

Immigration and Refugee Board of Canada

[Home](#) > [Research Program](#) > Responses to Information Requests

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

15 September 2011

MEX103802.E

Mexico: Child custody rights; the right of a parent to know the location of his or her children when the spouse relocates within Mexico; child abduction and legal recourse to protection (*amparo*) in custody situations; changes to child custody provisions as a result of the 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)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

In correspondence with the Research Directorate, a principal researcher with the National Autonomous University of Mexico's Institute of Legal Research (Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, UNAM) said that each state has its own civil or family code for regulating the rights of families, including guardianship and custody of children (Principal Researcher 17 Aug. 2011). When certain rights or obligations are not covered by a state's civil or family code, the Federal Civil Code (Código Civil Federal) applies (*ibid.*).

Child Custody

A coordinator with the Network for Children's Rights in Mexico (Red por los Derechos de la Infancia en México, RDIM) explained, in correspondence with the Research Directorate, that federal legislation stipulates two types of custody: parental authority (*Patria potestad*) and custody (*Guarda y custodia*) (RDIM 10 Aug. 2011). (RDIM is a [translation] "coalition of 63 Mexican civil society organizations that develops programs for vulnerable Mexican children and adolescents, and that operates in 14 states in Mexico" (RDIM July 2005).

1. Parental authority

According to the RDIM coordinator, parental authority is the right to exercise legal authority over the child by making legal decisions on his or her behalf, and the responsibility to raise and protect the child (RDIM 10 Aug. 2011). Parental authority is automatically granted to both parents; however, if the best interests of the child are threatened through violence or situations that put the child's personal safety or health at risk, parents can lose custody rights (*ibid.*). In such cases, parental authority can be granted to just one of the child's parents or to second-degree blood relatives such as grandparents, siblings, uncles or aunts (*ibid.*).

The RDIM coordinator added that family judges rule on parental authority cases in local courts (*ibid.*). The proceedings consist of the following steps:

- The plaintiff files the lawsuit against the defendant;
- The local court issues a summons (*emplazamiento*) that has to be delivered in person and signed by the defendant;
- The defendant responds to the summons and provides evidence;
- The local court demands and assesses formal evidence from both parties;
- The parties then contest the evidence and argue their case;
- The judge considers his verdict and makes a ruling (*ibid.* 26 Aug. 2011).

The proceedings can take up to two years to complete, depending on the nature of the case (*ibid.* 10 Aug. 2011).

Article 444 of the Civil Code of the Federal District (*Código Civil para el Distrito Federal*) stipulates that parental authority can be lost by [translation] "judicial resolution" for the following reasons:

- I. Where the individual exercising such authority is expressly sentenced to loss of that right.
- II. In cases of divorce, taking into account the provisions of Article 283 of this code.
- III. In cases of domestic violence committed against a child;
- IV. Failure to comply with support obligations for more than 90 days without just cause.

A spouse or common-law partner who has lost his or her parental rights due to failure to comply with support obligations may recover such authority by proving fulfillment of that obligation for more than one year, posting an annual guarantee, and undergoing a review of his or her financial situation and current conduct as well as a psychological diagnosis. Such reviews shall be conducted by personnel reporting to the Office of the Attorney General of Justice for the Federal District or by an expert in the field under the terms of the last paragraph of Article 346 of the Code of Civil Procedure for the Federal District;

- V. Abandonment by a father or the mother of his or her children for more than three months without just cause;
- VI. Where the individual exercising such authority has committed a deliberate offence against the person or property of his or her children for which he or she has been convicted by enforceable judgment;
- VII. Where the individual exercising such authority is convicted two or more times of serious offences; and
- VIII. Unjustified non-compliance with judicial determinations issued against the individual exercising parental authority for the purpose of correcting acts of domestic violence where such acts have affected that individual's children. (Federal District 26 May 1928)

If a child wants to live or spend time with the parent whose parental authority has been revoked, the possibility exists for the child to do so, depending on the judge's interpretation of the evidence and [translation] "the best interest of the child" (RDIM 17 Aug. 2011; see also Principal Researcher 29 Aug. 2011). The UNAM principal researcher added that a judge's determination [translation] "depends on the specific circumstances of each case" (29 Aug. 2011).

