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Responses to Information Requests

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13 February 2020

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Mexico: Whether a parent may relocate with a child without notifying the other parent, including in situations involving domestic violence and whether this is affected by protection or restraining orders; procedures for a parent to locate their child and/or the other parent (2017-October 2019)

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

Article 23 of the General Law on the Rights of Children and Adolescents (*Ley General de los Derechos de Niñas, Niños y Adolescentes*) provides the following:

[translation]

Children and teenagers whose families are separated will have the right to live with or maintain personal relations or direct contact with their family members on a regular basis, except in cases where the competent court determines that it is not in the best interests of the child,

subject to the precautionary and protective measures set out by the competent authorities in the respective proceedings, in which the right to a hearing of all parties involved, especially children and adolescents, must be guaranteed.

... (Mexico 2014)

The National Commission for Human Rights (Comisión Nacional de los Derechos Humanos, CNDH) indicates that the parent who has guardianship and custody of a child has the right to choose, in consultation with the child, the place of residency, as long as it does not impede the right of the child to maintain regular contact with the other parent (Mexico n.d.a). In correspondence with the Research Directorate, a Morelos-based lawyer from a firm with areas of legal expertise including family law and which also has offices in Mexico City and Querétaro, indicated that a parent cannot move a child to another place without notifying the other parent (Lawyer 7 Oct. 2019). Sources indicate that separating a minor from one of their parents is considered a crime (Attorney 7 Oct. 2019; Mexico n.d.a) that will be investigated *ex officio* (Attorney 7 Oct. 2019). In a document on the guardianship and custody rights of children, the CNDH states that a parent who refuses to return a child to their home, hides the child, or transfers the child to a place other than the usual residence without the consent of the other parent, can incur criminal charges (Mexico July 2018). The same source further indicates that a parent who has guardianship and custody of a child and unjustifiably refuses the child access to the other parent, may incur fines, detention, or loss of guardianship and custody (Mexico July 2018).

1.1 Domestic Violence and Parental Rights

In an information pamphlet on the rights of children in cases of parental separation or divorce, the CNDH states that the right to maintain personal relationships and direct contact with both parents may not apply in cases where this conflicts with the child's safety and well-being: for example, if that parent has exercised violence against the child (Mexico July 2018). Mexico's *General Law on Women's Access to a Life Free of Violence* [*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*] provides the following:

Article 32

Civil protection orders are those that appear below:

I. Temporary suspension of the aggressor's system of visits and shared living experiences with his descendants;

...

These orders shall be processed before courts that deal with family matters or, if they are not available, the pertinent civil courts. (Mexico 2007)

The lawyer stated that, in Mexico, the best interests of the child are protected in cases of danger due to violence; therefore, in cases of domestic violence, women must go before the Office of the Prosecutor General (Ministerio Público) to advise them of the situation and explain why the children or minors should remain in her care (Lawyer 7 Oct. 2019). In correspondence with the Research Directorate, an attorney at a law firm in Mexico City, whose areas of practice include civil law, indicated, [regarding individuals in Mexico City], that in cases of family violence, a complaint must be filed with the Mexico City Attorney General's Office (Procuraduría General de Justicia de la Ciudad de México), so as not to be charged with the crime of abandonment [and/or] unlawfully separating a minor from their parent (Attorney 7 Oct. 2019).

1.2 Missing Children

The General Law on the Rights of Children and Adolescents provides the following on missing children:

[translation]

Article 24

The federal, state and municipal authorities, and those of the territorial demarcations of Mexico City, shall, within the scope of their respective jurisdictions, establish the necessary norms and mechanisms to help locate the families of children and adolescents when they have been deprived thereof, and to reunite them with their families, except where this is contrary to their best interests.

...

Article 25

Federal and state laws shall contain provisions to prevent and punish the illegal removal or unlawful withholding of children and adolescents when these occur in violation of the rights attributed individually or jointly to persons or institutions exercising parental authority, tutelage or guardianship and custody, and shall provide for expeditious procedures to guarantee the exercise of these rights.

