

REPUBLIC OF PANAMA

**LAWS GOVERNING EXPLOITATIVE CHILD
LABOR REPORT**

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Introduction

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

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

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned the responsibility under section 2102(c)(9) to the Secretary of Labor and provided that it be carried out in consultation with the Secretary of State and the United States Trade Representative (USTR). The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the USTR and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)). Please see Sections 5.4 and 5.5 of the Department of Labor’s *Republic of Panama: Labor Rights Report* for information on the incidence and nature of forced labor and child labor.

Pursuant to Section 2102(c)(9) of the Trade Act, this report provides information on the laws of Panama governing exploitative child labor. The report relies upon reports and materials prepared by U.S. Government agencies, the Government of Panama, international organizations such as the International Labor Organization (ILO), and nongovernmental organizations.

Exploitative Child Labor

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

¹ ILO Convention 138, Article 2(3).

The ILO has defined the “worst forms” of child labor in ILO Convention 182 on the Worst Forms of Child Labor, which prohibits such labor for “all persons under the age of 18.”² Under Article 3 of ILO Convention 182, the term “worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.³

According to Convention 182, the types of work referred to under Article 3(d) “shall be determined by national laws or regulations or by the competent authority . . . taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the worst Forms of Child Labour Recommendation, 1999.”⁴

Republic of Panama

Panama ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and ILO Convention No. 182 on the Worst Forms of Child Labor on October 31, 2000.⁵

Panama’s Constitution, Family Code, and Labor Code set the minimum age for employment at 14 and at age 15 for children who have not completed primary school.⁶ Similarly, the Law on Education mandates that children under the age of 15 cannot work or participate in other activities that deprive them of their right to attend school regularly.⁷

² ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 2, 3 and 4; available from <http://www.ilo.org/ilolex/english/convdisp2.htm>, Articles 1 and 2.

³ ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Article 3; available from <http://www.ilo.org/ilolex/english/convdisp2.htm>.

⁴ *Ibid.*, Article 4.

⁵ ILO, *Ratifications by Country*. For information on the prevalence and nature of child labor in Panama, enforcement of child labor laws, and policies and programs on the issue, please see the U.S. Department of Labor’s 2009 Trade and Development Act (TDA) Report and the Trafficking Victims Protection Reauthorization Act (TVPRA) reports available at: <http://www.dol.gov/ilab/highlights/ifa-20101215.htm>. The 2010 TDA and TVPRA reports are expected to be published in September 2011.

⁶ *Constitución Política de la República de Panamá con reformas hasta 2004*, Article 70. See also *Código de la Familia*, (1994), Article 508; available from http://www.legalinfo-panama.com/legislacion/familia/codfam_index.htm. See also *Código de Trabajo* (1971), Article 117(1) and (2).

⁷ *Ley Orgánica de Educación*, (1946), Article 46; available from <http://www.asamblea.gob.pa/busca/index-legispan.asp>.

The Constitution allows children below the minimum age to work under conditions established by laws.⁸ The Family and Labor Codes appear to allow for light work in agriculture that does not prejudice school attendance starting at age 12,⁹ but provisions regarding hours of work are not well defined. The Labor Code states that minors 12 to 15 years of age may be employed in agriculture if the work is outside regular schooling hours.¹⁰ Similarly, the Family Code permits children between the ages of 12 and 14 to perform agricultural labor as long as the work does not interfere with schooling.¹¹ Neither provision sets limits on the total number of hours that children may work, nor define the kinds of light work that children may perform in agriculture. The CEACR has noted that neither the Family nor the Labor Codes provide clear regulations for the conditions under which children age 12 to 14 may engage in light agricultural work.¹²

Various laws and an executive decree govern hazardous work by children. The Family Code and the Labor Code prohibit children less than age 18 from certain activities and types of hazardous work, including work in venues where alcohol is sold, in public transport, with electricity, with toxic substances, and underground.¹³ Both the Labor Code and Penal Code establish penalties for employing children in hazardous or illegal occupations.¹⁴ Panamanian law also penalizes the use of children in certain activities involving illegal substances.¹⁵

Executive Decree No. 19 of 2006 provides a comprehensive list of the hazardous work for children, banned both by the Labor and Penal Codes. The Decree clarified the types of work considered hazardous for children under age 18, including work under water or on ships, with pesticides, involving exposure to extreme weather conditions, with heavy equipment or dangerous tools, involving carrying heavy loads, in the transport of goods or people, and in trash

⁸ *Constitución Política de la República de Panamá*, Article 70.

⁹ *Código de Trabajo*, Article 119. See also *Código de la Familia*, Article 716.

¹⁰ *Código de Trabajo*, Article 119. See also Paula Antezana Rimassa, *Trabajo Infantil en la Agricultura*, ILO, 2007, 40-41.

