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## 1. GENERAL BACKGROUND

Mexico is a Federal Republic, its official name is the United Mexican States, “*Los Estados Unidos Mexicanos*”. The country comprises 31 States (or *Estados*) and the Federal District (*Distrito Federal*).

Mexico’s legal system is basically a civil law jurisdiction, having been derived from a mixture of Roman Law and the French Napoleonic Code. Mexican Law is codified. There is little binding case law in Mexico, judgments made at Federal level by the Mexican Supreme Court and the circuit courts, and at State level by the *Tribunal Superior de Justicia* are not widely published and are of persuasive value only. There is some binding case law, known as *jurisprudencia definida*. For this to be made binding, an issue must be interpreted the same way in five consecutive *Amparo*<sup>1</sup> cases, and there must not be a conflicting decision by the Supreme Court. These rulings are only binding on equal or lower courts and not on executive agencies.<sup>2</sup>

Under Article 89 X of the Mexican Constitution “*Constitución Política de Los Estados Unidos Mexicanos*”, the President is empowered and obliged to direct diplomatic relations and sign international treaties, subject to approval by the Senate.

Article 133 of the Constitution says that the laws which emanate from the House of Congress “*Congreso del Union*” and all the treaties which are agreed by them, which have been solemnised by the President, with approval of the Senate, are the Supreme Law of the nation. The judges of every State must conform to the Constitution, and to the above mentioned laws and treaties notwithstanding anything contradictory found in the Constitutions or laws of the States.

Article 89 I obliges the President to promote and execute the laws which are drawn up by Congress.

### 1.1 IMPLEMENTATION OF THE CONVENTION

The Hague Convention was authorised by the Senate, “*la Cámara de Senadores del Congreso de la Unión*” on 13 December 1990. This authorisation was published in the Official Diary of the Federation “*Diario Oficial de la Federación*” on 14 January 1991.

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<sup>1</sup> See post at 2.2.

<sup>2</sup> <http://www.mexonline.com/business/bergerls.htm>

The supporting instrument was signed by the President on 29 January 1991 and was deposited in The Hague 20 June 1991.

Observing the obligation found in Article 89 I of the Constitution, the Convention was enacted by the President on 3 February 1992 and published with the seal of the Secretary of Foreign Affairs in the *Diario Oficial* on 6 March 1992.

Mexico became a Contracting State to the Convention on 1 September 1991. It was the 20<sup>th</sup> Contracting State, (the 4<sup>th</sup> State to accede, but with 16 States having previously ratified).<sup>3</sup>

### 1.2 OTHER CONTRACTING STATES ACCEPTED BY MEXICO

Mexico was not a member State of the Hague Conference at the time of the Fourteenth Session, when the Convention was drafted and was therefore not entitled to be a ratifying State. However, Mexico acceded to the Convention in accordance with Article 38. Contracting States are not obliged to accept accessions and consequently the Convention is only in force as between Mexico and those Contracting States which have accepted its accession. As of 1 January 2002 the Convention was in force between Mexico and 48 other States. This is the smallest number of any of the Contracting States analysed in this report, which is perhaps to be expected given that the Convention does not automatically come into force between Mexico and any other State. At 1 January 2002 the last accessions accepted by Mexico were on 1 June 2001, when Mexico accepted the accessions of eight other States.<sup>4</sup>

For a full list of all States for whom the Convention is in force with Mexico, and the dates that the Convention entered into force for the relevant States, see the Appendix.

### 1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES

Mexico is not a party to any bilateral agreements.<sup>5</sup>

Within the Foreign Office “*Secretaría de Relaciones Exteriores*” (SRE) is a Protection Department. If a child has been abducted to a non-Hague country, a left-behind parent may request help from this department. This department will then send a formal request to a Consulate Embassy to either send a letter to, or visit the abductor. If an agreement can be reached this is known as “*buenos oficios*”. An applicant may also request that a family judge make a civil order granting custody to the applicant and ordering the return of the child. The applicant must then hire an attorney in the other State to try and enforce the resolution. This can take up to two years.

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<sup>3</sup> Namely, Argentina, Australia, Austria, Canada, Denmark, France, Germany, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, UK, USA, Belize, Hungary and New Zealand.

<sup>4</sup> Namely, Brazil, Colombia, Costa Rica, Iceland, Nicaragua, Paraguay, South Africa and Uruguay.

<sup>5</sup> However, Mexico is a party to the Inter-American Convention about the International Restitution of Minors, adopted Uruguay, 15 July 1989. The Convention was published in the *Diario Oficial* 6 July 1994, however a Central Authority has not yet been designated. The Convention is only in force between Mexico and Brazil and this is perhaps now academic as The Hague Convention is now in force between the two Contracting States.

## 2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION

### 2.1 CENTRAL AUTHORITY

Under the *Diario Oficial de la Federación*, the Central Authority is located in the Judicial Consultancy Division “*Consultoría Jurídica*” in the Foreign Office (*SRE*). The Foreign Office has been restructured and the Central Authority has been moved from the Consular Affairs to the Family Affairs Division. The Central Authority prepares all applications, but the applications have to be signed by the Legal Consultant “*Consultor Jurídico*”.

