. The study takes on particular relevance given the current situation in the country and the constant violations of the right to health by the authorities that compromise the dignity, development and capacity of minors and adolescents with cancer, excluding them from opportunities to live a full life. The main barrier to overcoming this situation is the lack of political will to implement the General Law for the Timely Detection of Cancer in Children and Adolescents.

Method

The present research work has a qualitative approach of exploratory character that seeks to describe the social reality of the moment. For the purposes of this study, legal dogma was used to analyze the regulations in force in Mexico, especially the Constitution and the prevailing legislative framework on health and protection of children and

adolescents, highlighting the General Law on the Rights of Children and Adolescents and the General Law for the Timely Detection of Cancer in Children and Adolescents. As well as international treaties and conventions aimed at protecting the right to health ratified by the Mexican State.

To strengthen the study, the content and functionality of the norms were interpreted through legal hermeneutics in order to make an in-depth reflection on the historical process of the right to health and its observance up to the present day. The research was complemented with the jurisprudential doctrine of the Supreme Court of Justice of the Nation relevant to the issue of the right to health and the principle of the best interest of children and adolescents. In particular, to the pronouncements that have been building a doctrine that has been based on the conception of the right to health from an integral perspective, which has made it possible to understand its scope.

The research technique used was of a documentary nature, consisting of the collection of information from books and articles of legal relevance. This approach made it possible to examine the historical evolution of health, from its first conceptualizations to its constitutionalization process and its formal recognition as a fundamental human right. The detailed review of these sources provided an in-depth understanding of the impact of health in the legal sphere and its consolidation as a social right.

Results

Health is an essential good and a primordial desire of every person, being a *sine qua non* condition for the satisfaction of basic needs and the attainment of a state of plenitude. In addition to having an individual dimension, it faces a dimension that constitutes it as a social good. According to Carbonell (2012), its preservation is only possible through the efforts of the community. It is an indicator of the well-being and quality of life of the community and plays a crucial role in the social and economic progress of nations. Throughout history, it has occupied a preponderant place in human existence, constituting a state whose conservation has been the object of permanent concern and preservation.

The Importance of Health Care in Mexico Over Time

In Pre-Hispanic Mexico, the concept of health was based on the conception of an essential balance between the human being and the divine and natural forces that governed the cosmos. Disease was understood as the loss of that balance, and could be internal, caused by factors within the body, or external, caused by influences of the gods that affected the environment and people. According to Viesca (2010) society lived in a closed universe, in a "Mesoamerican world" shaped by their gods and their vision of universal order.

A holistic approach to the human being and his environment was observed. Torres (2014, p.51) that "religious, etiological, nutritional, political and social factors were seen as crucial to preserve the harmony between the individual and his environment". According to Torres (2014, p.51), there was a paradigm of duality for both health and disease, in which gods and pathologies were intrinsically linked, "the gods in the Valley of Mexico had positive and negative aspects, they could cure and protect against certain evils; sometimes, they caused disease depending on the behavior of the human being".

Figure 1

Relationship between gods and illnesses in the Valley of Mexico

Quetzalcoatl	• The good god. Cures all diseases and illnesses
Ehecatl	• Colds, rheumatism, torticollis and stiff neck and stiffness
Tezcatlipoca	• It is the night sun, it represents punishment, black magic and sorcery. Cures epidemics, calamities and madness
Tlatoc	• Death by lightning, drowning, skin diseases, scabies, buboes, contagious and incurable diseases
Xipe Totec	• Eruptions, blisters and suppuration, smallpox, apostemas, scabies, eye diseases and inflamed eyelids.
Ehecame and Tlaliques	• Gout of any part of the body, crippling and all cold palsies
Cihuateteo	• Paralysis and convulsions in children
Amimitl and Atlahua	• Dysentery and diarrhea, deadly chills and common and brain colds
Macuilxochitl and Xochipilli	• Diseases of the secretory parts, hemorrhoids and venereal diseases
Tlazolteotl	• Seizures, death by love and dependence on each other
Tzapotlatenen	• Patroness of Physicians and Midwives
Dead body	• Snakebite poisoning and serious diseases

Note. Source: Torres (2014, pág. 53).

Religion, deeply rooted in all levels of pre-Hispanic society, played a crucial role in the sphere of public health. In the words of Chavez (1987, p. 18), "the priest and sorcerer were the only ones who fought against disease, the one appeasing the wrath of the gods and the other conjuring the action of the stars and evil spirits". It was imperative for men to watch over their health and life, considering death in battle or on the sacrificial stone not as an end, but as a step to attain cosmic spirituality. There was a system for the prevention and control of diseases, the rulers were in charge of providing good living conditions to its inhabitants, the necessary means to maintain health and a favorable lifestyle; thus ensuring social welfare and the commitment of the inhabitants of the community to comply with the established rules.

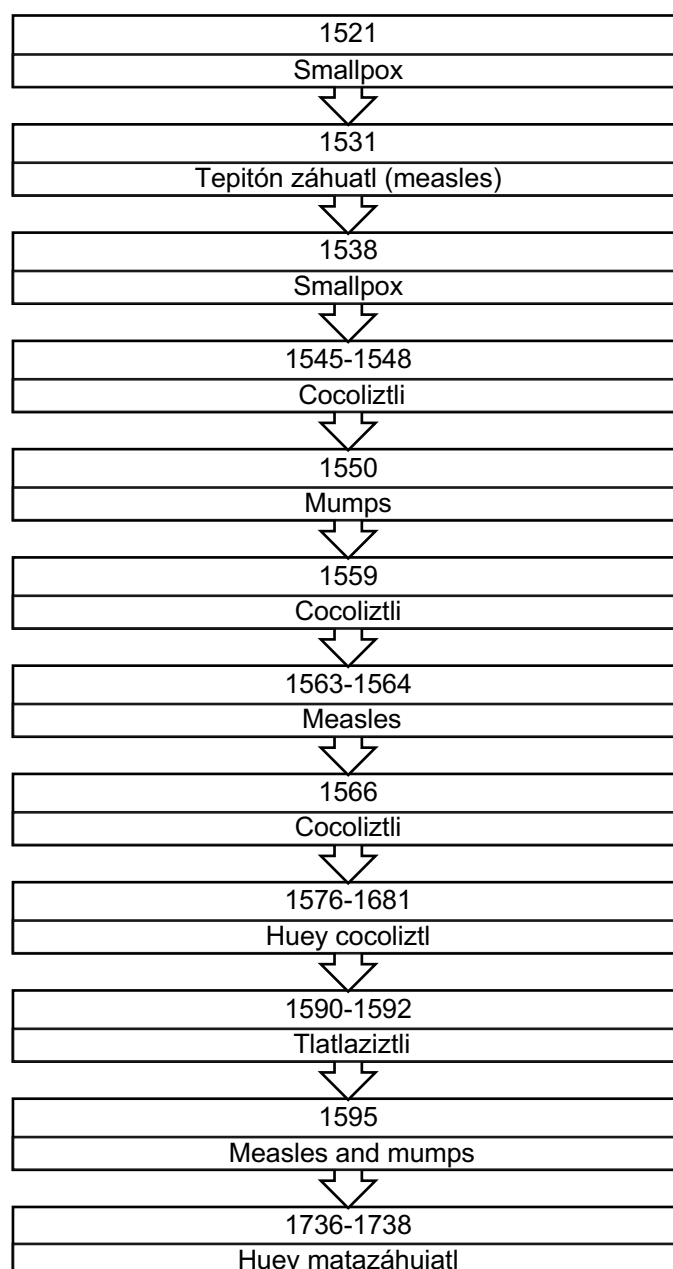
In the pre-Columbian era, medicine was a mixture of magical practices, herbalism and empirical knowledge related to human anatomy and physiology. Thanks to written sources and testimonies written by indigenous people who practiced medicine long before the arrival of the Spaniards, including evangelists and physicians who were sent to New Spain to study the medicinal resources found in these lands, it has been possible to have an idea of the Hispanic American cosmovision, its diseases, health care and healing techniques. Specifically, the Florentine Codex of Fray Bernardino de Sahagún of 1576, written a few years after the conquest of Tenochtitlán, constitutes a primordial source for the study of therapeutic strategies and medical procedures implemented by the physicians of the region.