2. Custody

According to the RDIM coordinator, custody is the parents' responsibility to provide the child with the necessary care and attention, such as food, shelter, and education, to ensure his or her well-being and development (RDIM 10 Aug. 2011). Usually, custody of a minor child is exercised by those who have parental authority (*ibid.*). As such, custody can be granted to the other parent, or to second-degree blood relatives, if the best interests of the child are threatened (*ibid.*). In cases where the child does not have a network of direct relatives, he or she can be sent to foster care (*ibid.*). However, the Coordinator, speaking for herself rather than her organization, said that although foster care should be a last resort (*ibid.*), it is [translation] "frequently" applied without an order from a judge in violation of the rights of child (Coordinator 10 Aug. 2011). She added, in a follow-up telephone interview by the Research Directorate, that the Public Ministry (Ministerio Público) can use the foster-care option as a temporary measure in cases of abuse or domestic violence, but that in some instances the temporary solution has become permanent, again in violation of the rights of the child (*ibid.* 30 Aug. 2011).

Just as in court cases to determine parental authority, family judges rule on custody cases (Federal District *n.d.*). Before making a ruling, however, they take into account observations from the Public Ministry (*ibid.*). According to the RDIM coordinator, custody trials should be more flexible than ordinary ones because they are part of a larger trial; however, since they have the same procedural stages, they are [translation] "equally complex and of similar duration to ordinary trials" (RDIM 10 Aug. 2011). She also noted that both parental authority and custody trials [translation] "must be conducted in the state where the child has his or her usual place of residence" (*ibid.*).

The Mexican news agency NOTIMEX reports that Mexico's Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) ruled on 3 September 2010 that, although mothers have custody of children [translation] "in the first instance," custody should not always be granted to them, especially in cases where the interests of the child could be in jeopardy (NOTIMEX 3 Sept. 2010). The Supreme Court concluded that judges [translation] "must assess the evidence to determine which of the parents should have the care of the children" (*ibid.*). The RDIM coordinator also noted that custody cases should not be based on the gender of the parent since, according to the principle of equality enshrined in the Mexican constitution, it [translation] "could be discriminatory" (RDIM 10 Aug. 2011).

Child Custody and the General Law on Women's Access to a Life Free of Violence

The UNAM principal researcher noted that, although the General Law on Women's Access to a Life Free of Violence (*Ley de Acceso General de las Mujeres a una Vida Libre de Violencia*) might have inspired recent changes to child custody rights and civil codes in Mexico's states, implementation of the law cannot be said to be responsible for those changes (17 Aug. 2011).

In cases of domestic violence where children are involved, Article 8 of the General Law stipulates the following:

The treatment, prevention and punishment models that the Federation, the states, the Federal District and municipalities establish are the set of measures and actions to protect victims of domestic violence as part of the State's obligation to guarantee women their safety and full exercise of their human rights. To that end, they should take the following into consideration: ...

VI. Encourage the installation and maintenance of shelters for victims and their children; information on their location shall be kept secret, and specialized psychological and legal support shall be provided free of charge. (Mexico 1 Feb. 2007)

Right of Separated Parents to Know Their Children's Location

The RDIM coordinator said that although each state has its own legislation, they follow the same principles regarding the rights of separated parents (RDIM 10 Aug. 2011). The parent who, as a result of "separation," does not live with the child, may still have parental authority (ibid.). This means that though not living full-time with the child, the parent has the right to exercise legal representation over the child's education, health, and interaction with the justice system; as well as to participate in decisions related to the child's assets, place of residency, educational institutions and learning environment (ibid.). The separated parent also has the right to spend time with the child (ibid.). In a subsequent telephone interview, the Coordinator added that the parent who has parental authority, but who does not live with the child has the right to know the child's address and telephone number since he or she [translation] "has the full right to know everything about the child" (RDIM 17 Aug. 2011). The parent, who has lost parental authority and who does not live with the child, does not have the right to the child's contact information, especially when the best interests of the child are endangered (ibid.). However, in a subsequent telephone interview, the RDIM coordinator observed that Mexico does not have a system in place to monitor court orders issued in custody cases, leaving the responsibility to the parents (RDIM 26 Aug. 2011).