In cases in which children or adolescents are illegally removed or unlawfully withheld outside the national territory, the person concerned may submit the respective request for return to the Ministry of Foreign Affairs [Secretaría de Relaciones Exteriores, SRE], so that the latter may take the corresponding action within the framework of its powers in accordance with the provisions of international instruments and other applicable provisions.

When state authorities have knowledge of cases of children or adolescents of Mexican nationality who have been illegally removed or unlawfully withheld abroad, they shall coordinate with the competent federal authorities, in accordance with the other applicable provisions, to locate those children or adolescents and have them returned.

When a child or adolescent is illegally removed or unlawfully withheld within the national territory, or where they have been legally removed but is being unlawfully withheld, the federal, state and municipal authorities, and those of the territorial demarcations of Mexico City, within the scope of their respective jurisdictions, shall be required to assist in locating that child or adolescent by means of search, locating and recovery programs; in taking all necessary measures to prevent them from suffering further harm; and in administering the emergency procedures necessary to ensure their immediate return, where appropriate in accordance with international treaties on child abduction. (Mexico 2014)

2. Procedure for a Parent to Locate the Other Parent and/or Child

The lawyer stated that once a family law-related proceeding, including divorce, custody or guardianship, has been initiated before the court, if the address or location of the other parent is unknown and they fail to comply with their obligation to the child, the other parent can request that the judge issue an order to government institutions such as the Mexican Social Security Institute (Instituto Mexicano del Seguro Social), the Tax Administration Service (Servicio de Administración Tributaria), among others, to search in their respective databases on the estranged parent (Lawyer 7 Oct. 2019). The solicited institution would provide available data on that person, including the address where the person can be located (Lawyer 7 Oct. 2019). The attorney indicated that the request, which is called "voluntary jurisdiction" (*jurisdicción voluntaria*), can be made before a family court judge to issue an order to different government or private agencies to search and locate the whereabouts of the parent and child (Attorney 7 Oct. 2019). The same source added that a *jurisdicción voluntaria* can be requested [translation] "even in the absence of a conflict between the parents" (Attorney 7 Oct. 2019). Information on cases for which a *jurisdicción voluntaria* would be denied could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1 Locating a Child in Mexico

Sources indicate that a complaint can be filed with the Office of the Attorney General (Fiscalía General de la República, FGR) to investigate cases of kidnapping (Mexico n.d.a; Attorney 7 Oct. 2019), abduction, unlawful withholding and concealment of a child (Mexico

n.d.a). The CNDH indicates that the FGR issues [translation] "the necessary precautionary measures," and where appropriate, an amber alert (Mexico n.d.a). The website of the FGR indicates that an amber alert is issued in cases in which the child is under 18, there is an [translation] "imminent risk of serious harm," and there is "sufficient information" about the child such as name, age, sex, physical characteristics, the circumstances under which the child went missing, and details of persons or vehicles involved (Mexico n.d.b). The same source indicates that an amber alert "is independent of the investigation," and if an amber alert is not issued, [translation] "[t]he corresponding authority within the framework of its powers, will carry out the necessary actions for the investigation and prompt location of children and adolescents" (Mexico n.d.b).

2.2 Locating a Child Outside Mexico

The website of the Ministry of Foreign Affairs indicates that Mexico has ratified the *Hague Convention on the Civil Aspects of International Child Abduction* and the *Inter-American Convention on the International Return of Children* (Mexico 30 Sept. 2017a). The *Hague Convention* establishes that each state party shall designate a Central Authority which is responsible for "co-operat[ing] with [other Central Authorities] and promot[ing] co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of [the] Convention" (HCCH 25 Oct. 1980, Art. 6-7). The General Directorate for the Protection of Mexicans Abroad (Dirección General de Protección a Mexicanos en el Exterior) is Mexico's Central Authority for the *Hague Convention* (HCCH 20 Nov. 2019).