During the 16th century, the indigenous culture had reached a level of development in the natural sciences that considerably surpassed that of Europeans. The application of botany in medicine, the profound knowledge and practical skills of indigenous physicians in the use of herbal medicine, represented significant contributions to universal medical culture. Viesca (2010) refers that in 1552, Martín de la Cruz, recognized as the first indigenous physician, wrote the oldest pharmacology book on the continent, known as the Codex de la Cruz - Badiano, translated from Latin into Spanish by Juan Badiano. This document, known as "Libellus de medicinalibus indorum herbis" or "Little Book of Medicinal Herbs", was presented as a gift to King Philip II of Spain. In it, the medicinal practice is described in detail, cataloging more than a thousand species of plants used for therapeutic purposes, as well as detailing the formulas for their preparation, methods of administration and specific curative properties.

In colonial times, the Spanish religious orders that arrived in Mexico altruistically provided the first hospital services, establishing the first sanatoriums, orphanages and shelters for the care of the sick and disadvantaged. In 1524, at the initiative of Hernán Cortés, the first hospital in New Spain was built, initially called the Hospital de la Purísima Concepción, whose original purpose was to provide medical care to combatants injured in battles. Over time, this institution expanded its services to include both Spaniards and the indigenous population. Years later, it was renamed the Hospital de Jesús de Nazareno, and as Ocharan Corcuera (2017, p.23) points out, "it is considered the oldest hospital in the American continent" and the first of 128 hospitals founded from the 16th century.

The cultural confluence resulting from the encounter between Spaniards and Indians catalyzed the spread of various pestilences and epidemics throughout Mexico that were new and unknown to the indigenous population. Ortiz (2020) describes that these diseases "decimated more than 90% of the population in less than a century". The population had no choice but to go on with their daily lives, facing disease and death caused by the constant epidemics that plagued the region. As Ortiz points out (2020) points out, on many occasions, their faith was their only defense against these evils.

Figure 2
Chronology of epidemics in New Spain



Note. Source: Ortiz (2020)

It was in the 19th century that an active search for solutions to public health challenges began to emerge, accompanied by significant scientific advances in the health field. This period marks the emergence of preventive medicine, with a growing importance of the relationship between the good condition of the people and the medical care received in the face of any type of illness. Chávez (1987) highlights the beginning, in 1804, of a mission ordered by King Charles IV to spread the smallpox vaccine throughout all Spanish-speaking regions of the continent. In the following years, campaigns were undertaken to tackle other diseases through immunization, such as rabies, poliomyelitis and tuberculosis, which were crucial against epidemics.

During the compulsory period of Independence, which lasted from 1810 to 1821, the country faced marked political instability and high morbidity, not only due to the serious wounds inflicted on the battlefield but also for public health reasons. Political and

social unrest exacerbated unsanitary conditions, providing for the rapid spread of disease. A significant event occurred in 1833 when an epidemic of "cholera mordus" struck the national territory and spread until 1851. As Passmore (1975, p. 266) points out, "the sudden onset of symptoms, their severity, high mortality and lack of effective treatment make it one of the most dramatic diseases in the history of mankind". This epidemiological outbreak seriously disrupted urban life by flooding cities with a large number of sick people, which prompted post-revolutionary governments to create health institutions to care for the population and design legal frameworks to ensure their basic needs.

Since the dawn of colonial times, care for the sick was carried out as a religious charity sponsored by the church. However, it was in the second half of the 19th century, during the mandate of President Benito Juárez García between 1855 and 1872, when the government undertook a secularization policy that stripped the church of its control over the hospitals, orphanages and cemeteries previously administered by this institution. This measure implied the cessation of charitable and beneficent assistance by the church, transferring the responsibility of caring for the health of the inhabitants to the State. In this new scenario, the State assumed the direction and management of health care services and charitable establishments in order to keep its inhabitants in good health. Public Charity, conceived by Meyer (1975, p. 9) as "a philanthropic work of the State, without being considered in any way as an obligation", did not occupy a priority position within the national public agenda.

The Magna Carta of 1857 established the acceptance of the rights of man in its first article: "The Mexican people recognize that the rights of man are the basis and object of social institutions. Consequently, it declares that all laws and all authorities of the country must respect and uphold the guarantees granted by the present constitution". However, it would lack specific provisions related to health despite the humanistic project of President Benito Juárez García, by substituting Christian charity for public assistance.

The Constitutionalization of the Right to Health

It was in the 1917 Constitution where the social guarantees were established, leaving a turning point in national history, representing a legal innovation at international level and whose legacy has transcended borders. The Mexican Revolution that lasted from 1910 to 1917 and the subsequent workers' movement responded to the yearnings for equality and social justice, raising the rights enshrined in the Constitution of 1857, fundamental rights that for more than three decades had remained in oblivion, denied by the regime of Porfirio Díaz. It demanded the recognition of work as a social right and duty, the need to guarantee social benefits, medical care, job and family security, as well as the enactment of laws to regulate working conditions. This uprising, initially conceived to overthrow the dictator and reestablish the rule of the Constitution, became a significant social movement that catalyzed important social reforms. In the opinion of Gómez (2019, p. 203), "the foundations were laid for health to be recognized after the Revolution as a strategic area for the security and welfare of the country and, therefore, as the object of broad state intervention."

The 1917 Constitution was the culmination of the revolutionary efforts to consolidate a legal framework that embodied the ideals of social justice, equality and labor rights, reflecting the demands and aspirations of the Mexican people after years of struggle. In Carpizo's words (1990, p. 21), "the Constitution of 1917 is the fruit of the first social movement that the world experienced in the twentieth century", in which a new social legal paradigm was born in Mexico: social law. This social law, according to Radbruch (1974, p. 162), far from seeking absolute equality among individuals, has as its main objective to mitigate existing inequalities, "equality thus ceases to be the starting

point of law and becomes the goal or aspiration of the legal order" Acquiring the State, as Ferrajoli (2019, p. 108) puts it, a new role and commitment to these "positive public benefit rights".

In Trueba's opinion (1980, p. 79), our Magna Carta "is the first Social Political Code of the world and a juridical presea converted into a herald of contemporary Constitutions". Health as a social right was associated with the provision of Social Security for the working class and their families and was not extended to all Mexicans. This inclusion gave rise to sections XIV and XV of article 123 of the Constitution, (2024) regarding labor and the employer's obligations to guarantee the health and life of the workers.

Article 123.

XIV.- "Employers shall be liable for occupational accidents and occupational diseases of workers, suffered by reason of or in the exercise of the profession or work they perform; depending on whether they have resulted in death or simply temporary or permanent incapacity to work, in accordance with the provisions of the law. This liability shall subsist even in the event that the employer hires the worker through an intermediary".

XV.-"The employer shall be obliged to observe in the facilities of his establishment, the legal precepts on hygiene and health, and to adapt the appropriate measures to prevent accidents in the use of machines, instruments and work materials, as well as to organize it in such a way that the health and life of the workers is the best guarantee compatible with the nature of the negotiation, under the penalties established by law".

