



RESPONSES TO INFORMATION REQUESTS (RIRs)

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16 February 2005

MEX43266.E

Mexico: Divorce law and practice, including separation agreements, custody, property dispositions, consent requirements, related issues from women's perspectives and in relation to spousal and child abuse, and legal requirements for taking children abroad by one parent (Replaces MEX27356.E of 22 August 1997 and MEX41510.E of 20 May 2003)

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Mexico's Federal Civil Code (Codigo Civil Federal) outlines various civil laws, including sections on the "community marriage legal regime" (*sociedad conyugal*), the "separation of property regime" (*separacion de bienes*) and the "twenty grounds for divorce" (Mexican Law Jan. 2004; see also Mexico 29 May 2000).

Nevertheless, Mexico and United States (US) government sources explain that state authorities control divorce procedures, and while each state's divorce legislation shares common features with the legislation of other states, there are also differences (US n.d.a; *ibid.* n.d.b; Mexico n.d.c). The US Embassy in Mexico states that Mexico does not have a federal, state or Federal District "central records office" for registering divorces (US n.d.b). Instead, according to the Embassy of Mexico in the US, a divorce is recorded on a couple's marriage licence kept at the civil registry (*registro civil*) where the couple was originally wedded (Mexico n.d.c). In other words "[e]ach court or civil registry maintains its own records" for marriage and divorce (US n.d.b). To illustrate the number of civil registries in Mexico, the US Embassy mentioned that the Federal District maintains "18 civil courts and 26 civil registries" (*ibid.*).

A November 2002 news article provides a summary of various divorce procedures in Mexico, outlining financial costs and timelines to complete a divorce (*El Universal* 14 Nov. 2002). The first divorce procedure is "mutual consent" (*mutuo consentimiento*), which is reportedly the most common form of divorce and can cost between 10,000 and 15,000 pesos (CDN \$1,082 and \$1,623 [Bank of Canada 4 Jan. 2005a]) (*ibid.*). The second type of divorce is "necessary divorce" (*divorcio necesario*) in which there is disagreement between the spouses and this is described as "lengthy, bothersome, and expensive" (*largo, engorroso y caro*) (*ibid.*). A "necessary divorce" can cost up to 25,000 pesos (CDN \$2,705 [Bank of Canada 4 Jan. 2005b]), requires legal proceedings and can take a minimum of six months (*ibid.*). Usually reserved for couples without children, "administrative divorce" (*divorcio administrativo*) is the least expensive form of divorce, costing about 500 pesos (CDN \$54 [Bank of Canada 4 Jan. 2005c]) and can be concluded in one month (*ibid.*). For those who do not have the money to begin divorce proceedings, the Federal District's Family Violence Assistance Units (Unidades de Atencion a la Violencia Familiar, UAVIF) provide psychological and legal assistance, including access to lawyers who will work on their cases without charge (*ibid.*).

Due to cases of fraudulent divorces having been recorded in some Mexican states, the US Embassy in Mexico cautioned that "only documents which have been authenticated by the Governor (Gobernador), the Secretary General of Government of the State (Secretario General de Gobierno del Estado) and/or by the Executive Director of Government (Oficial Mayor de Gobierno) may be given credence" (US n.d.b). Conversely, a marriage or divorce registered in a state different from where the marriage or divorce was officially recorded could be considered fraudulent (*ibid.*).

With regard to issues concerning children of a divorced couple, a 2004 Law Library Congress Report on the Hague Convention on International Child Abduction mentioned that in Mexico "[i]t is the family judges who have jurisdiction over problems concerning custody, rights of access, and child abduction based on the laws of that state" (*ibid.* Jan. 2004, 244). *Country Reports 2003* noted that in certain states "a woman may not bring suit to establish paternity and thereby obtain child support unless the child was a product of rape or cohabitation, the child resides with the father, or there is written proof of paternity" (25 Feb. 2004, Sec. 5)