The Family Affairs Division comprises a Director General, an Assistant Director General, a Manager of the Division who is a qualified lawyer and another lawyer who is responsible for Hague Convention applications. In addition five other members of staff work with abduction cases. These staff are social service helpers, who have between 6 and 12 months left before they complete their professional training to become a lawyer. The Family Affairs Division is also responsible for inter-country adoptions and international child maintenance. The Central Authority can be contacted at the following address:

*Secretaría de Relaciones Exteriores  
Consultoría Jurídica  
Oficina de Derecho de Familia  
Av. Ricardo Flores Magón No 1  
Tercer Piso, Ala “B”  
Tlatelolco  
C.P. 06995 México, Distrito Federal  
Tel: +52 55 5117 4381  
Fax: +52 55 5117 4343 or +52 55 5327 3101*

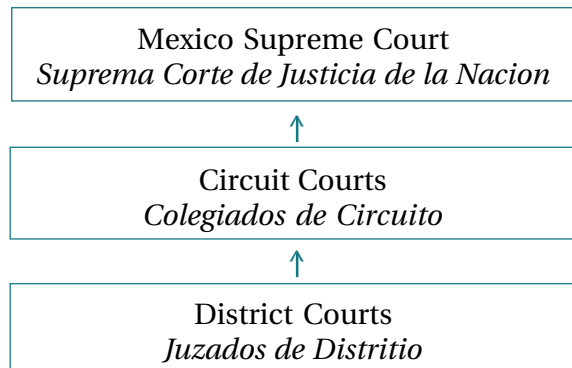
In Mexico there is a organisation called the *Desarrollo Integral de la Familia (DIF)*. This organisation has a special mandate and is responsible for the social and economic development of the family, providing free legal and other assistance to families, minors, the elderly, the disabled and the incapable. The *DIF* is a national entity which is administered by Federal, State and Municipal Governments.<sup>6</sup> The Mexican Ministry of Foreign Affairs has signed an agreement

<sup>6</sup> <http://www.dif.gob.mx/web/informacion/dif/index.html>

with 29 State *DIFs*<sup>7</sup> to act in Hague Proceedings. There is no agreement with the *DIF* for Mexico City, but here the national *DIF* will act in Convention proceedings. A copy of the application and formal petition is sent to the State *DIF* where the child is located. The *DIF* Attorney will be responsible for the welfare of the child, they will talk to the judge and a representative of the *DIF* will attend the court hearing. Although The Hague web site refers to these *DIFs* as State Central Authorities,<sup>8</sup> applications must be made to the Federal Central Authority in the Foreign Office (*SRE*) and it is the Federal Central Authority who will prepare applications both to the Mexican Court and the Foreign Central Authority.<sup>9</sup>

## 2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES

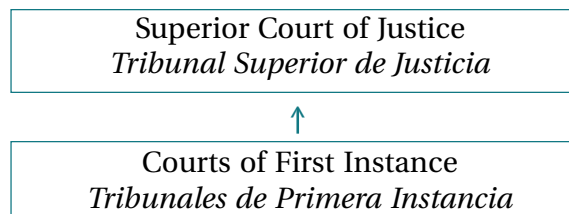
### 2.2.1 FEDERAL COURTS



The Mexican Supreme Court is the highest court in the land. The circuit Courts hear appeal cases and *Amparo* cases. The District Courts are the courts of ordinary jurisdiction, they hear *Amparo* cases at first instance.

### 2.2.2 STATE COURTS

These vary from state to state but generally are organised as follows:



<sup>7</sup> But not with the State *DIFs* in the States of Baja California Sur and Sonora.

<sup>8</sup> <http://www.hcch.net/e/status/stat28e.html#mx>

<sup>9</sup> See post at 3.2.

Convention Applications are sent to the *Presidente del Tribunal* in the Superior Court of Justice in the State in which the child is located. The *Presidente del Tribunal* will assign a Family judge, located in the family court, to the case. In Mexico City there are 42 judges in the family courts and there are two or three in the capital of each State. In towns, outside the capitals, there are one or two civil judges who have jurisdiction to hear family matters.

An appeal may be heard in an Appeal Room, which is attached to the Family Court. In Mexico City there are six to eight Appeal Rooms, two judges sit in each Appeal Room.

### 2.2.3 THE AMPARO

In Mexico there is a procedure called the *Amparo* which literally translated, means protection or help. An *Amparo* is a procedure that may be taken to review the constitutionality of an action of an executive agency, a court or a judgment itself.