From then on, a social transformation took place as certain conceptions that until then had been exclusively sociological in nature acquired legal significance. This process of positivization of rights, which developed in two stages, as described by Lara (2019, p. 124), "the constituent of 1857 marked a milestone in national history. Consecrating the rights of man in the Standard of Standards. Likewise, in 1917 the debates would lead to an international judicial novelty: elevating social rights to constitutional rank", which signified the transition from a State characterized by its liberal and individualistic approach to a social State based on the rule of law.

Thus, with the evolution of the social state, the aim is to safeguard the basic foundations of society, promote inclusion and protect the most vulnerable population. This process leads to a more comprehensive understanding of the human being, both in its individual and social dimension, as an active member of the community. In the words of Radbruch (1974, p. 157), "social law is the result of a new conception of man by law", by recognizing the individual not only as a subject of rights and obligations in the strict sense, but as a social being whose needs and welfare must be met by the legal order.

Health, a Guarantee of Equality for Everyone

It was not until February 3, 1983, during the six-year term of President Miguel de la Madrid Hurtado, 66 years after the promulgation of the 1917 Constitution, that health was incorporated as a guarantee of equality for all individuals within the national territory, this was achieved through the addition of a fourth paragraph to article 4 of the Constitution (2024) this was achieved through the addition of a fourth paragraph to article 4 of the Constitution, thus elevating the right to health protection to constitutional rank.

Everyone has the right to health protection. The law will define the bases and modalities for access to health services and will establish the concurrence of the Federation and the federative entities in matters of general health, in accordance with the provisions of section XVI of Article 73 of this Constitution.

It is important to note that the term "right to health" was not used, but rather "right to health protection", recognizing that health cannot be ensured only through access to medical services, but also requires a comprehensive approach that includes prevention and the family, social and community environment.

Subsequently, on February 7, 1984, the General Health Law was enacted, regulating the right to protection, establishing the bases and modalities for access to health services. This law delineated the forms of collaboration between the federation and the federative entities in matters of general health. It also defined the purposes of the right to health protection in terms of general health, the competent health authorities and the components of the National Health System, together with its objectives and coordination mechanisms.

In the following years, additional state health laws and regulations were created, leading to significant legislative and strategic changes. These initiatives contributed to the decentralization of health services and promoted greater efficiency in their delivery.

The Creation of the Social Protection System in Health in 2003

Making health a right for the entire population and the incorporation of the right to health protection in the Constitution represented a first step. However, the materialization of this right required the implementation of adequate administrative and legal mechanisms. In 2003, during the presidency of Vicente Fox Quesada, a decree was published in the Official Gazette of the Federation, (2003) the decree reforming and adding the General Health Law to create the Social Health Protection System. This reform allowed the gradual incorporation of all Mexicans without social security into Seguro Popular.

Article 77 Bis 1: "All Mexicans have the right to be incorporated into the Social Health Protection System in accordance with article four of the Political Constitution of the United Mexican States, regardless of their social condition."

Since the reform, the Ministry of Health has had the power to determine the list of essential drugs and supplies included in the Basic Health List, as well as the obligation to guarantee their permanent existence and availability.

Article 28.

For the purposes of the preceding article, there shall be a Basic List of Inputs for the first level of medical care and a Catalog of Inputs for the second and third levels, prepared by the General Health Council, to which the public institutions of the National Health System shall conform, and in which health inputs shall be grouped, characterized and codified. For these purposes, they will participate in its elaboration: The Ministry of Health, public social security institutions and other institutions designated by the Federal Executive.

Quoting Gómez (2004, p. 585), in the voice of Julio Frenk, creator of Seguro Popular, "the system of Social Protection in Health and its main operational arm, Seguro Popular, was conceived as a system in which the constitutional right to health protection is exercised equally by everyone, regardless of their employment status, income level or previous state of health. This was not the case before the reform". The primary objective of Seguro Popular was to guarantee free access to health services through a comprehensive package of services for all Mexicans who lacked social security.

As its name indicates, it was an insurance policy financed by the Federal Government and by the governments of the states, and based on socioeconomic studies, there were certain recovery fees according to the level to which one belonged. Through Seguro Popular and its Catastrophic Expense Protection Fund, we were able to provide medical services to all children and adolescents with cancer in the country. In 2005,

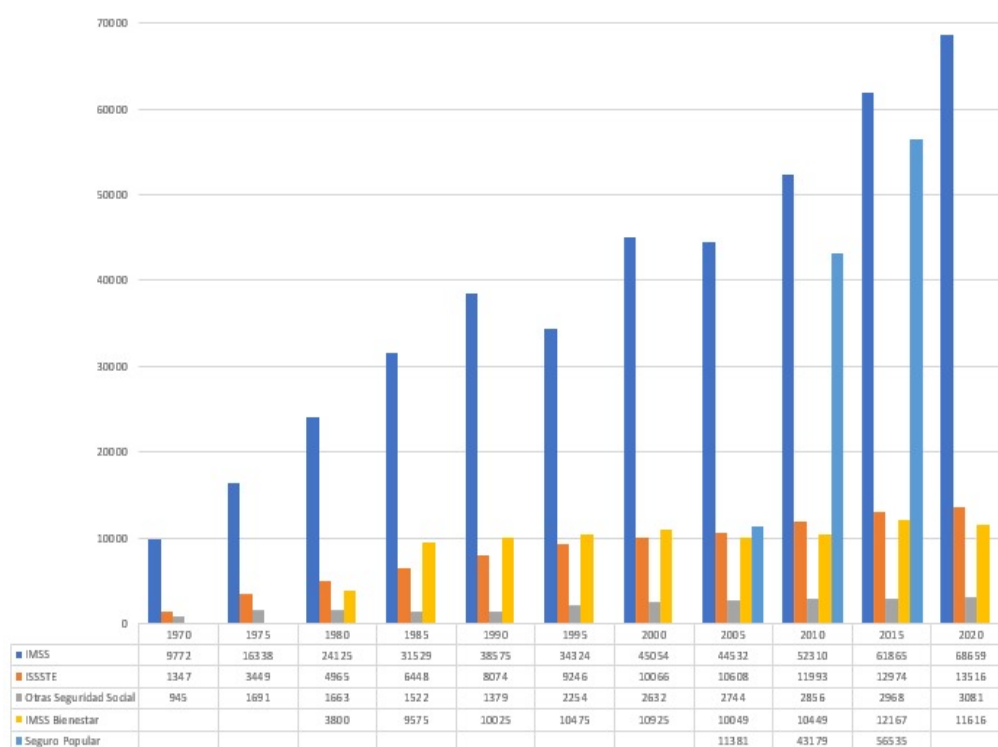
leukemia was incorporated into the Catastrophic Cost Protection Fund, followed by the inclusion of all other types of childhood cancer in 2008.

The main objective of these changes was to provide free access to health services with equity and quality, guaranteeing financial protection and universal coverage. It also sought to reduce catastrophic expenses that affected the most vulnerable population and those with limited resources. In addition, care was facilitated in various parts of the country by including a network of hospitals and clinics, improving the availability of medical services.

Gradually, according to data from the National Institute of Statistics, Geography and Informatics (INEGI), over the years there has been a progressive increase in the participation of families, accompanied by the expansion of basic coverage to include high-cost procedures, such as the treatment of childhood cancer.

Figure 3

Entitlement population (in thousands) by institution and health care coverage in Mexico from 1970 to 2020



Note. Retrieved from INEGI (2020)

Health as a Human Right

The constitutional rights reform of June 6, 2011 was transcendental and represented a moment of transformation for both society and the Mexican State. This reform was published in the Official Gazette of the Federation (2011)the amendment, published in the Official Gazette of the Federation, introduced significant changes by modifying the name of Chapter I of Title One and amending Article I of the Constitution. The main purpose of these amendments was to strengthen the system for the recognition

and protection of human rights in Mexico, thus consolidating a more robust framework for their defense and promotion.