The website of the SRE indicates that if a child is taken to another country without the consent of one of the parents, that parent can obtain assistance at the nearest office of the SRE within Mexico or at the office of the General Directorate for the Protection of Mexicans Abroad in Mexico City (Mexico 30 Sept. 2017a). If the parent is abroad in a country party to the *Hague Convention*, he or she can go to the designated Central Authority in that country (Mexico 30 Sept. 2017a). If the country is not a party to the *Hague Convention*, the parent can go to the Mexican embassy or consulate (Mexico 30 Sept. 2017a). In correspondence with the Research Directorate, a representative of the FGR's Special Prosecutor for Crimes of Violence Against Women and Trafficking in Persons (Fiscalía Especial para los Delitos de Violencia Contra las Mujeres y Trata de Personas, FEVIMTRA) indicated that parents can obtain such assistance regardless of the nationality of the child or parent (Mexico 31 Oct. 2019).

In order to request the restitution from abroad of a child or obtain visiting rights abroad, a parent must submit a form called "Application for Assistance Under the Hague Convention on the Civil Aspects of International Child Abduction" ("Solicitud de asistencia con base en la

Convención de la Haya sobre Aspectos Civiles de la Sustracción Internacional de Menores") (Mexico 30 Sept. 2017a). A copy of the form is attached to this Response.

A document produced by the SRE's General Directorate for the Protection of Mexicans Abroad on child abduction indicates that, between January and September 2017, 197 cases involving 294 minors were opened, and 198 cases involving 294 minors were concluded (Mexico 30 Sept. 2017b, 4, 15). Of the cases that were opened, Mexico was the petitioner in 138 cases, and received the petition from another country in 59 cases (Mexico 30 Sept. 2017b, 4). The same source indicates that on 30 September 2017, 434 cases remained active (Mexico 30 Sept. 2017b, 13).

The US *Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction* indicates the following:

Location: In some cases, the competent authorities delayed taking appropriate steps to locate a child after a Convention application was filed. The average time to locate a child was three months and eight days. As of December 31, 2018, there are 22 cases where the Mexican authorities remain unable to initially locate a child.

Judicial Authorities: The judicial authorities of Mexico routinely reached timely decisions. However, delays by the Mexican judicial authorities at the appellate level impacted cases during 2018. ...

Enforcement: Decisions in Convention cases in Mexico were generally enforced in a timely manner. There were two cases (accounting for 10 percent of the unresolved cases) pending for more than 12 months, where Mexican law enforcement could not locate the children to enforce the return orders. (US Apr. 2019, 85-86)


Sources indicate that the *amparo* process, "a constitutionally[-]based injunction that suspends the effects of a lower court's decision" (US Apr. 2019, 85), creates delays in resolving abduction cases (US Apr. 2019, 85; The Law Office of Jeremy D. Morley n.d.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

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United States (US). April 2019. Department of State. "Mexico."  *Annual Report on International Child Abduction 2019*. [Accessed 1 Oct. 2019]


Additional Sources Consulted

Oral sources: Center for Missing Children Mexico; Ciudadanos de Apoyo a los Derechos Humanos; Instituto de Transparencia, Acceso a la Información Pública, Protección de Datos Personales y Rendición de Cuentas de la Ciudad de México; lawyers specializing in family law and divorce; Mexico – Comisión Nacional de los Derechos Humanos; Red por los Derechos

de la Infancia en México; researcher on gender violence at Universidad Nacional Autónoma de México; Research Program on Infancy and Childhood at Universidad Autónoma Metropolitana.

Internet sites, including: Amnesty International; Austrian Centre for Country of Origin and Asylum Research and Documentation; ecoi.net; Factiva; Human Rights Watch; Mexico – Instituto Mexicano del Seguro Social; Organisation for Economic Co-operation and Development; UN – Refworld.

Attachment

Mexico. N.d. Secretaría de Relaciones Exteriores (SRE). " Solicitud de asistencia con base en la Convención de la Haya sobre Aspectos Civiles de la Sustracción Internacional de Menores." [Accessed 8 Nov. 2019]

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