Unless there are five consecutive *Amparo* decisions which decide an issue in the same manner, a single *Amparo* ruling does not create precedent and therefore the same issue may be considered in different Convention applications. In a Convention application a parent may file an *Amparo* against the Central Authority, the presiding judge and the judgment itself. There have been no *Amparos* filed questioning the constitutionality of the Hague Convention itself. The filing of an *Amparo* suspends the proceedings until the constitutionality has been reviewed. This may take a considerable period of time. Once an *Amparo* has been filed there are three possible outcomes:

- The *Amparo* will be denied.
- The *Amparo* will be allowed, all actions of the authority are denied and the child should not be returned – this would then result in another trial to discuss the parents' rights.
- A protective *Amparo* is granted.<sup>10</sup>

*Amparos* slow down an application considerably and so it is imperative that an applicant follows all the procedures correctly.

## 3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

### 3.1 LOCATING THE CHILD

If the child's whereabouts are unknown a request to locate the child is sent to the *Procuraduría General de la República (PGR)* in the Federal District, who will forward the request to the State office, which will then forward the application to the town in which the child is believed to be. The *PGR's* web site contains photos of missing children and the National Center for Missing & Exploited Children (NCMEC), a USA organisation, has helped to establish a Mexican missing children's web site.<sup>11</sup> Problems have been caused by the abductor changing the name of the minor.

<sup>10</sup> Andrés Linares Carranza speaking at the Second International Forum on Parental Child Abduction, "Identifying Best Practices in Hague Convention Cases," National Center for Missing & Exploited Children, 1-2 November 2000.

<sup>11</sup> See post at 6.2.

Many cases are delayed because of the length of time taken to locate a child. Some files, where the *PGR* has been unable to locate the child, are two years old. A new agreement (June 2001), has been made with the Federal Police, "*Policia Federal Preventiva*," (*PFPP*). Amongst other things they deal with traffic and child pornography. The *PFPP* have access to all election information, social security and hospital and school records. It is believed that the *PFPP* will be able to locate a child within a week.

In Mexico City there are at least two organisations dedicated to locating missing people, *LOCATEL*<sup>12</sup> and *CAPEA*.<sup>13</sup> *LOCATEL* is based in the Government of the Federal District, *CAPEA* is based in the Federal District branch of the *Procuraduría General de Justicia*, (the Attorney General).

The Treasury and Public Credit Ministry may check the Federal Taxpayers Registry to find the address of the abductor. State Authorities may check records regarding the issuing of driving licences.<sup>14</sup>

### 3.2 CENTRAL AUTHORITY PROCEDURE

Applications may be sent to the Central Authority by fax in the first instance. However, Mexican law requires that certain documents must be originals or certified copies.

The application should include:

- Certified copy of the child's birth certificate.
- Certified copy of the parent's marriage certificate.
- Photographs of the child and the person who has taken the child to Mexico.
- Certified copy of the court order in effect at the time that the child was taken to Mexico. (Any court order that has been made since the child was taken to Mexico may be included for general information).
- Statement from the applicant specifying the date, time and circumstances of the wrongful removal or retention.
- Where appropriate, a statement that it is anticipated that the abductor will hide once they learn of the proceedings.
- Translations of the Convention application and supporting documents, do not have to be official or certified.<sup>15</sup>

If an application is faxed then the Central Authority will begin the checking process (see below) until the original arrives. Because the Mexican postal system can be unreliable, applications should be sent by a courier, such as FedEx®. Applications from Europe sent by normal post can take one month or more to arrive.

Sometimes the Central Authority receives requests directly from applicants in the USA. They will send a copy of the State Department application form, which they send to the applicant, if that is returned to the Mexican Central Authority, they will forward it to the USA State Department.

<sup>12</sup> <http://www.ddf.gob.mx/servicios/locatel/>

<sup>13</sup> <http://www.pgjdf.gob.mx/capeal/>

<sup>14</sup> This is taken from a document the Mexican Central Authority provided to the USA Department of State which is given to applicants. (Hereafter 'Advice from the Mexican Central Authority to Foreign Applicants').

<sup>15</sup> Ibid.

When an application is received the Central Authority will check that the file is complete, and that there is an address for the child in Mexico. If there is an address (and there must be one before a petition may be prepared) a formal petition may be prepared for the court. The petition takes the form of a summary of the Convention application.

### 3.3 LEGAL REPRESENTATION

It is not necessary for an applicant to have their own attorney, the Central Authority is obliged to follow proceedings and the applicant will be represented by the Central Authority.<sup>16</sup> If the applicant does have their own attorney, the attorney may ask the Central Authority for advice. The Central Authority will provide a copy of the file and the attorney may visit the judges and make suggestions.

The Central Authority provides assistance to all those who need it. When the petition to the court is made, the Central Authority will explain to the court its obligations under the Convention and actions that the court may take. If the applicant or respondent wishes to have their own lawyer, the Central Authority is willing to explain about the procedure and the specific application.

### 3.4 COSTS AND LEGAL AID

Notwithstanding that Mexico made no reservation under Article 26, Mexico does not give legal aid to applicants but if an applicant or abductor has no income, they may request that the *DIF* assign them a free attorney. The attorneys for the *DIF* are said to be very good and often better than private lawyers. A foreign applicant may request a *DIF* attorney. The government does not have a list of recommended attorneys.