Article one:

In the United Mexican States all persons shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions established in this Constitution.

The norms relating to human rights shall be interpreted in accordance with this Constitution and with international treaties on the subject, favoring at all times the broadest protection for individuals.

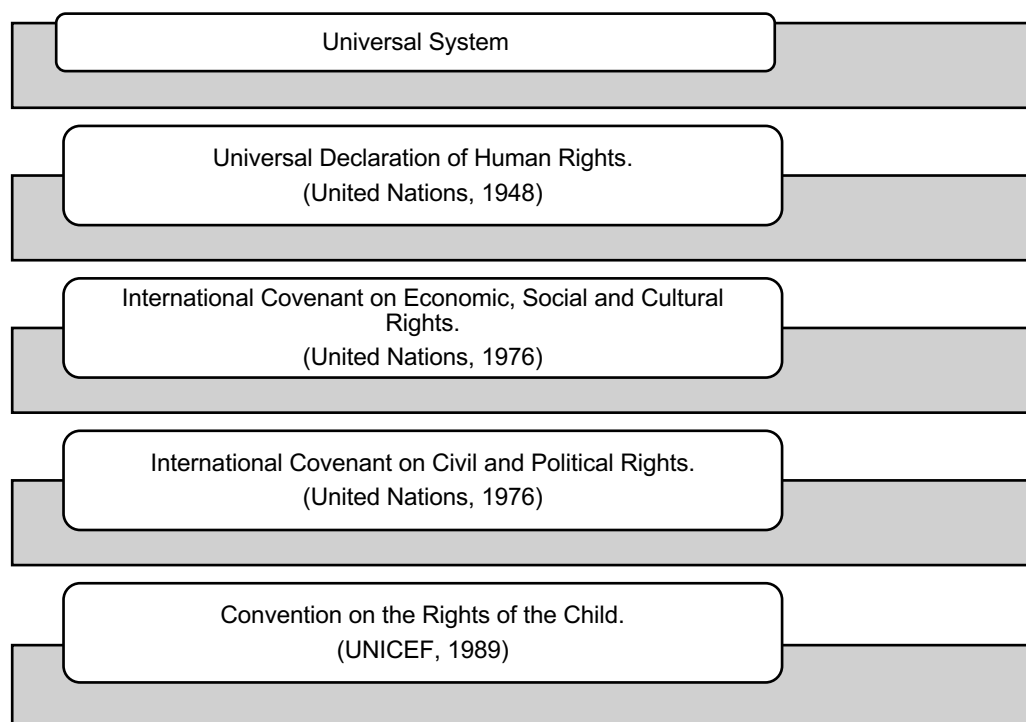
All authorities, within the scope of their competencies, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. Consequently, the State shall prevent, investigate, punish and redress human rights violations, under the terms established by law.

Bearing in mind Fix Zamudio (1999, p. 22), "the Constitution is not and never was a rigid and invariable text, but a text open to different circumstances, actors and times". The dynamism of the Constitution has been permanent, undergoing very relevant changes in its structure throughout history. Constitutional reform in the area of human rights arose as a result of the democratic transition that Mexico has undergone in recent decades and the globalization process of recent years. This reform introduces new procedures for learning and disseminating the law, in addition to fostering a new culture of human rights.

Since the 2011 reform, Mexican constitutional law has clearly and forcefully opened up to international human rights law. The recognition of the obligatory nature of the jurisprudence of the Inter-American Court of Human Rights binding for all judicial jurisdictional bodies of the country is considered a source of law that contributes to define and explain the rights contained in international treaties, forming the inter-American corpus iuris. This has forced us to understand and follow international standards of rights protection by recognizing that international human rights treaties have constitutional rank. In the words of Carbonell (2016, p. 22), "international treaties have been an essential driver in the recent development of fundamental rights around the world." Since then, we have been learning to use not only the human rights established in the Constitution, but also those contained in all the international treaties signed and ratified by Mexico.

Figure 4

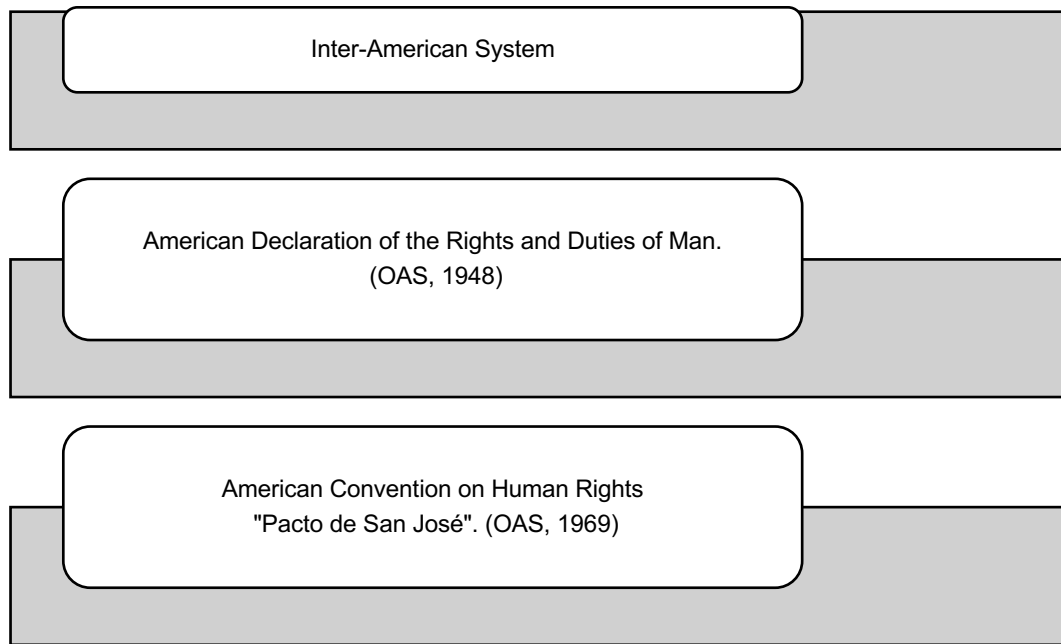
International human rights treaties in the Universal System to which the Mexican State is a party



Note. Source: Carbonell (2022)

Mexico stands out as one of the most active countries in signing and ratifying international treaties, thus demonstrating its firm commitment to international law and the principles of global cooperation. As part of this commitment, Mexico has assumed the responsibility to guarantee, promote, protect and respect the rights enshrined in more than 261 international treaties. This broad participation not only strengthens its position in the international community but also contributes to the protection of human rights and the promotion of peace, security and sustainable development worldwide.

Figure 5
International human rights treaties in the Inter-American System to which the Mexican State is a party



Note. Source: Carbonell (2022)

The protection of the right to health acquires today broader dimensions in terms of the protection referred to in the international treaties to which Mexico has subscribed. These international agreements not only establish obligations to guarantee universal access to quality health services, but also promote equity and fairness in the distribution of medical resources. In addition, these treaties emphasize the importance of adopting comprehensive public policies that address the social determinants of health. In this context, Mexico must ensure that its national legislation and practices are aligned with international standards to guarantee effective and equitable protection of the right to health for all its inhabitants.

Figure 6

International and regional treaties ratified by Mexico which guarantee the right to health

The Universal Declaration of Human Rights of 1948,
ratified by Mexico in 1948.

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, are entitled to equal social protection.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966,
ratified by Mexico in 1981.

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. Among the steps to be taken by States Parties to the Covenant to ensure the full realization of these rights are the necessary requirements for:
 - a. Reduction of mortality and infant mortality and the healthy development of children;
 - b. The improvement of all aspects of occupational and environmental hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions that ensure medical assistance and medical services to all in case of illness.