Sentences for a parent or person who has custody over a child will be increased if the person commits a crime of domestic violence or of trafficking in children (Principal Researcher 17 Aug. 2011). To protect victims of domestic violence, including children, the General Law specifies the following regarding protection orders:

ARTICLE 29.- Emergency protection orders are those that appear below:

- I. Departure by the aggressor from the matrimonial domicile or the place the victim lives, regardless of ownership certification or possession of the property, even in cases where such property is leased;
- II. Prohibition of the party allegedly responsible from approaching the domicile or place of work or study [of the victim], or domicile of [the victim's] ascendants or descendants or of any other person who frequents the victim; ...

ARTICLE 30.- Preventive protection orders are those that appear below: ...

- IV. Access to the domicile held in common by police authorities or persons assisting the victim with removing her personal belongings and those of her children;
- V. Immediate delivery of items for personal use and identification documents of the victim and her children; ...

ARTICLE 32.- Civil protection orders are those that appear below:

- I. Temporary suspension of the aggressor's visitation schedule or co-habitation with his descendants. (Mexico 1 Feb. 2007)

However, the RDIM coordinator added that in terms of the application of the General Law in child custody cases in the Federal District, family judges [translation] "do not understand the procedures for enforcement of protection orders and the implementation of these orders conflicts with local civil legislation" (RDIM 10 Aug. 2011). Corroboration of this information could not be found among the sources consulted by the Research Directorate.

Child Abduction

The RDIM coordinator stated that the Federal Penal Legislation (Legislación Penal Federal) regulates child abduction by one of the parents ("Sustracción ilegal de menores") (RDIM 10 Aug. 2011). Mexico has also ratified two international conventions related to child abduction (RDIM 26 Aug. 2011): The Hague Convention on the Civil Aspects of International Child Abduction (Convención de la Haya sobre los Aspectos Civiles de la Sustracción Internacional de Menores) and the Inter-American Convention on the International Return of Children (Convención Interamericana sobre la Restitución Internacional de Menores) (ibid; RDIM 26 Aug. 2011).

Protection against child abduction

The concerned parent, or the person who has custody of the child, can appeal to a family judge for assistance (Principal Researcher 29 Aug. 2011). Family judges can issue the necessary protection measures such as restriction

orders; however, in order to enforce such measures, the child would need constant police protection, which is difficult to ensure (ibid.). The Public Ministry can issue restraining orders on a temporary basis; only a family judge can make these orders permanent (Coordinator 30 Aug. 2011).

If a child is abducted to or from a country other than Mexico, courts [translation] "must offer all the necessary assistance" to the parent or parents, or to whomever has custody rights of the abducted child or children (Principal Researcher 29 Aug. 2011). However, this is problematic because the process can take [translation] "a considerable amount of time" (ibid.; RDIM 26 Aug. 2011). Additional information on processing times could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In statistics provided by the RDIM for 2009, there were 244 reported cases of a child being abducted by a parent in Mexico (RDIM 10 Aug. 2011). In 2010, 221 cases were reported, of which 101 resulted in 141 children being taken out of Mexico, and 120 brought 169 children in to Mexico (ibid.). In the 2011 *Report on Compliance with The Hague Convention on the Civil Aspects of International Child Abduction*, the United States (US) State Department observes that the legal requirements of the Convention have been applied "inconsistently" by Mexican courts (US Apr. 2011, 5). Although the report notes "some progress" by several states and districts in training judges to hear Convention cases and in the "quality and speed of decisions" that follows, the State Department notes the "low rate of success in locating children who have been abducted to, or wrongfully retained in, Mexico" (ibid.). The report identifies the "insufficient resources" and the "lower priority" assigned to these cases given the criminal activity in Mexico as the main causes for the country's "unresolved return applications" (ibid., 5-6).