### 3.5 LEGAL PROCEEDINGS

Once the location of the child is known the Central Authority will prepare the formal petition to the court. This will provide a summary of the Convention application, and the obligations under the Convention including the obligation under Article 7 (c) to negotiate a voluntary return. Because the filing of an *Amparo* would effectively negate the effectiveness of the application, the Central Authority will ensure that the request highlights all procedural and constitutional rules that must be followed.

The application takes the form of a petition from a foreign government to enforce an international treaty. There will be a request for a court hearing. This request is important to prevent the abductor filing an *Amparo*, as under Articles 14 and 16 of the Mexican Constitution litigants have the right to a court hearing.

Included in the petition to the court are:

- The relevant extract of the *Diario Oficial de La Federación*.
- The relevant articles of the Constitution.
- Article 543 of the Federal Civil Procedures Code which says in Federal matters international judicial co-operation is governed by that code and

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<sup>16</sup> Information from the Mexican Central Authority, June 2001.

other applicable laws, notwithstanding the dispositions or treaties to which Mexico is a party.

- Article 546 of the Federal Civil Procedures Code and Article 23 of the Hague Convention under which documents do not need to be legalised or formalised.
- Article 11<sup>17</sup> of the UN Convention on the Rights of the Child also justifies the proceedings.

The petition must include the exact address of the child, and includes a suggestion that the child be put into care of the *DIF*. If the child cannot be placed in the care of the *DIF*, a police car can be put in front of the house, this is known as *arraigo domiciliario*. If the child is in the care of the *DIF* for too long the abductor may impose an *Amparo* and so the hearing should be within two days of the abductor being notified of the proceedings.

The formal petition is signed by the *Consultor Juridico*, and is sent to the President of the Court with all the necessary documents. Mexican law requires that original documents or certified copies are provided to the court. If simple copies are sent to the court, the court will return the file. Documents must also be translated into Spanish. A copy is sent to the *DIF*. Applications are sent by courier and not by normal post.

The abductor should be notified of the proceedings. When the abductor is given notification, the judge will seek a voluntary agreement between the parties. If this is unsuccessful the case will proceed to court. In the actual hearing, it is better for the applicant to be present, but this is often not possible since notification of the proceedings is frequently the day before the hearing. If the case is in Mexico City, the Central Authority can take the applicant to the court. In the hearing, a representative of the *DIF*, a representative of the *SRE* and any attorneys for the applicant or left-behind parent are present. The hearing is mainly by paper, although oral arguments may be heard.

Defences are rarely raised, but, if they are, the *DIF* will visit the child and provide a welfare report.

The President of the Court will assign a judge to the application and will inform the Central Authority of the name of the family judge, with their telephone number. The Central Authority is informed of this within 10-15 days of filing an application.

As many judges have no experience of the Convention, the Central Authority will telephone the judge, seven to eight days, after they have received the application, and liaise with him or her explaining the Convention and its application. They will generally suggest any measures that may be taken. The judge may act “ex-officio”. All family judges are meant to work within the ambit of State Law, but may take actions which are not prescribed under State law, for example, we have been told of a case in which a judge visited the abductor’s house at 5 am, six mornings in a row to locate the child.

<sup>17</sup> “1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.”



If the child is in the Federal District, a representative of the Central Authority will visit the judge. The Central Authority will also ask when the hearing will take place and what measures are being taken. In Mexico City, it may take one month for a hearing. In other States, it may only take one week. The Mexican Central Authority will fax the requesting Central Authority with the date of the hearing.

In Mexico City the Central Authority will attend the court hearing, but in all other States, a representative from the *SRE* will be present.

In Mexico City problems have been caused by the fact that family judges are reluctant to return young children to left-behind fathers, in the absence of a custody order in the father's favour. Under the Civil Code, the custody of a minor under the age of seven years old is with the mother.<sup>18</sup>

In the States of Puebla, Nayarit and Michoacan, the President of the Court will not accept cases under an international treaty as they argue that it is a Federal issue, whereas they are a State court which hears State matters. The Federal court, however, says that the application is a family matter and therefore they are not competent to hear the case,<sup>19</sup> the case should be heard in the Family Court.<sup>20</sup>

### 3.6 APPEALS

Only three abduction cases have been appealed since Mexico acceded to the Hague Convention. Under Mexican law if a person wishes to file an appeal, they must do so between three and nine days after the order has been made. The Central Authority may not file an appeal. Only an attorney may file an appeal, and therefore at this stage in the proceedings, an applicant must hire a lawyer if he wishes to appeal a decision. The other option is to request access, and the Central Authority will assist in this matter.

### 3.7 ENFORCEMENT OF ORDERS

If return of the child is ordered, there are many mechanisms to ensure smooth return. If the child is in Mexico City, the Central Authority will take the child to the airport. In other States the *DIF* will take the child to the airport and assist the applicant with any other matters. The Central Authority works with the National Institution of Emigration "*Instituto Nacional de Migración*" (*INM*) to ensure that the travel papers for the child are organised. The Emigration Officers are given a copy of the court order. The *SRE* may also request that Consulates / Embassies assist.