The American Convention on Human Rights (Pacto San José), ratified by Mexico in 1981.

- Article 19.- Every child has the right to the measures of protection that his or her condition as a minor requires on the part of his or her family, society and the State.

The Additional Protocol to the American Convention on Human Rights in the Area of
Economic, Social and Cultural Rights (Protocol of San Salvador), ratified by Mexico in
1996.

1. Article 10. Right to Health. Everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being.
2. In order to realize the right to health, the States Parties undertake to recognize health as a public good and, in particular, to adopt the following measures to guarantee this right:
 - a. primary health care, understood as essential health care made available to all individuals and families in the community;
 - b. the extension of health care benefits to all individuals subject to the jurisdiction of the State;
 - c. full immunization against major infectious diseases;
 - d. prevention and treatment of endemic, occupational and other diseases;
 - e. education of the population on the prevention and treatment of health problems, and
 - f. meeting the health needs of the most at-risk groups and those who are most vulnerable due to their conditions of poverty.

The Convention on the Rights of the Child 1989,
ratified by Mexico in 1990.

- Article 24.- States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right to the enjoyment of such health services.

Note. Source: Carbonell (2022) and the Nuevo León State Human Rights Commission.

A series of pronouncements by the Inter-American Court of Human Rights (IACHR) and the Supreme Court of Justice of the Nation (SCJN) have been applying different standards that delineate the obligations of the Mexican State as a State Party to the American Convention on Human Rights, particularly with respect to the control of conventionality. Today, the individual is recognized as a subject of international law and is protected by mechanisms adopted for his or her benefit.

The Rights of Children and Adolescents

Mexico ratified the Convention on the Rights of the Child on September 21, 1990, committing to respect, promote, protect and guarantee the exercise of civil, economic,

social and cultural rights, regardless of place of birth, sex, religion, ethnicity, social class and family status, among others. In addition, it undertook to implement all administrative, legislative and other measures to give effect to all the rights recognized in this legal framework.

Initially, Article 4 of the Constitution was limited to establishing certain duties of parents or guardians with respect to their children, until it was necessary to reform it in order to align its contents with the principles of the Convention on the Rights of the Child. The rights of children and adolescents appear for the first time in the constitutional text through the reforms published in the Official Gazette of the Federation on March 18, 1980 (1980) on March 18, 1980, which added:

"It is the duty of parents to preserve the right of minors to the satisfaction of their needs and to physical and mental health. The law shall determine the support for the protection of minors by public institutions".

- Subsequently, a second amendment published in the Official Gazette of the Federation on April 7, 2000 replaced the previous text with the following paragraphs (2000) on April 7, 2000 replaced the previous text with the following paragraphs:

"Children have the right to the satisfaction of their nutritional, health, educational and recreational needs for their integral development. Ascendant guardians and custodians have the duty to preserve these rights. The State shall provide what is necessary to ensure respect for the dignity of children and the exercise of their rights.

The State shall grant facilities to private individuals so that they may contribute to the fulfillment of children's rights".

- Finally, with the decree published in the Official Gazette of the Federation (2011) on October 12, 2011, it was reorganized and additions were made to the corresponding section of article 4^o, modifying the sixth and seventh paragraphs, remaining as follows:

"In all decisions and actions of the state, the principle of the best interest of children shall be ensured and complied with, fully guaranteeing their rights. Children have the right to the satisfaction of their needs for food, health, education and healthy recreation for their integral development. This principle should guide the design, implementation, monitoring and evaluation of public policies aimed at children.

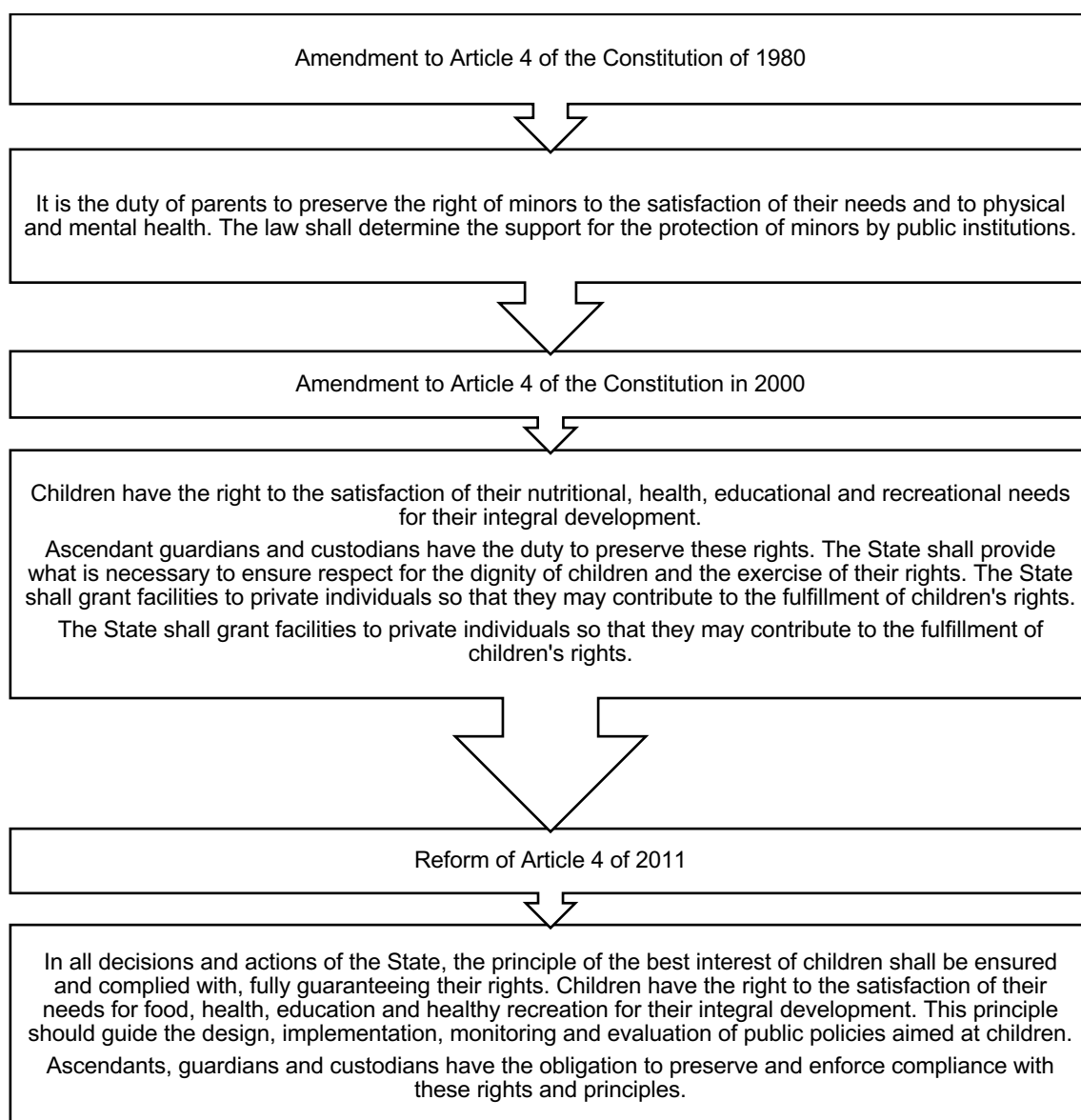
Ascendants, guardians and custodians have the obligation to preserve and enforce compliance with these rights and principles.

The State shall grant facilities to private individuals to help in the fulfillment of children's rights".