News sources of 2004 demonstrate the states' authority to amend civil legislation such as divorce law (*La Jornada* 7 Dec. 2004; *Diario de Mexico* 22 Dec. 2004; *Once TV* 8 Dec. 2004). *La Jornada* reported that the Nuevo Leon state congress had voted to approve the reform of 26 articles within the civil code, including changes that would facilitate divorce (*facilitan el divorcio*) (7 Dec. 2004). In the Federal District, news sources noted that a new custody law came into force (*entro en vigor*) in December 2004 (*Diario de Mexico* 22 Dec. 2004; *Once TV* 8 Dec. 2004). According to the *Diario de Mexico*, the reforms to the Civil Code and Civil and Penal Proceedings Code of the Federal District would sanction the arrest of any custodial mother or father of a child who prevents the non-

custodial parent from seeing the said child after he or she has lost custody in a divorce (22 Dec. 2004). Specifically, under the new law any parent "retaining or removing" (*retenga o sustraiga*) a minor would be subject to term of imprisonment from one to five years in prison and a fine equivalent to between 100 and 500 days of the minimum salary (*Diario de Mexico* 22 Dec. 2004).

Custody and consent requirements

MEX41510.E of 20 May 2003 outlines a woman's legal rights to custody, joint custody or visitation rights of her child. Specifically, a consular representative at the Embassy of Mexico in Ottawa provided the following information in a 16 May 2003 telephone interview with the Research Directorate: Unless custody of the child has been lost to one of the parents by way of a judicial decision, both parents have the same rights with regard to access to the child, according to family law. Custody of children is usually a consequence of divorce procedures; in cases where the couple separates, the custody or guardianship of the child is usually decided by the couple based on the best interests of the child. Generally, in custody cases, children of 14 years of age or older are asked by judges which parent they would prefer to reside with; sometimes, children as young as seven years of age are asked the same question. With regard to disabled children, if the minor is unable to state a preference, the judge presiding over the case may seek the opinion of the attorney general's office or a family services' agency such as the System for Integral Family Development (Sistema para el Desarrollo Integral de la Familia, DIF). The consular representative stated that the outcome of custody, joint custody or visitation cases would always depend on their particular circumstances.

With regard to legal recourse available to a woman whose access to her child has been denied by her spouse, the consular representative stated that she can seek legal assistance from the DIF, which has offices in the various delegations throughout Mexico City or from the family services offered by the family courts.

The Website of the DIF in the Federal District states that it offers free legal assistance to persons with limited resources who are in need of such assistance or want to pursue family matter cases through the courts, including those related to custody and guardianship matters (Mexico n.d.a). The same Website states that both parents have rights to reside with their children, except in those cases where there is a risk to the child (ibid. n.d.b). In cases where there is disagreement between the parents as to where the child should reside, a family court judge will resolve the matter keeping in mind the Public Ministry (ibid.).

Property

With regard to property, Mexico government sources noted that the law requires couples to choose that their marriage be arranged under "community" or "joint ownership" of property or be filed under "separate property ownership" (Mexico n.d.e.; Mexico n.d.f). According to the Embassy of Mexico, each marriage certificate should show which type of property arrangement the couple chose (ibid. n.d.e).

Spousal and child abuse

While the Research Directorate's March 2003 Issue Paper *Mexico: Domestic Violence and Other Issues Related to the Status of Women* mentioned that victims of domestic violence had begun to use divorce as a means of leaving an abusive partner, an October 2003 *El Universal* news article reported that only 15 states sanctioned domestic violence as a justification for divorce (22 Oct. 2003). An October 2004 government of Mexico report presented to the Inter-American Commission of Women stated that 14 of the country's 32 state civil codes authorize domestic violence as a basis for divorce (OAS 13 Oct. 2004).

Single parent travelling abroad with a minor

MEX42710.E of 19 May 2004 summarizes the legal requirements for taking children abroad by one parent: According to the General Consulate of Mexico in Toronto (Consulado General de Mexico en Toronto) Website, if only one parent has legal guardianship of the minor, this parent must be able to prove this by bringing the following documents: the minor's birth certificate in the case of unwed mothers, a judicial resolution indicating a change in custody in the case of divorced parents, or the original death certificate of the deceased parent (n.d.).

The Foreign Relations Secretariat (Secretaria de Relaciones Exteriores, SRE) Website also mentions that a single mother need only obtain the father's consent to process her child's passport; the father does not need to be present (Mexico n.d.d.). If the father is unable or unwilling to provide consent, the SRE Website explains that the mother can request a family court judge (*juez de lo familiar*) to authorize the issuance of a minor's passport (ibid.). The SRE Website further recommends that the mother request that the judge "clearly specify" (*especifique claramente*) the passport's date of authorization and temporary nature (*temporalidad*) (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.

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