<sup>18</sup> Interview with Luz Elena Lopez Rodea at the Mexican Central Authority, 28 May 2001.

<sup>19</sup> We have heard some anecdotal evidence suggesting that this problem can be overcome if the Central Authority passes the application to the local *DIF* who then process the application to the courts so that it comes to the courts as a State matter.

<sup>20</sup> Query whether this standpoint could be challenged by an *Amparo*.

## 4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS

The initial procedures for access applications are the same as those for return. The same procedure is used to locate the child, there must be an address for the child. The Central Authority will prepare a petition to the judge. It can take 10 to 20 days for a case to be heard. Where there is an access arrangement the judge will inform the respondent that they are aware of such an arrangement and that the respondent has to follow it. The judge can order access in holidays as well as by telephone and email. In general an access application is heard under Article 21 and not under domestic law. The applicant may attend the hearing, but it is not always necessary.

## 5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

### 5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

#### 5.1.1 CIVIL LAW

Both parents must give written consent before a child's passport may be issued.<sup>21</sup>

According to one case:

“Mexican law provides that two natural parents of a child are his joint guardians in the absence of a custody order. Mexican citizens must have the written permission of both parents in order to remove a minor child from that country.”<sup>22</sup>

If the parents of the child are unmarried, the consent of the father is required if his name appears on the child's birth certificate.<sup>23</sup>

Minors under 18, travelling from Canada and the USA, can be and frequently are asked to produce a notarised consent form signed by the absent parent (or parents) giving permission for the child to enter Mexico.<sup>24</sup> For British minors travelling to Mexico on their own, with only one parent or with another person, it is no longer necessary to obtain the parent's or legal guardian's consent. Possession of a British Passport implies such consent.<sup>25</sup>

<sup>21</sup> <http://www.mexicanconsulate.org.uk/>

<sup>22</sup> *In re the Application of Petitioner: Felipe Jorge C. v. Respondent: Gabriela R.*, Riverside County Superior Court Case No. 137745. Taken from “How Hague Cases are Handled by California District Attorneys and the California Attorney General's Office.” Raquel M Gonzalez, published for North American Symposium on International Child Abduction: How to Handle International Child Abduction Cases, 30 September-1 October 1993.

<sup>23</sup> Telephone conversation with the Mexican Consulate in London, 3 August 2001.

<sup>24</sup> John Noble, Michelle Matter, Nancy Keller, Daniel C. Schetter, James Lyon, Scott Doggett. *Lonely Planet-Mexico* 7<sup>th</sup> Edition September 2000, pp. 77-78.

<sup>25</sup> <http://www.mexicanconsulate.org.uk/>

### 5.1.2 CRIMINAL LAW

International parental child abduction became a Federal crime under Article 366 *quáter* of the Federal Penal Code “*Código Penal Federal*” on 12 June 2000. Under this Article, prosecution must be pursued at the petition of those whose parental rights (*patria potestad*), rights of custody, or guardianship have been violated. Because international parental abduction has only recently been made a Federal crime, the procedures that may be taken to return a child are not widely known. The *Procuraduría General de la República (PGR)* or the Attorney General for the Republic will request that a criminal judge create a warrant for the arrest of the abducting parent. This warrant then enables INTERPOL to search for the child, and the abductor may be extradited from the foreign country.<sup>26</sup> Articles 366 *ter.* and 366 *quáter* of the Federal Penal Code prescribe the penalties for international parental child abduction. Under these Articles, a parent will be punished with between 18 months and 5 years imprisonment and a fine the equivalent of 200 to 500 days pay<sup>27</sup> if they abduct a child under the age of 16 outside of the National Territory, for no economic benefit, and the person receiving the child intends to incorporate the child in its nuclear family.

### 5.2 CENTRAL AUTHORITY PROCEDURE

An outgoing application may be made to the Federal Central Authority, the State *DIF* or the State branch of the *SRE*. The State *DIF* and the State branch of the *SRE* have copies of the forms that need to be completed.

The following should be attached to the application form:

- Account of the events and circumstances surrounding the abduction or unlawful retention.
- Certified copy of the child’s birth certificate.
- Photograph of the child.
- Photograph of the person presumed to have taken or unlawfully retained the child.
- Judgment of agreement relating to the divorce or custody.

All documents submitted need to be in Spanish and the official language of the requested State.

The Mexican Central Authority has a translation of a Mexican birth certificate, and can translate in an emergency, but generally will not translate documents for the applicant. For the documents that do not need to have a certified translation, such as the request to the foreign Central Authority, the Central Authority recommends that the applicant use a language school for the translation.

If an application is made to the State *DIF* or *SRE* office, then the application is forwarded to the Federal Central Authority since it is the only authority that has the power to prepare applications. Applications are signed by the *Consultor Jurídica*. Once completed, applications are made to the Foreign Central Authority.