Through reforms to Article 4 of the Constitution, the significant changes that the ratification of the Convention on the Rights of the Child has brought to our country have become evident. These reforms have strengthened the legal framework for the protection of the rights of minors, ensuring that the State assumes a more proactive role in guaranteeing their fundamental rights and promoting more inclusive public policies oriented towards the comprehensive wellbeing of all children and adolescents in the country. In addition, they have promoted greater awareness and training in children's rights in both government institutions and civil society, which has contributed to a culture that is more respectful and protective of children's rights in Mexico.

Figure 7

Amendments to Article 4 of the Constitution regarding the rights of children and adolescents



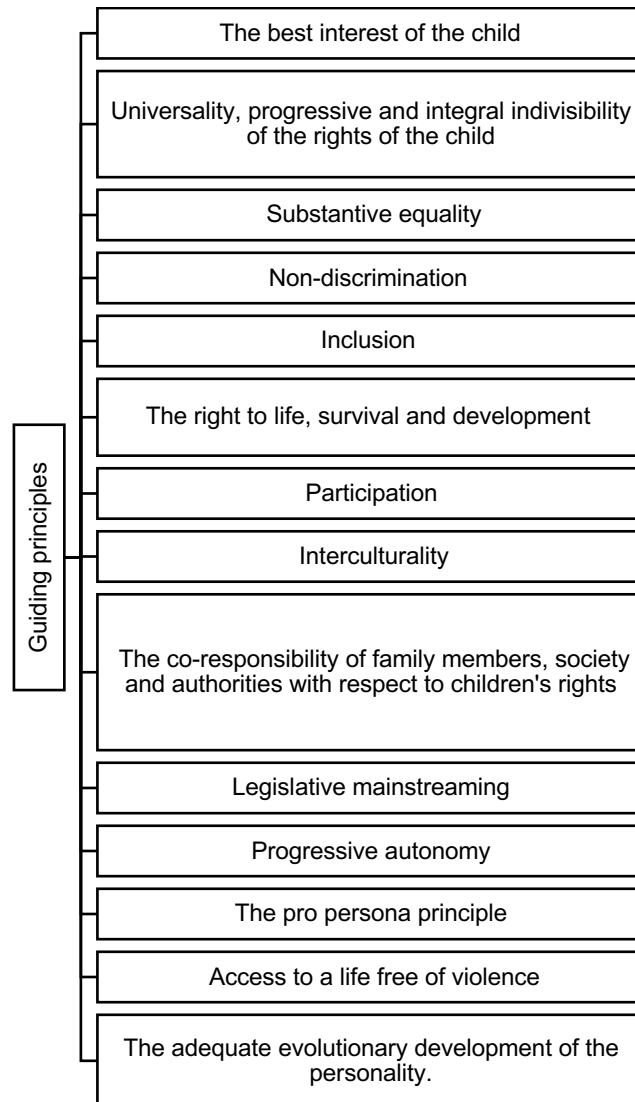
Note. Source: Fix (1999, p. 102-104)

Mexico's ratification of the Convention on the Rights of the Child laid the foundations for the creation of the Law on the Rights of Children and Adolescents, marking an important step forward and the beginning of a series of transformations, the most transcendental of which is the recognition of minors as subjects of law with their own capacities and interests. This law was enacted during the term of office of President Enrique Peña Nieto and published in the Official Gazette of the Federation on December 4, 2014 (2014). In its 20 articles, the law establishes public policies aimed at protecting their integrity and ensuring their rights. Specifically, the right to health and social security, as detailed in section IX.

"All children and adolescents have the right to the enjoyment of the highest attainable standard of physical and mental health" and to receive the provision of health care services and to free, quality medical care.

Figure 8

Guiding Principles of the Law on the Rights of Children and Adolescents

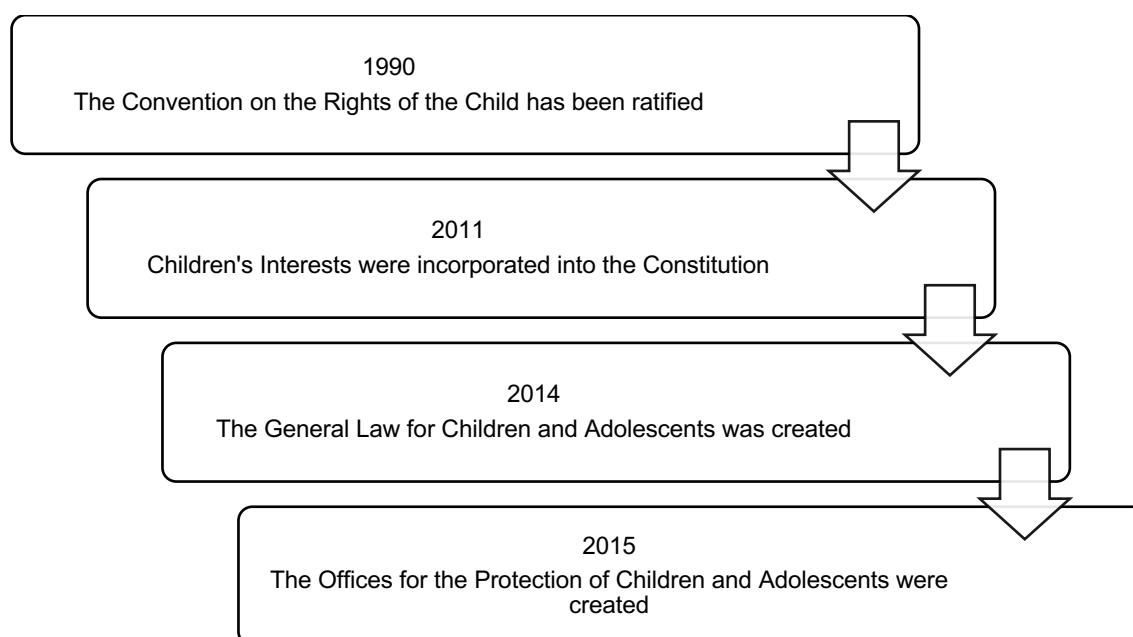


Note. Source: Law on the Rights of Children and Adolescents.

As part of that legislation, in 2015, the Offices for the Protection of Children and Adolescents were created, with the purpose of providing protection and legal representation in ministerial and jurisdictional processes, under an approach based on human rights and the principle of the best interests of children and adolescents.

Figure 8

Evolutionary development of the rights of children and adolescents in Mexico



The Crisis of the Health Care System in Mexico

As of 2020, with the beginning of President Andrés Manuel López Obrador's term of office, the Social Health Protection System, known as Seguro Popular, as well as the Catastrophic Expense Protection Fund, will be eliminated. In its place, the Instituto de Salud para el Bienestar (INSABI) was created. With the purpose of guaranteeing the right to health protection to all people without social security, offering free access to health services, medicines and necessary supplies. The transformation represented a significant change in the functioning of the health system in Mexico, centralizing the state health systems and the modification of the Health Fund for Welfare (FONSABI). It also meant the end of funding for catastrophic diseases and the discontinuation of consolidated drug purchases that had been in place since 2013.

This change caused the worst crisis in the health system and a generalized shortage of medicines throughout the country, mainly affecting people without social security who depended on the services provided by INSABI. This had a negative impact on the care of diseases such as childhood cancer and on interventions that required highly specialized care and are considered catastrophic. It has taken on alarming social dimensions, seriously affecting the health and lives of thousands of children and adolescents with cancer, who have been left in a situation of extreme vulnerability due to the loss of their social security coverage.

On April 28, 2023, the government acknowledged the failure of INSABI, which left millions of people without access to healthcare and led to the death of thousands of sick people. In response, the decentralized public agency called Servicio de Salud del Instituto Mexicano del Seguro Social, known as IMSS-Bienestar, was created. Through coordination agreements, the states cede their existing physical and human infrastructure to the Mexican Social Security Institute (IMSS) so that the IMSS can provide health services to the population without social security, in order to consolidate a policy of universal, free and quality health services.