Child abduction and the General Law

The General Director for Gender Mainstreaming at the National Institute for Women (Dirección General de Transversalización de la Perspectiva de Género del Instituto Nacional de las Mujeres, Inmujeres) stated, in correspondence with the Research Directorate, that, according to Articles 49 and 50 of the General Law, [translation] "states and municipalities must carry out the necessary measures to ensure respect for women's human rights, especially when it involves women and female children victims of sexual and domestic violence" (Inmujeres 15 Aug. 2011). The General Director also contends that [translation]

[v]arious actions have been carried out on behalf of children, such as the National System of Child Development [Sistema Nacional de Desarrollo Infantil], which developed a system of detection, registration, attention and follow-up on domestic violence cases against women, as well as the creation of the National Census of Vulnerable Female Children [Padrón Nacional de Niñas Vulnerables] (ibid.)

However, the UNAM principal researcher noted in a telephone interview that the General Law had [translation] "no direct effect" on the subject of child abduction (29 Aug. 2011). Additional information on changes to child abduction legislation and/or procedures could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Writ of Amparo

The legal remedy of the writ of *amparo* (juicio de amparo) is included in Articles 103 and 107 of the Mexican constitution (RDIM 10 Aug. 2011). In *The Mexican Legal System* by Francisco A. Avalos, the author explains that "'amparo' literally means favor, aid, protection or shelter" (Avalos 2000). Avalos explains that there are five classes of amparo as follows:

1) "amparo" as a defense of individual rights such as life, liberty, and personal dignity; 2) "amparo" against laws (defending the individual against unconstitutional laws); 3) "amparo" in judicial matters (examine the legality of judicial decisions); 4) administrative "amparo" (providing jurisdiction against administrative enactments affecting the individual); 5) "amparo" in agrarian matters (protecting the communal ejidal rights of the peasants). (ibid.; see also Fix-Zamudio Sept.-Dec. 2004, 848)

According to Héctor Fix-Zamudio, a UNAM researcher emeritus, [translation]

the writ of amparo protects not only the human rights enshrined in the Constitution, but it is also the legal remedy of last resort of all the judgments of all judges and courts, at the local and federal level, and it also includes challenges to legislation that are considered unconstitutional. (Sept.-Dec. 2004, 848; see also RDIM 10 Aug. 2011)

According to the RDIM coordinator, a person can have recourse to amparo when, during the course of a family court ruling, he or she believes that the [translation] "judicial authorities violated" his or her constitutional rights, such as the [translation] "right to a hearing, guarantee to due process, [...] equality rights and non-discrimination, or substantive rights such as the right to a family, the best interests of the child, right to freedom, etc." (RDIM 10 Aug. 2011). Also, the writ of amparo can be used by victims of domestic violence in cases where a previous court ruling determined that such violence did not occur and the plaintiff believes that the evidence was not assessed properly (RDIM 26 Aug. 2011).

The writ of amparo is lodged before a district judge only after a [translation] "definite sentence" from a first-instance judge and a revision from a second-instance appellate division has been rendered (RDIM 26 Aug. 2011). The

time in which a person can file a writ of amparo is [translation] "very short" (15 days), which, in the RDIM coordinator's opinion, is not enough (ibid.). The length of an amparo case can vary from a month and a half to several months (ibid.). If, during an amparo proceeding, a judge determines that the contested ruling is causing [translation] "serious and irreparable damage," the judge can issue a "provisional suspension" of the contested ruling (ibid.). This measure, says the RDIM coordinator, is not frequently used (ibid.).