<sup>26</sup> Interview conducted with Luz Elena López Rodea at the Mexican Central Authority, 28 May 2001.

<sup>27</sup> A day’s fine is the minimum daily wage as set by each State.

For applications to the USA, the Mexican parent should complete a legal assistance questionnaire, a copy of which is kept by the Mexican Central Authority. This must be notarised and the Central Authority recommends that this is done in the USA Embassy as it is cheaper there. Fifty to sixty percent of the applications to the USA are to California. If the child is believed to be in California, the Central Authority will send the application to the National Center for Missing & Exploited Children (NCMEC) (who act as the Central Authority for incoming applications to the USA). NCMEC will forward it to the relevant District Attorney who will deal with it directly. The District Attorney will update both NCMEC and the Mexican Central Authority.

### **5.3 PROTECTION AND ASSISTANCE ON RETURN**

Where there have been allegations of abuse the child may be transferred to the care of the *DIF* upon arrival in Mexico from the requested State. The *DIF* is responsible for the child's welfare.

Mexican courts may enforce undertakings as long as they come in the proper format.<sup>28</sup>

## **6. AWARENESS OF THE CONVENTION**

### **6.1 EDUCATION OF THE CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS**

The Mexican Central Authority has meetings with authorities such as the *DIF* and the Public Ministry from other States, including Oaxaca, Mexico, and Hidalgo to explain about The Hague Convention and international child maintenance.

There have been frequent meetings between the Mexican and USA Central Authorities. There have also been two Bi-national Commission meetings in 1999 and 2000.<sup>29</sup>

### **6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC**

The amount of information available on the Internet has significantly improved during our period of research. There is a Central Government web site which has a link to sites relating to missing children:

*<http://www.precisa.gob.mx>*

One of these links is to a new web site set up for the *PGR* by NCMEC. This site is similar to other sites supported by the National Center for Missing & Exploited Children and has photos of missing children from all over the world. It can be viewed in Spanish and English:

*<http://www.menoresperdidos.org>*

<sup>28</sup> See the Mexican reply to the Questionnaire circulated by the Permanent Bureau to Contracting States for preparation of the Fourth Special Commission (Hereafter 'Mexican Response to the Hague Questionnaire').

<sup>29</sup> See the USA Central Authority's "Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction" presented to Congress in April 2001.

The PGR web site also contains photos of missing children:

<http://www.pgr.gob.mx/servscom/persextr/persextr.htm>

*Juegos Sin Terminar*, is an organisation which offers services to help find abducted children. Their web site has photos of missing children, information regarding the prevention of abduction, information for parents of children who have been abducted and links to other organisations:

<http://www.menorextraviados.org.mx/>

*Asociacion Mexicana De Niños Robados Y Desaparecidos, A.C.*, offers support to those whose children are missing. They offer means of communication in the press, television and radio. Their web site has photos of missing children:

<http://nrobados.cjb.net/>

## 7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999<sup>30</sup>

In terms of the number of applications for return that were received in 1999, Mexico was the 10<sup>th</sup> busiest Convention State.<sup>31</sup> However, perhaps surprisingly, the Mexican Central Authority neither received nor made any access applications in that year.

Incoming return applications	41
Outgoing return applications	55
<b>Total number of applications</b>	<b>96</b>

### 7.1 INCOMING APPLICATIONS FOR RETURN

#### 7.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
USA	35	85
Germany	1	2
Italy	1	2
Norway	1	2
Portugal	1	2
Colombia	1	2
Cuba	1	2
<b>Total</b>	<b>41</b>	<b>~100</b>

<sup>30</sup> Preliminary Document No. 3 *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* drawn up by Professor Nigel Lowe, Sarah Armstrong, Anest Mathias and available at <http://www.hcch.net/e/conventions/reports28e.html> (Hereafter 'Preliminary Document No. 3').

<sup>31</sup> The USA, England and Wales, Germany, Australia, France, Italy, Canada, New Zealand and Spain all received more applications in that year.

As can be seen in the table on the prior page, the majority of applications (85%) were from the USA. Given their geographical proximity, it is perhaps predictable that there would be a significant caseload between the two States. However, no other Central Authority has had such a high percentage of its overall caseload coming from one other State. No other Contracting State made more than one application to Mexico in 1999.<sup>32</sup>

#### 7.1.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection	0	0
Voluntary Return	0	0
Judicial Return	6	15
Judicial Refusal	0	0
Withdrawn	0	0
Pending	35	85
Other	0	0
<b>Total</b>	<b>41</b>	<b>~100</b>

In terms of the proportion of applications made to Mexico in 1999 which resulted in the return of the child, Mexico is the worst of the seven Contracting States considered. Only six applications, 15% resulted in a judicial return while the other 85% were still pending 17 months after the last application would have been received. We understand that in eight of these applications the child had still not been located, a total of 20% of all applications received in 1999. The USA Central Authority's "Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction" presented to Congress in April 2001, noted:

"Mexican law enforcement agencies have not consistently undertaken serious efforts to locate parentally abducted children. Location of the child remains undetermined for eight of the cases included in the September 2000 Compliance report and in all six of the cases added to this report."<sup>33</sup>

It should be noted that, according to the Mexican Central Authority, as at the end of May 2001, 34 of the 57 (62%) outgoing applications to the USA were still in the stage of locating the child.