According to the publication in the Official Gazette of the Federation on June 17 of this year, (2024) this model is present in 22 Mexican states and Mexico City. The Director General of the Mexican Social Security Institute, Zoé Robledo, informed that it has 707

hospitals and 13,966 health centers to benefit 53.2 million Mexicans, with the purpose of closing the existing gaps in order to comply with the mandate of making health a right for all.

Figure 10

Mexican states that have joined the new health system IMSS Bienestar



Note. Source: Government of Mexico (2023)

It should be noted that the Mexican State has the obligation to guarantee the integral wellbeing of all children and adolescents. The constitutional protection of their rights has evolved in recent times. The defense of human rights from the perspective of children and adolescents has its origin in the Convention on the Rights of the Child. Since its enactment, there has been a significant change from considering children and adolescents as objects of protection to recognizing them as full subjects of rights.

The pronouncements of the Suprema Corte de Justicia de la Nación (SCJN), the collegiate circuit courts, district courts and local courts have addressed fundamental and urgent aspects related to the health and life of people, developing legal standards regarding the right to health protection that states must comply with. These resolutions have made it possible to make social rights enforceable, combat structural indifference and provide for the progressive evolution of the right to health protection.

1. In the face of diseases that require the periodic supply of medicines, the State has a duty of care that must be strengthened. Thesis:1a/J. 151/2023 (11a).

- Judicial Weekly of the Federation. Digital Register: 2027440. (Suprema Corte de Justicia de la Nación, 2023)
2. The State has the obligation to take all necessary measures to the maximum of its available resources to achieve progressively its full realization. Thesis: 1a. XV/2021 (10th). Judicial Weekly of the Federation. Digital register: 2022889. (Suprema Corte de Justicia de la Nación, 2021)
 3. Medical assistance and treatment to patients who are users of an institution that is part of the national health system must be guaranteed in a timely, permanent and constant manner. Thesis: 1a. XIII/2021 (10th). Judicial Weekly of the Federation. Digital register: 2022890. (Suprema Corte de Justicia de la Nación, 2021)
 4. In the area of mental health, the principle of progressivity in the provision of medicines must be guaranteed without discrimination. Thesis: 2a. LVII/2019 (10th). Semanario Judicial de la Registro digital: 2020588. (Suprema Corte de Justicia de la Nación, 2019)
 5. In order to guarantee the right to health protection, the Mexican Social Security Institute (IMSS) must provide its beneficiaries with the medicines prescribed for them, even when they are not included in the basic list and catalog of health sector supplies. Thesis: IX.1o.1 CS (10a.). Judicial Weekly of the Federation. Digital register: 2010052. (Suprema Corte de Justicia de la Nación, 2015)

Discussion and Conclusions

Guaranteeing the right to health protection for children and adolescents with cancer has become a significant challenge for the country. Despite being enshrined in several laws, its effective implementation continues to face substantial obstacles. Largely as a result of the federal government's decision to abolish the Social Health Protection System and Seguro Popular, its implementation mechanism in 2019, and transition to the Health Institute for Wellness in 2020, without a concrete plan. The federal government's promises regarding the improvement of the health system with the IMSS-Bienestar program, which seeks to expand health coverage and guarantee better medical services, as well as an adequate supply of medicines, have been left up in the air in the face of the harsh reality facing the country in terms of health.

The disparity between what is stipulated by the Constitution and the limited accessibility of health services for the entire population, characterized by a shortage of medical services, lack of drug supplies by public institutions, delays in procedures for receiving care, and insufficient medical personnel. The effective materialization of this right in practice is not reflected, becoming an unfulfilled promise for thousands of children and adolescents affected by cancer in the country.

The Pan American Health Organization (PAHO) has indicated that cancer is one of the leading causes of death in the world among children and adolescents (2021) has pointed out that cancer is one of the main causes of mortality in the world among children and adolescents. The survival rate can be as high as 80% in countries with access to comprehensive health services, but lower in countries without such services. Dr. Roció del Socorro Cárdenas Cardós, specialist in pediatric oncology and academic at the Faculty of Medicine of the National Autonomous University of Mexico (UNAM), points out that Mexico is considered a middle-income country and "our challenge to increase survival is a real fact" (Gaceta UNAM, 2021).

Figure 11

Disparity in survival rates of children and adolescents with cancer in the Region of the Americas

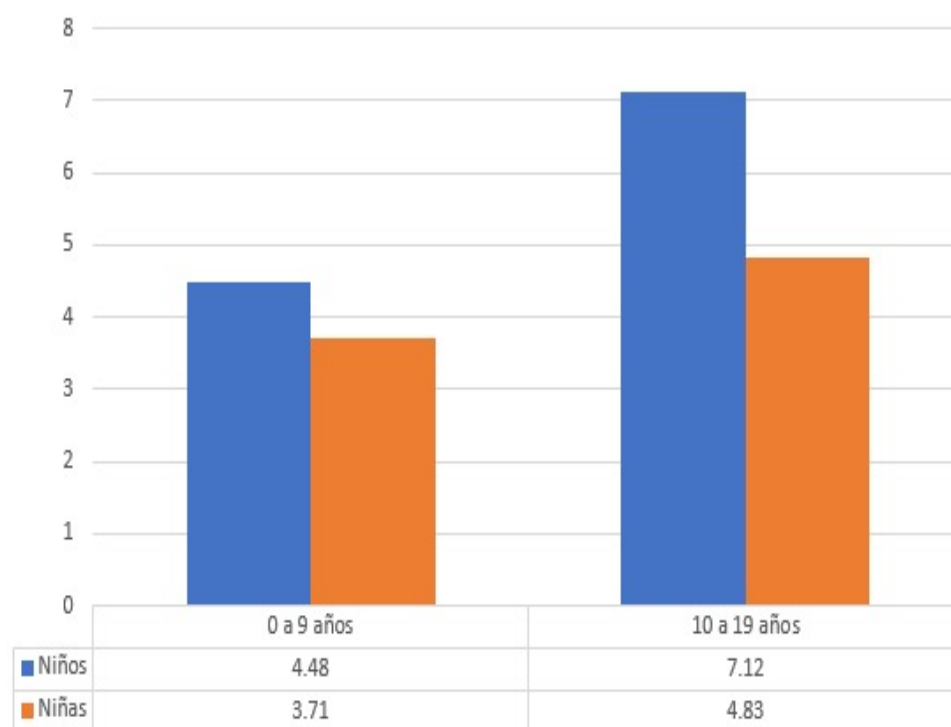


Note. Source: Pan American Health Organization (2021)

In Mexico, childhood cancer is the leading cause of death by disease among children between 5 and 14 years of age, being the second leading cause of death after accidents. This disease is considered high risk and requires specialized medical attention with costly and prolonged treatments, which vary according to the type of cancer and stage of development. According to data from the Instituto Nacional de Estadística, Geografía e Informática INEGI (National Institute of Statistics, Geography and Informatics) (2021) the percentage distribution by sex indicates that there are more deaths in boys than in girls due to childhood cancer.