¹¹ *Código de la Familia*, Article 716. There is some conflict between the provisions of the laws discussed above and the Agriculture Code. That Code prohibits children under 14 years of age from paid work in agriculture, even with parental permission. However, because the Family Code repeals or amends any laws referring to family or minors that are inconsistent with the Code, and the Agriculture Code was passed in 1962, this age limitation presumably controls in case of discrepancy. See Government of Panama, *Por la cual se aprueba el código agrario de la Republica* (1962), as published in *Gaceta Oficial*, no. 14,726 (August 21, 1962), Article 403; available from <http://www.asamblea.gob.pa/busca/index-legispan.asp>. See also *Código de la Familia*, Article 838. See also *Código de Trabajo*, Article 119.

¹² ILO Committee of Experts, *Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138) Panama (ratification: 2000)*, [online] 2006 [cited April 26, 2010]; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=18523&chapter=9&query=%28C138%29+%40ref+%2B+%28Panama%29+%40ref&highlight=&querytype=bool&context=0>. See also *Código de la Familia*, Article 716. See also *Código de Trabajo*, Article 119.

¹³ Government of Panama, *Código de Trabajo*, Article 118; available from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/42679/67564/S95PAN01.htm>. See also Government of Panama, *Código de la Familia*, Article 510; available from http://www.legalinfo-panama.com/legislacion/familia/codfam_index.htm.

¹⁴ *Código de Trabajo*, Article 125. See also *Código Penal de la República de Panamá Adoptado por la Ley 14 de 2007, con las modificaciones y adiciones introducidas por la Ley 26 de 2008, la Ley 5 de 2009, la Ley 68 de 2009 y la Ley 14 de 2010*, (April 26, 2010), Article 198; available from http://www.oas.org/juridico/mla/sp/pan/sp_pan-int-text-cp.pdf

¹⁵ *Código Penal*, Article 203.

recycling.¹⁶ The Decree indicates that existing laws are to be used to sanction violations, although it is unclear whether in practice either the Labor or Penal Codes are being applied against employers hiring children to perform the hazardous work identified in the Executive Decree.¹⁷

There are additional protections in the Panamanian Penal Code against the worst forms of child labor. The Penal Code prohibits soliciting and paying for prostitution with a minor and benefiting from the proceeds of child prostitution.¹⁸ Additionally, the Penal Code provides comprehensive prohibitions against child pornography, including its production, distribution, possession, or promotion. Child sex tourism is also prohibited.¹⁹ Trafficking of minors domestically and internationally for sexual purposes is punishable with prison and fines.²⁰

The Penal Code does not include a ban on child trafficking for forced labor, but prohibits the sale of children and provides for penalties that are increased if actions result in sexual exploitation, forced labor, or servitude of children.²¹ Panama also has no laws that explicitly prohibit the use of forced or compulsory child labor, although the Constitution of Panama, as well as the Panamanian Penal Code, afford related protections that can be used to prohibit forced labor.²² The Family Code guarantees children protection against being kidnapped, sold, or trafficked for any purpose, but does not include penalties.²³

¹⁶ *Decreto Ejecutivo Número 19: Que aprueba la lista del trabajo infantil peligroso, en el marco de las peores formas del trabajo infantil*, 25,569, (June 12, 2006); available from http://www.asamblea.gob.pa/legispan/PDF_NORMAS/2000/2006/2006_548_0012.pdf.

¹⁷ Creative Associates International, Inc., *Destino: Combating Exploitive Child Labor through Education in Panama* (El Destino hacia la Educación: Disminuyendo y Erradicando el Trabajo Infantil para Nuevas Oportunidades), Government Performance Results Act Reporting, Washington, D.C., September 16, 2008, 2.

¹⁸ *Código Penal*, Articles 176 and 182.

¹⁹ *Ibid.*, Articles 180, 181, 183-186.

²⁰ *Ibid.*, Articles 177 and 179. See also ILO Committee of Experts, *Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29) Panama (ratification: 1966)*, [online] 2010 [cited April 26, 2010]; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23934&chapter=9&query=%28C029%29+%40ref+%2B+%28Panama%29+%40ref&highlight=&querytype=bool&context=0>.

²¹ *Código Penal*, Article 207.

²² *Constitución Política de la República de Panamá*, Articles 21 and 40. See also *Código Penal*, Article 149. See also U.S. Embassy- Panama, E-mail Communication to USDOL Official, April 20, 2011. See also Mendoza, Eduardo. "Ejecutivo analiza proyecto sobre la trata de personas. "

²³ *Código de la Familia*, Article 489 (18); available from http://www.legalinfo-panama.com/legislacion/familia/codfam_Iiprem.pdf.