It is interesting to note that there were no judicial refusals or voluntary returns in 1999. We understand however that between 1 January and 28 May 2001 there were seven voluntary returns to the USA.<sup>34</sup>

<sup>32</sup> An application was accepted from Cuba, not a Convention State.

<sup>33</sup> [http://www.travel.state.gov/2001\\_Hague\\_Compliance\\_Report.html](http://www.travel.state.gov/2001_Hague_Compliance_Report.html)

<sup>34</sup> Interview with Luz Elena López Rodea at the Mexican Central Authority, 28 May 2001.

### 7.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION

No information was available regarding timing for the six judicial return cases. No applications were appealed.

## 8. CONCLUSIONS

It should be noted that the system of the Federal Central Authority and the State *DIFs* being involved in the applications seems to be highly effective. The Central Authority with its experience with many applications and its employment of lawyers and those who are close to qualifying, has the legal expertise to deal with any problems and ensure that the Convention is enforced correctly. The State *DIFs* are there to provide local support to the Central Authority, the *DIF* will be responsible for the child's welfare, if a defence is raised evaluate the merits of the defence and it has been said that the child welfare reports provided by the *DIF* are excellent.<sup>35</sup> If an applicant wishes to attend the court hearing, the *DIF* will take the parent to the court, if the return of the child is ordered the *DIF* take the child to the airport. In outgoing applications, the applicant can obtain an application form from the State branch of the *DIF* or the *SRE* as well as the Central Authority.

Mexico could be criticised for not limiting jurisdiction in the courts and for not having a special fast-track procedure. Indeed it would seem important to limit jurisdiction to judges experienced in the Hague Convention, particularly as the filing of an *Amparo* can render a Convention application almost useless as it will stay the procedures. It is therefore imperative that a judge follows all procedures correctly. By having a lawyer in charge of Convention applications in the Central Authority, she is aware of the *Amparo* and in the petition that is prepared to the judge notes all the areas in which an *Amparo* may be filed and highlights the procedures that should be taken to prevent grounds for an *Amparo* being raised. Few *Amparos* are now raised, indeed during a meeting in the USA State Department in November 2000 it was said that no new *Amparos* had been filed since 1999.<sup>36</sup> The Central Authority will either visit the judge or telephone the judge to ensure that the application of the Convention is fully understood. Although there is no special fast-track procedures for Convention Applications, this is perhaps not necessary as once an application is made to *Presidente del Tribunal* an application can be heard within one month.

The USA Central Authority's Compliance Report 2001, was critical that:

“Mexico has no implementing legislation integrating the Convention into the Mexican legal system.”

<sup>35</sup> Interview with Guillermo Galarza, NCMEC, 2 November 2000.

<sup>36</sup> Interview with Martha Hass, Mexican caseworker at the USA Department of State, Office of Children's Issues, 31 October 2000 and 3 November 2000.

However, as already stated, following the requirements of the Constitution, the Convention is in force in Mexico and furthermore under Article 133 of the Constitution it is “Supreme Law”, which is binding even if it conflicts with existing State laws. Nevertheless we understand that there are serious problems caused by certain Mexican States refusing to process a Convention application in a State Court and is something which needs to be addressed by the authorities in Mexico.

A common complaint amongst Central Authorities is that communication with the Mexican Central Authority is difficult. Indeed some Central Authorities have even resorted to using diplomatic channels. We understand that as between the USA and Mexico matters improved considerably when the USA State Department decided to employ a Spanish speaker to deal with applications to Mexico. Our research has found that the most effective means of communication is by telephone, and when speaking to the members of the Central Authority (in English and Spanish) they are extremely helpful. The USA Central Authority and Argentina always send documents by courier. Other Central Authorities could profitably follow this example.

When writing about “Good Practice”, it is very easy to look at the services provided by wealthy countries, such as legal aid and translation services and say that every country should provide these. It is important to remember however, that not every Contracting State can afford to provide these, Mexico is one of these countries. The Mexican Central Authority has however devised methods which can be used to help the applicant, and they must be applauded for doing so.

Although, legal aid is not provided, it is not strictly necessary, as the applicant is represented at first instance<sup>37</sup> by the Central Authority.<sup>38</sup> The Central Authority is obligated to supervise the enforcement, operation, implementation, interpretation and fulfilment of the Convention. If the applicant has no income, if requested the *DIF* is obliged to provide a lawyer free of charge, the lawyer will frequently be very experienced in family matters.

The Central Authority cannot translate all documents for the applicant, but has devised means to reduce the financial burden on the applicant, such as the provision of a translation of a Mexican Birth Certificate and the recommendation that the applicant use a local language school. English and French is also spoken in the Central Authority.