Figure 12

Rate of childhood cancer deaths in 2019 per 100,000 population for each sex group and age range



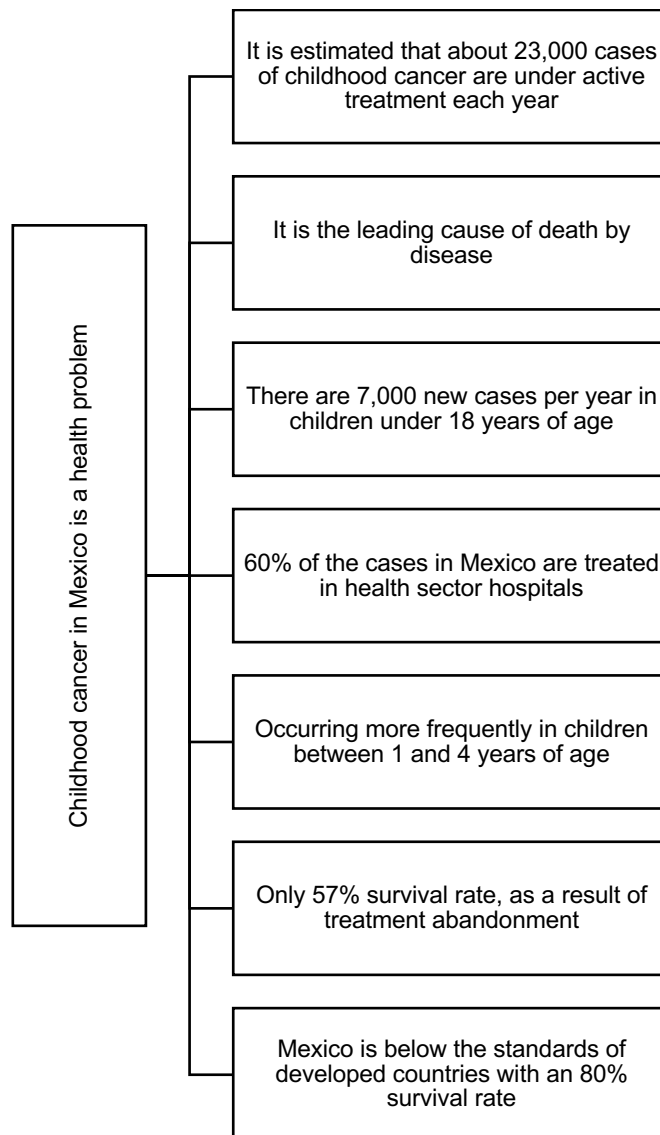
Note. Source: National Institute of Statistics, Geography and Informatics INEGI (2021)

According to data from the 2022 annual report of the Mexican Association for the Support of Children with Cancer AMANC (2023) the survival rate in Mexico barely reaches 57%, due to problems such as late diagnosis, difficulties in accessing medical care, shortage of oncological drugs and abandonment of treatment. Every year, 7,000 new cases of childhood cancer are detected, with 60% of them treated in health sector hospitals and 75% diagnosed in advanced stages.

However, although it is a serious disease, it has a much better prognosis when detected in early stages. Early detection and appropriate treatment are crucial to improve cure and survival rates.

Figure 13

Childhood cancer in Mexico is a health problem



Note. Source: Mexican Association of Aid to Children with Cancer AMANC (2023)

The failure of the Mexican State to provide adequate health care coverage to this particularly vulnerable group of the population is unacceptable. As Navarrete (1994, p. 19) states: "The State that ignores and ignores human rights violates and violates the sacred dignity that every human being possesses and that comes from the simple fact of being a human being". Although the recognition of health as a human right in the Political Constitution of the United Mexican States represented a significant advance, there is a clear need for public policies and legal mechanisms to facilitate its implementation and access. In this context, the General Law for the Timely Detection of Cancer in Children and Adolescents is a crucial tool to transform the social reality and address the challenges faced by thousands of children with cancer in the country.

Since its enactment in the Official Journal of the Federation on January 7, 2021 (2001), the law represents a significant advance in the Mexican healthcare system by creating priority screening and promotion strategies for childhood cancer healthcare. Composed of 32 articles, the law implies a comprehensive transformation in all aspects of the lives of children affected by the disease, covering multiple aspects of both public health and essential human rights. Its implementation seeks to ensure the defense and promotion of the human right to health, thus raising the dignity of Mexican children throughout the country.

Target

The General Law for the Timely Detection of Cancer in Children and Adolescents aims to reduce mortality, increase survival and improve the quality of life of patients.

Fundamental Aspects of the Law

1. Improved prognosis and survival rates: The law promotes the timely detection of cancer in childhood and adolescence, which is crucial to increase the chances of successful treatment. Early diagnosis and timely initiation of appropriate treatment significantly increase the chances of cure and prolong life with a better quality of life, thus reducing the mortality rate associated with the disease.
2. Reduction of invasive treatment: The advantage of early detection of childhood cancer is to be able to use less aggressive treatments, which improves the quality of life of patients during treatment and reduces long-term side effects that could affect their future development.
3. Treatment and follow-up: Once diagnosed, children should receive quality treatment with a humanitarian approach. In addition, post-treatment follow-up is essential to monitor possible recurrences and manage long-term side effects.
4. Health equity: The law seeks to ensure that all children and adolescents, regardless of their socioeconomic status, have equal access to all screening and timely diagnostic tests. This approach contributes to reducing health disparities and ensuring the right to health protection for all.
5. Reduce treatment dropout: Treatment abandonment and discontinuation is associated with socioeconomic factors, limited access to health services and lack of understanding about the disease and treatment. The law aims to ensure that all children and adolescents with cancer complete their treatment regimens in order to increase success rates.
6. Awareness and education: The enactment and enforcement of the law promotes awareness of the disease and the importance of its timely detection. Education and awareness programs target children and adolescents, parents, caregivers, teachers and health professionals.
7. Continuous training of medical personnel: Trained medical personnel are required for the management of childhood cancer due to the complexity and specificity of the required therapies applied to minors.
8. Promote a culture of health: The law promotes healthy practices from a very early age, fostering a culture of integral and preventive health.
9. Comprehensive support: The law promotes a comprehensive approach to health, recognizing the psychological, social and economic impact of cancer on patients and their families.

10. Right to participate: The law encourages the participation of families, community and health professionals in educational and prevention programs to create an environment in which child and adolescent health is a priority.
11. Economic impact: The implementation of timely detection programs implies an initial investment for the State, however, in the long term, the cost to the health system is significantly reduced. Advanced cancer treatments are much more costly and prolonged.
12. Promotion of research and development: Attention to cancer in childhood and adolescence can stimulate research and the development of new, more effective and less aggressive diagnostic and treatment techniques for children and adolescents with cancer.
13. Collaboration and coordination: The law promotes the creation of specific programs and the coordination between different government agencies, civil associations and society in general, in order to guarantee a comprehensive and coordinated response to the problem of childhood cancer.
14. Human rights compliance: The law ensures compliance with the human right to health for all children and adolescents in accordance with national and international standards. Reinforces the best interests of the child by ensuring that health policies and practices prioritize the well-being and protection of all children in Mexico.
15. Social impact: The implementation of the law can transform the social reality of the country, forming a society that is more aware and committed to the health of children with cancer.
16. Maintain reliable and exhaustive records: The law seeks to ensure the proper collection, management and analysis of patient data to improve the quality of care and decision making.

Challenges and Considerations

Given the current health situation in Mexico, particularly in relation to cancer in children and adolescents, there is an urgent need to improve the protection of this vulnerable population. Recognizing the existing weaknesses in the health system, it is imperative to move towards the strengthening and development of strategies that guarantee adequate care for children affected by cancer.

the General Law for the Timely Detection of Cancer in Children and Adolescents reflects an ambitious response to the country's needs to strengthen the health rights of children and adolescents affected by cancer. However, it faces great challenges, such as the adequate allocation of resources and comprehensive health coverage in all regions of the country. The success of the law will depend on the optimal use of available resources. It is the responsibility of citizens to demand that health institutions fully comply with legal provisions.

Its effective implementation is crucial to carry out all strategies aimed at reducing cancer mortality in this demographic group in Mexico. This implementation requires not only an adequate allocation of resources, but also collaboration and coordination between government institutions, non-governmental organizations and the private sector, as well as continuous monitoring of results to ensure that the objectives of the Law are met in an effective and timely manner.

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