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Mexico: Procedure for victims of crime to identify the accused; whether the victim must identify the accused in the same room

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

In 6 May 2009 correspondence to the Research Directorate, a professor at the University of New Mexico specializing in criminal law in Mexico provided the following information:

In Mexico the arrest procedure is ordered by the judge at Consignacion [Arraignment]. The Consignacion is the presentation of facts to the judge and the request for an Arrest Warrant. This is when the accused is officially arrested, although the accused may have been detained at an earlier date by the police acting independently or by instruction of the prosecutor.

In the inquisitorial written process and the accusatorial process, the victim normally does not personally identify the accused because the identity of the accused has been established during the Averiguacion Previa [Preliminary Investigation]. This is the investigation by the prosecutor that has the function to establish the corpus delicti and the person probably responsible for the commission of the crime. The averiguacion is not open to public view.

I have as [an] investigator had the opportunity to read the reports contained in the investigation which are submitted to the judge as the "carpeta" [file]. The methods mentioned in the carpetas that I have read vary from face to face identification by the victim, physical description, name, address, and etc. There appears to be no rule that requires an identification by the victim in the same room as the accused.

In *Criminal Procedure: A Worldwide Study*, the chapter on Mexico written by Miguel Sarre, a professor at the Instituto Tecnológico Autónomo de México (ITAM) in Mexico City and Jan Perlin, a specialist in comparative criminal reform and an advisor to the Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR), notes the following about identification procedures during a criminal investigation:

The court or the prosecutor may compel the suspect to participate in a line up in two cases: a) when a witness is not sure about the identity of a person, but says that s/he would be able to identify him/her in person; b) when a witness is positive about knowing someone but there are reasons to doubt his/her truthfulness or accuracy.

The line-up consists of the simultaneous presentation to the witness of several individuals, including the suspect. Precautions are taken to prevent the suspect from changing his dress or appearance, or hiding aspects of his/her appearance, which could be useful for identification. The rest of the group will be selected from among individuals with a similar cultural and educational background. The individual to be confronted will choose the specific position s/he wants to take during the line-up. Additional measures will be taken if the parties and the presiding judge request them or the prosecutor authorizes them. As in the case of any hearing, counsel should be present during the line-ups in accordance with the right of the defense attorney to be present during the preliminary investigation in any of the investigative acts in which the suspect must be present. However, the procedure will not be invalidated if the attorney is not present.

[...]

Photo lineups are not specifically regulated. They are admitted under the general rule on confrontation in order to determine identity, and with the understanding that any relevant evidence not contrary to law is admissible. Police and prosecutors frequently practice them during the investigative stage. Line-ups may also be recorded. This possibility is in line with the belief that each investigative act, which will later constitute evidence, should be registered in a way that will best preserve the act for examination at trial. More reliance is placed on documents, objects and registers previously made, than on the testimony the witness will give during the presentation of the evidence in court, during the instruction phase of the proceeding. (2007, 362-364)

In a 30 August 2008 article about the criminal justice system published in the Mexico City based newspaper *Excelsior*, it was reported that a victim has the legal right to protect his or her identity and personal details in cases where the victim is a minor; in cases of victims of "rape" (*violacion*), "kidnapping" (*secuestro*), or organized crime; or when a judge decides it necessary for the victim's protection. In addition, during the criminal procedure process, the Public Prosecutor (Ministerio Publico) must guarantee the protection of the victim, the defendant, witnesses, and anyone else involved (*Excelsior* 30 Aug. 2008).

Regarding whether the victim must identify the accused in the same room; various sources consulted did note the constitutional right of "*careo*," which allows a defendant to confront his or her accuser face to face (Sarre and Perlin 2007, 377; see also US n.d.; Professor, University of New Mexico 6 May 2009; Professor, Colegio de Mexico 3 May 2009). The United States (US) Consulate General in Guadalajara, Mexico website notes the following about *careo*:

After a suspect is taken into custody, the victim may be asked to identify the suspect in person and a process called a "*careo*" may be conducted. The *careo* takes place at the penal courts in the jail where the suspect is being detained. A penal judge, a *ministerio publico*, the victim's attorney and the defense attorney are present for the *careo*. During the *careo*, the victim is asked to confront the suspect and may be questioned directly by the suspect. (US n.d.)

In particular, the Professor from the University of New Mexico provided the following information about a procedure called "*Careo Probatorio*":

Careo Probatorio is a procedure [within] the criminal process to clear up contradictory testimony or confusion in the identification of who committed the crime. The goal is to arrive at a full, complete and accurate complex of testimony (those are the Mexican words) that has no contradictions or confusion. It should result in a set of proof without inconsistencies. The accused, judge, witnesses, prosecutors and defense lawyer meet in [a] room in the criminal court that is connected by a passage way to the jail if the accused is being held. The accused is separated by a window and bars from what you might call the court room. Witnesses and accused make [their] statements. Where there is confusion or contradicting facts the judge will clarify the situation by asking questions or suggesting what is the factual problem, suggest that the witnesses rethink their answer, and at times suggest what should be the correct answer based on the testimonies of other witnesses.

If the accused is not in jail, the meeting will be held in a room with a few chairs for the parties and witnesses. (6 May 2009)

According to Sarre and Perlin in *Criminal Procedure: A Worldwide Study*, due to legal reform enacted in 2000, the *careo* is "no longer automatic, and can only be invoked upon request of the defendant" (2007, 377). A professor at the Colegio de Mexico, specializing in criminal justice in Mexico also noted in correspondence to the Research Directorate on 3 May 2009 that the Public Prosecutor continues to use *careo* during preliminary investigation processes (*procesos de averiguacion previa*), except in cases where the victim is a minor or in rape cases. Nevertheless, this determination falls under the discretion of the Public Prosecutor (Professor, Colegio de Mexico 3 May 2009). In addition, *Excelsior* notes that minor victims in cases of rape and kidnapping are not obligated to participate in a *careo* (30 Aug. 2008).

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

Excelsior [Mexico City]. 30 August 2008. Lemic Madrid. "Demanda de uno...ganancia de todos." <http://www.exonline.com.mx/diario/noticia/primer/especiales_nacional/demanda_de_uno...ganancia_de_todos/336466> [Accessed 5 May 2009]

Professor, Colegio de Mexico. 3 May 2009. Correspondence.

Professor, University of New Mexico. 6 May 2009. Correspondence.

Sarre, Miguel and Jan Perlin. 2007. "Chapter 10: Mexico." In *Criminal Procedure: A Worldwide Study*. Ed. Craig M. Bradley. Carolina Academic Press: Durham, North Carolina.

United States (US). N.d. Embassy of the United States, Consulate General Guadalajara, Mexico. "Mexican Legal Procedures." <<http://guadalajara.usconsulate.gov/service/victims-of-crime2/mexican-legal-procedures2.html>> [Accessed 14 Apr. 2009]

Additional Sources Consulted

Oral sources: The following sources did not respond to requests for information submitted by the Research Directorate: Democracia, Derechos Humanos y Seguridad (DDHS), Instituto Ciudadano de Estudios Sobre la Inseguridad (ICESI), Instituto Nacional de Ciencias Penales (INACIPE), Centro de Investigacion para el Desarrollo, A.C. (CIDAC), a professor at the University of San Diego School of Law.

Internet sites, including: Amnesty International (AI), Factiva, Freedom House, Human Rights Watch (HRW), *La Jornada* [Mexico City], Justice in Mexico [news archive], Overseas Security Advisory Council (OSAC), Office of the UN High Commissioner for Refugees (UNHCR) Refworld, United States (US) Department of State, *El Universal* [Mexico City].

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