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<sup>37</sup> We are unsure of the procedures for legal aid in appeal cases where an attorney is required, but few applications end in appeal. There were no appeals in 1999. See Preliminary Document No. 3, op. cit., n. 30.

<sup>38</sup> Advice from the Mexican Central Authority to Foreign Applicants, op. cit., n. 14.



## 9. SUMMARY OF CONCERNS

- Communication with the Central Authority can be difficult.
- Despite making no reservation to Article 26 Mexico does not provide legal aid. Due to the utilisation of the Central Authority to represent the applicant at first instance legal aid is not strictly needed, however an attorney is needed in order to file an appeal.
- In Mexico it is beneficial for the applicant to be present at proceedings.
- In 1999 85% of applications to Mexico were still pending as at 31 May 2001.
- Problems have been caused in certain States with regard to the refusal to accept Convention applications as they are considered Federal matters.
- Many judges have no experience of the Convention.
- Judges in Mexico City are reluctant to return children under the age of seven years to left-behind fathers.

## 10. SUMMARY OF GOOD PRACTICES

- The person responsible for Convention applications in the Central Authority is a lawyer and as such is able to protect against the filing of an *Amparo*.
- The involvement of State *DIFs* to aid child protection issues and provide local support for the Federal Central Authority appears successful. The *DIF*, as a child protection agency, ensures that the welfare of the child is always monitored.
- As a response to the poor performance of one police force in locating children, an agreement has been signed with another police force. (It is too early to say whether this is having the required effect.)
- The State *DIFs* are required to provide a lawyer free of charge where the applicant has no income.
- The Federal Central Authority in Mexico City, and the State *DIFs* in other States take the child to the airport to ensure return is enforced.
- The Central Authority arranges all emigration matters.
- Outgoing applications may be made locally, although applications must then be forwarded to the Federal Central Authority.
- The Central Authority meets with State Authorities to give information about the Convention.
- The Central Authority has helped with translation costs by providing a translation of a Mexican birth certificate.
- Although it is not possible to limit the number of judges who can hear a Hague application, the Central Authority provides detailed information to the judges about the procedures, suggests any measures that can be taken and telephones the judges to ensure that they understand the proceedings.
- Criminal proceedings may not proceed without the permission of the parent whose parental rights have been violated.
- Where there are allegations of abuse, the child will be put into the care of the *DIF* on the return to Mexico.
- Mexico has an active policy of accepting accessions.

## APPENDIX

As of 1 January 2002, the Convention is in force between the following 48 Contracting States and Mexico.

CONTRACTING STATE	ENTRY INTO FORCE
ARGENTINA	1 OCTOBER 1991
AUSTRALIA	1 JUNE 1992
AUSTRIA	1 NOVEMBER 1994
BAHAMAS	1 DECEMBER 1995
BRAZIL	1 JUNE 2001
BURKINA FASO	1 DECEMBER 1995
CANADA	1 JULY 1992
CHILE	1 DECEMBER 1995
CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION	1 SEPTEMBER 1997
COLOMBIA	1 JUNE 2001
COSTA RICA	1 JUNE 2001
CYPRUS	1 DECEMBER 1995
CZECH REPUBLIC	1 AUGUST 1998
DENMARK	1 DECEMBER 1992
ECUADOR	1 DECEMBER 1995
FINLAND	1 AUGUST 1994
FRANCE	1 JANUARY 1992
GERMANY	1 FEBRUARY 1992
GREECE	1 OCTOBER 1997
HONDURAS	1 DECEMBER 1995
HUNGARY	1 APRIL 1997
ICELAND	1 JUNE 2001
IRELAND	1 OCTOBER 1991
ISRAEL	1 FEBRUARY 1992
ITALY	1 APRIL 1997
LUXEMBOURG	1 NOVEMBER 1991
MONACO	1 DECEMBER 1995
NETHERLANDS	1 OCTOBER 1991
NEW ZEALAND	1 DECEMBER 1991
NICARAGUA	1 JUNE 2001
NORWAY	1 MARCH 1992
PANAMA	1 DECEMBER 1995
PARAGUAY	1 JUNE 2001
POLAND	1 DECEMBER 1995
PORTUGAL	1 AUGUST 1992
ROMANIA	1 DECEMBER 1995
SAINT KITTS AND NEVIS	1 DECEMBER 1995
SLOVAKIA	1 FEBRUARY 2001
SLOVENIA	1 DECEMBER 1995
SOUTH AFRICA	1 JUNE 2001
SPAIN	1 JULY 1992
SWEDEN	1 AUGUST 1992
SWITZERLAND	1 SEPTEMBER 1992
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	1 OCTOBER 1991
UNITED STATES OF AMERICA	1 OCTOBER 1991
URUGUAY	1 JUNE 2001
VENEZUELA	1 SEPTEMBER 1997
ZIMBABWE	1 DECEMBER 1995



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