



RESPONSES TO INFORMATION REQUESTS (RIRs)

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20 April 2005

GTM43508.FE

Guatemala: Update to GTM43416.FE of 10 March 2005; provisions for child abduction or confinement in the context of domestic violence; possibility of filing a complaint against a parent who disappears with his or her child; procedure for a parent whose child has been taken away by the other parent (2005)
Research Directorate, Immigration and Refugee Board, Ottawa

A representative from Guatemala's Institute of Comparative Studies in Penal Science (Instituto de Estudios Comparados en Ciencias Penales de Guatemala, ICCPG) indicated that article 261 of the civil code states that, in the case of an unmarried or separated couple, the mother retains custody of the children (13 Apr. 2005). No corroborating of this information could be found among the sources consulted.

Article 209 of the penal code indicates that a person who removes a child aged 12 years or under from his or her parents, tutor or guardian, and who holds him or her against the parents', tutor's or guardian's will, may be imprisoned for one to three years (ICCPG 13 Apr. 2005). The same sentence applies in the case of an unconsenting minor aged more than 12 years (*ibid.*). The Guatemalan penal code also states that, in the case of a consenting minor, the prison sentence ranges from six months to two years (Guatemala 5 July 1973).

The ICCPG representative pointed out that, in cases that fall under the above-mentioned article of the penal code, one of the parents has to have lost the *patria potestad* or parental authority, which is difficult to prove [translation] "given the strict interpretation of the penal code" (13 Apr. 2005).

If a child is taken away by one of his or her parents, the other parent can go to a judge, who can order that the child be returned under the civil code (ICCPG 13 Apr. 2005). If a criminal offence is involved, the parent can go to the public prosecutor (Ministerio Público) to file a complaint (*ibid.*).

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 additional sources consulted in researching this Information Request.

References

Guatemala. 5 July 1973. Código Penal de Guatemala, Decreto No. 17-73.
<http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-cp.pdf> [Accessed 19 Apr. 2005]

Instituto de Estudios Comparados en Ciencias Penales de Guatemala. 13 April 2005. Correspondence from a representative.

Additional Sources Consulted

Oral sources: The family court (Sala de Familia) of Guatemala's judicial organization (Organismo Judicial) could not provide any information within the time constraints for this Response.

Internet sites, including: Caza Alianza, *El Periodico* , Embassy of Guatemala in the United States, Organization of American States (OAS), *Prensa Libre* , Unicef, World News Connection.


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