Amparo and the General Law

The UNAM principal researcher stated that [translation] "the amparo law has not undergone changes due to the General Law" (Principal Researcher 17 Aug. 2011).

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

Avalos, Francisco A. 2000. "Introduction." *The Mexican Legal System*. 2nd. ed. (University of Arizona) <<http://www.law.arizona.edu/Library/Research/Guides/mexicanlegalsystem.cfm>> [Accessed 18 Aug. 2011]

Coordinator, Área de Legislación y Políticas Públicas, Red por los Derechos de la Infancia en México (RDIM). 30 August 2011. Telephone interview.

_____. 10 August 2011. Correspondence with the Research Directorate.

Federal District. 1928. Last amended 18 August 2011. *Código Civil para el Distrito Federal*. Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.aldf.gob.mx/codigos-107-4.html>> [Accessed 8 Aug. 2011]

_____. N.d. Sistema para el Desarrollo Integral de la Familia Distrito Federal. "Asistencia jurídica." <<http://201.144.87.93/dif/juridico/custodia.php>> [Accessed 5 Aug. 2011]

Fix-Zamudio, Héctor. September-December 2004. "Los estados de excepción y la defensa de la Constitución." *Boletín Mexicano de Derecho Comparado*. No. 111. <<http://www.juridicas.unam.mx/publica/librev/rev/boletin/cont/111/art/art2.pdf>> [Accessed 5 Aug. 2011]

Mexico. Instituto Nacional de las Mujeres (Inmujeres). 15 August 2011. Correspondence from the General Director, Dirección General de Transversalización de la Perspectiva de Género, to the Research Directorate.

_____. 2007. Last amended 28 January 2011. *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*. Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV.pdf>> [Accessed 8 Aug. 2011]

NOTIMEX, Agencia de Noticias del Estado Mexicano. 3 September 2010. "Custodia de hijos no corresponde sólo a la madre, determina Corte." <<http://www.milenio.com/cdb/doc/noticias2011/a171a1241e5a048787f20d8c8e896e66>> [Accessed 5 Aug. 2011]

Principal Researcher, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México (UNAM). 29 August 2011. Telephone interview.

_____. 17 August 2011. Correspondence with the Research Directorate.

Red por los Derechos de la Infancia en México (RDIM). 26 August 2011. Telephone interview with the Coordinator, Área de Legislación y Políticas Públicas.

_____. 17 August 2011. Telephone interview with the Coordinator, Área de Legislación y Políticas Públicas.

_____. 10 August 2011. Correspondence from the Coordinator, Área de Legislación y Políticas Públicas, to the Research Directorate.

_____. July 2005. "¿Qué es la Red por los Derechos de la Infancia en México?" <http://www.derechosinfancia.org.mx/Red/red_esp1.htm> [Accessed 1 Sept. 2011]

United States (US). April 2011. Department of State. *Report on Compliance with The Hague Convention on the Civil Aspects of International Child Abduction*. <<http://travel.state.gov/pdf/2011HagueComplianceReport.pdf>> [Accessed 8 Aug. 2011]

Additional Sources Consulted

Oral sources: Attempts to contact representatives from the following organizations were unsuccessful: Desarrollo Integral de la Familia, Facultad Latinoamericana de Ciencias Sociales - Mexico, Procuraduría General de Justicia, and Secretaría de la Función Pública.

Internet sites, including: Amnesty International; Centro Virtual de Atención a Víctimas; Comisión Nacional de Derechos Humanos; European Country of Origin Information Network, Human Rights Watch; InfoMex Gobierno Federal; National Center for Missing and Exploited Children; Secretaría de Desarrollo Social del Gobierno del Distrito Federal, Sistema de Información de Menores Extraviados; United Nations (UN) Development Program, Refworld.

[Click here for tips on how to use this search engine.](#)

Date modified: 2013-07-17 [Top of Page](#)

The attached reproduction is a copy of an official work that is published by the Government of Canada. The reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.